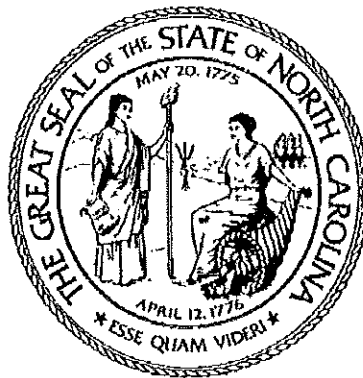


**North Carolina Department of Revenue**

**MEMBER'S HANDBOOK**

for

**BOARDS OF EQUALIZATION AND REVIEW**



Prepared by the Staff of the Property Tax Division

**David B. Baker, Director**

© MARCH 1992 - Revised March 2004

## Foreword

North Carolina's Constitution commands that the power of taxation be exercised "in a just and equitable manner." That mandate, coupled with the commands of both the State and Federal constitutions, that persons must not be deprived of their property without due process of law, leads to the conclusion that decisions of the county assessor that concern the listing and assessment of real and personal property for ad valorem taxation must be subject to review by higher authority. In North Carolina, the first step in that review process takes place before the county board of equalization and review.

Few local boards have a more important or complex assignment. This manual fulfills a long-standing need to better equip the board of equalization and review for its task. It has been prepared by staff members of the Ad Valorem Tax Section [now Property Tax Division] of the North Carolina Department of Revenue who among them count many decades of outstanding service to citizens of North Carolina and their public officials. It should be on the shelf and at the hand of every North Carolina official charged with the duty of deciding property tax appeals.

Joseph S. Ferrell

Institute of Government  
The University of North Carolina at Chapel Hill  
February 11, 1992

## Introduction

The property tax is the primary source of revenue for local government. As Mr. Ferrell points out in his Foreword, 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 those citizens of our State 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, you 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 you 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 you, as well as to those who have, your decisions will foster public confidence in the property tax system and those who administer it.

David B. Baker

Director, Property Tax Division  
North Carolina Department of Revenue  
March 2004

## CONTENTS

Preparations	1
Preliminary Review	1
Preparation Checklist	2
Determining the Time of Meetings	3
Advertisement of Scheduled Meetings	4
Notice of Meetings and Adjournment	7
Sample Advertisement	8
Adjournment and Adjournment Date Defined	9
Powers and Duties of the Board	10
Personnel	10
Oath of Office	11
Statutory Authority	12
Power of Attorney	16
General Considerations for Hearing of Appeals	20
Who May Present Evidence?	20
Avoiding Conflicts of Interest	21
Recommended Format for Hearings	22
"Greater Weight of Evidence" Test	24
What Should Not Be Considered	25
Legal References	26
The Market Value Standard	26
Highest and Best Use	28
Other Statutory Considerations	29
When a Change Is Not Retroactive	32
When a Change Is Retroactive	32
N.C.G. S. 105-380	33
Taxpayer's Remedies	34

# **PREPARATIONS**

## **Preliminary Review**

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. While certainly time consuming, there are significant savings available to the county by correcting, at the earliest opportunity, data errors or otherwise fine-tuning the appraised value via an on-site inspection and data verification. Certainly, waiting to make the necessary adjustments until after the property has been appealed to the Property Tax Commission only defers eventual equity and fairness within the local tax program and unfortunately prolongs discontent between the county and the taxpayer.

It is recommended that the property should be reviewed before the appeal is scheduled for hearing by the Board of Equalization and Review, or even earlier if feasible.

The checklist recommended by the North Carolina Department of Revenue sets forth the minimum points to be addressed as a part of any preliminary review of a real property appeal. Counties should feel free to expand the review as their experience, resources, and supporting market documentation indicate as being appropriate for their county, the subject property, and the listing and appraisal issues involved.

Regardless of when the review may take place, the North Carolina Department of Revenue expects counties to have made the review before appeals to the Property Tax Commission are investigated.

[Please refer to the North Carolina Department of Revenue's checklist on the next page.]

