

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

BRIEFING DRAFT

MEETING DATE: FEBRUARY 18, 2021

AGENDA ITEM NUMBER: \_\_\_\_\_

9

**SUBJECT: RESOLUTION APPROVING THE RELEASE OF TAXES BY THE TAX ASSESSOR/COLLECTOR IN THE AMOUNT OF \$80,455.38**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:**

### **SUMMARY OF INFORMATION:**

In accordance with the provisions of N.C.G.S. 105-381, the Assessor/Collector has determined that the taxpayer listed on the attached list is eligible for the release of remaining unpaid taxes. The original tax valuation was made without knowledge the property was designated as a Low-Income Housing Tax Credit property. The property owners paid the correct portion of the original bill amount, the remainder should be released.

ATTACHMENTS: -  YES  NO

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
COUNTY MANAGER

**RESOLUTION APPROVING THE RELEASE OF TAXES BY THE  
TAX ASSESSOR/COLLECTOR IN THE AMOUNT OF \$80,455.38**

**WHEREAS** John Burgiss, Forsyth County Tax Assessor/Collector has certified that the portion of taxes paid on the attached listing of city and county taxes were levied and assessed legally and without clerical error;

**WHEREAS** the taxpayer, NCHF Enclave II, Inc., has made demand in writing for a release of the remaining unpaid taxes on such property which were in excess of the proper valuation of the property as low-income housing pursuant to N.C.G.S. 105-277.16, and the unpaid tax amount has been certified by the Tax Assessor/Collector as being in excess of the amounts legally due in accordance with N.C.G.S. 105-381;

**WHEREAS** the Tax Assessor/Collector has therefore determined that, as a result of the foregoing, there was an overassessment of taxes which should be released for the following Fiscal Year:

FY 2020	\$80,455.38
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**WHEREAS** the City of Winston-Salem and other municipalities in Forsyth County have each adopted a Resolution or entered into an interlocal agreement, which authorizes the Forsyth County Board of Commissioners to act on their behalf with regard to refunds, releases and reductions in tax claims;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of Forsyth County that the certified County amount of individual release of remaining unpaid taxes of \$100.00 or more shown on the attached release submitted by John Burgiss, Forsyth County Tax Assessor/Collector, is hereby approved and the Forsyth County Chief Financial Officer is directed to make said release in the total amount of \$43,318.54, including applicable interest; and

**BE IT FURTHER RESOLVED**, that the certified amount of individual release of remaining unpaid taxes of \$100.00 or more shown on the attached release submitted by the Tax Assessor/Collector for the City of Winston-Salem and other municipalities in Forsyth County, is hereby approved, and the Chief Financial Officer is directed to make said release in the total amount of \$37,136.84, including applicable interest.

Adopted this 18<sup>th</sup> day of February 2021.

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## M E M O R A N D U M

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**DATE:** JANUARY 14, 2021  
**TO:** Dudley Watts  
County Manager  
**FROM:** John T. Burgiss  
Tax Assessor/Collector  
**RE:** Tax Releases

In accordance with procedures established with the Commissioners, the attached list of taxpayers are due a release of County taxes totaling \$80,455.38, including applicable interest. The taxpayer's name is shown along with the reason for the release approval and the amount. I am available to answer any questions you may have.

I, John Burgiss, Forsyth County Tax Assessor/Collector, do hereby certify that the attached list of taxes were not required to be paid, and have been collected, with clerical error or by a tax illegally levied and assessed. The taxpayers have made demand in writing for the release of such taxes, and the amounts shown on this list are in excess of the amounts legally due by the taxpayers and should not be released for the reasons hereinafter set forth in accordance with N.C.G.S. 105-381.

  
\_\_\_\_\_  
John Burgiss, RES  
Assessor/Collector

JTB/tcl

NCPTS - Assessment LEACHTC Search Abstract # [ ] Tax Year 2021 Go

Abstract Registrars Appeal Workflow Admin Options Help

NCPTS -> Assessment -> Abstract -> Bill Detail

PDF [ ] Interest Recalc Release Bill Prorate Bill Print  
 Export Pay Bill Void Bill

Bill #: 0003597103-2020-2020-0000-00 REG  
 Bill Status: UNPAID Returned NA  
 DLQ-01/12/2021

Taxpayer Info

Owner Id	ID Number	COA Code	Confidential	Name	Mailing Address	Ownership Type	Owner Order	Ownership %	Group Number	Send Mail	Relief Eligibility
16035120			NO	NCHF ENCLAVE II INC	750 BETHESDA RD WINSTON SALEM NC 27103-3302		PRIMARY	100.0000		YES	NO

