

May 25, 2004

The scheduled meeting of the Cleveland County Equalization Board was called to order this 25th day of May, 2004, in the conference room of the Cleveland County Fairgrounds, 605 E. Robinson, Norman, Oklahoma, by Chairman Waldo Blanton. Roll was called by Dorinda Harvey, County Clerk/Secretary and those present were:

Waldo Blanton, Chairman
Pat Ross, Vice-Chairman
Charles Thompson, Member
Dorinda Harvey, Secretary

Others present were: Denise Heavner, David Tinsley, Mike McDanel, John Hancock, Bob Blakemore, Lewis Bullock, and Harold Liddell.

After the reading of the minutes of the meeting of May 18, 2004, Pat Ross moved that the minutes be approved. Waldo Blanton seconded the motion.

The vote was: Waldo Blanton, yes; Pat Ross, yes; Charles Thompson, yes.
Motion carried.

Chairman Blanton called for discussion, consideration, and/or action on the following Letters of Protest and stated that the first would be Harold Liddell, Represented by Bob Blakemore, Bullock & Bullock, 320 South Boston, Suite 718, Tulsa, OK 74103 for Administrative Complaint of Harold Liddell.

Chairman Blanton stated that by agreement he has agreed to recess this meeting after this hearing for the people coming with ULan Fam. and Star Tex because of a conflict in Yukon that they have. The Board will reconvene at 11:00 A.M. for anyone interest in attending. Bob Blakemore and Lewis Bullock appeared and Mr. Bullock stated that he thinks they have set out their claims in some detail in the administrative complaint that they filed. It's the view of their client and he thinks it is amply supported by the evidence that they put forth and by the records of the Assessor that Cleveland County has developed this system, which is discriminatory. It forces the taxpayers such as Mr. Liddell to bare an unfair in discriminatory burden of taxes in this county. Time after time what you see is preferences given to certain developers and there are allowed to hold property, valuable property, for long periods of time without it being reassessed to its appropriate value. This is an issue that was raised years ago and found at least to have some facial validity by the courts and Mr. Liddell was told he had to come back and exhaust. That is the reason they are here. They are seeking a rapid establishment of a fair system of assessments that meets requirements of the law and ends the discrimination that they have set out.

Chairman Blanton stated he thinks everyone has read the document and he has one question and asked if Mr. Bullock has gone through the informal hearing process with the Assessor? Mr. Bullock was told when they talked about it, and Mr. Blakemore spoke to the Assessor's Office before and they said they were not aware of any type of remedy they could give and said that it should be brought here.

Chairman Blanton asked Denise Heavner, County Assessor, if that is what they were told?

Denise Heavner, County Assessor, stated that she certainly didn't suggest that they come here, there was no actual protest of an individual property and Chairman Blanton stated so there wasn't anything to look at.

Chairman Blanton stated that he has asked the Board Counsel to give him their views and the fact that it is his understanding there is a statute that requires at least to go through an informal hearing with the Assessor first.

Mike McDanel, Assistant District Attorney and Counsel, stated that he has had some difficulty since he received a copy of the complaint in this case, the administrative complaint, understanding exactly what it is Mr. Liddell wants to go with. He does not complain about any particular piece of property that he owns, but only about the property that others own that Mr. Liddell claims is undervalued. Mr. McDanel's understanding is that property that Mr. Liddell complains about is properly valued under Title 68 - 2817, under what Mr. McDanel called the developers exception to the rule, that the property should be assessed at its fair cash value. Mr. McDanel gave the Board some historical information about Mr. Liddell previous case. The lawsuit was filed in 1994 and Mr. McDanel thinks in the summer and one of the concerns that he that had when he got hold of the case in 1995 or 1996 was that he discovered by December of that year at least the individual pieces of property that Mr. Liddell complained about in that lawsuit alleging discriminatory under valuation of the properties resulting in Mr. Liddell having a higher tax burden, that he no longer owned any of that property and divested himself from that property. Mr. McDanel stated that he thought from the outset that he had a serious standing problem in that case. The other thing that became apparent to Mr. Hancock and Mr. McDanel early on in reviewing the case, (they had taken it up after a motion to dismiss and then overruled by the court and it was in the discovery process by that time). Two things struck Mr. McDanel the primary one being was that when Mr. Liddell first went to the County Assessor when he went for his informal hearings on about nine or ten pieces of property, he appealed half a dozen of those perhaps to the Board. The Board then acted and Mr. Liddell appealed three specific pieces of property the decision to the District Court. That was in 1990 and those were assigned to Mr. McDanel because he was a Judge at that time. Nothing was ever done on them until the summer of 1991, and Mr. McDanel was no longer on the bench and what occurred at that time was Mr. Liddell's and his attorney came in and they dismissed all of those appeals. More than three years prior to the time that Mr. Liddell brought his subsequent lawsuit. Mr. McDanel saw no way in the world that he was going to overcome that statute of limitations problem at that time and he thinks Mr. Hancock agreed with that and they proceeded on the basis that Mr. Liddell was going to be barred ultimately and they were going to win the lawsuit on the statute of limitations issue, if not on a standing issue or the issue of whether or not he bring a federal case based on the problems with state law. Therefore during the course of that proceeding he and Mr. Hancock never tried to contest Mr. Gary Gardenhire's (attorney) picking at individual piece of property and trying to show..... because they didn't, they felt it was a long, long way to get to the point of winning the lawsuit. Very expensive and time consuming and Mr. McDanel and Mr. Hancock relied on the defenses that they ultimately prevailed on. Mr. McDanel and Mr. Hancock conceded at some point because Ms. Heavner, in 1990 had granted Mr. Liddell some million dollars worth of tax relief or value relief on the Trail Golf Course, which Mr. McDanel thinks was Mr. Liddell's primary complaint and another five or six hundred thousand dollars of reduction on a piece of property which we referred to Boydview property. They essentially said my goodness if that

