From:	Robert Grimaldi
To:	Vaupel, Jessica; "dan.leonard@am.jll.com"
Cc:	Smith, Katie; VAB; Cristina Saya; Tatsiana Sokalava; Ana M. Arroyo; Camille Smith; James M. Kleitz
Subject:	RE: Request for Reconsideration: 2020-00147
Date:	Tuesday, December 22, 2020 9:12:59 AM
Attachments:	image001.png image002.png image003.png image004.png image006.png image007.png image008.png image009.png image010.png email-signature-footer_e2f4ceb3-e0f2-417b-b135-7180c84c844d.png facebook_62a6cf23-4c12-45a3-9381-fe029c7c6903.png twitter_e6e28ff3-d2ab-405a-b778-da1ce71f0191.png youtube_205c2491-f603-4d11-b4dc-b9d7ba07a154.png instagram_14294086-9abf-453c-9c80-910744f0512b.png

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Good afternoon,

I would like to thank Mr. Thalwitzer for taking the time to opine on this matter. I have a great deal of respect for his opinion and believe that he wants the Board to make the right decision. I do not want to take an unwarranted "second bite at the apple" but I feel the need to point out that there seems to be a disconnect somewhere.

Firstly, the Special Magistrate's recommendation states the subject property's value should be $0 (zero dollars). There is at least land value attributable to the property and there is value in the extra features, neither of which were challenged during the hearing. The Property Appraiser would, at a minimum, request that the other values associated with the property be accurately reflected on the recommendation.

Secondly, perhaps I did not fully explain the Property Appraiser's duties when adding improvements to the tax roll. As stated many times by all parties, §192.042(1), *Florida Statutes*, defines "substantial completion as when "*the improvement* or some self-sufficient unit within it can be used for the purpose for which it was constructed." (Emphasis added) The Property Appraiser is charged with valuing the fee simple, unencumbered interest in the property; not whether a business is able to operate on the property (Fla. Const. art. VII, § 4, *see also* Bystrom v. Valencia Ctr., 432 So. 2d 108 (Fla. 3d DCA 1983); Singh v. Walt Disney Parks & Resorts US, Inc., *45 Fla. L. Weekly D1873* (Fla. 5th DCA August 7, 2020)). Nothing in case law or any other definition of "substantial completion" directs a Property Appraiser to determine whether the business intended to operate within the building is able to do so. Instead, the plain language demands an analysis of whether the improvement *can be used*, and in this case, the subject property could have been used for its intended purpose on January 1. The subject improvement simply was not being used while the intended occupant awaited their business license. A business license was the only thing impeding the subject improvements from being used as an assisted living facility and nothing was presented to show that the physical improvements themselves were not substantially complete.

It is not within a Property Appraiser's area of expertise to check every business license to determine if a business can, in fact, operate on a parcel. There are simply too many business types for the Property Appraiser to have the requisite expertise to know all the requirements to operate every possible business. Many businesses require numerous certifications, not just a business license, to operate. Requiring the Property Appraiser to follow the Special Magistrate and Mr. Thalwitzer's analysis, it would be impossible for the Property Appraiser to make a substantial completion determination and only fully operational newly constructed businesses would be added to the tax roll, rendering the "substantially complete" provisions of the law useless. Nothing in any relevant legal authority refers to a business license being needed to place substantially complete tangible/physical improvements on the tax roll. All analyses of "substantial completion" speak of the physical building itself. In the case Markham v. Kauffman, 284 So. 2d 416 (Fla. 4th DCA 1973), the *building could not be occupied*, but the court still deemed it appropriate to place the improvements on the tax roll. Here, as the evidence demonstrated, the building was ready for occupancy. To disregard the improvements on the property and not assess them is not only contrary to professionally accepted appraisal practices, but contrary to Florida law.

