North Carolina
Department of Revenue

APPEALS HANDBOOK

Prepared by the Staff of the Local Government Division

Property Tax Section

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Introduction

The property tax is the primary source of revenue for local government. The county Board of Equalization and Review is the first level of review beyond the county assessor for questions and concerns involving the listing, appraisal, and assessment of property.

We hope these materials will be particularly useful to all the citizens of our State. It will also serve as a guide for those citizens who serve as members of county boards of commissioners or boards of equalization and review. As the first level of review in the administration of the property tax, board members have the often difficult job of applying a body of law that requires consistent, uniform, and non-discriminatory treatment of all property owners. Taxpayers coming before the boards deserve a fair and impartial hearing, and a decision that accurately applies legal principles to the facts of each case. By applying these principles with a sense of fairness to the thousands of taxpayers who have not appealed to the boards, as well as to those who have, the board's decisions will foster public confidence in the property tax system and those who administer it.

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North Carolina Department of Revenue
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1. North Carolina Property Tax Appeal Process

A. General Process

1. During the year of the reappraisal or any year of the reappraisal cycle, a taxpayer may appeal the appraised value of their property. The taxpayer may appeal any property valuation in the county, so long as the taxpayer owns property in the county. The taxpayer may also appeal the listing and assessing of property and the denial of an application for exemption or special assessment.

2. In many cases, the first step is to contact the tax office informally and seek to resolve the difference without filing a formal appeal. This informal appeal process typically takes place between January and March. If the appeal cannot be settled informally, the taxpayer may appeal to the local Board of Equalization and Review, which begins its deliberations around the first week in April.

3. The board of county commissioners may comprise the Board of Equalization and Review or the county commissioners may appoint a special board to handle the appeals. This level of the appeal process is more formal, with the taxpayer being allotted a specific amount of time to present his case and the county also having time to present its side. The Board of Equalization and Review may choose to decide the appeal immediately or choose to delay its decision and deliberate further. All meetings and deliberations are open to the public. The taxpayer should receive a copy of this decision in writing.

4. If the taxpayer is not satisfied with the decision of the local board, they may appeal to the State Board of Equalization and Review, known as the Property Tax Commission. The Commission meets monthly in Raleigh to decide questions on valuation and exemption. The Commission is a trial court. Like any trial court, it is required to follow the North Carolina Rules of Evidence. When the taxpayer appeals, the taxpayer has the burden of proof.

5. Individual taxpayers may present their own cases before the Property Tax Commission, but are encouraged to hire an attorney. Corporate taxpayers and Limited Liability Companies

must be represented by an attorney licensed to practice law in North Carolina unless the business entity elects the following non-attorney representative as permitted by G.S. 105-290(d2): (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company; (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five (25%). If a business entity elects to use a non-attorney representative as set forth above, a business entity must complete Form AV-63 (Power of Attorney of Business Entities and Declaration of Non-attorney Representative) and sign the form before a notary. Form AV-63 is available on the Commission website: https://www.ncdor.gov/documents/av-14-north-carolina-property-tax-commission-notice-appeal-and-application-hearing

6. The Commission will render its decision within a short time based upon the greater weight of the evidence. Evidence is usually presented as sworn testimony and/or documents. The taxpayer may appeal a decision of the Property Tax Commission to the state Court of Appeals and state Supreme Court, but those bodies may choose to not hear the case as the grounds for appeal are more limited. If an appraisal report is submitted, it is suggested that the appraiser be present to testify concerning the report.

B. Who may file an appeal

1. Any taxpayer who owns or controls taxable property in the county may appeal the listing or appraisal of his or her property. Here, "controls" refers to situations in which the individual appealing is not actually the owner, but nonetheless has the authority to make decisions regarding the property (for example, a trustee in the case of trust-owned property, a guardian in the case of property owned by a minor), or a tenant in the case of rental property.

2. In addition, taxpayers are permitted to question the listing, appraisal, or exemption of property owned by another. If appealing the listing or appraisal of someone else's property, the appellant must show that he or she has been aggrieved by the current listing or appraised value. Brock v. North Carolina Property Tax Commission 290 N.C. 731, 228 S.E.2d 254(1976). This type of appeal is allowed because each taxpayer is directly affected by the

county's treatment of all other property subject to taxation. The situation typically arises when the appellant believes the other property is undervalued or has been incorrectly granted preferential tax treatment.

3. If the board increases or decreases the value of the property appealed by an aggrieved taxpayer, the board's decision should be mailed to the taxpayer who filed the appeal and to the taxpayer's whose property was appealed to the board. The taxpayer whose property was appealed to the board should have the opportunity to appeal the decision at the local board within 15 days of notice of the board's decision.

4. Taxpayers who own property jointly may file separate or joint appeals as they feel necessary.

5. Attorneys at law may file appeals to the Board of Equalization and Review for their clients who own or control property in the county.

C. When and how to appeal

1. There is no informal appeal process in the statutes but most counties allow taxpayers to file an appeal to the county assessor prior to the convening of the Board of Equalization and Review. Prior to the first meeting of the Board of Equalization and Review, the assessor may, for good cause, change the appraisal of any property subject to assessment for the current year. Written notice of a change in assessment shall be given to the taxpayer at his last known address prior to the first meeting of the Board of Equalization and Review. In the year of a general reappraisal, counties normally will send a reappraisal notice to the property owners with instructions on how to file an informal appeal. Property owners should follow these instructions and adhere to the deadlines set by the counties. Failure to file an informal appeal to the county assessor does not prohibit the property owner from filing an appeal to the county Board of Equalization and Review.

2. In a non-reappraisal year the county will send the property owner a reappraisal notice if the property has had a change which causes the county to reappraise the property. In these cases the notice will contain instructions on how to file an informal appeal. Property owners should follow these instructions and adhere to the deadlines set by the counties. For those

properties that have not had an assessment change the property owner should contact the county assessor to file an informal appeal.

3. A notice of the date, hours, place, and purpose of the first meeting of the Board of Equalization and Review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn. The notice shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper.

4. A request for a hearing before the Board of Equalization and Review has to be made in writing to or by personal appearance before the board prior to its published date of adjournment. Failure to make a request for a hearing prior to the adjournment date will result in a dismissal of the appeal request.

2. POWERS AND DUTIES OF THE BOARD

A. Personnel

1. In 37 of the 100 North Carolina counties, the members of the board of county commissioners sit as the Board of Equalization and Review. In these counties, the members are sitting to fulfill legal responsibilities separate and apart from their roles as county commissioners. As such, they must be mindful of not allowing their actions on the Board of Equalization and Review to be influenced by their interests as commissioners. The Department of Revenue recommends counties create special Boards of Equalization and Review. This allows the county commissioners to focus on the normal business of the county. The Board of Equalization and Review can concentrate solely on dealing with the issues involving property taxation.

2. In the remaining counties, the commissioners have appointed a special Board of Equalization and Review either by a local resolution or through passage of a local act by the General Assembly. The resolution or local act delegates the responsibilities and duties imposed by statute to a citizen body whose powers are the same as those provided to the county commissioners had they chosen to sit as the Board of Equalization and Review.

B. Oath of Office

1. G.S. 105-322(c) requires each member of the Board of Equalization and Review to take and sign the following oath, which should be administered at or prior to the Board's first meeting, and before the Board conducts any other business:

I, _____ do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as a member of the Board of Equalization and Review of _____ County, North Carolina, and that I will not allow my actions as a member of the Board of Equalization and Review to be influenced by personal or political friendships or obligations, so help me God.

_____

(Signature)

2. The oath of office should not be viewed as a mere formality, but rather as an affirmation of the responsibility to carry out the powers and duties of the Board in a fair and impartial manner. Once taken and signed, the oaths are to be filed with the clerk to the board of county commissioners. A member's oath is valid for the term of his or her appointment.

C. Statutory Duties

1. Virtually all statutes dealing with the property tax are found in a Subchapter II of Chapter 105 of the North Carolina General Statutes (abbreviated as N.C.G.S., or simply G.S.) known as the Machinery Act. Under the provisions of the Machinery Act, the Board of Equalization and Review has three major responsibilities.

