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The Revaluation Revolt of 2009

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Property tax revaluations of real property are rarely greeted warmly by taxpayers, regardless of the state's economic health. The more difficult the economic conditions, the more likely that a revaluation will produce taxpayer angst and outrage.

When twenty-seven North Carolina counties conducted revaluations in the midst of the past year's historic economic collapse, the resulting taxpayer complaints were not surprising. What was surprising, however, was the vehemence of these protests and the response to them from several boards of county commissioners. Boards in six counties voted to repeal or postpone their 2009 revaluations. Four of these counties did so after the new tax valuations took effect on January 1, 2009, despite receiving legal advice that such actions likely violated state property tax law. The political and legal controversy surrounding these contested revaluations quickly expanded beyond the county level. The North Carolina Department of Revenue (DOR), the Attorney General, and the General Assembly all weighed in on the issue, the end result being a law that approved all six repeals of 2009 revaluations.

This legislative solution dealt only with 2009 revaluations, however. With the economy still in turmoil and more than a third of North Carolina counties scheduled to conduct revaluations in the next two years, questions about exactly when and how a county may repeal a revaluation are certain to arise again.

Revaluation and Recession

The North Carolina property tax provisions, collectively called the Machinery Act, require that a county revalue all real property in its jurisdiction for taxation purposes at least every eight years.[1] More than half of North Carolina's 100 counties have decided to conduct more frequent real property revaluations, with most of those counties choosing to revalue their real property

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1. N.C. Gen. Stat. (hereinafter G.S.) § 105-286. In contrast, personal property is valued annually by all counties. G.S. 105-283. Last year the General Assembly added to G.S. 105-286 a provision that requires counties with populations of 75,000 or more to revalue their real property within two years if their tax values diverge from actual sales prices by more than 15 percent on average. This new provision is unlikely to have much of an impact however: the North Carolina Department of Revenue (DOR) estimates that only a single county would have triggered the requirement over the past twenty years.

every four years.[2] The Machinery Act defines the term "real property" to include not only land but also buildings, structures, and permanent fixtures on the land, as well as any rights to or in the land, such as mineral or timber rights.[3] The county assessor, the tax official charged with the listing, appraisal, and assessment of all property in the county, is responsible for planning and implementing a revaluation.[4]

Although county fiscal years run from July 1 to June 30, by law, property tax valuations take effect on the January 1 prior to the beginning of the fiscal year.[5] This is true regardless of when a county actually informs taxpayers of the new valuations, which often occurs after the January 1 date. The new valuations are based on the "uniform schedules of values, standards, and rules"—the detailed policies and procedures governing tax appraisals—that a county must adopt prior to the January 1 date.[6] This schedule of values remains in effect until the next countywide revaluation of real property and, during this period, is used to value physical changes to real property, such as construction or destruction of buildings, and changes to the permissible use of real property, such as through rezoning.[7] In-between revaluations, individual tax values may not be adjusted to reflect changes in the local real estate market or other economic conditions.[8]

As shown in Table 1, twenty-seven counties had real property revaluations scheduled for 2009,[9] meaning they were finalizing their numbers in late 2008, just as the bottom fell out of the economy.

From June 2008 to January 2009, both the Dow Jones Industrial Average and the national median sales price for existing homes dropped by roughly 25 percent. [10] Taxpayers who believed that their tax values were increasing as their income and savings were decreasing began to put pressure on county officials to reconsider their revaluations.

In October 2008, two months before the new tax values were to take effect, the board of county commissioners in Mecklenburg County split evenly along party lines on a proposal to push back its revaluation to 2010. Mecklenburg County Commissioner Bill James summed up the thoughts of many of his voters as well as those from other counties conducting revaluations when he observed, "We should not lock in residential housing prices before this downturn is complete or we will be effectively overtaxing folks."[11]

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2. North Carolina Department of Revenue, *2008-2009 Property Tax Rates and Revaluation Schedules for North Carolina Counties*, *in* Sales Assessment Ratio Studies as of January 1, 2008 According to this report, fifty-seven counties had elected to adopt a revaluation cycle of less than eight years, forty-four of which had adopted four-year revaluation cycles.

