

PROPERTY TAX IN NORTH CAROLINA

Property Tax Assessment of Real Estate

Introduction

All real property is subject to *ad valorem* taxation in North Carolina unless it is constitutionally exempted or classified and excluded from taxation by statute.¹

Real property is defined by the Machinery Act as “not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging or in any way appertaining to the property.”²

A. The Listing of Real Property for Assessment

All taxable real property not centrally assessed by the Department of Revenue (certain real property owned by public service companies) is assessable by the county in which it is situated.³ It is required to be listed in the name of the owner of the real property and it is the owner’s duty to list it annually unless the county has adopted a permanent listing system.⁴ All counties have, in fact, adopted such a system and the owner of the real estate is thereby relieved from the annual filing requirement otherwise imposed by statute. The owner remains

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¹ N.C. Const., Art. V, §§ 2-3.

² N.C. Gen. Stat. § 105-273(13).

³ N.C. Gen. Stat. § 105-301.

⁴ N.C. Gen. Stat. § 105-302.

responsible, however, for annually listing buildings constructed and improvements made since the last appraisal, as well as listing separate rights created in the real property (such as mineral, quarry, timber, waterpower or other rights) since the last revaluation.⁵

Since real property may be owned by different parties with different interests, N.C. Gen. Stat. § 105-302 provides a detailed list of how these interests should be listed.

B. Fair Market Value and Uniformity

All property subject to assessment must be assessed “at its true value in money,” or fair market value.⁶ The Machinery Act defines “true value” as “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.”⁷

Further, under the North Carolina Constitution, all property in each county must be assessed uniformly.⁸ As an example, it would constitute a violation of uniformity principles for the assessor to distinguish in assessment practice between property that has been sold and similar property that has not been sold. *See Edward Valves, Inc. v. Wake County.*⁹ In addition, N.C. Gen. Stat. § 105-284(a) imposes two uniformity requirements upon assessors:

⁵ N.C. Gen. Stat. § 105-303(b)(2); 105-309(c)(4)-(5).

⁶ N.C. Gen. Stat. § 105-283.

⁷ *Id.*

⁸ N.C. Const., Art. V, Sec. 2; N.C. Gen. Stat. § 105-284.

⁹ *Edward Valves, Inc. v. Wake County*, 117 N.C. App. 484, 451 S.E.2d 641 (1995), 343 N.C. 426, 471 S.E.2d 342, *stay granted*, 339 N.C. 611, 454 S.E.2d 267 (1995), *review granted*, 340 N.C. 111, 456 S.E.2d 327 (1995), *aff'd as modified and remanded*, 343 N.C. 426, 471 S.E.2d 342 (1996), *reh'g denied*, 344 N.C. 444,

(1) that all property, real and personal, be assessed for taxation at its true value (or, in the case of agricultural, horticultural or forestland, at the value for which it is used, its “use value”) and
(2) that all taxes imposed by counties and municipalities be levied uniformly on the assessed value (either true value or use value).

The North Carolina Supreme Court has ruled that uniformity of assessment exists only with a uniform mode of assessment.¹⁰

C. The Assessor’s Valuation of Real Estate

Real property – land and the improvements thereto – is valued on a countywide basis by the county tax assessor every eight years, unless the local taxing jurisdiction advances its revaluation schedule.¹¹ Counties may advance the date of an octennial revaluation and many North Carolina counties are now revaluing real property every four (4) years.

In appraising real property, the assessor must consider the elements set forth in N.C. Gen. Stat. § 105-317(a)(1) as to land (location, zoning, soil quality, mineral deposits, adaptability for different uses, past and future income, etc.) and those set forth in N.C. Gen. Stat. § 105-317(a)(2) as to buildings or other improvements (types of construction, age, replacement cost, cost, adaptability for uses as well as some of the factors listed in (a)(1)). (See Attachment A.)

476 S.E.2d 115 (1996), *cert. denied*, 519 U.S. 1112, 117 S.C. 952 (1997).

¹⁰ Hajoca Corp. v Clayton, 277 NC 560, 569, 178 S.E.2d 481, 487 (1971).

¹¹ N.C. Gen. Stat. § 105-285 and N.C. Gen. Stat. § 105-286.

