

**DECEMBER 15, 2008 38th DAY OF
THE OCTOBER ADJOURN TERM**

The County Commission met in the County Commission Hearing Room at 9:00 a.m. pursuant to adjourn with all members present and the following proceedings were had and made a matter of record.

Prayer was led by Commissioner Pennel followed by the pledge.

ACCOUNTS ALLOWED

Commissioner Pennel made a motion to approve accounts payable warrants #307364 - #307528 and manual warrants #4935 – 4936. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (abstain).

Commissioner Pennel made a motion to approve accounts payable warrant #307323, a reimbursement that was tabled last week. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (abstain), Strahan (yes).

JOURNAL ENTRIES

Commissioner Herschend made a motion to approve a journal entry for the Judicial Facility, in the amount of \$14,342.95, for work that was performed by the Road & Bridge Department, which needs to be reimbursed back to their budget. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

PRIOR MINUTES

Commissioner Pennel made a motion to approve prior Commission Minutes dated 12/8/2008, 12/9/2008 and 12/10/2008. Commissioner Herschend seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

**LONG-TERM RECOVERY
COMMITTEE**

Mr. Richard Jones, Disaster Specialist, came before the Commission requesting the use of a room within the courthouse to meet with clients. He stated that Red Cross has requested specialists to meet with clients in a private setting.

The Commission agreed to allow Mr. Jones to meet with his clients in a private setting, within the Taney County Courthouse. Commissioner Herschend noted that someone would have to get back in touch with him over the next several days as to which room would be available.

**MR. NATHAN BURTON
PROPERTY TAXES**

Ms. Kari Walden, Styron & Schilling Law Firm, appeared before the Commission representing Mr. Nathan Burton. She stated Mr. Burton would like to appeal tax assessments on what used to be eight (8) parcels of land and now has been combined into one (1) parcel. She submitted an affidavit, as well as a legal memorandum, which read as follows:

1. I submit this Affidavit to show good cause for not having attended the county board of equalization for the purpose of correcting the errors and defects in the tax assessment on parcels 09-3.0-05-000-000-033.001 through 09-3.0-05-000-000-033.008 and 09-3.0-05-000-000-033.012.
2. I make these statements based on my personal knowledge or upon review of publicly available documents.
3. On November 8, 2006, I purchased the property described on the warranty deed attached as **Exhibit A** from Nearon-Doyas Properties, LLC and Nearon Enterprises, LLC.
4. In 2007 I received only one tax notice, which is attached as **Exhibit B**, associated with the property described on Exhibit A, which referenced parcel number 09-3.0-05-000-000-033.012.
5. The 2007 tax notice shown on Exhibit B described the parcel as containing 33.55 acres and was classified as both residential and agriculture.
6. I believed the 2007 tax notice to contain the entire tract of land purchased on November 8, 2006 so I made no further inquiry into the property taxes due and paid the full amount shown on Exhibit B in a timely manner.
7. On or about December 8, 2008 I received a notice of property taxes due on the parcel known as 09-3.0-05-000-000-033.001 in the amount of \$7,622.84 for tax year 2008.
8. I had never received a notice associated with parcel 09.3.0-05-000-000-033.001.
9. On or about December 9, 2008 I made contact with the Taney County Collector and the Taney County Assessor to discuss the taxes associated with parcel ending in 001.
10. The Assessor and Collector informed me that the parcel ending in 012 did not contain all property purchased and 2007 taxes were delinquent for additional parcels known as 09-3.0-05-000-000-033.001 through parcel 09-3.0-05-000-000-033.008, copies of such notices for tax years 2006 and 2007 are attached as **Exhibit C** collectively.
11. While discussing the matter with the Collector and Assessor, I discovered that the 2007 tax notices for the parcels ending in 001 through 006 and 008 were sent to Nearon-Doyas Properties LLC, 500 La Gonda Way, Ste 210, Danville, CA 94526.
12. I attempted to go before the Taney County Board of Equalization during the week of December 8, 2008 but was denied hearing.

