

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
10 PTC 901

IN THE MATTER OF:  
THE APPEAL OF: **NC Yadkin House, LLC**  
from the decision of the Rowan County  
Board of Equalization and Review  
revoking *ad valorem* property tax  
exemption status for certain  
property for tax years 2009 and 2010.

**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 at its regularly scheduled Session of Hearings in the City of Raleigh, Wake County, North Carolina on Thursday, November 17, 2011, pursuant to the appeal of **NC Yadkin House, LLC** ("Appellant") from the decision of the Rowan County Board of Equalization and Review ("County Board") removing certain property from property tax exemption status effective for tax years 2009 and 2010.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Paul Pittman and Commission members Aaron W. Plyler, Georgette Dixon and William W. Peaslee participating.

E.D. Gaskins, Jr., Esquire and Averill C. Harkey, Esquire, appeared at the hearing as counsel for the Appellant. Charles C. Meeker, Esquire, appeared at the hearing as counsel for Rowan County.

**STATEMENT OF THE CASE**

The Appellant, NC Yadkin House LLC ("Yadkin House"), is appealing the decision of the Rowan County Board of Equalization and Review ("County Board") affirming the Rowan County Assessor's ("County Assessor") determination that the subject property (apartment building consisting of 67 units) did not qualify for property tax exemption for tax years 2009 and 2010. In tax year 2008, The County Assessor granted Appellant's application requesting an exemption from *ad valorem* property taxation for the subject property on the grounds that Appellant is a non-profit organization providing housing for individuals or families with low to moderate incomes. In granting the 2008 *ad valorem* property tax exemption, the County Assessor determined that the property under appeal is actually and exclusively occupied and used by Yadkin House for charitable purposes.

For tax years 2009 and 2010, the County Assessor revoked the *ad valorem* property tax exemption that was previously granted to Appellant; and upon Appellant's challenge of the County Assessor's revocation of the *ad valorem* property tax exemption status of the subject property, the County Board affirmed the County Assessor's decision to remove the subject property from *ad valorem* tax exemption status effective for tax years 2009 and 2010; and affirmed Rowan County's assessment and discovery of the subject property at a total value of

\$2,100,547 for tax years 2009 and 2010.<sup>1</sup> Thereafter, Yadkin House paid the taxes and filed its Notice of Appeal and Application for Hearing with the Commission. In the appeal to the Commission, Appellant requests the Commission to reverse the decision of the County Board and rule that the subject property be exempt from *ad valorem* taxation as provided in N.C. Gen. Stat. § 105-278.6(a)(8). Rowan County objects to Appellant's request for exemption from *ad valorem* taxation as provided in N.C. Gen. Stat. § 105-278.6(a)(8) by contending that Appellant does meet the (a) ownership or (b) use requirements of a charity. As such, Rowan County requests the Commission to affirm the decision of the County Board.

## ISSUES

In the Order on Final Pre-Hearing Conference, the parties did not agree upon the issues to be presented to the Commission. The contested issues that were considered and tried by the Commission are stated as follows:

1. Does the subject property qualify for exemption from *ad valorem* taxation as provided in N.C. Gen. Stat. § 105-278.6(a)(8)?
2. Was Rowan County's revocation of *ad valorem* property tax exemption status for the subject property for tax years 2009 and 2010; and the discovery and taxation of the subject property; and the County Board's decision to uphold the revocation, discovery and taxation of the subject property proper under the provisions of the North Carolina Machinery Act and applicable North Carolina case law?

### **FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, ANY STIPULATIONS AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. The Appellant, NC Yadkin House, LLC ("NC Yadkin") is a single purpose limited liability company that was organized and established as the record owner of the property subject to this appeal.

2. The subject property (a sixty-seven (67) unit apartment building) is located at 201 N. Lee Street, in Salisbury, North Carolina, is rented to Section 8 low income tenants. One hundred percent (100%) of the apartment units qualify as HUD federally funded and approved Section 8 rentals.

3. The sole member of NC Yadkin is American Housing Foundation of North Carolina, LLC ("AHF-NC, LLC").

4. American Housing Foundation, Inc, ("AHF"), a Texas corporation that organized as a non-profit entity in 1989, is the parent of NC Yadkin and sole owner of AHF-NC, LLC. AHF's sole purpose, as stated in its Certificate of Incorporation,<sup>2</sup> is as follows:

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<sup>1</sup> See County Board's Notice of decision mailed on October 20, 2010.