Each county, as part of its real estate revaluation process, must adopt a schedule of values, standards and rules before the revaluation begins.¹² The schedule of values is, in essence, a “cookbook” to be followed by the assessor and his staff in conducting the revaluation. The schedule of values, which must be approved by the county commissioners before January 1 of the year for which they are to be applied, contains a relatively detailed set of “recipes” for the valuation of different types of real estate. The schedule of values establishes a valuation methodology for different types of real estate and is used to ensure the uniform assessment of real property.¹³

A particular taxpayer’s real property may be revalued between scheduled revaluation years if the value changes as a result of certain events, such as additions or expansions to a structure.¹⁴ N.C. Gen. Stat. § 105-287 (see Attachment B) provides a detailed list of circumstances under which the assessed value of real property may be changed between revaluation years.

The value of the property is determined as of January 1 of the revaluation year and generally speaking, unless the property itself has changed in some fashion, it will not be subject to a change in value due to circumstances occurring after the revaluation date.

The assessor must, however, change the assessed value to:

- a) correct a clerical or mathematical error

¹² N.C. Gen. Stat. § 105-317(b)(1) and (c)

¹³ N.C. Gen. Stat. § 105-317.

¹⁴ N.C. Gen. Stat. § 105-287. See In re Allred, 351 NC 1, 519 S.E.2d 52 (1999) and In re Corbett, 355 N.C. 181, 558 S.E.2d 82 (2002).

- b) correct an appraisal error resulting from a misapplication of the schedule of values
- c) recognize a change in value due to a conservation or preservation agreement
- d) recognize a change in value due to a physical change to the property (other than changes due to normal physical depreciation or specified betterments)
- e) recognize a change in the permitted use of the property or
- f) recognize any other change not due to inflation, deflation or other economic changes affecting the county in general.

Under N.C. Gen. Stat. § 105-287(c) the increase or decrease in value “is effective as of January 1 of the year in which it is made and is not retroactive.” In general, if a property remains unchanged after the revaluation date, it is only in very limited circumstances that its value can thereafter be changed, other than by a challenge to its value as of the reappraisal date.

It is important to note that if the assessed value of real property is to be changed between scheduled revaluation years, as authorized by N.C. Gen. Stat. § 105-287, the changes must be made pursuant to the schedule of values adopted for the revaluation year governing the revaluation cycle. Following the schedule of values ensures that similar real property is valued under the same approach to value, using the same land costs and construction costs, as of the cycle revaluation date and helps ensure uniformity. Thus, in a county using an eight-year revaluation cycle, a new home constructed and sold in the sixth year and placed upon the assessment rolls when complete, as of January 1 of the seventh year, must be valued, not using

its fair market value as of January 1 of the seventh year, but valued using construction costs, land costs and market conditions in effect seven years earlier.

D. Appeals of Schedules of Value

Typically, the schedule of values is approved three to nine months before January 1 of the revaluation year. The assessor prepares the schedule of values, sometimes with the assistance of a consultant, submits them to the county board no less than 21 days before the hearing when they will be considered by the board, notice is published, the board adopts them, and notice of that action must be published in a paper of general circulation for four successive weeks thereafter.

Failure to give adequate notice of the adoption of the schedule of value is a denial of due process.¹⁵

A property owner who asserts that the schedules, standards, and rules are invalid may appeal from the order adopting the schedule of values to the Property Tax Commission within 30 days of the date when the order adopting them was first published.¹⁶

Normally, this process does not present a problem because the schedules contain ranges broad enough to give the assessor significant leeway in making the assessment and not so narrow that if the taxpayer does not appeal the adoption of the schedule of values, he will have difficulty challenging an assessment made pursuant to the schedules. However, “the appeal procedure thus provided is the exclusive means for challenging the order adopting

¹⁵ In re McElwee, 304 N.C. 68, 79-81, 283 S.E.2d 115, 122-124 (1981)

¹⁶ N.C. Gen. Stat. § 105-317(c)(3)b.

schedules, standards and rules for the octennial reappraisal of real property for taxation.”¹⁷ (Emphasis added.) If the schedule for a particular property is drafted so tightly that its application will result in a higher than market valuation for a property, and the taxpayer does not appeal the adoption of the schedule of values, the taxpayer may well find itself without a remedy when it receives its notice of revalued assessment.

