

Republic of the Philippines Department of Finance

CENTRAL BOARD OF ASSESSMENT APPEALS

7th Floor, EDPC Bldg., BSP Complex Roxas Boulevard, Manila

ARTUR G. GIMENEZ,
Petitioner-Appellant,
CBAA CASE NO. L-97
-versus-(LBAA CASE NO. 07-1126)

LOCAL BOARD OF ASSESSMENT APPEALS OF CITY OF LEGAZPI,

Appellee,

-and-

THE CITY ASSESSOR OF LEGASPI CITY, Respondent-Appellee. X-----X

DECISION

This is an Appeal filed with this Board on January 14, 2009 by Petitioner-Appellant from the Decision dated February 22, 2008, as well as the Resolution dated October 27, 2008, both issued by the Local Board of Assessment Appeals of the City of Legazpi (the "LBAA") in LBAA Case No. 07-1126.

Petitioner-Appellant alleged that he received a copy of the said Decision on March 13, 2008 and a copy of the subsequent Resolution on December 4, 2008.

BACKGROUND/ANTECEDENTS

1. On September 28, 2007, Petitioner-Appellant received from the City Assessor of Legaspi City a "Notice of Assessment" dated September 13, 2007 and bearing No. 0484-2007, which "notice" listed three (3) Tax Declarations, namely, TD Nos. 0390148, 0390149 and 0390150 for three (3) parcels of land. It appears, however, that Petitioner-Appellant was interested only in Tax Declaration (TD) No. 0390150 covering that parcel of land previously covered by ARP No. 1478. Said TD No. 0390150 appears to have been approved by the

City Assessor on December 11, 2003, cancelling TD/ARP No. 1478 beginning 2004. The data on the ARP/TD Nos. 1478 and 0390150 appear as follows:

TD/ARP NO.	<u>1478</u>	<u>0390150</u>
Effectivity (Year)	2000	2004
Area (Sq. M.)	8,407 SQ.M.	8,407 SQ.M.
Unit Value	P300.00	P3,000.00
Market Value	P5,296,410.00	P25,221,000.00
Less: FRA &TFA(40%)		10,088,400.00
Net Market Value	P5,296,410.00	P15,132,600.00
Assessment Level	15%	40%
Assessed Value	P794,460.00	P6,053,040.00

- 2. On November 26, 2007, Petitioner-Appellant filed an Appeal or Petition with the Appellee LBAA alleging as follows:
 - "6. Prior to the issuance of Tax Declaration No. 0390150 effective 2004 and on the basis of the assailed notice of assessment, the subject real property owned and possessed by appellant-taxpayer was classified and assessed as a "residential land". Although the property is idle and therefore not actually used for residential purposes, appellant taxpayer acquiesced to the residential classification of his property because it is the dominant land use in the vicinity or neighborhood of the property. A copy of Tax Declaration No. 0390150 is hereto attached as Annex "C".
 - 7. Based on the afore-quoted provision of law, the City Assessor cannot reclassify and reassess the subject property with retroactive effect. Since the reassessment was made and notice thereof was served upon appellant-taxpayer only on 28 September 2007, the realty taxes due for the years 2004, 2005, 2006 and 2007 should be based on the residential land classification. If at all, the re-assessment could only be implemented prospectively or on the 1st day of January 2008. However, appellant-taxpayer is contesting said reclassification and reassessment based on the new classification as to actual land use for lack of basis.
 - 8. Admittedly, appellant-taxpayer used about 10% of the subject property for commercial purposes from 2002 up to November 2006. In the aftermath of Typhoon "Reming" which destroyed all improvements introduced in the 10% portion of the property, the subject property is at present no longer used for commercial or business purposes.
 - 9. Based on the foregoing premises, appellant-taxpayer respectfully petitions this Honorable Local Board of Assessment Appeals to review the reclassification and assessment made by the City Assessor and subject of his Notice of Assessment dated

- 13 September 2007 and received by appellant on 28 September 2007, and come up with the following ruling:
- 9.1. That the predominant and principal use of the subject property shall remain as residential, the classification prior to 2004.
- 9.2. That the reassessment subject of the notice of assessment dated 13 September 2007 cannot be retroactively applied for taxable years 2004, 2005, 2006 & 2007. Consequently, the realty taxes due for these years should be based on the residential classification of the subject real property, and assessment be accordingly made on the basis thereof.
- 9.3. That considering the present condition or actual land use of the subject real property, the reclassification and reassessment subject of Notice of Assessment dated 13 September 2007 be reversed and the subject real property be reclassified instead as 'residential land'."
- 3. On January 8, 2008. pursuant to the letter from the LBAA dated December 14, 2007, OIC-City Assessor of Legaspi City filed his Comment with the LBAA wherein he stated:

"1. As to the Classification and Assessment of Real Properties

Classification and Assessment of Real Properties in the City of Legazpi are governed by the Zoning Ordinance and other existing City Ordinances. Pursuant to the Zoning Ordinance and Ordinance No. 021-2002 entitled "An ordinance providing for the schedule of Fair Market Value pursuant to Section 2.12, Chapter II of Ordinance No. 95-07, an ordinance further amending Ordinance No. 709, Series of 1974 (Legazpi Revenue Code of 1974), the properties of the herein appellant located at Bonot, Legazpi City are classified and valued as commercial because they are located in a Commercial Zone District.

Admittedly, the previous classification of appellant's properties is residential. But long before the enactment and approval of Ordinance No. 021-2002 and the Zoning Ordinance, appellant herein put up some business within his properties like the King's Arthur, Food House, Piggery and Lagoon that led to its being reclassified as commercial under the said ordinance.

Sometime in 2003, a general revision of assessment and property classification was conducted as mandated under Section 219 of the Local Government Code. And the revision led to the reclassification of the properties of the appellant from residential to commercial and this became effective in January 1, 2004, as shown in the tax declaration, which is a year

after the 2003 revision. In short, the reassessment was not given a retroactive effect.

2. As to the Notice of Assessment

The date of the notice of assessment to the land owner, herein appellant, is not the date of assessment. The issuance of the notice of assessment, which is required under the law, is merely to inform the landowner of the revised assessment and to avail of his right to appeal the assessment if he does not agree. The period of thirty days is required in order to determine whether the appeal was filed on time.

3. Asto the vacant or idle land

The contention of the appellant that his vacant lot should not be classified as commercial is devoid of merit. According to the established rules, vacant lot shall be classified, valued and assessed like similar lands in the locality. (DOF Assessment Regulations No. 3-75, Art. VIII (A)(4)(e). Thus, in a case it was held that although Lot 1-A and Lot 1-D are undeveloped vacant lots, yet they must be classified and assessed as "commercial lots" since the predominant use of the lots in the locality is commercial; Moreover, these lots are located within a commercial zone under the Zoning Ordinance (MOF letter dated 1-9-87).

4. "Actual Use" as basis for assessment

"Actual Use" should not be construed as a criterion for the classification and valuation of real property, but as a determining factor in applying the appropriate percentage or level of assessment to market value of property computed on the basis of the schedule of base market values; and "assessment" should construed be in a narrower or limited sense to the percentage or level of assessment to be applied to the market value of real property as basis for its taxation.

The computation of the assessed value of real property shall be based on the "actual use" of the property regardless of its location and whatever uses it. Where the land on which a purely residential building is erected is in a commercial area, the current and fair market value of such lad(sic) shall be determined by applying the appropriate base market value for commercial land as provided in the corresponding schedule of values and the assessed value fixed on the basis of the assessment level for residential land.

5. Appellant failed to submit the sworn declaration

Under Section 202 of the Local Government Code of 1991, it shall be the duty of all persons, natural or

juridical, owning or administering real property, including the improvements therein, within a city or municipality, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be filed with the assessor concerned once every three (3) years during the period from January first (1st) to June thirtieth (30th) commencing with the year 1992.

The appellant did not comply with the above cited provision of law.

6. Attached documents in support of this comment:

- (b) Xerox copy of Tax Declaration No. 0390150 covering Lot 1329-A-1-pt. ANNEX "B"
- (c) A portion of the Land Use Plan duly approved by the SangguniangPanlungsod showing the classification of appellant's properties as "commercial" – ANNEX "C"
- (f) Certification from the Engr. Joseph Esplana, City Planning and Development Officer, to the effect that the appellant's properties are within the Commercial Zone district.
- 4. On January 25, 2008, Petitioner-Appellant filed his "Reply to the Comment of the City Assessor" with the LBAA, Par. No. 2 of which "Reply" reads:
 - "2. The written notification of assessment or the Notice of Assessment is not a mere formal requirement that can be dispensed with by the City Assessor. It is a condition sine qua non before a valid assessment can be made. If the City Assessor does not serve the written notification the reassessment is inoperative or void. Article 5 of the Civil Code provides x xx "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."
- 5. On February 22, 2008, the LBAA rendered its Decision, interpreting the provisions of Section 223 of R.A. 7160, thus:

"In this case, nowhere in the said provision states that non-compliance or delay in the service of the notification renders the reassessment void or inoperative. The requirement of notification is merely to inform the taxpayer of the revised assessment and to afford him the opportunity to question or to protest the said assessment, if he does not agree. In other words, should notification be instituted beyond the 30 day period provided in the law, such action will not necessarily result in the nullity of the reassessment. Hence, the contention of the petitioner that if the City Assessor does not serve the written notification within the thirty (30) day period, the reassessment is inoperative or void is not tenable.

It is a long and firmly settled rule of law that the government is not bound by the errors committed by its agent. (CIR v. CTA, 234 SCRA 348) Such that when there is delay or inaction on the part of its officials or agents in the performance of its functions, the government is not deprived of its right to rectify the same.

Further, we agree with the City Assessor that the contention of the appellant that his property being idle should not be classified as commercial land is devoid of merit. According to established rules, vacant lot shall be classified, valued and assessed like similar lands in the locality. (DOF Assessment Regulations No. 3-75, Art.VIII (A) (4) (e))."

- 6. On April 1, 2008, Petitioner-Appellant filed a Motion for Reconsideration with the LBAA which was denied by the LBAA in a Resolution dated October 27, 2008.
- 7. On January 14, 2009, Appellant's Appeal dated December 20, 2008 was received by this Board.
- 8. On January 22, 2009, this Board received an "Appearance and Comment (to Appeal Memorandum)" which was filed by Respondent-Appellee, though the Legazpi City Legal Officer, via registered mail on January 14, 2009.
- 9. On January 23, 2013, Respondent-Appellee's counsel filed with this Board a Motion dated January 15, 2013 asking this Board to order Petitioner-Appellant to file a bond to guarantee the payment of the real property taxes subject of the Appeal.

Petitioner-Appellant, in his Appeal Memorandum, raised the following errors, thus:

"First Assigned Error:

"Appellee committed a reversible error when it failed to discharge its duties as mandated by the Rules of Procedure Before the Local Boards of Assessment Appeals promulgated by the Central Board of Assessment Appeals tantamount to a denial of due process of law because Petitioner-Appellant was not given the chance to present evidence on his appeal before Appellee.

"Second Assigned Error:

"Appellee committed a reversible error when it upheld the contention of Respondent-Appellee that the subject property is classifiable, on the basis of actual use as commercial, notwithstanding that the dominant actual use of the vicinity where the subject property is located is residential, without conducting its own evaluation by way of ocular inspection of the location of subject property.

"Third Assigned Error:

"Appellee committed a reversible error when it upheld the retroactive effectivity of the reassessment of the subject property beginning the year 2004 despite the fact that the mandatory Notice of Assessment was received by Petitioner-Appellant only on 28 September 2007."

DISCUSSIONS&FINDINGS OF THIS BOARD

Respondent-Appellee's Pending Motion

On January 23, 2013, this Board received from the counsel of the Respondent-Appellee a Motion dated January 15, 2013 in which Respondent-Appellee's counsel prayed that this Board require the Petitioner-Appellant "to file a bond to guarantee the payment of his real property taxes in question and subject of this appeal" pursuant to "Rule IV, Section 7 of the Rules of Procedure of this Honorable Board" which Appellee quoted, thus:

"Section 7. Effect of appeal on collection of taxes – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the assessor concerned without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

If the corresponding realty taxes are not paid, the Central Board may nevertheless entertain an appeal by requiring the appellant to file a bond to guarantee the payment of the said taxes if found to be due, subject to the approval by the Central Board."

The above-quoted Rule was apparently based on Opinion No. 99, S. 1976, in which the Minister of Justice opined that the provisions of Section 37 of P.D. 464 "indicates that . . . The concern of the Board (referring to the local Board) should be the payment of taxes based on

the questioned assessment, <u>proof of payment of which the appellant</u> <u>must have to show before the Board may proceed to hear the appeal."</u>

Section 37 of P.D. 464 (now Section 231 of R.A. 7160) merely states that the filing of an appeal shall "in no casesuspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor." This should be construed that, while the appeal is pending, the corresponding local government unit, through its treasurer, may proceed to collect the taxes involved through the remedies provided for under Section 256, in relation to Sections 258, 265 and 266, all of R.A. 7160. If the legislature wanted the corresponding taxes to be paid before the appeal may be entertained and heard, it could have provided so in clear and unambiguous language.

