



COUNTY of MARIPOSA

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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JEFF GREEN, County Counsel

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: Public Hearing to Consider Appeal of Decision by County Counsel Relative To the Timely Filing of an Appeal for Transient Occupancy Taxes for the Yosemite Peregrine Bed and Breakfast and Falcons Nest; Res. 00-128; Appeal of Tax Collector Relative to Timely Payment of Transient Occupancy Taxes for Yosemite Peregrine Bed And Breakfast and Falcons Nest, Kay and Donald Pitts, Appellants; Res. 00-129

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on April 11, 2000

ACTION AND VOTE:

2:06 p.m. Jeff Green, County Counsel;
Don Phillips, Tax Collector;

A) PUBLIC HEARING to Consider Appeal of Decision by County Counsel Relative to the Timely Filing of an Appeal for Transient Occupancy Taxes for Yosemite Peregrine Bed and Breakfast and Falcons Nest; Kay and Donald Pitts, Appellants;

BOARD ACTION: Jeff Green provided the staff report and reviewed the timelines that the decision was made by the Tax Collector and the appeal was filed. He responded to a question from the Board relative to the hearing process for this matter.

Public portion of the hearing was opened and input was provided by the following.

Don Pitts, appellant, referred to the appeal procedures in County Code, section 3.36.140 relative to noticing procedures for decisions. He stated he was not mailed the decision by the Tax Collector; it was faxed, and he does not believe that constitutes "serving" pursuant to the procedures. These statutes were enacted in 1964 and FAX machines did not exist at that time. He stated the faxed notice he received consisted of a note in the margin of the Transient Occupancy Form. He advised of his conversations with the Tax Collector's Office relative to the appeal procedures and subsequent correspondence that clarified the timelines, and he stated this was received after the fifteen day appeal period had lapsed.

Kay Pitts, appellant, advised that after they received the January 6, 2000, letter containing the timelines for the appeal process, they filed their appeal of the Tax Collector's decision well within the fifteen day period.

Chairman Parker held the public portion of the hearing open for additional questions.

Don Phillips, Tax Collector, provided input relative to his understanding of the code relative to providing notice to the taxpayer, and he advised that he spoke via telephone with the appellants on December 20, 1999, and the appellants agreed to having a FAX sent. The FAX was sent on December 22, 1999, and he feels this provided sufficient notice.

Don Phillips and Jeff Green responded to questions from the Board relative to the County's usual process for providing notification of delinquent taxes; as to why the Tax Collector sent a letter in January, following the FAX of December, 1999; and relative to the chronology of events.

Kay Pitts stated the first written notification they received, via FAX, from the Tax Collector only contained the amount of the penalty, and they were kept on hold about how to deal with the penalty and the subsequent appeal process until the January 6th letter.

Don Phillips and Jeff Green responded to additional questions from the Board relative to due dates for transient occupancy taxes; whether calendar or business days are used to calculate the appeal timeframes; and the notification process that is used when taxpayers do not have a FAX machine.

Kay Pitts stated she feels there should be a uniform process for noticing and advising taxpayers of the process.

Public portion of the hearing was closed and the Board commenced with deliberations. (M)Pickard, (S)Reilly, Res. 00-128 adopted upholding the appeal on the timeliness issue based on the arguments that were raised by the appellants that the faxed notice of December 22, 1999, constituted insufficient notice of the appeal process; and the January 6, 2000, letter contained the information and started the clock for the appeal timeframes/Ayes: Unanimous. Hearing was closed.

B) Appeal of Decision by County Tax Collector Relative to the Timely Payment of Transient Occupancy Taxes for the Yosemite Peregrine Bed and Breakfast and Falcons Nest; Kay and Donald Pitts, Appellants

BOARD ACTION: Jeff Green presented the staff report and advised that the taxes in question needed to be received in the Tax Collector's Office by October 31, 1999, and the letter that was subsequently received was postmarked on December 13, 1999. He advised that he was unable to find anything in the Code that would allow relief to a taxpayer who pays on time, but the taxes are not received by the County on time. Staff responded to questions from the Board relative to the appeal rules; the definition of remittance as used in the Ordinance; and relative to the penalties being merged and becoming a part of the taxes. Don Phillips advised that they have honored postmarks in the past.

Public portion of the hearing was opened and input was provided by the following.

Kay Pitts, appellant, advised that they took a vacation during the month of November, and prior to leaving, they paid every bill for the months of October and November. Around December 13th they discovered that these two tax payment checks were not cashed, and they checked with their bank and found that they had not been paid. They were in sequential order with the checks written for their other bills, and those other checks had cleared the bank. Until November, 1999, they did not have secure mail boxes – they know the tax bills were deposited in their mail box, but they do not know what happened after that. She noted that this is the second time they have had this happen since January, 1999; however, they caught the first incident immediately. The Tax Collector advised them that the payment was received late, and he waived the penalty as the postmark was different than when the bills were mailed in the first incident. She noted she feels they live in a contentious community and they are involved in the Homeowner's Association, etc. She stated she feels the penalty is extremely severe – for this incident it will cost them \$1,400. She advised that there are people who are renting without paying their taxes or obtaining a Transient Occupancy Tax permit, and there is no enforcement. She stated they are trying to abide by the rules.

Don Pitts, appellant, noted that his check register shows that there were plenty of funds available to cover the checks that were written for the taxes, and the other checks all cleared the bank. He further advised that the tax payments were submitted in envelopes provided by the Tax Collector and they are distinctive. He feels they made every effort to make the payment timely. It is an hour-round trip drive to mail them by certified mail from Yosemite Valley. He feels that, as an operator, they are in essence an employee working to collect the tax for the County, and he feels consideration should be given for their loyalty.

The public portion of the hearing was closed, and the Board commenced with deliberations. Don Phillips responded to questions from the Board relative to the postmark on the tax payments, and the timeframes covered by the penalties that were imposed; and whether penalties have been waived in the past for taxpayers. Don Phillips recommended that the second ten percent penalty be waived, along with the interest, based on the appellants efforts in contacting his office and trying to straighten this matter out. Marian Spacke, Investment Officer, provided input on the accrual of the penalties. (M)Pickard, (S)Balmain, to deny the appeal, failed by the following vote: Ayes: Balmain, Pickard; Noes: Reilly, Stewart; Abstained: Parker. (M)Stewart, (S)Balmain, Res. 00-129 adopted denying the appeal and accepting the Tax Collector's recommendation to waive the second ten percent penalty and interest; and to charge the first ten percent penalty based on the fact that the taxes were delinquent when received by the Tax Collector; and recognizing that the taxes were received and paid as of December 13, 1999/Ayes: Reilly, Balmain, Stewart, Parker; Noes: Pickard. Hearing was closed.

cc: Don Phillips, Tax Collector
Ken Hawkins, Auditor
File