E. **Appeals of Assessed Value to County Boards of Equalization and Review**

If a taxpayer concludes that his real property has been over-assessed, it is advisable to appeal the assessed value during the revaluation year, which, as noted above, occurs every 8 years unless the county has elected a 4-year cycle or otherwise advances the revaluation schedule.

Any relief granted will be effective for the year appealed and future years in the revaluation cycle. Appeals may, however, be taken after the revaluation year. *See In re Property of Pine Raleigh Corp.*¹⁸ In such cases, the valuation of the property will be determined as of January 1 of the revaluation year, subject to the limited exceptions set forth in N.C. Gen. Stat. § 105-287 governing changes to the property thereafter. Any relief granted will not be retroactive to the revaluation year, but will be prospective only.

Even though a property’s valuation has changed significantly since the general revaluation date, if the valuation change is not confined to something peculiar to the property,

¹⁷ Brock v. North Carolina Property Tax Commission, 290 N.C. 731, 228 S.E.2d 254 (1976).

¹⁸ 258 N.C. 398, 128 S.E.2d 855 (1963)

but is due to “economic changes affecting the county in general,” the property’s assessed value may not be changed until the next revaluation.¹⁹

In the event that a taxpayer objects to the county tax assessor’s listing, appraisal or assessment of the taxpayer’s real or personal property, the taxpayer may appeal to the county board of equalization and review.²⁰ (See Attachment C for a form notice of appeal.) The board of equalization and review is comprised of the board of county commissioners unless the board of county commissioners has authorized a special board of equalization and review to hear property tax appeals.²¹ Most counties do set up a special board of equalization and review comprised of citizens of the county. County boards of equalization and review convene between the first Monday in April and the first Monday in May of each year to hear property tax appeals and must adjourn no later than July 1, (December 1 in revaluation years), or later under certain circumstances when the board has received a timely-filed appeal prior to its adjournment for the year.²² In non-revaluation years it is not uncommon for boards to meet and adjourn on the same date. Since appeals to the county board must be filed prior to its adjournment,²³ in non-revaluation years a taxpayer would be well advised to file its appeal before the board convenes. The 2001 General Assembly expanded the powers and duties of boards of equalization and review by adding a new section, G.S. § 105-322(g)(5), which

¹⁹ N.C. Gen. Stat. § 105-287(b). See Appeal of Hotel L’Europe, 116 N.C.App. 651, 652-654, 448 S.E.2d 865, 866 (1994), *disc. review denied*, 339 N.C. 612, 454 S.E.2d 252 (1995).

²⁰ N.C. Gen. Stat. § 105-322(g)(2).

²¹ N.C. Gen. Stat. § 105-322(a).

²² N.C. Gen. Stat. § 105-322(e).

²³ N.C. Gen. Stat. § 105-322(g)(2)(a).

authorizes boards of equalization and review to continue to meet after adjournment to hear and decide discovery appeals, to hear and decide motor vehicle tax appeals, and to hear and decide appeals related to audits of property classified for present use valuation or under another classification for exclusion or exemption.

In revaluation years, some counties publish notice that the board will adjourn on June 30 or some other date, except for the purpose of hearing pending appeals. The purpose of this notice is to cut off the time for filing appeals as of the noticed date of adjournment, even though the board will continue to meet after that date to hear appeals previously filed. While the statutory scheme is ambiguous on this point,²⁴ a taxpayer should acquaint itself with the local rules to ensure that its appeal is timely filed. Some counsel that appeals be filed by June 30 regardless of whether the board adjourns on that date.

If a notice of the assessment of real or personal property is not delivered until after adjournment of the county board, the Property Tax Commission has held that an appeal is timely if filed before year-end on the grounds that failure to afford a hearing would constitute a denial of due process.

Upon appeal by a taxpayer that owns property in the county, the county board of equalization and review will review any decision of the county tax assessor with regard to the listing or appraisal of the taxpayer's property.²⁵ The county board is authorized to examine and adjust the appraised value of the taxpayer's property and take other steps necessary to

²⁴ N.C. Gen. Stat. § 105-322(e) and (g)(2).

²⁵ N.C. Gen. Stat. § 105-322(g).

ensure that the property is appraised and taxed in conformity with statutory requirements.²⁶ If a taxpayer is “aggrieved” by the assessment of property he does not own, he may also appeal that assessed value.²⁷

County boards may increase or decrease the assessed value appealed. If the assessor discovers facts during the course of the appeal that lead him to believe that he under-assessed the property, he will undoubtedly ask the local board to increase his assessment.

