Tab

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Law Office Of DARRYL L. THOMPSON, P.C.

_Attorney At Law__

841 I STREET ANCHORAGE, ALASKA 99501 PH: (907) 272-9322 FAX: (907) 277-1373

May 5, 2015

Via fax and mail: (907) 334-2285

cynthia.franklin@alaska.gov

Alcohol Beverage and Control Board Attention: Cindy Franklin, Director 2400 Viking Drive Anchorage, AK 99501

Re: Licensee: T & M Enterprises Inc.

License #: 3556

Location: 1149 Gambel Street

Notice of Denial to Renew License No.3556

Request for Informal Conference

Dear Director Franklin:

The purpose of this letter is to respond to the notice dated May 1, 2015. In response to the notice and on behalf of T & M Enterprises, Inc. ("T & M"). That letter states that T & M may request an informal conference with either the director or the full board. T & M has chosen to request an informal conference before the full board and the undersigned may be contacted to arrange for a date and time of the conference.

Please take notice that, without waiving the right to an informal conference and to preserve the right to a formal hearing under AS 44.62.330-630, a notice of defenses and request for hearing is transmitted with this letter. I look forward to hearing from you on the setting of the informal conference.

Darryl L. Thompson, Esq.

enclosures: a/s

STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL BOARD 2400 VIKING DRIVE ANCHORAGE, ALASKA 99501

In the matter of:)
)
T & M Enterprises dba Spirits of)
Alaska, 1139 Gambell Street,)
Anchorage, Alaska 99501)
) Case No. 15-01

NOTICE OF DEFENSE AND REQUEST FOR HEARING

TO: ALCOHOLIC BEVERAGE CONTROL BOARD

T & M Enterprises, dba Spirits of Alaska, ("T & M") by and through undersigned counsel hereby files a Notice of Defense and Request for Hearing pursuant to AS 44.62.390. Specifically, on May 1, 2015, the Board denied T & M's application for renewal of its license under AS 04.11.480(a) based on its decision to uphold a protest filed by the Anchorage Municipal Assembly.

T & M hereby respectfully requests a hearing. AS 44.62.390(a)(1). T & M's defenses to the Board's action are as follows:

1. On April 29, 2015, the Director issued to T & M Enterprises, Inc., dba Sprits of Alaska, a Notice of Suspension immediately suspending all sales of alcohol after the Board voted to uphold a local governing body's protest of T & M's renewal application and said Notice directed T & M to immediately stop selling alcoholic beverages. This decision to immediately suspend the license was an unconstitutional taking of T & M's valuable property right because T & M was not provided the required notice and opportunity to be heard in a meaningful, impartial administrative hearing in full compliance with the Administrative

Procedures Act <u>prior</u> to the suspension in violation of art. I, Sec. 7 of the Alaska Constitution and AS 04.11.510(c).

- 2. The Board erred in upholding the protest because the decision to protests by the Anchorage Municipal Assembly (MOA)was arbitrary and capricious as a matter of law and/or fact.
- 3. The Board erred in upholding the protest because T & M was not afforded the opportunity to the defend its renewal application before the local governing body in the manner as provided by the local governing body in violation of the MOA's code and ordinances including but not limited to 3 AAC 304.145(d), MCA 2.30.120(H) and in violation of art. I, Sec. 7 of the Alaska Constitution.
- 4. The Board erred in upholding MOA's protest because it was arbitrary, capricious and unreasonable as the MOA denied T & M the due process rights established by the MOA's ordinances, specifically including, but not limited to, the right to have the opportunity to defend the renewal application and against the protest by having access to the political process and fully engaging in permissible ex-parte communication with the Anchorage Assembly members as provided under MCA 2.30.120(H).
- 5. T & M has requested an informal conference, and reserves the right to supplement these defenses both before and after said informal conference as the time to do so under AS 44.62.390(a) and (b) is tolled pending the informal conference.

Ph: 272-9322 Fax: 277-1373 DARRYL L. THOMPSON, P.C. Anchorage, Alaska 99501

DATED this day of May 2015.

DARRYL L. THOMPSON, P.C.

841 I Street

Anchorage, Alaska 99501

(907) 272-9322

Darryl Thompson ABA No. 8706055

Law Office Of DARRYL L. THOMPSON, P.C.

