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Ashe County Commissioners
150 Govt. Circle
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Good morning honorable Commissioners, County Manager and staff, and citizens of Ashe County. My name is Jonathan Jordan and I live at 495 Nathan's Creek School Road in Crumpler and I currently serve as your state representative for House District 93 - Ashe and Watauga counties. I also have a solo law practice with my office here in Jefferson focusing primarily on real estate closings and estate planning and wills. I am here today to report to you on an issue that has come to my attention both as a constituent issue of citizens of Ashe County, but also as a real estate property tax issue that affects clients of mine and other local attorneys who handle real estate transactions.

Several weeks ago one of our local attorneys who also practices in real estate called to inform me of an issue one of his clients had just faced with regards to property taxes. He relayed to me that the property his client had purchased was done so in 2011 and at that time his office had acquired from the Ashe County Tax Office a certificate showing no back taxes for the last 10 years. That has been the practice in real estate closings since I opened my office as well. We obtain a tax certificate that shows a table for the past 10 years that we complete showing all of the property tax owners during that time. The document assisted the Tax Office in looking back 10 years to determine if any taxes were due on the property so that they could be taken care of at the closing, and the current year prorated between the buyer and seller. The practice had been that that certificate stood as a guarantee from the Tax office that there were no back taxes, especially because taxes older than 10 years cannot be legally enforced and collected by the tax office. The language of the current statute chapter 105-361 (a) says "the tax collector must give the person a written certificate stating the amount of any taxes and special assessments owed for the current year and for any prior year."

This attorney informed me that his client received notice with the 2017 property tax bill that in fact there were past taxes due from the year 1998. That would have been three years prior to the 10-year tax certificate that his office under perfectly correct procedure had obtained on behalf of the client for the purchase of the property. That also would have been an amount incurred by an owner several links back in the chain of title. This attorney advised that he discussed with the tax administrator the situation and that the

attorney at that time understood the problem was the language in chapter 105-361(b) that stated "When a certificate has been issued as provided in subsection (a), above, all taxes and special assessments that have accrued against the property for the period covered by the certificate shall cease to be a lien against the property." Notice how that language specifies only the period covered by the certificate and not all prior years.

He told me that his client was informed that if the 1998 taxes were not taken care of, then going forward the property could not be sold because the tax office could not stamp the deed showing no delinquent taxes which is a requirement here in Ashe County in order for the Register of Deeds to record any deed transferring property. The client was understandably upset because those back taxes were from a great deal of time in the past and were originally owed by an owner several steps back in the chain of title on the property which was unfair in the opinion of the client.

So the problem seemed to be a loophole in the law that only guaranteed no back taxes during the period of the tax certificate which has always been treated as a ten-year document here in Ashe County, primarily because there is another statute in the tax laws that says back taxes after 10 years cannot be enforced through means such as wage garnishments. That was a primary reason for this attorney to contact me as the representative of our area who could potentially introduce changes or corrections to the law.

With this situation and these questions in mind I sat down with our new Tax Administrator Mr. Chris Lambert last week to go over this issue. I want to let you commissioners and the citizens of Ashe County know upfront that Mr. Lambert could not have been more helpful in discussing this issue. He has already taken steps to ensure that the tax certificate that is obtained during a real estate closing will actually cover all prior year's taxes, not just a ten-year period, which he believed to be a misinterpretation of the statutes as they were applied in the past. Therefore, going forward the property tax calculations for most future real estate transactions should proceed smoothly.

He has changed the property tax bills to be more transparent and list any past taxes that have been uncovered and for what year and will also list any pre-payments for taxes that have been made on the property, such as when during a real estate closing the current year taxes are prorated between the seller and buyer.

The issue remains with any back taxes that are discovered now on property previously sold. However, Mr. Lambert assures me that if any citizen is faced with a situation such as the one I described in my comments today that the Ashe County tax office will work closely with that citizen and if the tax has been determined to have been overlooked due to the fault of the Ashe County Tax Office, then he will work to get those taxes

waived in the normal process which means that you as commissioners will have to review and approve such waivers.

What I'd like to especially point out to the citizens of Ashe County as well as to you as commissioners is that if there are any issues with back taxes and the property owners have a tax certificate obtained at the time of closing whether in their own files or whether their attorney has a copy of that certificate, or there is any other kind of documentation regarding property taxes paid at closing, please bring that documentation to the Ashe County Tax Office so that the issue may be handled. Mr. Lambert has assured me that he will take every effort necessary to understand each particular property owners situation and resolve any problems due to the oversight of the tax office on behalf of the citizens whose taxes pay for the operation of local and state government and yours and my salaries as elected officials.

Again, commissioners I thank you very much for your time and attention and as always stand ready to work with you or the county staff if there are any needed changes in the law or any efforts in Raleigh that I can undertake on behalf of our citizens here in the High Country.

§ 105-361. Statement of amount of taxes due.

(a) Duty to Furnish a Certificate. – On the request of a person who is listed in subdivision (1) of this subsection and who complies with subdivision (2) of this subsection, the tax collector must give the person a written certificate stating the amount of any taxes and special assessments owed for the current year and for any prior year and the amount of any deferred taxes and interest that would become due if a disqualifying event occurred.

(1) Who may make request. – Any of the following persons may request the certificate:

- a. An owner of the real property.
- b. An occupant of the real property.
- c. A person having a lien on the real property.
- d. A person having a legal interest or estate in the real property.
- e. A person or firm having a contract to purchase or lease the property or a person or firm having contracted to make a loan secured by the real property.
- f. The authorized agent or attorney of any person described in this subdivision.

(2) Identification of property. – A person requesting a certificate with respect to taxes must specify the name of the person who listed the real property for taxation for each year for which the information is sought. A person requesting a certificate with respect to assessments must identify the real estate in the manner required by the tax collector.

(b) Reliance on the Certificate. – When a certificate has been issued as provided in subsection (a), above, all taxes and special assessments that have accrued against the property for the period covered by the certificate shall cease to be a lien against the property, except to the extent of taxes and special assessments stated to be due in the certificate, as to all persons, firms, and corporations obtaining such a certificate and their successors in interest who rely on the certificate:

- (1) By paying the amount of taxes and assessments stated therein to be a lien on the real property;
- (2) By purchasing or leasing the real property; or
- (3) By lending money secured by the real property.

The tax collector shall be liable on his bond for any loss to the taxing unit arising from an understatement of the tax and special assessment obligations in the preparation of a certificate furnished under this section.

(c) Penalty. – Any tax collector who fails or refuses to furnish a certificate when requested under the conditions prescribed in this section shall be liable for a penalty of fifty dollars (\$50.00) recoverable in a civil action by the person who made the request.

(d) Oral Statements. – An oral statement made by the tax collector as to the amount of taxes, special assessments, penalties, interest, and costs due on any real or personal property shall bind neither the tax collector nor the taxing unit.

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