Hearings before county boards are informal. Taxpayers may represent themselves, be represented by counsel and, in most counties, by family members, accountants or tax representatives. Witnesses are not sworn and the rules of evidence are not followed. Counties typically require non-lawyers representing property owners to produce a power of attorney before the appeal will be heard.

Although hearings on the appeals from county boards of equalization to the State Property Tax Commission (discussed below) are *de novo*, and although it often seems that hearings before local county boards are perfunctory, occasionally taxpayers will be able to obtain relief from county boards. This may be particularly true of less complicated properties where the owner is able to present facts affecting value not known to the assessor. The North Carolina Court of Appeals held in MAO/Pines Association, Ltd. v. New Hanover County Board of Equalization²⁸ that failure to reveal evidence of a factor (asbestos contamination in

²⁶ Id.

²⁷ See Brock v. North Carolina Property Tax Commission, *supra* note 17. See also In re Appeal of Whiteside Estates, Inc., 136 N.C.App. 360, 525 S.E.2d 196, *cert. denied*, 351 N.C. 473, 543 S.E.2d 511 (2000).

²⁸ 116 NC App. 551, 449 S.E.2d 196 (1994).

that case) allegedly affecting the true value of the taxpayer's property to the assessor or to the local board of equalization and review on a timely basis was sufficient basis for exclusion of evidence of that factor by the Property Tax Commission. Although MAO/Pines may be distinguishable, in order to maintain a good working relationship with the county assessor, taxpayers would be well advised to apprise assessors of factors adversely affecting the value of their property during negotiations with the assessor and to advise the county board of equalization and review of these factors in appearances before these bodies.²⁹

F. Appeals to Property Tax Commission

1. Procedure

If a taxpayer objects to the resolution of his locally assessed property tax appeal by the county board of equalization and review or board of county commissioners, the taxpayer may appeal to the state Property Tax Commission.³⁰ (See Attachment D for a form notice of appeal.) The county assessor may not appeal an adverse ruling of the county board.³¹ Three of the five members of the Commission are appointed by the Governor, one member is

²⁹ But see also Brock v. North Carolina Property Tax Commission, *supra* note 17. "A county board of equalization and review operates in a very informal manner. No record is kept and usually little hard evidence exists to indicate the procedures followed. Therefore, appeals to the Property Tax Commission should not be dismissed on technical grounds, but only for clear noncompliance with statutory prerequisites."

³⁰ N.C. Gen. Stat. § 105-290; N.C. Gen. Stat. § 105-342(b).

³¹ N.C. Gen. Stat. § 105-290(b); In re Appeal of Forsyth County, 104 N.C.App. 635, 410 S.E.2d 533 (1991), *disc. rev. denied*, 330 N.C. 851, 413 S.E.2d 551 (1992).; In re Moses H. Cone Memorial Hospital, 113 N.C.App. 562, 439 S.E.2d 778 (1994), *aff'd in part, cert. improvidently granted in part*, 340 N.C. 93, 455 S.E.2d 431 (1995).

appointed by the Speaker of the North Carolina House of Representatives, and one member is appointed by the President Pro Tempore of the North Carolina Senate.³²

For locally assessed property, written notice of appeal to the Commission must be filed within thirty (30) days after the date that the county board of equalization and review mails a notice of its decision to the property owner.³³ The Commission promulgates rules governing its procedures, which may be found at N.C. Admin. Code, title. 17, r. 11.

Under the Commission procedures, the taxpayer must timely request a hearing. This is accomplished by the filing of Commission Form AV14, Application for Hearing, which is mailed to the taxpayer after the appeal is filed. It must be filed within 30 days of the date it is mailed. According to Commission rules, only taxpayers appearing *pro se* or attorneys licensed to practice law in North Carolina may file appeals to the Commission or otherwise appear before that body.³⁴ After an appeal is filed, the staff of the Property Tax Division of the Department of Revenue will consult with both the taxpayer and the county in an attempt to mediate the appeal informally. The staff is knowledgeable and helpful and their efforts are frequently successful.

Although the Rules of Civil Procedure do not apply to proceedings before the Commission, the rules pertaining to discovery have been adopted and are available for use by

³² N.C. Gen. Stat. § 105-288.