<sup>2</sup> See Appellant's Exhibit 17.

The specific and primary purposes are to foster in the community the enthusiasm, hope and joy that comes from being servants to each other, by helping each other meet their physical needs for good housing, good health, and rewarding work, their emotional and intellectual needs for a caring and sharing community, and their needs to love and communion with God. This brotherhood and fellowship in the everyday lives of men, women and children shall be demonstrated through the development of adequate housing and any further activities that would enhance the lives of those involved in the housing program, and in particular, this corporation shall foster low-income housing. This charter also provides explicitly that:

No part of the net earnings of the corporation shall inure to the benefit of any director of the corporation, or any private individual, except that the corporation shall be authorized and empowered to pay a reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth [above].

5. AHF requested the Internal Revenue Service for and received recognition as a tax-exempt charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code in May, 1990. AHF still holds that designation and operates in various states through wholly-owned subsidiaries, all of which provide low-income housing, consistent with the charter of AHF.

6. AHF-NC, LLC ("AHF-NC") was formed in February 2008. AHF is its sole member and owner. Distributions of cash or property generated by AHF-NC can be paid only to its parent, AHF, for the purposes set forth in the AHF Charter.<sup>3</sup>

7. AHF-NC in turn organized NC Yadkin House, LLC ("NC Yadkin") in February 2008 in order to operate a low-income housing facility in Salisbury, Rowan County, North Carolina. The sole member of Yadkin House is AHF-NC. All distributions of cash or property made by Yadkin House can be paid only to AHF-NC for the purposes set forth in AHF's Charter.<sup>4</sup>

8. All the AHF entities, including NC Yadkin, have 501(c)(3) designations by virtue of being wholly-owned subsidiaries of the parent, AHF. AHF files a consolidated tax return for itself and all its subsidiaries, including NC Yadkin.

9. NC Yadkin acquired the subject property in Salisbury, North Carolina, for low-income housing in October 2008. For tax year 2009, the County Assessor granted Appellant's application requesting an exemption from *ad valorem* property taxation for the subject property on the grounds that Appellant is a non-profit organization providing housing for individuals or families with low to moderate incomes. *See* N.C. Gen. Stat. § 105-278.6(a)(8).

10. NC Yadkin operates the subject property (sixty-seven (67) rental units), under the guidelines and pursuant to HUD Section 8 regulations, which only allows tenants to be individuals with incomes of thirty (30) percent less than the median income for Rowan County.

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<sup>3</sup> See Finding of Fact Number 5 above.

<sup>4</sup> *Id.*

11. By letter dated January 20, 2010,<sup>5</sup> Rowan County revoked ad valorem property tax exemption status for the subject property based upon the following:

“This notice is to inform you that property tax exemption has been removed from the the above referenced parcel for 2009 and 2010 and the property is being discovered for 2009 and 2010. Based on a review of the property tax exemption for the above referenced parcel it is the county Tax Administrator’s determination that the property does not meet the qualifications of North Carolina General Statute 105-278.6, Real and Personal Used for Charitable Purposes, for property tax exemption because the property does not meet the description of a “charitable purpose” as described in G.S. 105-278.6(b). The property owner is receiving lease payments at market rate for the units in the building on this parcel and therefore the use of this property does not meet the statute’s description of a charitable purpose which describes 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.”

12. When basing the revocation of *ad valorem* property tax exemption status for the subject property on the statement [above], Rowan County ignores the fact that providing low income housing pursuant to Section 8 is not a commercial enterprise since NC Yadkin’s ability to sustain operation losses has been accomplished only through the substantial capital contribution made by AHF through AFH-NC to NC Yadkin in establishing this non-profit entity for the specific purpose of partially meeting Rowan County’s need for low-income housing.<sup>6</sup>

13. AHF’s ownership interest in NC Yadkin allows the subject property to qualify for exemption from *ad valorem* taxation such that it should be exempt from *ad valorem* taxation as provided in N. C. Gen. Stat. § 105-278.6(a)(8).

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

1. Real and personal property owned by a nonprofit organization providing housing for individuals or families with low or moderate incomes shall be exempted from taxation if: “(i) As to real property, it is actually and exclusively occupied and used, and as to personal property, it is entirely and completely used, by the owner for charitable purposes; and (ii) the owner is not organized or operated for profit.” *See* N. C. Gen. Stat. § 105-278.6(a)(8). This statute expresses the General Assembly’s intention to exempt from *ad valorem* taxation real and personal property of a “non-profit organization, such as AHF’s and NC Yadkin’s sole activity, which is providing housing for individuals and families with low to moderate incomes.

