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:

SNOW CAMP LLC,
Appellant

16 PTC 0765

From the decision of the Alamance County Board of Equalization and Review to deny the partial exclusion of certain personal property for tax year 2016

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 Thursday, September 14, 2017, pursuant to the Appellant's Motion for Summary Judgment and to the Cross-Motion for Summary Judgment filed by Alamance County.

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee, Alexander A. Guess, and Charles W. Penny participating.

Rockingham County Attorney Emily A. Sloop and Bertie County Attorney Lloyd C. Smith, Jr., appeared on behalf of Alamance County ("County"). Charles B. Neely, Jr., and Nancy S. Rendleman of Williams Mullen appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The essential facts in this matter are undisputed, and are stipulated by the parties. As of the date of the hearing, the Appellant owned and operated a solar energy electric system, as that term is defined in N.C. Gen. Stat. §105-275(45). As of January 1, 2016, the system was under construction and was not operational. In 2016, the Appellant timely filed an application for the partial exclusion authorized by N.C. Gen. Stat. §105-275(45), seeking such exclusion for the 2016 tax year. The County denied the exclusion on the basis that the property did not qualify for the exclusion, being under construction and not in operation as of January 1, 2016. The Appellant timely appealed the County's denial to the Alamance County Board of Equalization and Review ("Board"), which affirmed the County's denial. The Appellant timely appealed the Board's denial to the Commission.

ANALYSIS AND ISSUES

N.C. Gen. Stat. §105-275(45) provides an exclusion from property tax for "Eighty percent (80%) of the appraised value of a solar energy electric system," and further provides that "For purposes of this subdivision, the term 'solar energy electric system' means all equipment used directly and exclusively for the conversion of solar energy to electricity."

The issue presented for the Commission is whether a system under construction qualifies for the exclusion authorized by N.C. Gen. Stat. §105-275(45).

UPON REVIEW OF THE FILINGS IN THIS MATTER, 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. "...The primary rule of construction of a statute is to ascertain the intent of the legislature and to carry out such intention to the fullest extent."[1]
3. "It is well settled that '[w]here the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give [the statute] its *plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.*'"[2]
4. We note further that "The principal goal of statutory construction is to ascertain and enforce legislative intent. The intent of the General Assembly may be found first from the plain language of the statute, then from its legislative history, the spirit of the act and what the act seeks to accomplish."[3] Further, legislative intent may be determined "from the nature and purposes of the act and the consequences which would follow its construction one way or the other,"[4] and statutes should be interpreted to accomplish legislative purpose and avoid absurd results.[5]
5. While each party in this matter has argued for the adoption of its respective interpretation of the word "used," the fact that one interpretation or the other would result in significantly different outcomes suggests that there is no "plain and definite meaning" for the term.
6. N.C. Gen. Stat. §105-275(45) provides that "the term 'solar energy electric system' means all equipment used directly and exclusively for the conversion of solar energy to electricity."
7. While the County has focused on the single word "used" in advocating for its interpretation, arguing that the word denotes a thing in use for its intended purpose, we note that the entire

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[1] *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E. 2d 134, 137 (1990)
[2] *Union Carbide Corp. v. Offerman*, 351 N.C. 310, 314, 526 S.E.2d 167, 170 (2000) (emphasis added)
[3] *Cape Hatteras Electric Membership Corp v. Lay*, 210 N.C. App. 92, 99, 708 S.E. 2d 399, 403 (2011)
[4] *In re Hardy*, 294 N.C. 90, 97, 240 S.E. 2d 367, 372 (1978)
[5] *See, e.g., N.C. Forestry Foundation, Inc.*, 35 N.C. App. 414, 423, 242 S.E. 2d 492, 498 (1978)

phrase "used directly and exclusively for the conversion of solar energy to electricity" could merely be descriptive of the way in which such equipment is normally put to use.