Property Info

	Value (\$)	Adj Value (\$)
Real:	8,991,300	0
Deferred:	0	0
Use:	8,991,300	0
Personal:	0	0
Exempt:	0	0
Total Value:	8,991,300	0

Lender: Parcel#: 6818-82-1255.000  
 Description: THE ENCLAVE II LO131J BL3457  
 Situs: 4101 BETHANIA STATION RD WINSTON-SALEM NC 27106

Property Details

Bill Info

Source Type/System: REI PROPERTY TAX  
 Abstract #: 0003597103-2020-2020-0000  
 Bill Date: 07/27/2020 Created By: POLLOCMD  
 Interest Begin Date: 01/06/2021 Interest Freeze Date:  
 Bill Due Date: 09/01/2020 Final Payment Date:

Tax Amount

# Months	Description	Original Billed(\$)	Current Due (\$)
	Tax & Fees	124,160.87	80,455.51
	Interest	Jan/21	1,609.11
	Collection Fees		0.00
	Expenses		0.00
	Total	124,160.87	82,064.62

Payment History

Transaction Summary

Date	Type	Update User	Trans #	Interest Date	Trans Amount(\$)
01/06/2021	PAYMENT	MARGARET DBANKS	3913011	12/31/2020	43,705.36

Transaction Detail History

Flag [ ] Link IDs [ ] Agents [ ] Notes/Documents [ ] Change History [ ] Owner History

Flag: [ ] Apply Flag Remove Flag

Flags  
 DLQ,



**Bell·Davis·Pitt**

Attorneys and Counselors at Law

WINSTON-SALEM, NORTH CAROLINA  
336.722.3700

**John A. Cocklereece, Jr.**  
jcocklereece@belldavisppitt.com  
T 336.714.4123  
F 336.722.6558

**RECEIVED**  
JAN 11 2021  
COUNTY MANAGER'S/  
COMMISSIONERS' OFFICE  
MAILING ADDRESS  
PO Box 21029  
Winston-Salem, NC  
27120-1029

January 6, 2021

**CERTIFIED MAIL**

Forsyth County Board of Commissioners  
201 North Chestnut Street  
Winston-Salem, NC 27101

Mr. John Burgiss  
Forsyth County Tax Assessor and Collector  
201 North Chestnut Street  
Winston-Salem, NC 27101

**RE: NCHF Enclave II Inc. Request for Value Change Under N.C. General Statute § 105-287 or Release before Payment Under N.C. General Statute § 105-381**

Dear Commissioners and Mr. Burgiss:

On behalf of our client, NCHF Enclave II Inc. ("Taxpayer"), we request a decrease in the appraised value of Taxpayer's property having county assigned parcel identification number 6818-82-1255 with an address of 4101 Bethania Station Road, Winston-Salem, Forsyth County, North Carolina (the "Subject Property") from its current 2020 assessed value effective January 1, 2020, of \$8,991,300 down to \$3,165,000. Attached as Exhibit 1 is the current tax card for the Subject Property. The requested revised value is the result of additional analysis of the Subject Property by the Forsyth County Tax Administration, as conveyed to the Taxpayer on December 1, 2020. The attached Exhibit 2 reflects the corrected computation. Taxpayer's understanding is that the Tax Administration's current position is that \$3,165,000 is the correct assessment and that the 2020 assessed value of \$8,991,300 was erroneous.

Taxpayer's request is made pursuant to North Carolina General Statute §105-287 which is attached as Exhibit 3 and which obligates the assessor to decrease the appraised value of real property to correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal.

The Subject Property is a low-income housing development to which the North Carolina Housing Finance Agency allocated a federal tax credit under Section 42 of the Internal Revenue Code. As such, pursuant to N.C. General Statute §105-277.16, it must be assessed utilizing the income approach as the method of valuation and, in doing so, taking rent restrictions that apply to the property into consideration. §105-277.16 is attached as Exhibit 4. The North Carolina Department of Revenue and the North Carolina Property Tax Commission through directives and

decisions have made clear that the assessor must utilize the income approach utilizing the rent-restricted income of the property and that the expenses, vacancy rates, and reserves utilized should be consistent with those required for underwriting of the property pursuant to the relevant Qualified Allocation Plan from the North Carolina Housing Finance Agency. See, e.g., Exhibit 5. Taxpayer's requested valuation, and the county's revised analysis, values the Subject Property consistent with those principles and metrics.