D. Duty to Review Tax Lists

1. The first responsibility, providing the broadest authority, is the duty to review the county tax records, set forth in G.S. 105-322(g)(1)as follows:

> **...The board shall examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:**
>
> **a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.**
>
> **b. Correct all errors in the names of persons and in the description of properties subject to taxation.**
>
> **c. Increase or reduce the appraised value of any property that, in the board's opinion, has been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.**
>
> **d. Cause to be done whatever else is necessary to make the lists and tax records comply with the provisions of this Subchapter.**
>
> **e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.**
>
> **f. Give written notice to the taxpayer at the taxpayer's last known address in the event the board, by appropriate order, increases the appraisal of any property or lists for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).**

2. Since the implementation of the permanent listing system codified in G.S 105-303(b), the board rarely exercises authority under 105-322(g)(1) a and b. These types of corrections are typically addressed by the assessor's office prior to first meeting of the board. The majority of the board's hearing time is used for deciding valuation issues appealed to the board under 105-322(g)(c).

3. In the year of a general reappraisal the powers under (g)(1) discussed below can be used by the board to make changes in areas of the counties in which the assessor or the board determines should be made. This allows the board to correct appraisal errors without the taxpayers having to appeal the values. It also allows the board to make wholesale changes in types of properties and properties located in an area where the appraisal is either under market value or above market value. Any changes made under this provision must adhere to the counties' schedules of values used in the general reappraisal.

Stated otherwise, the Board of Equalization and Review has the duty under G.S. 105-322(g)(1) to:

- Examine and review the tax lists of the county for the current year.
- List, appraise, and assess any taxable property omitted from the tax lists.
- Correct any errors in the names and description of taxable property.
- Change the appraised value of any property that, in the board's opinion, is above or below market value, as required by G.S. 105-283.
- Ensure that any change in the appraised value of <u>real</u> property is made under the provisions of G.S. 105-286, G.S. 105-287, and G.S. 105-317.
- Ensure that any change in the appraised value of <u>personal</u> property is made under the provisions of G.S. 105-317.1.
- Make any changes necessary to ensure that all tax records comply with the provisions of the Machinery Act.
- Notify any taxpayer at his or her last known address whenever the board renders a decision regarding the appraised value of the taxpayer's property.
- See that any action taken by the board is placed in an appropriate order, and that the order is entered in the minutes of the board.

E. <u>Duty to Hear Taxpayer Appeals</u>

1. The second major responsibility of the Board of Equalization and Review arises under G.S. 105-322(g)(2) and is the duty to hear appeals:

    - from those who own or control taxable property

- about the listing or appraisal
- of the taxpayer's property or the property of other taxpayers.

2. G.S. 105-322(g)(2) reads as follows:

On request, the Board of Equalization and Review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of the taxpayer's property or the property of others.

a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.

b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.

c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on the taxpayer's appeal not later than 30 days after the board's adjournment.

F. Who may file an appeal

1. Any taxpayer who owns or controls taxable property in the county may appeal the listing or appraisal of his or her property. Here, "controls" refers to situations in which the individual appealing is not actually the owner, but nonetheless has the authority to make decisions

regarding the property (for example, a trustee in the case of trust-owned property, or a guardian in the case of property owned by a minor).

2. In addition, taxpayers are permitted to question the listing, appraisal, or exemption of property owned by another. If appealing the listing or appraisal of someone else's property (including the classification of property for present-use value or as exempt), the appellant must show that he or she has been aggrieved by the current listing or appraised value. Brock v. North Carolina Property Tax Commission 290 N.C. 731, 228 S.E.2d 254(1976). This type of appeal is allowed because each taxpayer is directly affected by the county's treatment of all other property subject to taxation. The situation typically arises when the appellant believes the other property is undervalued or has been incorrectly granted preferential tax treatment. If the board increases or decreases the value of the property appealed by an aggrieved taxpayer, the board's decision should be mailed to the taxpayer who filed the appeal and to the taxpayer's whose property was appealed to the board. The taxpayer whose property was appealed to the board should have the opportunity to appeal the decision at the local board within 15 days of notice of the board's decision..

3. Taxpayers who own property jointly may file separate or joint appeals as they feel necessary.

4. As a practical matter, when a close family member of a taxpayer, such as a father, mother, daughter, or son, comes forward on the basis that the owner is unable either to present an appeal or to execute a Power of Attorney, the more prudent position should be to allow the family member to represent the actual owner. Situations such as unexpected military duty, and unexpected illness or hospital stays would certainly come under this exception.

5. Attorneys-at-law may file appeals to the Board of Equalization and Review for their clients who own or control property in the county.

6. Non-Attorney Representation -- A quasi-judicial hearing is one that requires public officials to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences and make conclusions from those facts, and to exercise judicial discretion.

7. The NC Property Tax Commission and all Board of Equalization and Reviews operate as quasi-judicial bodies. Representing another person or party before a quasi-judicial body such as a county Board of Equalization and Review may constitute the practice of law. Practicing law without a license is a criminal offense. There is an exception to this rule found in N.C.G.S.105-290(d2) and discussed below.

8. 105-290(d2) – If a property owner is a business entity, the business entity may represent itself using a non-attorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of non-attorney representation shall be made in writing, under penalty of perjury, to the Commission on a form provided by the Commission.

9. While N.C.G.S.105-290(d2) does not directly apply to Board of Equalization and Reviews, it is reasonable for Board of Equalization and Reviews to adopt these new procedures for appeals involving business entities. If attorneys are not required for business entity appeals before the Property Tax Commission, then it stands to reason that attorneys are not required for business entity appeals before Board of Equalization and Reviews.

10. Use of Powers of Attorney Form: Requiring tax representatives and other non-attorneys to file a signed Power of Attorney claiming the exception in 105-290(d2) is recommended. It protects the Board of Equalization and Review, should a taxpayer challenge the adjustment given to another taxpayer's property, when the other taxpayer was represented by a tax representative.
    - It protects the taxpayers who own or control property and who are unable to represent themselves before the board.

- It protects the representative by providing evidence of the taxpayer's intent should a challenge arise as to the authority of the representative to act on behalf of the taxpayer.

- It protects all other taxpayers and owners or controllers of taxable property with the assurance that the proceedings of the board are well within the framework of the law.

11. Below is a sample of the Power of Attorney document drafted by the Department of Revenue and recommended for use starting in 2015 follows. Please refer either to the Property Tax Section forms site (https://www.ncdor.gov/documents/power-attorney-form) or directly to our office for information on any updates to this form.

POWER OF ATTORNEY

Know all men by these presents that _____, (Taxpayer) in the County of _____, State of _____, City of _____, do hereby make, constitute, appoint, and authorize the representative(s) listed below as my true and lawful attorney in fact to appear for me and represent me before the **board of county commissioners or the county Board of Equalization and Review** in the County of _____, in connection with any matter involving the **ad valorem taxation** of the property described below; I grant unto said attorney in fact the full power and authority to appeal the property tax value assigned by the County to the described property, and the power to make full and complete settlement or other disposition of the matter; I hereby authorize the said County to disclose to my attorney in fact all information used by the County in connection with the listing, appraisal, or assessment of the said property, including specifically information of a confidential nature.

I understand that in the event of an adverse decision by either County Board, that if this matter is appealed to the North Carolina Property Tax Commission, the property tax value may be lowered, left unchanged, or increased as a result of the appeal. I also understand that representation of business entities before the Property Tax Commission is subject to the provisions of G.S. 105-290(d2).

The specific property which my attorney in fact is authorized to appeal is described as follows: _____
_____
_____

NOTE: PLEASE USE THE PROPERTY TAX PARCEL IDENTIFICATION NUMBER(S) FOR REAL PROPERTY; PERSONAL PROPERTY SHOULD BE DESCRIBED AS CLEARLY AS POSSIBLE. ATTACH ADDITIONAL INFORMATION SHEETS IF NECESSARY.

Taxpayer(s) must sign and date this Power of Attorney before a Notary Public.

Taxpayer's name and address:	**Telephone Number:** **Fax Number:** **Email:**

Witness my hand this the _____day of _____, 20___.