8. For example, the Appellant has stated that "The Solar Equipment on each solar farm was designed, fabricated, constructed and installed specifically for use directly and exclusively for the conversion of solar energy to electricity and, *during construction of the solar farm and now, has no other use*.[6] This assertion, supported by affidavit of the Appellant's officer[7], suggests that, once specified and purchased, the individual equipment components were forever dedicated to a particular purpose, and that dedication limits their use solely to the one set out in the statute. While we believe this to be a reasonable interpretation of the statute, the fact that the word "used" has such conflicting senses prompts us to look beyond the "plain meaning" of the statutory language in an effort to determine the intent of the legislature.
9. "In ascertaining this intent, it is always presumed that the Legislature acted with full knowledge of prior and existing law."[8]
10. N.C. Gen. Stat. §105-275(45) was enacted in 2008 as a part of S.L. 2008-146, which contained several revisions and expansions of various property tax statutes. In 2007, the first year of the same legislative session, the General Assembly enacted S.L. 2007-397, entitled in pertinent part, "AN ACT TO: (1) PROMOTE THE DEVELOPMENT OF RENEWABLE ENERGY AND ENERGY EFFICIENCY IN THE STATE THROUGH IMPLEMENTATION OF A RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS)." The REPS essentially required electric utilities to attribute a minimum percentage of their total power generation portfolio to renewable energy resources.
11. In addition, S.L. 2007-397 amended N.C. Gen. Stat. §62-2(a), the Declaration of Policy of the state Public Utilities Act, to declare the State's policy to "(10)...promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following: ... c. Encourage private investment in renewable energy and energy efficiency." [emphasis added]
12. It is apparent from the legislature's express declaration, one year prior to the statute under review, that private investment in projects such as the solar energy electric system under appeal in this matter was to be promoted and encouraged as a matter of state policy.
13. Furthermore, the Supreme Court of North Carolina in 1960 affirmed the ruling of the lower court in finding that property containing a cafeteria building that was only 20% complete "was in

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[6] Appellant's Memorandum of Law in Support of Their Motion for Summary Judgment, p.7

[7] Appellant's Memorandum of Law in Support of Their Motion for Summary Judgment, App. 001, at 004 [emphasis added]

[8] See, e.g., *Ridge Community Investors, Inc., et al. v. Berry*, 293 N.C. 688, 695, 239 S.E.2d 566, 570 (1977)

'actual use'"[9] for purposes of another property tax exemption statute that, like N.C. Gen. Stat. §105-275(45), required the property to be "actually and exclusively occupied and used" for the exempt purpose.[10]

14. Thus, the legislature is presumed to have enacted N.C. Gen. Stat. §105-275(45) with the full knowledge of the state's policy toward the development of solar energy electric systems, and also of the Supreme Court's interpretation of the term "used" as including partially constructed exempt property.
15. The County argues that the Court's holding in *Southeastern Baptist* applied to real property, and not to personal property, such as that at issue in this appeal. In construing the term "used," however, we find no reason to distinguish between real and personal property.
16. In further considering the purposes for the enactment of N.C. Gen. Stat. §105-275(45), and the consequences of interpreting the statute either way, we note that the Appellant argues that taxation of the property while under construction would frustrate the purpose of the exclusion, and would lead to the absurd result of fully taxing property in one year, only to largely exclude it in a subsequent year. It is confounding to contemplate that property intended to be developed in furtherance of state policy would be assessed at 20% of its value when complete, but at 100% of its value while under construction. Since valuation and stage of completion for a property under construction are both determined as of January 1 each year, a project could be 95% complete as of that date, but still fail to receive the exclusion for that tax year because it was not 100% complete. Potential development would then be subject to the natural fluctuations owing to weather, change orders, and the like of the construction process, with the bizarre result that similar property owners, with similar but slightly different project timelines, could receive drastically different assessments for their projects. And, given that these developments are commercial activities with a profit-seeking incentive, and with minimal or no income during the construction phase, it is only rational to expect that the project owners would seek to conclude construction and begin operations as quickly as possible. There is no incentive for a property owner to delay in the development of its project.
17. There are dozens of exemptions and exclusions listed in the Machinery Act; nearly all of them are silent as to partially constructed property. Yet, there are several situations where partial construction is specifically addressed:
    a. N.C. Gen Stat. §105-275(8)(a): "Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal...." [emphasis added]

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[9] *Southeastern Baptist Theological Seminary, Inc. v. Wake County*, 351 N.C. 755, 112 S.E. 2d 528 (1960)
[10] Former N.C. Gen. Stat. §105-296(4)

b. §105-275(8)(b): "Real and personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste..." [emphasis added]

c. §105-275(8)(c): "Tangible personal property that is used exclusively or, if being installed, is to be used exclusively, for the prevention or reduction of cotton dust...." [emphasis added]

The County argues that these are examples of how N.C. Gen. Stat. §105-275(45) *should* look, had the legislature intended to allow the exclusion for solar energy electric systems under construction.

