



**CHATHAM COUNTY
BOARD OF COMMISSIONERS
AGENDA ABSTRACT**

ITEM NUMBER:
MEETING DATE:
2/18/2008

PART A

Subject: Consideration to award contract to Zacchaeus Legal Services to assist with foreclosure actions.

Action Requested: Consideration of request to award a contract to Zacchaeus Legal Services to assist with foreclosure actions.

Attachments:
Copy of Contract

Submitted By: Tina Stone 2-6-08
Tina Stone, PPS Date
Tax Administrator

County Manager Review:
Charlie Horne
Charlie Horne, County Manager
2-6-08
Date

This abstract requires review by:

County Attorney _____
Date Reviewed

Finance Officer _____
Date Reviewed

Budget Officer _____
Date Reviewed

PART B

Introduction & Background:

In conjunction with the County Purchasing Agent, a Request for Proposals was solicited for legal services to assist with foreclosure actions on delinquent real property taxes.



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Discussion & Analysis:

Three firms submitted proposals with interviews extended to all three. Those submitting were:

- W. Ben Atwater, Jr
- Gunn & Messick, LLP
- Zacchaeus Legal Services

The interviews proved to be informative and added valuable information to the proposals for consideration. Zacchaeus Legal Services is the firm our office felt overall could provide all the components at a level the County needs. While W. Ben Atwater, Jr and Gunn & Messick, LLP are both local firms it is of the opinion that both firms currently lack the staff to perform the services needed.

Budgetary Impact:

Attorney fees of \$650.00 per parcel will be added to the taxpayer when suit is filed and will be paid upon settlement of the foreclosure action resulting in minimal cost to the county.

Recommendation:

Consideration of request to award a two year contract to Zacchaeus Legal Services

Suggested Motion:

Motion to award a two year contract for foreclosure legal services to Zacchaeus Legal Services

TAX FORECLOSURE ATTORNEY AGREEMENT

This agreement, made and entered into this the _____ day of _____, 2008, by and between Chatham County, hereinafter referred to as County, and Mark D. Bardill, P.C., a North Carolina professional corporation, hereinafter referred to as Attorney, shall be for the legal services to be provided for foreclosure actions on delinquent real property taxes due to the County, and to this end, the parties hereto make the following recitals:

WITNESSETH:

WHEREAS, Attorney has in excess of twenty years experience serving as Special Tax Attorney for the Counties of Onslow, Jones, Craven, Lenoir, Beaufort, Wilson and Warren; and

WHEREAS, tax foreclosure is a certain and special area of practice and any attorney who serves as a Special Tax Attorney must provide specially trained staff, must advance thousands of dollars in costs and must dedicate other resources in order to successfully complete the foreclosure assignments made to it; and

WHEREAS, to support these specially trained staff, advanced costs and other dedicated resources, Attorney needs a contract with County to serve as its special tax attorney for a term of two (2) years;

NOW, THEREFORE, for good and valuable consideration, and upon the agreements, conditions, and covenants found herein, the parties hereto agree as follows:

1. The Attorney shall initiate foreclosure actions for all parcels with delinquent taxes in batches of 100 parcels per assignment made on the 1st day of every even numbered month during the term of this agreement, or in more frequent intervals, upon mutual agreement of the parties hereto.
2. The Tax Collector shall provide to the Attorney the name of the delinquent taxpayer, the most recent address on file, the total delinquent taxes, including interest and penalties by year and a map of the parcel with its identification number. This information shall be in the form of a computer printout and GIS Map, with other information provided as available.
3. If a Taxpayer tenders payment in full after the subject parcel has been assigned to the Attorney but prior to the filing of the complaint, the Tax Collector must accept payment and no attorney fees are due from the Taxpayer, provided, however, attorney fees plus all incurred expenses shall be due and payable by County to Attorney in such cases where the Tax Collector has not informed Attorney of payment in full by the Taxpayer and Attorney has begun to render its services as to the parcel in question after said payment.
4. The Attorney shall notify the Tax Collector, in writing, immediately upon the filing of a foreclosure complaint with the Office of the Clerk of Superior Court.
5. The Attorney shall bring each foreclosure to conclusion during the term of this agreement; if for some reason, a foreclosure action is not concluded during the term of this

agreement, Attorney shall submit a written statement to the Tax Collector as to the reason why the action has not been concluded.

6. The Attorney shall be compensated in each foreclosure action in accordance with procedures set forth in the North Carolina General Statutes, Chapter 105 as ordered by a District or Superior Court Judge, or as agreed between the instant Taxpayer and Attorney. Attorney shall be guaranteed compensation for foreclosure on each parcel in the amount of six hundred fifty and 00/100 dollars (\$650.00) plus all incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like. Attorney shall be paid said compensation and costs upon settlement of the foreclosure action prior to the Order of Foreclosure, upon redemption of the parcel from sale or as part of the amount paid to purchase the property at sale. If the Taxpayer applies to the District or Superior Court for determination of a reasonable attorney fee pursuant to the procedures set forth in the North Carolina General Statutes, Chapter 105, and the Court awards less than \$650.00 per parcel, the County shall pay the balance of said compensation within thirty (30) days of said award from the County's local funds for legal work.