_____
TAXPAYER

STATE OF _____

COUNTY OF _____

The foregoing instrument was duly acknowledged before me by _____ for the uses and purposes therein expressed.

Witness my hand and seal this the _____day of _____, 20___. (seal)

My commission expires :_____ _____

Notary Public

Representative(s) name and address:	**Telephone Number:** **Fax Number:** **Email:**

G. Manner and timing of the appeal:

1. The request for a hearing must be made in writing or by personal appearance before the board, prior to its advertised date of adjournment. The county may use a standardized appeal form to be filled out by the taxpayer, however, a request for hearing before the local board does not have to be on the county's appeal form. The statute only requires that the appeal be in writing to the board or in person before the adjournment of the board. Any notice of a decision made by the board under the provisions of G. S. 105-322(g)(1) mailed fewer than 15 days prior to the board's adjournment, must allow the taxpayer the opportunity to request a hearing within 15 days after the notice of the decision was mailed regardless of the advertised date of adjournment.

H. Duty to Change Abstracts and Records After Adjournment

1. The third major duty of the Board of Equalization and Review is to hear and decide certain appeals that may arise after adjournment, and is set out in G.S. 105-322(g)(5) as follows:

> **Following adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this subsection, the board may continue to meet to carry out the following duties:**
>
> **a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).**
>
> **b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).**
>
> **c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation.**
>
> **d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c).**

2. The tax office functions that generate the appeals listed in G.S. 105-322(g)(5) are processes which typically occur throughout the year. Historically, the duties listed above would become the responsibility of the boards of county commissioners, once the Board of Equalization and Review had adjourned; however, some counties had local acts passed by the General

Assembly to allow the Board of Equalization and Review to continue to meet during the year to handle appeals arising from one or more of the factors listed above. The enactment of G.S. 105-322(g)(2) extended this option to all counties.

3. The same reasons that make it desirable to create a separate Board of Equalization and Review probably make it desirable to allow them to handle these additional appeals as they arise. If a county's most recent resolution does not allow the Board of Equalization and Review to handle these post-adjournment appeals, the board of county commissioners should consider adopting an updated Board of Equalization and Review resolution to clarify which board should be responsible for the appeals.

4. NOTE: This provision should not be taken as a second opportunity to appeal for those taxpayers who failed to timely appeal under G.S. 105-322(g)(2). Only those specifically enumerated appeals in G.S. 105-322(g)(5) should be allowed once the Board of Equalization and Review has adjourned.

I. G.S. 105-322(g)(3)—Additional Statutory Powers

1. The board has additional powers that may be used in connection with the duties previously addressed under G.S. 105-322(g)(1) and (2). These powers are enumerated in (g)(3) as follows:

> **In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the Board of Equalization and Review may exercise the following powers:**
>
> **a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by the taxpayer if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.**
>
> **b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it**

must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chair of the board, directed to the witness or to the person having custody of the document and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.

2. The board has the power to appoint committees composed of its members or other people to assist in the board's investigative duties; however, upon receipt of the investigative report, only the members of the board may be involved in the final deliberation and decision. The expense of the committees, appraisers, or other individuals, is to be borne by the county.

3. The board may require the taxpayer to reimburse the county for the cost of an appraisal demanded by the taxpayer when that appraisal does not result in a material reduction of the value by the board or by the Department of Revenue through the Property Tax Commission.

4. The board may examine any witnesses and documents that it feels is pertinent to the decision. This is often necessary to ensure that the testimony or statements made are indeed accurate as to what the document addresses.

5. The board may place any witnesses under oath. This oath may be administered by any member of the board. If used, this practice should be made a policy of the board and subsequently administered to all witnesses.

6. The board may subpoena any witnesses or documents on its own motion and upon request under G.S. 105-322(g)(2)c. The subpoena has to be signed by the chairman of the board and can be served by an officer authorized to serve subpoenas. Failure to respond to a subpoena is a Class 1 misdemeanor.

3. PREPARATION

A. Preliminary Review

1. Experience has shown that the volume of appeals to the Board of Equalization and Review, as well as those to the North Carolina Property Tax Commission, could be significantly reduced if a few basic procedures were followed. This has been proven time and again by the number of appeals to the Property Tax Commission which have been resolved by the simple correction of data listing elements.

2. It is recommended that the property be reviewed before the appeal is scheduled for hearing by the Board of Equalization and Review, or even earlier if feasible. While certainly time consuming, there are significant benefits to the county in correcting data errors at the earliest opportunity or otherwise fine-tuning the appraised value via an on-site inspection and data verification.

3. The Department of Revenue expects counties to have verified the data used in calculating the appraised value before the Board of Equalization and Review has made its final decision on the appeal. Adjustments based on factual errors made only after the property has been appealed to the Property Tax Commission tend both to reduce taxpayers' impression of equity and fairness within the local tax program, and to promote discontent between taxpayers and the county.

B. Determining the Time of Meetings

1. The ability of the Board of Equalization and Review to meet after adjournment to hear appeals filed under the provisions of G.S. 105-322(g)(5) is discussed in the previous section. All other appeals to the Board of Equalization and Review are subject to the provisions discussed below and following.

G.S. 105-322(e) sets forth:

Each year the Board of Equalization and Review shall hold its first meeting not earlier than the first Monday in April and not later than the first

Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. Except as provided in subdivision (g)(5) of this section, the board may not sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below.

2. The Machinery Act is clear on the deadlines for convening and for adjourning the Board of Equalization and Review. While the date for convening should not pose a problem for most counties, the deadlines for adjournment should be interpreted as being:

    - **the last possible date for receiving new appeals** filed under the provisions of G.S. 105-322(g)(2); **and**
    - **the last possible date for performing the duties and exercising the powers** listed in G.S. 105-322(g)(1).

3. The board may continue to meet after adjournment for the purpose of hearing and deciding appeals that have been timely filed, meaning appeals which were:

- actually received by the board or the assessor by or before the published date and time of adjournment; or

- made in person before the board by or before the published date and time of adjournment; or

- received by the board or the assessor at any time bearing a U.S. Postal Service postmark which is dated on or before the published date of adjournment.

4. In each instance, once notice of appeal is timely received, the actual hearing of the appeal can be scheduled for a later date.

C. Advertisement of Scheduled Meetings

1. The advertisement of scheduled meetings creates, in effect, a "window" for accepting requests for hearing. Although the assessor may accept notice of appeal prior to the convening of the board, the advertisement gives public notice that requests can be made and that a deadline for receiving those requests has been set.

2. There are three important considerations influencing the determination of the number of meetings to be scheduled and stated in the advertisement[1]:

D. Duty to review:

As detailed previously, the board has the obligation under G.S. 105-322(g)(1) to review tax records and do whatever is necessary to make the records comply with the provisions of law. It is in this area that the board has its greatest power which is available only up to the advertised adjournment date. While the board may continue to meet after its adjournment date to hear timely filed appeals, its power to review and make changes on its own motion for property (real or personal) not under appeal has expired with the passing of the adjournment date.

Appeals filed in reappraisal years may produce evidence indicating that an adjustment (up or down) is warranted for other properties not under appeal. This most often comes about as the subject appeals are investigated or heard. It is not unusual for the assessor's office or the board to become aware of substantial under assessments. When this occurs, the assessor may take the matter to the board for their consideration or the board may address the issue on its own motion. In the early years of the reappraisal cycle, the "window" may need to be wider to provide sufficient time for the board to act. The emphasis is that the "window" be realistic, so as to allow the board time to adequately perform its duties regarding equalization set forth in G.S. 105-322(g)(1).

E. Expected volume

[1] The prospect of paying interest on tax refunds, as a result of Board valuation reductions, is also a consideration. This topic is discussed in Section I on Page 40.

An estimate must be made as to the volume of appeals the board may be requested to hear. In the first two years of the reappraisal cycle, the real property appeals will greatly outnumber all others. Generally speaking, the later years of the cycle should produce fewer requests for hearing, and accordingly the "window" may be narrowed.

F. Space

All hearings should be held in a space which allows for the public to be present and witness all the hearings, deliberations, and actions of the board. An environment of the board hearings should be established to encourage citizen participation.