Attorney At Law

841 I STREET ANCHORAGE, ALASKA 99501 PH: (907) 272-9322 FAX: (907) 277-1373

April 30, 2015

Via fax and email: (907) 334-2285

cynthia.franklin@alaska.gov

Alcohol Beverage and Control Board Attention: Cindy Franklin, Director 2400 Viking Drive Anchorage, AK 99501

Re: Licensee: T & M Enterprises Inc.

License #: 3556

Location: 1149 Gambel Street

License renewal Denial based Protest from Municipality of

Anchorage

Dear Director Franklin:

I write to formally notify you and the Alcohol Beverage Control Board ("Board") that my office represents T&M, Enterprises, Inc ("T&M")incidental to the above referenced matter. As such, I respectfully request that all future communications and correspondence be directed to me and the address and contact information set forth above. I also write to insist that you, or the Board immediately correct the unconstitutional action taken yesterday of taking the license away before T&M was afforded its constitutional protections under Alaska due process clause.

I anticipate that, pursuant to AS 04.11.510(b)(1), as required by 3 AAC 304.150(a)(2), a written notice of the denial will be immediately furnished to my office on behalf of T&M stating the reason(s) for the denial and informing T&M of its entitlement to an informal conference with either the director or the board, and right to a full due process formal hearing conducted by the office of administrative hearings (AS 44.64.010). Please forward the required notice to my attention at my office address above. If your office has already sent this immediate notice to my

client directly, I respectfully ask that you forward a copy to my attention at the above address/fax number or email address: darrylthompson@akdltlaw.com .

Further, at this time, T&M also maintains the decision to immediately force it to close down and cease all sales was in error. T&M respectfully requests a stay the effect of the board's decision upholding the protest and denying the renewal of T&M's liquor license until such time as T&M is afforded the full due process rights provided under 3 AAC 304.150(a)(2), AS 04.11.510(b)(1) under AS 44.62.330-630. Until the notice and full opportunity to participate in first an informal conference, and then a formal hearing if necessary, T&M has not been provided the anticipated and mandated due process rights consistent with the potential depravation of its established property interest in this license.

It is established law in Alaska that T&M has a property right in its license that is protected by the due process clause of the Alaska Constitution. See Rollins v Sate, 991 P.2d 202, 210 (Alaska 1999). Rollins is instructive and makes clear that the actions taken yesterday to immediately force the store closure was in error and is a pre-hearing depravation of my client's property interest, in violation of due process. T&M's interest in the liquor license is "not merely a privilege subject to withdrawal or denial at whim of the state" but is "of considerable value". <u>Id</u>. To be clear, in <u>Rollins</u>, the court was considering the rights of a license holder who had her license renewal denied. Before this property right can be taken, due process requires that the license holder be provided with notice and an opportunity to be heard in a meaningful, impartial hearing. Rollins, citing Thorn v. State, Dep't. of Public Health, 774, P2d 1326, 1329 (Alaska 1989) (due process requires a "meaningful hearing"); Frontier Saloon, Inc. Alcohol Beverage Control Board, 524 P2d 657, 659, (Alaska 1974)(due process requires notice and an opportunity to be heard <u>prior</u> to a taking of a valuable property right). The court in Rollins noted that she received the procedural safeguards to which she was entitled; namely adequate notice and an opportunity to be heard in a meaningful, impartial administrative hearing in full compliance with the Administrative Procedures Act. Id.

T&M has not yet been provided the procedural safeguards to which it is entitle prior to yesterday's taking of its valuable property right, namely the procedural safeguards as set forth in AS 04.11.510(b)(1), required under 3 AAC 304.150(a)(2) when the board upheld a local governing body's protest and a renewal application was denied and made effectively immediately. Those procedural safeguards include the right to notice and a meaningful impartial hearing under the Administrative Procedures Act ("APA"). The actions taken by the ABC Board to close the store taken at the first regular meeting after having received the protest on its renewal does not comport to that which is required under Alaska's due process clause as interpreted by the Alaska supreme court or its own regulations. The Alaska supreme court and the governing statutes and regulations require notice and opportunity to be heard in a meaningful impartial

hearing in accordance with APA. Because yesterday's board meeting is not that required meaningful, impartial hearing conducted in accordance with the APA, the action of taking the license yesterday was an unconstitutional pre-hearing deprivation and a taking of my client's property without affording to it the due process required by Alaska's constitution and the ABC Board's own statutes and regulations.