3. G.S. 105-273(13).

4. G.S. 105-296. Municipalities rely on county assessors and do not independently value property for tax purposes. G.S. 105-327.

5. G.S. 105-283.

6. G.S. 105-317(b).

7. G.S. 105-287(a).

8. G.S. 105-287(b).

9. North Carolina Department of Revenue, *supra*, note 2.

10. The Dow Jones Industrial Average fell from 12,209 in early June 2008 to 9,034 in early January 2009, a 26 percent decrease. http://moneycentral.msn.com/investor/charts/chartdl.aspx?iax=1&Symbol=%24INDU (last visited May 1, 2009). The national median sales price of existing homes dropped 23 percent in that same period, falling from $215,000 to $164,800. www.realtor.org/research/research/ehsdata (last visited May 1, 2009).

11. April Bethea, *Delay property tax study? Mecklenburg County commissioners argue over whether to reassess home values in volatile market*, Charlotte Observer, Oct. 20, 2008.

Table 1. 2009–10 County Property Tax Revaluations

Counties with Real Property Revaluations Originally Scheduled for January 1, 2009	Counties with Real Property Revaluations Originally Scheduled for January 1, 2010
Alamance	Anson
Caldwell	Avery
Chatham	Beaufort
Cumberland	Buncombe
Davie	Clay
Duplin	Craven
Edgecombe	Dare
Forsyth	Franklin
Gates	Graham
Harnett	Granville
Hyde	Haywood
Lenoir	Onslow
Martin	Robeson
Mecklenburg	Watauga
Mitchell	
Nash	
Orange	
Person	
Polk	
Rockingham	
Stanly	
Stokes	
Swain	
Transylvania	
Tyrrell	
Warren	
Yadkin	

Other commentators urged the board of county commissioners to move forward with the revaluation, which would have been the first since 2003. The editorial page of the *Charlotte Observer* pointed out that tax bills are dependent on the tax *rate* as well as the tax *valuation* and argued that revaluation was necessary to more fairly distribute the tax burden: "[A] revaluation alone doesn't equal a higher tax bill. It means a more equitably assessed property value. . . . The tax rate vote and the revaluation decision are two different issues. . . . Delaying may be popular with folks whose values have soared, but it taints a process that should be as equitable as possible."[12]

12. *It's a fairness thing; don't stall revaluation*, Charlotte Observer, Nov. 3, 2008.

After five newly elected commissioners took office in early December, Mecklenburg County's board of county commissioners voted unanimously to postpone the revaluation for at least one year.[13] That same week, Person County's board of county commissioners voted to postpone its revaluation from 2009 to 2010 "due to the unstable real estate market and [because] the 2005 tax assessments are accurate, fair and equitable."[14]

As the stock markets continued to slide and North Carolina unemployment figures hit record levels in early 2009,[15] complaints about revaluations in other counties mounted. The DOR and the UNC School of Government (SOG) fielded calls from a growing number of county officials inquiring whether the Machinery Act authorized the repeal of a revaluation after it takes effect on January 1. Both the DOR and the SOG answered this novel legal question in the negative and advised counties that repealing a revaluation after January 1 would likely violate the Machinery Act.

Nevertheless, the parade of revaluation repeals continued. On January 5, Caldwell County's board of county commissioners voted to delay its revaluation until 2011.[16] Two weeks later, members of the Stanly County board of county commissioners earned a standing ovation from their audience by unanimously voting to do likewise.[17] When asked if she was concerned about a potential state law violation, Stanly County Commissioner Jann Lowder responded, "I don't feel like a revolutionary. I feel like I am a voice for the people. In these times, there is nobody that can afford an additional tax or increase in taxes."[18]

After a four-hour public meeting attended by 750 angry taxpayers in early February, Rockingham County's board of county commissioners followed suit and deferred its revaluation until 2011 as well.[19] "I think we did the right thing," commented Board Chair Amelia Dallas after the vote, "We'll just kind of measure the market and see how it goes."[20]

Other counties considered but narrowly rejected the same course of action. Heeding the advice of its county attorney and assessor, in February the Forsyth County board of county commissioners voted four to three to continue with its 2009 revaluation. County attorney Davida Martin had advised her commissioners that a revaluation repeal after January 1 would be "very risky to do with no statutory authority," while county assessor William A. "Pete" Rodda had

13. Minutes of Mecklenburg County Board of Commissioners, Dec. 2, 2008, *available at* www.charmeck.org/NR/rdonlyres/ekrbbtamzxozplj4jkdxvut63qsuit7uxua6fvetk6avzxcy5b5c3pb4at7johqm6a3mbacetq7fvfqpgsd3pu4b4kd/M120208.pdf.

