

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 17 August 2016

SUBJECT: WLAE, LLC, request for Release or Refund of Taxes Claimed or Paid

PRESENTER: Darlene Burgess; Charles Russell Burrell

ATTACHMENT(S): Statement of Defense to Taxes Claimed and Request for Release or Refund of Taxes Claimed or Paid

SUMMARY OF REQUEST:

WLAE, LLC, seeks a release or refund of taxes paid for certain property described in its application.

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

NOTE: Staff recommends that the request for release or refund of taxes made by WLAE, LLC be DENIED, and this Request is prepared based on that recommendation.

BOARD ACTION REQUESTED:

Denial of WLAE, LLC request.

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

I move that the Board deny the request of WLAE, LLC for release or refund of taxes claimed or paid.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

WLAE, LLC,

Taxpayer,

re:

Parcels: 9545-53-3972 (9934778,
1366.95 acres) and **9545-04-8343**
(0401540, 11.6-acres)

Personal Property: Abstract Numbers
128523, 128524, and 128525 (Farm
Equipment)

**STATEMENT OF DEFENSE
TO TAXES CLAIMED
and**

**REQUEST FOR
RELEASE OR REFUND OF
TAXES CLAIMED OR PAID**

NOW COMES the taxpayer, WLAE, LLC (hereinafter "WLAE"), by and through the undersigned counsel, stating its defense to the taxes claimed, and requesting release or refund from taxes claimed and taxes paid. To support its defenses and requests, WLAE shows as follow:

BACKGROUND

1. Parcels 9934778 (1366.95 acres) and 0401540 (11.6-acres) (collectively the "Parcels") are and have remained owned by Wolf's Lair, Ltd. ("Wolf's Lair"), a Florida limited partnership, since 1977, acquiring interests through deeds at Deed Book 552, Page 809 (Grantor: Intra State Terrazzo & Cement Co., Inc. ("Intrastate"); 81% interest, retaining timber rights); Book 553, Page 855 (Grantors: Wolf Karl Weinhold ("Karl") and wife Marjorie Weinhold, 6% interest); Book 553, Page 858 (Grantors: Marjorie Weinhold and husband Wolf K. Weinhold, 6% interest); Book 554, Page 5 (Grantor: Wolf Arbin Weinhold, 3.5% interest); and Book 554, Page 7 (Grantor: Karl Wilms Weinhold, 3.5% interest).

2. The initially retained timber rights were transferred either directly by Intrastate to Wolf's Lair by through Deed Book 951, Page 814 (dated in 1981 but not recorded until 1998), or by Book 985, Page 620, both with Intrastate as grantor and Wolf's Lair as grantee, or through a series of transactions, Book 880, Page 467 (Intrastate to Karl Wienhold), Book 883, Page 340 (Karl Weinhold to Verdant Earth, Inc.), and Book 1005, Page 332 (Verdant Earth to Wolf's Lair).

3. In June, 1994, when he filed for Chapter 7 personal bankruptcy ("WAW Bankruptcy"), Wolf Arbin Weinhold ("WAW") owned both the general partnership interest and all of the limited partnership interest in Wolf's Lair, and those interests in Wolf's Lair became part of the bankruptcy estate (see March 2, 2012, bankruptcy court transcript and March 6, 2012, order approving an agreement by WAW). Through a long series of events, WAW's Bankruptcy case continued to have activity through at least March, 2013.

4. During the course of WAW's Bankruptcy, the bankruptcy trustee ("Trustee") and, through other agreements, others, transferred ownership of Wolf's Lair to WLAE. To assure all interests in the real property were properly transferred, the Trustee also executed deeds to the real estate to WLAE, although no prior authorized transfers of the property out of Wolf's Lair had occurred.

5. On information and belief, at some point prior to April, 2009, while the ownership of Wolf's Lair and therefore the Parcels remained in the WAW Bankruptcy bankruptcy estate, WAW and Robert Edwards entered into an agreement by which timber would be removed and sold from the Parcels. Neither WAW nor Edwards had any authority to sell the timber from the Parcels.

