

## MINUTES

Board of Equalization and Review

December 3, 2014

### Board Members Present:

Chair: Jane Sparks

Bronwyn Merritt

Jennifer Marsh

### Staff Members Present: Roger Gunn, Chief Appraiser

Steve Hensley, Appraiser

Dwane Brinson, Tax Administrator

Brenda Riley, Business Appraiser

Nancy Freeman, Recording Secretary

The meeting was called to order at 2:00PM on Wednesday, December 3, 2014 by Chair, Ms. Jane Sparks.

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Prior to the receiving of the first scheduled appeal, Mr. Brinson provided a statement to the board members to explain that there were several appeals to be heard that are due to the reallocation of values from the Durham-Orange County line that was established in 1968. The Durham-Orange County line was not redefined; rather both counties were involved in a correction of taxation. This was prompted by the Durham County Board of Elections who would not allow voting due to the fact that citizens were not living in Durham County even though they were paying Durham County taxes. Ms. Sparks questioned if some of these properties were in the city limits of Chapel Hill, and Mr. Brinson answered that there were properties in the city limits of Chapel Hill that were affected.

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### **WHOLE FOODS MARKET GROUP, INC**

**272708**

Mr. Michael Lateur appeared before the Board to request a compromise of penalties related to a discovery of improvements on Whole Foods property located at 81 S. Elliott Road, Chapel Hill for tax year 2014. Mr. Lateur provided paperwork to the board members and staff. The appellant stated that Evans & Associates performed an audit and most of the property discovered should not have been discovered as it was already included in the real property value. However, during the audit, some property was reclassified between the real and personal property categories. Whole Foods listed the assets, but the auditor for the County, Evans & Associates, reclassified them. Mr. Lateur referenced the statute that states that penalties would be applied if the assets were not reported, but stated Whole Foods' assets were listed, albeit on the wrong listing form. The only issue is that the assets were not assessed due to the incorrect classification. The appellant referenced the assets in the listing form that were reclassified and stressed that the assets were listed by Whole Foods but the listing just simply was not performed correctly. Ms. Riley stated that the assets were listed as not taxable, only for information purposes on the listing forms when they should have been listed as leasehold improvements and taxed. Ms. Sparks asked if the taxes were paid and Mr. Lateur stated that Whole Foods was waiting to pay until the issue was resolved because the NC statute states that if the penalties are paid they cannot be appealed. Mr. Brinson asked if any other counties are having this same issue with listing forms on their Whole Foods locations. Mr. Lateur stated that the same person does the listing for most of the counties in NC and was unaware of any similar problems with other counties. The appellant is not disputing any

values or that back taxes are owed but is requesting that Whole Foods be relieved of the discovery penalties for years 2009-2014, which amounts to \$11,610.63.

Ms. Riley & Mr. Brinson clarified for the board members how the property was listed on the listing form and what constitutes a leasehold improvement.

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 penalties and not waive them due to the fact that the listed information was not properly provided to the County. The motion was seconded by Ms. Merritt and the motion carried.

Ayes: 3

Noes: 0

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**CARL N. BEAN, JR**

**9799961657**

Mr. Bean appeared before the Board to appeal the value of his property located at 285 Highview Drive, Chapel Hill. The current Orange County valuation of this property is \$64,200. This property was previously taxed completely in Durham County. The property in Orange County is 0.34 acre of his entire lot, and his house sits on the remaining portion of the lot in Durham County. The appellant stated there are only 7-8 houses in the Lassiter-Currie Subdivision. He provided statistics to show that the value per acre is much higher for this small portion of land compared with his Orange County neighbors' properties. He noted that his home is on the larger portion of the lot that is in Durham County and the adjoining property is valued at a per acre value that is 62% less in Durham County. Mr. Bean stated that the Orange County property should be lowered to a value of \$22,422.58. It should not be valued as a buildable lot because it is only a small adjoining property from his home which is located in Durham County. He understood when he purchased the property that Durham County would be sending a portion of the taxes to Orange County for the portion that was located in Orange County.

