

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
11 PTC 162

IN THE MATTER OF:

THE APPEAL OF: **Blue Ridge Housing
of Bakersville LLC** from the decision of
the Mitchell County Board of Equalization
and Review denying property tax exemption
for certain property effective for tax year 2011.

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 Wednesday, December 14, 2011, pursuant to the appeal of **Blue Ridge Housing of Bakersville, LLC** (“Appellant”) from the decision of the Mitchell County Board of Equalization and Review (“County Board”) removing certain property from property tax exemption status effective for tax year 2011.

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

David A. Gitlin, Esquire, appeared at the hearing as counsel for the Appellant. Hal Harrison, Esquire, appeared at the hearing as counsel for Mitchell County.

STATEMENT OF THE CASE

The Appellant, Blue Ridge Housing of Bakersville, LLC, is appealing the decision of the Mitchell County Board of Equalization and Review (“County Board”) affirming the Mitchell County Assessor’s determination that the subject property (two apartment buildings consisting of 24 units)¹ did not qualify for property tax exemption effective for tax year 2011. In conducting his annual review of at least one-eighth of the parcels in the county that are exempted or excluded from taxation, the Mitchell County Assessor (“County Assessor”) determined that the subject property was taxable, as provided in N.C. Gen. Stat. § 105-277.16,² and he issued a discovery notice to the Appellant for taxes, penalty and interest due. Since the County Assessor believed that the subject property was taxable, he thought the discovery of the property was proper, when in his opinion, the property was granted an exemption when the property did not in fact qualify for an exemption.

The Appellant challenged the County Assessor’s decision by filing an appeal with the County Board. By notice of decision, dated May 10, 2011, the County Board upheld the

¹See Notice of Decision, mailed on May 10, 2011, regarding description of property: two apartment buildings and 5.95 acres of secondary commercial/industrial land.

²Effective for taxes imposed for taxable years beginning on or after July 1, 2009.

discovery bill issued by the County Assessor for taxes in the total amount of \$24,066.48, but waived the penalty in the amount of \$9,922.87. Thereafter, the Appellant filed an appeal with the Commission, and requested the Commission to rule that the subject property is exempt from *ad valorem* taxation as provided in N.C. Gen. Stat. § 105-278.6.

To support its request for an exemption from *ad valorem* property taxation, Appellant, Blue Ridge Housing of Bakersville, LLC (“BRH-B”), provides that it is a corporate entity created solely to act as owner of Cane Creek Village, a low income housing credit apartment development located in Bakersville, North Carolina. Appellant states that the members of BRH-B, and their ownership interests in the subject property, are as follows: (a). Northwestern Housing Enterprises, Inc. (“NHE”) is the managing member, holding a one-tenth percent (.1%) ownership interest in the subject property. (b). North Carolina Equity Fund III Limited Partnership (“NCEFIII”) is the investor member, holding a ninety-nine and nine tenths percent (99.9%) ownership interest; whose general partner is Carolina Affordable Housing Equity Corporation (“CAHEC”), an equity funding corporation that assembles tax credit investors.

Prior to tax year 2011, Mitchell County exempted Appellant’s property from *ad valorem* property taxation. For tax year 2011, the County Assessor reviewed property tax exempt applications as provided in N.C. Gen. Stat. § 105-296(l). After conducting the annual review, as provided in N.C. Gen. Stat. § 105-296(l), the County Assessor denied any further *ad valorem* property tax exemption for Appellant’s property. Further, the County Assessor issued a discovery notice for the subject property.³

ISSUES

In the Order on Final Pre-Hearing Conference, the parties agreed 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 Northwestern Housing Enterprise, Inc. and/or the Northwestern Regional Housing Authority possess sufficient ownership interest in the Cane Creek Village property such that it should be exempt from *ad valorem* taxation?
2. Was the Mitchell County Assessor’s “discovery” of the subject property, under N.C. Gen. Stat. § 105-312, and the County Board’s decision to uphold that discovery proper under the provisions of the North Carolina Machinery Act and applicable North Carolina law?
3. Does the principle of equitable estoppel⁴ bar Mitchell County from demanding payment of the *ad valorem* taxes imposed for the discovery years at issue?

