



REQUEST FOR BOARD ACTION

ITEM NO. 11

DATE OF MEETING: October 12, 2015

REQUESTED BY: Chip Rodgers, Sherman and Rodgers

SHORT TITLE: Update on Tax Collections and Proposal to Sell Surplus County Property.

BACKGROUND: The Commissioners requested that the County Attorney investigate the possibility of selling county surplus property to third-party purchasers. This proposal is a response to that request.

SPECIFIC ACTION REQUESTED: Consider for approval a proposal on how Sherman & Rodgers, PLLC can assist the County in identifying, marketing, valuing and conveying surplus property to third-parties.



*ESTATE PLANNING AND ADMINISTRATION,
CORPORATIONS AND BUSINESS LAW,
CIVIL LITIGATION*

**PO Box 250
BURGAW, NC 28425**

**910-259-2525 (VOICE)
CHIP@SHERMANANDRODGERS.COM
SCOTT@SHERMANANDRODGERS.COM**

October 7, 2015

Pender County Government
805 South Walker Street
Burgaw, NC 28425

Re: Pender County Tax Collection Proposal –
Revised 12-12-14

Dear Commissioners:

We hope that this letter finds you well and in good spirits.

By request of the Board, Sherman and Rodgers, PLLC is presenting the following Proposal as it regards the disposition of certain Surplus Property currently and prospectively owned by Pender County as a consequence of the tax foreclosure process and through other sources.

About Us

This law firm, is comprised of partners Scott G. Sherman and Richard T. Rodgers, Jr. (“Chip”). Scott has been licensed and practicing law in North Carolina for 25 years and Chip has been licensed and practicing law in North Carolina for 13 years. Sherman and Rodgers, PLLC has been representing Pender County since July 1, 2013 and has been collecting taxes on behalf of the County since that date.

Subject Matter of this Proposal

The subject matter of this proposal regards the methods of disposal of certain real property owned by Pender County, but unutilized for various reasons. Currently, the tax collection efforts of Sherman and Rodgers, PLLC has yielded \$1,320,770.28 as of September 30, 2015. Inevitably, these efforts have resulted in Pender County becoming the owner of certain real property as a consequence of these foreclosures. Pender County became the owner of these properties because there were no bidders at the tax foreclosure sale.

The Surplus Property Sale Generally

The County has three (3) options for disposing of this real property:

- Public Auction,
- Sealed Bid; and
- Upset Bid.

As Pender County has not formally offered property for sale to the public to our knowledge, it is logical that this proposal will focus on the most common method of property disposal used state-

wide, namely the 'Upset Bid' process. If the County desires to endeavor on less widely used methods in the future, subsequent proposals would be forthcoming.

Identifying Properties to Offer for Sale

The first step shall be to assist the County in identifying the properties for sale. Sherman and Rodgers, PLLC shall use the existing information provided by the Tax Assessor and Planning Department to compile a list of County owned properties to be presented to the County Manger and/or his designee. The Manager and/or his designee, by whatever method he deems necessary, shall then determine what properties the County desires to maintain as an asset and what properties should be offered for sale.

Marketing/Publishing the List of Properties for Sale

Once the properties to be sold are identified, the County Manager and/or his designee shall then decide how these properties are to be marketed for sale. While it is likely that Pender County will be maintaining this list of available properties on the County website, Sherman and Rodgers, PLLC is hereby offering to maintain this list on its existing website found at <https://shermanandrodgers-public.sharepoint.com/property-foreclosure> free of charge. Furthermore, Sherman and Rodgers, PLLC will use its extensive marketing efforts to direct its current investors to the list of surplus properties, again, at no charge to the County.

Negotiating the Price

By whatever method is most suitable to the County, interested buyers may be directed to Sherman and Rodgers, PLLC to negotiate a purchase and sale contract.

Upon this initial contact, Sherman and Rodgers, PLLC will work with the County Manager and/or his designee to determine a suitable offer for sale. This offer shall include any and all costs and or expenses the County has in acquiring title to the subject property, the fair market value of the property, and the anticipated closing costs (including but not limited to legal fees) necessary to effectuate the transfer of the real property to the prospective buyer. Sherman and Rodgers, PLLC will then present to the prospective buyer a suitable contract.

This contract shall be contingent upon approval by this Board and the requirements under the "Upset Bid" process.

Board Resolutions

If the purchaser accepts and executes the contract and tenders the deposit in the legal amount, Sherman and Rodgers, PLLC shall draft a Resolution, and if specifically requested by the Board, appear before the Board for the purpose of answering any questions that the Board may have regarding the sale.

