BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

EDWIN CAVAGNARO, Appellant, v. CBJ ASSESSOR, Appellee.	Appeal of: Letter of Determination re Senior Citizen Real Property Hardship Exemption Assessor File No. 2013-4b2001030090

DECISION ON APPEAL

I. Introduction

Appellant Edwin Cavagnaro, by and through counsel, Robert Spitzfaden, timely appealed the CBJ Assessor's June 24, 2013 Letter of Determination denying his application for a 2013 Senior Citizen Real Property Hardship Exemption under CBJ 69.10.021(a). The Assessor denied the application on the basis of her determination that the applicant's Gross Household Income exceeded the 2013 income cap for a three-person household. CBJ Finance Director Bob Bartholomew represented the Assessor in this appeal.

The issue on appeal is whether the Assessor erred by counting Appellant's brother-in-law, David MacDonald, as a member of the household, and his income as part of Appellant's Gross Household Income ("GHI"). The parties do not dispute that Appellant's GHI would have fallen below the income cap, qualifying him for the hardship exemption, had Mr. MacDonald's income been excluded from the calculation.

On August 27, 2013, the Presiding Officer held a prehearing conference with the parties and issued a Prehearing Order setting the hearing date and briefing deadlines. The record was prepared and briefs were filed. At the appeal hearing on November 25, 2013, the parties

presented oral argument and responded to Assembly questions. After the hearing, the Assembly deliberated in closed session and directed counsel to prepare a draft decision. As provided by the CBJ Administrative Appeal Procedures, the parties were given an opportunity to file written objections to the Assembly's proposed decision. Neither party filed objections.

Having fully considered the record, the parties' briefs and oral argument, and all written objections to the draft decision, the Assembly hereby denies the appeal for the reasons set out herein.

II. Legal Standard of Review and Burden of Proof

As the appeal agency, the Assembly's review of the CBJ Assessor's decision is subject to the requirements of CBJ 01.50.070, which provides in relevant part that:

> (a) The appeal agency . . . may set aside the decision being appealed only if:
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> > (1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
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> > (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency or the hearing officer of the basis;
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> > (3) The appeal agency or the hearing officer failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.
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> (b) The burden of proof is on the appellant.

Under Alaska law, "'[s]ubstantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.'" *Williams v. Ketchikan Gateway Borough*, 295 P.3d 374, 375 (Alaska 2013) (quoting *May v. State, Commercial Fisheries Entry Comm'n,* 175 P.3d 1211,1216 (Alaska 2007) (internal citations omitted)). The appeal agency does not "'reweigh the evidence nor choose between competing factual inferences' . . . and must uphold [the

decision being reviewed] if it is supported by substantial evidence '[e]ven though there are competing facts that might support a different conclusion.'" *Id.* at 375-376.

III. The Senior Citizen Real Property Hardship Exemption Law

The senior citizen/disabled veteran hardship exemption is an optional real property exemption under Alaska law,[1] available to hardship-eligible applicants who qualify for the mandatory statewide senior citizen/disabled veteran real property exemption. Once an applicant is determined hardship-eligible, the applicant is exempt from paying that portion of his or her tax bill that exceeds 2% of the applicant's gross household income. "Gross household income" is defined in this state law provision as "total annual compensation, earned and unearned, from all sources, of all members of the household." 3 AAC 135.040. While the amount of the tax exemption is established by state law, the criteria for determining hardship-eligibility is left largely up to each local taxing authority that adopts the exemption.

The senior citizen/disabled veteran real property hardship exemption, adopted by the CBJ, is codified at CBJ 69.10.021.[2] Eligibility for the exemption requires the applicant to meet the following income requirement:

> "The applicant's gross household income, from all sources in the prior year, may not exceed 120 percent of the most current Median Family Income for Juneau as set by the U.S. Department of Housing and Urban Development for a similar sized household . . ."

CBJ 69.10.021(b)

"Gross household income," is defined in the CBJ Title 69.10 as the:

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[1] *See* AS 29.45.030(e) (". . . A municipality may in case of hardship, provide for exemption beyond the first $150,000 of assessed value in accordance with regulations of the department. . .")

[2] While the same income-based criteria is used to determine hardship eligibility for senior citizens and disabled veterans, references to "hardship exemption" herein refers to the senior citizen hardship exemption, as that is the only exemption at issue in this appeal.