Based on the above, I am respectfully asking at this point, the Board, or you correct this error and withdraw the order of closure until such time as T&M has been provided the required notice and opportunity to be heard in a meaningful, impartial administrative hearing in full compliance with APA. Failure to take immediate action is likely to result in the filing of an action in the superior court to prevent the irreparable harm occurring as a result of this unconstitutional taking.

I look forward to receiving on behalf of T&M the Notice as required by AS 04.11.510(b)(1) and required by 3 AAC 304.150(a)(2). I also look forward to written confirmation that the unconstitutional taking yesterday has been rescinded until such time as T&M has been provided its pre-deprivation constitutional due process rights, which includes the referenced notice and the opportunity to engage in a meaningful, impartial hearing in full compliance with the APA.

Darryl L. Thompson, Esq

cc: File

Tab

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6310 "A" Street Anchorage, AK 99518 (907) 561-2100

Cynthia Franklin, Director

Alcohol Beverage Control Board

550 West 7th Ave. Suite 1600

Anchorage, Alaska 99501

Director,

I am writing on behalf of Bare Distillery Alaska LLC, License 4985, to request an Informal Conference with the Board as described in 04.11.510 (b)(1).

This in response to your letter on May 8^{th} , 2015 informing us of the action taken by the Board at the April 29, 2015 meeting.

Sincerely,

Jeremy Loyer

Vice President-Bare Distillery Alaska LLC



PO. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4316 • Fax: (907) 249-7533 http://www.muni.org/assembly/liccuse

Office of the Municipal Clerk Licensing

May 19, 2015

Ms. Sarah Oates Alcoholic Beverage Control Board 2400 Viking Drive Anchorage, Alaska 99501

Re: Bare Distillery LL#4985

Dear Ms. Oates:

On February 17, 2014 the Anchorage Municipal Assembly approved the protest of the Renewal of Distillery Liquor License #4985 for the above listed establishment until payment of delinquent taxes was received.

The Municipality of Anchorage Clerk's Office <u>LIFTS THE PROTEST</u> on license #4985.

Conditions placed on any license prior to renewal are to continue until specifically removed or amended. If you require additional information or if I can be of any assistance please call me.

Cordially,

Jamle Heinz

Business License Official

Concur.

Amanda K. Moser

Deputy Municipal Clerk

From: Bob Klein [mailto:bobkleinak@gmail.com] Sent: Wednesday, May 13, 2015 3:13 PM

To: Oates, Sarah D (CED)

Subject: FW: Bare Distillery Business Property returns

Sarah,

Please include this email stream in the information packets you are sending to the Board Members for our May 22nd meeting. Bob Klein

From: Todd Goodew [mailto:todd.goodew@gmail.com]

Sent: Wednesday, May 13, 2015 2:06 PM

To: Bob Klein

Subject: Fwd: Bare Distillery Business Property returns

Sent from my iPhone

Begin forwarded message:

From: "Simpson, Janet M." < SimpsonJM@ci.anchorage.ak.us>

Date: May 13, 2015 at 2:32:03 PM PDT

To: 'Todd Goodew' < todd.goodew@gmail.com>

Subject: RE: Bare Distillery Business Property returns

Todd Goodew came into our office to try and resolve the 2013 and 2014 accounts for Bare Distillery starting in December 2014,

Todd brought information regarding the closure of Bare Distillery which took place sometime in 2013 in February 2015.

Due to complexity of the case it took us until 5/13/15 to resolve the issues.

Janet Simpson Appraisal Supervisor Property Appraisal (907) 343-6699

From: Todd Goodew [mailto:todd.goodew@gmail.com]

Sent: Friday, April 24, 2015 1:06 PM

To: Peltier, Deonna R. **Cc:** Simpson, Janet M.