Mr. Gunn reiterated that we cannot consider that the property is not a buildable lot because it is part of a buildable lot and must be valued accordingly for the portion in Orange County. However, he feels the value for the Orange County portion is too high as the pricing model used to value the .34 acre did not consider that the .34 acre was part of a 1.9 acre tract. Mr. Gunn stated that if the entire property was located in Orange County, the value per acre would be lower and the value of the .34 acre lot should be valued at \$41,900. Mr. Gunn pointed out that this value would be comparable on a per acre basis with the neighboring Orange County lots that Mr. Bean referenced.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion to make an adjustment to bring the property value in line with the neighboring properties and change it to \$41,900. The motion was seconded by Ms. Merritt and the motion carried.

Ayes: 3

Noes: 0

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Mr. Thomas Stann appeared before the Board representing the Monkey Bottom Ventures (DBA Hillsborough Barbecue) requesting compromise of taxes related to a discovery for the years 2012-2014.

Mr. Stann stated that the business has not paid its bill because it had never received a bill for personal property taxes. Earlier this year, they hired an accountant who immediately realized that Monkey Bottom Ventures had not been paying business personal property taxes. The appellant stated that he feels that with all of the permits and the fact that county employees come into his establishment, he feels that the County should have sent a bill before now and the business would have paid if it had received a bill. The appellant stated that he always pays his individual personal property taxes and is in good standing with the County.

Ms. Riley stated that, statutorily, the responsibility is with the taxpayer to list, and once our office discovered the business had not been listing and paying taxes, bills were created and sent to the appellant. She clarified that the appellant originally requested to appeal the value, but the request was outside of the 30 day appeal window. However, since the penalties were not paid, the penalties are subject to appeal and compromise. Mr. Brinson stated that listing forms were not always mailed to all taxpayers on record on a yearly basis until 2012.

During deliberation, the Board reviewed all documentation presented by the appellant and the County. After deliberation, Ms. Marsh made a motion to uphold the penalties due to the fact that it is the taxpayer's responsibility to list. Ms. Merritt seconded the motion and the motion carried.

Ayes: 3

Noes: 0

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**PAUL MANNING****0801270345**

Mr. Paul Manning did not appear before the Board but wrote a letter to appeal the value of his property located at 4916 Montvale Drive, Durham for the year 2014. This property was previously taxed completely in Durham County.

Mr. Gunn stated that the majority of the information in the appeals letter was related to the services and rights associated with the taxation of the parcel in Orange County, and that the Tax Office's responsibilities are to value and tax the property that is actually located in Orange County.

During deliberation, the Board reviewed all documentation presented by the appellant's letter and by the County. After deliberation, Ms. Marsh made a motion to deny the request due to the fact that the property was valued according to the value of neighboring properties. The motion was seconded by Ms. Sparks and the motion carried.

Ayes: 3

Noes: 0

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Ms. Denise M. Olson appeared before the Board to appeal the value of her property located at 7 Pascal Way, Durham. This property was previously taxed completely in Durham County. The current valuation is \$52,600. Ms. Olson stated that the taxation of 0.7 acres was moved from Durham County to Orange County and that Durham County decreased their valuation by \$40,946. She further stated that Orange County valued that same 0.7 acres for \$52,600. The appellant inquired about what County she would contact for services and if she would be able to call either fire department to respond if she had a fire. Mr. Hensley stated that in North Carolina, typically fire departments sign "mutual aid agreements" that state that the closest unit will respond, and the financial ramifications are worked out between the fire departments, but that the emergency is responded to in the fastest way possible to save lives and property.

Ms. Olson asked where children residing in her home would go to school. Ms. Marsh explained that she believed that if the actual house is split by the two counties, then the rule is that children would attend in the county that the bedrooms are located. Ms. Olson stated that she understood Durham County to explain that her house was 68% in Durham, but per Mr. Gunn, the map reflects that her entire whole house is in Durham County, and that the whole property was split. He stated that 68% of her property is located in Durham County instead of 68% of her actual house. The appellant offered to provide a copy of the Durham County tax bill.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks made a motion to leave the value as it currently is due to the fact that there was no supporting evidence to support a change. The motion was seconded by Ms. Marsh and the motion carried.

Ayes: 3  
Noes: 0

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**HARIDEV LLC dba SHORT STOP****1054309**

Yogesh Patel appeared before the Board on behalf of Haridev LLC to request a compromise of the discovery late listing penalties for 2012-2014 in the amount of \$108.36. Mr. Patel reiterated the information provided in the appeals form. He stated that the error in listing was not done with bad intentions and asked for a one-time waiver of the penalties.