OWNER: \_\_\_\_\_

APPEAL # \_\_\_\_\_

**Preparation Checklist  
for Review of Real Property Appeals  
with Property Tax Commission Staff Member**

Before the PTC staff member can schedule a meeting for a review of the appeal, the County is asked to have done the following (as a minimum):

- Perform an on-site visit during the appeal process to verify from an outside inspection:
  - Physical Dimensions
  - Physical Characteristics
  - Grade
  - Depreciation
  - Topography, etc.
  
- Print a map of the subject and surrounding area.
  
- Print Property Record Cards (or report) for adjacent properties or for comparably assessed properties (if adjacent properties are not comparable).
  
- Print Property Record Cards (or report) for comparable sales.
  
- Print any appropriate digital imaging (if available).
  
- Do a **preliminary** review to insure that the appraised value is supported by the available data, from both a market value approach and from an equity standpoint.
  
- Have a copy of the above items available for the PTC staff member at the informal PTC meeting.**

COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## Determining the Time of Meetings

**NOTE:** 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 later under the section Statutory Authority (p. 19). All other appeals to the board of equalization and review are subject to the provisions discussed below and following.

N.C.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.”**

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). The board may continue to meet after adjournment for the purpose of hearing and deciding appeals already received. The term “received” as used herein, includes the accepting of applications for a hearing in person, the delivery and receipt in the assessor’s office of a letter dated with a U.S. Postal Service postmark on or before the last advertised date for the accepting of appeals, and the personal appearance of someone on or before the last advertised meeting for the accepting of appeals with a request to be heard. In the each instance, once notice of appeal is timely received, the actual hearing of the appeal can be scheduled for a later date.

## Advertisement of Scheduled Meetings

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.

There are three important considerations influencing the determination of the number of meetings to be scheduled and stated in the advertisement.

First and foremost is the seriousness with which the board takes its duties 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 authority, and which is available only during its scheduled meetings as stated in the advertisement. While the board may continue to meet after its advertised adjournment date to hear timely filed appeals, its power to review and make changes on its own authority 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 underassessments. 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 authority. In the early years of the reappraisal cycle, the “window” may need to be wider to provide sufficient time for the board to act, than in subsequent years after the problem areas have been addressed. 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).

[For additional information regarding the powers and duties of the board, and, possible appeal after the adjournment of the board, please refer to Section I-G and Section VII-B and C, respectively, in the Assessor’s Manual.]

Second, 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.

Third, 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. 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 from the Institute of Government, “**a goal rather than an absolute limitation.**”

The Department of Revenue recommends that, when a county finds itself in this situation, the notice of the board’s decision should be mailed to the appellant no later than 30 days following the hearing. This is a reasonable expectation and should be acceptable to all parties. N.C.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.”**

The notice of the decision should also:

- 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
- Advise that tax representatives and powers of attorney are not permitted to file the PTC appeal

[For more information regarding the conclusion of the board’s business and mailing of notices, refer to Section I-J and Section VI-B respectively, in the Assessor’s Manual.]

## Recommendation Concerning Advertisements

The North Carolina 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.**
- **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.**

Among the benefits of implementation are:

1. 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."**
2. It will generate greater uniformity across the state, enabling taxpayers to expect reasonably similar procedures from county to county.
3. 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.
4. It requires and encourages having only one advertising period. Allow for ample time to be provided in the "window" for accepting requests for hearings. There is no reason to continue to re-advertise new adjournment dates as the most likely result will be a greater volume of appeals causing possible delays in the budgetary process.
5. It will expedite the local appeals process, especially for counties in the first year of a reappraisal, and where in recent years, timidity in setting an adjournment date and sticking to it has brought about a propensity for appeals to generate additional appeals.

It would impact favorably on the budget process as estimates of the total tax base are requisite to the process of setting the tax rate.

## Notice of Meetings and Adjournment

N.C.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.”**

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, and should be located in a place where it is easily noticed by the readers.

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.

[For information regarding these recommendations and their compliance with public notice requirements, refer to Section III-A-1.]

**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 2, 2004.

The Board will adjourn for the purpose of accepting  
requests for hearing at its last meeting on  
Friday, APRIL 27, 2004.