G. Frequency and length of meetings

Consideration must be given to the number of hours the members of the board can reasonably be expected to give to each meeting, and the frequency with which meetings can be held.

H. Recommendation Concerning Advertisements

1. The Department of Revenue recommends that counties work within the following general guidelines:

- Convene as early as possible within the statutory time frame, between the first Monday in April and the first Monday in May. By statute the local board can determine when to convene between these dates. To promote uniformity statewide, the Department of Revenue strongly recommends that all boards convene on the first Monday in April.

- Under no circumstances should the board convene and adjourn on the same date.

- For those counties in a reappraisal year, schedule a minimum of three (3) weeks and a maximum of eight (8) weeks between convening and adjournment dates.

- For those counties in a non-reappraisal year, schedule a minimum of two (2) weeks and a maximum of six (6) weeks between convening and adjournment dates.

2. Among the benefits of implementation are:

- It is fair. As communicated by the Department of Revenue in a memorandum to former Buncombe County Assessor, Charles Clark, fairness is achieved...

> …because all taxpayers are deemed to be on notice of the cutoff date by virtue of publication. The fact that the board may need to meet after this date to decide cases should not open the door to new requests for hearing. In fact, opening the door for this reason would be unfair to taxpayers who have relied on the adjournment date stated in the public notice.

- It generates greater uniformity across the state, enabling taxpayers to expect reasonably similar procedures from county to county.

- It expedites the local appeals process especially for counties in the first year of a reappraisal. Setting an adjournment date and sticking to it will avoid the problem of appeals which multiply simply because the filing window remains open.

- It provides the assessor greater control over the administration of the appeals process while protecting the rights and interests of all property owners/taxpayers by affording them ample opportunity to file notice of appeal or requests for hearing.

- It promotes the completion of the budget process, as estimates of the total tax base are requisite to the process of setting the tax rate.

I. Notice of Meetings and Adjournment

1. G.S. 105-322(f) provides:

A notice of the date, hours, place, and purpose of the first meeting of the Board of Equalization and Review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier

adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment.

2. The notice stating when, where, and why the Board of Equalization and Review is meeting should be published at least three times before the first meeting, with the first notice being at least 10 days prior to the first meeting. This notice should be published in a newspaper having general circulation in the county, should be of sufficient size, and should be located in a place within the newspaper where it is easily noticed by the readers.

3. Any changes in the board's schedule should be published in the same newspaper. If a change in the schedule calls for an early adjournment, a notice should be published at least five days prior to the date fixed for adjournment. If the change is for a later adjournment, the notice is to be published prior to the original adjournment date.

4. A sample initial notice for the purpose of advertising meetings of the Board follows. Please refer either to the Property Tax Section forms site (https://www.ncdor.gov/documents/board-equalization-and-review-notice-meeting-sample).

NOTICE OF MEETINGS

OF THE _____ COUNTY
BOARD OF EQUALIZATION AND REVIEW

Pursuant to N.C.G.S. 105-322, the _____ County Board of Equalization and Review will meet as required by law.

PURPOSE OF MEETINGS

To hear, upon request, any and all taxpayers who own or control taxable property assessed for taxation in _____ County, with respect to the valuation of such property, or the property of others, and to fulfill other duties and responsibilities as required by law.

TIME OF MEETINGS

The Board will convene for its first meeting on
Monday, April 4, 20--.

The Board will adjourn for the purpose of accepting requests for hearing at its meeting on
Friday, April 29, 20--.

Meetings will begin promptly at 10:00 AM in Room _____
of the _____ County Courthouse.

Requests for hearing must be received no later than final adjournment, which is scheduled for Friday, April 29, 20--, at 3:00 PM.

In the event of an earlier or a later adjournment, notice to that effect will be published in this newspaper.

The schedule for the hearing of appeals which were timely filed will be posted at the office of the Assessor, serving as Clerk to the Board, and will also be provided to individuals and organizations that have requested notice pursuant to N.C.G.S. 143-318.12.

All requests for hearing should be made to:

_____, Clerk to the
_____ County Board of Equalization and Review
_____ County Courthouse
_____, N. C. 12345
Telephone: (____) ____-_____

J. Definition of "adjournment" and "adjournment date"

1. The Department of Revenue interprets the word "adjournment" and the phrase "adjournment date," within the context of G.S. 105-322, to mean **the date set as the deadline for:**

- **the accepting of requests for hearing from owners or controllers of taxable property; and**

- **the last date on which the Board of Equalization and Review can, <u>on its own motion</u>, review tax lists, correct tax records, increase or decrease appraised values, or "cause to be done whatever else is necessary to make the lists and tax records comply with the provisions of [the Machinery Act]."**

2. The Board's authority to accept appeals, therefore, expires at the close of its last advertised meeting, which may be held no later than July 1 in a non-reappraisal year or December 1 in a reappraisal year. These dates represent the latest possible date for "adjournment," or the receiving of requests for hearing. <u>Even after the adjournment date, the Board still has the obligation to continue meeting in order to hear appeals which were timely filed on or before the adjournment date</u> [G.S. 105-322(g)(2)(a)].

K. **Summary of important Board of Equalization and Review dates:**

Date	**Significance**
10 days prior to first meeting	Deadline for the first publication of notice of meetings
First Monday in April	Earliest permitted date for first meeting
First Monday in May	Last permitted date for first meeting
Third Monday following first meeting	Unless a revaluation year, board should complete its duties, unless it determines that a longer period is necessary
July 1	Unless a revaluation year, board must adjourn by this date, except for hearing appeals which have been timely filed.
December 1	If a revaluation year, board must adjourn by this date, except for hearing appeals which have been timely filed.
The later of 30 days after adjournment or 30 days after the hearing date	Notice of the board's decision should be mailed to the appellant by this date

4. GENERAL CONSIDERATIONS FOR HEARING OF APPEALS

A. Format

1. The formats used by the different boards in North Carolina's 100 counties vary greatly from leisurely informal experiences to rigid, formalized proceedings. The board is not required to follow strict rules of evidence and civil procedure. The board of review needs to be formal enough that taxpayers can present their arguments to the board and be afforded the opportunity to respond to rebuttal arguments made by the county. Generally speaking, the degree of formality needs to be decided at the beginning and the same format used throughout the board's hearings.

2. All hearings should be held in a space which allows for the public to be present and witness all the hearings, deliberations, and actions of the board. An environment of the board hearings should be established to encourage citizen participation.

3. Commonly known as the "Sunshine Laws," the state of North Carolina has enacted statutes designed to shed light on, and promote public access to government activities. Among these laws is the Open Meetings Law, which reflects the declared policy of the General Assembly that the hearings, deliberations, and actions of public bodies be conducted publicly.

4. It is our understanding that the proper application of the Open Meetings Law to meetings of the Board of Equalization and Review requires local boards to conduct all Board business in such a manner that a typical citizen would believe himself entitled to attend the entire meeting. The board and the assessor's office should not discuss the appeal after the taxpayer's case is heard by the board; however, exceptions to this general rule may arise such as a situation in which a taxpayer's income or other confidential information relevant to an appeal may be discussed or to clarify errors of fact presented by the taxpayer. For further reference and clarification of the application of the Sunshine Laws, the Department of Revenue recommends that you consult your County Attorney, the School of Government at UNC-Chapel Hill, or the office of the Attorney General of North Carolina.

B. Who May Present Evidence?

1. The taxpayer, the taxpayer's attorney, and the taxpayer's authorized representative may present evidence to the Board of Equalization and Review. See page 1 for discussion on representation by non-attorneys other than the owner. The person presenting the evidence may call upon witnesses to help them present their case to the board. The assessor, under G.S. 105-322(d), is directed to provide the board with all available information relating to the listing and valuation of the subject property. Appraisers and other county officials may present additional evidence to the board concerning the property that is under appeal. The board, upon request by the taxpayer, shall subpoena witnesses or documents if it is believed that the witness or documents are pertinent to the decision of the appeal.