The Board will either approve the sale under the terms provided, or reject the same. The Board may at any time suggest amendments to the terms of the contract that Sherman and Rodgers, PLLC will present to the potential purchaser.

Deposits, Advertisement and Upset Bids

Once a contract is approved by the Board, the buyer shall tender a deposit in the amount of 5% of the total purchase price to Sherman and Rodgers, PLLC. The law firm shall advertise for upset bids in a publication of sufficient circulation, calculating the next minimum upset bid and deposit. The law firm shall accept all upset bids and deposits, mail notices of upset bids to any necessary parties and recalculate the next bids and deposits until the expiration of the final upset bid period.

Legal Representation of Pender County as Seller

Sherman and Rodgers, shall take whatever steps necessary to represent the interests of Pender County as the seller in this transaction. The Law Firm shall research the public record as necessary, work with departmental heads to resolve title matters, communicate with title insurers and lenders as necessary, draft all sales documents on behalf of the seller, have the same executed by the appropriate County authority, and distribute any funds held by Sherman and Rodgers, PLLC as is appropriate.

Sherman and Rodgers, PLLC shall work diligently to limit as much as possible any liability that Pender County may incur as a consequence of selling said property including but not limited to: 1) drafting a contract that limits the liability of Pender County as seller in matters regarding the transfer of the property, 2) negotiate or otherwise handle requests for various affidavits such as lien waivers, tax reporting forms, disclosures to the buyer as necessary and the drafting of deeds that either eliminate or limit the liability of the County to the greatest extent practicable, 3) insure that any and all matters regarding the vesting of title in the County are resolved to the greatest extent possible and limiting the likelihood of divestment of the County's title, including but not limited to, re-opening any case as necessary and filing appropriate supplemental documents, searching the public tax and judgment records as they apply to the property to be sold, 4) when feasible, submitting to a Court of competent jurisdiction Orders specifically adjudicating all matters currently in the discretion of the Board, including but not limited to, the reasonableness of prospective and retrospective costs and fees associated with the tax foreclosure process, hereby relieving this Board of any discretionary obligations regarding the same, and transferring exclusive jurisdiction to the Courts, and 5) any and other actions that the Law Firm deems is in the best interest of Pender County.

Drafting Closing Documents

The law firm shall draft and have executed any and all closing documents necessary and present the same to the buyer or the buyer's legal counsel for filing at the appropriate time. The law firm shall tender any copies of any and all necessary documents requested to the County Manager and/or his designee.

Attorney's Fees

It is the intention of this proposal that any and all attorney's fees to be paid to the law firm shall be determined prior to the submission of the contract for review by the buyer. Sherman and Rodgers, PLLC shall take whatever action is necessary to estimate the fees for the duties necessary to effectuate the final sales of these properties and, in working with the County, add said attorney's fees and costs to the purchase price.

Sherman & Rodgers, PLLC

Unforeseen Issues

As has been the custom of the law firm since first beginning work with the County, it is always our policy to immediately bring any unforeseen issues to the attention of the Board as soon as they arise.

If any term of this proposal shall prove unduly burdensome or impractical this law firm shall notify this Board of this impracticality and explain their reasons for taking any action outside of the express terms or spirit of this proposal. Further, the terms of this proposal, once accepted by the Board, shall supplement, modify and control all other proposal and contracts between the parties.

That being said, neither party is contractually obligated to the other, so if the Board is unsatisfied with the efforts of the law firm, this Board is in no way limited in excusing the Law Firm from further service.

Conclusions

Pender County maintains certain real property as surplus property that could be sold to 1) generate some short term revenue, and 2) put the property back into the stream of commerce so that it may again generate tax revenue.

The above-proposal foresees efforts by Sherman and Rodgers, PLLC to:

- 1) Identify the properties that would be offered for sale,
- 2) Provide or assist the County in publishing a list of these properties,
- 3) Negotiating a price and drafting/executing a purchase and sale contract,
- 4) Presenting a Resolution to the Board,
- 5) Advertising for upset bids,
- 6) Accepting deposits and upset bids until a final bidder has emerged,
- 7) Representing Pender County as the seller as title-holder of the property,
- 8) Drafting and Executing all documents,
- 9) Conducting the seller-side of the closing, and
- 10) Distributing all funds to the appropriate County authorities

The fees for this service shall be estimated on a case-by-case basis and added to the purchase price offered to any potential purchaser.

If you have any questions or concerns, please do not hesitate to contact either of us.

Yours truly,

Sherman & Rodgers, PLLC