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 27, 2004 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 for hearing should be made to:

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

## Definition of Adjournment and Adjournment Date

The North Carolina Department of Revenue recommends, for the purpose of interpreting N.C.G.S. 105-322(e) and (f), and in compliance with the required advertisement, that the word “adjournment” and the phrase “adjournment date” shall be held 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 whereby the board of equalization and review can exercise its authority under N.C.G.S. 105-322(g)(1) to, on its own motion, review tax lists, correct tax records, increase or decrease appraised values, or **“cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions”** and requirements of the Machinery Act. [ref: G.S. 105-322(g)(1)d]

Joseph Ferrell of the Institute of Government has long recognized the difficulty in explaining the statutory language as provided in G.S. 105-322(e),(f), and (g)(2), concerning the time and notice of meetings, and the taxpayer’s right to request a hearing by personal appearance. He makes the following observation:

**“G.S. 105-322(e) and (f) should be understood to refer to ‘stated’ meetings at which any taxpayer may appear (with or without prior appointment) to enter his appeal. These subsections do not prohibit the board from holding additional meetings for the purpose of hearing appeals that have already been docketed.”** [ref: Joseph Ferrell document *The Organization, Powers, and Procedures of the County Board of Equalization and Review*, Appendix, Assessor’s Manual for Boards of Equalization & Review]

The board of equalization and review’s authority to place an appeal on its agenda effectively 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. As detailed above, the board may continue to meet after these dates to hear appeals already received.

# POWERS AND DUTIES OF THE BOARD

## Personnel

In approximately 45 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.

In the remaining 55 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. In particular, the resolution or local act delegates the responsibilities and duties imposed by statute, to a citizen body, whose powers, at a minimum are no more or no less than those provided to the county commissioners, had they chosen to sit as the board of equalization and review. In some instances, additional powers, such as the hearing of discovery and motor vehicle appeals, are specifically given to the special board.

[For more information regarding personnel, please refer to Section I-A of the Assessor’s Manual for Boards of Equalization and Review, hereinafter referred to as the Assessor’s Manual.]

## Oath of Office

N.C.G.S. 105-322(c) provides that, before entering upon his duties, each member of the board of equalization and review shall take and subscribe the following oath and file it with the clerk of the board of county commissioners:

**"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)" \_\_\_\_\_**

Regardless of how the board is comprised, its members are bound by the Constitution and laws of the United States and by the Constitution and General Statutes of North Carolina to fulfill their duties in a fair and impartial manner. Taxpayers have a reasonable right to expect equal treatment of their interests, both as appellants and non-appellants.

[For more information regarding the relationship of the U.S. Constitution to the local appeal process, refer to Section X of the Assessor's Manual.]

Consequently, the oath required of office should be viewed as an affirmation of the responsibility to uphold the laws and principles of the nation and state, and not as a mere formality. Expressly forbidden is the use of the position to advance personal friendships or political agendas,

[For more information regarding the oath of office, refer to Section I-C of the Assessor's Manual.]

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.

[For more information regarding this liability, refer to G.S. 105-380 and Section XI-I in the Assessor's Manual.]

## **Statutory Authority**

### **N.C.G.S. 105-322(g)(1)—Duty to Review Tax Lists**

The board of equalization and review has three major responsibilities. The first, providing the broadest authority, is the duty to review the county tax records, set forth in N.C.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, shall have 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 shall be 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 his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).”**

The board of equalization and review has the duty to:

1. Examine and review the tax lists of the county for the current year and make any changes necessary to insure that all taxable property is listed, appraised, and assessed as directed under the provisions of the Machinery Act.
2. List, appraise, and assess any taxable property omitted from the tax lists.
3. Correct any errors in the names and description of taxable property.
4. Increase or decrease the appraised value of any property that in the board's opinion is below or above market value, as required by G.S. 105-283.
5. See that any increase or decrease in the appraised value of real property is made under the provisions of G.S. 105-286, G.S. 105-287, and G.S. 105-317.
6. See that any increase or decrease in the appraised value of personal property should be made under the provisions of G.S. 105-317.1.
7. Notify any taxpayer at his last known address whenever the board increases the appraised value of the taxpayer.
8. See that any action taken by the board is placed in an appropriate order and that the order be entered in the minutes of the board.