³³ N.C. Gen. Stat. § 105-290(e). See In re Appeal of Intermedia Communications, Inc., 144 NC App. 424, 548 S.E.2d 562 (2001) (allowing an appeal to be filed by fax).

³⁴ N.C. Admin. Code, title 17, r. 11.0216.

the parties.³⁵ The Commission encourages the use of informal discovery. In addition, the Commission has the authority to issue subpoenas.³⁶

2. Hearings

The full Commission may hear the taxpayer=s appeal or, in rare instances, it may designate one or more Commission members or Department employees to hear the appeal and issue a proposed decision which may then be accepted or rejected by the full Commission after review of the record and any written arguments of the parties.³⁷ Typically, the Commission meets monthly, usually in Raleigh. Hearings before the Commission are *de novo*³⁸ and are conducted under the North Carolina Rules of Evidence.³⁹

The duties of the Property Tax Commission are quasi-judicial in nature and require the exercise of judgment and discretion.⁴⁰ The Commission has the duty “to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence.”⁴¹

As with appeals to the local board of equalization and review, the Commission may affirm the assessment appealed, may lower it, or may increase it.

³⁵ N.C. Admin. Code, title 17, r. 11.0218.

³⁶ N.C. Gen. Stat. § 105-290(d).

³⁷ N.C. Gen. Stat. § 105-290(b).

³⁸ Appeal of Forestry Foundation, 35 N.C.App. 414, 425, 242 S.E.2d 492, 499 (1978), *aff'd*, 296 N.C. 330, 250 S.E.2d 236 (1979).

³⁹ N.C. Gen. Stat. § 8C-1.

⁴⁰ Albemarle Electric Membership Corp., 282 N.C. 402, 409, 192 S.E.2d 811, 816 (1972).

⁴¹ In re McElwee, *supra* note 15 at 87, 283 S.E.2d at 126-27.

An *ad valorem* tax assessment is presumed correct.⁴² This presumption is only one of fact and is, therefore, rebuttable. This presumption may be rebutted by material, substantial, and competent evidence that tends to show that either an arbitrary or an illegal method of valuation was used and that the assessment substantially exceeded the true value in money of the property.⁴³ It is not enough for the taxpayer to show that the method used by the assessor was wrong; the taxpayer must also show that the result of the valuation is substantially greater than the true value in money of the property assessed.⁴⁴ The converse is also true – the taxpayer must not only prove that the value is substantially in excess of true value, he must prove that the assessment was arbitrary or illegal.⁴⁵ The good faith of tax assessors and the validity of their actions are presumed. The taxpayer bears the burden of showing that the assessment was erroneous.⁴⁶

“When a taxpayer has rebutted the presumption of regularity in favor of the county . . . the burden then shifts to the county to demonstrate to the Property Tax Commission that the values determined in the revaluation process were not substantially higher than that called for by the statutory formula, and the county must demonstrate the reasonableness of its valuation by ‘competent, material and substantial evidence.’”⁴⁷ The

⁴² In re Appeal of AMP, Inc., 287 N.C. 547, 561, 215 S.E.2d 752, 761 (1975).

⁴³ Id. at 563, 215 S.E.2d at 762.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ In re McElwee, *supra* note 15 at 75, 283 S.E.2d at 120.

⁴⁷ In re McElwee, *supra* note 15 at 86-87, 283 S.E.2d at 126-7 (1981).

Supreme Court observed in In Re Southern Railway⁴⁸ that when the taxpayer offered evidence that the appraisal methods used by the assessing authority would not produce true values for the taxpayer and that the values actually produced by these methods were substantially in excess of true value, the taxpayer had rebutted the presumption of correctness. “The burden of going forward with evidence and of persuasion that its methods would in fact produce true values then rested with the [assessing authority] and it became the Commission’s duty to hear the evidence of both sides, to determine its weight and sufficiency and the credibility of witnesses, to draw inferences, and to appraise conflicting and circumstantial evidence, all in order to determine whether the [assessing authority] met its burden.”

