

**NCDOR**

NORTH  
CAROLINA  
DEPARTMENT  
OF REVENUE

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# **Preparing a Case for the Property Tax Commission**

2019 Spring Real Property  
Advanced Seminar

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# **Part I: Overview**



- The PTC sits as the State Board of Equalization and Review
- Created by G.S. 105-288
- Actually considered a separate state agency, but NCDOR provides support staff
- Five members; three appointed by governor and two by the General Assembly, on recommendation of the Speaker and President *Pro Tem*. They have four year, staggered terms (3/2)
- Chair is appointed by governor; Vice Chair selected by members



- Robert C. Hunter (Chair): McDowell County; former legislator and retired from the NC Court of Appeals (current term expires June 30, 2021) – Gov. Cooper
- Terry L. Wheeler (Vice Chair): Dare County; former county manager and longest-serving member of the PTC, being first appointed in 1995 (June 30, 2019) – Speaker Moore
- William W. Peaslee; Wake County: former Chair and current Deputy Commissioner with the NC Industrial Commission (June 30, 2019) – Pres. *Pro Tem* Berger
- Alexander A. Guess: Wake County; CPA in private practice (June 30, 2019) – Former Gov. McCrory
- Charles W. Penny: Nash County; former Rocky Mount city manager (June 30, 2021) – Gov. Cooper



- Primarily hears appeals from county Boards of Equalization and Review “concerning the listing, appraisal, or assessment of property...” [G.S. 105-290(b)]
  - Note that these are all activities occurring prior to billing
  - The PTC does not deal with issues related to billing, including refunds, interest, penalties, etc



- When a county adopts schedules of values, standards, and rules (usually just called the “Schedule of Values”) in connection with a countywide reappraisal, the Commission is the first forum in the appeal process [G.S. 105-290(c)].
- An appellant may appeal the county’s order adopting the Schedule of Values within 30 days of the first publication of the order.



- The Commission is also responsible for hearing appeals of “Public Service Companies” [G.S. 105-333(14)], which are appraised by NCDOR [G.S. 105-342(b)]
- These appellants must submit a written request for hearing on the appraisal or apportionment of the property within 20 days of NCDOR’s tentative appraisal notice.
- These appeals don’t directly involve the counties. The AG’s office represents NCDOR.



As to who has standing:

- any taxpayer who **owns or controls** property taxable in the county with respect to the listing or appraisal of the taxpayer's property **or the property of others** [G.S. 105-322(g)(2)]
  - “owns or controls” includes tenants for life, trustees, probably at least some lessees
  - The appellant generally would have to demonstrate that another’s property value causes the appellant harm (See In re Appeal of Whiteside Estates, 136 N.C.App. 360, 525 S.E.2d 196 (2000))



As to who can **appear**:

- The taxpayer/property owner
- The taxpayer's attorney (licensed in NC)
- If the owner is a business entity, G.S. 105-290(d2) permits the taxpayer to self-represent through one of the following:
  - Corporate officer;
  - LLC manager;
  - Employee receiving a W-2 from the taxpayer;
  - Individual owner of 25% or more of the entity

**Appellant must make this election, using Form AV-63, within 30 days of the notice of appeal**

- Appellant files written notice to the county Board of Equalization and Review (“Board” or “BOER”), objecting to the taxability or valuation of the subject property
- Board conducts hearing and issues written Notice of Decision
- Appellant has 30 days to file Notice of Appeal with PTC [G.S. 105-290(e)]
- This deadline is jurisdictional [see, e.g., “Louisiana Pacific” appeals, 208 N.C.App. 457, 703 S.E.2d 190 (2010)]



- Appellant also has to file an application for hearing, Form AV-14 (17 NCAC 11 .0212)
- There's a deadline for this filing, as well, but it's administrative, rather than jurisdictional
- Form AV-14 can serve as both the Notice of Appeal and as the application for hearing
- Staff review and schedule files for hearing
- Parties are encouraged to use the least formal discovery methods, but all discovery methods available under the NC Rules of Civil Procedure are available



- About 50 days in advance, staff mails letters to both sides advising them of the month in which the hearing is planned to be scheduled
- About 20 days in advance, staff mails notice of the actual hearing date and time to both sides



- No later than 10 days in advance of the hearing, the appellant is to:
  - Enter into a prehearing order with the county;
  - Exchange evidence with the county; and
  - File six copies of the order and evidence with the Commission. (17 NCAC 11 .0213 and .0214)
- The county is also to file six copies of its evidence with the Commission at least 10 days in advance of the hearing. (17 NCAC 11 .0213)



- The hearing itself is conducted under the Rules of Evidence, but not under the Rules of Civil Procedure (17 NCAC 11 .0209)
- Even so, if the Commission has not developed a procedure for a particular situation, the RCP can offer useful options.
- *Pro se* appellants are usually given a bit of latitude during the hearing
- All testimony is given under oath (or affirmation)



- Hearings are recorded by a court reporter. Either side may contract with the reporter to obtain a transcript, if desired
- At the close of the taxpayer's evidence, the county will often make a motion to dismiss (more on this later)
- The county puts on evidence after the appellant
- At the close of the hearing, the Commission will excuse the parties and deliberate off the record



- The decision is usually, but not always, announced the same day
- The written decision is generally entered within 90 days of the hearing
- Either party has 30 days from the date of entry to file with the Commission a Notice of Appeal to the NC Court of Appeals [G.S. 105-345(a)]
- The Rules of Appellate Procedure apply from here on





- It's normally up to the appellant to demonstrate that the county Board's decision was wrong
- For value appeals, the county's value is presumed correct, and the appellant must offer evidence that the county's value was:
  1. Arbitrary or illegal, **and**
  2. Substantially in excess of the property's true value



- As a practical matter, the focus is usually on value
- The appellant's burden is one of production, not of proof
- If the appellant produces the required evidence, the burden shifts to the county to demonstrate that its methods produce "true value"



“All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. 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 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.”

