STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD
EQUALIZATION AND REVIEW
13 PTC 778

In the matter of the appeal of:	)	
	)	
Avalon Farm	)	
	)	**FINAL DECISION**
from a decision of the Iredell County	)	
Board of Equalization and Review	)	
for 2013.	)	

This appeal was heard before the North Carolina Property Tax Commission ("Commission") sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on Thursday, 14 August 2014, pursuant to the appeal of **Avalon Farm** ("Appellant"). The Appellant appealed to the Commission from the decision of the Iredell County Board of Equalization and Review for 2013 ("County Board"), in which the County Board decided that the real property owned by **Avalon Farm** did not qualify for exemption from property taxes for tax years 2010, 2011, 2012, and 2013.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Member David A. Smith participating.

Avalon Farm was represented at the hearing by Katie A. Lawson, attorney at law. Iredell County was represented at the hearing by C. B. McLean Jr., attorney at law.

STATEMENT OF THE CASE

The Appellant has filed an appeal to the Property Tax Commission challenging the decision of the Iredell County Board of Equalization and Review, which decided that the real property owned by the Appellant did not qualify for exemption from property taxes for tax years 2010, 2011, 2012, and 2013. The Appellant seeks exemption under the provisions of NCGS 105-278.7, contending that the Appellant is a "charitable association or institution" under the provisions of NCGS 105-278.7(c)(1) and that all of its real property qualifies for exemption as property wholly and exclusively used by its owner for nonprofit charitable purposes under the provisions of NCGS 105-278.7(a)(1). Iredell County contends that the Appellant is not a charitable association or institution and contends that the Appellant's real property is not wholly and exclusively used for charitable purposes.

ISSUE

In the Order on Final Pre-hearing Conference filed with the Commission, the parties did not agree on the precise phrasing of the issues, though the parties did agree on the general issues to be considered. The issues considered by the Commission are stated as follows:

1. Whether the property under appeal, consisting of two tax parcels, was owned by a "charitable association or institution" as specified in NCGS 105-278.7 as of 1 January 2010, 1 January 2011, 1 January 2012, or 1 January 2013; and

2. Whether the property under appeal, consisting of two tax parcels, or any portion of it, was wholly and exclusively used by the Appellant for a "charitable purpose" as defined in NCGS 105-278.7(f)(4) as of 1 January 2010, 1 January 2011, 1 January 2012, or 1 January 2013.

At the hearing before the Commission, the Appellant offered the testimony of Ms. Kimberly A. Clarke, Executive Director of Avalon Farm, and the testimony of Ms. Elaine Nicholson, CPA. The Appellant also offered into evidence a number of documentary exhibits. In its cross examination of the Appellant's witnesses, Iredell County offered into evidence certain cross examination exhibits. At the conclusion of the Appellant's presentation of evidence, Iredell County, through counsel, moved to dismiss the Appellant's appeal on the ground that the Appellant had failed to produce competent, material, and substantial evidence from which the Commission could conclude (1) that the Appellant was a charitable association or institution or (2) that the property under appeal was wholly and exclusively used by the Appellant for a charitable purpose.

The Commission voted unanimously to grant Iredell County's motion to dismiss because the Appellant failed to produce competent, material, and substantial evidence from which the Commission could conclude that (1) the Appellant was a charitable association or institution or (2) the property under appeal was wholly and exclusively used by the Appellant for a charitable purpose.

APPLICABLE LAW

NCGS 105-282.1(a) provides: "Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it." Numerous cases in this State's appellate courts reinforce this point. See, e.g., *In re Appeal of Master's Mission*, 152 N.C. 640, 643, 568 S.E.2d 208, 211 (2002) and *In re Appeal of Eagles Nest Foundation*, 671 S.E.2d 366, 194 N.C. App. 770 (2009). See also *In re Blue Ridge Housing of Bakersville LLC*, 738 S.E.2d 802 (2013) and *Rockingham County v. Elon College*, 13 S.E.2d 618 (N.C. 1941).

"Statutes exempting property from taxation due to the purposes for which such property is held and used must, of course, be strictly construed against exemption and in favor of taxation." *In re Forestry Foundation*, 35 N.C. App. 414, 428-29, 242 S.E.2d 492, 501 (1978) (citations omitted), *aff'd* 296 N.C. 330, 250 S.E.2d 236 (1979); see also *In re Totsland Preschool Inc.*, 180 N.C. App. 160, 164, 636 S.E.2d 292, 295 (2006) ("[a]ll ambiguities are to be resolved in favor of taxation." (citations omitted)).

NCGS 105-278.7, under which the Appellant seeks exemption, requires that, in order to qualify for exemption, the real property at issue must be owned by a nonprofit charitable association or institution, and the property must be wholly and exclusively used for a charitable purpose or purposes.

This case arises from a review of the Appellant's property conducted by the Iredell County Assessor pursuant to NCGS 105-296(l) in tax year 2013. The assessor concluded that none of the Appellant's real property qualified for property tax exemption for tax years 2010, 2011, 2012, and 2013. The Iredell County Board of Equalization and Review considered the Appellant's appeal and concluded that none of the Appellant's real property qualified for property tax exemption for tax years 2010, 2011, 2012, or 2013. From this decision, the Appellant appealed to the Property Tax Commission.