3. Arbitrary or Illegal Assessment

Illegal Assessment

“An illegal appraisal method is one which will not result in true value as that term is used in N.C. Gen. Stat. § 105-283 and, for public service companies, in N.C. Gen. Stat. § 105-335.”⁴⁹ The Supreme Court held in AMP that the use of book value as a *per se* indicator of fair market value was illegal.⁵⁰ An appraisal method contrary to the Machinery Act is an illegal method of valuation.⁵¹ The Supreme Court further observed in McElwee that the use of comparable sales constituted an illegal method of valuation when the “comparable” land which had been sold was not shown to be used for the same purposes as the land being

⁴⁸ In re Appeal of Southern Railway Co., 313 N.C. 177, 328 S.E.2d 235 (1985).

⁴⁹ Southern Railway Co., *supra* note 48 at 181, 328 S.E.2d at 239.

⁵⁰ AMP, *supra* note 42 at 563-65, 215 S.E.2d at 762-63.

⁵¹ Id.

valued.⁵² “An illegal appraisal method is one which will not result in ‘true value’ as that term is used in [G.S. § 105-283]”.⁵³

Arbitrary Assessment

The use of valuation guides without consideration of the condition of the article being valued has been held to be an arbitrary method of valuation.⁵⁴ A revaluation process conducted 2½ years before the effective date of the appraisal and under a short time frame (2 months) is “plainly arbitrary.”⁵⁵ Failure to take restraints on alienation into account in assessing real property was found to be arbitrary.⁵⁶ Averaging of comparable sales and omitting other comparable sales from the average without apparent analysis of the comparable sales was found to be arbitrary; assessing real property based on a figure per front foot without considering suitability of tract for building was found to be arbitrary.⁵⁷

4. Valuation of Real Property – Proof that the Assessed Value is “Substantially Greater” than True Value

Hearings before the Commission on appeals of the assessed valuation of properties typically involve battles between expert witnesses, including appraisers, cost estimators and engineers, and generally turn on questions of the highest and best use of the property, the determination of obsolescence and depreciation under the cost approach to value, the

⁵² In re McElwee, *supra* note 15 at 88-91, 283 S.E.2d at 127-29.

⁵³ Appeal of Colonial Pipeline, 318 N.C. 224, 236, 347 S.E.2d 382, 389 (1986).

⁵⁴ In re Carolina Quality Block Co., 270 N.C. 765, 155 S.E.2d 263 (1967).

⁵⁵ In re McElwee, *supra* note 15 at 82-84, 283 S.E.2d at 124-125.

⁵⁶ In re Appeal of Perry-Griffin Foundation, 108 N.C. App. 383, 424 S.E.2d 212, *disc. rev. den'd*, 333 N.C. 538, 429 S.E.2d 561 (1993).

⁵⁷ In re Appeal of Boos, 95 N.C.App. 386, 382 S.E.2d 769 (1989).

comparability of “comparable sales” under the market data approach to value, and calculations of net operating income and its appropriate capitalization, or use of the discounted cash flow method, under the income approach to value.

Appraisers will usually consider all of the three approaches to determining fair market value – cost, income, and comparable sales – and, depending upon the availability of data, will use one or more of these methods, frequently using all three.

Although theoretically all three approaches to the determination of market value should yield approximately the same number, in practice they often do not, leaving the appraiser to reconcile the approaches he used and to determine which approach he must most heavily rely upon.

Assessors in North Carolina traditionally used the cost approach to assess improvements to real estate. In more recent years, as they have become more sophisticated and have had access to greater resources, many assessors, particularly in large, more urban counties, have also begun using the income approach to assess income producing properties.

The propriety of a particular valuation method is frequently disputed before the Property Tax Commission and the appellate courts.

Our courts have held that the income approach is most appropriate for the valuation of investment properties like mall anchor stores⁵⁸ and super regional malls.⁵⁹ In using the income approach to value properties, it is important to note that North Carolina is a “market

⁵⁸ In re Appeal of Belk-Broome Co., 119 N.C.App. 470, 458 S.E.2d 921 (1995).

