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September 11, 2013

Mr. Bobbie Shields
Interim Mecklenburg County Manager
Post Office Box 31787
Charlotte, North Carolina 28231

VIA First Class Mail and E-Mail

Re: Session Law 2013-362 --- Review of County's Implementation Plan

Dear Mr. Shields:

You requested our opinion regarding legal issues with Mecklenburg County's implementation plan regarding Session Law 2013-362. As more specifically set forth herein, in our opinion, Mecklenburg County's implementation plan for the review by neighborhoods of all parcels by a qualified appraisal company complies with the directives of Session Law 2013-362 and accomplishes the goals of the Machinery Act, which is to determine the "true value" of all parcels.

BACKGROUND

Pursuant to North Carolina General Statute §105-286, Mecklenburg County conducted a reappraisal of all real property effective January 1, 2011 (the "2011 Revaluation"). On November 16, 2010, the Mecklenburg County Board of Commissioners adopted the final Uniform Schedules of Values, Standards and Rules (the "Schedules") pursuant to the provisions of N.C.G.S. §105-317. The Schedules were approved following publication of notices and public hearings. The last day to challenge the validity of the Schedules by appealing to the Property Tax Commission was December 17, 2010, and there were no appeals.

Notifications of the January 1, 2011 values of all parcels in Mecklenburg County were mailed to taxpayers in the spring of 2011. Thereafter, more than 42,000 taxpayers requested the

Assessor's office to conduct informal reviews of their property values. The appeals process for the 2011 Revaluation is still in progress.

In response to citizen concerns, the Board of Commissioners selected Pearson's Appraisal Service, Inc. ("Pearson's") on July 3, 2012 to perform an independent review of the 2011 Revaluation. Pearson's presented a report to the Board on November 20, 2012, which report found instances of inequity and erroneous data that impacted the valuations of properties in the County.

On July 18, 2013, the General Assembly of North Carolina ratified Session Law 2013-362 (hereinafter sometimes referred to as "the Legislation"), which law was signed by Governor Pat McCrory and became law on July 26, 2013.

On August 6, 2013, the Board of Commissioners passed a resolution finding that certain conditions set forth in the Legislation applied to the Mecklenburg County 2011 Revaluation and directed you as Interim County Manager/ County Manager to take the necessary steps to comply with the Legislation. You have requested our opinion on the County's plan to comply with the Legislation.

SESSION LAW 2013-362

Session Law 2013-362 provides that if certain conditions exist from the 2011 Revaluation, the County is required to proceed with one of two options to correct the values of property in the County and to bring the 2011 Revaluation in compliance with applicable tax law.

Section 1 of Session Law 2013-362 provides:

"SECTION 1. Notwithstanding G.S. 105-287, G.S. 105-325 and G.S. 105-380, any provision of law restricting the time for which a change in appraisal or valuation may be made, or any other provision of Subchapter II of Chapter 105 of the General Statutes inconsistent with the provisions of this act, a board of county commissioners **shall undertake the measures required by this act if all of the following conditions are met:**

- (1) The county has independent evidence that the majority of commercial neighborhoods in the county reviewed by a qualified appraisal service possess significant issues of inequity.

- (2) The county has independent evidence that for residential neighborhoods instances of inequity or erroneous data had an impact on the valuation of the neighborhood as a whole.
- (3) The county's last general reappraisal was performed for the 2008 tax year, 2009 tax year, 2010 tax year, 2011 tax year, or 2012 tax year.
- (4) The independent evidence resulted from a review performed by a qualified appraisal company selected and retained by the county and registered with the Department of Revenue and had a sample size of no less than 375 properties, the relevant characteristics of which were reviewed on location at the property.” (emphasis added)

At its August 6, 2013 meeting, the Board of Commissioners adopted a Resolution which specifically found that “[T]he four conditions set forth in Section 1 of Session Law 2013-362 have been met and apply to Mecklenburg County and the 2011 Revaluation.”

Section 2 of Session Law 2013-362 requires the County to proceed with one of two options:

“SECTION 2. If all of the conditions of Section 1 of this act are met, a board of county commissioners shall either (i) **conduct a reappraisal**, using no less than one person certified by the Department of Revenue for mass valuations per 4,250 parcels, pursuant to G.S. 105-286 within 18 months, applicable to all tax years from and including the tax year when the last general reappraisal was performed pursuant to G.S. 105-286 or (ii) have a qualified appraisal company, which may be the same company that provides the evidence in Section 1 of this act, **conduct a review of all the values in the county by neighborhoods and make recommendations as to the true value of the properties as of January 1** of the year of the last general reappraisal performed pursuant to G.S. 105-286. **After the reappraisal or after each neighborhood review** required by this section is complete, the board of county commissioners shall make any change on the abstracts and tax records to ensure that the assessed values of incorrectly appraised properties in the county reflect the true values of those properties effective for the year of the last general reappraisal performed pursuant to G.S. 105-286 and shall apply the adjusted values for those properties for each tax year until the next general reappraisal for real property is performed by the county pursuant to G.S. 105-286 unless those adjusted values are changed in accordance with G.S. 105-287. In making changes to the abstracts and tax records mandated by this act, the board of county commissioners shall make adjustments for previous errors prioritized as follows:

- (1) Adjustments to parcels with errors that resulted in the parcels having a significantly overstated value.
- (2) Adjustments to parcels with errors that resulted in the parcels having a significantly understated value.
- (3) Adjustments to parcels with errors that resulted in the parcels having an overstated value.
- (4) Adjustments to parcels with errors that resulted in the parcels having an understated value.

