

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
05 PTC 687

IN THE MATTER OF:
APPEAL OF FAYETTE PLACE LLC
from the decision of the Durham County
Board of Equalization and Review
denying property tax exemption for
certain real property for the 2005 tax
year.

FINAL DECISION

This Matter 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, at its regularly scheduled Session of Hearings on Thursday, April 19, 2007, pursuant to the appeal of **Fayette Place LCC** ("Appellant") from the decision of the Durham County Board of Equalization and Review ("County Board"), issued on November 2, 2005, denying Appellant's application for exemption from property taxes for tax year 2005.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Anthony L. Young and Commission members R. Bruce Cope, Wade F. Wilmoth and Harvey W. Raynor, III participating.

Attorney Joel M. Craig appeared at the hearing on behalf of the Appellant. Lucy Chavis, Assistant County Attorney, appeared on behalf of Durham County.

STATEMENT OF CASE AND FACTS

The property under appeal is a two hundred (200)-unit public housing project located on 1101 Fayetteville Street in the City of Durham, Durham County, North Carolina. This property is known as the Fayetteville Street public housing project, and the residential units are located on 19.747 acres. For tax year 2005, Durham County assessed the subject property at a total value of \$ \$2,297,382.

The subject appeal disputes the Durham County Tax Administrator's (Tax Administrator) denial of Appellant's application for exemption from ad valorem taxation for tax year 2005, and the County Board's decision confirming the Tax Administrator's decision. Appellant contends, even though it holds legal title to the property, that the

subject property is exempt from taxation because the City of Durham Housing Authority, which is an instrument of government, continues to exercise complete management and control of the property, operates the subject property as low income housing in accordance with its public purpose, and is the sole owner of the subsidiary corporate entities that own record title. As a result, the principal issue is Appellant's status as an instrumentality of the Housing Authority of the City of Durham ("Housing Authority"), a quasi-governmental entity that is exempt from taxation under the Machinery Act and Art. V Sec. 2(3) of the North Carolina Constitution.

Durham County maintains that the subject property is not totally exempt from ad valorem taxation due to the ownership of the property. Durham County further maintains that when a percentage of the property (1%) is vested in a for profit entity, then the property is therefore taxable. Therefore, Durham County argues that the structure of the ownership prevents the property from being exempt for ad valorem tax purposes. As a result, Durham County requests the Commission to affirm the decision of the County Board in this matter.

ISSUE

In the Order on Final Pre-Hearing Conference, the parties did not agree on the issue to be presented to the Commission. The Commission considers the following issue:

Is the subject property exempt from ad valorem taxation under N. C. Gen. Stat. § 105-278.1, N. C. Gen. § 157-26 and Article V, Sec. 2(3) of the North Carolina Constitution?

FROM THE APPLICATION FILED IN THIS MATTER, ANY STIPULATIONS AND EVIDENCE PRESENTED, 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 subject to this appeal is a two hundred (200)-unit public housing project for residential tenants located 1101 Fayetteville Street in the City of Durham, Durham County, North Carolina. This property is known as the Fayetteville Street public housing project and the residential units are located on 19.747 acres.
3. The improvements of the subject property consist of 1960s-era housing, and in 2004, about 20% of the units were occupied. For tax year 2005, Durham County assessed the subject property at a total value of \$2,297,382.

4. For tax year 2005, Appellant submitted an application for tax exemption of the subject property to the Tax Administrator. The Tax Administrator denied Appellant's application and the Appellant filed an appeal with the County Board. By decision dated November 2, 2005, the County Board affirmed the taxation and valuation of the subject property at a total value of \$2,297,382. Thereafter, Appellant filed a timely notice of appeal and Application for Hearing with the Commission.

5. At the hearing, the Commission heard testimony that Fayette Place, LLC, (Appellant), is a North Carolina limited liability company that holds legal title to the subject property. The members and owners of Appellant are Development Ventures, Inc., a North Carolina non-profit corporation which is wholly owned by the City of Durham Housing Authority ("Housing Authority") and which owns 99% of Appellant and Creative Housing, Inc. a North Carolina business corporation, which is wholly owned by Development Ventures, Inc., which owns 1% of Appellant.

6. In 2002, Appellant was formed to redevelop the Fayetteville Street public housing project as an Affordable Housing Community under U.S. Department of Housing and Urban Development regulations. Prior to the purchase of the subject property, the subject property was owned by the City of Durham Housing Authority and was not subject to ad valorem taxation.

7. Upon conveyance of the subject property to Appellant, the property was subject to a Declaration of Restrictive Covenants, which establishes that the property must be managed as a qualified affordable housing project. Thus, the subject property is used and occupied by low-income tenants in furtherance of the Housing Authority's public function.

8. Even though legal title to the subject property vested in Appellant as of the date of the transfer (December 30, 2002), the Housing Authority exercises complete management and control over this public housing project. The Housing Authority operates the property as low-income housing in accordance with its public purpose.

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

1. The Commission has jurisdiction to hear this appeal and to determine whether the subject property qualifies for property tax exemption under N. C. Gen. Stat. § 105-278.1, N. C. Gen. § 157-26 and Article V, Sec. 2(3) of the North Carolina Constitution.

2. N.C. Gen. Stat. § 105-278.1 provides for the exemption of real and personal property owned by units of governments. N.C. Gen. Stat. § 105-278.1(3)(d) provides that a housing authority created under G.S. 157-4 or G.S. 157-4.1 is a unit of local government of this State.

3. The North Carolina Constitution states: "Property belonging to the State, counties and municipal corporations shall be exempt from taxation." (N.C. Const. Art. V, Sec. 2(3)). Where a non-governmental entity holds title to real property in trust for the benefit of an agency of the state, the property "belongs to" the state and is exempt. *In re Appeal of Appalachian Student Housing Corp.*, 165 N.C. App. 379, 598 S.E.2d 701, appeal dismissed 359 N.C. 68, 604 S.E.2d 307 (2004).

4. As to this appeal, the ownership of record title in Appellant (Fayette Place, LLC) does not change the fact that the City of Durham Housing Authority exercises exclusive control over the use of the subject property and that the subject property "belongs to" the Housing Authority.

5. The subject property is exempt from taxation as provided in N.C. Gen. Stat. § 105-278.1(3)(d) since the subject property "belongs to" a housing authority and the property is exclusively occupied for low income housing as required under the Machinery Act.

6. As the Housing Authority's property, the subject property is exempt from taxation under the North Carolina Constitution and the applicable statutes of the Machinery Act.

7. The County Board improperly affirmed the Tax Administrator's decision that denied Appellant's application for exemption from ad valorem taxation of the subject property for tax year 2005.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS, AND DECREES that the decision of the Durham County Board of Equalization and Review is hereby Reversed and that Appellant's application for property tax exemption for the subject property is Granted for tax year 2005.

NORTH CAROLINA PROPERTY TAX COMMISSION



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Terry L. Wheeler, Chairman

Commissioner Wilmoth and Raynor concur. Vice Chairman Young and Commissioner Cope respectfully dissent.

Entered: August 7, 2007

Attest:

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

Janet L. Shires, General Counsel