C. Avoiding Conflicts of Interest

1. Regardless of how the Board of Equalization and Review is constituted (by members of the board of county commissioners or by private citizens serving via appointment as a special Board of Equalization and Review) the occasion will arise when questions of "conflict of interest" will replace the issues of the appeal as the center of discussion. The following are a few examples:

   - an appellant who is a business partner with one of the board members.
   - any appellant who is a relative of one or more of the board members.
   - the offering of an independent fee appraisal performed by an appraiser employed in the tax office, by an employee associated with the reappraisal firm contracted by the county, or by a member of the board.

2. In a memorandum to former Surry County Assessor, Katye B. Simpson, dated August 21, 1991, former Director of the Property Tax Division, Frank S. Goodrum stated:

   "While questions of ethics and conflict of interest are very difficult and rarely have clear answers, we have been guided by two principles: (1) neither a county employee nor a member of the Board of Equalization and Review should take any

action that could be construed as giving any taxpayer an unfair advantage over any other taxpayer and (2) the appearance of a conflict of interest can weaken the integrity of a tax system even when no improper actions occur."

3. In those instances where the question may be raised, the members of the board who find themselves in this "conflict of interest" position should excuse themselves and not participate in any hearing or deliberation of the appeal. Employees of the county tax office should refrain from accepting any outside appraisal assignments when the subject property is located within the taxing jurisdiction where they are employed. When in doubt, err to the side of discretion and thereby protect the integrity of the appeal process and tax program.

D. Recommended Format for Conducting the Hearing

1. The format recommended by the Department of Revenue for boards of equalization and review is set forth below. Reasonable variations are allowable to the extent that they do not impinge the integrity of the local property tax program, or collide with the constitutional requirements of "due process" and "equal protection under the law." The format and conduct of the hearing process are of the utmost importance and should not appear to be either solicitous of taxpayer approval or deaf to taxpayer concerns. Rather, the process should instill in the taxpayer/appellant a sense of having been treated fairly. The recommended guidelines for the conduct of hearings are as follows:

    1. Meeting is called to order by the Chairperson.

    2. Upon indication from the chair that the board is ready to hear the first case, the clerk identifies the appellant and property under appeal.

    3. If a taxpayer fails to appear at a scheduled hearing, the board shall review any information submitted earlier as evidence, hear the position of the assessor's office, and make a decision based on these facts alone. If no evidence has been submitted by the taxpayer, then the board should decide in favor of the tax office on the grounds that the taxpayer has not attempted to carry his or her burden of proof; however, if the taxpayer does not appear before the Board of Equalization and Review, the appeal should not be dismissed for the taxpayer's failure to appear at the hearing. If the board does not

increase or decrease the value based on the evidence, the board's decision should reflect a no change in value.

4. The chair instructs the appellant to begin, whereby the appellant/taxpayer proceeds to present his or her case through the use of personal testimony, documentary evidence, and the testimony of any other individuals, including expert witnesses.

5. The assessor's office should be allowed an opportunity to ask questions of the taxpayer and any witnesses concerning the evidence presented.

6. Each board member should be allowed an opportunity to ask questions of the taxpayer and any witnesses concerning the evidence presented. Some examples of questions that the board members may want to ask are listed below:

    - "Is there an appraisal for the property, dated effective January 1 of the reappraisal year?"
    - "Are there expert witnesses that can testify as to the value of the property?"
    - "Has there been a sale of the property, prior to January 1 of the reappraisal year?"
    - "Is there any information on the sale of comparable property (or properties), which occurred prior to the reappraisal?"
    - "Is there any income and expense information available?" (if a commercial property)
    - "What was the cost of the improvements constructed on the property?" (if recently built)

7. The chairperson then recognizes the appropriate individual from the assessor's office to present the position of the tax office for the case that is under appeal.

NOTE: In those counties where the taxpayer has received prior notice of the position the county will present at the hearing, the chair may elect to read the stated position into the record prior to the taking of the appellant's evidence and testimony. This should lessen the amount of time required for each hearing.

8. The taxpayer should be allowed the opportunity to ask questions of the county's witnesses concerning the evidence presented.

9. Each board member should be allowed an opportunity to ask questions of the county and any witnesses concerning the evidence presented. Some examples of questions that the board may properly ask of the staff appraiser, or county's witness, are as follows:

    - "Does the county have information on the sale of comparable property (or properties), which occurred prior to the reappraisal?"
    - "How do the assessments of comparable properties compare with their sale prices and with the property under appeal?"

NOTE: Members of the board SHOULD NOT ask questions that appear to imply that a conclusion has been reached.

10. The board should let the appellant and the county know which of the following actions they are going to take:

- The evidence and testimony submitted will be considered, a decision will be rendered, and the both parties will be notified of the decision in due course.

- Have someone take a look at the property (either a member or the full board), then decide the case based on that physical inspection and the evidence and testimony submitted, and notify the parties accordingly. NOTE: Hopefully, the property has been visited as part of the investigative process, and thus it will not be necessary for the board to take this step.

- Request that additional information be provided by either the appellant or the tax office within a set time frame, (generally one week to 10 days), with a decision to be reached at the end of that time frame based on the information at hand, and the appellant to be notified accordingly.

11. Once the board has indicated the course of action it will take concerning the appeal there should not be any other communication concerning the appeal between the board and the taxpayer or county unless all parties are present to hear the conversation.

12. All decisions by the board have to be made in an open public meeting. All citizens including the appellant have the right to be present and hear the deliberations, all discussions and the vote by the board members.

13. There should be no attempt by the county to mislead the appellants that they must leave as soon as their hearing is over or that they cannot be present for the deliberations.

E. The "Greater Weight of Evidence" Test

1. Once the hearing has concluded, the board may request additional information to be provided by one or both parties. Beyond fulfilling these requests, neither the appellant nor the tax office staff is to have additional input which might influence the decision. This would include discussing the case with the county after the taxpayer has left the hearing. The decision should be based on the information provided or requested through the hearing process coupled with the requirements of law and the board members' knowledge of the county and expertise with that particular property type. In view of that, Joseph S. Ferrell, formerly of the School of Government, made the following observation:

   > The "greater weight of the evidence" test requires only that the taxpayer bring forward clear, relevant, and persuasive evidence sufficient to persuade an impartial and fair-minded board that it is more likely that the facts are as the taxpayer says they are. This is a less rigorous burden of proof than the 'beyond a reasonable doubt' test used in criminal cases.

2. Therefore, in all appeals before the county Board of Equalization and Review it is incumbent on the appealing taxpayer to persuade the board, by the greater weight of the

evidence, that the county assessor's decision was unlawful or incorrect. Furthermore, the taxpayer must show that the value placed on the property by the assessor is substantially greater than true value. This implies that the taxpayer must produce persuasive evidence tending to show what the true value of the property actually is.

The observations of Mr. Ferrell are well supported by a review of applicable court cases:

> "Ad valorem tax assessments are presumed to be correct, and when such assessments are challenged, the burden of proof is on the taxpayer to show that the assessment was erroneous." In re Bosley, 29 N.C. app. 468, 224 S.E.2d 686, cert. denied, 290 N.C. 551, 226 S.E.2d 509 (1976);

> "It is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong; he must also show that the result arrived at is substantially greater than the true value in money of the property assessed, i.e., that the valuation was unreasonably high." In re Highlands Dev. Corp., 80 N.C. App. 544, 342 S.E.2d 588 (1980).

F. What SHOULD NOT be Considered in Deciding the Appeal

1. It is important to note that the board members, in the majority of instances, are drawn from a wide variety of backgrounds. At this particular point, preparing to decide the matter at hand, the backgrounds should provide insight and not preferential treatment. Regardless of the issues presented in the appeal, the decision of the board, in order to be substantiated and defendable:

- SHOULD NOT be based on personal or political friendships or obligations.

- SHOULD NOT be based on the percentage increase or change from the previous appraisal or previous amount of taxes.

- SHOULD NOT be based on the actual sales price or private appraisal of the subject property when there is better evidence of a different value such as that supported by verified sales of comparable properties. [Refer to in re Greensboro Office Partnership (1985).]

- SHOULD NOT be based on the actual rents of a commercial property when those rents are not reflective of the economic rent for that property type. [Refer to in re Property of Pine Raleigh (1963) and Valuation of Property Located at 411-417 W. Fourth St., (1972).]