Subject: Re: Bare Distillery Business Property returns

Good afternoon ladies

Wanted to follow up with you in the property taxes as the city has protested out license for the distillery because of the back taxes

I want to get current with the 2013 taxes and want to know where we are with the abatement of the 2014 taxes

Please let me know how we are coming on this abatement

Thanks for your help in this matter

Todd Goodew Anchorage distillery

Sent from my iPhone

On Apr 21, 2015, at 9:30 AM, Peltier, Deonna R. < <u>PeltierDR@ci.anchorage.ak.us</u>> wrote:

Hello Todd,

We are still currently waiting on a decision from the Assessor on the deletion of the 2014 account for Bare Distillery.

Janet and I gathered everything and submitted it to him. I am not sure when he will have a decision as he is still doing his own research into the matter.

As soon as I find out anything, I will let you know.

Thank you,

Deonna Peltier Municipality of Anchorage Appraisal Analyst 343-6775

From: Todd Goodew [mailto:todd.goodew@gmail.com]

Sent: Monday, April 20, 2015 5:57 PM

To: Peltier, Deonna R.

Subject: Re: Bare Distillery Business Property return

Hi Deanna

How are we coming with the abatement of 2014 taxes

Todd

Sent from my iPhone

On Feb 6, 2015, at 9:36 AM, Peltier, Deonna R. < PeltierDR@ci.anchorage.ak.us > wrote:

Sounds good. We will contact you on Monday to set up an appointment to go over any information. The 2012 return did have a Depreciation Schedule attached to it.

Deonna Peltier Municipality of Anchorage Appraisal Analyst 343-6775

From: Todd Goodew [mailto:todd.goodew@gmail.com]

Sent: Thursday, February 05, 2015 4:16 PM

To: Peltier, Deonna R.

Subject: Re: Bare Distillery Business Property returns

It is getting done as it is rather confusing as no books were done for 2014 and I don't think they were done for 2013 but I will be back there Monday and I will look

What is it you were looking for. I gave you what they paid for equipment and I

tried to find a schedule for the 1.2 million they said they had for equipment but I think they put that number to try and find investors as I can't find anything that would show that value.

All I have is what they paid for the equipment as they had separated the one time set up fees on a different schedule so they did not add that to the equipment.

I will see what I can find and bring it to you but all the new company bought was the equipment of 680,000 and 3,000 for the forklift and that is all they had for assets.

We also assumed a 200,000 note as the bank had collateralized the equipment on the notes so we had to assume these 2 notes

The new company anchorage distillery officially started on 5 th of January 2015

Todd

Sent from my iPhone

On Feb 5, 2015, at 5:07 PM, Peltier, Deonna R. < PeltierDR@ci.anchorage.ak.us wrote:

Hello Todd,

Janet and I are reviewing the file on this and we are requesting the 2013 IRS tax return filed for Bare Distillery. We do have the one for 2012; we just need to verify some information.

Thank you,

Deonna Peltier Municipality of Anchorage Appraisal Analyst 343-6775

Tab

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From: Sunil (Bombay) [mailto:sunil@bombaydeluxe.com]

Sent: Tuesday, May 12, 2015 8:14 PM

To: Oates, Sarah D (CED)

Subject: RE: Informal Conference

Hi Sarah,

Thank you for informing me about an option for an informal conference with the ABC Board. Bombay Deluxe, Inc. intends to discuss the denial of a renewal application for liquor license #4158 with the ABC Board. I look forward to attending this meeting.

I also appreciated your team's help on Monday in getting the paperwork for the new liquor license application started.

Advertising for the new license application will begin in the Anchorage Press for a duration of three weeks, beginning this

Thursday. In addition, a copy of the application has been posted at Bombay Deluxe as well as at the Northern Lights Post Office.

We sincerely hope that the Board will reverse its decision regarding the denial and that the new application may not even be necessary. As a small, local, and family-owned establishment our restaurant relies on summer tourism; the ability to serve Beer and Wine with our food definitely impacts our business.

I want to thank you and Cynthia for taking the time to talk with me on Monday and providing a sympathetic ear. Bombay Deluxe Staff appreciates the service your Department provides to Alaska Businesses.