⁵⁹ In re Winston-Salem Joint Venture, 144 N.C.App. 706, 551 S.E.2d 556, *disc. review denied*, 354 N.C. 217, 555 S.E.2d 277 (2001).

rents” state and not a “contract rents” state; for property tax purposes, in applying the income approach to value, the market rents of comparable properties are used and not the properties’ actual contract rents, although an appraiser may determine, based upon his survey of the market, that the properties’ actual rents reflect the market.⁶⁰

A recent case has clouded the issue in North Carolina as to just what the “market” is – Belk-Broome.⁶¹ In Belk-Broome, the Court of Appeals held that in valuing mall anchor stores, the assessor’s reliance on the cost approach was inappropriate because the income produced by market rents for mall anchor stores should be the primary measure of value. The court noted that mall anchor stores have a special, more restricted market due to the existence of operating agreements that provide lower rents in the form of a subsidy by the mall developers to the department store. Even though the rents are lower for mall anchors, “The operating agreement is an integral part of that market . . . The property must be valued according to that market . . . The County and Commission must take the property as it finds it.”⁶²

Our Supreme Court has held that the income approach is appropriate for the valuation of property assessed at its present use.⁶³

Our courts have indicated that, “The cost approach is better suited for valuing specialty property or newly developed property . . .”⁶⁴

⁶⁰ In re Greensboro Office Partnership, 72 N.C.App. 635, 325 S.E.2d 24, *cert. denied*, 313 N.C. 601, 330 S.E.2d 610 (1985); In re Pine Raleigh Corp., 258 N.C. 398, 128 S.E.2d 855 (1963).

⁶¹ In re Appeal of Belk-Broome Co., *supra* note 58.

⁶² In re Appeal of Belk-Broome Co., *supra* note 58 at 478-480, 458 S.E.2d at 926-27.

The comparable sales approach seems to be particularly useful for the valuation of raw land and single family residences, and when market comparables are available, for other types of property, such as apartment complexes, office buildings, or retail uses,⁶⁵ keeping in mind the court's preference for the income approach for investment grade properties.

Industrial plants, particularly older ones, present significant appraisal challenges. Rental income data is rarely available since these properties are generally owner occupied. Many plants have significant physical, functional and external obsolescence, requiring large and subjective adjustments to the replacement cost new. The replacement cost new of an older plant will sometimes mean that construction of a new plant can't be justified and would not occur. Although comparable sales are frequently available, even for large plants, the assessor invariably contends that the "dangling wire plants" which have been sold (plants from which all the machinery and equipment have been removed) are not comparable to plants in economically productive use.

In valuing industrial properties, several issues generally present themselves:

⁶³ In re McElwee, *supra* note 15 at 92, 283 S.E.2d at 130.

⁶⁴ In re Appeal of Belk-Broome Co., *supra* note 58 at 474, 458 S.E.2d at 924.

⁶⁵ In ascertaining market value, sales of comparable property are the most reliable indicators of value. United States v. 100.80 Acres of Land, 657 F. Supp. 269, 274 (M.D.N.C. 1987); City of Statesville v. Cloaninger, 106 N.C. App. 10, 16, 415 S.E.2d 111, 115 (1992), *disc. review denied*, 331 N.C. 553, 418 S.E.2d 664 (1992).

- Qualification of obsolescence.
- Valuation of super adequate features.
- Construction in process and new construction – how to value additions to an obsolescent plant.
- Distinguishing between realty and personalty when the personalty is often permanently affixed to the realty.

As a general rule, the Property Tax Commission staff, and most appraisers, tend to regard the equipment installed in the plant for plant lighting, air handling and plumbing for human comfort, distribution wiring, etc., to be part of the real estate, while equipment installed for purposes of the manufacturing process conducted within the plant to be personalty.⁶⁶

The Appraisal of Real Estate, 12th Ed., published by the Appraisal Institute in 2001 is an invaluable resource for the discussion of appraisal methodology.

After the parties have introduced their evidence, the Commission “shall make findings of fact and conclusions of law and issue an appropriate order” based on evidence considered at the hearing.⁶⁷

⁶⁶ See Personal Property Assessment Manual, September, 2001, p. 2-2. The Manual, which is discussed at greater length in the section on assessment of business personal property below, contains a useful checklist classifying selected items as realty or personalty

⁶⁷ N.C. Gen. Stat. § 105-290(b)(2).

The Property Tax Commission has no authority to rule on constitutional issues. These must be raised and preserved for the appellate courts.⁶⁸

G. Judicial Review

Any party aggrieved by a final order or decision of the Commission may appeal to the North Carolina Court of Appeals by filing with the Commission within thirty (30) days after entry of the final decision or order being appealed a notice of appeal and a statement of alleged errors made by the Commission in its decision.⁶⁹ The appealing party must also serve notice of the appeal on all other parties to the action and perfect the appeal in the Court of Appeals in accordance with the Rules of Appellate Procedure. Either the taxpayer or the taxing jurisdiction may appeal the decision of the Court of Appeals to the North Carolina Supreme Court as provided in the Rules of Appellate Procedure.

