

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD  
EQUALIZATION AND REVIEW  
15 PTC 0004

IN THE MATTER OF APPEAL OF:

**Avalon Farm**

**ORDER**

from a decision of the Iredell County  
Board of Equalization and Review  
for tax year 2014.

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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 Friday, March 13, 2015 upon Motion for Summary Judgment filed by Iredell County on the issue raised in this appeal of **Avalon Farm** (“Taxpayer” or “Appellant”) from the decision of the Iredell County Board of Equalization and Review (“County Board”) for tax year 2014.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith, Jack C. (Cal) Morgan III and Linda O. Shaw participating.

No representative or attorney appeared at the hearing on behalf of **Avalon Farm**. 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 year 2014. 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).

In its Final Decision entered on December 10, 2014, the Property Tax Commission concluded that the property under appeal did not qualify for exemption for tax years 2010, 2011, 2012, and 2013. Iredell County contends that the property under appeal was used by Taxpayer during calendar year 2014 in the same manner and for the same purposes as it was used by Taxpayer during calendar years 2010, 2011, 2012, and 2013. Accordingly, Iredell County contends that there is no genuine issue of material fact concerning the property tax exemption for the property under appeal for tax year 2014, and that the County is entitled to judgment in its favor as a matter of law.

## ISSUE

The issue considered by the Commission is stated as follows:

1. Did Iredell County show that there is no genuine issue as to any material fact in this appeal that would entitle the County to judgment as a matter of law?

At the hearing before the Commission, Iredell County, through counsel, argued that the Commission should grant the County's Motion for Summary Judgment in this appeal when there was no genuine issue as to any material fact concerning Appellant's challenge to the County Board's decision concerning the taxation of the subject property for tax year 2014. In support of its Motion for the Summary Judgment, Iredell County offered the Affidavit of Melia Miller, the Iredell County Tax Assessor (the "Assessor").

After considering the Motion for Summary Judgment, the Affidavit of the Assessor, and the Exhibits attached thereto, and all matters of record, the Commission voted unanimously to grant Iredell County's Motion for Summary Judgment because Iredell County did show that summary judgment in favor of the County was appropriate when the pleadings, the affidavit and exhibits attached thereto showed that there is no genuine issue as to any material fact concerning Appellant's challenge of the County Board's decision for tax year 2014.

## APPLICABLE LAW

Rule 56 of the North Carolina Rules of Civil Procedure provides that summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. Even though the Rules of Civil Procedure do not apply to proceedings before the Property Tax Commission,<sup>1</sup> our Supreme Court has ruled that the Commission did properly grant summary judgment in favor of the movant when there was no genuine issue as to any material fact and the undisputed facts establish that a party is entitled to judgment as a matter of law.<sup>2</sup>

**FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, THE MOTION FOR SUMMARY JUDGMENT, THE AFFIDAVIT AND EXHIBITS ATTACHED THERETO, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

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

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<sup>1</sup> See 17 N.C.A.C. 11 .0209.

<sup>2</sup> See In re Ocean Isle Palms, LLC 366 N.C. 351, 749 S.E.2d 439 (2013).

2. The subject property is located at Fair Oaks Lane, Stony Point, North Carolina and consists of two tracts identified by Iredell County as parcel numbers 3796-75-1913 (5.00 acres and improvements) and 3796-76-2585 (44.838 acres), respectively (the "Property").

3. Iredell County denied tax exemption for the Property for tax year 2014 by letter dated June 11, 2014.<sup>3</sup>

4. The Appellant appealed the non-exempt status to the County Board on June 26, 2014. In the appeal, the Appellant stated that the basis for the appeal was the same criteria it previously provided in the earlier tax years.<sup>4</sup>

5. The County Board heard the appeal of Avalon Farm at its meeting held on December 11, 2014. Ms. Kimberly Clarke appeared before the County Board and spoke on behalf of Avalon Farm. During this meeting, the Appellant represented no new evidence regarding the basis for its appeal. The Appellant did not assert that the use of the property for tax year 2014 differed in any way from the use of the property for tax years 2010, 2011, 2012, and 2013. As conducting the hearing, the County Board denied exempt status and upheld the determination that the Property did not qualify for property tax exemption under NCGS 105-278.7 for tax year 2014.

6. On December 12, 2014, the County Board mailed its Notice of Decision to the Appellant.<sup>5</sup>

7. On January 9, 2015, the Appellant filed an appeal challenging the County Board's decision with the Commission. The Notice of Appeal and Application for Hearing was signed by Ms. Kimberly Clarke and dated December 5, 2015 [sic].<sup>6</sup>

8. By final decision entered by the Commission on November 10, 2014, in the matter of 13 PTC 778, the Commission determined that the Property did not qualify for property tax exemption for tax years 2010, 2011, 2012, and 2013.<sup>7</sup>

9. In her affidavit, Melia Miller states by information and belief that there have been no changes to the operation of Avalon Farm, Inc., nor the use of the Property, that differs from the record in 13 PTC 778 that would support property tax exemption status for tax year 2014.

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<sup>3</sup> See Affidavit of Melia Miller, Iredell County Assessor and Exhibit 1 attached to her affidavit.

<sup>4</sup> See Exhibit 2 attached to Affidavit of Melia Miller.

<sup>5</sup> See Exhibit 3 attached to Affidavit of Melia Miller.

<sup>6</sup> 2014 is the correct year, but the document was December 5, 2015.

<sup>7</sup> See Exhibit 5 attached to Affidavit of Melia Miller.

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

1. Summary judgment is a method of disposing of litigation when there is no genuine issue of material fact and the undisputed facts establish that a party is entitled to judgment as a matter of law.<sup>8</sup>

2. The purpose of the motion is to avoid the time and expense of trials where only questions of law are involved and a fatal weakness in a claim is exposed. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976). Summary judgment motions provide a forecast of evidence to determine if a full hearing is necessary or if the facts are settled and the only issues for resolution are questions of law. Patterson v. Reid, 10 N.C. App. 11, 178 S.E.2d 1 (1970).


3. There are no disputed facts that the operation of Avalon Farm, Inc., nor the use of the Property, differed from the record in 13 PTC 778 that would support property tax exemption status for tax year 2014.

4. Summary judgment in favor of Iredell County is appropriate in this appeal when there is no genuine issue of material fact and the undisputed facts show that the Property did not qualify for property taxation for year 2014.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Commission grants Iredell County's Motion for Summary Judgment regarding Appellant's property tax appeal for tax year 2014.



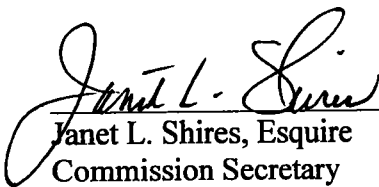
NORTH CAROLINA PROPERTY TAX COMMISSION

  
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William W. Reaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith, Morgan and Shaw concur.

ENTERED: April 17, 2015

ATTEST:

  
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Janet L. Shires, Esquire  
Commission Secretary

<sup>8</sup> N.C.R.Civ.Pro., Rule 56(c).