(G.S. 105-283)



# NCDOR What is “True Value?” Cont’d.

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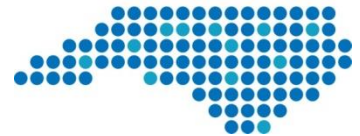
- “True Value,” although a statutorily-defined term, is essentially synonymous with the more conventional “fair market value”
- G.S. 105-317 and 105-317.1 list the minimum elements to be considered in determining the true value of taxable property
- G.S. 105-317 “has been interpreted as authorizing three methods of valuing real property: the cost approach, the comparable sales approach, and the income approach.” See *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)



- In re Amp, Inc., 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975)
- In re Appeal of S. Ry. Co., 313 N.C. 177, 323 S.E.2d 235 (1985)
- In re IBM Credit Corporation, (IBM Credit II), 201 N.C. App. 343, 689 S.E.2d 487 (2009)
- In re Parkdale Mills, 225 N.C. App. 713, 741 S.E.2d 416 (2013)



**Part II:**  
**County Appeal**  
**Strategies & Tips**



1. Untimely to BOER – Motion To Dismiss; be prepared with affidavit of publication and with affidavit of mailing
2. Untimely to PTC – MTD; issue of jurisdiction
3. Appeals regarding refunds, penalties, interest, etc. – MTD; jurisdiction
4. Appellant did not state grounds of appeal, or assessor did not get notice under 105-290(f) – MTD? Compare with notice required in TCD case



5. Use discovery, especially from commercial appeals
6. Response to notice of appeal – not common and not required. See 17 NCAC 11 .0212
7. Late/no AV-14 – will be handled by PTC
8. Prehearing conference – be proactive in setting up with appellant
9. Subpoenas can be issued if needed. This is uncommon





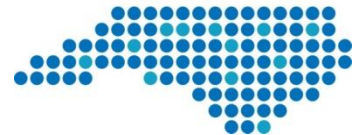
10. Appellant's failure to attend PHC/enter into order/exchange or submit exhibits – Depends. Result could range from no different to dismissed
11. Appellant's failure to appear – grounds for dismissal. See 17 NCAC 11 .0217
12. No AV-63 filed – At a minimum, appellant will have to have attorney at hearing. See 17 NCAC 11 .0216 Tax reps cannot be a nonattorney representative



13. County should consider making a MTD at the close of appellant's case
14. If you haven't handled a property tax appeal before, consider outside counsel
15. Mass appraisal and single-property appraisal have generally the same goal, but very different approaches
16. Encourage your attorney to consider taking any of property tax-related courses offered to county tax staff. Some are eligible for CLE



# **Part III: Recent Developments**



- Several appeals heard simultaneously in September, 2017. Involved interpretation of “used” in partial exclusion statute. Currently at COA. Heard in September, decision expected around January
- Another theory advanced regarding treatment of equipment as inventory in the hands of a contractor. This theory has not gained much traction so far. Stay tuned...



- Heard in December; PTC determined that property out on lease was not inventory.
- Also appealed to COA. Not yet heard
- PTC will not generally schedule similar cases while a COA appeal is pending, if requested by the parties



- PTC decision was that appellant had not met its burden of production
- Dismissed at close of appellant's case
- COA held that burden had been met, and sent back
- Settled prior to rehearing by PTC
- Couple of interesting statements in decision, regarding presumption of correctness and appraisal method – highest & best use, and (wrong) description of income approach



- PTC issued order involving lack of jurisdiction for penalties in a discovery matter (Mecklenburg)
- Case in which separate but contiguous parcels were valued independently (Wake)
- Case in which notice requirement was raised by appellant as a prerequisite to open the window for a real property appeal (Durham)
- Untimeliness (to BOER) case which was sent back for hearing on value (Durham)
- What is the scope of PTC's review?



- Current edition of “Machinery Act of North Carolina Annotated” – usually published in even years, as of the most recent odd year
- Title 17, Chapter 11 of the NC Administrative Code ([reports.oah.state.nc.us/ncac.asp](https://reports.oah.state.nc.us/ncac.asp))
- NCDOR Appeals Manual ([www.ncdor.gov/documents/appeals-manual](http://www.ncdor.gov/documents/appeals-manual))
- NCDOR PTC Informational Bulletin ([www.ncdor.gov/documents/av-14a-north-carolina-property-tax-commission-informational-bulletin](http://www.ncdor.gov/documents/av-14a-north-carolina-property-tax-commission-informational-bulletin))
- NCDOR staff (919) 814-1129

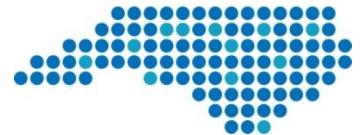




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(your mileage may vary)



**Questions?**