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:

³See N.C. Gen. Stat. § 105-312 regarding the discovery of property. N.C. Gen. Stat. § 105-277.16 applies to taxes imposed for taxable years beginning on or after July 1, 2009.

⁴Sometime known as estoppel in pais.

1. The Appellant, Blue Ridge Housing of Bakersville, LLC (“BRH-B”), is a single purpose limited liability company that was organized and established in August 1989 as the record owner of Cane Creek Village, which is the property subject to this appeal.

2. Cane Creek Village is a twenty-four (24) apartment project in Bakersville, Mitchell County, North Carolina that provides rental housing to families whose annual incomes are less than fifty percent (50%) of the median family income for the area (families with low to moderate incomes).

3. One hundred percent (100%) of the dwelling units at Cane Creek Village qualify and receive Section 42 federal low-income housing credits, as provided in the Internal Revenue Code of 1986, as amended.

4. The members of BRH-B, and their ownership interests in the subject property, are provided as follows: (a). Northwestern Housing Enterprises, Inc. (“NHE”) is the managing member and holds a one-tenth percent (.1%) ownership interest in the subject property. (b). North Carolina Equity Fund III Limited Partnership (“NCEFIII”), is the investor member, holding a ninety-nine and nine tenths percent (99.9%) ownership interest, whose general partner is Carolina Affordable Housing Equity Corporation (“CAHEC”), an equity funding corporation that assembles tax credit investors.

5. NHE, is a 501(c)(3) non-profit corporation organized under Chapter 55A of the North Carolina General Statutes, and its Articles of Incorporation, as amended, include the following statement of purposes:

“the corporation’s primary purpose shall be to assist the Northwestern Regional Housing Authority within its jurisdiction with its stated goals and purposes.”, and

“To generally provide for the relief of the poor and distressed combating community deterioration, eliminating discrimination, and lessening the burden of government through the development, creation, ownership, sponsorship, financing, building and maintenance of low and moderate income housing, pursuant to the Housing Act of 1937 and its amendments and successor statutes, § 501(c)(3) and § 42 of the Internal Revenue Service Code of 1986 (the “Code”) and its amendments and successor statutes and relevant state and local housing statutes in Wilkes, Yancey Avery, Alleghany, Ashe, Watauga and Mitchell Counties, North Carolina, and to provide housing to qualified low and moderate income families.”

6. The first amended and restated operating agreement was entered by BRH-B and its member on November 17, 1998, and this agreement remains in effect through December 31, 2048, which is BRH-B’s term, unless BRH-B is sooner dissolved through operation of the Agreement.

7. As of November 1, 1998, construction began to develop Cane Creek Village Apartments. On December 28, 2000, the Mitchell County Department of Inspections issued the certificates of occupancy for the two apartment buildings.

8. The Cane Creek Village Apartments project was developed by NRHA, a fee-paid developer.⁵ Per written agreement, NRHA unconditionally guaranteed NCEFIII that the project would be completed on time and within budget, or NRHA would be fully responsible for any adverse circumstances resulting from the delay or costs that exceed the project budget.

9. Upon closing of permanent financing for the Cane Creek Village Apartments, BRH-B executed the Declaration of Deed Restrictions for the benefit of the North Carolina Housing Finance Agency, and recorded the instrument in Book 346, at Page 629, in the office of the Mitchell County Register of Deeds. BRH-B also executed the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits for the benefit of the North Carolina Federal Tax Reform Allocation Committee, and recorded the instrument in Book 329, at Page 726, in the office of the Mitchell County Register of Deeds.

10. These recorded instruments⁶ require that during the tax credit compliance period and for fifteen years thereafter (a total of thirty years), one hundred percent (100%) of the dwelling units at Cane Creek Village (“CCV”) shall be rented to tenants with incomes of fifty percent (50%) or less of the gross area median income.

11. On August 23, 2000, NHE, managing member for BRH-B, submitted an application to the Mitchell County Assessor requesting that CCV be exempt from *ad valorem* property taxation by citing N.C. Gen. Stat. § 105-278.6 for the basis of its qualification for exemption from *ad valorem* taxation. On the basis of this application, the Mitchell County Board of Commissioners (“County Board of Commissioners”) granted property tax exemption for CCV.

