

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:

**LEINWOOD VII LLC,**  
**Appellant**

**20 PTC 0574**

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

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## **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 Raleigh, Wake County, North Carolina on Wednesday, August 11, 2021, pursuant to the Appellant’s appeal from the decision of the Forsyth County Board of Equalization and Review (“Board”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members Alexander A. Guess and June W. Michaux participating.

Attorney Frederick P. Johnson appeared on behalf of Forsyth County (“County”). Attorney John A. Cocklereece, Jr., appeared on behalf of the Appellant.

## **STATEMENT OF THE CASE**

The Appellant is the owner of a condominium unit (designated by the County as REID 6835-16-1741) that is a part of a property that was formerly the location of a YMCA facility. The former YMCA property was made subject to a historic landmark ordinance enacted by the City of Winston-Salem as of December 18, 1995.

N.C. Gen. Stat. §105-278 provides a 50% property tax deferral for certain property designated as a historic landmark. Prior to the 2020 tax year, the County applied the 50% deferral to the appraised value of the entire property, including the Appellant’s condominium unit. In the course of conducting an audit of the property’s participation in the historic landmark deferral program, the county assessor concluded that the historic landmark designation applied only to specific elements of the property, and not to the entire property. Accordingly, the County

determined that the appropriate effective deferral amount for the Appellant’s condominium unit, as of tax year 2020, was not 50% of the unit’s total value, but rather 35.5% of the unit’s total value.

The Appellant subsequently appealed this determination to the Board, which affirmed the County’s deferral amount. The Appellant timely appealed the Board’s decision to the Commission.

### **ANALYSIS AND ISSUES**

N.C. Gen. Stat. §105-278 provides in pertinent part as follows:

“Real property...designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is designated a special class of property.... Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property....”

The initial issue presented for the Commission is whether the historic landmark designation may apply to specific elements of a property, or must apply to the entire property.

If the Commission determines that the historic landmark designation may apply to less than the entire property, then the Commission must determine whether the local ordinance was intended to apply to specific elements of the property or to the entire property.

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

1. In the jointly-submitted Order on Final Prehearing Conference (see Taxpayer Exhibit 1), the parties stipulated to the facts and evidence set out therein, and stipulated further to the Commission’s jurisdiction over the parties and the subject matter of this appeal.
2. N.C. Gen. Stat. §160A-400.5, referred to in N.C. Gen. Stat. §105-278, was repealed (effective June 19, 2020) by Session Law 2019-111, with its relevant provisions being now located in Chapter 160D of the North Carolina General Statutes. Except for the change of “ordinance” to “regulation,” the language directing and authorizing the designation of historic landmarks is identical in each version:

(REMAINING SPACE INTENTIONALLY BLANK)

Former N.C. Gen. Stat. §160A-400.5:

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary.

Current N.C. Gen. Stat. §160D-945:

The regulation shall describe each property designated in the regulation, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary.

3. Each version of the statutory language directs that the ordinance/regulation describe “those elements of the property that are integral to its historical, architectural, or prehistorical value.” Therefore, the plain language of each version contemplates that some, but not necessarily all, of a property’s components have historical, architectural, or prehistorical value.
4. Because the language of N.C. Gen. Stat. §105-278 limits its application to property “designated as a historic landmark,” the property tax deferral program can only apply to the specific property that is so designated by the local ordinance.
5. Because specific elements of a property can be designated as having historical value, and because the deferral program offered by N.C. Gen. Stat. §105-278 applies only to specifically designated property, we find that the historic property deferral program can apply to portions of a particular tax parcel, and does not necessarily apply to all real property comprising the parcel.
6. The local ordinance (“ordinance”) at issue in this matter was adopted by the City of Winston-Salem (“City”) as of December 18, 1995, and provides in pertinent part as follows:

Section 1. The following described property is hereby designated a historic landmark:

The (former) Spruce Street YMCA, entire exterior of the building, specified interior features on the main floor of the building (front entrances doors and woodwork, molded plaster cornices and wood-paneled fireplaces at the north and south ends of the building, and hardwood gymnasium flooring), and Tax Block 6107, Lots 511A, 511B, 511D, 511G, 511H, and 512, located at 315 North Spruce Street in Winston-Salem. This property is owned by Horn and Stronach, William K. Pixley d/b/a Oldtown Properties, R. Kenneth Babb, Carroll L. and Kay L. Teeter, and Spruce Street Associates, Ltd.

