

MINUTES

Board of Equalization and Review
October 30, 2014

Board Members Present:

Chair: Jane Sparks
Bronwyn Merritt
Jennifer Marsh

Staff Members Present: Roger Gunn, Chief Appraiser
Steve Hensley, Appraiser
Scherri McCray, Recording Secretary
Dwane Brinson, Tax Administrator

The meeting was called to order at 2:02PM on Thursday, October 30, 2014 by Chair, Ms. Jane Sparks.

Chad Venable Staples

PIN # 9833691722

Barbara Terry appeared before the Board on behalf of her son, Chad Venable Staples, to request a compromise of taxes related to a discovery of improvements on the property located at 2303 BUSHY COOK ROAD, EFLAND for the tax years 2007 through 2013 on property that was omitted from taxation for those years. The appellant is requesting that the Board waive penalties for tax years 2007-2013 citing that when she purchased this property in December 2006, she was not aware that a leasehold improvement was associated with the purchase.

Ms. Terry proceeded to read from the letter that they submitted to the Board to support their appeal. The letter stated that the penalties charged were, "due to an error at the Orange County Tax Office. The property was purchased in December of 2006 and a title search was conducted by an attorney in Burlington NC. The property had gone in to foreclosure and BB&T owned the property at the time. The appellant negotiated with BB&T for 8 months before obtaining this property and it was owned by BB&T for some time before they purchased it."

Once the appellant "went to closing, the deed was then filed and recorded in Orange County properly." She stated that she heard nothing about a leasehold on the building and still does not know how that is possible on a residential lot. The appellant continued to read the letter to the Board, "Seven years passed by and the tax bill I received each year was paid properly and in full. Then this year I got a call from Teresa Moore explaining that the building had a separate bill and that your office had been mailing those bills to a Christopher Thompson at another address and that he never paid them nor did he respond." The appellant stated that she does not know this person. Ms. Terry summarized her letter by stating that:

1. The Orange County Tax Collector was negligent in not attaching the building tax to the land pertaining to the deed that was legally filed in December 2006.
2. That the County was negligent in not notifying the landowner of tax in arrears.
3. That the County failed to pursue or inquire information from Mr. Thompson, whom they were billing, for an entire seven years, allowing the tax bills to accumulate.

She is not contesting the tax itself but she is contesting paying the penalties due to the mistakes of others.

Dwane Brinson, the Tax Administrator for Orange County, addressed the appellant and the Board by stating that the County tried to find a way to resolve this matter in house but could not make adjustments

after the Board adjourned on May 23, 2014. He stated that the County has worked with the appellant. There were notes about the matter in the collection files and there was an undated letter in the taxpayer's files. Mr. Brinson stated that this matter should have been corrected in 2011 and it was not. If tax rate had been corrected at that time, the appellant's account would be correct. However, the County is not legally allowed to adjust the penalties although they are partly due to an oversight on the County's part many years ago.

Roger Gunn, the Chief Appraiser for the Orange County Tax Office informed the appellant and the Board that deeds typically do not reference buildings. The deeds only represents the real property as a whole and typically do not mention that buildings exist on the property.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks made a motion made to relieve the penalties. The motion was seconded by Ms. Marsh and the motion carried.

Ayes: 3
Noes: 0

At this time, the Board made a motion to go into a closed session for the next appeal due to the discussion of the appellant's income.

Cox

PIN # 9875428182

Teresa Cox appeared before the Board to request that the Denial of Disabled Exclusion be reversed. The appellant states that she applied for the Elderly or Disabled Exclusion for the 2014 tax year and was denied based on the fact that she exceeded the maximum income requirement to qualify. She informed the Board that she does not have the funds to pay the lump sum owed to the County. Furthermore, she needs all her money each month for food, medication, and other necessities.