6. WAW also took other unauthorized actions related to the Parcels.

7. On information and belief, Wolf's Lair has had no assets other than the Parcels since its formation. During the course of its ownership prior to WAW's initial bankruptcy filing and thereafter, Wolf's Lair held and managed the Parcels for forestry and timber purposes.

8. In 2012, shortly after ownership of Wolf's Lair and the Parcels was finally resolved in bankruptcy court and WLAE was fully authorized to manage the Parcels, WLAE, owner of all partnership interests in Wolf's Lair, and acting through its capacity as General Partner through Doug Smith, WLAE manager, attempted to determine the amount of property taxes owed on the Parcels by making direct inquiry with Henderson County tax officials. Those tax officials were unable to provide Mr. Smith a tax amount owed. Mr. Smith was unable to obtain a tax amount owed despite several subsequent inquiries. As late as 2016, Taxpayer's representatives were unable to obtain a final, verifiable tax amount owed.

9. In September, 2012, WLAE arranged for a forest management plan (the "Plan") to be developed by WNC Forestry Services, Inc., owned by John Rutland III, North Carolina Registered Forester #642. That plan was intended to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

10. After completion of the Plan Rutland delivered a copy of the Plan to Henderson County tax officials office on behalf of WLAW, and Rutland subsequently delivered other copies or versions of the Plan to Henderson County after the original copy of the Plan was misplaced by that office.

11. Since development of the Plan, WLAE has authorized John Rutland to continue managing the Parcels through the Plan, and he has taken active steps to enact that Plan.

12. In 2014, WLAE, acting for Wolf's Lair, filed two lawsuits in Henderson County. The first case, 14-CVS-395, named Blue Ridge Grading & Trucking, Inc., Wolf Arbin Weinhold, and the North Carolina Department of Transportation as defendants, and alleges improper placement of waste on the Parcels. The second case, 14-CVS-395, named Robert Edwards and Wolf Weinhold as defendants, and alleges timber theft, among other claims.

13. In both cases, WAW has filed counterclaims claiming an ownership interest in the Parcels, and has filed *lis pendens* against the Parcels.

14. Henderson County alleges taxes and interest due on the parcels as follows:

- a. Parcel 9545-53-3972 (9934778, 1366.95 acres), Years 2000 through 2015
 - i. Taxes: \$159,108.65
 - ii. Interest: \$72,562.65
 - iii. Costs: \$6,475.49

- Notes provided to taxpayer indicate that the 2011 amount claimed includes "\$6,782.50 in attorney fees incurred for defending the County's interest in Bankruptcy Court."
- b. Parcel 9545-04-8343 (0401540, 11.6-acres), Years 2002 through 2015
 - i. Taxes: \$5,039.53
 - ii. Interest: \$2,251.56
 - iii. Costs: \$84.00
 15. Henderson County further claims personal property taxes as follows:
 - a. Years 1999-2001
 - i. Taxes: \$287.50
 - ii. Interest: \$436.77

16. On information and belief, Henderson County did not obtain relief from stay or take other action in bankruptcy court to allow changes to the valuation of the Parcels, to charge interest on taxes levied, or to claim attorney's fees possibly associated with the WAW Bankruptcy.

17. WLAE properly appealed the 2015 assessed valuation of the Parcels, and that valuation remains on appeal.

18. In October, 2002, N.C. Gen. Stat. 105-277.3 was amended to add the requirement a written forest management plan. On information and belief, prior to that amendment the statute did not require a written plan.

19. After multiple requests, Taxpayer was presented a detailed listing of taxes owed, and their basis, and the denial of forestland present use valuation, on May 6, 2016.