We note, however, that the various provisions of N.C. Gen. Stat. §105-275, which lists many property exclusions, were enacted at widely different times, from as early as 1939 to 2015. New exclusions are periodically added, and each addition doesn't necessarily conform to a standard format. The examples listed above were all enacted at the same time, providing the best explanation as to why they share similar terms.

18. In *In re Vienna Baptist Church*,[11] a church that was partially constructed as of January 1 of the year under appeal was denied the exemption typically available to churches (under N.C. Gen. Stat. §105-278.3) because the church could not be lawfully used as of that date, being under construction and without final approval from the county Code Enforcement department. The North Carolina Court of Appeals upheld the denial. Shortly after the court issued its decision, the General Assembly passed S.L. 2015-185, amending N.C. Gen. Stat. §105-278.3 to include buildings under construction within the religious use exemption. The legislature's rapid response to the court's decision not only embraces the *Southeastern Baptist* holding, but also demonstrates the legislature's general intent to include partially constructed property within the exclusion statutes.

19. The court in *Southeastern Baptist* wrote, "...this Court stated in *Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269, that statutes exempting specific property from taxation because of the purposes for which such property is held and used, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation (citing cases).

"By the rule of strict construction, however, is not meant that the statute shall be stintingly or even narrowly construed * * * but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used...." [emphasis added]

[11] 241 N.C. App. 268, 773 S.E.2d 97 (2015)

20. In light of the language, history, and legislative intent of the statute, the issue of partial construction clearly comes within the scope of the language of N.C. Gen. Stat. §105-275(45).

WHEREFORE, the Commission orders and decrees that the Appellant's motion for summary judgment is granted, and that the County's cross-motion for summary judgment is denied; and that the personal property under appeal is to be assessed for the 2016 tax year with the benefit of the partial exclusion provided in N.C. Gen. Stat. §105-275(45).

NORTH CAROLINA PROPERTY TAX COMMISSION

Robert C. Hunter, Chairman

Commission Members Peaslee and Guess concur. Vice Chairman Wheeler and Commission Member Penny dissent by separate opinion.

Date Entered: 1/10/18

ATTEST:

Stephen W. Pelfrey, Commission Secretary

DISSENT

1. While we agree generally with the majority as to the appropriate standards for construction of the statute in question, we believe that the majority's conclusion requires a generous interpretation of both the statute and the cases presented.
2. "It is well settled that '[w]here the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give [the statute] its *plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.*'"[12]
3. While each party in this matter has argued for the adoption of its respective interpretation of the word "used," the fact that either interpretation could seem reasonable, and that one interpretation or the other would result in significantly different outcomes, indicate that there is no "plain and definite meaning" for the term.

[12] *Union Carbide Corp. v. Offerman*, 351 N.C. 310, 314, 526 S.E.2d 167, 170 (2000) (emphasis added)

4. In order to ascertain the intent of the legislature, the Commission should therefore evaluate the term within the context of its statute and of the decisions of the courts.
5. N.C. Gen. Stat. §105-275(45) provides that "the term 'solar energy electric system' means all equipment used directly and exclusively for the conversion of solar energy to electricity."
6. While each party has focused on the single word "used" in advocating for its interpretation, ascertaining the plain and definite meaning of the statute as a whole requires us also to consider the context of the word "used" within the remainder of the definition.
7. Initially, we observe that "used" is the past tense form of the verb "use." The purpose of verb tenses is to express the timing of verbs, and the past tense of a verb typically refers to actions that have already happened. But, given the curious nature of language and its common meanings, "used" could also describe the way in which an item is put to use, whether or not such use has actually happened. For example, a hammer could be described as a tool "used" to hammer nails, whether or not the hammer had actually been so used. Again, we find that focusing on the single term is not dispositive of the question of its meaning.
8. Looking further within the statute, we note the adverbs "directly" and "exclusively," which modify the verb "used." The choice of the legislature to include these modifiers sheds more light upon the appropriate interpretation of "used," since they describe *how* a qualifying use under the statute is intended to appear.
9. Although "directly" implies immediacy, the word sometimes (albeit less commonly) has the alternate and perhaps contradictory meaning of "soon."[13] Either sense of the word could be invoked by the parties in support of their respective positions.
10. "Exclusively" has a meaning that is less vague, denoting a limited or single purpose.[14] The inclusion of this word in the statute indicates the legislature's intent that qualifying equipment must at least have the conversion of solar energy to electricity as its primary purpose. The Appellant argues that the equipment under appeal has "no other use,"[15] although we take judicial notice of the fact that at least some of the property, such as electrical inverters and wiring, has multiple common and alternative uses beyond solar energy conversion. Even if such equipment is purchased as a part of a system that is to be installed, it could arguably be employed for a different, non-qualifying purpose until it is actually installed within the system.
11. Considering the phrase, "used directly and exclusively for the conversion of solar energy to electricity," then, in its entirety, the most common interpretation of the language used indicates