It is an established principle in statutory construction that rules, regulations and, for that matter, opinions issued by officials to implement a law cannot go beyond the terms and provisions of the latter.

We cannot, therefore, grant Respondent-Appellee's said Motion.

As to the First Assigned Error:

Petitioner-Appellant contends that the LBAA did not conduct a hearing of the case before it, thereby denying the Appellant due process of law.

As correctly pointed out by the respondent City Assessor in his Comment dated January 14, 2009, "the proceedings of the (Local) Board shall be conducted solely for the purpose of ascertaining the

facts without necessarily adhering to technical rules applicable in judicial proceedings."

Administrative due process does not require an actual hearing. The essence thereof is simply an opportunity to be heard. Thus, the Honorable Supreme Court, in the following cases, had held:

1. G.T. Printers v. NLRC, G.R. No. 100749, April 24, 1992:

Due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard (Hian vs. CTA, 59 SCRA 110; Azul vs. Castro, 133 SCRA 271).

2. Navarro, III v. Damasco, G.R. No. 101975, July 14, 1995:

We held in Stayfast Philippines Corp. v. National Labor Relation Commission, 218 SCRA 596 (1993) that:

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are given fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing.

3. Tajonera, et. al v. Lamaroza, et. al G.R. No. L-48907 & 49035, December 19, 1981:

Although there was no actual hearing conducted, petitioners were afforded time to explain their side. There were no reputations made nor was there any hint on the record that they can present any meritorious defense which would warrant a reversal of the questioned orders.

What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. Petitioners have no reason to impute lack of due process because they were "heard" on their memorandum of appeal and motion for reconsideration. They, therefore, had sufficient opportunity for them to inform the tribunal concerned of their side of the controversy. What due process contemplates is freedom from arbitrariness, and what it requires is fairness or justice, the substance rather than the form being paramount.

_

¹ Sec. 229(b), RA 7160.

4. Vallende, et. al v. NLRC, et. al, G.R. No. 110321 July 7, 1995:

We have held in **Sunset View Condominium Corporation** (228 SCRA 466 [1993]) that "the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, . . . an opportunity to seek a reconsideration of the action or ruling complained of."

Petitioner-Appellant was first "heard" by the LBAA when he filed the Appeal (to the LBAA). When the Appeal was decided against Petitioner-Appellant, the LBAA "heard" him again when he filed a Motion for Reconsideration of the said Board's Decision. Incidentally, Petitioner-Appellant did not raise the question of lack of due process of law in his Motion for Reconsideration.

We cannot now agree with Petitioner-Appellant that he was deprived by the LBAA his right to due process.

As to the Second Assigned Error:

Petitioner-Appellant insists that the dominant use of the properties in the vicinity where the subject property is located is still residential – not commercial; and that the subject property is located in Bogtong, Legazpi City, where there is no commercial area, not in Bonot, Legazpi City as claimed by the City Assessor.

Respondent City Assessor, on his Comment dated January 14, 2009, stated thus:

"Appellant insists that in 2002 subject property, which is currently covered by Tax Declaration No. 030150 and located at Bonot, Legazpi City, is only 10% commercially used and 90% idle. It presupposes that the 10% commercial area consists only of the floor area of King Arthur's lodging house, Food House offering Japanese cuisine, piggery and Lagoon but excluding the cottages beside the lagoon where customers dine and the parking area which encompass the so-called idle portion. To avoid an absurd situation where the supposed facility of the commercial structures mentioned, like the parking area, might be treated as idle, the established rule is to classify and assess vacant lot/area like similar lands in the area (DOF Assessment Regulations No. 3-75, Art. VII (A)(4)(e) cited in the Appellee's Comments).

As clearly explained in the Appellee's Comment (Annex "B" of Appeal Memorandum), the factors considered by the Department of Finance in classifying real property for assessment purposes are its predominant use and zoning classification while "actual use" is considered in applying the appropriate level of assessment to market value of property.

In its tax declaration the property is located at "Bonot", Legazpi City and it shall prevail over the lapse by the LBAA, there being no other controverting evidencealiunde which will bolster the theory that is location is in "Bogtong", Legazpi City."