- SHOULD NOT be based on the income stream of the business (if a commercial property), but rather the rent the property (land and improvements) can command in the marketplace.

- SHOULD NOT be based on the economic ability of the owner to pay the anticipated tax.

- SHOULD NOT be based on personal sympathies towards any individual.

- SHOULD NOT be based on personal preferences towards one property type over another.

- SHOULD NOT be based on whether or not the taxpayer is a native resident of that particular county, as opposed to an out-of-state property owner.

- SHOULD NOT be based on the "book value" showing on the taxpayer's accounting records.

G. Notice of Decision

1. With respect to the requirement in G.S. 105-322(g)(2)d, every effort should be made to conclude the business of the board no later than thirty (30) days following its advertised adjournment. However, when it is impossible for the board to complete its duties, including notification of decisions, within the statutory 30 days following the advertised date for adjournment, prudence should dictate a more reasonable alternative. In some instances, the hearings and notices of decision are not concluded for the current calendar

year until the following January, February or March. Given the continuing trend of boards being required to meet long after their advertised adjournment, it must be acknowledged that this particular statutory language is, in the words of Joseph A. Ferrell, formerly of the School of Government, "a goal rather than an absolute limitation."

2. The Department of Revenue recommends that notices should not be mailed before the board's advertised adjournment date, but otherwise, a notice of the board's decision should be mailed to the appellant by 30 days following the hearing date. This is a reasonable expectation and should be acceptable to all parties. G.S. 105-394(9) specifies that "[t]he failure to make or serve any notice mentioned in this Subchapter" is an example of an immaterial irregularity, and as such, "shall not invalidate the tax imposed upon any property or any process of listing, appraisal, assessment...or any other proceeding under this Subchapter."

3. The notice of the decision should also:

- Show the value appealed in addition to the value determined by the Board. The language in the decision letter should be concise to the issues decided by the board;
- State that the appeal to the Property Tax Commission must be filed within 30 days of the notice;
- Contain the date that the notice of decision was mailed;
- State that a copy of the notice should accompany the appeal to the Property Tax Commission;
- Contain the correct mailing address of the Property Tax Commission.

4. A sample of the Notice of Decision letter drafted by the Department of Revenue, and recommended for use follows. Please refer either to the Property Tax Section forms site (https://www.ncdor.gov/documents/board-equalization-and-review-notice-decision) or directly to our office for information on any updates to this form.

NOTICE OF DECISION

Notice of Decision mailed: *insert mailing date*

Taxpayer's name
Taxpayer's mailing address

Dear Taxpayer:

On *insert meeting date*, the _____ County Board of Equalization and Review received evidence and heard testimony regarding your appeal. Based on the evidence and testimony, and in due consideration of all applicable laws, the Board made the following decision for tax year _____, effective for the January 1, _____ general reappraisal.

County Identification/Description of Property under Appeal:

PARCEL/PIN/ACCOUNT # _____

Description of Property: _____

Property address (if applicable): _____

Assessed Valuation under appeal: $_____

Decision of the Board: _____

You may appeal the Board's decision by filing a timely appeal with the North Carolina Property Tax Commission ("Commission"). The appeal **must** be received by the Commission or ***postmarked by the U.S. Postal Service*** **within thirty (30) days** from the mailing of the County Board's Notice of Decision. ***A copy of this Notice of Decision must accompany your appeal to the "Commission". The "Commission" will not accept electronic copies (i.e. Fax, email, etc.).***

To file an appeal with the North Carolina Property Tax Commission, you may: 1) Go online to the Department of Revenue's website at https://www.ncdor.gov/documents/av-14-north-carolina-property-tax-commission-notice-appeal-and-application-hearing and complete the Notice of Appeal and Application for Hearing (Form AV-14) **or** 2) Send a signed letter (notice of appeal) stating the grounds for the appeal and identifying the property being appealed. After receiving the signed letter, copies of the Notice of Appeal and Application for Appeal (Form AV-14) will be provided by our office to the taxpayer to complete and return to the "Commission" **within 30 days.**

The appeal from the County Board's Notice of Decision may be filed by: (a) Property owner or party having an ownership interest in the property; (b) attorney representing the property who is licensed to practice law in North Carolina; (c) if the property owner is a business entity (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five (25%); (d) a general partner, if the owner is a partnership; (e) trustee, if the property owner is a trust, and (f) executrix/executor, if the property owner is an estate. . **If the property owner is a business entity and wishes to authorize a representative as defined in (c) above, form AV-63 must be complete and provided to the "Commission" within 30 days of the date the property was first appealed.**

When prepared, the Notice of Appeal and Application for Hearing (Form AV-14) **or** the signed letter (notice of appeal), with a ***copy*** of board's decision letter, must be postmarked (see above) and mailed to the following address: **North Carolina Property Tax Commission, *P.O. Box 871, Raleigh, NC 27602.*** The "Commission's" staff is available to answer questions by calling (919) 814-1129.

The "Commission" rules require that you also send a copy of your notice of appeal to the county tax administrator/assessor and to the county attorney.

Sincerely,

Clerk, Board of Equalization and Review

5. LEGAL REFERENCES

A. The Market Value Standard

1. G.S. 105-283. Uniform appraisal standards.

All property, real and personal, shall as far as practical be appraised or valued at its true value in money. When used in this subchapter, the words 'true value' shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used. For the purposes of this section, the acquisition of an interest in land by an entity having the power of eminent domain with respect to the interest acquired shall not be considered competent evidence of the true value in money of comparable land.

2. The Concept

Market value, as set forth by statute, is generally considered to include the following assumptions:

- The property has been openly available for sale on the market for a period of time reasonable for the property type.

- The buyer and seller are typically motivated. For example, the subject property is a single-family residence, used by the seller and intended for use by the buyer, as a personal residence.

- Both parties are well informed regarding the actual and potential uses of the property. For example, the subject property is a three acre parcel improved with a 30 year old single-family residence, zoned for use as an office, located across a primary traffic artery from a major regional mall, and currently used by the seller as his or her personal residence. The buyer plans to use the property as an office center, and, as such, considers the sale to be a land acquisition. The seller, in putting the property on the market realized that the value of the land for the commercial use was greater than the combined value of the land and dwelling for residential purposes.

- Both parties are acting in their own best interests, free from any duress or outside pressure. The sale is not influenced by financial hardships, death, job transfer, etc.

- Payment is made in cash or its equivalent. Generally, 10-20% cash down, with the remaining balance financed at prevailing rates and terms, by financial institutions typical for that property type.

- The price paid is typical for the type of property being sold, and is supported by a review of recent sales of comparable property. One sale does not necessarily set the market value. This applies whether the sale is for the subject property or for a similar property. Market value is best determined when several "arm's length" sales of comparable properties support a similar value.

3. Three Approaches to Value:

Traditionally, there have been three generally accepted approaches to determining market value:

- **Sales Comparison Approach:** This method involves researching the actual, recent sales of properties similar to the one being valued. The sales prices are adjusted somewhat to account for relatively minor differences between the properties and a typical sale price is estimated for the type and location of the property in question. Because this approach is derived from actual market transactions, it is usually considered the best indicator of market value.

- **Cost Approach:** In this method, the cost of replacing a piece of property is estimated and that figure is then reduced by a depreciation factor, primarily to account for the age of the existing property. This approach is often used in appraising personal property.

  For real property, this method produces the value of a structure, which is then added to the land value to determine the total value of the property. This approach is most useful

for new construction when there are insufficient comparable sales to determine the value in that manner.

- **Income Approach:** Properties which generate rental income can, and often should, be valued based on the present value of the income stream they generate. This approach is often used for commercial properties or for residential rental properties.

  Ideally, all three approaches could be developed for any given property, and all three approaches would return a value in the same ballpark. However, it is often impossible or impractical to fully develop all three approaches for every property.