Contrary to the requirements of §105-277.16, the 2020 assessed value of the Subject Property was developed utilizing the cost approach to value and not the income approach. Thus, the assessment was developed in clear violation of §105-277.16 and the 2017 Schedule of Values, Standards and Rules which provide that "[a]ll appraisal techniques and valuations...are to be completed in compliance with applicable North Carolina General Statutes."

N.C. Gen. Stat. §105-287(a)(2), incorporating the word "shall" as opposed to "may," requires, rather than merely suggests or allows, the assessor to decrease the appraised value of the Subject Property to correct this misapplication of the 2017 Schedules of Values. Moreover, the statute clarifies that the assessor's obligation is not conditional. §105-287(c) provides that the change shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal, must be effective as of January 1 of the year in which the change is made, and is required even if there is no request submitted by the owner of the affected property.

To the extent that the assessor and Commissioners determine that the assessor should not or will not make the requested change under §105-287(a)(2), then let this letter serve as a request for release before payment of the assessed property taxes in the amount of \$80,455.38 pursuant to N.C. Gen. Stat. § 105-381(a)(2), which amount constitutes illegal taxes assessed during the tax years 2020. §105-381 is attached as Exhibit 6. Please refer to the attached Exhibit 2 to review the calculation of the requested release. As noted, the assessment results from a clear violation of N.C. Gen. Stat. §105-277.16 and is therefore an illegal tax to which Forsyth County is not entitled. See attached as Exhibit 7 the refund request form.

Please provide a response to our request for value change under N.C. Gen. Stat. §105-287 or, in the alternative, release request under N.C. Gen. Stat. §105-381 as soon as possible. If you have questions, please call.

Sincerely,

BELL, DAVIS & PITT, P.A.

  
John A. Cocklereece, Jr.

Enclosures

CC via email:

Mr. Frederick P. Johnson  
Assistant Forsyth County Attorney  
[johnsofp@forsyth.cc](mailto:johnsofp@forsyth.cc)

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  
APPEALS OF:

**KIMBERLY PARK II, LLC;** 18 PTC 0029

**KIMBERLY PARK III, LLC; and** 18 PTC 0025

**HHG II, LLC,** 18 PTC 0026  
**(collectively) Appellants,**

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

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### **FINAL DECISION**

These matters 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 Tuesday, June 25, 2019, pursuant to the Appellants’ appeals from the decisions 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 William W. Peaslee, Alexander A. Guess, and Charles W. Penny<sup>1</sup> participating.

Attorney Frederick P. Johnson appeared on behalf of Forsyth County (“County”). Attorneys John A. Cocklereece and Justin M. Hardy appeared on behalf of the Appellants.

### **STATEMENT OF THE CASE**

The properties under appeal are all low-income housing developments. The Appellants timely appealed the assessed value of the subject properties to the Forsyth County Board of

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<sup>1</sup> Although Mr. Penny is no longer a Commission Member as of the date this decision is entered, he was a Member at the time of this hearing, and participated in the hearing and resulting decision.

Equalization and Review (“Board”), and subsequently timely appealed the Board’s decisions to the Commission.

Many of the facts in these matters are not only common to each appeal, but are essentially undisputed. The primary area of disagreement between the parties relates to the appropriate calculation of operating expenses with respect to the properties: whereas the Appellants contend that the actual expenses for each property should be considered, the County’s position is that the operating expenses claimed by the Appellants are not justifiable and are not typical for the subject property type, and should be limited to a fixed percentage of effective gross income.

### ANALYSIS AND ISSUES

Most properties in North Carolina are appraised for property tax purposes at “true value,” as that term is defined in N.C. Gen. Stat. §105-283. N.C. Gen. Stat. §105-317 provides specific elements that must be considered in appraising property at true value, and the North Carolina Courts have recognized three valuation approaches as accommodating those considerations (i.e., the cost, income, and sales comparison approaches<sup>2</sup>).

Certain low-income housing, however, is entitled to appraisal, assessment, and taxation based upon the provisions of N.C. Gen. Stat. §105-277.16, which provides the exclusive statutory means for valuing such properties, in lieu of true value. The statute provides in pertinent part that:

1. The income approach is the only approved method of valuation;
2. Rent restrictions must be considered in determining the property’s income; and
3. Income tax credits received under Section 42 of the [Internal Revenue] Code may not be considered in determining the property’s income.