Further affiant sayeth not.

Nathan Burton

**In the matter of Nathan Burton,
Property formerly known as
Ozarks Prime Resort**

Property Parcel Numbers

09-3.0-05-000-000-033.001, 09-3.0-05-000-000-033.002,
09-3.0-05-000-000-033.003, 09-3.0-05-000-000-033.004,
09-3.0-05-000-000-033.005, 09-3.0-05-000-000-033.006,
09-3.0-05-000-000-033.007, 09-3.0-05-000-000-033.008
And 09-3.0-05-000-000-033.012

Taxpayers' Legal Memorandum

Issues:

What effect does the termination of a condominium under RSMo 488.2-118 have upon the condominium unit parcels and the associate tax assessments under 448.1-105.1?

Can the use classification of a unit be changed after a condominium is terminated?

Does the Assessor have a duty to inspect records and discover a change in the form of ownership of property, i.e. condominium?

Facts:

The parcels listed above as 001 through 008 were associated with the units and common elements of Ozarks Prime Resort (**Exhibit A**).

Ozarks Prime Resort was a condominium formed under the Missouri Uniform Condominium Act, Chapter 448.

The condominium, Ozark Prime Resort, was terminated under RSMo 448.2-118 on July 29, 2005 according to the Agreement for Termination recorded as Document Number 2005L38904 in the Office of the Taney County Recorder (**Exhibit B**).

The real estate where Ozarks Prime Resort was located was sold by Nearon-Doyas Properties, LLC and Nearon Enterprises, LLC to Nathan Burton on November 8, 2006 as described and shown on the Warranty Deed recorded as document Number 2006L60371 in the Office of the Taney County Recorder (**Exhibit C**).

Mr. Burton received only one tax notice and paid the taxes associated with the property he purchased in 2007, which referenced parcel 09-3.0-05-000-000-033.012 (**Exhibit D**).

No other tax statements have been sent to Mr. Burton until Mr. Burton received the 2008 tax statements for parcels 09-3.0-05-000-000-033.001 and 09-3.0-05-000-000-033.012 (**Exhibit E**).

Upon receipt of the 2008 tax statements, Mr. Burton attempted to go before the Taney County Board of Equalization but was unable to obtain a decision.

Statutes:

The Missouri Uniform Condominium Act, §448.1-105.1 RSMo, provides that “each unit which has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.”

Section 448.2-118 RSMo indicates that a condominium may be terminated by agreement of the unit owners by recording such agreement in the county where the condominium is located and upon termination the title to all the real estate in the condominium vests in the unit owners as tenants in common in proportion to their respective interests in their units, the limited common elements and the common elements.

Section 137.016.1(1) RSMo defines residential property, as “all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, and manufactured home parks, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, “transient housing” means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to Section 144.020.1(6), RSMo.”

Section 137.016.1(3) RSMo defines commercial property as “all property used directly or indirectly, for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose...”

Section 137.180.1 RSMo requires that “whenever any assessor shall increase the valuation of any real property he shall forthwith notify the record owner of such increase, either in person, or by mail directed to the last known address...”

Section 137.375.1 RSMo requires the assessor to verify by affidavit that he has “made diligent efforts to ascertain all the taxable property being or situate on the first day of January last past, in the county of which he is the assessor; that, so far as he has been able to ascertain the same, it is correctly set forth...”

Argument:

Mr. Burton should be granted the following relief by the Taney County Commission as allowed under Section 137.270 RSMo:

- 1) The classification of the parcels ending in 001 through 008 should be changed from commercial to residential;
- 2) All assessed taxes and all fines and penalties associated with the 2007 tax year for the parcels ending in 001 through 008 should be abated; and
- 3) The classification of the parcel ending in 001 for the tax year 2008 should be changed from commercial to residential.