occurred in 1990 when Ms. Heavner was the Assessor and that was the first time in over some twenty years that Mr. Liddell complained of it that he ever came in and took formal action to do anything. They essentially conceded that in those instances where relief was granted tremendous relief by Ms. Heavner in the informal process that the property was probably over valued compared to other property. So by conceding that Mr. McDanel thinks that the trial court pickup by some of the language in his briefs and said it appears that there was over valuation and then the appellate court used the same language in their findings. Mr. McDanel understand that it was set out in the complaint that that was a finding of the court but it was really dicta because the court was on their way to ruling in favor of the county. Mr. McDanel never conceded that there was any systematic over valuation or under valuation or anything else, but they did concede essentially that there probably was a problem because Mr. Liddell got so much relief. Mr. McDanel thinks Mr. Liddell has a standing problem here and Mr. McDanel doesn't know of anything that this Board can do.

Chairman Blanton stated that none of Mr. Liddell's property is in question about over taxation and that is what the Board is here for.

Mr. McDanel stated that is his understanding from reading the complaint, that none of that involves Mr. Liddell's property. Mr. McDanel doesn't know what property Mr. Liddell still has interest in and at the time of that lawsuit which took seven or eight years to resolve, before it was even started he had divested himself of his interest in the properties he had complaints about, specifically had brought to the Assessor and to the Board in the first place. Mr. McDanel doesn't know what property he continues to hold or what property he continues to own today other than his home.

Chairman Blanton stated that he looked at the law and he understands that property that is agriculture even if it has been bought by a developer according to the law stays taxed as agriculture. The man next to it that might have less land but improved it and ready to go and maybe sold lots than it is more value at that point even though it came out of the same track. Denise Heavner, County Assessor, stated that when she went through the complaint the first thing she noticed was that it seemed to be ignoring the statute, the part of 2817 where it every clearly says and it was amended in 1998 or 1997 and that she had wrangled for years with the issue of development land and what was its value and do you put it on for what it is selling for or do you put it on for the money in the property. There was already a builder's statute saying you would put builder's property on for the construction cost, but that was talking about improvements it never really dealt with the land part. Finally and she is sure it was through the efforts of the developers a new part of the statute was added that basically says you take the purchase price of the property, get a per acre (you're basically getting a per acre value) for what was paid for the property, multiply that by how many acres are being actually developed into a plat and then divide that by the number of lots. It is cut and dried there is no discussion back and forth between the Assessor and the developers or anyone else, it is basically spelled out. That is what she has started doing, because that is exactly what the law says. As she has said that over the years there has always been a little contention about that issue and she was happy to see it finally spelled out so each county would be looking at the same statute and doing the same thing on development property. And again, as Mr. Blanton was talking you can have a million dollar property that someone recently purchased for development, but until they actually develop it she leaves it alone.

Chairman Blanton stated until the use changes and Ms. Heavner repeated until the use changes.

Ms. Heavner stated that she was a little confused about that issue because a lot of the examples in this complaint, basically compares property that is in the developers name and has that statutory value, compared to property that has then been sold to an individual or a builder, whoever that is that purchased that lot.