Mr. Brinson inquired if the appellant understood why she was denied this particular exclusion, to which the appellant replies that she did understand. At this time, Mr. Brinson informed the appellant that the County had several programs that could possibly assist Ms. Cox with her tax liabilities. He mentioned that the County could set up a payment plan for her and that although her income did not qualify her for the Elderly or Disabled Exclusion, she did qualify for the Circuit Breaker Deferral program. This program would help her pay less tax, on a deferral basis, if she was interested in this option. Mr. Brinson then asked the appellant if she would like the Tax Office to assist her with this matter. The appellant stated that she would accept the Tax Office's offer for assistance.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion of no change and to uphold the denial of the Request for Elderly or Disabled Exclusion. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3
Noes: 0

The Board made a motion to now make the session open again.

Community Home Trust

Anita Badrock and Trish Cates, representatives from Community Home Trust, appeared before the Board to request a compromise of taxes related to a discovery for a property, PIN # 9788076413 - 229 N. Graham Street, Chapel Hill with a current Orange County assessed value of \$132,000 and consideration of timely filed appeals for the following other properties:

PIN # 9788278230.020L214 - 140 W. Franklin Street, Unit 214, Chapel Hill. Current Orange County assessed value \$ 150,000.

PIN # 9788278230.021L215 - 140 W. Franklin Street, Unit 215, Chapel Hill. Current Orange County assessed value \$ 154,900.

PIN # 9788278230.023L217 - 140 W. Franklin Street, Unit 217, Chapel Hill. Current Orange County assessed value \$ 154,900.

PIN # 9788278230.052L314 - 140 W. Franklin Street, Unit 314, Chapel Hill. Current Orange County assessed value \$ 154,400.

PIN # 9788278230.054L316 - 140 W. Franklin Street, Unit 316, Chapel Hill. Current Orange County assessed value \$ 155,100.

PIN # 9860828523 - 234 Lexes Trail, Chapel Hill. Current Orange County assessed value \$ 201,500.

PIN # 9860828545 - 238 Lexes Trail, Chapel Hill. Current Orange County assessed value \$ 186,600.

PIN # 9776893508 – 1024 Shagbark Court, Chapel Hill. Orange County assessed value \$ 269,300.

Ms. Cates addressed the Board concerning the property at 229 N. Graham Street, Chapel Hill on behalf of the property owner, who was also in attendance at this meeting. The appellant is requesting a compromise of taxes related to a discovery citing that the current homeowner never received the 2013 property tax bill and was not aware that she was liable for the property tax. The appellant states that she will pay the 2013 property taxes but requests a waiver of the penalty associated with the discovery. The homeowner would also like to set up a payment plan with the County to pay her 2013 property taxes.

The County concurred that there was a discovery of this property for the 2013 tax year.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion to remove the penalty due to the error in billing. Ms. Merritt seconded the motion and the motion carried.

At this time, Ms. Badrock presented additional documents for the Board to review. She stated that this matter is complex and should be heard by the Board. It concerns Orange County affordable housing and the situation is that the appellant and the Orange County Tax Office have a difference of opinion as to how the tax value is calculated when it concerns affordable housing.

Ms. Badrock explained that these homes were completed in 2013 and not sold till 2014. The developers hold on to the property until it is sold. They do not convey the homes to the community until they have a buyer. Furthermore, even though the properties were technically owned by the developers, they were ever

available to the general public. Each of these homes was specifically designated as affordable housing in the Special Use Permits that were issued to the developers when the subdivisions were approved. The appellant is requesting that the values on the above mentioned properties be modified to reflect the 2014 values instead of the 2009 assessed value citing the County assessed values are incorrect and the correct values of these properties should be the value at which they were conveyed to the Community Home Trust buyers.

The County states that the appeals of these properties are not timely filed and should not be heard. The County stated that notices of value were sent to the January 1, 2014 owners of record with the current appraised values. The properties were not owned by Community Home Trust at that time. After January 1, the properties were transferred to Community Home Trust and the individual lessees. The owners of the properties as of January 1st were the developers who had the opportunity to appeal. The developers were responsible for the property taxes unless it is sold or conveyed to another owner. The County acknowledges that the above mentioned properties were appraised at what was believed to be their appropriate affordable housing value and not market value for the general public. The County recommends that the assessed property values be upheld for 2014 but adjusted for 2015 to the individual properties' initial investment basis.

Ms. Badrock stated that the developers were not aware that they had to appeal this matter. This situation has never occurred before this time.

