

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 5 October 2015

SUBJECT: Tax Release, Valid Defense

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Corporate minutes

SUMMARY OF REQUEST:

Mountain Home Independent Baptist Church (“MHIBC”) is the listed owner of a building and parcel located on Mountain Road. It is County parcel number 9968370. MHIBC has been assessed and billed for *ad valorem* property taxes for 2014 and 2015. MHIBC has requested the release of these taxes, pursuant to N.C. Gen. Stat. §105-381, as shown on the attached.

Under §105-381, the Board “shall within 90 days after receipt of such request determine whether the taxpayer has a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made”.

As shown by the documents from MHIBC, the property was not used as a church meeting place for a period, awaiting renovations.

While one case under North Carolina law can be argued to support a contrary view, there is no case reported under the Machinery Act where a property previously entitled to an exemption loses the exemption during a period of disuse where there is a credible plan for future, exempt use, and where there is no non-exempt use in the meantime. *In re the Appeal of Worley*, 93 N.C. App. 191 (1989), allowed “holding for future use” of a property attendant to an exempt parcel as an exempt use.

County attorney recommends the grant of this release, as this property was put to no non-exempt use, and was held for future, exempt, use by one or another exempt entity..

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Review of the release request.

If the Board is so inclined, the following motion is suggested:

I move that the Board grant the requested release.

Mount Home Independent Baptist Church
Post Office Box 222
Mountain Home, North Carolina 28758

September 3, 2015

C. Russell Burrell
County Attorney
County of Henderson
One Courthouse Square
Main Street
Hendersonville, North Carolina 28792

Re: Mountain Home Independent Baptist Church
Taxation Of Parcel #9968370
Statement of Defense Pursuant to North Carolina General Statute § 105-381(a)(1)a, and a(1)b

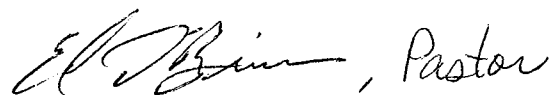
Dear Attorney Burrell,

We respectfully assert as a valid defense to the enforcement of the collection of a tax assessed on the above referenced property North Carolina General Statute § 105-381(a)(1)a, and a(1)b.

We request the Board of County Commissioners, within 90 days after receipt hereof to determine whether we have a valid defense to the tax imposed or any part thereof and release that portion of the amount that is determined to be in excess of the correct tax liability or notify us in writing that no release will be made.

We believe we are entitled to a religious exemption which has been wrongfully denied. We have previously provided documentation to your office and that of the Tax Assessor. Please let us know if additional information is necessary.

Sincerely,

 Pastor

Official Minutes

07 COPY

Mountain Home Independent Baptist Church, Inc.

Date: December 2013

On or about April 3, 1978 Mountain Home Independent Baptist Church, Inc. received title to the real property described in Deed Book 367 at Page 505, Henderson County Registry.

The current Directors / Officers of this Corporation are:

Edward O'Brien, President; Barbara O'Brien, Secretary / Treasurer and Kenneth Mason

The Directors of Mountain Home Independent Baptist Church, Inc. voted this date to transfer possession of the real property to the Trustees of Calvary Baptist Church, an unincorporated association, while the property undergoes renovations needed to continue its use as a place of worship and while the Corporation completes its internal reorganization. Upon the completion of the renovations, possession of the subject property shall be transferred to Mountain Home Independent Baptist Church, Inc. The use of the property has not and will not change.

This date and year above first written.

Mountain Home Independent Baptist Church, Inc.

By: Barbara O'Brien
Acting Secretary of Corporation
Barbara O'Brien