



August 28, 2013

## Final Investigative Report Concerning Ombudsman Complaint 2013-0032

### COMPLAINT

A citizen contacted the Municipal Ombudsman alleging that for several years the Municipality of Anchorage Property Appraisal Division has been erroneously assessing him and his wife for unconstructed platted public Rights of Way adjacent to their property.

### FINDINGS

This complaint against the Municipality of Anchorage, Property Appraisal Division is **JUSTIFIED**.

### ANALYSIS AND CONCLUSIONS

On March 4, 2013 an Anchorage citizen contacted the Municipal Ombudsman alleging that the Municipality of Anchorage Property Appraisal Division had been assessing him and his wife for, and they had been paying property taxes on, unconstructed platted public Rights of Way adjacent to their property since they purchased it in 2007. The citizen had recently been notified by the Municipality that they were proposing to change the name of Lupine Street (unconstructed ROW) to the west of his property. While examining his property plat he discovered that the platted square footage of his property was substantially less than the square footage for which he was being assessed property taxes.

The complainant provided the Ombudsman with a copy of the recorded plat for his property, which showed his lot to be 89,720 square feet. The Ombudsman reviewed the Municipal Property Appraisal webpage which listed the assessed square footage of the property as 108,900 square feet, a difference of 19,180 square feet. A map review revealed that two unconstructed Rights of Way were platted adjacent to the property, Lupine Street (now Baker Place) to the west and Fernwood Avenue to the south. The Ombudsman contacted Erika McConnell, Current Planning Manager for the Municipality, who verified that the platted square footage of the complainant's property is 89,720 square feet.

The Ombudsman contacted Municipal Assessor Marty McGee to inform him of the discrepancy. McGee confirmed with the Planning Division that the property was platted at 89,720 square feet, and not the 108,900 square feet that the complainant was being assessed for. By March 25, 2013 Property Appraisal had corrected the error in their data base and the correct square footage was listed on their webpage. While this resolved the discrepancy going forward, there was still the issue of the previous erroneous assessments and property tax overpayments.

Anchorage Municipal Code, Chapter 12.05.062.A states "If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the municipality on audit of the account in question, is satisfied that this is the case, the municipality shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for a refund filed one year after the due date of the tax, as billed to the property owner by the municipality, is forever barred." This language is similar to the language found in Alaska Statute 29.45.500.b. and prevents the Assessor's

Office from refunding the complainant's overpayments from previous years of their own initiative. A refund would require the Assembly to pass an ordinance suspending Anchorage Municipal Code, Chapter 12.05.062.A to allow for reimbursement of previous overpayments plus interest, based on "errors" as allowed by Alaska Statute 29.45.500.c. McGee informed the Ombudsman that he was willing to recommend this action to the Assembly. To initiate the action, the complainant and his wife must write a letter to the Municipal Assessor requesting reimbursement. The Ombudsman briefed the complainant regarding his investigation and provided him with written instructions on how to request reimbursement and initiate the process.

As additional compensation for their erroneous overbilling of his property taxes the citizen believes that the Municipality should vacate the two sections of Right of Way adjacent to his property at no cost to him. Because the Municipality has been collecting property taxes on these unconstructed Rights of Way for decades, the Ombudsman believes that waiver of any Municipal fees associated with an application to vacate, submitted by the complainant, would be fair and reasonable, *if there is no current or projected future public need for either of these two sections of platted Right of Way*. The Ombudsman asked McConnell if it were possible for the Assembly to vacate the Rights of Way by ordinance. McConnell responded that "The Assembly can vacate a road by ordinance, as long as they insert a "Notwithstanding AMC 21...[correct provision of T21] into their ordinance." McConnell also noted that Planning does not like to see roads vacated by ordinance because it bypasses the public process.

Further discussion with McConnell and Community Development Director Jerry Weaver revealed that even if the Assembly vacated by ordinance the complainant would still have to pay a surveyor \$4,000-\$6,000 to survey his property and prepare documents. Also, if the Right of Way was vacated by ordinance rather than through the Platting Board, the action would not be recorded on the plat, but only on the property title. This could cause problems down the road for the current and future property owners. Weaver stated that he was willing to support waiver of the fees associated with an application to vacate the Right of Way if the public process through the Platting Board were followed. Any reimbursement to the complaint for property tax overpayments, if the Assembly passes an ordinance to suspend the code, could be used by the complainant to help offset the expense of hiring a surveyor to survey his property and prepare documents as part of an application to the Platting Board. This, along with the waiver of any Municipal fees associated with the application seems like a fair and reasonable solution to this citizen's complaint.

*Although Community Development has made a preliminary determination that the department would not object to vacating the section of Baker Place (formerly Lupine Street) to the west of the complainant's property, there is no guaranteed outcome for any application the complainant might submit to the Platting Board. The Platting Board will make a determination based on input from multiple Municipal and State agencies, including Community Development. Utilities and the public will also have an opportunity to provide comments.*

**Because the recorded plat of the complaint's property shows the square footage of his property to be 89,720 square feet, and because the Municipality of Anchorage, Property Appraisal Division had been assessing property taxes to the complaint based on 108,900 square feet, the Municipal Ombudsman finds this complaint to be JUSTIFIED.** A preliminary report regarding this matter was provided to the Property Appraisal Division. **Based on the investigation of this case, the Municipal Ombudsman recommends the following:**

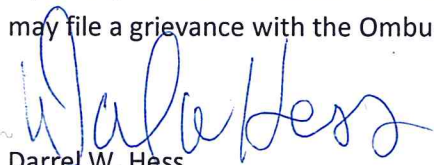


1) that the Municipality of Anchorage, Property Appraisal Division prepare for Assembly introduction an ordinance suspending Municipal Code, Chapter 12.05.062.A, to allow for reimbursement to the complaint of any property tax overpayments made since he purchased the property in 2007, plus eight percent interest. *The Ombudsman acknowledges that the complainant must initiate the process by submitting a written request for reimbursement to the Municipal Assessor.* The Chief Appraiser concurs with the Ombudsman's recommendation and has provided the complainant with a reimbursement request document template.

2) that the Municipality of Anchorage, Community Development waive any Municipal fees associated with an application by the complaint to the Platting Board to vacate the unconstructed public Rights of Way (Baker Place and Fernwood Avenue) directly adjacent to his property. *The Director of Community Development concurs with the Ombudsman's recommendation.*

**Based on this finding, and these recommendations, this case is closed.**

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.



Darrel W. Hess  
Municipal Ombudsman