On the above facts, Taxpayer presents the following

DEFENSES AND REQUESTS FOR RELEASE AND REFUND

20. Taxpayer does not dispute that property taxes are owed on the Parcels, just that the taxes charged are excessive because changes in assessed property value were made despite the bankruptcy automatic stay; that interest cannot be charged during the pendency of the bankruptcy case, in violation of the automatic stay; and that post-bankruptcy changes to forestry use valuation for tax years during the pendency of the bankruptcy action is not allowed because it is an attempt to violate the automatic stay, and that any attempt at such recapture is illegal.

21. No changes in value of the Parcels are allowed during the pendency of the WAW Bankruptcy.

- a. The bankruptcy filing entered an automatic stay (the "Stay") against certain actions and activities by the County. While the Stay does not prevent certain tax collections actions, Taxpayer contends that, without relief from stay, the Stay prevents Henderson County from making changes to the valuation of the Parcels during the pendency of the bankruptcy action, and that no exception to the automatic stay allows such change. The changes to the assessed

value of the Parcels during the pendency of the WAW Bankruptcy are an attempt to circumvent and violate the Stay.

- b. Actions for changes in valuation are tolled during the pendency of the bankruptcy action.

22. No charges of interest on property taxes are allowed during the pendency of the WAW Bankruptcy.

- a. The Stay proscribes certain actions and activities by the County. Taxpayer contends that, without relief from stay, the Stay prevents Henderson County from including interest on property taxes levied against the Parcels during the pendency of the bankruptcy action, and that no exception to the automatic stay allows such charge. The claims of interest on the taxes during the pendency of the WAW Bankruptcy are an attempt to circumvent and violate the Stay.
- b. Charges of interest on property taxes are tolled during the pendency of the bankruptcy action.

23. No changes to present use valuation as forestland of the Parcels is allowed during the pendency of the WAW Bankruptcy.

- a. The Stay proscribes certain actions and activities by the County. Taxpayer contends that, without relief from stay, the Stay prevents Henderson County from changing the present use valuation of the Parcels for the years during the pendency of the bankruptcy action, and that no exception to the automatic stay allows such change.
- b. At the time the Parcels came under the control of the bankruptcy estate, the Parcels and their ownership met the requirements for forestland present use valuation. North Carolina law requiring a written forest management plan occurred in 2002, after the Parcels were already under the control of the bankruptcy estate.
- c. Henderson County's attempt to retroactively change the present use valuation of the Parcels for the period while the WAW Bankruptcy was pending is an attempt to circumvent and violate the automatic stay.
- d. The Parcels have been and remain qualified for forestland present use valuation.
 - i. Wolf's Lair was formed to hold and manage the Parcels for forestland purposes.
 - ii. The Parcels have remained in the same ownership--Wolf's Lair--during the pendency of the WAW Bankruptcy and remain in that same ownership.
 - iii. After closing the WAW Bankruptcy case, Wolf's Lair properly submitted a forest management plan, and continues to operate the property for forestry purposes pursuant to that Plan.

24. Charges for personal property taxes are from a listing error resulting in an illegal tax.

25. There is no statutory basis to claim against the Parcels for charges for "attorney fees incurred by the County for defending the County's interest in Bankruptcy Court."

26. No interest on taxes due should be charged or accrue for or after 2012.

a. Taxpayer attempted to pay the property taxes then existing against the Parcels but could not because Henderson County tax officials could not provide a tax amount due. Taxpayer attempted to obtain a taxes due figure on other subsequent occasions, but was not given a figure by Henderson County officials until May, 2016.

27. Taxpayer pays the 2015 taxes levied against the Parcels based on Henderson County's 2015 assessed value under protest, disputes that valuation, retains all rights to continue its appeal of that valuation, contends the valuation and associated taxes are unjust and excessive, and objects to inclusion of said 2015 taxes in the amounts alleged to be owed.

WHEREFORE, Taxpayer respectfully demands and requests as follows:

1. That no changes in valuation be allowed during the period the Parcels were under the control of the Trustee in the WAW Bankruptcy.