Ms. Marsh stated that she felt the Board should hear the appeals and made a motion to consider the appeals as filed in a timely manner and to hear the appeals. Ms. Merritt seconded the motion and the appeals were heard.

The Board feels that there was an oversight in the writing of the law. Ms. Merritt stated that the Board needs to make this work for the taxpayer. The 2014 assessed values of these properties should reflect the 2015 values. The intent of the Board is to correct this issue.

The County reiterated that the developers were contacted and the values that were provided to the County by the developers were used to determine the assessed value. The County had no way of knowing when the properties were transferred to the Community Home Trust lessees. The properties are billed to whoever is the owner as of January 1st. The County has the properties' developers as the owners as of January 1st. The County also noted that North Carolina statutes outlines that there is an appeal time frame.

At this time, there was a discussion as to the interpretation of the law. The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion that the initial investment basis be used to assess the individual properties that are being appealed for 2014. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3
Noes: 0

Robert Lee

PIN # 9857439371

Robert Lee appeared before the Board to appeal the Individual Personal Property Discovery letter that he received from the Orange County Tax office that stated that he failed to list his personal property. He states that he has tried year after year to get the County to correct his personal property description and values. There are 4 watercrafts that are being referenced. They are a 1940 Boat, a 1964 John Boat, a 2003

motor that goes with the 1964 John boat and a 1990 blue boat that the appellant claims was a factory reject. He had questioned where the County came up with the appraised values for personal property. He was informed that the State determined what the values are to be assigned to a personal property. He told the Board that his boats are not worth the \$500 assessed value for each boat and the motor.

Mr. Lee presented that Board with photos to show the conditions of the properties in question. He is requesting that the Board please correct the records and make the corresponding values accurate.

Teresa Moore, the Personal Property Manager for Orange County Tax Office, stated that the appellant never provided any evidence that his property was not worth what the County had it assessed. The County never received the photos that the appellant presented to the Board. The County uses a default value to assess certain items unless the taxpayer shows proof that the property is not worth the County's assessed value. The default values that the County must use are mandated by the State. If the appellant had presented the County with the photos that he is now presenting to the Board, the County would have made the adjustments to the appellant's property. The County recommends that the values of the boats and motor be adjusted to reflect the true value of the properties in question.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Merritt made a motion that the following adjustments be applied to the properties. A \$100 value should be applied to the 1964 boat, the 1940 boat and the 1990 boat. A \$200 value should be applied to the 2003 motor. Ms. Sparks seconded the motion and the motion carried.

Ayes: 3

Noes: 0

Dalia LLC

PIN # 9871539339

Dani Mouawad, the owner of Dalia LLC, elected not to appear before the Board and has requested that his documentation serve as his appeal.

Kandice Wright, Assessor for Orange County Tax Office, presented the appeal to the Board. She informed the Board that Dr. Mouawad is the owner of the Integrative Healing and Learning Center. He applied for Property Tax Exemption claiming that the property is held by the 501 C3 and is used for educational purposes. His application was denied based on the fact that this is residential property and not wholly used for educational purposes.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion that the exemption denial be upheld based on the evidence that the property is a residential property and not wholly used for educational purposes. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3

Noes: 0

NC Nails

Business Personal Property

Nguyen Le, owner of NC Nails, appeared before the Board to request a compromise of taxes related to a Discovery conducted by the Orange County Tax Office. The appellant states that she never knew that she needed to file a business listing form or pay business personal property taxes on her business. Her

business has been operational for the last four years. The appellant is requesting that the failure to list penalties of \$ 371.51 be removed.

Brenda Riley, Orange County Business Personal Property Appraiser, stated that the County did a discovery of the business for the tax years 2011 thru 2014. Ms. Riley indicated that the appellant never listed or paid business personal property tax.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks motioned to not the waive penalties associated with the discovery citing that it is taxpayer responsibility to list the business personal property. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3
Noes: 0

Mystery Brewing Company

Business Personal Property

A representative from Mystery Brewing Company appeared before the Board to request a compromise of taxes by removing the penalty related to a Discovery as the company did not file the 2014 Business Personal Property listing form to the Orange County Tax Office. The representative stated that they filed their 2014 business personal property listing via TAXScribe in early February, after submitting a request for extension on January 29, 2014. They did not get a confirmation from TaxScribe, but they did have a copy of the listing form printed from TAXScribe prior to submission. When they realized that the listing form was not submitted, they immediately contacted the Tax Office and submitted the documents.