Ms. Riley stated that the appellant did submit a 2014 listing form and that as a result, the Tax Office created a discovery for 2012 and 2013.

Ms. Marsh asked if they purchased the property in 2012 and the appellant stated that the property was purchased in 2010. Mr. Patel further stated that when he received the letter from the Tax Office, he called his accountant, and at that point, he made sure that Haridev listed everything it needed to list. Mr. Patel also mentioned that he is working on a deal to buy another property in Orange County to expand his business. The appellant confirmed that the taxes have been paid except for the penalties.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, Ms. Sparks made a motion that the penalties be upheld because it is the taxpayer's responsibility to list. Ms. Marsh seconded the motion and the motion carried.

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Ayes: 3

Noes: 0

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**ROBERTA HARDAKER**

**0802238847**

Ms. Hardaker appeared before the Board to appeal the value of her property located at 4012 Kerley Road, Durham. Currently, the Orange County assessed value is \$23,400. This property was previously taxed wholly in Durham County.

The appellant stated that 90% of her property is in Durham County. She stated that the per acre value is so much more in Orange County than in Durham County and it is unfair to her. She cannot sell her Orange County property because it is under restrictive covenants. Ms. Hardaker disclosed that the entire property is approximately 7 acres and legally, she cannot sell a portion of the property. She stated that the Orange County portion is basically a ravine and cannot be sold separately, and she thinks the property is valued too high. Durham County lowered the value of her property by approximately \$10,000, but Orange County valued the property at approximately \$23,000. The County noted that Durham County is currently using a 2008 schedule of values and Orange County is using a 2009 schedule of values, as a result of each county's last revaluation. The discrepancy in value for the appellant amounts to approximately \$13,000.

Mr. Gunn stated that Orange County must treat this portion of land as part of a whole tract and the difference in value is due primarily to the different schedules of value between Durham County and Orange County. Ms. Edeburn stated she understands, but the fact that the difference is over \$13,000 does not seem correct. Mr. Brinson asked if Mr. Gunn or Mr. Hensley have looked at the Durham County value for the rest of the property. Mr. Gunn stated that he did not concern himself with Durham County's values. Ms. Hardaker stated she is using the value that is provided on her Durham County tax bill. She stated that she is a law abiding citizen and just wants equity and fairness. Ms. Hardaker asked how such a long-standing agreement could suddenly become null and void. The appellant said that she did not have the opportunity to vote on this change. The appellant stated that when she purchased the property she was led to believe she purchased Durham County property. Mr. Brinson asked Ms. Hardaker what was her opinion of the value. The appellant stated that it should be valued along the same lines as the Durham County property. The appellant stated that she is not asking for services and that Orange County is not providing services to her.

In response, Mr. Gunn stated that he saw no major discrepancy in the valuing of this piece of property.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, there was a motion by Ms. Sparks that the County value be upheld as there was no compelling evidence to change the value. The motion was seconded by Ms. Merritt and the motion carried.

Ayes: 3

Noes: 0

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Ms. Betsy Brinkley appeared before the board to appeal the value of her property located at 2907 Mt. Moriah Road, Durham. The current Orange County value is \$277,900. This property was previously taxed in Durham County.

Ms. Brinkley stated that Durham County taxed the property based on a value of \$120,000 in 2013. She and her husband own 4 separate lots, two of which are still taxed in Durham County, but two of which are now taxed in Orange County. Ms. Brinkley stated that the acreage is 1.16 acres.

Ms. Sparks explained that Orange County has a separate schedule of values from Durham County, which is a contributing factor as to why the value is different. Ms. Sparks went on to say that Orange County most recently had a revaluation in 2009 and Durham County in 2008. Ms. Marsh explained that the County line has not been redefined, but both counties are working together to correct the taxation. Ms. Brinkley stated that she expected the value to increase but not to be three times as much as it was in Durham County. She stated she has been billed from Durham County for the last 45 years.

Ms. Brinkley requested an application for the Elderly/Disabled Homestead Exclusion and Ms. Riley provided one for her.

Mr. Hensley stated that the construction grade on the house may need to be adjusted down from a construction grade B+10 to B+00.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, there was a motion by Ms. Merritt to change the grade to B+00, which would change the value to \$264,400. Ms. Marsh noted that the appellant has not been taxed for the house by either county since 2011 and that it is now correctly taxed according to the Orange County Schedule of Values. Ms. Sparks seconded the motion and the motion carried.