I would like to provide some illustrations of the Property Appraiser's position in an effort to clarify further: let's say we have a situation where a construction company is in the business of constructing assisted living facilities for the purpose of leasing them out to separate companies which would obtain their own licenses to actually operate the facility. On January 1, construction is complete, but the builder has not yet acquired a tenant with that license. Under the analysis provided by Mr. Thalwitzer and the Special Magistrate, that complete building would not be added to the tax roll. The building is complete for the purpose for which it is intended, but the ability to actually operate the business within the improvement has not yet come to fruition. A business license, even if it is required to fulfill the true purpose for which the building was constructed, has nothing to do with the completeness, or *substantial* completeness, of the improvement; whether the improvement is complete for the purpose for which it was intended, or whether or not it should go on the tax roll. If no license is obtained, the building still exists and may either be operated as something else in the interim or remain vacant until a business operator with the appropriate license is located, but it is still appropriately added to the tax roll, even if as vacant. The ultimate purpose may be as an assisted living facility, but if that specific business license was never granted, under the analysis provided, the improvements would never be added to the tax roll.

Put simply, there is no correlation between a substantially complete improvement and a business license. Another such example would be a hair salon. If the space is not leased, or the operator does not obtain his or her DBPR license for the operation of a salon until after January 1, that unoccupied space still must be placed on the tax roll. It would be impermissible for the Property Appraiser to deduct or delete the square footage of a building or remove a stand-alone improvement from the tax roll due to the hair stylists' license not being in-place as of January 1. A Property Appraiser assesses the unencumbered fee simple interest. A business license is an "encumbrance" as part of the leased fee interest, which we do not assess. This same scenario applies to substantially complete restaurants (which require many more certifications than just a business license), day cares, medical office buildings, specialty retail space, and virtually all property types.

Orange County has several properties that fit this scenario which are added to the tax roll, or remain on the tax roll, every year when the improvements are unoccupied or the type business that the building was intended for is not in operation. The same is true for counties across the state. The Courts have ruled that: "(A)ctual occupancy is not the appropriate test for substantial completion of an improvement project subject to assessment under Fla. Stat. ch. 192.042(1) (1987) in every case. In the present day business world, there may be several stages between the beginning of construction and the time of occupancy during which the improvement is substantially complete for the purpose for which the taxpayer constructed it." Mikos v. Two M. Dev. Corp., 546 So. 2d 1110 (Fla. 2d DCA 1989). (*Note: the 1987 version of §192.042(1) is identical to the 2019 version.*) To treat the subject property differently will yield an inequitable assessment and the future ramifications would have a chilling effect on the Orange County tax roll.

There is no question that subject improvement was substantially complete on January 1. There was no testimony that any portion of the improvement still needed to be constructed, just that the business license had not been obtained. The subject improvement was ready for occupancy and was rightfully added to the tax roll by the Property Appraiser, so the Property Appraiser asks again that the Special Magistrate's recommendation be overturned.

Thank you,

Robert Grimaldi, Esq.
Legal Advisor
Representing Rick Singh, CFA | Orange County Property Appraiser
200 S. Orange Ave | Suite 1700 | Orlando, FL 32801
407.836.5030 work | 407.836.5051 fax
rgrimaldi@ocpafl.org | www.ocpafl.org

ocpafl.org
available in 50 languages

From: Vaupel, Jessica <Jessica.Vaupel@occompt.com>
Sent: Monday, December 14, 2020 2:58 PM
To: Robert Grimaldi <rgrimaldi@ocpafl.org>; 'dan.leonard@am.jll.com' <dan.leonard@am.jll.com>
Cc: Smith, Katie <Katie.Smith@occompt.com>; VAB <VAB@occompt.com>; Cristina Saya <msaya@ocpafl.org>
Subject: FW: Request for Reconsideration: 2020-00147

Good Afternoon.

Please see the below response from VAB Counsel Thalwitzer regarding the Property Appraiser's Request for Reconsideration concerning petition 2020-00147.