The County informed the Board that TaxScribe is an online listing application that enables taxpayers to list their personal property online. The County stated that if a listing form is submitted via TaxScribe, the form must have a signature or the form will not be accepted.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks motioned to not the waive penalties associated with the discovery citing that it is taxpayer responsibility to list the business personal property. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3
Noes: 0

Lumina Theatre LLC

Business Personal Property

The appellants elected not to appear before the Board and request that their documentation serve as their appeal. Ms. Riley, of the Orange County Tax Office, presented the Board information about the appellant's request for compromise of taxes associated with the late listing of business personal property for the 2013 tax year. The appellant's documents state that the management company for the theatre changed during the end of 2012- beginning of 2013, and the equipment purchases were overlooked during the filing process.

The appellant states that they currently have a CPA handling their annual preparation of this filing and that they do not anticipate failure to list occurring in the future. They are requesting relief of the penalties in the amount of \$ 934.19.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks motioned to not the waive penalties associated with the discovery citing that it is taxpayer responsibility to list the business personal property. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3

Noes: 0

Jeffrey C. West, DMD

Business Personal Property

Jeffrey West elected not to appear before the Board and requested that his documentation serve as his appeal. In a letter to the Board, the appellant requests a waiver of penalties recently applied on his business personal property by the Orange County Tax Office. The appellant started his business in 2011 and the County made a discovery of unpaid taxes and failure to list business personal property for the tax years 2012 thru 2014. He states that his oversight was not intentional; he intends to pay all the taxes that are owed. He was not aware of this particular requirement to list his business personal property with the County. Mr. West is requesting that the Board waive the listing penalties in the amount of \$ 1,151.70.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks motioned to not the waive penalties associated with the discovery citing that it is taxpayer responsibility to list the business personal property. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3

Noes: 0

TBLF HAMPTON POINTE, LLC

PIN # 9873491758

Sherrod Banks, a managing member of the company, appeared before the Board to appeal the value of the commercial property located at 490 HAMPTON POINTE BOULEVARD, HILLSBOROUGH. The current assessed value of this property is \$ 2,016,100. The appellant is requesting that the Board change the assessed valuation to \$ 1,750,000 citing that Hampton Pointe is a low income housing property subject to Section 42 of the Internal Revenue Code because of the utilization of Low Income Housing Tax Credits ("LIHTCs"). He went on to state that this 48 apartment property is situated on 7.89 acres with four (4), three story buildings, of which 24 units are two bedroom units and 24 units are three bedroom units. Mr. Banks stated that the property has a unit mix with a target of 12 units at 30% of the area-median income ("AMI"), 8 units at 50% of the AMI and 28 units at 60% of the AMI. All of these units are rent restricted. They all include utilities in the rent.

The appellant obtained a private appraisal in October 2013 that stated the value should be 1,750,000. He also provided the Board with a 2009 memo from the Department of Revenue regarding the appropriate valuation for low income tax credit projects. Mr. Banks also included income data from 2013.

The appellant shared the 2014 financial statements of the property which showed that the revenues are tracking fairly close to the projections; however, the expenses are higher than expected, and in some cases higher than reasonably foreseeable. As a result, the project has not met its debt service coverage ratio ("DSCR") of \$ 1.15 of net operation income for every \$ 1.00 of permanent debt service. This means that

the project cannot convert its construction loan to a permanent mortgage, and that the viability of the project is in jeopardy of the DSCR of \$ 1.15 cannot be met.

Mr. Banks presented the Board with the tax statute that read a Section 42 property such as Hampton Pointe is designated as a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is to be appraised, assessed and taxed in accordance with North Carolina General Statute Section 105-277.16 which requires the “assessor {to} use the income approach as the method of valuation...and...take rent restriction that apply to the property into consideration in determining the income attributable to the property...”.