> "total annual compensation, earned and unearned, taxable and nontaxable, from all sources of all members of the household for the calendar year prior to the exemption year, including but not limited to, wages, interest, dividends, rents, royalties, alimony, pensions, annuities, gains derived from dealings in property, etc. Losses are not considered income for purposes of this exemption."

IV. Statement of Facts

Appellant is a senior citizen who with his wife, and brother-in-law Mr. MacDonald, share a four bedroom single-family residence at 1010 Otter Run in Juneau. The warranty deed indicates that Mr. and Mrs. Cavagnaro own a 25% undivided interest, and Mr. MacDonald owns a 75% undivided interest, in the real property. R.000024. The Cavagnaros and Mr. MacDonald file separate tax returns and do not conduct their financial affairs as a single unit. Rather, Appellant and Mr. MacDonald stated in separate affidavits that [Mr. MacDonald and the Cavagnaros] "contribute our proportionate share towards the property taxes, insurance, utilities and repairs of the property." R. 000020, 000022.

In 2011 and 2012, Appellant applied for the senior hardship exemption. Both years, Mr. MacDonald's tax returns were provided to the Assessor, but his income was *not* included in the calculation of Appellant's GHI, and Appellant was granted the exemption. In 2013, the Assessor included Mr. MacDonald's income in calculating Appellant's GHI (for a total GHI of $199,844.00), though neither the ordinance nor the Appellant's material circumstances had changed. Applying the 2013 hardship income cap for a 3-person household of $98,520, under CBJ 69.10.021(b), the Assessor denied the hardship exemption.

V. Analysis

Appellant asserts that it was error to count Mr. MacDonald as a member of his household, and to include his income in Appellant's GHI. He argues that only occupants of a residence who conduct their financial affairs as a single unit should be considered members of

the household for purposes of the hardship property tax exemption. He urges the Assembly to find that two separate households share the single-family residence at issue: Appellant and his wife make up one household, and Mr. MacDonald makes up the other household. Appellant points out that CBJ Code 69.10.021 contemplates the situation where two or more people may be eligible for the exemption, and requires them to decide among themselves who is to receive the benefit of the exemption, since only one hardship exemption may be granted for a property.

The potential for more than one qualifying party, Appellant contends, means that there is the potential for more than one household per single-family property, and that the Assessor must proceed accordingly when calculating gross household income. Appellant's position is that the occupants of a single-family residence do not necessarily constitute a single household, for purposes of the hardship exemption.

Appellant also argues that, despite its "hardship" name, the purpose of the hardship exemption is primarily to support and attract seniors to the community. Citing to Assembly meeting minutes, Appellant underscores two comments made when the ordinance was discussed and adopted, to support this legislative history and intent argument.

Finally, Appellant offers two Alaska Supreme Court cases to bolster his argument that the Assessor is bound by her 2011 and 2012 hardship exemption determinations, when reviewing Appellant's 2013 hardship exemption application.[3]

The Appellee, in turn, argues that the Assessor should be permitted to correct past errors made under CBJ Code and in violation of state law, which prohibits the pro rata allocation of property taxes. The Assessor notes the undisputed fact that Mr. MacDonald claims the subject address as his residence, and contends that Mr. MacDonald' s income was properly included as

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[3] *Offshore Systems-Kenai v. State*, 282 P.3d 348 (Alaska 2012) and *Luper v. City of Wasilla,* 215 P.3d 342 (Alaska 2009).

part of Appellant's GHI under CBJ 69.10.005, which requires counting "total compensation. . . from all sources of all members of the household." While acknowledging that "household" is not defined in Code, the Assessor cites to CBJ 69.10.021(d) which requires the exemption applicant to submit relevant federal income tax returns "for all occupants in the applicant's home who are required to file . . ."

Appellant also asserts that allowing the recognition of two separate households, where the property is a single family dwelling with a single water utility connection, would create internal code conflicts that are inconsistent with CBJ's permitting regulatory schemes, and could lead to the manipulation of the hardship exemption rules.

We conclude there is substantial evidence in the record to support the Assessor's decision, and find that Appellant's appeal lacks merit. The Appellant concedes that he and his wife and Mr. MacDonald are jointly and severally liable for the entire tax bill on the real property they own together. Though Mr. MacDonald owns an undivided 75% interest, and the Appellant and his wife own an undivided 25% interest, in the eyes of the law each owner is legally responsible for 100% of the real tax property bill on the property. In fact, as both parties acknowledged at the hearing, Alaska law prohibits the Assessor from allocating taxes pro rata among the property owners of record.

