

NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
06 PTC 200

IN THE MATTER OF:

APPEAL OF: **Eagle's Nest Foundation**
from the Order of the Transylvania County
Board of County Commissioners concerning
tax exempt status for tax year 2006.

FINAL DECISION

This Matter came on for hearing before the North Carolina Property Tax Commission ("Commission"), sitting as the State Board of Equalization and Review in the City of Greensboro, Guilford County, North Carolina, at its regularly scheduled Session of Hearings on Thursday, November 15, 2007. This case involves the appeal of Eagle's Nest Foundation ("Appellant") from the Order of the Transylvania County Board of Equalization and Review denying Appellant's application for exemption from ad valorem taxation for the tax year January 1, 2006.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Anthony L. Young and Commissioners R. Bruce Cope, Wade F. Wilmoth, and Juleigh Sitton participating.

The Appellant was represented at the hearing by John A. Cocklereece, Jr., Esq. Charles C. Meeker, Esq. appeared at the hearing on behalf of Transylvania County.

STATEMENT OF THE CASE

The Appellant has filed an appeal with the Commission challenging the decision of the Transylvania County Board of Equalization and Review, which denied Appellant's application for tax exemption for the 2006 tax year. While Appellant initially requested an exemption pursuant to G.S. § 105-278.4 as real property used for educational purposes, Appellant subsequently amended its application for hearing to contend that it was also entitled to exemption pursuant to G.S. § 105-278.7 as real property used for educational and charitable purposes. Transylvania County contends that because Eagle's Nest Camp uses the Foundation's land and buildings as a summer camp, Appellant is not entitled to an exemption from ad valorem taxation under either G.S. § 105-278.4 or G.S. § 105-278.7.

ISSUE

In the Order on Final Pre-Hearing Conference, the parties did not agree on the precise phrasing of the issue, although the parties did agree on the general issue to be considered. The issue considered by the Commission is stated as follows:

Whether Eagle's Nest Foundation's operation of Eagle's Nest Camp meets the requirements of an educational and/or charitable purpose under G.S. § 105-278.4 and/or G.S. § 105-278.7?

After hearing Appellant's testimony, reviewing the exhibits offered and hearing argument of counsel, the Commission considered Appellant's evidence and voted unanimously to grant Transylvania County's motion to dismiss this appeal because Appellant did not carry its burden of proof to show entitlement to an exemption. See In Re Appeal of the Master's Mission, 152 N.C. 640, 643, 568 S.E. 2nd 208, 211 (2002).

BASED ON THE EVIDENCE PRESENTED ON BEHALF OF APPELLANT, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. Eagle's Nest Foundation is a non-profit corporation organized under the laws of the State of North Carolina. The Foundation has been granted exemption from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code since at least December 1, 1994. The Foundation and its predecessor camp have been in existence for decades but never have been exempt from ad valorem taxation in North Carolina.

2. The Foundation runs three programs: (a) a summer camp called Eagle's Nest Camp; (b) a two-semester winter 10th grade school called the Outdoor Academy, and (c) Hante which sponsors trips outside of Transylvania County including travel overseas.

3. Eagle's Nest Camp has a capacity of 158 campers per session and serves over 300 campers each summer. The winter school has a capacity of 35 students per semester. The most students attending the school during any one semester was 32.

4. Eagle's Nest Camp uses all the buildings and land owned by the Foundation in Transylvania County.

5. The Foundation's facilities are typical for those of a summer camp – cabins for sleeping, a lake for swimming, three ponds for water activities, horses for riding and large natural areas for a variety of outdoor activities. The summer camp's activities include hiking, swimming, canoeing, horse riding, tennis, and all kinds of arts, crafts and music. The summer camp also emphasizes community building and fellowship.

6. While the winter school is accredited as a school, Eagle's Nest Camp is not accredited as a school. Rather the summer camp is accredited by the American Camp Association. Many of the Camp's counselors are college students.

7. The Eagle's Nest Camp director testified that each camper is assigned to four activities which are intended to be part of the Foundation's philosophy to provide "experiential education." These activities include sports, crafts, art, music and the like. The director also testified that (a) grades are not given for the activities, (b) the activities do not count as course work for schools, and (c) there is no standardized end-of-activity testing.

The winter school, on the other hand, does have course work and studies typical of a high school.

8. Eagle's Nest Camp provides a varied and interesting summer camping experience including recreation, arts, crafts, music and fellowship. The Eagle's Nest brochure refers to the summer attendees as "campers."

9. The charge for Eagle's Nest Camp is approximately \$150 per day per camper, which is within the range of what other nearby summer camps charge.

10. For the year ending December 31, 2005, the Eagle's Nest Camp revenues were \$1,137,000.68. The total expenses were \$746,892.61. The surplus was \$390,108.07. After interfund transfers to the Foundation, the net surplus for the camp was \$135,715.88. The Foundation periodically has conducted capital campaigns to acquire land and build structures. The Foundation also requests contributions for operating expenses each year.

