

FPG STIP Claremont, LLC

v.

City of Claremont

Docket No. 25017-09PT

ORDER

In response to the May 31, 2011 Order (the “Order”), the “City” filed a timely “Motion to Recover Costs” (“Motion”) on June 9, 2011 for costs and attorney’s fees in the total amount of \$817.45. (The “Taxpayer’s” representative, Robert E. Lisk of Commercial Property Tax Management, LLC (“CPTM”), decided not to file an objection to the Motion.) Upon review of the itemization provided by the City, the board finds the Motion should be granted in part and therefore orders CPTM to pay, within fifteen (15) days of the Clerk’s date shown below, the sum of \$588.97 in costs and attorney’s fees for the reasons stated below.

As the Order makes clear, the actions of CPTM caused unnecessary time and costs to be expended regarding CPTM’s non-compliance with the mediation rules contained in Tax 203.07. In the Order (p. 9), the board cited both RSA 71-B:9 and Tax 201.39 in support of its ruling that the City could file the Motion to seek recovery of “costs and attorney’s fees.”

The board finds all of the cost items listed in the Motion are reasonable and should be awarded except for the assessor’s own time, because he is an employee of the City and there is no indication his attendance at the hearing resulted in any additional out of pocket cost or

expense for the City. Generally, an award of costs is circumscribed by the provisions in Tax 201.39, but no such limitation constrains the board's authority to award the City attorney fees as a sanction under RSA 71-B:9. This is true even if the City Attorney is a salaried employee, rather than an independent contractor (i.e., outside counsel). Thus, the board finds it is proper to award the attorney's fees claimed by the City.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mr. Robert Lisk, Commercial Property Tax Management, 55 South Commercial St. - 3rd Fl., Manchester, NH 03101, Taxpayer Representative; Chairman, Board of Assessors, 58 Opera House Square, Claremont, NH 03743; and Jane F. Taylor, JD, Office of the City Solicitor, 58 Opera House Square, Claremont, NH 03743, counsel for the City.

Date: June 28, 2011

Anne M. Stelmach, Clerk