12. Since the initial granting of Appellant’s application for exemption from *ad valorem* taxation by the County Board of Commissioners, the use of CCV has not changed and the record owner and members associated therewith have remained the same.⁷

13. By letter dated January 6, 2011, the County Assessor notified NHE that CCV was no longer granted an exemption from *ad valorem* property taxation. Further, the County Assessor notified NHE that he intended to discover the property, as provided in N.C. Gen. Stat. § 105-312, and demanded that NHE provide him with financial data in order for Mitchell County to appraise the subject property. NHE provided the County Assessor with the requested financial data; but NHE objected to the Mitchell County’s action to deny property tax exemption for CCV and to discover the property under the provisions of N.C. Gen. Stat. § 105-312.

14. By letter dated March 17, 2011, NHE was provided with an appraisal of the CCV and a discovery tax bill.⁸ Upon receipt of the tax bill, NHE requested a hearing before the County Board to challenge disqualification of CCV from exempt *ad valorem* property tax status, and for taxation and discovery of CCV for the years at issue. After conducting a hearing, the County Board

⁵See written agreement between BRH-B and NRHA, dated November 17, 1998.

⁶Declaration of Deed Restrictions for the benefit of the North Carolina Housing Finance Agency and Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits.

⁷See Property Tax Commission Findings of Fact I and 4.

⁸NHE received tax bills from Mitchell County and the Town of Bakersville allocated over a five year discovery period (Final Pre-Hearing Conference Order, Stipulation (f) application for tax exemption for CCV). The Bakersville Town Council agrees to abide by the ruling in this appeal.

upheld the Mitchell County discovery bill issued by the County Assessor for taxes in the total amount of \$24,066.48, but waived the penalty in the amount of \$9,922.87.⁹

15. NHE is a nonprofit organization that assists Northwestern Regional Housing Authority with providing housing for individuals or families with low or moderate income in Wilkes, Yancey, Avery, Alleghany, Ashe, Watauga and Mitchell Counties. NHE, as managing member of CCA, holds a one-tenth percent (.1%) ownership interest in the subject property.

16. NHE ownership interest in CCA allows the subject property to qualify for exemption from ad valorem taxation such that it should be exempt from *ad valorem* taxation; and the Mitchell County Assessor's discovery of the subject property, under N.C. Gen. Stat. § 105-312, and the County Board's decision to uphold discovery is not proper under the provisions of the North Carolina Machinery Act and applicable North Carolina law.

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 (ii) the owner is not organized or operated for profit." See N. C. Gen. Stat. 105-278.6(a)(8).

2. NHE is a nonprofit organization affiliated with the NRHA, a public housing agency organized under North Carolina law (Chapter 157 of the North Carolina General Statutes) to provide housing assistance and other public services to disadvantaged residents of seven North Carolina counties (Wilkes, Yancey, Avery, Alleghany, Ashe, Watauga and Mitchell Counties).

3. The subject property, CCV, is actually and exclusively occupied and used as housing for families with low to moderate incomes; and NHE possesses an ownership interest in CCV such that the property qualifies for exemption from *ad valorem* taxation as provided in N. C. Gen. Stat. 105-278.6(a)(8).

4. Since CCV qualifies for exemption from *ad valorem* taxation pursuant to N.C. Gen. Stat. 105-278.6(a)(8), then the Mitchell 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 law.

5. The Commission reaches no ruling on the principle of equitable estoppel when CCV qualifies for exemption under N.C. Gen. Stat. 105-278.6(a)(8); and when the county's discovery and taxation of the subject property was not proper under North Carolina law.

WHEREFORE, THE COMMISSION ORDERS that the decision of the County Board upholding the discovery and taxation of the subject property is reversed, and the county is instructed to revise its records to reflect the Commission's final decision in this appeal.

⁹ See Notice of Decision mailed on May 10, 2011.



NORTH CAROLINA PROPERTY TAX COMMISSION

Terry L. Wheeler, Chairman

Vice Chairman Pittman and Commission members Dixon and Peaslee concur.

Entered: February 28, 2012

ATTEST:

Janet L. Shires, Secretary and
General Counsel