In instances of parcels with errors that resulted in an overpayment of taxes, the governing board shall require that notice of refund and the refund amount be sent to the owner of record as of the date the payment was made. The provisions of G. S. 105-380 do not apply to the issuance of any refunds under the provisions of this act.” (Emphasis added.)

As set forth above, the County has two (2) options: i) conduct a complete reappraisal of the 2011 Revaluation; or ii) have a qualified appraisal company conduct a review of all values by neighborhood. The Board of Commissioners has chosen to conduct a review of all values by neighborhood [option ii], as contrasted with a “reappraisal” [option i] pursuant to N.C.G.S. 105-286, which requires that a county “must reappraise” all property in the county.

COMPLIANCE WITH SESSION LAW 2013-362

At its August 6, 2013 meeting, the Board of Commissioners directed you as the Interim County Manager/County Manager to take all steps necessary to implement the requirements set forth in Section 2(ii) of Session Law 2013-362 set forth above.

The first step in conducting a review of all values by neighborhood [option ii] is to select a qualified appraisal company to conduct the review. The qualified appraisal company should be registered with the Department of Revenue as an approved appraisal firm. We understand that Pearson’s is a qualified appraisal company registered with the Department of Revenue and is in good standing as set forth in N.C.G.S. §105-289(i).

The next steps are for the qualified appraisal company to “conduct a review of all the values in the County by neighborhoods”, and to make recommendations to the Board of Commissioners as to the true value of each parcel as of January 1, 2011, and “after each neighborhood review required by this section is complete, the board of commissioners shall

make any change on the abstracts and tax records to ensure that the assessed values. . . are corrected”.

The reviewing company is required to review all values and make recommendations to the Board of County Commissioners as to the true values as of January 1, 2011. We interpret this to mean that the values of every property in the County are to be reviewed for accuracy by the reviewing company and that those values are required to be increased, decreased, or no change made.

The recommendations of the reviewing company are to be made “after each neighborhood review ... is complete”. We interpret this to mean that the recommendations to the Board of County Commissioners can be made as they are completed, rather than waiting until all parcels in the County have been reviewed.

The Legislation provides that “after each neighborhood review required by this Section is complete, the board of county commissioners shall make any changes on the abstracts and tax records....” We interpret this to require the Assessor’s office to make changes on the property record cards to reflect the changes in value set by the board. This process will correct any errors in individual property record cards.

In instances of parcels with errors that resulted in overpayment of taxes, the Legislation requires that “the governing board shall require that notice of refund amount be sent to the owner of record as of the date the payment was made”. We interpret this to mean “payment” to the owner of record on the date the taxes were paid, not the date of payment of the refund.

There will likely be instances where the owner of record as of the date the taxes were paid is not the taxpayer who would be entitled to the refund. For example, where there is a change of ownership and the seller paid a prorated part of the taxes, the seller would be the logical person to receive a portion of the refund. There will likely be disputes over refunds where property has been transferred since January 1, 2011. There is no guidance in the Legislation as to how these situations are to be handled. We are of the opinion that the County should adhere strictly to the requirements of the Legislation and send refunds to the owner of record as of the

date the payment of taxes was made. Section 3 of the Legislation provides that the taxing authority shall pay interest at the rate of 5% per annum on any refunds due to taxpayers.

The Legislation also requires notice to be sent to the owners of any parcel that had errors which caused an understated value and which are increased in value as a result of the qualified appraisal company's review. The notice must comply with the discovery provisions of N.C.G.S. §105-312 and the owners of these parcels will have the right to appeal the values to the Board of Equalization and Review. In addition, the County must send bills for additional taxes that are due from the owners of such parcels.

The Legislation does not address the following:

1. The Legislation does not specifically require a notice to be sent to all taxpayers regarding the results of the review by the qualified appraisal company. The law only requires notice if there is a change in value to a parcel. This is consistent with the Machinery Act, which requires that notice of change in value by the Board of County Commissioners is not required to be given unless the change "will adversely affect the interests of any taxpayer", in which event notice of a change and an opportunity to be heard must be given before the change becomes final. [G.S. §105-325(a)(6)d]. Likewise, the BER has the right to make changes on its own but must give notice to the taxpayer if it "increases the appraised value of any property". [G.S. §105-322(g)(6)f]; and the assessor has the right to change the value prior to the first meeting of the BER and must give "written notice of a **change** in assessment".

2. There is no provision for an appeal by the taxpayer or to whom the appeal is to be made. We are of the opinion that due process requires that taxpayers whose values have been adversely affected should have an opportunity to appeal.