4. What Market Value is NOT:

Market value SHOULD NOT be confused with a wide assortment of "other values" including, but not limited to:

- historical cost
- construction costs
- depreciated asset or book value
- insurance value
- liquidation or salvage value
- aesthetic value
- inheritance value

5. Market Value vs. Market Price

The most common challenge to the market value standard involves the use of an actual sales price for the subject property as being irrefutable evidence of market value. The courts have consistently held that:

"…neither G. S. 105-283 nor 105-317(a) require the Commission to value property according to its sales price in a recent arm's length transaction when competent evidence of a different value is presented." [Refer to In re Greensboro Office Partnership, by the North Carolina Court of Appeals, Feb., (1985).]

6. The manual developed by the International Association of Assessing Officers for the Assessment of Personal Property course makes the following distinction:

Market Price is that amount actually paid or about to be paid in a particular transaction. No allowance is made for financing terms, knowledge or prudent conduct on the part of buyer or seller, degree or type of stimulus motivating either or both, use for which the property is best suited or to which it will be put, or length of time the property has been offered on the open market. Market price can result from many factors other than value.

Market Value is the most probable price expressed in monetary terms that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all uses to which it is adapted and for which it is capable of being used. It is a hypothetical or estimated sales price.

Market Value and Market Price are identical [only] under the following assumptions:

1. No coercion or undue influence over buyer or seller in an attempt to force the sale or purchase;

2. Well-informed buyers and sellers acting in their own best interests;

3. A reasonable time for the transaction to take place; and

4. Payment in cash or financing typical for the property type in the community.

In many cases, the market price paid for [property] is not the market value. (Emphasis added)

7. Actual Data vs. Market Data

By similar fashion, the courts have also held that actual income streams (based on actual rents, lease terms, and expenses) are not to be the sole basis for determining market value. When considering the income approach to value, it is necessary to determine market or economic rent and expense levels, and base the appraisal upon that data. To wit:

> "…Net income is an element which may properly be considered in determining value, but it is only one element. If it appears that the income actually received is less than the fair earning capacity of the property, the earning capacity should be substituted as a factor rather than actual earnings." [Refer to In re Pine Raleigh Corp., by the North Carolina Supreme Court, January (1963).]

This principle holds true regardless of whether or not the actual income stream is less than or greater than economic rent. [Refer to In re Property Located at 411-417 W. Fourth Street (F. W. Woolworth), by the North Carolina Supreme Court, October (1972).]

In the appraisal of business personal property, the use of the cost approach must include all costs necessary to achieve normal utility of an asset. The North Carolina Supreme Court recognizes that failure to assign a "going-concern value" ignores the basis of the market value standard. [Refer to In re Amp, Inc., 287 N.C. 547, 215 S.E.2d 752, (1975).]

B. Highest and Best Use

1. Any discussion of market value would be incomplete without acknowledging the important role of the principle of highest and best use. Highest and best use is defined as that use which:

- is legally permitted,
- is physically possible,
- is economically feasible, **and**
- would bring the greatest net return to the owner.

2. In the majority of instances, the highest and best use of the property is its present use. Areas in transition from one predominant use to another generally pose the greatest difficulty in determinations of highest and best use. As addressed earlier in this section, if the present use is as single family residential property, and the property is zoned for office use, then it is clearly more likely that the highest and best use of the property is as an office. By the same measure, vacant land located at an interchange of an interstate

highway is almost certain to have as its highest and best use some commercial use that might take best advantage of its location.

C. The "Schedule of Values"

1. In preparing for each general reappraisal cycle, an important part of the assessor's duty is to see that

   Uniform schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value are prepared and are sufficiently detailed to enable those making appraisals to adhere to them in appraising real property. [G.S. 105-317(b)(1)]

2. This compilation of values, standards and rules is primarily the result of the assessor's analysis of the market data available for the time period just prior to the revaluation date. Present-Use values are typically developed by the Use Value Advisory Board through a statewide analysis of market data. Each analysis is completed using the market value concepts discussed above.

3. The manual resulting from these values, standards and rules is commonly referred to as simply the county's "Schedule of Values," and it is to be used as the basis for valuing all real property during all years of the reappraisal cycle.

D. Real Property Value Changes in Non-Reappraisal Years

1. G.S. 105-287(a) provides the general rule that the assessed value of real property, once determined in a reappraisal year, will remain unchanged for the remainder of the reappraisal cycle. There are a few limited situations, however, for which the statute requires the assessor to adjust (increase or decrease) the appraised value of real property. The allowed exceptions are to:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

2. The assessor's authority to reappraise property in non-reappraisal years is limited to these exceptions; however, when he or she determines that one of the above-listed conditions exists, the assessor is required to reappraise pursuant to this section. The actions of the assessor are presumed to be correct, and the burden of proof is on the taxpayer to prove otherwise, and thereby challenge the county's authority to adjust the assessment in a non-reappraisal year. The case In re Butler, 84 N.C. App. 213, 352 S.E.2d 232 (1987), provides a good overview. [Refer also to the case notes following the statutory language in the Machinery Act.]

3. **NOTE:** G.S. 105-322(g)(1)c extends the authority, and the limitations, of G.S. 105-287 to the Board of Equalization and Review. After the board has adjourned, G.S. 105-325(a)(6)b extends the limited authority of G.S. 105-287 to the board of county commissioners, but then only if the assessor recommends a change to that board, and if the matter could have been properly heard and determined by the Board of Equalization and Review prior to its advertised adjournment. As such, it is imperative that the assessor, the appropriate members of the assessor's staff, and the members of the Board of Equalization and Review and the board of county commissioners thoroughly understand the requirements of this section, and proceed as directed by the statute.

4. G.S. 105-287(a) is not a blanket authorization to reappraise property in a non-reappraisal year simply because the assessor, or some other tax official, thinks that the current assessment is either "too high" or "too low." In addition to the limited situations for

which reappraisal is required, there are also circumstances for which reappraisal is specifically not permitted set out in G.S. 105-287(b):

...change[s] in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:
- **a. Repainting buildings or other structures;**
- **b. Terracing or other methods of soil conservation;**
- **c. Landscape gardening;**
- **d. Protecting forests against fire; or**
- **e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.**

5. In particular, the items listed in sub-parentheses (1), (2), and (3)a are addressed during each reappraisal in the preparations of the schedules, standards and rules, and in the application of those schedules to each individual property. Items (3)b and (3)c, are addressed indirectly in determining the criteria for market value. For example, neighborhoods where the individual lots are well landscaped generally command a higher lot value than those neighborhoods where the landscaping is minimal. The same would hold true for a rural agricultural area, where the farmers use proven soil conservation practices, as opposed to an area where the land has been neglected or abandoned. [see GS 105-317(a)(1)]

   In addition, G.S. 105 287(c) provides:

An increase or a decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. … This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property. [Emphasis added]

6. The presumption throughout the Machinery Act is that taxpayers have the opportunity each year to raise questions about their appraisals through the Board of Equalization and Review. If the taxpayer fails to take advantage of this opportunity, the value determined

by that appraisal becomes fixed for that tax year, and thus becomes a part of that year's tax base. In this manner, the county is protected against unplanned payouts in future years based on appraisal errors in prior years.

7. Finally, G.S. 105-287(d) provides:

Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property.

8. This subsection causes many problems for assessors and county boards alike, as many developers erroneously believe that this language authorizes and permits the property to be appraised and assessed at a "wholesale" value that is less than the true value of their property. Such is simply not the case, as all property must be appraised and assessed at market value.

9. Any attempt to appraise lots owned by a developer at a value different from the value assigned to similar lots owned by purchasers IS ABSOLUTELY WRONG! The identity of the owner of the property has nothing to do with the value of the property. The law requires that property and its relevant features and conditions, not ownership, be the basis for determining value. Each lot owned by a developer must be appraised and assessed in a manner consistent with the county's appraisal and assessment of similar lots owned by individual purchasers.