On the face of TD/ARP No. 1478², it appears that the location of the subject property is "Bonot, Legazpi City". On the face of TD 0390150³, it appears that same property is also located in "Bonot, Legazpi City". TD/ARP No. 1478 was made effective the year 2000, but there is no evidence that Appellant ever questioned the property location as appearing on said TD/ARP.

On a copy of the "Land Use Plan" it appears that Cadastral Lot No. 1329-A-1-pt. (subject property) is located in a Commercial Zone. The amount of P3,000.00 is the fair market value per square meter assigned to parcels of land located at Bgy. Bonot and classified as "C-4" per Ordinance No. 021-2002 (entitled "An Ordinance Providing for the Schedule of Fair Market Value Pursuant to Section 2.12, Chapter II of Ordinance No. 95-07, an Ordinance Further Amending Ordinance No. 709, Series of 1974 [Legazpi Revenue Code of 1974]).

Appellant does not deny Respondent's allegation that, long before the passage of Ordinance No. 021-2002, Petitioner-Appellant put up on the subject property a King Arthur's lodging house, a Food House offering Japanese cuisine, piggery, Lagoon, cottages beside the lagoon where customers dine, and a parking area. On the contrary, Appellant admitted having used a portion of the subject property "for commercial purposes from 2002 up to November 2006."

²Annex "A", Petitioner's Petition before LBAA, LBAA Records, p. 6.

³ Annex "B", Respondent's Comment before :LBAA, LBAA Records, p. 21.

⁴ Annex "C", Respondent's Comment before :LBAA, LBAA Records, p. 23.

As to the Third Assigned Error:

Petitioner-Appellant contends that the subject reassessment should have taken effect only after the service of the written notice of assessment.

Respondent City Assessor, on his Comment dated January 14, 2009, stated thus:

"The right of a property owner to challenge a new property assessment is not affected even if notice of assessment is received after 30 days from such assessment.

The so-called retroactive effect of assessment is in reality a delayed increase in assessment and payment of an increase in property tax brought about by the mandatory 3-year general revision of real property assessment where increase in property assessment and subsequent payment of tax are delayed up to a maximum of three (3) years without surcharges and interest, to the benefit of taxpayers.

Lastly, the Comment of the Respondent-Appellee is hereby reproduced to form part of this pleading."

Sections 221 and 223 of R.A. 7160, otherwise known as the Local Government Code of 1991 (the "LGC"), provide thus:

"SEC. 221.Date of Effectivity of Assessment or Reassessment.- All assessments or reassessments made after the first (1st) day of January of any year shall take effect on the first (1st) day of January of the succeeding year: Provided, however, That the reassessment of real property due to its partial or total destruction, or to a major change in its actual use, or to any great and sudden inflation or deflation of real property values, or to the gross illegality of the assessment when made or to any other abnormal cause, shall be made within ninety (90) days from the date any such cause or causes occurred, and shall take effect at the beginning of the quarter next following the reassessment." (Emphasis supplied.)

"SEC. 223.Notification of New or Revised Assessment. – When real property is assessed for the first time or when an existing assessment is increased or decreased, the provincial, city or municipal assessor shall within thirty (30) days give written notice of such new or revised assessment to the person in whose name the property is declared . . ."

The provisions of Sections 221 and 223 of the LGC are selfexplanatory. The purpose of the service of the written Notice of Assessment is to afford the taxpayer an opportunity to exercise his right CBAA CASE NO. L-97 DECISIONPage 13 of 13

to appeal the subject assessment before the Local Board of Assessment Appeals (LBAA) under the provisions of Section 226 of the LGC.

If the owner of the real property, or person having legal interest therein, does not appeal the assessment thereof, the same assessment becomes final onlysixty (60) days afterthe date of receipt of the written notice of assessment by the said owner of the real property or person having legal interest therein. The delay in the delivery of the written notice of assessment does not invalidate the assessment itself, but merely delays its finality.

To say that the assessment was retroactively applied to taxable years 2004, 2005, 2006 and 2007 because the written notice of assessment was received by the Appellant only on September 28, 2007 is not correct. The records show that the subject assessment was made in 2003 when a general revision of assessment and property classification was conducted. In accordance with the provisions of Section 221 of the LGC, the assessment was made effective on the first (1st) day of January of the year immediately following or succeeding the date of assessment.

WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, November 14, 2013.

SIGNED

OFELIA A. MARQUEZ

Chairman

SIGNED

ROBERTO D. GEOTINA

Member

SIGNED

CAMILO L. MONTENEGRO

Member