3. There is no provision about the finality of values which have been voluntarily settled between the taxpayer and the assessor, or which have been ordered by the Property Tax Commission. The Legislation does not address this issue and it may be up to a court to determine whether the Legislation allows a change to values previously agreed to by the taxpayer and assessor or previously subject to an order of the Property Tax Commission.

SCHEDULES OF VALUES

On November 16, 2010, the Mecklenburg Board of Commissioners adopted the Schedules of Values pursuant to the provisions of N.C.G.S. §105-317 following publication of notices and public hearings. There were no appeals to the Property Tax Commission challenging the Schedules.

Over two and a half years after the adoption of the Schedules, the Board was advised that among the thousands of numerical factors in the Schedules, there appear to be over 200 errors. These errors must be considered in the context of the entire process.

It appears that there are errors and inconsistencies between the Board approved Schedules and Schedules of Values Tables in the County's CAMA System (AssessPro). For example, attached is a copy of a table found on page 11-5 of the Schedules. There are 61 values in this table and we understand that there are inconsistencies with 6 of the 61 values. The handwritten values on this attachment are the values that are in the CAMA System. For example, under the Schedules, a Below Average 02 structure should have a factor of 0.85. Instead, in the CAMA System the factor is 0.84. Another example is that the first full bath of a building group 2 structure should have a value of \$2100 according to the Schedules, not \$2000 as in the CAMA System. We understand that there are also allegations of errors in individual parcel property cards in the CAMA System. However, such errors are not in the **Schedules**, but rather are on the **property record cards**. Those cards are changed regularly during the revaluation process for subjective changes as the appeals process proceeds.

The Schedules and the property cards are initial tools used in determining the property values. However, they are not the ultimate tools. The values generated by the CAMA System using the tables and the property cards are filtered, or adjusted, by information such as qualified sales, income data and other factors to determine true value, such as will be done by the qualified appraisal company when it performs its review.

Errors and inconsistencies between the Schedules and the tables in the CAMA System do not affect the determination of true property values. Pearson has indicated that they are aware of

the errors and inconsistencies, but are confident that their review to date has not been compromised and that they have been able to determine true values of properties.

Under North Carolina law, the fact that there are errors in the Schedules of Values does not invalidate the revaluation. Errors in the Schedules of Values do not require a reappraisal. *In the Appeal of McElwee, 304 N.C. 68, 283 S.E.2d 115 (1981)*, the taxpayer challenged Wilkes County's revaluation of his property. The North Carolina Supreme Court held that the County had failed to comply with the statutory requirements of N.C.G.S. §105-317 regarding the approval of the Schedules of Values. The Schedules were disapproved by the Supreme Court, but this did not invalidate the Wilkes County revaluation. The Court ruled that the taxpayer had met his burden of showing that the revaluation of his property had been illegally done and the burden shifted to the county to demonstrate that the value of the taxpayer's property was not unreasonably high.

The objective of valuation of property is to determine the "true value" of the property. It is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong, he must also show that the result arrived at is **substantially** greater than the true value in money of the property assessed, i.e., that the valuation was **unreasonably high**. *In re AMP, 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975)*. In *Amp*, the court found that the assessor used an illegal method of valuing property, but the real issue was the value of the property, not the method of determining the value.

The Legislation requires the reviewing company to determine values, and the Schedules are a help, but not the decisive factor in arriving at property values. It is our opinion that the identified errors and inconsistencies between the Schedules and the tables in the CAMA System will not impede the qualified appraisal company's review of all values in the County and that the Schedules need not be revised in the review process.

RECOMMENDED PROCEDURE

Based upon the foregoing analysis, we recommend that the implementation of the review should proceed as follows:

1. The Board should appoint a qualified appraisal company to conduct the review;

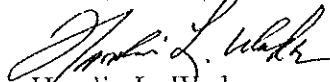
2. The reviewing company determines the values of all properties by neighborhood;
3. The reviewing company makes recommendations to the Board as each neighborhood review is completed to increase, decrease or make no change of each parcel;
4. The Board directs the Assessor to mail the results of the review to the last known address of the property owner;
5. The notice should advise each taxpayer the right to file a notice of appeal to the BER, or to the PTC if there is a pending PTC appeal, within 30 days after the date of the notice;
6. If there is no appeal within 30 days of a decrease in value, or if the taxpayer waives the right to appeal by written notice, the County issues refunds for any overpayment of the 2011 and subsequent years taxes, with interest at the rate of 5% per annum; and
7. If there is no appeal within 30 days of an increase in value, the County issues a bill to the property owner for additional taxes owed.

The opinions herein are based upon our review of Session Law 2013-362, the Machinery Act, applicable case law, and our experience in representing the Assessor's Office over the years. There are no court cases interpreting any provisions of the Legislation. It is possible that in the future a court might take a different view on some aspects of the Legislation.

Please let us know if you have any questions or need any clarification of any of the opinions set forth herein.

Respectfully submitted,

RUFF, BOND, COBB, WADE & BETHUNE, L.L.P.



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