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[13] Merriam-Webster Dictionary online, https://www.merriam-webster.com/dictionary/directly (September 28, 2017)
[14] Merriam-Webster Dictionary online, https://www.merriam-webster.com/dictionary/exclusively (September 28, 2017)
[15] Appellant's Memorandum of Law in Support of Their Motion for Summary Judgment, p.7

that the legislature's intent was to create an exclusion for a system in which the individual components have been assembled and have been put to the immediate and sole purpose of converting solar energy to electricity.

12. Furthermore, according to the affidavit of Jerome O'Brien submitted on behalf of the Appellant regarding each solar development under appeal, "Each of the solar farms, when completed, was to be used directly and exclusively for the conversion of solar energy to electricity."[16] Logically, we find that equipment that is to be used in a solar energy electric system cannot simultaneously be actually used.
13. The Appellant argues that the holding of the North Carolina Supreme Court in *Southeastern Baptist Theological Seminary, Inc. v. Wake County*[17] provides the rule that property under construction is to be considered in "actual use" for purposes of property tax exemption statutes. Specifically, in that case, the Supreme Court upheld the finding of the trial court that "[t]he two properties on which construction of the cafeteria had begun was [*sic*] in 'actual use' within express terms of the statute" and were therefore exempt.[18]
14. Again, the finding of the trial court, as upheld by the Supreme Court, must be considered within the context of that case. *Southeastern Baptist* involved a different statute, former N.C. Gen. Stat. §105-296(4). Like the current version (N.C. Gen. Stat §105-278.4) of this statute, a qualifying building was a prerequisite to the exemption of any additional land. In *Southeastern Baptist*, there were sixteen separate parcels under appeal, several of which had qualifying, completed, buildings.
15. Indeed, the trial court's first conclusion of law in *Southeastern Baptist* was that "'All of the sixteen properties in question are so located with reference to the main buildings of the Seminary as to come within the definition of the term 'additional adjacent land' as used in [the statute in question].'"[19] Thus, additional adjacent land could properly be considered within actual use under the statute, whether such additional land was improved or not. While the parcels containing the partially-constructed cafeteria building were considered to be in use, so was a parcel that was vacant, and so were parcels that contained unused buildings that were "unfit for occupancy," and were therefore used for other purposes.[20]
16. If we are to accept the Appellant's argument that *Southeastern Baptist* stands for the rule that incomplete construction is the equivalent of "in 'actual use,'" without regard to the presence of a

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[16] Appellant's Memorandum of Law in Support of Their Motion for Summary Judgment, App. 001, at 004 [emphasis added]
[17] 351 N.C. 755, 112 S.E. 2d 528 (1960)
[18] *Id.* at 781
[19] *Id.* at 780 [emphasis added]
[20] *Id.* at 779-781

qualifying building on an adjacent parcel, then it follows that the rule would similarly permit the exemption not only of parcels that contain only unused, uninhabitable buildings, but also of properties that are completely vacant. Clearly, no such parcels could qualify under the original or current statute *without first having a qualifying structure on an adjacent parcel.*