Jessica Vaupel
Assistant Manager, Clerk of the Board Department
201 S. Rosalind Avenue, Orlando, FL 32801
Phone 407-836-7302; Fax 407-836-5382
jessica.vaupel@occompt.com

ORANGE COUNTY COMPTROLLER
PHIL DIAMOND, CPA
COMPTROLLER
ORANGE COUNTY, FLORIDA

From: Aaron Thalwitzer <aaron@brevardlegal.com>
Sent: Monday, December 14, 2020 12:39 PM
To: Vaupel, Jessica <Jessica.Vaupel@occompt.com>
Cc: Smith, Katie <Katie.Smith@occompt.com>; VAB <VAB@occompt.com>
Subject: RE: Request for Reconsideration: 2020-00147

Hi Jessica,

In this substantial completion petition, the subject property was intended to be an assisted living facility ("ALF"). In Florida, an operator of an ALF requires approval from Florida's Agency for Healthcare Administration, Division of Health Care Quality Assurance ("ACHA"). Such approval was not issued until 3/30/2020, well after the 1/1/20 date of assessment. As such, it appears undisputed that the petitioner could not operate an ALF at the subject property on 1/1/20.

The PAO argues that this petition and the underlying factual background, are indistinguishable from a different petition in which the SM found that substantial completion had been reached even though only a Temporary Certificate of Occupancy had been issued. I disagree. In the instant petition, the petitioner cannot use the property for its intended use, as an ALF, without a license which it lacked on 1/1/20. The PAO's argument is essentially that, because the petitioner could make *some* use of the subject property even with the license, it is irrelevant that it could not make its intended use. In other words, the PAO appears to take the position that the SM should find substantial completion because, even without the ACHA license, the subject property could house regular tenants or be used in some other non-ALF way. This argument ignores the definition of "substantially completed" cited in the PAO's request: "the improvement or some self-sufficient unit within it *can be used for the purpose for which it was constructed*" (emphasis supplied) F.S. 192.042(1). Using the subject property other than as an ALF is not using it "for the purpose for which it was constructed".

The PAO also attempts to minimize the importance of the ACHA license to the intended use of the subject property, analogizing it to a case in which a property was found to be substantially complete "even though some minor items might be required to be added." Implicit in this argument is the conclusion that the ACHA license is a "minor item[]" which "might" be required. I disagree with this notion. The ACHA license is not "minor" to the intended use of the subject property, it is critical. It is also not something which "might" be necessary; it is a strict legal requirement which must be satisfied before the subject property may serve as an ALF.

Consequently, I agree with the recommended decision's finding that the subject property had not reached substantial completion on 1/1/20, and accordingly would deny the request for reconsideration.

Thank you,

GORDON & THALWITZER
ATTORNEYS AT LAW
Aaron Thalwitzer, Esq.
257 N. Orlando Ave.
Cocoa Beach, FL 32931
(321) 799-4777
Aaron@BrevardLegal.com

From: Robert Grimaldi <rgrimaldi@ocpafl.org>
Sent: Wednesday, December 2, 2020 1:28 PM
To: VAB <VAB@occompt.com>
Cc: aaron@brevardlegal.com; 'dan.leonard@am.jll.com' <dan.leonard@am.jll.com>; Smith, Katie <Katie.Smith@occompt.com>; Vaupel, Jessica <Jessica.Vaupel@occompt.com>; Starr Brookins <sbrookins@ocpafl.org>; Cristina Saya <msaya@ocpafl.org>; Camille Smith <csmith@ocpafl.org>; James M. Kleitz <jkleitz@ocpafl.org>; Ana M. Arroyo <aarroyo@ocpafl.org>; Tatsiana Sokalava <tsokalava@ocpafl.org>
Subject: Request for Reconsideration: 2020-00147

Good afternoon,

Please see the attached correspondence.

Thank you,

Robert Grimaldi, Esq.
Legal Advisor
Representing Rick Singh, CFA | Orange County Property Appraiser
200 S. Orange Ave | Suite 1700 | Orlando, FL 32801
407.836.5030 work| 407.836.5051 fax
rgrimaldi@ocpafl.org| www.ocpafl.org

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