Ayes: 3

Noes: 0

Mr. & Ms. Edeburn appeared before the board to appeal the value of their property located at 4110 Kerley Road, Durham. The current Orange County value is \$70,100. This property was previously taxed wholly in Durham County. Mr. Edeburn provided a handout to the board members and Tax Office staff. The appellant stated that the lateness of the tax bill is an issue for them because they were not able to get their escrow timely changed. Mr. Edeburn stated that Durham County lowered their property's value by \$18,510 and Orange County valued the property at \$70,100. The appellant further stated that Orange County assigned a separate PIN to the property, but it is not a separate tract; it is a portion of a larger tract. Mr. Edeburn reviewed nine parcels in Orange County similar to their property in size and the average was valued at \$26,000 per acre, with one being priced at \$23,000 per acre, which is much lower than the \$44,000+ per acre value in Orange County. The property is 1.11 acres. The appellant stated that there is a covenant that restricts this property. Mr. Edeburn is not aware of covenants on the comparative properties that he reviewed. It is the appellant's hope that a reasonable agreement can be made.

Mr. Gunn stated that Orange County may be able to adjust the value. He further stated that the entire 4.9 acres would be priced at \$27,415 per acre if it was fully located in Orange County. Using that per acre value for the 1.11 acres would yield a value of \$30,430.

The appellant wanted to know why Mr. Gunn would not use the same per acre value as the property located in Orange County that is directly in front of his property, and is closest in acreage. Mr. Gunn stated that the appellant's property has road frontage on two public roads and that the property in question has no road frontage, only one private drive adversely affecting its value. Ms. Edeburn stated that she was told by the Tax Office that size is the only variable, but Mr. Gunn stated that he would have indicated just the opposite, that there are many other factors involved in valuing a piece of property. In addition, Mr. Hensley mentioned that the property in question already includes a 15% reduction in value due to an easement. Ms. Edeburn thanked the Board for their time and effort.

Ms. Edeburn asked how the change in taxation came about and Mr. Brinson explained that the change was initiated by the Board of Elections in Durham County attempting to correct situations as to where citizens should be voting. Ms. Edeburn stated she was concerned that there was very little lead time given to the citizens when this change happened and she realizes that there are property owners that would be devastated by the changes in values, and subsequently, the amount of taxes to be paid. She suggested that the citizens would like to have had more time to prepare financially.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, there was a motion by Ms. Marsh to adjust the land to be in line with neighboring parcels which would yield an overall value of the property (land and a detached garage) to \$50,700. Ms. Sparks seconded motion and the motion carried.

Ayes: 3  
Noes: 0

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**PHE INC & TOWNSEND ENTERPRISES INC****94964 & 182319**

Ginger Stallings, accounting manager for PHE Inc. and Townsend Enterprises Inc. appeared before the Board requesting a compromise of taxes related to a discovery of improvements on the property located at 302 Meadowlands Drive, Hillsborough. Ms. Riley stated that annually, PHE Inc. and Townsend Enterprises Inc. list property for taxation that is valued at \$39 million. Ms. Riley pointed out that only supplies were not listed for 2009, 2011, 2012, 2013, and 2014. Ms. Riley stated that in 2010 supplies were listed correctly. Ms. Stallings stated that she believes the omission was due to a change in staff. She has been the accounting manager for PHE Inc. and Townsend Enterprises Inc. for the last two years. The appellant did not question the findings of the audit; they are only requesting the compromise of the penalties. PHE Inc. and Townsend Enterprises Inc. have already paid the taxes less the penalties. Ms. Stallings mentioned that they have a new addition that will be on their 2015 listing, so they are helping to keep Orange County growing.

The Board reviewed all documents and information provided by the appellant and the County. After deliberation and review, there was a motion by Ms. Marsh to uphold the penalties based on the fact that it is the business owners' responsibly to list. Ms. Merritt seconded motion, and the motion carried.

