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November 18, 2020

Orange County Value Adjustment Board
c/o Katie Smith, Manager, Clerk of the Board Department
201 S. Rosalind Ave
Orlando, FL 32801

RE: Property Appraiser's Request for Reconsideration; Petition Numbers: 2020-00147; Heard on: October 8, 2020; Petitioner: Dan Leonard; Parcel 01-22-29-3712-13-031

Dear Members of the Value Adjustment Board:

I represent the Orange County Property Appraiser's office. We respectfully request that you reconsider and reject Special Magistrate Dawn Grace-Jones' recommendations in the above-listed petitions as not complying with Florida Statutes and other binding legal authority.

This hearing exclusively dealt with the issue of "substantial completion" which is a legal issue, and the hearing was rightfully held before an Attorney Special Magistrate. Evidence was presented at the hearing, by both parties, which demonstrated that the subject property is the site of an assisted living facility which received a temporary certificate of occupancy in December 2019. However, the Petitioner argued that because the facility was not *licensed for use* as an assisted living facility until after January 1, 2020, the improvements were not "substantially complete" for taxation purposes and the Special Magistrate agreed with that argument in her recommendation.

Taxation is not contingent upon whether a license to operate the business has been granted. As presented by the Property Appraiser during the hearing, the term "substantially completed" is defined in Florida Statutes as "the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed" § 192.042(1), *Florida Statutes*. "Even if some minor items were lacking, if a building can be used for its intended purpose it may be deemed substantially complete for tax purposes... Every detail of construction is not required to be completed and construction does not necessarily have to be final." Hausman v. Bayrock Investment Company, 530 So.2d 938, 940 (Fla. 5th DCA 1988). (See also Manufacturers National Corp. v. Blake, 287 So.2d



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129 (Fla. 3rd DCA 1973), where the Court tacitly found that temporary certificates of occupancy can be considered evidence of an ability to occupy a property and be used for the purpose intended, and therefore constituting substantial completion.)

In her written decision, the Special Magistrate misstates the Property Appraiser's argument and Florida Statute 192.042, by stating "a structure is not substantially completed where it can be used because it could be used on 1/1/2020 for which it was constructed." (sic) (emphasis added). Importantly, Petitioner did not provide any evidence to show that the improvements were NOT substantially completed. Instead, Petitioner simply provided licenses to operate their business on the property, which were issued after the lien date, stating that the property could not be used for its stated purposes as an assisted living facility because they could not yet take in patients/residents. This information may have been helpful in determining marketability of an assisted living facility that is fully licensed, but this hearing was not related to valuation and whether or not the business is operating, open, or able to operate is irrelevant to a determination of whether the improvements are substantially complete. This argument is similar to the taxpayer's argument in Markham v. Kauffman, 284 So. 2d 416 (Fla. 4th DCA 1973) where tenants were unable to occupy the property but the court found that "a building was substantially complete when it had reached the stage where it could be put to the use for which it was intended, even though some minor items might be required to be added."

The Special Magistrate seems to confuse a highest and best use analysis with a substantial completion analysis, or at least conflates the two analyses. While case law, statutes, and administrative codes are not considered evidence, the special magistrate relies upon administrative rules that are irrelevant to the matter at hand and which were not presented at the hearing, to inform her decision. For example, the Special Magistrate cited Florida Administrative Register Rule 59A-36A.014, which pertains to Assisted Living Facility licensure requirements. For tax roll purposes, the question presented is "were the improvements substantially complete" and should they be added to the tax roll. Whether or not the facility is licensed and the requirements for such licensure is wholly irrelevant to the analysis to be undertaken by the Value Adjustment Board.

For ease of reference, the Property Appraiser's office included the Special Magistrate's recommendation from petition 2019-02337 in its evidence for this hearing because the facts were so similar. The building was complete and ready for occupancy, but no tenants had moved in as of January 1, 2019, and only a Temporary Certificate of Occupancy had been issued. In that recommendation, the Special Magistrate held that the Petitioner failed to introduce any evidence that there existed any physical impediment to allowing tenants to occupy the premises, such as inaccessible areas, or incomplete essential building elements, citing to Forte Towers East, Inc. v. Blake, 275 So.2d 39 (Fla. 3rd DCA 1973). The circumstances in the case are similar and the Special Magistrate's ruling in this matter is not only legally incorrect but creates inequity with similarly situated properties.

In her ruling, the Special Magistrate simply says that the instant facts are distinguishable from the binding case law yet fails to state how that is true. Instead, she merely points out that the full Certificate of Occupancy and license to operate were issued after the lien date. Again, the issue is not whether a business can be operated on the property or whether tenants can occupy it, but whether it is substantially complete for taxation purposes. This property was substantially complete and physically ready for occupancy and no evidence to the contrary was presented.

Based on the foregoing, we request that the Special Magistrate's recommendation be rejected and that the Property Appraiser's value, and determination that the subject property was substantially complete as of the lien date, be reinstated.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Robert Grimaldi', with a stylized flourish at the end.

Robert Grimaldi, Esq.
Representing the Honorable Rick Singh
Orange County Property Appraiser's Office

CC: Aaron Thalwitzer, Esq., VAB Legal Counsel – via email (aaron@brevardlegal.com)
Petitioner, Dan Leonard – via email (dan.leonard@am.jll.com)