Charles Thompson asked Mr. Liddell's attorneys if they are here because they thought they should be here, you were told to be here, or do you feel that this Board has a remedy to help. Mr. Bullock stated that they believe that the Board does have a remedy to help, by complying with the constitution, which requires fair and equal assessment. They believe that they have to come to the Board in order to go to court.

Charles Thompson asked if the attorneys feel that the Board has the ability to change the law?

Mr. Bullock stated that he doesn't believe so, but he does believe that the Board is not in compliance with the law. Mr. Bullock continued saying to look at the Integris Hospital wing. There is land which has sold which is not valued anywhere near what it was sold for, even though the sale cost is publicly known that's no secret.

Chairman Blanton wanted to ask a question because he was not familiar with the particle spot that Mr. Bullock was talking about. Chairman Blanton wanted to know what was on the land now that it has been sold?

Mr. Bullock stated that it was empty.

Chairman Blanton stated that he thinks according to the statute it stays.

Mr. Bullock stated that it has to stay at what it was purchased at it has to at least be that, that is the value of it at least until it is platted or developed. They believe that at the point where it sold that the property value on the land changes. That you establish a new value for it, but at this point that land has sold and yet its not valued anywhere near what it sold for.

Mr. Thompson stated that a point of clarification is that he hasn't been on this Board too long and the Board Members are required to go to a school and try to learn what they are suppose to do and what they have the right to do and they have to abide by the law. They can't change the law and most of it is value to equalize. He doesn't see a thing in anything that he has read where this Board has the ability according to what he pickup at the school that this Board can do or is even suppose to do or has anything to do with.

Mr. Bullock believes that this is not in compliance with the law.

Mr. Thompson stated that you will have to change the law and nobody has told him that he can do that yet.

Mr. Bullock stated that the law itself does not allow the unequal and discriminatory valuation.

Chairman Blanton moved that the situation at hand remain unchanged.

Pat Ross seconded the motion.

The vote was: Waldo Blanton, yes; Pat Ross, yes; Charles Thompson, yes.

Motion carried.

Waldo Blanton moved to recess until 11:00 A.M. Pat Ross seconded the motion.

The vote was: Waldo Blanton, yes; Pat Ross, yes; Charles Thompson, yes.

Motion carried.

Pat Ross moved, seconded by Charles Thompson, to reconvene the Equalization Board Meeting.

The vote was: Waldo Blanton, yes; Pat Ross, yes; Charles Thompson, yes.
Motion carried.

Bob Christenson was present also.

Chairman Blanton called for Mr. Christenson, with Brazos Tax Group to proceed with the ULan Fam. Ltd., Represented by Brazos Tax Group, 930 W. 1st St. #303, Fort Worth, TX 76102 for Lot 1, Block 1, Eastpark Crossing. Mr. Christenson presented the Board with documentation. Mr. Christenson stated what he is talking about today is two Walgreen's locations in Norman. Typically the way drug store operate, specifically Eckerd's and Walgreen's they have somebody build their locations for them with an agreement that once it is built they will lease the property. Where the person makes the profit is that he re-sales that property again and by doing that Walgreen's doesn't have to put out any money at all for these locations. They're goal is to build more Walgreen's without having to pay any money at all up front. So in that aspect they don't really care about how much they built them for what they really care is that market share and saturation. That is the same thing that Eckerd's did but it appears it didn't really work real well for them since they have sold out to CBS. Basically they don't really care much about what these things cost, it doesn't sound like good business to Mr. Christenson, but that is the way it is done. In order to come up with a market for these kinds of things you really have to look at what other drug stores have closed down, what they leased for.

Chairman Blanton stated that Mr. Christenson is saying that they resell the buildings after they are finished with it or does he mean that they sell them before Walgreen's move into them.

Mr. Christenson stated that it varies. It usually works that somebody builds the building for them then they sign a lease with Walgreen's and once that lease is signed they resell it to somebody else and that is where the profit is the builder or developer. That way Walgreen's is out no money, but they do have a pretty high lease payment. In order to try to look at what the buildings are really worth, and Mr. Christenson will say that by the time that second time comes around they sell for ridicule amounts of money. Sometimes the buildings sell from 2.5 million to 4 million dollars depending on the location, but it might of cost according to Marshall/Swift less than half of that to build. Mr. Christenson tried to find a lot of the drug stores that sold that have the leases attached and very few were found Mr. Christenson gave those amounts. (Mr. Christenson gave drugs stores that were out of the State of Oklahoma. He also gave one with a lease that was in Kansas.) Mr. Christenson had given the Board the income workup on the property. He tried to come up with some local comps, but there are not too many and gave one Drug Emporium in Oklahoma City at \$6.50 a foot and an Albertson's at \$5.00. Mr. Christenson stated that there was a Blockbusters and that Blockbusters are now doing the same thing that Eckerd's and Walgreen's people do as far as the same kind of pyramid. The Blockbuster's in Oklahoma City on Hefner listed at \$111.00 a foot. Mr. Christenson stated that in the latest Marshall/Swift there was a Walgreen's, Mr. Christenson explained each page and it says average drug store is class "C" and shows it for \$69.22 a square foot for what it cost. Then there is the local multiplier and for the Norman area it is .93. So if you take the original figure and multiply it times .93 it shows you the