7. The Appellant contends that the description provided in the ordinance was intended to be cumulative, such that all components (e.g., the identification of the property, the specifically listed elements, the entirety of the named tax parcels, and the listing of a single street address for the property) were meant to be designated as part of the overall historic landmark.
8. When considered in light of the language of former N.C. Gen. Stat. §160A-400.5, however, it appears that each of the descriptive components coincide with the requirements of that statute: the property is described by name and by address; the names of the owners are listed; the elements of the property having historical value are designated; and the land area is described by tax parcel name. We find no reason to assume that the ordinance was intended to apply to the entirety of the (former) Spruce Street YMCA building.
9. In the jointly-submitted Order on Final Prehearing Conference, the parties expressly stipulated that the affidavit of Michelle McCullough (see County Exhibit 11) could be received into evidence without further identification or proof. In the affidavit, Ms. McCullough is identified as the Project Planner and Historical Resources Officer for the City-County Planning Department, a joint department of the City of Winston-Salem and Forsyth County, administered by the City (see Item 1 of the affidavit).
10. Ms. McCullough stated further in her affidavit that the ordinance declares the “entire exterior of the building, specified interior features on the main floor of the building (front entrances doors and woodwork, molded plaster cornices and wood-paneled fireplaces at the north and south ends of the building, and hardwood gymnasium flooring)” to be a historic landmark at the [former] Spruce Street YMCA (Item 9 of the affidavit); that the City considers some landmarks to be “full” landmarks and others to be “partial” landmarks (Item 12 and Exhibit G of the affidavit); and that the City does not consider the condominium units within the interior of the (former) Spruce Street YMCA to be part of the landmark (Item 14 of the affidavit).
11. Accordingly, we find through both the original language of the City’s ordinance and the interpretation and application of the ordinance by the City itself that the ordinance was not intended to apply to the entirety of the (former) Spruce Street YMCA, but only to certain elements of the property, as specified in the ordinance.
12. The parties further stipulated that the County had applied the historic property tax deferral offered by N.C. Gen. Stat. §105-278 to the entirety of the (former) Spruce Street YMCA prior to the 2020 tax year, at which point the County concluded that the deferral applied only to the

named elements of the property. The Appellant contends that this action represented the County's ongoing interpretation of the ordinance, and that there was no reason to interpret the ordinance differently many years later. While we can understand that the change in the County's application of the deferral program as of tax year 2020 might raise questions from the condominium owners, the City's ordinance must be interpreted in a way that effectuates the City's intent, and the evidence before us (for example, Item 13 of the McCullough affidavit) indicates that the City has intended, since the inception of the ordinance, to designate only certain elements of the (former) Spruce Street YMCA as historical landmarks.

13. Accordingly, we find that the ordinance applies only to the specific features of the entire property as are set out in the ordinance, and that, therefore, the historic property tax deferral offered by N.C. Gen. Stat. §105-278 applies only to those elements.
14. Because there is no alternative evidence of the amount of the effective deferral, we find that the appropriate effective deferral amount of the condominium unit that is the subject of this appeal is 35.5% of its total value.

**WHEREFORE**, the Commission affirms the decision of the Board, and herewith orders and decrees that the property under appeal is to be assessed for the 2020 tax year at an amount that represents a 35.5% deferral of the unit's total value.

NORTH CAROLINA PROPERTY TAX COMMISSION



*T. Wheeler*

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Terry L. Wheeler, Vice Chairman

Commission Members Guess and Michaux concur.

Chairman Hunter dissents with separate opinion.

ATTEST:

*Stephen W. Pelfrey*

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Stephen W. Pelfrey, Commission Secretary

Date Entered: 12. 06. 2021

## DISSENT

I respectfully dissent from the majority's decision, because it is undisputed that the County had consistently interpreted the ordinance as applicable to the entirety of the (former) Spruce Street YMCA for a number of years in applying the historic property tax deferral offered by N.C. Gen. Stat. §105-278. Presumably, that interpretation was made contemporaneously with the adoption of the ordinance, and therefore, with full knowledge of the ordinance's intent. There is no evidence before us that either the ordinance or the property itself has changed during the period for which it has remained qualified for the historic property tax deferral. Neither have the provisions of N.C. Gen. Stat. §105-278 changed during that time. Accordingly, I find no reason that the County should suddenly determine as of 2020 that the property no longer fully qualified for the benefit of the historic deferral.

At the hearing, the County's witness, Forsyth County assessor and collector John T. Burgiss, testified that the County had only changed its calculation of the benefit, and not the application of the benefit itself. It appears, however, that the County actually did change its interpretation and application of the statute, when it determined that the statute applied only to certain parts of the (former) Spruce Street YMCA property, having previously concluded that the statute applied to its entirety.

For these reasons, it is my opinion that the Appellant is entitled to have the statutory deferral applied to all of the property under appeal, and it was my vote to do so.



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Robert C. Hunter, Chairman