G.S. § 105-345.2(b) establishes the standard of review to be applied by appellate courts upon an appeal of a decision of the Commission:

The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional provisions; or
- (2) in excess of statutory authority or jurisdiction of the Commission; or
- (3) made upon unlawful proceedings; or

⁶⁸ Gulf Oil Corp. v. Clayton, 267 N.C. 15, 147 S.E.2d 522 (1966); Great American Insurance Company v. Gold, 254 N.C. 168, 118 S.E.2d 792 (1961), *overruled on other grounds*, Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

⁶⁹ N.C. Gen. Stat. § 105-345.

- (4) affected by other errors of law; or
- (5) unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

G.S. § 105-345.2(c) requires: “(I)n making the foregoing determinations, the court shall review the whole record . . . and due account shall be taken of the rule of prejudicial error.” Under a “whole record” analysis, the reviewing court may not

“replace the [Commission’s] judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it *de novo* (citation omitted). On the other hand the “whole record” rule requires the court, in determining the substantiality of evidence supporting the [Commission’s] decision, to take into account whatever in the record fairly detracts from the weight of the [Commission’s] evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the [Commission’s] result, without taking into account the contradictory evidence or evidence from which conflicting inferences could be drawn (citation omitted).”⁷⁰

However, “it is clear that no court of the General Court of Justice can weigh the evidence presented to the [Commission] and substitute its evaluation of the evidence for that of the [Commission].”⁷¹ If the Commission’s decision, considered in the light of the foregoing rules, is supported by substantial evidence, it cannot be overturned.⁷² Substantial evidence means more than a scintilla of evidence or such evidence as a reasonable person might accept as adequate.⁷³

⁷⁰In re McElwee, *supra* note 15 (citing Thompson v. Wake County Board of Education, 292 N.C. 406, 233 S.E.2d 538 (1977)).

⁷¹AMP, *supra* note 42.

⁷²In re Appeal of Interstate Income Fund I, 126 N.C.App. 162, 484 S.E.2d 450 (1997); In re Appeal of Perry-Griffin Foundation, *supra* note 56.

⁷³In re Appeal of General Tire, Inc., 102 N.C. App. 38, 40, 401 S.E.2d 391, 393 (1991) (Substantial evidence supported the Commission’s decision).

H. Action Brought Directly in Superior Court

A taxpayer may, in certain circumstances, bypass administrative appeals of its property tax assessment and seek judicial review in a state trial court by filing with the city or county that imposed the tax a demand for the release of any tax assessed but not paid or, in the event that the taxpayer has already paid the tax, a claim for refund.⁷⁴ This procedure is available only in instances where the taxpayer alleges that the property tax was imposed through clerical error, an illegal tax, or a tax levied for an illegal purpose. It would not, for instance, apply where the taxpayer challenges the appraised value of its property.⁷⁵ As one example, this procedure would seem to be available when a taxpayer determines that property had been assessed which was no longer in existence in the county as of the assessment date, but the time has passed for challenging its assessed value.

If the taxing body does not grant the requested release or refund within ninety (90) days after receipt of the request, the taxpayer may file suit against the taxing body for the tax amount claimed.⁷⁶ If the taxpayer sought a release from an unpaid property tax and did not receive the requested release of the tax from the taxing body, the taxpayer must first pay the tax due before filing suit. The taxpayer in that circumstance may file suit within three (3) years after payment of the tax. A taxpayer filing suit after the 90-day period for approval of

⁷⁴ N.C. Gen. Stat. § 105-381.

⁷⁵ Edward Valves, Inc., *supra* note 9 at 489, 451 S.E.2d at 645 (“If a taxpayer disagrees with a county’s valuation of its property, the taxpayer must pursue and exhaust its administrative remedies before resorting to the courts...Questions concerning valuation which are first presented directly to the courts are properly dismissed.” (citations omitted)).

⁷⁶ N.C. Gen. Stat. § 105-381(c).

his refund claim has passed must file suit within three (3) years after the date when the governing body was required to act on the taxpayer's refund claim.⁷⁷

⁷⁷ Id.