### **N.C.G.S 105-322(g)(2)—Duty to Hear Taxpayer Appeals**

The second major responsibility of the board of equalization and review arises under G.S. 105-322(g)(2); this is the duty to hear those who own or control taxable property with regard to the listing or appraisal of their property or the property of other taxpayers. It 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 his 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 his appeal not later than 30 days after the board's adjournment."

As provided by statute, taxpayers are permitted to question the listing, appraisal, or exemption of someone else's property because each taxpayer is directly affected by the county's treatment of all other property subject to taxation.

1. Any taxpayer who owns or controls property taxable in the county may appeal the listing or appraisal of his property or the property of others. In order to have standing, if appealing the listing or appraisal of property owned by another (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. This would typically occur when the appellant believes the other property is undervalued or has been incorrectly granted preferential tax treatment.
2. Attorneys may file appeals to the board of equalization and review for their clients who own or control property in the county.
3. The request for a hearing shall be made in writing to the board or by personal appearance before the board prior to its advertised date of adjournment.
4. Taxpayers may file separate or joint appeals as they feel necessary.
5. The board of equalization and review has the authority to establish reasonable procedures for taxpayers to follow when filing appeals. One area in which the board may want to set some guidelines is in who can represent, or file an appeal on the behalf of, a taxpayer. The strictest guideline would be to allow only taxpayers who own or control property, and at-

torneys to represent taxpayers. Next would be to require a power of attorney from the taxpayer giving non-attorneys the authority to do so, and the least strict guideline would be to require no form of authorization. Each county should set guidelines after consultation with their county attorney.

6. 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.

Requiring tax representatives and other non-attorneys to file a signed power-of-attorney from the owner of the property benefits all parties in the appeal process. First and foremost, 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. (Remember, the statute only provides for owners and controllers of taxable property to request a hearing.) Second, it protects the taxpayers who own or control property and who are unable to represent themselves before the board. And lastly, it protects all other taxpayer and owners or controllers of taxable property with the assurance that the proceedings of the board are well within the framework of the law.

NOTE: There is one possible exception to the preceding guidelines. 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 to effect the appeal, 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.

## POWER OF ATTORNEY

Know all men by these presents that I, \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_, City of \_\_\_\_\_, do hereby make, constitute and appoint, \_\_\_\_\_, 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 my attorney in fact, unless he/she is an attorney at law, authorized to practice law in the State of North Carolina will not be allowed to prepare or file any documents with the North Carolina Property

Tax Commission or represent me at any hearing to be held before the Commission, for such representation would constitute the unauthorized practice of law.

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.

I am the record owner of the property described above: YES NO (Circle one) If No, please identify the record owner and state the relationship between the record owner and the person executing the power of attorney.

\_\_\_\_\_

Witness my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
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 \_\_\_\_\_, 2004.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

The board has additional powers that may be used in connection with the duties previously addressed under N.C. 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 him 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 chairman of the board, directed to the witness or 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.”**

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.

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 the Department of Revenue through the Property Tax Commission.

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

The board may place any witnesses under oath, which 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.

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.

### **N.C.G.S. 105-322(g)(5)—Duty to Change Abstracts and Records After Adjournment**

The third major duty of the board of equalization and review is hear and decide certain appeals that may arise after adjournment and is set out in N.C.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).”**

Historically, the duties listed above would become the responsibility of the boards of county commissioners once the board of equalization 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 fairly recent enactment of (and subsequent additions to) G.S. 105-322(g)(2) extends this option by law to all counties. Since this is an option to allow the board of equalization and review to handle the 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.

The tax office functions that generate the appeals listed in G.S. 105-322(g)(5) are processes which typically occur year round. The same reasons that made it desirable to create a separate board of equalization and review probably make it desirable to continue to allow them to meet from time to time during the year to handle these year round appeals. Boards of county commissioners which sit as the board of equalization and review may now do so year round under the limited provisions of G.S. 105-322(g)(5).

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.