He cited a memo from the North Carolina Department of Revenue (NCDOR), Property Tax Division concerning Low Income Housing (2009) written by Michael Brown of the NCDOR Property Tax Division. It read that these properties may have slightly higher occupancy rates overall but may also have slightly higher collection loss. He provided information concerning expenses, capital rates and operating income.

The appellant directed the Board to a questionnaire for income information sent by the County at which time the appellant provided handwritten information on income for the project in 2013. An unaudited financial statement from the property manager was submitted for review. The use of actual rents and expenses were calculated to determine the value.

Roger Gunn, Chief Appraiser for the Orange County Tax Office, provided information as to how the County's assessed values were generated. He stated that the 2013 taxes were based on partial completion of the property. The 2014 value was based on completion of the project in 2013 taking into account the actual rents and projected vacancy and expenses for similar low income projects along with the prevailing capitalization rate and tax rate for January 1, 2009, the effective date of the valuation.

The appellant stated that the NCDOR recommends that the County take into consideration the actual rents and expenses from an audited statement. He felt the Board should not consider the estimates that the County provided, but should use TBLF Eno Haven's actual financials instead as recommended in the memo from NCDOR. The appellant furnished the Board with a notebook which contained among other items: his letter of appeal, an excerpt from the NC General Statutes, a property tax memo from NCDOR, and a 2013 private appraisal of the subject property. Although the appellant felt that the \$1,750,000 opinion of value from the private appraisal was still too high for the property, as the appraisal underestimated expenses, the appellant indicated that \$1,750,000 would be an acceptable value for his property.

In comparing the private appraisal with the County's calculations of value, the biggest point of contention surrounded the selection of the capitalization rate. As the majority of the calculations between the two parties were consistent, the private appraiser used a 7% total capitalization rate to apply to the net operating income which included property taxes as an expense. County staff pointed out that for ad valorem valuation, property taxes needed to be deducted from expenses which would yield a higher net income. However, property taxes are handled by applying a higher overall capitalization rate inclusive of the appropriate tax rate for the property. The County used a total overall capitalization rate of 7.978% (6.5% capitalization rate + 1.478% tax rate) to derive the \$2,016,000 assessed value. County staff conceded that the difference in opinion between 7% and 6.5% capitalization rates was debatable and performed calculations using an overall capitalization rate of 8.478% (7% capitalization rate + 1.478% tax rate) to show the Board that the value indication by the .5% difference in the capitalization rate would yield a value of \$1,880,269 for the subject property.

Ms. Sparks made a motion to adjust the value by applying the 7% cap rate that was in the appraisal and the appropriate 1.478% tax rate to the County's net operating income calculations to derive a new assessed value of \$1,880, 269. Ms. Marsh seconded the motion and the motion carried.

Ayes: 3
Noes: 0

Ralph White

PIN # 9799843294

Victor Lancaster is the Power of Attorney for Ralph White. In a written email to Kandice Wright of the Orange County Tax Office, Mr. Lancaster is appealing the County's decision of a denial for disability exclusion. The appellant stated that he provided the Tax Office with all the documentation that was required and he did not understand why the request was denied.

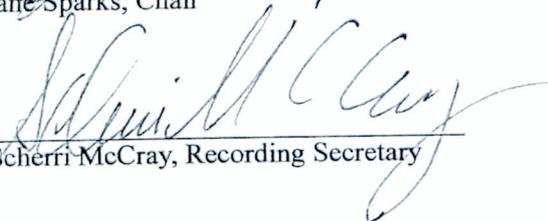
Ms. Wright stated that the appellant submitted the incorrect paperwork. When the correct paperwork was submitted, the appellant exceed the allotted income requirement. When asked to provide more information about the income, Mr. Lancaster stated that they have submitted enough information.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion to uphold the denial for disability exclusion citing that information requested was not provided. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3
Noes: 0

Having heard all of the appeals scheduled on this date, Ms. Sparks made a motion to adjourn this meeting. Ms. Merritt seconded the motion and the meeting was adjourned at 5:05 PM.


Jane Sparks, Chair


Scherri McCray, Recording Secretary