actually cost per square foot for that location. The next is the depreciation and basically there is a 40-year life and this one only shows 3% depreciation. But the front page Mr. Christenson did the workup for the Board and stated that the square footage is 15,056 square feet, built in 1999, but he did not know how to come up with the land value so he went ahead and used the Assessor's value for that which is \$840,710 which the site improvements also have to be added like the concrete etc. and he added \$80,000.00 for that. The adjustment then at \$69.22 a square foot local cost multiplier minus 7% and he comes up the \$64.37 a square foot. So to build that building new is \$969,224.00 with 3% depreciation \$29,070.00 so you have a total building cost of \$941,047.00 and total land cost of \$840,710.00 additional site improvement \$80,000.00 total value \$1,860,857.00.

David Tinsley with the Assessor's Office asked if that was both protest and Chairman Blanton stated that was just the first one.

Mr. Christenson stated that it would be the same for both of them.

Mr. Tinsley stated that this year he re-evaluated several commercial types of property and drug stores in this county there were nine freestanding drug stores.

Chairman Blanton asked Mr. Tinsley if he means by freestanding does that mean only the drug store in the building and Mr. Tinsley replied yes.

Mr. Tinsley stated that out of the nine five of those have sold and the mistake that he made was that the sale price that he looked at he assumed included personal property. In all of these whether it is Eckerd's or Walgreen's they all turn in over a million dollars in personal property. So Mr. Tinsley took the million off of the purchase prices and that is what he put them on the tax rolls for. Because if you had over 50% of anything to sell does that not set a market? If it was anything else it would set a market and that is where Mr. Tinsley came up with his. A sales letter was sent on the Walgreen's on main-street and he never received a response.

Ms. Heavner explained to the Board this is a questionnaire to try to find out if personal property was involved.

Charles Thompson stated that Mr. Tinsley was trying to find out why it was that high.

Mr. Tinsley stated that his first assumption was ok because someone buys the property and they build the building and then turn around and sell it either an LLC or a company. He is going to assume the personal property is included in that but he is going to send a letter to ask. Mr. Tinsley called Canadian County to see if they knew if personal property was included and was told no it was an arms length transaction. So basically from the sale the Assessor's Office is about a million shy on each one that sold. Mr. Tinsley gave what the Assessor's Office has on each of the drug stores that sold; (1) sold for 3.8 million its on for 2.4 million (this is the one at 615 W. Main (protested property)); (2) sold for 3 million 33 thousand its on for 2 million on the other one (other protested property); he pulled the Eckerd's that sold (3) for 3.5 million its on for 2.2; another Eckerd's (4) sold for 5.2 million and its on for 2.8 million; and the last one is an older sale in 2002 it sold for 2.4 million and its on for 1.5 million.

Charles Thompson stated that they are paying so much for the lease the yield, and to him that is what makes something to him, cause if he thinks Walgreen's are stout enough or Eckerd's whomever and they are willing to pay a yield on that and he pays to get that amount every month in rental income.

Chairman Blanton asked if there was method at stuff based on revenue.

Denise Heavner asked if Chairman Blanton was speaking of an income approach.

Mr. Thompson stated that the man that owns the building it's making him whatever the lease is and it is probably going to make it higher.

Mr. Tinsley stated it is probably a triple net lease and Charles Thompson he thought so. Chairman Blanton asked whose opinion it was and Ms. Heavner asked if he meant which approach was to be used.

Mr. Tinsley stated that the market value and the income approach better be the same. If one of the drug stores had sold for 2.9 million and the rest for a million then Mr. Tinsley would say the guy that bought for 2.9 million maybe he got took but five of them.

Chairman Blanton stated that he was not questioning anything but he knows of an incident in Oklahoma City that involved a shopping center and he doubts if it was in Cleveland County where part of the process was the lease was down they wanted to go income approach and discussion took place on income approach.