2. That no interest on property taxes be charged for the period the Parcels were under the control of the Trustee in the WAW Bankruptcy.

3. That no charges for "attorney fees incurred by the County for defending the County's interest in Bankruptcy Court" be allowed, and all amounts charged for same be returned to Taxpayer.

4. That any and all amount of property taxes assessed on property valuations higher than the valuation of the Parcels at the time they came under the control of the Trustee in the WAW Bankruptcy be disallowed, and that taxes paid pursuant to those higher values be returned to Taxpayer.

5. That any and all amount of interest on property taxes assessed on the Parcels during the period they were under the control of the Trustee in the WAW Bankruptcy be disallowed, and that interest paid on taxes assessed during that period be returned to Taxpayer.

6. That property taxes and interest on personal property taxes claimed be disallowed, and those amounts paid be returned to Taxpayer.

7. That 2015 taxes paid on valuations in excess of those finally determined after all appeals of those valuations and decisions are completed be returned to Taxpayer.

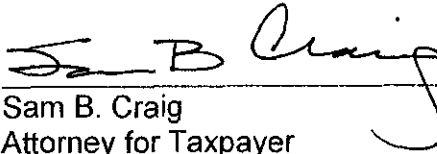
8. That the forestland present use valuation for the Parcels be reestablished for the period the Parcels were under the control of the Trustee in the WAW Bankruptcy, and that no recapture of taxes be allowed for that period, and that any taxes and interest amounts paid resulting from claimed disallowance of the forestland present use valuation be returned to Taxpayer.

9. That the forestland present use valuation for the Parcels continue after their release from the control of the Trustee in the WAW Bankruptcy, and that no recapture of taxes be allowed for that period, and that any taxes and interest amounts paid resulting from claimed disallowance of the forestland present use valuation be returned to Taxpayer.

10. For such other and further relief deemed just and proper.

This the 16th of May, 2016.

CRAIG LAW FIRM, PLLC

A handwritten signature in cursive script, appearing to read "Sam B. Craig", is written over a horizontal line.

Sam B. Craig
Attorney for Taxpayer
N.C. State Bar No. 29163
Post Office Box 1861
Asheville, North Carolina 28802
Phone: 828-484-1595
Fax: 828-707-9595

RECEIPT

The undersigned representative of HENDERSON COUNTY acknowledges receipt of this STATEMENT OF DEFENSE TO TAXES CLAIMED and REQUEST FOR RELEASE OR REFUND OF TAXES CLAIMED OR PAID, along with payment of \$246,274.89.

This the 16th of May, 2016.

 Printed Name: 5/16/16

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

WLAE, LLC,

Taxpayer,

re:

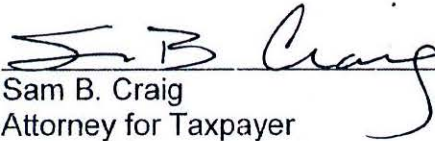
Parcels: 9545-53-3972 (9934778,
1366.95 acres) and 9545-04-8343
(0401540, 11.6-acres)

NOTICE OF APPEAL
OF DECISION TO DISALLOW
FORESTLAND PRESENT USE
VALUATION

NOW COMES the taxpayer, WLAE, LLC (hereinafter "WLAE"), by and through the undersigned counsel, APPEALING Henderson County's May 6, 2016, decision to reclassify the above-numbered parcels as not qualifying for forestland present use valuation for the tax years 2000 forward.

This the 16th of May, 2016.

CRAIG LAW FIRM, PLLC

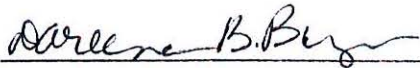


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RECEIPT

The undersigned representative of HENDERSON COUNTY acknowledges receipt of this NOTICE OF APPEAL OF DECISION TO DISALLOW FORESTLAND PRESENT USE VALUATION.

This the 16th of May, 2016.



Printed Name:

Darlene B. Burgess
Interim County Assessor
& Collector