There is one tax bill and one (if any) senior hardship tax exemption granted per property. If and when an exemption is granted, it applies against the entire tax bill—and benefits all the owners of the property, by reducing the total tax bill. Here, Appellant would have us exclude the income of one of the property owners, who shares the single family home and would, if the exemption were granted, directly benefit from the reduced tax liability. We do not agree it was the intent of the hardship exemption ordinance to work in such a way or to lead to such a result.

We also find unpersuasive Appellant's legislative intent argument, which virtually asks us to disregard the term "hardship" throughout the ordinance. While we agree that one purpose of the exemption is to support and attract seniors to the community, we disagree that "hardship" is an insignificant component and purpose of the exemption. The economic hardship element of the exemption is well supported by a reading of the minutes in their entirety, as well as by the express language of the hardship exemption ordinance that was ultimately adopted.

Finally, the Alaska case law Appellant cites does not require the Assessor to repeat the legal error from which Appellant has benefited in the past. In fact, the promissory estoppel analysis in each case undercuts Appellant's appeal. Assuming that the Assessor's prior determinations were "positions asserted by the municipality," Appellant did not prove that he had reasonably or prejudicially relied on those positions.[4] He represented—to the contrary, that there'd been no relevant change in his circumstances. He also did not prove that the interests of justice would best be served by binding the CBJ to those prior, erroneous determinations.[5]

In the *Offshore Systems-Kenai* case, the Alaska Supreme Court rejected an estoppel argument even though substantial improvements had been made to property it turned out the litigant did not own, because the Court concluded "there was no evidence of an unconscionable act or representation by the State or Borough."[6]

We do not find evidence of either detrimental reliance, nor an unconscionable act or representation on the part of the Assessor in this case. Appellant merely reaped the financial

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[4] *Luper v. City of Wasilla*, 215 P.3d 342, at 347-348 (Alaska 2009) (City could enforce use permit requirement because not reasonable for home purchaser to rely on City Clerk's statement that was in variance with the law.)
[5] *Luper* at 347-348. See also, *Alaska Trademark Shellfish, LLC v. State*, 91 P.3d 953, 960 (Alaska 2004) (even assuming department's prior representations were reasonably interpreted as unequivocal promises, balance of equities fell well short of justifying order compelling state to issue permits for exclusive fishing rights that legislature had not authorized it to grant).
[6] *Offshore Systems-Kenai v. State Dep't of Trans. and Pub. Facilities*, 282 P.3d 348, 355 (Alaska 2012) (State highway permit showing right of way ending short of beach did not estop State from claiming additional public right of way extended further.);

benefit of the Assessor's mistakes in 2011 and 2012. We do not find that to be justification for allowing a legal error to continue.

VI. Conclusion.

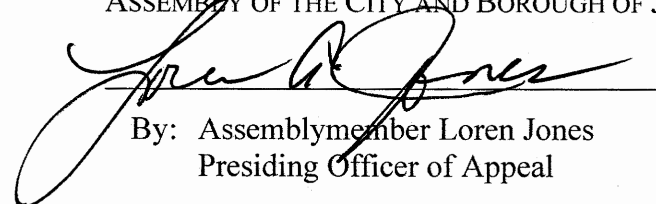
The appeal is denied and the CBJ Assessor's June 24, 2013 Letter of Determination is affirmed. We find that the Appellant did not meet his burden of proof. The Assessor properly applied the law in calculating Appellant's GHI, and there is substantial evidence to support her June 24, 2013 Letter of Determination. We also find that the decision is supported by adequate written findings and that the Appellant has been afforded appropriate due process.

This is a final administrative decision of the Assembly of the City and Borough of Juneau, Alaska. It may be appealed to the Juneau Superior Court, pursuant to the Alaska Rules of Court, if such appeal is filed within 30 days of the date the decision is sent to the Appellant.

IT IS SO ORDERED.

DATED this 7th day of January 2014.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA



By: Assemblymember Loren Jones
Presiding Officer of Appeal

E-MAILED TO PARTIES

By Laurie_Sica at 11:44:10 AM, 1/8/2014