11. Eagle's Nest Camp in 2005 made charge reductions of \$106,179 for "referral discounts" to families referring other campers to the Camp and for other business purposes. Financial assistance to campers for that year was about \$20,000, which was approximately 2% of the Camp's revenues.

BASED ON THE FOREGOING FINDINGS OF FACT, THE NORTH CAROLINA PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. The Appellant bears the burden of proving that its property is entitled to the exemption under the law. See In Re Appeal of Southeastern Baptist Neurology Pulmonary Inc., 125 N.C. App. 247, 249, 520 S.E. 2nd 302, 304 (1999). "This burden is substantial and often difficult to meet because all property is subject to taxation unless exempted by a statute of statewide origin." See In Re Appeal of Atlantic Coast Conference, 112 N.C. App. 1, 4, 434 S.E. 2nd 865, 867 (1993), *aff'd*, 336 N.C. 69, 441 S.E. 2nd 550 (1994).

2. G.S. § 105-278.4 and G.S. § 105-278.7 govern tax exemptions of real property used for educational and charitable purposes.

3. Eagle's Nest Foundation has failed to carry its burden of proving that it is an educational institution as defined by G.S. § 105-278.4(f)(1). This definition includes "a university, a college, a school, a seminary, an academy, an industrial school, a public library, a museum, and similar institutions." This definition does not include summer camps, and summer camps are not similar to the institutions listed in the definition. The definition of "educational institution" covers the kind of institutions listed therein and does not generally apply to "experiential" activities. Because Eagle's Nest Camp uses all of the Foundation's buildings and land and is a principal activity of the Foundation, the Foundation has failed to show that it is an "educational institution."

4. In addition, the land and buildings owned by the Foundation and used by Eagle's Nest Camp are not of the kind commonly employed in the performance of activities naturally and properly incident to the operation of an educational institution. Likewise, the land and buildings are not wholly and exclusively used for educational purposes. See G.S. § 105-278.4(a). Rather, the site and its facilities are designed for and used as a summer camp.

5. To the extent that the camp activity in question is educational in nature, such education is incidental to the primary camp activities involving recreation, arts, crafts, music and fellowship.

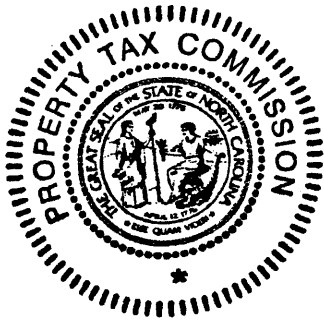
6. The Foundation also failed to carry its burden of proving that its land and building are wholly and exclusively used for a charitable purpose. G.S. § 105-278.7 defines a charitable purpose as "one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward."

7. Eagle's Nest Camp charges market rates for the summer camp and the amount of financial aid given is a small percentage (i.e., less than 2%) of the total revenue of the Camp. The Camp's use of the property thus benefits individual campers and their families, not the community at large. The Camp's daily charges are paid by almost all families, and the Camp's surplus and net surplus are substantial. Likewise, the Foundation has failed to show that it is a charitable association or institution or that it is a non-profit community or neighborhood organization. See G.S. § 105-278.7(c). The Foundation did not contend, or show, compliance with any of the other agencies listed in this subsection. Thus, the Foundation has failed to show compliance with the "charitable purpose" requirements of G.S. § 105-278.7.

8. The definition of educational purpose is the same in G.S. § 105-278.7(f) as it is in G.S. § 105-278.4(f) and, as such, Appellant has failed to show compliance with G.S. § 105-278.7(f). See Conclusions 4 and 5 above. Appellant has also failed to show compliance with G.S. § 105-278.7(c). See Conclusion 7 above.

9. Eagle's Nest Foundation has failed to carry its burden of showing that it qualifies for tax exempt status under G.S. § 105-274.4 or under G.S. § 105-278.7. Thus Transylvania County's motion to dismiss at the close of Appellant's evidence should be granted.

THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES that the decision of the Transylvania County Board of Equalization and Review, which denied an ad valorem tax exemption to the subject property for the tax year 2006, is hereby **AFFIRMED** and that the Foundation's appeal to this Commission is **dismissed**.



NORTH CAROLINA PROPERTY TAX COMMISSION

A handwritten signature in black ink, appearing to read "T. Wheeler", written over a horizontal line.

Terry L. Wheeler, Chairman

Vice Chairman Young and Commissioners Cope, Wilmoth,
and Sitton concur.

Entered: December 21, 2007

Attest:

A handwritten signature in black ink, appearing to read "Janet L. Shires", written over a horizontal line.

Janet L. Shires, General Counsel