17. Concerning the rules of statutory construction, we note further that "The principal goal of statutory construction is to ascertain and enforce legislative intent. The intent of the General Assembly may be found first from the plain language of the statute, then from its legislative history, the spirit of the act and what the act seeks to accomplish."[21] Further, legislative intent may be determined "from the nature and purposes of the act and the consequences which would follow its construction one way or the other,"[22] and statutes should be interpreted to accomplish legislative purpose and avoid absurd results.[23]
18. Having reviewed the plain language of the statute, we turn first to its legislative history. The exclusion provided in N.C. Gen. Stat. §105-275(45) was enacted in 2008 as a part of S.L. 2008-146, which contained several revisions and expansions of various property tax statutes. The original filed bill contained no provision for the exclusion; that was not included until the fourth version of the bill.[24]
19. In 2007, the legislature enacted S.L. 2007-397, entitled in pertinent part, "AN ACT TO: (1) PROMOTE THE DEVELOPMENT OF RENEWABLE ENERGY AND ENERGY EFFICIENCY IN THE STATE THROUGH IMPLEMENTATION OF A RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS)." The REPS essentially required electric utilities to attribute a minimum percentage of their total power generation portfolio to renewable energy resources.
20. S.L. 2007-397 created N.C. Gen. Stat. §62-133.7(a)(8), which includes the following definition: "'Renewable energy resource' means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. 'Renewable energy resource' does not include peat, a fossil fuel, or nuclear energy resource."

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[21] *Cape Hatteras Electric Membership Corp v. Lay*, 210 N.C. App. 92, 99, 708 S.E. 2d 399, 403 (2011)
[22] *In re Hardy*, 294 N.C. 90, 97, 240 S.E. 2d 367, 372 (1978)
[23] *See, e.g., N.C. Forestry Foundation, Inc.*, 35 N.C. App. 414, 423, 242 S.E. 2d 492, 498 (1978)
[24] N.C. General Assembly website, http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=S1878 (September 28, 2017)

21. In addition, S.L. 2007-397 amended N.C. Gen. Stat. §62-2(a), the Declaration of Policy of the state Public Utilities Act, to declare the State's policy to "(10)...promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following: ... c. Encourage private investment in renewable energy and energy efficiency." [emphasis added]
22. Two points are apparent from the plain language of S.L. 2007-397: First, that the standard was intended to promote a multitude of renewable energy resources, rather than solely solar electric resources; and second, that *the REPS itself* was the vehicle intended by the legislature to "promote the development of renewable energy."
23. It does not follow that the creation of N.C. Gen. Stat. §105-275(45) was the natural, logical, or even intended result of the enactment of the REPS in 2007. Although a limited income tax benefit was created by S.L. 2007-397 for certain donations to nonprofit organization for their purchase of renewable energy property (Sec. 13), that credit was not limited to solar electric property purchases, and S.L. 2007-397 provided no property tax exclusion whatsoever. Moreover, since the enactment of the REPS, the legislature has not seen fit to create a property tax exclusion for any of the other listed renewable energy resources.
24. We move then to a consideration of the purposes of the enactment of N.C. Gen. Stat. §105-275(45), and the consequences of interpreting the statute either way. The precise purpose cannot really be determined without knowing the legislative intent, which we have previously discussed. At a minimum, however, since the statute partially excludes qualifying solar equipment from taxation, it is rational to assume that the reduction in ownership costs created by the exclusion would provide an incentive for developers to prefer development in this state over other states with no such exclusion, all other things being equal. But the question is not whether the property should be excluded during its lifetime—the parties agree that the exclusion applies to operational systems—the question is whether the property should be excluded under the limited circumstance of when the system is under construction and not operational as of January 1 of a given tax year. Again, the statute is silent on this point.
25. The Appellant argues that taxation of the property while under construction would frustrate the purpose of the exclusion, and would lead to the absurd result of fully taxing property in one year, only to largely exclude it in a subsequent year. However, if the intent of the statute was to encourage the prompt completion of a solar energy system, then full taxation during the construction process would provide an incentive for that purpose. Even though these developments are commercial activities with a profit-seeking incentive, we take judicial notice of the countless times that property development ventures stall or cease progress altogether,

especially around the time that this statute was enacted. Certainly, from the perspective of a taxing jurisdiction, some leverage over the developer would be welcome to ensure the timely completion of the project.