Sincerely,
Sunil Sethi
President, Bombay Deluxe, Inc.
555 W. Northern Lights Blvd.
Anchorage, AK 99503
907-277-1200
907-317-6180 (Cell)
www.BombayDeluxe.com



PO, Box 196650 • Anchorage, Alaska 99519-6650 • Telephone; (907) 343-4316 • Fax; (907) 249-7533 http://www.mumi.org/assembly/license

Office of the Municipal Clerk Licensing

May 19, 2015

Ms. Sarah Oates Alcoholic Beverage Control Board 2400 Viking Drive Anchorage, Alaska 99501

Re: Bombay Deluxe Indian Restaurant LL#4158

Dear Ms. Oates:

On March 24, 2015 the Anchorage Municipal Assembly approved the protest of the Renewal of Restaurant/Eating Place Liquor License #4158 for the above listed establishment until payment of delinquent taxes was received.

The Municipality of Anchorage Clerk's Office <u>LIFTS THE PROTEST</u> on license #4158.

Conditions placed on any license prior to renewal are to continue until specifically removed or amended. If you require additional information or if I can be of any assistance please call me.

Cordially,

Jamie Heinz

Business License Official

Concur,

Amanda K. Moser

Deputy Municipal Clerk

From: Sunil (Bombay)

To: Franklin, Cynthia A (CED); Oates, Sarah D (CED)

Cc: <u>sunil@bombaydeluxe.com</u>

Subject: Request for Renewal for Liquor License #4158 - Bombay Deluxe, Inc.

Date: Wednesday, May 13, 2015 5:29:28 PM

Dear Cynthia/Sarah,

I am writing to address the Board's April 29th decision to uphold the protest of License #4158, which was held by my restaurant, Bombay Deluxe, Inc. Firstly, I would like to thank you for giving me the opportunity to explain the circumstances surrounding the protest put forth by the Municipality of Anchorage.

Bombay Deluxe, Inc. did receive a letter around March 17th, 2015 regarding the payment of municipality taxes. However, my wife and I welcomed the birth of a baby girl on the very same date. My wife is the financial officer of Bombay Deluxe, Inc. and was unable to review our establishment's incoming mail during this time due to the delivery of our daughter as well as extenuating medical circumstances. I also did not see the letter from the Municipality of Anchorage due to the extensive family support required during this time. For this I accept full responsibility.

I did receive a registered letter regarding the denial of License #4158 on Saturday, May 9th. This letter came as quite a surprise, as Bombay Deluxe, Inc. was making preparations for a typically busy Mother's Day weekend. However, we immediately ceased all sales of alcoholic beverages and waited in anticipation for a resolution on the next business day. Following my receipt of the registered letter, I also discovered the misplaced protest letter from the Municipality of Anchorage at my restaurant. Payment was made in full on Monday morning, May 11th to the Municipality of Anchorage.

I accept full responsibility if I failed to review in a timely manner any communications from the Municipality of Anchorage. However, I am requesting understanding regarding this matter, as it was a product of missed communication and extenuating family circumstances as opposed to willful negligence. In light of the extenuating family circumstances, as well as a complete resolution of the matter that initiated the Municipality of Anchorage's protest, I am requesting that Bombay Deluxe, Inc. be approved for a renewal of License #4158. Bombay Deluxe, Inc. is proud to serve Alaska residents and I personally appreciate the Alcoholic Beverage Control Board's efforts to support Anchorage establishments.

Best Wishes,

Sunil Sethi President, Bombay Deluxe, Inc. 555 W. Northern Lights Blvd. Anchorage, AK 99503 907-277-1200 907-317-6180 (Cell) www.BombayDeluxe.com

ss License Review

Finance - Business Personal Property Taxes

y Van Nortwick/Diana Flavin

Phone: 343-6940/343-6946

Fax: 343-6677

or License

W

ner:

siness:

dress:

4158

Sent: 3/11/15

Due: 03-12-2015

Previous License

Current Application

Owner:

Bombay Deluxe, Inc.