The tax assessments on the parcels ending in 001 through 008 for the tax year 2007 should be reclassified as and all fines and penalties associated with those parcels should be removed. Section §448.1-105 RSMo defines each unit in a condominium (with its share of the common elements) as a separate tax parcel. The converse is true when a condominium is terminated according to §448.2-118.1 and all unit owners become owners of the underlying real estate as tenants in common.

The former condominium, Ozarks Prime Resort, was terminated on July 29, 2005 upon the recording of the Agreement for Termination signed by more than eighty percent of the record owners of the units in the condominium. Once the condominium was terminated, the tax parcels associated with the condominium units should have been combined to create one parcel, with multiple owners as tenants in common. The Assessor had notice of this change in form of ownership because the document was recorded on July 29, 2005 and with such notice the Assessor should have merged the parcels and reassessed the parcel as a tract with multiple owners as a tenant in common beginning in tax year 2006.

In 2006, the parcels ending in 001 through 008 were assessed separately as residential units even though the condominium had terminated. The parcels ending in 001 through 008 should have been merged to form one parcel for the tax year 2006 but because the notices for all the parcels mentioned above were sent to the same address, this failure to merge the parcels and assess the real estate as one parcel did not create a notice problem.

In 2007, seventeen months after the condominium terminated, the Assessor reassessed the units as commercial after allegedly sending a notice to the record owner asking for an indication as to whether or not the units were used for nightly rentals. Mr. Burton was the record owner in 2007 and received no notification of reassessment or communication regarding the use of the property. At the time of the reassessment in 2007 the buildings were vacant and the condominium units no longer existed.

In 2007 the notice of tax due for the parcels ending in 001 through 008 were sent to Nearon-Doyas Properties, LLC and Nearon Enterprises, LLC and no notice was sent to Mr. Burton even though he had become the record title holder on November 14, 2006. According to RSMo 137.375.1 the Assessor is to swear that he has assessed the property as of January 1 in the year of taxation. Mr. Burton was the title holder to the property for 46 days in 2006 and he received no notice of the taxation, nor did he receive a notice of an increase in taxes as required by Section 137.180.1 RSMo.

The only tax notice Mr. Burton received in 2007 was for the parcel ending in 012. This parcel described a 33.55 acre tract and was classified as residential and agriculture. Believing this to be the entire tract he had purchased in 2006, Mr. Burton paid the taxes and made no further inquiry as to real property taxes for that parcel.

It was not until Mr. Burton received the 2008 tax notice showing taxes in the amount of \$7,622.84 due on the parcel ending in 001. At the time of the receipt of this notice, Mr. Burton contacted the Taney County Assessor and Collector who notified him that the taxes were delinquent on parcels ending in 001 through 008 for tax year 2007 and that those parcels had been merged to form one parcel for the tax year 2008. At that time Mr. Burton contacted the Taney County Board of Equalization (BOE) regarding the assessment but after discussing the matter, the BOE decided not to hear the matter.

For the above reasons, the taxes associated with the parcels ending in 001 through 008 should be abated for tax year 2007 and the classification of the merged parcel now known as 09-3.0-05-000-000-033.001 should be changed to residential rather than commercial.

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Commissioner Pennel requested an opinion from Counselor Paulson. Counselor Paulson noted that he would have to review all information to give an accurate opinion.

A general discussion ensued between Ms. Walden and Counselor Paulson. Commissioner Herschend made a motion to table and allow Counselor Paulson to review all information and make a recommendation. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

RURAL MISSOURI WORKMAN'S COMPENSATION MEMBERSHIP AGREEMENT

Commissioner Pennel stated the Rural Missouri Workman's Compensation Membership Agreement is presented annually at a cost of \$400.00.

Counselor Paulson commented he is ok with it as long as the county attaches a certification by the County Auditor and a signatory attestation by the County Clerk.

Commissioner Pennel made a motion to follow forth with the Agreement, including the signature page indicated by Counselor Paulson. Motion died for lack of being seconded. A general discussion ensued.