26. Ultimately, on the issue of partial construction, we find the silence of the statute to be telling. There are dozens of exemptions and exclusions listed in the Machinery Act; nearly all of them are silent as to partially constructed property. Yet, there are several situations where partial construction is specifically addressed:
    a. N.C. Gen Stat. §105-275(8)(a): "Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal...." [emphasis added]
    b. §105-275(8)(b): "Real and personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste..." [emphasis added]
    c. §105-275(8)(c): "Tangible personal property that is used exclusively or, if being installed, is to be used exclusively, for the prevention or reduction of cotton dust...." [emphasis added]
    d. Even §105-275(39a) provides an exclusion for "A correctional facility, including construction in progress, that is located on land owned by the State...." [emphasis added]

    In each of these situations, the legislature has provided explicit exclusions for partially constructed property, in the furtherance of both environmentally-related objectives and, in the case of privately-owned correctional facilities, in the promotion of specific development types. In this case, there is no similar provision, even though the subject of the exclusion benefits both objectives.
27. Finally, we address the applicability of *In re Vienna Baptist Church*.[25] That case involved a church that was partially constructed as of January 1 of the year under appeal, and was denied the exemption typically available to churches (under N.C. Gen. Stat. §105-278.3) because the church could not be lawfully used as of that date, being under construction and without final approval from the county Code Enforcement department. The North Carolina Court of Appeals upheld the denial. Shortly after the court issued its decision, the General Assembly passed S.L. 2015-185, amending N.C. Gen. Stat. §105-278.3 to include buildings under construction within the religious use exemption. The Appellant argues that the legislature's rapid response to the court's decision

[25] 241 N.C. App. 268, 773 S.E.2d 97 (2015)

not only embraces the *Southeastern Baptist* holding, but also demonstrates the legislature's general intent to include partially constructed property within the exclusion statutes.

28. We addressed *Southeastern Baptist* earlier, and our reasoning as to that case squares with the holding in *Vienna Baptist*. The property under appeal in *Vienna Baptist* was a single parcel, unimproved except for the partially constructed church. Although the *Southeastern Baptist* statute (including its current version) relates to property used for educational purposes, both that statute and the religious use statute of *Vienna Baptist* require a qualifying building before any other property can be exempted; the seminary in *Southeastern Baptist* had one, but the church in *Vienna Baptist* did not, and the court specifically noted this deficiency: "...the purported building was under construction, and could not legally be used or occupied. Without the existence of a building on adjacent property owned by the Appellant that was also being used wholly and exclusively for religious purposes, the property in question does not qualify for tax exemption...."
29. As to the question of legislative intent behind the amendment to N.C. Gen. Stat. §105-278.3, the amendment affected only that statute, and no others, further emphasizing the distinction between exclusion or exemption statutes that include property under construction and those statutes that don't. And, although the legislature overrode the court's interpretation with regard to one particular statue, the holding nonetheless supports the general premise that "under construction" and "used" are mutually exclusive.
30. The court in *Southeastern Baptist* wrote, "...this Court stated in *Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269, that statutes exempting specific property from taxation because of the purposes for which such property is held and used, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation (citing cases). "By the rule of strict construction, however, is not meant that the statute shall be stintingly or even narrowly construed..., but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used...."[26]
31. The question of partial completion of the solar electric system does not clearly come within the scope of the language of N.C. Gen. Stat. §105-275(45). Even viewing the statute in a light favorable to the Appellant, we conclude that, at best, there could be reason to interpret the statute both ways—that is, either for or against the exclusion. Under the rule expressed in *Southeastern Baptist*, our decision should be that the exclusion does not apply to partially completed solar electric systems.

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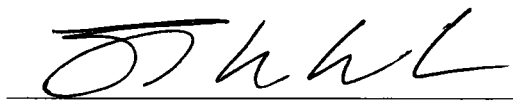
[26] S. v Whitehurst, 212 N.C. 300, 193 S.E. 657 (1937) [emphasis added].

WHEREFORE, we are of the opinion that the personal property under appeal should properly be fully taxable for the 2016 tax year without benefit of the partial exclusion provided in N.C. Gen. Stat. §105-275(45), and, for the foregoing reasons, we respectfully dissent.



Terry L. Wheeler, Vice Chairman

Commission Member Penny joins in the dissent.