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<sup>5</sup> See Appellant Exhibit 5.

<sup>6</sup> See N.C. Gen. Stat. § 105-259 as to the confidentiality of financial statements and income information. As such, the Commission will not address the particulars of entities financial and income information in this final decision.

2. In order to qualify for the exemption, the owner must use its real and personal property solely for “charitable purposes”, and, the owner cannot be organized or operated for profit. N. C. Gen. Stat. § 105-278.6(a)(8)(b) provides that: “A charitable purpose within the meaning of this section is 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. The humane treatment of animals is also a charitable purpose.”

3. AHF is a nonprofit organization that is the sole member and owner of AHF-NC. AHF-NC organized NC Yadkin to operate a low-income housing facility in Salisbury, Rowan County, North Carolina, and AHF-NC is the sole member of NC Yadkin.

4. Yadkin House meets the statutory criteria when AHF’s specific and primary purposes are to foster in the community the enthusiasm, hope and joy that comes from being servants to each other, by helping each other meet their physical needs for good housing, good health, and rewarding work, their emotional and intellectual needs for a caring and sharing community, and their needs to love and communion with God. This brotherhood and fellowship in the everyday lives of men, women and children shall be demonstrated through the development of adequate housing and any further activities that would enhance the lives of those involved in the housing program, and in particular, this corporation shall foster low-income housing; and when no part of the net earnings of the corporation shall inure to the benefit of any director of the corporation, or any private individual, except that the corporation shall be authorized and empowered to pay a reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth therein.<sup>7</sup>

5. Rowan County’s basis<sup>8</sup> for revoking *ad valorem* property tax exemption status for the subject property ignores the specific holding of the North Carolina Court of Appeals in the matter of In re Tot’s Land.<sup>9</sup> In that case, the Court of Appeals held that “the purpose of the activities and the actual use of the funds to be the controlling factors, rather than the source of the funds.” 180 N.C. App. 168. In this appeal, as in that case, a non-profit corporation was receiving government funding, which it in turn was using the funds for a charitable purpose.

6. Since the subject property is entirely and completely used by the owner for charitable purposes; and (ii) the owner is not organized or operated for profit, then the property meets all the statutory criteria for exemption as described in applicable case law. As such, the subject property qualifies for exemption from *ad valorem* taxation, as provided in N. C. Gen. Stat. § 105-278.6(a)(8); and the County Assessor’s discovery and taxation of the subject property, and the County Board’s decision to uphold the discovery and taxation is not proper under the provisions of the Machinery Act and applicable North Carolina case law.

**WHEREFORE, THE COMMISSION ORDERS AND DECREES** that the decision of the County Board is reversed; and the subject is granted an exempt from *ad valorem* taxation for the years subject to this appeal.

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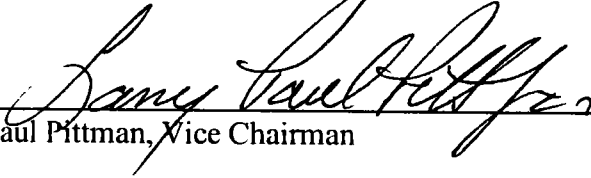
<sup>7</sup> See Finding of Fact Number 5 above.

<sup>8</sup> See Finding of Fact Number 12 above.

<sup>9</sup> In re Tot’s Land, 180 N.C. App. 160, 636 S.E.2d 292 (2006). See also In re Taxable Status, 45 N.C. App. 632, 263 S.E.2d 838 (1980).



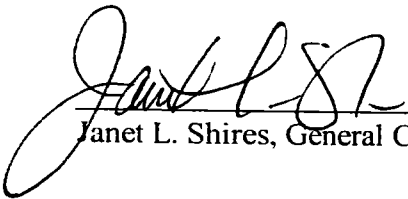
NORTH CAROLINA PROPERTY TAX COMMISSION

  
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Paul Pittman, Vice Chairman

Commission members Plyler, Dixon and Peaslee concur.  
Chairman Terry L. Wheeler respectfully dissents.

Entered: March 20, 2012

Attest:

  
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Janet L. Shires, General Counsel