E. No taxes to be released, refunded or compromised (G.S. 105-380)

1. G.S. 105-380 is a stern warning to those who serve on the governing body of a taxing unit to follow the requirements of the Machinery Act. The statute reads in part:

a) The governing body of a taxing unit is prohibited from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this Subchapter.
…
c) Any tax that has been released, refunded, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for

the release, refund, or compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

2. In plain English, this statute tells governing boards to err on the side of taxation when deciding requests for refund, release, or compromise which are most commonly brought under G.S. 105-381 or G.S. 105-312(k). Since most boards of county commissioners desire the economic benefits that accompany industrial, commercial, and residential development, board members are often sought out, either individually or collectively, as a source of "tax relief" by taxpayers engaged in business in their county. The most common requests involve petitions by business taxpayers to release the late listing penalty generated through a discovery, or the real estate developer seeking to have his or her lots assessed at a discounted value until such time as they are sold. Such requests should be summarily denied.

3. When faced with these requests, the board should apply the requirements of the appropriate statutes, keeping in mind the mandate for "equal protection of the law", and base their final decision on the facts and evidence presented relevant to the law. Personal empathies or political leanings should not be part of the consideration given towards any request brought under G.S. 105-381 or G.S. 105-312(k).

4. Members who vote with the majority to reduce a tax liability, without a clear lawful basis under the Machinery Act, risk personal liability for the revenue lost as a result of their vote (see GS 105-380).

F. Compromise in Discovery

1. G.S. 105-312 deals with discovered property. In this context, "discovery" refers to the process by which taxable property becomes properly listed for taxation when it was either improperly listed or not listed at all. This process typically generates sizable bills since multiple years and substantial penalties are involved.

2. G.S. 105-312(k) provides for the compromise of the county's claim for taxes arising from a discovery. In other words, the county has the authority to settle for an amount less than

that actually billed through discovery. The board of county commissioners has the statutory authority to compromise discovery bills, but it can, by resolution, delegate that authority to the Board of Equalization and Review.

3. While a full discussion of discovery and compromise is beyond the scope of this handbook, there are a few considerations worth pointing out:

- Compromise is only available in situations where a discovery has been billed, but remains unpaid. This should mean that there is no issue as to the taxable value of the property (since the value should have been finalized before the bill was issued), and that the county still has a claim for outstanding taxes (if the bill has been paid, there is no longer a claim for the county to compromise).

- There are no statutory guidelines for compromising discovery bills and, therefore, there is no inherent method for ensuring that the power to compromise is applied equally in all situations. Furthermore, there is no method for ensuring fairness to taxpayers who properly listed their taxable property and were billed appropriately with no opportunity to request a compromise of their bills. These are among the issues discussed in the article entitled, "Compromising Taxes on Discovered Property: an Unconstitutional Statute?" by William A. Campbell in Popular Government (Spring, 1989), to which the reader is referred for additional information on the subject.

- For the reasons mentioned above, it is the recommendation of the Department of Revenue that counties either adopt a written policy for applying their power to compromise or avoid using it altogether.

4. **NOTE:** While G.S. 105-381 provides some qualifications for considering a taxpayer request for a release or refund of taxes (see below), the compromise authority in 105-312(k) does not. Therefore, it is important for governing boards to recognize the distinction.

G. Taxpayer's Remedies (G.S. 105-381)

1. Any taxpayer who wishes to oppose the collection of a property tax must challenge the validity of the tax before the board of county commissioners (but not the Board of Equalization and Review) by asserting one of the three specified grounds set forth in G.S. 105-381(a)(1) below:

For the purpose of this subsection, a valid defense shall include the following:

a. A tax imposed through a clerical error;
b. An illegal tax;
c. A tax levied for an illegal purpose.

2. <u>These three specific grounds for appeal of the tax are exclusive.</u> No other defense to the tax may be considered without the members of the governing body running the risk of the harsh sanctions imposed by G.S. 105-380.

3. G.S. 105-381(a)(2) and (3) set forth the time limits imposed upon taxpayers to make a request for release or refund as appropriate:

(2) <u>If a tax has not been paid</u>, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for release of the tax at any time prior to payment of the tax.

(3) <u>If a tax has been paid</u>, the taxpayer, at any time within five years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit written statement of his defense and a request for refund thereof. [Emphasis added]

4. If the tax has been paid, a written request for a refund must be made "within five years after said tax first became due" (September 1) or within six months from the date of payment, whichever is later. It should be noted that G.S. 105-381 is not a substitute for other provisions of the Machinery Act. A taxpayer who fails to pursue administrative remedies available under other sections in a timely fashion cannot save himself by attempting to bring an action under Section 381.

H. When NOT to Make the Change Retroactive

1. Example: Two years ago, at the time of the last county-wide reappraisal, a taxpayer's commercial building was classified as quality grade "B". In February, the taxpayer asked the assessor to visit the property. After inspecting the property, the assessor is convinced that the building, at best, is of average quality (according to the Schedule of Values), and therefore should have been graded as "C". The change is made pursuant to the assessor's authority under G.S. 105-296(i) and 105-287(a)(2), and the taxpayer is notified accordingly. Such adjustments are not retroactive. In this example the taxpayer had the right to challenge his or her appraisal in prior years, but failed to do so, and as such has no valid basis for requesting a refund or release of the prior year taxes under G.S. 105-381.

I. When to Make the Change Retroactive

1. Assume similar conditions as set forth above except that, when the assessor visits the property, the assessor determines that the listing for the property is in error. The property record card shows that the taxpayer has been assessed for three buildings when, in fact, only two buildings are actually located on the property. After determining which of the three buildings should be removed from the property listing, the change is made pursuant to the assessor's authority under G.S. 105-296(i) and G. S. 105-287(a), and the taxpayer is notified accordingly. While the initial change by the assessor is not retroactive, should the taxpayer make request for refund or release for prior year taxes under G.S. 105-381, the county board of commissioners could approve same back to the year of the reappraisal, on the basis that certain property did not exist and therefore was not, and could not be, subject to taxation.

2. NOTE: Any considerations regarding potential refunds/releases must be addressed against the requirements of G.S. 105-381, especially the 5-year time limit for such considerations.

J. Interest On Overpayments and Delay of Enforcement and Collection

1. In 2011, the North Carolina General Assembly ratified legislation which concerns payment of taxes for properties under appeal including appeals to the Board of Equalization and Review. These provisions take effect for tax years beginning on or after January 1, 2011.

2. The first relevant section of Session Law 2011-3 provides as follows:

G.S. 105-360 is amended by adding a new subsection to read:

(e) When an order of the county Board of Equalization and Review reduces the valuation of property or removes the property from the tax lists and, based on the order, the taxpayer has paid more tax than is due on the property, the taxpayer is entitled to receive interest on the overpayment in accordance with this subdivision. An overpayment of tax bears interest at the rate set under subsection (a) of this section from the date the interest begins to accrue until a refund is paid. Interest accrues from the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed.

3. When the Board of Equalization and Review reduces an assessed value, the tax liability for that property is also reduced. If the taxpayer has already paid more taxes than is owed because of the reduction, the county must refund the difference. The first section of SL 2011-3 listed above, which amends G.S. 105-360, now adds that, in some situations, the county must also pay interest to the taxpayer on the refunded amount of taxes. When owed, interest is paid at the same rate as that charged for delinquent taxes (2% from January 6 to February 1, and ¾ of one percent for every month or partial month thereafter).

4. An important limitation of this provision is that interest only accrues from January 6 (or the date the overpayment was actually made, if later) until five days after the refund check is mailed. Therefore, as long as the Board of Equalization and Review has finished its work in time for the county to mail all refund checks by December 31, there should be no reason for the county to have to pay interest under the provisions of the new G.S. 105-360(e).

5. There is a similar but separate provision under G.S. 105-290(b)(4), which applies to situations where the Property Tax Commission reduces the assessed value of property, but the taxpayer has already paid taxes for the year(s) under appeal based on the previous, higher value. Interest on the overpayment in these cases is paid at a rate set by the Secretary of Revenue, and determined in accordance with G.S. 105-241.21.

6. The second relevant section of Session Law 2011-3 provides as follows:

G.S. 105-378(d) reads as rewritten:

(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the county Board of Equalization and Review or the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer.

7. Collectors have long been prohibited from enforcing tax liens or seeking collection of tax bills for properties that are under appeal before the Property Tax Commission. G.S. 105-378(d) now extends that prohibition to properties which are under appeal to a local Board of Equalization and Review.