Mr. Christenson stated that the things that are being looked at here that really and truly they are suppose to value the thing at a fee simple value, which includes market, income and cost. The sales that Mr. Tinsley is speaking of are for both Eckerd's and Walgreen's who do that same kind of deal and that is really a leased fee value. That is not a fee simple value. If you look and see that they are selling for three million and you know that it can be built for 1.8 or 1.9 million the true value of it is not three million dollars that would be a leased fee value. The situation that the Board is discussing is somebody's leasing a shopping center for less now and what they have on their lease is not necessarily what they are assessed at for they assess it at what the true market would be for that lease. If you take a 15,000 square feet Walgreen's or Eckerd's in order to come up with three million dollars you are probably looking at \$40.00 rents and you can tell something is wrong with that.

Chairman Blanton stated that they are paying that.

Mr. Christenson stated that is because of the scheme they do and Chairman Blanton stated that he thinks their scheme is going to cost them some taxes.

Mr. Thompson stated it is going to eat their lunch and Mr. Christenson agreed it would in the end. Mr. Thompson stated that it is a gamble but it makes the value, whenever one is bought because you're going to get \$40.00 a foot that's what its worth that day. Now if you go broke the next day and you put hay in it then the value slides some.

Chairman Blanton stated then next year the Assessor would have to look at it as a hay barn.

Mr. Christenson stated that is what you have to look at the risk of that and since CBS has bought out Eckerd's it's a good chance that some of those are going to close down and it wouldn't be worth holding the bag. And that is why you are suppose to assess things on a fee simple bases, look at all of those things and take all of that into consideration.

Ms. Heavner stated that there is also a point to be made in that making an assumption that turns out not to be true about the personal property all of these are lower that what they probably would be.

Chairman Blanton stated that the Mr. Christenson is stuck with the cap law even though the County made the mistake.

Ms. Heavner stated that she is stuck because she can't send new notices now it's too late in the year. She may need to look at this next year when she has time and maybe all of these are too low. If the same situation exists next year, but she was assuming that personal property was a part of this transfer.

Chairman Blanton asked Ms. Heavner if next year she sees that it doesn't include personal property and in all probability it should have been three million is she stuck with the 5% increase and Ms. Heavner replied yes. So Mr. Christenson got a break.

Ms. Heavner stated that there again she is trying to figure out what is going to happen next year that could very well be true.

Mr. Tinsley asked what the lease was on the property and Mr. Christenson did know.

Mr. Christenson stated that he doesn't even look at that because to him it isn't true market.

Mr. Tinsley and Mr. Thompson both disagreed with Mr. Christenson.

Chairman Blanton stated that to him it looks like Mr. Christenson is looking to have one good income producing high risk deal, but not pay the taxes just like not paying income tax. Chairman Blanton has a problem with the rational of saying it ought to be less because it is fee simple.

Mr. Thompson stated that to be on this Board we are sent to seminars and he tries to remember what is said and they say if you have a willing buyer and willing seller and all of that it pretty much says there is a reason it is worth that and there is exception.

Ms. Heavner stated that is setting this years value, maybe not next years, next year you have to look at the whole thing all over again because the situation could change. But this year how can it not be setting this years value.

Mr. Thompson asked what Oklahoma County has them on for and Mr. Tinsley stated that he had not spoken to them.

Mr. Christenson stated they range from 2.4 to 1.4 million pretty close to where Cleveland County has them and more discussion took place.

Charles Thompson moved to leave the value unchanged.

Dorinda Harvey, County Clerk, asked if that was for both ULan Fam. Ltd., Represented by Brazos Tax Group, 930 S. 1st St., #303, Fort Worth, TX 76102 for Lot 1, Block 1, Eastpark Crossing and Star Tex, LC., Represented by Brazos Tax Group, 930 W. 1st St. #303, Fort Worth, TX 76102 for Block 6, Birchum Addn, and Mr. Thompson stated yes.

Mr. Christenson also stated yes and said it was the same situation.

Pat Ross seconded the motion.

The vote was: Waldo Blanton, yes; Pat Ross, yes; Charles Thompson, yes.

Motion carried.

Dorinda Harvey asked if there were any explanation that the Board wanted her to put on the Notices that were being sent out to the individuals that came before the Board last week. Nothing is to be added.

Chairman Blanton called for a meeting to adjourn on Friday, May 28, 2004, at 8:30 A.M.

There being no further business to come before the Board, Pat Ross moved that the meeting be adjourned. Waldo Blanton seconded the motion.

The vote was: Waldo Blanton, yes; Pat Ross, yes; Charles Thompson, yes.

Motion carried.