Neither the rent restrictions nor the income tax credits associated with the properties are at issue in these matters. As to the income approach, the parties have stipulated the capitalization rate, and the effective gross incomes determined by each party for the respective properties are similar. Accordingly, the sole issue considered by the Commission in these matters is whether the appropriate measure of operating expenses for the properties is the actual expenses or some percentage of effective gross income, in order to reach the net operating income for the properties.

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<sup>2</sup> See, for example, *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)



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

1. Each of the above-captioned appeals involves a common question of law. Accordingly, and with the consent of the parties, we have consolidated the appeals for purposes of the hearing and this decision. References herein to the singular or plural forms of “Appellants” or “properties” or the like are meant to be used interchangeably, unless specifically stated otherwise.
2. The parties have stipulated that the properties are subject to the provisions of N.C. Gen. Stat. §105-277.16 and are to be appraised using the income approach as therein provided.
3. The income approach involves the capitalization of an income stream as an estimator of value for an income-producing property. The two essential components to estimating value under this approach are the property’s income and some mathematical rate or factor used to express the value of the property’s income stream. Here, the parties have stipulated that a capitalization rate of 9.5% is appropriate to capitalize the annual net income of the properties.
4. Net income is the portion of effective gross income remaining after subtracting operating expenses, including appropriate reserves for replacing items associated with a property that have relatively long lives and are only infrequently replaced (e.g., roofing or HVAC systems).
5. Neither party significantly disputed the reserves for replacement amounts considered for the properties. Similarly, there was no more than a 2.24% difference in the effective gross income figures presented by each party. Accordingly, we find no need to discuss these items in detail.
6. Broadly, however, it is relevant that the effective gross income figures provided by the parties are based on the actual income received by the subject properties. The actual income amounts came from audited financial statements prepared for each of the properties, in connection with reviews of the properties conducted regularly by various regulatory agencies, such as the North Carolina Housing Finance Agency (“NCHFA”), the U.S. Department of Housing and Urban Development (“HUD”), and others. Testimony at the hearing indicated that the audits were required both for the initial underwriting of low-income housing projects and for the continued allocation of tax credits to the property owners. We therefore find that the effective gross income amounts presented by the Appellants are appropriate.
7. Similarly, the actual operating expense figures offered by the Appellants are also sourced from audited financial statements prepared for each of the properties, in connection with reviews of

the properties conducted regularly by various regulatory agencies, just as were the income figures. . In addition, the Appellants have offered evidence that the reported expenses are consistent with the operating expenses of other properties subject to the same level of regulation as the subject properties, and, further, that the reported expenses are consistent with NCHFA underwriting guidelines.

8. The Appellants' witness Gaye Morgan, CEO of the company that manages and has an equity interest in the subject properties, testified that there are several types of low-income housing, each affected by different layers of government regulation, and that the subject properties were among the most heavily regulated types of low-income housing.
9. Ms. Gaye further testified that none of the audits of the financial records of the subject properties had ever suggested that the operating expenses reported for the properties were excessive.
10. The County explained that its estimation of operating expenses for each of the properties was based on an operating expense ratio, or a percentage of effective gross income, that was assumed to be typical for low-income housing properties. As support for the 60% ratio chosen, the County indicated that another county had adopted a similar approach and figure, and that it was County staff's understanding that this ratio fell within an appropriate range.
11. The County provided information concerning the expense ratios it had chosen for the assessment of other properties, but did not offer evidence that those ratios were based on actual data received from those properties. Moreover, the County's chosen expense ratios for these other properties ranged from 50% to 60%, with no explanation for the variation.
12. As support for the dollar amount of expense produced by applying the chosen ratio, the County offered information from a published survey of low-income-housing properties, but could not confirm to what extent the survey reflected the typical expenses for properties subject to the same level of regulation as the subject properties.
13. The County offered information from a different survey as additional evidence that its estimation of the expense amount was consistent with the survey results. However, the County could not confirm that this additional survey reflected the typical expenses for properties subject to the same level of regulation as the subject properties. Furthermore, the second survey was dated 2010, and the year in which the operating expenses were being considered was 2017.