Business:

Bombay Deluxe Indian

Restaurant

Address:

555 W. Northern Lights Blvd.

Anchorage, AK

Anchorage, AK 99503

License is not protested

License is protested for taxes

PERSONAL Property Taxes

PERSONAL Property Taxes

PERSONAL Property Taxes

REAL Property Taxes:

Hotel/Motel:

Reviewed By:

Collections:

Comments:

Municipality of Anchorage Treasury

Municipality of Anchorage (Treasury) Counter hours 8:00 AM-5:00PM CH 02 28 052835 05/11/15 08:39AM

002 Pers Prop Tax

\$368.64

Account #: 3452934700170

Total Due: Cash:

\$368.64 \$370.00

Change:

\$1.36

Keep receipt for your records

Protest Released - TAXES PAID IN FULL

Date: 5 - / 1 - 15 Signed/Title:/

Tab

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From: Clyde Kim [mailto:clydekim@msn.com]
Sent: Wednesday, May 13, 2015 4:47 PM
To: Oates, Sarah D (CED)

Subject: Re: Informal Conference

Hello,

I would like to request a informal conference with the abc board in regards to renewing the liquor license for dish sushi. Thank you.

Sent from myMail for iOS



P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4316 • Fax: (907) 249-7533 http://www.muni.org/assembly/license

Office of the Municipal Clerk Licensing

May 19, 2015

Ms. Sarah Oates Alcoholic Beverage Control Board 2400 Viking Drive Anchorage, Alaska 99501

Re: Dish LL#4685

Dear Ms. Oates:

On February 17, 2014 the Anchorage Municipal Assembly approved the protest of the Renewal of Restaurant/Eating Place Liquor License #4685 for the above listed establishment until payment of delinquent taxes was received.

The Municipality of Anchorage Clerk's Office <u>LIFTS THE PROTEST</u> on license #4685.

Conditions placed on any license prior to renewal are to continue until specifically removed or amended. If you require additional information or if I can be of any assistance please call me.

Cordially,

Jamie Heinz

Business License Official

Concur.

Ámanda K. Moser

Deputy Municipal Clerk

Tab

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EAGLE RIVER BOWL 12130 REGENCY DR. EAGLE RIVER, AK 99577

May 13, 2015
State of Alaska
Alcoholic Beverage Control Board
Re: Eagle River Bowl/Homestead Lounge
Liquor License #2895
To whom it may concern;
This letter is an official written request for an informal conference regarding the Board's decision to deny the renewal of Liquor License #2895. I request that this conference be held as soon a possible.
Please contact me by mail, email, or phone 244-8450 with a date and time that this will be held.
Lynn Lythgoe
Managing Member
Eagle River Bowl



PO. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone; (907) 343-4316 • Fax; (907) 249-7533 http://www.muni.org/assembly/license

Office of the Municipal Clerk Licensing

May 19, 2015

Ms. Sarah Oates Alcoholic Beverage Control Board 2400 Viking Drive Anchorage, Alaska 99501

Re: Homestead Lounge/Sourdough Bowl LL#2895

Dear Ms. Oates:

On February 25, 2014 the Anchorage Municipal Assembly approved the protest of the Renewal of Beverage Dispensary Liquor License #2895 for the above listed establishment until payment of delinquent taxes was received.

The Municipality of Anchorage Clerk's Office <u>LIFTS THE PROTEST</u> on license #2895.

Conditions placed on any license prior to renewal are to continue until specifically removed or amended. If you require additional information or if I can be of any assistance please call me.

Cordially,

Jamie Heinz

Business License Official

Concur,

Amanda K. Moser

Deputy Municipal Clerk



Business License Review	Fin	ance - Business Personal Property Taxes
o: Daisy Van Nortwick/Diana Flavin		Phone: 343-6940/343-6940 Fax: 343-667
Liquor License	# 2895	
Renew		Due: 01-28-2014
Previous License		Current Application
Owner:	Owner:	EAGLE RIVER BOWL LLC
Business:	Business:	HOMESTEAD LOUNGE/ SOURDOUGH BOWL
Address:	Address:	12130 REGENCY DRIVE
		EAGLE RIVI, AK
License is not protested		Date:
License is protested for taxes	٠.	Date: 1/22/14;
PERSONAL Property Taxes PERSONAL Property Taxes PERSONAL Property Taxes PERSONAL Property Taxes REAL Property Taxes:	7001 5/130 130	#13 47371.68 6 970.42 #69.59 \$ \$
Hotel/Motel:	00 7/4/10 r	\$ 19, 164. 91
Reviewed By:		Date: 1-23-14 Date: 1/22/14
Comments:		

Protest Released - TAXES PAID IN FULL

Signed/Title:

Date: 5-14-15