Ayes: 3  
Noes: 0

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Mr. Joe Diab appeared before the Board requesting a value adjustment on 3 parcels, one of which was previously taxed exclusively in Orange County and two that were previously taxed exclusively in Durham County. All of these properties are now partially taxed in both counties. The appellant is basing his appeal on these factors:

1. He is asking for an adjustment back to the Orange County value from 2013 on one of the parcels PIN 9890904183.
2. He stated that according to North Carolina General Statute 105-287(a), which states by paraphrase: in a non-revaluation year there is no condition that would give rise to a revaluation of the property. The appellant does not have a problem paying the taxes based on the 2013 values, but not on these higher values. He is willing to agree to the slightly higher values used by Durham County for the portion taxed by Durham County.
3. There are restricted covenants that would make these parcels more in line with residential property, not commercial property. The covenants have been in place since 1975 and only renew every ten years. According to the appellant, Durham government has made it plain that they would not approve any rezoning in the area if it is not a very large parcel.

Mr. Gunn stated that after reviewing the 2013 value on the parcel he could not assume that the value was correct. Mr. Gunn researched similar properties. He used a nearby improved Lakeview Drive residential lot's per acre value, which was \$204, 082 per acre.

Mr. Diab stated that the difference is that the properties under appeal are unimproved properties. This amounts to the fact that the current value is in essence three times as much as the previous values. Mr. Brinson stated that by statute, the value can be revisited when a parcel's size changes. However, the 2009 Schedule of Values is still used in determining the value of the properties. Mr. Diab stated that the key factor is that the values should be in line with the 2013 larger parcel's value. He asked, what would be consistent with this prior year value on the larger property.

Mr. Gunn stated that when we recognize an inaccuracy in the valuation of the property, we can correct it, which is the case here. The larger lot does not seem to be accurately priced for 2013 per Mr. Gunn.

The Board reviewed all documents provided by the appellant and the County. After deliberation and review, Ms. Marsh made a motion for 9890904183 to lower the value by 25% due to influence of traffic flow to and from the adjacent Red Roof Inn. The motion was seconded by Ms. Sparks and the motion carried.

Ms. Marsh made separate motions that no changes be made to the valuations of the two other properties, PIN 9799994937 and PIN 979994931. Ms. Sparks seconded the motion for PIN 9799994937 and the motion carried. Ms. Merritt seconded the motion for PIN 9799994931 and the motion carried.

Ayes: 3  
Noes: 0

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Mr. Scott Foster appeared before the Board to request a compromise of penalties related to a discovery of improvements for 9500 Sertoma LLC property located at 9507 Sertoma Road, Chapel Hill for tax years 2012-2014. The appellant stated that the property was purchased in 2010, and Attorney Griff Graves notified Orange County Tax Office that the property was changing ownership and that the prior owner was a non-profit organization but the new owner was not a non-profit organization and would not be exempt from taxation.

Mr. Foster stated that in early 2013 he contacted Mr. Gunn concerning the high valuation on the property. He stated that Orange County Planning would not issue a permit because of the zoning. Mr. Foster hired an appraiser to assist him with the correct valuation for the property. After obtaining the appraisal of the property, Mr. Foster and Mr. Gunn agreed on the valuation for 2013. However, again in 2013 there was no bill. The appellant stated that now this year (2014) he called and informed the Tax Office that still he was not billed for the taxes, but that he received a notice of discovery for the amount of the past due taxes with penalties. Mr. Foster stated that at every opportunity, he attempted to notify the Tax Office so that he could pay the taxes, and that the penalties should not be appropriate when he tried to resolve the situation several times. The appellant stated that the property should have been taken out of exempt status at time of the purchase in 2010, but it was not.

Mr. Gunn stated that the discovery is for the years 2012 through 2014, and at the discovery conference the 2012 value was adjusted. However, the discovery penalties were still imposed because statutorily, imposing the penalties is procedurally correct.

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

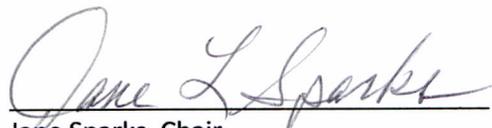
Ayes: 3  
Noes: 0

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Mr. Gunn informed the board members that there needs to be one more meeting of the 2014 Board of Equalization & Review in early January, 2015 and that Mr. Gunn will contact the board members soon to arrange a meeting date.

Having heard all of the appeals scheduled on this date, the meeting was adjourned at 5:15PM by Ms. Sparks.

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Jane Sparks, Chair

  
Nancy Freeman, Recording Secretary