14. Minutes of Person County Board of Commissioners, Dec. 1, 2008, *available at* www.personcounty.net/LinkClick.aspx?fileticket=V45Y%2bBW3GSM%3d&tabid=197&mid=692.

15. The Dow Jones Industrial Average lost just under 20 percent of its value from January 1 to February 28, 2009. S*upra*, note 10. The North Carolina unemployment rate hit 10.7 percent in February 2009, the highest level since the U.S. Bureau of Labor Statistics adopted the current reporting methodology in the 1970s. www.bls.gov/lau/ (last visited April 30, 2009).

16. Minutes of Caldwell County Board of Commissioners, Jan. 5, 2009, *available at* www.caldwellcountync.org/wp-content/uploads/minutes-jan-5-2009.pdf.

17. Minutes of Stanly County Board of Commissioners, Jan. 20, 2009, *available at* www.co.stanly.nc.us/portals/2/commissioners/AgendasMinutes/2009/01202009rm.pdf.

18. Wesley Young, *Policy delay is not likely*, Winston-Salem Journal, Feb. 15, 2009 (discussing Stanly County's decision and a possible repeal in Forsyth County).

19. Minutes of Rockingham County Board of Commissioners, Feb. 23, 2009, *available at* www.co.rockingham.nc.us/minutes/feb2309i.htm.

20. Jonnelle Davis, *Putting off Rockingham revaluation right move*, official says, News & Record (Greensboro, N.C.), Feb. 25, 2009.

argued that because home values had not changed at the same rate across the county, revaluation was the only way to equitably distribute the tax burden.[21]

A group called Orange County Tax Revolt posted hundreds of "Tax Revolt!" signs across that county and organized a February protest meeting that attracted 1,400 outraged residents calling for a repeal of the 2009 revaluation.[22] The board of county commissioners, however, stood by the opinion of Geoff Gladhill, the county's attorney, that a repeal of the revaluation after January 1 would violate the Machinery Act. This despite an emotional plea from one of the county's state representatives, Bill Faison: "It almost defies common sense that at a time when nobody can sell property, we would be increasing valuation in Orange County by dramatic numbers. We're in the worst time since the Great Depression, and people are scared. We'll get through this, but I would appeal to you to back this up and give comfort to the community until we do."[23]

By the close of the fiscal year, six of the twenty-seven counties scheduled to conduct revaluations in 2009 decided to repeal or postpone their valuations. See Table 2 for a complete list.

The highly publicized political and economic unrest even reached one county that was not scheduled to conduct a revaluation for another two years. In March, Lee County decided to move its next revaluation from 2011 to 2013.[24]

The revaluation controversy soon arrived in the state capital. Alamance County, which was at the end of the Machinery Act's maximum eight-year revaluation cycle, unsuccessfully attempted to obtain permission from the state attorney general's office to extend its cycle for an extra year.[25] At the urging of several counties, the DOR's Property Tax Division requested a formal opinion from the attorney general regarding the legality of a post-January 1 revaluation repeal.

In early April, the attorney general issued an advisory memorandum confirming the earlier opinions from the DOR, the SOG, and several county attorneys that the Machinery Act does not permit a county to rescind a revaluation once the schedule of values becomes effective on January 1.[26] The next week, the Property Tax Division director sent letters to the three counties that had rescinded their revaluations after January 1—Caldwell, Rockingham, and Stanly—informing them that they were in violation of the Machinery Act and that they must reinstate their 2009 revaluations or risk "further action" by the DOR.[27]

The General Assembly then jumped into the fray, with members introducing varied bills that would retroactively approve the post-January 1 repeal of the contested revaluations. One bill, H 1530, would have permitted any county to repeal a revaluation after January 1 so long as the county made the decision before a budget (and therefore the tax rate) was submitted to the

21. Young, *supra* note 18.

22. Dan E. Way, *Tax revolt meeting draws up to 1,400 people*, Herald-Sun (Durham, N.C.), Feb. 25, 2009.

23. Lisa A. Young, *Rep. Bill Faison suggests rescinding Orange County revaluations*, Herald-Sun (Durham, N.C.), Apr. 21, 2009.

