

# REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Tracking Number: 18.

Date of Request: July 21, 2008

Date Request Received: July 21, 2008

Board Meeting Date Requested: August 4, 2008

Board Meeting Date Assigned: August 4, 2008

**Short Title:** A Resolution To Grant Approval Of A Late Application For Exemption Of Property Taxes For The Pecan Grove Homeowners Association.

- Request Status:**
- Request is proceeding to Board of Commissioners
  - More information is needed – see attached
  - Request on hold – no further information needed
  - Other:

**Background:** G.S. 105-282.1(a)(2)(d) states that real and personal property owned by eligible homeowners associations may file an application for exemption from Property Tax. Every owner of property claiming exemption or exclusion from property taxes has the burden of establishing that the property is entitled to it. An application for exemption must be made during the listing period. However, as per G.S. 105-282.1 (a1), upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption filed after the close of the listing period and the adjournment of the Board of Equalization and Review may be approved by the Board of County Commissioners. An untimely application for exemption or exclusion approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Refunds for any previous years not exempted are not permitted.

(Administrative Use Only)

## CONTRACT TYPE

- Renewal
- For Service(s)
- Intergovernmental – County as Grantee
  - Federal Grantor
  - State Grantor
  - Grantor
- County as Grantor
  - County Funds
  - Other Funds:
- Revision
- For Equipment

**Specific Action Requested:** The Pender County Board of Commissioners is requested to grant an approval for late application for exemption for the Pecan Grove Homeowners Association.

**PURCHASING** Budgeted Item:  Yes  No  
Date Rec'd:  Reviewed and Approved  
 Comments on Reverse

Date Sent: Signed:

Requested by: Coby S. Heath  
Department: Tax Office  
Title: Tax Assessor  
Contact Phone: 910-259-1256  
Contact Fax: 259-1482

**ATTORNEY**  Reviewed and Approved  
Date Rec'd:  Legal Problem(s)  
 Comments on Reverse

Date Sent: Signed:

**FINANCE** Sufficient Funds  Available  
Date Rec'd  Not Available  
 Budget Amendment Necessary  
 Budgeted Amendment is Attached  
 Comments on Reverse

Date Sent: Signed:

**CLERK** Signature(s) Required:  
 Board Chairman/County Manager  
 Other:

Date Rec'd Approved by Board:  Yes  No  
At meeting on

**MANAGER'S RECOMMENDATION:**

Respectfully Recommend Approval.

  
Initials

**NOW, THEREFORE, BE IT RESOLVED** by the Pender County Board of Commissioners that

Late application for exemption from property taxes for the Pecan Grove Homeowners Association is approved.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS \_\_\_\_\_

**YEA VOTES:**

Williams \_\_\_ Tate \_\_\_ Blanchard \_\_\_ Brown \_\_\_ Rivenbark \_\_\_

\_\_\_\_\_  
J. David Williams, Jr., Chairman      08/04/08  
DATE

\_\_\_\_\_  
ATTEST      08/04/08  
DATE

## Additional Comments for Pecan Grove Homeowners' Association Resolution

Common area of a subdivision owned by a qualifying homeowners' association can be and exempt from property taxes. Once we receive a plat map of a qualifying subdivision, the tax office exempts the common area of the subdivision and taxes are not charged. The following tax law illustrates:

### **G.S. 105-277.8. Taxation of property of nonprofit homeowners' association.**

(a) The value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association if:

- (1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally;
- (2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association; and
- (3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

In the case with Pecan Grove Subdivision, the developer did not immediately create the homeowners' association. A developer is not classified as a "non-profit homeowners' association" and is not exempt from property tax. Consequently, the developer paid the taxes on the common area of the subdivision up until 2006. In 2006, the developer deeded the property to Pecan Grove Homeowners' Association, a qualifying organization. Here lies the problem; at the time of deed transfer, the homeowners' association was not aware that an application to the Tax Assessor's office for exemption is required. Below is an excerpt from the statute that requires application:

### **105-282.1(a)2(d) Applications for property tax exemption or exclusion; annual review of property exempted or excluded from property tax.**

(2) Single application required. – An owner of one or more of the following properties eligible to be exempted or excluded from taxation must file an application for exemption or exclusion to receive it...

**d. Property owned by a nonprofit homeowners' association**  
but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

Therefore, the Pecan Grove Homeowners' Association paid the 2007 taxes of \$10,235.68. Through their legal counsel, they have requested an exemption for this year. However, at this point in the tax year, only the County Commissioners can grant them a late application. A timely application could have been granted by the Tax Assessor only before January 1, 2008. The Board of Equalization and Review could have granted them a late application before its adjournment. The request was after the

adjournment of the Board of Equalization and Review. Therefore, only the County Commissioners may grant them a late application for 2008:

**105-282.1(a1)** Late application. - Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate.

The Tax Assessor recommends that the late application be granted. I believe the spirit of the law was to exempt the qualifying homeowners' association from property taxation. I also believe the application law is somewhat obscure and ambiguous. According to Michael Brown of the NC Department of Revenue, other counties may be interpreting this statute incorrectly. Supporting this assumption is a statement by the vice-president of the Pecan Grove Homeowner's Association. He said he was told by the New Hanover County Tax Office that they did not have to make an application and that it was automatic. Mr. Brown, an expert with the NC DOR, says this information is incorrect. An application is required.

Based on the original intent of the exemption law, the ambiguity and obscurity of the statute, the taxpayer shows good cause for a late application for 2008. The decision totally belongs to the Commissioners to whose wisdom I yield.

Coby S. Heath  
Pender County Tax Assessor