14. We determine that property type and age are both important considerations for determining an appropriate level of expenses for the subject properties. Neither report offered by the County as support for its choice of expense ratio sufficiently identified the types and ages of properties considered.
15. While the County contended that the expenses claimed by the Appellants were excessive, unjustifiable, and untypical, the County did not offer reliable and specific market evidence that the Appellants' claimed expenses were in fact untypical or unjustifiable.
16. Accordingly, we find that, while the Appellants have offered evidence that their claimed operating expenses are both actual and typical for properties similar to the subjects, the County has offered little justification for substituting the actual expenses with an estimated expense ratio. We find, therefore, by the greater weight of the evidence that the Appellants' figures for operating expenses (including reserves) are justifiable and typical for the subject properties.
17. Specifically, the relevant elements of the income approach for the subject properties are as follows:

	<b>Kimberly Park II, LLC</b>	<b>Kimberly Park III, LLC</b>	<b>HHG II, LLC</b>
Effective Gross Income	\$ 1,309,667	\$ 521,107	\$ 399,361
Operating Expenses and Reserves	\$ 955,570	\$ 386,424	\$ 306,411
Net Operating Income	\$ 354,097	\$ 134,683	\$ 92,950
Capitalization Rate	9.5%	9.5%	9.5%
Indicated Resulting Value	\$ 3,727,337	\$ 1,417,716	\$ 978,421

**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. The Appellant properties are subject to the provisions of N.C. Gen. Stat. §105-277.16.
3. In these matters and for these properties, the effective gross income amounts as listed above are appropriate for use in determining the value of the subject properties using the income approach, when there is evidence from the Appellants that the income amounts are both actual and supported by audited financial statements, and when there is little evidence to the contrary from the County.

4. In these matters and for these properties, the expenses as listed above are appropriate for use in determining the value of the subject properties using the income approach, when there is evidence from the Appellants that the expenses are both actual and supported not only by audited financial statements, but also by relevant market data, and when there is little evidence to the contrary from the County.
5. Because the parties have stipulated to a mutually agreeable capitalization rate, the Commission has not considered the capitalization rate with respect to the subject properties. The indicated values are simply the quotient of the net operating income divided by the stipulated capitalization rate.

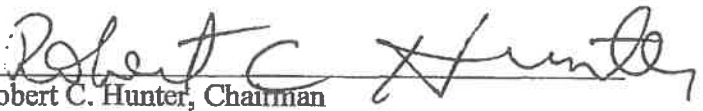
**WHEREFORE**, the Commission herewith orders that the 2017 tax value of the subject properties be changed as follows:

Kimberly Park II:	\$3,727,337;
Kimberly Park III:	\$1,417,716; and
HHG II:	\$978,421,

and that the Forsyth County abstracts and tax records be changed to give effect to this decision.

NORTH CAROLINA PROPERTY TAX COMMISSION



  
 Robert C. Hunter, Chairman

Vice Chairman Wheeler and  
 Commission Members Peaslee and Guess concur.

Commission Member Penny dissents without separate  
 opinion.

Date Entered: 7-15-19

ATTEST:   
 Stephen W. Pelfrey, Commission Secretary



FORSYTH COUNTY TAX ADMINISTRATION

Date Mailed: \_\_\_\_\_

REQUEST FOR RELEASE OR REFUND OF PROPERTY TAXES

Please check one option:  Request is for Release (of UNPAID taxes)  Request is for Refund (of PAID taxes)

NAME AS IT APPEARS ON ACCOUNT: NCHF Enclave II Inc.

CONTACT INFORMATION: PHONE: (336) 714-4123 EMAIL: jcocklereece@belldavispitt.com

G.S. 105-381 states that requests for refunds must be made in writing within five (5) years from the date the tax first became due or within six (6) months of the date of payment of such tax, whichever is the later date. G.S. 105-381 states that requests for releases must be made in writing at any time prior to payment of the tax. Please furnish the requested information and return this form to the address below within ten (10) business days:

Forsyth County Tax Assessor  
P. O. Box 757  
Winston-Salem, NC 27102-0757

Attn: \_\_\_\_\_

Taxes for the year(s) 2020 have been paid(or taxed) on property identified as:

PIN or Account Number 6818-82-1255

Total Amount Paid(or Taxed): \$ 43,705.36 paid / \$ 124,160.87 taxed

Please explain reason for release or refund: Original assessment violated 105-277.16 - letter submitted with tax assessor and county attorney

Has a release or refund been made on this same tax receipt before? If so, state reason for release/refund:

No

\*Signature of taxpayer: John A. Cocklereece, atty Date: 01/06/2021

\*Mailing address for refund: John A. Cocklereece, Bell Davis & Pitt, PA  
P.O. Box 21029

Winston-Salem, NC 27120-1029

\*PLEASE ALLOW 8-10 WEEKS FOR PROCESSING OF RELEASE OR REFUND REQUEST