24. Sarah A. Reid, *Lee: Revaluations to be delayed until 2013*, Fayetteville Observer, Mar. 17, 2009.

25. Robert Boyer, *Revaluation revs up board meeting*, Times-News (Burlington, N.C.), Mar. 10, 2009. The continuing controversy over Alamance County's 2009 revaluation led to the resignation of the county tax administrator two months later. Michael Abernathy, *County tax administrator to resign*, Times-News (Burlington, N.C.), May 12, 2009.

26. Memorandum from Kay Linn Miller Hobart, Special Deputy Attorney General, to David Baker, Director, Property Tax Division, DOR (Apr. 8, 2009).

27. Letters from David Baker, Director, Property Tax Division, DOR, to the assessors of Caldwell, Rockingham, and Stanly counties (Apr. 16, 2009).

Table 2. County Decisions Regarding 2009 Revaluations

Counties that Proceeded with Real Property Revaluations as Scheduled for January 1, 2009	Counties that Postponed or Repealed Real Property Revaluations Originally Scheduled for January 1, 2009
Alamance	Caldwell (repealed January 5, 2009)
Chatham	Mecklenburg (postponed December 2, 2008)
Cumberland	Person (postponed December 1, 2008)
Davie	Rockingham (repealed February 23, 2009)
Duplin	Stanly (repealed January 20, 2009)
Edgecombe	Swain (repealed June 8, 2009)
Forsyth	
Gates	
Harnett	
Hyde	
Lenoir	
Martin	
Mitchell	
Nash	
Orange	
Polk	
Stokes	
Transylvania	
Tyrrell	
Warren	
Yadkin	

board and the county was not at the end of the mandatory eight-year cycle. A second bill would have granted Alamance County alone a one-year extension of the mandatory eight-year revaluation cycle and permit the post-January 1 repeal of its 2009 revaluation.[28] A third bill would have permitted all counties to delay by one year the implementation of a mandatory eight-year revaluation.[29]

The one bill that eventually passed was a modified version of H 1530. The final provision authorized any county, not just the three counties that had already done so, to repeal its 2009 revaluation so long as its board of county commissioners voted to do by June 30, 2009.[30] Beyond Caldwell, Rockingham, and Stanly counties, only one additional county took advantage of this new authority. Swain County, which had abandoned its 2009 revaluation in favor of its previously existing tax valuation without passing a formal ordinance to that effect, formally repealed its 2009 revaluation in mid-June.[31]

28. H 1018.

29. H 1643.

30. S.L. 2009-180 (H 1530). The full text of the ratified bill can be found at www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1530v6.pdf (last visited July 1, 2009).

31. E-mail from Kimberly C. Lay, county attorney for Swain County, to the author (July 1, 2009).

Local Powers and Limitations Regarding Property Tax Revaluations

A local governing body is generally free to repeal or reverse ordinances and resolutions previously adopted by that same body.[32] If so, why was the decision by three counties to rescind their 2009 revaluations so legally controversial? The answer lies in the details of the Machinery Act, as well as in the basic structure of North Carolina state and local government.

Local governments are "creatures of the General Assembly and have no inherent legislative powers."[33] Under the concept known as Dillon's Rule, which was adopted by the North Carolina Supreme Court more than 130 years ago, a city or county may not exercise a particular authority unless the General Assembly has expressly granted such authority.[34] Subsequent case law affirmed that tax statutes must be strictly construed against a local government when there exists some ambiguity about the existence of a specific taxing power.[35]

The Machinery Act provides substantial detail regarding the timing of a countywide real property tax revaluation and the process for creating and adopting the schedule of values that controls the revaluation.[36] The Machinery Act also describes in detail how individual real property valuations may be adjusted or corrected in both revaluation and nonrevaluation years.[37] However, the Machinery Act is completely silent on the process for amending or repealing a schedule of values after it and the valuations based on it take effect on January 1 of a revaluation year.