FROM THE APPLICATION FOR HEARING FILED IN THIS MATTER, THE STIPULATIONS, AND THE EVIDENCE PRESENTED AT THE HEARING, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The property under appeal consists of two tax parcels, 3796-75-1913.000 (5.00 acres and improvements) and 3796-76-2585.000 (44.84 acres).

3. The important improvements located on the property are a house and a horse barn.

4. The Appellant keeps horses on the property, and, for a fee, people are allowed to interact with the horses and engage in other activities on the property.

5. As of 8 November 2012, the Appellant owed its Executive Director, Ms. Kimberly A. Clarke, $764,225.60.

6. Under her most recent employment agreement with the Appellant, Ms. Clarke was to receive a salary of $90,000, though it does not appear to have been paid. Also, the Appellant agreed to pay Ms. Clarke's for-profit corporation $3,000 per horse per year to lease horses. In addition to paying $3,000 per year per horse to lease the horses, the Appellant agreed to be responsible for all food, upkeep, and veterinary expenses for the horses. Ms. Clarke testified that these were "rescue" horses.

7. In contrast with cases referenced above in which the Commission and the courts have found that property did qualify for exemption (e.g. *Totsland* and *Blue Ridge Housing*); the Appellant is not focused on serving needy people. In *Totsland*, all of the children served were from low income families. All of them received subsidies, so that the parents paid only a portion of the cost. *Totsland* did not compete with private, for profit day care facilities. In a similar fashion, all units in *Blue Ridge Housing* were occupied by persons of low income, each of whom qualified for some form of government housing assistance.

8. At the hearing before the Commission, Ms. Clarke testified that the Appellant does not focus on serving needy persons, and does not primarily serve persons with low income.

9. The Appellant markets its services to anyone able to pay. There is nothing in the Appellant's promotional materials about providing services for free or at a reduced rate to persons of low income. The property under appeal is used as the location for the provision of these services.

10. Ms. Clarke charges as much as $250 per hour for her services.

11. Ms. Clarke writes checks out of the Avalon Farm checking account for numerous personal expenses. There appear to be no real controls by Avalon Farm, as an entity separate and distinct from Ms. Clarke, over Ms. Clarke's activities. In substance, Avalon Farm is operated as a sole proprietorship, with Ms. Clarke as the proprietor. Ms. Clarke makes all decisions for Avalon Farm. The Board of Directors of Avalon Farm does not appear to exercise any real supervision or control over Ms. Clarke. Avalon Farm files income tax returns as a 501(c)(3) corporation, but fails to actually conduct itself as a nonprofit corporation.

12. The property under appeal is used by Avalon Farm to provide services on a fee for service basis. It is not used to provide services for free or at a substantially reduced cost to persons of low income.

13. No portion of the property under appeal is used for a "charitable purpose" as that term is defined in NCGS 105-278.7(f)(4).

14. The Appellant charges market rates for its services and makes no effort to serve persons of low income.

15. The Appellant is not a "charitable association or institution" as defined in NCGS 105-278.7(f)(4).

16. The Appellant provides services in exchange for fees. The Appellant charges market rates for its services. But the Appellant accounts for all monies it receives, including fees paid to it for services rendered, as "contributions." This is an

incorrect characterization of many of the payments the Appellant receives. There is an important difference between receiving payment for services rendered and receiving contributions (for which no services are expected) that may be used to provide services to the needy. Avalon Farm makes no distinction between the two in accounting for its receipts.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. The Appellant, **Avalon Farm**, failed to produce competent, material, and substantial evidence from which the Commission could conclude that the Appellant was a "charitable association or institution" as defined in NCGS 105-278.7(c)(1) as of 1 January 2010, 1 January 2011, 1 January 2012, or 1 January 2013.

2. The Appellant failed to produce competent, material, and substantial evidence from which the Commission could conclude that any portion of the property under appeal was wholly and exclusively used by the Appellant for a "charitable purpose" as defined in NCGS 105-278.7(f)(4) as of 1 January 2010, 1 January 2011, 1 January 2012, or 1 January 2013.

3. Because the Appellant failed to produce competent, material, and substantial evidence with regard to the two issues set out above, Iredell County's motion to dismiss should be granted.

Based on the foregoing Finding of Facts and Conclusions of Law, the Commission now Orders that the decision of the Iredell County Board of Equalization and Review for tax year 2013, concluding that no portion of the property under appeal was entitled to property tax exemption for tax years 2010, 2011, 2012, or 2013 is affirmed, and the Appellant's appeal to this Commission is dismissed.

NORTH CAROLINA PROPERTY TAX COMMISSION

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Member Smith concur.
Commission Member Morgan and then Commission Member Plyler did not participate in the hearing or deliberation of this appeal.

ENTERED: 11/10/2014
ATTEST:

Janet L. Shires, Secretary