# **GENERAL CONSIDERATIONS FOR HEARING OF APPEALS**

## **Format**

The formats used by the different boards in North Carolina's 100 counties vary greatly; from leisurely informal experiences to rigid, formalized proceedings. Generally speaking, the degree of formality needs to be decided at the beginning and the same format used throughout the board's hearings. However, the degree of formality may be permitted to vary depending on who the taxpayer may be. As an example, the board should be willing to give taxpayers who are appearing pro se (taxpayers who appear on their own behalf without benefit of legal representation), more leeway when they present their case. Conversely, attorneys and tax representatives appearing by power of attorney should be expected to present their cases in a forthright and concise manner.

## **Who May Present Evidence?**

The taxpayer, the taxpayer's attorney, and the taxpayer's representative who has authorization to appeal may present evidence to the board of equalization and review. The person presenting the evidence may call upon witnesses to help them present their case to the board. The assessor and other county officials may present 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.

## Avoiding Conflicts of Interest

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 but 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.**
- **a member of a special board who resigns from the board immediately prior to adjournment to request a hearing by the remaining 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.**

In a memorandum to former Surry County Assessor, Katy 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.”**

In those instances where the charge may be raised, the members of the board who finds 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.

[For a complete copy of Mr. Goodrum's memorandum, refer to appendix ix in the Assessor's Manual.]

## Recommended Format for Conducting the Hearing

The format recommended by the North Carolina 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 ad valorem program, or collide with the constitutional requirements of “due process” and “equal protection under the law”. Of the utmost importance, the format and conduct of the hearing process 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. The chair instructs the appellant to begin, whereby the appellant/taxpayer proceeds to present his case through the use of personal testimony, documentary evidence, and the testimony of any other individuals, including expert witnesses.
4. 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 on the property, dated effective 1-1 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 1-1 of the reappraisal year?”
  - “Is there any sales information on comparable property, 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)
5. The chairperson then recognizes the appropriate individual from the assessor’s office to present the position of the tax office 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 appellants evidence and testimony. This should lessen the amount of time required for each hearing.

6. Each board member should be allowed the opportunity to ask questions of the county's 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 regarding the sales of comparable property?"
  - "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.

7. The board should let the appellant and the tax office know what action they are going to take:
  - Will take the evidence and testimony submitted under consideration, render a decision, and notify the appellant in due course.
  - Will 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 appellant accordingly. NOTE: Hopefully, the property has been visited as part of the investigative process, elaborated upon in Section III-E in the Assessors' Manual, and the preliminary review set forth at the beginning of this handbook, and thus it will not be necessary for the board to take this step.
  - Request 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.

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, then the board should decide in favor of the tax office on the grounds that the taxpayer has not attempted to carry his burden of proof.

## The “Greater Weight of Evidence” Test

Once the hearing has concluded, neither the appellant nor the tax office staff are to have additional input which might influence the decision. The decision should be based on the information provided or requested during the hearing, 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 from the Institute of Government, makes 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.”**

**“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.”**

[For more information, refer to Section IV-C and appendix ii, in the Assessor’s Manual.]

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).

and,

**“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).

## What SHOULD NOT be Considered in Deciding the Appeal

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 defensible:

**SHOULD NOT** be based on personal or political friendships or obligations. [For more information refer to Section I-C in the Assessor's Manual.]

**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 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.

## LEGAL REFERENCES

### The Market Value Standard

N.C.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.”**

### The Concept

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

1. **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.
2. **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, and located across a primary traffic artery from a major regional mall, and currently used by the seller as his 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.
3. **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.,.
4. **The property is available on the open market for a reasonable length of time.** Different property types require varying lengths of time on the market, as well as exposure to different markets, set out as follows:

- **Vacant residential lots; 3-9 months, local market.**

- **Vacant commercial/industrial land; 6-36 months, local, regional and national markets.**
- **Single family residences, 3-6 months, local market.**
- **Condominiums; 3-18 months, local market.**
- **Custom designed residences (estate category); 6-24 months, local and regional markets.**
- **Small commercial; 3-18 months, local market.**
- **Large commercial; 6-24 months, regional, national and international markets.**
- **Industrial; 12-24+ months, regional, national and international markets.**

NOTE: The times given are approximations only. Actual marketing times tend to vary depending on market location, local, general economic conditions, especially supply and demand, etc.

