

CLOSED (Opened @ 10/26/15 Review)
FINANCE COMMITTEE MEETING
June 29, 2015

MEMBERS PRESENT

Jay Dunn
Kevin Greenfield
Linda Little
Patty Cox
Keith Ashby

COUNTY PERSONNEL PRESENT

Mike Baggett, State's Attorney's Office

Carol Reed, Auditor

Members Absent

Greg Mattingley
Tim Dudley

Jeannie Durham, County Board Office

CALL TO ORDER

The closed session pursuant to ILCS Section 2(c)11 for discussion of litigation involving the county was called to order by Chair Dunn, at the Macon County Office Building.

NEW BUSINESS

Macon County Board Resolution Agreeing to Settlement of Legal Claim Regarding Taxes on Welcome Inn Hotel

Mike Baggett explained that in 2007, the Welcome Inn Hotel Group, LLC stopped paying their taxes half way through the year. They paid no taxes in 2008. At the November, 2008 tax sale, the 2007 taxes were sold to Ed Beasley, a local tax buyer. In 2009, the taxes were not sold. In April 2010, the Welcome Inn Hotel Group filed for Chapter 11 Bankruptcy. That protects them from being sold at tax sale. The Treasurer is notified and puts a flag on the account and taxes will not be sold. That is why the 2009 taxes were not sold at that time. Another side effect of a bankruptcy is that it allows a tax buyer a statutory basis for having any prior tax sale declared in error. The County repays the money that was paid and the taxes remain deficient until they are sold after the bankruptcy or paid by the bankruptcy debtor. Because of the bankruptcy, the 2009 taxes were not sold at that time. Ed Beasley got a refund on his 2007 & 2008 tax purchase. So now, the 2007, 2008 & 2009 taxes are all deficient. They are included in the Welcome Inn Hotel Group bankruptcy petition, although not in whole. The bankruptcy petition listed \$143,895 which is equal to the 2007 & 2008 taxes. At the time, the 2009 taxes had been assessed, but they were not yet considered deficient because the tax installment dates had not arrived. They were not listed as a claim in the bankruptcy petition. They were acknowledged.

In 2011, Ed Beasley received his refund. The 2011 taxes were paid in full by Welcome Inn. Those are no longer at issue. The same thing happened in 2012 when they paid those in full. Also, in 2011, the Welcome Inn Hotel Group filed their second amended Chapter 11 plan. This is the one that was ultimately confirmed by the bankruptcy court. This allowed Macon County's claim, which the Treasurer had filed at \$143,895 for 2007 & 2008 taxes, had a 5% per annum rate which is less than the Statutory rate, but federal law trumps state law and bankruptcy law

trumps everything. An objection was not filed by the county because we did not have a basis for one. When that plan was confirmed in August, 2011, that is what we are entitled to under the law. 2010 & 2011 taxes were paid in full and they are not part of the deficiency. It is 2007, 2008, 2009 & 2012. This is where the mess-up began: The 2007 – 2009 & the 2012 taxes were sold to Dome Tax Service. They should not have been sold because the bankruptcy, even though the plan was confirmed, was still an ongoing bankruptcy. The Treasurer didn't realize that a confirmed plan was not a termination and discharge of the bankruptcy and so they put them back on the tax rolls and sold them in 2012. In 2013 & 2014, the taxes were paid by the new owner, the Bank of Springfield. Also in 2013, the Bank of Springfield notified Mr. Baggett that the 2012 tax sale was improperly done and that it should not have gone on the tax rolls and sold. Based on the bankruptcy status and pursuant to statute, bankruptcy is an absolute basis for a Declaration of the Sale in Error. We did that on the Treasurer's motion so the taxes that were sold to Dome were declared an error and were paid back approximately \$300,000 plus interest which was not much.

Now, the redemption amount that the Treasurer has, in order for all the taxes on the property to be completely taken care of, includes the base taxes, the fees, the pre-sale, pre-tax sale interest & the post-tax sale interest for a total amount of \$401 and change. The Bank of Springfield, correctly so, says that that is not what is owed under the bankruptcy plan and under the federal bankruptcy law in order to get the tax situation cleared up on this property. They have made a settlement offer. It consists of paying all back taxes in full. That is \$246,525. They are offering to pay the interest on the 2007 & 2008 taxes, which we had that claim in the original bankruptcy, at 5% per annum. That was the confirmed plan from the date of the bankruptcy plan through the date that we were notified that the 2012 tax sale was in error. That is \$10,469. They are also willing to pay the interest on the 2012 taxes. This is what Dome Tax Service got as an interest when they got their sale refunded. Mr. Baggett said that under State Law, he does not think they have an obligation to pay that interest. It is the County's obligation since it was our sale that was in error. We had to pay the tax buyer interest, but that was our obligation and not the Bank of Springfield. They are offering a total settlement figure of \$258,010.17 which would mean a write off of \$143,371.85. Mr. Baggett said he calls it a "write off" because it is a settlement of less than what the Treasurer says the redemption estimate is, but if we were to litigate this, Mr. Baggett said he feels almost certainly that we would be fighting a losing battle. He said he thought the law is very much on the Bank of Springfield's side because of the bankruptcy petition, the timing of it, and the fact that the taxes were sold in error. This interest should never have been allowed to accrue. From the moment they filed for bankruptcy, that saved them from the interest and so the only interest they are obligated to pay is what the bankruptcy plan obligates them to pay. That is the \$10,469.

Mr. Baggett's recommendation to the board is to accept the settlement offer; agree to write off the \$143,371 that would otherwise be calculated as interest and close this so that the Bank of Springfield can sell the property. They have an interested buyer, but the buyer will not take the property as long as the title is clouded.

Linda Little asked how much goes into the general fund. Mr. Baggett said the base taxes would be distributed pursuant to the 2007, 2008, 2009 & 2012 tax levies. That is all but about \$11,000 so the county's portion is not going to be substantial. He said according to Cherie Meyers,

interest goes into the county general fund. Mr. Baggett repeated that he has reviewed the Statutes & Case Law and he simply does not believe that if it were litigated, that the county could prevail on the claim.

Jay Dunn asked when the bankruptcy was filed. Mike said 2010. Mr. Dunn asked how that affects the 2007 & 2008 taxes. Mike said that the 2007 & 2008 taxes were included as part of their debt and included it in their Chapter 11 bankruptcy petition. They attached the 2009 and it would have been included except that those had not yet come past due. Jay asked who the winners and losers were in the situation and if it was actually costing the county anything other than time. Mr. Baggett said it is significant that the Bank of Springfield is offering to pay interest that we would otherwise have to eat. He said he didn't know that there are winners and losers. The county will get what we are entitled to as far as the original tax levy, but we won't get interest, but Mr. Baggett said he didn't think the county would be entitled to the interest.

Linda Little said that they should do whatever it takes to get this settled because if they've got a buyer, it will keep it on the tax rolls as a productive business. If they lose the buyer because we're messing around over litigation, then we're just messing up.

Mike Baggett added that if this were to be litigated, his background is not in bankruptcy and it would have to be farmed out and the best bankruptcy lawyer in town represents the Bank of Springfield on this.

The Bank of Springfield is willing to pay quickly, they want this to move, and that is what Mike Baggett advises.

Kevin Greenfield made a motion to return to Open Session, seconded by Linda Little and the motion carried 5-0.

RETURN TO OPEN SESSION

Minutes submitted by Jeannie Durham, Macon County Board Office