Commissioner Pennel made a motion to table for a five (5) minutes recess. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

**RECESS
9:50 a.m.**

**RECONVENE
9:55 a.m.**

COMMISSIONER STRAHAN

Commissioner Strahan discussed when important decisions are brought before the Commission that all Commissioners should be present.

CHRISTMAS HOLIDAY

Commissioner Pennel announced the closing of the Taney County Courthouse on Friday, December 26th. He also noted several nearby counties would be closed, in addition to state offices.

SHEILA WYATT PENALTIES/INTEREST ON SPLIT

Ms. Sheila Wyatt, County Collector, requested that a 2006 real estate tax bill that should have been split be waived the penalties and interest as they did not receive their tax statements, which was tabled from earlier in the month.

Commissioner Pennel made a motion to follow the request as submitted by Collector Wyatt. Motion died for lack of being seconded.

A general discussion ensued. Collector Wyatt urged the Commission to make a decision, as her office could not proceed forward until a directive is given.

Commissioner Strahan asked Counselor Paulson for an opinion; referencing Senate Bill 711 and which decision would be legal to make. Counselor Paulson stated Senate Bill 711 modifies provisions regarding property taxation and noted he would have to look into Senate Bill 711, but generally laws are not retroactive.

A general discussion ensued.

RURAL MISSOURI WORKMAN'S COMPENSATION MEMBERSHIP AGREEMENT

Commissioner Pennel made a motion to table until this afternoon, as the Commission was waiting on information from the Auditor's Office. Commissioner Herschend seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

**RECESS
10:48 a.m.**

Minutes were taken and typed by Nikki Lawrence.

RECONVENE
11:00 a.m.

GRANT FUNDING

Mr. Sean Barnwell, City of Branson Police Department, discussed a Silent Dispatching Project with the Commission. He stated the project was in need of federal funding for the second year and requested a letter of support from the Commission sent to our State Representatives.

Sheriff Russell stated that the Silent Dispatching would enable officers to gather information over the computer without it being announced across the scanner. A general discussion ensued.

Commissioner Herschend moved for the Commission to actively pursue the second year of funding for the Silent Dispatching Project, contingent upon the hardware installed in all emergency vehicles countywide. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

RECESS
11:17 a.m.

RECONVENE
1:00 p.m.

It shall be noted that Commissioner Herschend was not present at the start of this meeting.

SEPTAGON & WALTON CONSTRUCTION

The Commission, along with representatives from Septagon Construction, Walton Construction and HMN Architects, discussed issues concerning the parking lot at the Judicial Facility, as well as granite for the landing and stairs, liquidated damages and the sound system.

It should be noted that Commissioner Herschend entered the meeting at 1:25 p.m.

Commissioner Strahan directed Mike Smith, Septagon Construction, and Steve Davis, HMN Architects, to view the parking area and present recommendations on the areas of concern to the Commission.

An update referencing the granite finish for the stairs and landing, was given by Mr. Davis, HMN Architects, who also noted that HMN would cover half the cost.

Commissioner Strahan made a motion to pay \$400.00 extra, if needed, to have work done on the weekend to correct problems with the granite floor in the Judicial Facility. Commissioner Herschend seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

Commissioner Herschend suggested the county ask for \$43,000.000 in liquidated damage cost.

EXECUTIVE SESSION

Commissioner Herschend to go into executive session pursuant to RSMo 610.021.1, as this is a time sensitive issue. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

Commissioner Herschend made a motion to go out of executive session. Commissioner Strahan seconded the motion.

RURAL MISSOURI WORKMAN'S COMPENSATION MEMBERSHIP AGREEMENT

Commissioner Pennel made a motion to approve the Rural Missouri Workman's Compensation Membership Agreement, as well as the annual membership fee in the amount of \$400.00. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (abstained), Strahan (yes).

VACATION CARRY-OVER

Commissioner Herschend made a motion to carry over 44 hours of unused vacation time Ms. Tressa Luttrell, which was accumulated throughout 2008. Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

RECESS 4:15 p.m.

Minutes were taken by Donna Neeley and typed by Nikki Lawrence.