7. The Attorney shall use its best efforts to be appointed the Commissioner in the Order of Foreclosure, and upon public sale of such property pursuant to the Order of Foreclosure as provided for in Chapter 105, the Attorney shall be entitled to a Commissioner's Fee, plus incurred expenses, in accordance with the schedule provided for in Chapter 105, as approved by the Clerk of Superior Court. However, to assist the County in collecting all taxes due without reduction by the amount of the Commissioner's Fee, the Attorney agrees that as Commissioner, it shall be paid only to the extent available after payment of all amounts so ordered in the Order of Foreclosure plus the expenses incurred by the Attorney to advertise and give proper notice of public sale of such property. To this end, these expenses shall be added to the amount of taxes, fees and costs as ordered in the Order of Foreclosure to determine the opening bid by the County for purchase of such property from local funds. For purposes of illustration, compare the examples below where a typical 5% commission would be appropriate in a foreclosure with \$400.00 of taxes, \$900.00 of attorney fees and costs and \$300.00 of advertising/notice of public sale expenses (Total without Commissioner's Fee \$1,600):

Example #1 - County as High Bidder @ \$1,600

In this example, the County is paid in full for the taxes and interest which have accrued to the date the Order of Foreclosure is entered, the Attorney is paid in full for the attorney fees and costs incurred to the date of the Order of Foreclosure, the expenses incurred by the Attorney to advertise and give proper notice of public sale are paid, but no Commissioner's Fee is paid.

Example #2 - Other High Bidder @ \$1,650

In this example, all amounts outlined in Example #1 are paid, plus \$50.00 of the \$82.50 5% Commissioner's Fee is paid.

Example #3 - Other High Bidder (@ \$1,700

In this example, all amounts outlined in Example #1 are paid, the \$85.00 5% Commissioner's Fee is paid, and \$15.00 is paid to the Clerk as surplus from the sale.

8. If the Taxpayer files a petition in bankruptcy during the period any foreclosure action brought pursuant to this agreement is pending, the Tax Collector shall file, as part of its claim to the bankruptcy court, the fees, costs and expenses set forth herein, and shall pay Attorney for such amounts within sixty (60) days of written notification to Tax Collector of such bankruptcy. If the Taxpayer's petition is dismissed or a lift of the stay of bankruptcy court is obtained during the term of this agreement, Attorney agrees to proceed with the foreclosure and complete the remaining services due from it hereunder.

9. If the County assigns to the Attorney, in any one assignment, more than one parcel owned by the same Taxpayer, the County's obligation to pay the compensation set forth in Paragraphs 6, 7 and 8 shall be based on the following per parcel charge: 2 to 5 parcels, six hundred fifty and 00/100 dollars (\$650) per parcel; 6 to 10 parcels, six hundred and 00/100 dollars (\$600.00) per parcel, 11 or more parcels, five hundred fifty and 00/100 dollars (\$550.00) per parcel.

10. The Attorney shall not apply for fees over the amounts aforementioned except for unusual, novel, or difficult cases.

11. In the event of double listings, erroneous information provided by the Tax Collector to Attorney, or clerical or administrative problems discovered by the Tax Collector or Attorney which result in legal impracticality to effect proper collection remedies through foreclosure, the County shall pay to the Attorney a fixed fee of \$250.00 before suit is filed and \$650.00 after suit is filed, plus all incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, to recall each such parcel from any assignment.

12. To ensure that the proper amount of delinquent taxes, interest, fees and costs are collected, the Attorney and the Tax Collector shall verify with one another the amount due at the time when, and if, the Taxpayer satisfies the tax lien after the complaint is filed but prior to foreclosure.

13. All funds collected shall be paid to the Tax Collector and shall be paid in the form of cash, bank check or certified funds. County shall immediately inform Attorney of the receipt of any such funds and the parcel to which they pertain. Any part of any such funds that represent attorney fees, service fees, copy charges, postage, publication costs, filing fees, and the like shall be remitted to Attorney as part of the next ensuing regular disbursement by the County Finance Office.

14. Subject to the terms below, Attorney shall be the sole and exclusive special tax attorney for the County during the term of this agreement. County shall use its best efforts to assign all of its parcels with delinquent property taxes to Attorney pursuant to the terms hereof during the term of this agreement.

15. County and Attorney agree that Attorney's services hereunder are limited to the general prosecution of foreclosure actions to collect delinquent taxes assessed against real property located in the County, including title search services, document preparation, court appearances to obtain orders of foreclosure by default judgment, judgment on the pleadings, summary judgment, appearances as Commissioner to sell property at public sale, and negotiation with Taxpayers in settlement of such actions. Attorney's services hereunder do not include preparation and court appearances for trial or appeal and the County shall provide all such legal services.

16. This agreement shall be for the period of two (2) years, beginning _____ 1st, 2008 and terminating on _____, 2011.

COUNTY:

Chairman,
Chatham County Board of Commissioners

ATTEST:

Clerk

ATTORNEY:

President, Mark D. Bardill, P.C.

ATTEST:

Secretary

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This instrument has been preaudited in the manner required by the Local Government
and Fiscal Control Act. Mark D. Bardill
Fiscal Officer