

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:

**CHAPEL HILL POST NO. 6,
AMERICAN LEGION, INC.,
Appellant**

19 PTC 0428

From the decision of the Orange
County Board of Commissioners

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 Monday, August 9, 2021, pursuant to the Appellant’s appeal from the decision of the Orange County Board of Commissioners (“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 Anne Marie Tosco appeared on behalf of Orange County (“County”). Attorney Charles G. Brown appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The property under appeal consists of two parcels, one of which is approximately 56 acres in size and identified by the County with PIN 9749101791, and the other parcel being approximately 69 acres in size and identified by the County with PIN 9748194003 (collectively, the “subject property”). The subject property was acquired by the Appellant by deed recorded February 15, 2018. The Appellant subsequently applied for the exclusion of the property for tax year 2018 under the provisions of N.C. Gen. Stat. §105-275(17).

In January of 2019, the County mailed the Appellant 2018 tax bills for the subject property, and also mailed the Appellant a letter denying the Appellant’s exclusion application for the 2018

tax year. On June 27, 2019, the Board upheld the County's denial of the 2018 application. The Appellant appealed the Board's decision to the Commission.

ANALYSIS AND ISSUES

N.C. Gen. Stat §105-275 provides for the exclusion of various properties from the property tax. The specific exclusion sought by the Appellant is governed by N.C. Gen. Stat §105-275(17), which provides in pertinent part for an exclusion as follows:

“Real and personal property belonging to the American Legion...and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon.”

In this appeal, the issue presented for the Commission is whether the property met the statutory requirements to qualify for the exclusion for tax year 2018.

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

1. The Appellant is a local post of the American Legion
2. The Appellant became record owner of the subject property as of February 15, 2018, the date of the recording of the deed for the subject property to the Appellant. We find, therefore, that as of January 1, 2018, the subject property was not owned by an entity that would qualify for the exclusion provided by N.C. Gen. Stat §105-275(17).
3. The Appellant's witness, Mr. William E. Munsee, testified that, as of January 1, 2018, the Appellant was using another property, under a rental arrangement, for meeting purposes, and was not using any other location for meeting purposes at that time.
4. In its application for the exclusion as submitted to the County and dated February 21, 2018, the Appellant sought only the exclusion provided by N.C. Gen. Stat §105-275(17), and also therein described the subject property as the location “where Post 6 will construct its new home,” and stated that the subject property “will be used to support veteran and youth programs of the American Legion.”
5. We find, therefore, that the subject property was not used “exclusively for meeting or lodge purposes” as of January 1, 2018.

6. At the hearing, the Appellant contended alternately that the subject property should qualify for the exemption provided by N.C. Gen. Stat §105-278.7¹, applicable to “a veterans’ organization,” among other listed agencies. Even if the Appellant is the type of organization intended by this exemption program, we note again that the Appellant was not the owner of the subject property as of January 1, 2018. Furthermore, the “veterans’ organization” exemption applies to “buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building.”² The Appellant’s application for the exclusion suggested that there was no building situated upon the subject property as of January 1, 2018, and in any event, there is no evidence before us that there was a qualifying use, within the context of N.C. Gen. Stat §105-278.7, of the subject property as of January 1, 2018. Accordingly, we find that the Appellant neither owned nor used the subject property as required for the N.C. Gen. Stat §105-278.7 exemption, as of January 1, 2018.

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. N.C. Gen. Stat. §105-285(d) provides in pertinent part that “[t]he ownership of real property shall be determined annually as of January 1,” except for limited circumstances that do not apply here. Therefore, for purposes of tax year 2018, the owner of the subject property is not the Appellant, but rather another owner that did not and does not qualify for the exclusion or exemption sought by the Appellant.
3. Many property tax exemption and exclusion programs require both a qualifying owner and a qualifying use as of January 1 of the tax year in question. For example, “Requests for exemption are based upon the use of the property as of January 1 of the tax year at issue. Each property owner applying for an exemption has the burden of proving that it is entitled to such exemption....Therefore, in order to qualify for the religious property tax exemption, Appellant has the burden of proving that it was using a building on the property wholly and exclusively for religious purposes as of 1 January 2012 [the tax year at issue].”³

¹ N.C. Gen. Stat §105-278.7(c)(3)

² N.C. Gen. Stat §105-278.7(a)

³ *In re Vienna Baptist Church*, 241 N.C. App 268 (2015) [further citation omitted from quote]

4. In this matter, the Appellant neither owned the subject property, nor used it for an excludible or exemptible purpose, as of January 1, 2018, the tax year at issue in this appeal.

Accordingly, we find that the subject property does not qualify either for the exclusion provided by N.C. Gen. Stat §105-275(17) or for the exemption provided by N.C. Gen. Stat §105-278.7 for tax year 2018.

WHEREFORE, the Commission orders and decrees that the Board's decision, denying the Appellant's application for exclusion for the 2018 tax year, is affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION


Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Guess and Michaux concur.

Date Entered: 10.28.2021

ATTEST:


Stephen W. Pelfrey, Commission Secretary