5. **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.
6. **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 property support a similar value.

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**
- **value in use; residential, agricultural, industrial, or public, etc.,**
- **liquidation or salvage value**
- **aesthetic value**
- **inheritance value**

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 arms’ 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).]

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).]

## **Highest and Best Use**

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,
- physically possible,
- economically feasible, and
- which would bring the greatest net return to the owner.

In the majority of instances the present use of the property is the highest and best 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 a single family residential 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.

## **Other Statutory Considerations**

N.C.G.S. 105-287(a) requires in part, that in a non-reappraisal year, the assessor shall adjust (increase or decrease) the appraised value of real property 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).”**

The assessor has an “affirmative duty” to reappraise pursuant to this section, whenever he determines that the proper conditions, as outlined above, exist. 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 to the case notes following the statutory language in the Machinery Act.]

NOTE: N.C.G.S. 105-322(g)(1)c provides for the authority given to the assessor under G.S. 105-287, to be available to the board of equalization and review. N.C.G.S. 105-325(a)(6)b, allows the assessor, at his discretion, to take matters to the board of county commissioners, 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. **G.S. 105-287 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".** [For more information regarding the use of this authority by the assessor, the board of equalization and review, or county commissioners, refer to Section II-A and B, Section I-G, and Section VII-B and C respectively, in the Assessor's Manual.]

The value of real property is fixed as of January 1 of the reappraisal year. For the majority of properties, the assessment will not change, except in those situations outlined in N.C.G.S. 105-287(a) above. In addition, N.C.G.S. 105-287(b) sets out the particular basis, under which the assessor shall not adjust the current assessment ... **"to recognize a change 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."**

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.

[For the specific language in N.C.G.S. 105-317(a)(1), as to what is to be considered in the appraisal of land, refer to Section XI-G in the Assessor's Manual.]

In addition, N.C.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 appraisal or horizontal adjustment. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which 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.”**

The presumption throughout the Machinery Act is that taxpayers <sup>have</sup> 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 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. [For more information regarding this authority, refer to Section XI-E in the Assessor’s Manual.]

N.C.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.”**

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.

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. [For more specific information regarding the appraisal of lots owned by developers, refer to a memorandum from C.B. McLean to Brenda King, appendix x in the Assessor’s Manual.]

## **When NOT to Make the Change Retroactive:**

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 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 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.

## **When to Make the Change Retroactive**

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.

Note: Any considerations regarding potential refunds/releases must be addressed against the requirements of N.C.G.S. 105-381, especially the 5-year availability for such consideration.

**N.C.G.S. 105-380. No taxes to be released, refunded or compromised.**

N.C.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.”**

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 10% discovery for late listing of personal property, or the real estate developer seeking to have his lots assessed at a discounted value until such time as they are sold. Such requests should be summarily denied.

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). [For more regarding the constitutional considerations, refer to Section X-D in the Assessor’s Manual.]

NOTE: There is a provision for the compromise of the county's claim for taxes arising from the action of a discovery. This is provided for in G.S. 105-312(k). Where 105-381 provides some parameters for the consideration of a taxpayer request for release or refund, the compromise authority in 105-312(k) does not. Therefore it is important for governing boards to recognize the distinction. [For a review of the constitutional questions regarding the compromise of the tax on discovered property, refer to Mr. William Campbell's article, appendix xi in the Assessor's Manual, reprinted with the permission of the Institute of Government.]

### **N.C.G.S. 105-381. Taxpayer's Remedies.**

Any taxpayer who wishes to oppose the collection of a property tax must proceed to challenge the validity of the tax to the Board of County Commissioners by asserting one of the three specified grounds set forth in N.C.G.S. 105-381(a)(1) below:

- “(1) 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.”**

These three specific grounds for appeal of the tax are exclusive; 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.

N.C.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) If a tax has not been paid, 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) If a tax has been paid, 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.”**

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.

[For more information regarding these requests, refer to the examples in Section XI-J in the Assessor's Manual.]