

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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

IN THE MATTER OF THE APPEAL OF:

**ENDRES CUSTOM HOMES, INC.,**

**20 PTC 0541**

Appellant

From the decision of the Buncombe County  
Board of Equalization and Review

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## **ORDER**

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 Raleigh, Wake County, North Carolina on Monday, September 19, 2022, pursuant to the Appellant’s appeal from the decision of the Buncombe County Board of Equalization and Review (“Board”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Member William W. Peaslee participating.

Attorney Curtis W. Euler appeared on behalf of Buncombe County (“County”). Dustin Endres, President of Endres Custom Homes, Inc., appeared on behalf of the Appellant, pursuant to the provisions of N.C. Gen. Stat. §105-290(d2).

### **STATEMENT OF THE CASE**

On or about November 29, 2018, the Appellant acquired property situated partly in Buncombe County, North Carolina, and identified by the County as Parcel Number 0628-51-5083-00000. At the time of transfer to the Appellant, the property was enrolled in the Present-Use Value (“PUV”) program as forestland. The County subsequently determined that the Appellant did not qualify for participation in the PUV program, and both removed the subject property from the PUV program and issued a deferred tax bill for the property.

The Appellant appealed the removal of the property from the PUV program to the Buncombe County Board of Equalization and Review (“Board”), and the Board determined that the Appellant did not meet the statutory requirements to participate in the PUV program. The Appellant appeals to the Commission concerning the Board’s decision.

## **ANALYSIS AND ISSUES**

The Present-Use Value program is governed by N.C. Gen. Stat. §105-277.2 through §105-277.7. In the program, property must meet certain statutory requirements in order to qualify for participation as agricultural land, horticultural land, or forestland. The program includes specific provisions as to the types of owners that may qualify for participation in the PUV program [N.C. Gen. Stat. §105-277.2(4)].

In this appeal, the issue presented for the Commission is whether the Appellant qualifies to participate in the PUV program.

### **FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. At the outset of the hearing, the County moved to dismiss the Appellant's appeal because the Appellant had failed to enter into the prehearing order required by Commission rules (17 NCAC 11 .0214). The Commission held the motion in abeyance in order to consider the Appellant's underlying appeal.
2. The Appellant is a business corporation registered in the state of Minnesota.
3. N.C. Gen. Stat. §105-277.2(4) defines the term "individually owned" to include certain business entities. One of the requirements for a business entity to qualify for PUV is that "[i]ts principal business is farming agricultural land, horticultural land, or forestland" [N.C. Gen. Stat. §105-277.2(4)(b)(1)].
4. At the hearing, Mr. Endres testified on behalf of the Appellant that the Appellant's primary business is the building of custom homes. This position is further supported by documents submitted by the Appellant, and it appears undisputed that the principal business of the Appellant is, in fact, the building of custom homes. Accordingly, we find that the Appellant's principal business is the building of custom homes, and not the farming of agricultural land, horticultural land, or forestland.
5. The Appellant contends that the choice of ownership form is irrelevant, because the Appellant business entity is ultimately owned by an individual that could himself be a qualifying owner, and also because the individual could have chosen to acquire the property through another business entity that did have the principal business of farming agricultural land, horticultural land, or forestland. Nonetheless, the testimony and documentary evidence before us demonstrates that the Appellant was specifically chosen to be the acquiring entity of the subject property, and that the

Appellant is neither an individual nor a business entity with the principal business of farming agricultural land, horticultural land, or forestland. Accordingly, we give little weight to the Appellant's contentions as to this point.

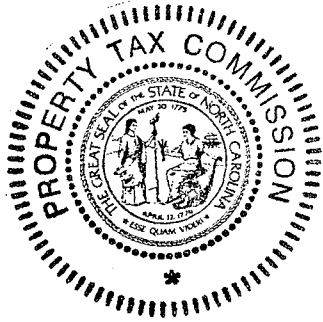
6. The Appellant contends further that allowing only certain business entities to participate in the PUV program is discriminatory and unconstitutional, specifically contending that such treatment denies it equal protection. These arguments have been previously considered by the North Carolina courts (see, for example, *In re Consol. Appeals of Certain Timber Cos.*, 98 N.C. App 412, 391 S.E.2d 503 (1990)), and the courts have determined that the statutory PUV ownership distinctions are not illegally discriminatory; do not violate federal or state equal protection clauses; and do serve a compelling governmental interest. Accordingly, we give little weight to the Appellant's contentions as to this point.
7. At the close of the Appellant's testimony, the County moved to dismiss the Appellant's appeal on the basis that all evidence before the Commission demonstrates that the Appellant is not a qualifying entity under the statutory PUV program requirements.

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

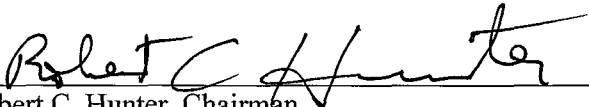
1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. Because it is undisputed that the Appellant is not a business entity with the principal business of farming agricultural land, horticultural land, or forestland, the Appellant has not met the ownership qualification requirements of N.C. Gen. Stat. §105-277.2(4). Accordingly, the Appellant cannot participate in the Present-Use Value program.
3. The County properly moved to dismiss the Appellant's appeal when all evidence demonstrates that, as a matter of law, the Appellant cannot participate in the Present-Use Value program.

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**WHEREFORE**, the Commission orders and decrees that this appeal should be, and is hereby, dismissed; and that the decision of the Buncombe County Board of Equalization and Review, determining that the Appellant does not meet the statutory requirements for participation in the Present-Use Value program, is affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION

  
Robert C. Hunter, Chairman

Vice Chairman Wheeler and  
Commission Member Peaslee concur.

ATTEST:

  
Stephen W. Pelfrey, Commission Secretary

Date Entered: 11-2-2022