In the author's view, which is shared by the DOR, the attorney general, and several county attorneys, the Machinery Act's silence on this issue is conclusive. Under Dillon's Rule and related North Carolina Supreme Court case law, because the Machinery Act does not *expressly authorize* a county to repeal a schedule of values once it takes effect, such authority may not be read into the statutes. Without the authority to repeal schedule of values that took effect on January 1, a county cannot repeal or rescind a revaluation after that date. The General Assembly apparently agreed with this conclusion when determined that a new law was needed to retroactively bless the late repeals in Caldwell, Rockingham, and Stanly counties.

The General Assembly has charged the DOR with the obligation to enforce the Machinery Act on local governments. G.S. 105-289(g) requires that the DOR "see that proceedings are brought to enforce the statutes pertaining to taxation and the collection of penalties and liabilities imposed by law upon public officers . . . who fail, refuse or neglect to comply" with the

32. *See* Hutchins v. Town of Durham, 118 N.C. 457, 24 S.E. 723 (1896) ("Succeeding boards of commissioners are deemed to act subject to the provisions of ordinances passed by their predecessors in authority, until they see fit to repeal them directly or to substitute others inconsistent with older enactments."). The two primary restrictions on this power to repeal existing law are situations involving unconstitutional impairment of contract or interference with employment or other vested rights. *See* Hogan v. City of Winston-Salem, 121 N.C. App. 414, 466 S.E.2d 303 (1996) (holding that change to disability retirement benefits was unconstitutional impairment of contract); Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972) (discussing whether change to zoning ordinance impermissibly altered vested rights of property owners).

33. Craig v. County of Chatham, 356 N.C. 40, 44, 565 S.E.2d 172, 175 (2002).

34. Smith v. City of Newbern, 70 N.C. 14, 18 (1874), *modified,* 73 N.C. 303. Roughly a century later, the General Assembly passed two statutes, G.S. 153A-4 and G.S. 160A-4, that relaxed Dillon's Rule and required that powers and rights granted to counties under G.S. Chapter 153A and to cities under G.S. Chapter 160A be broadly construed. However, because the taxation power at issue in the revaluation cases arises under G.S. Chapter 105 and not G.S. Chapters 153A or 160A, Dillon's Rule remains relevant.

35. C.D. Kenny Co. v. Town of Brevard, 217 N.C. 269, 7 S.E.2d 542 (1940).

36. G.S. 105-285, 105-286, and 105-317.

37. G.S. 105-287, 105-322, 105-323, and 105-325.

Machinery Act. David Baker, the director of the DOR's Property Tax Division, reports that to the best of his knowledge, the DOR has never taken any enforcement action beyond delivering the type of warning letters he sent in April to the three counties that repealed their revaluations after January 1.[38] Presumably, the next step in the enforcement process would be for the attorney general's office to seek a court order requiring the offending county to reverse the decision that violated the Machinery Act. In light of G.S. 105-380, which creates personal liability for county commissioners who unlawfully release or refund taxes, the state might also be able to hold individual county commissioners liable for any taxes lost due to an illegal revaluation repeal.

Other Options

Could the offending counties have responded to taxpayer concerns about their revaluations without violating the Machinery Act and risking DOR enforcement actions? The goal of the counties that repealed their revaluations was, of course, to lower their real property valuations and the potential tax burden on their residents. The author believes that the Machinery Act offers several other paths to this goal that do not involve a potentially unlawful repeal of an entire revaluation.

The first option involves individual taxpayer appeals. Every taxpayer has the right to appeal his or her revaluation to a county board of equalization and review and, if unsuccessful, to the DOR Property Tax Commission and then to the state appellate courts.[39] To prevail, a taxpayer must demonstrate that the county relied on an "illegal or arbitrary" valuation method and that the valuation substantially exceeded the true market value of the property.[40] Even in the midst of a historic economic meltdown, not all property owners could meet this standard because not all were affected similarly. Those taxpayers whose tax values did not reflect market conditions as of January 1 would be entitled to reductions, but the rest of the revaluation would stand.

The second option involves a countywide adjustment to revaluation figures. Individual appeals may not be a satisfactory solution if, as was alleged in several counties, the revaluation is patently inaccurate across the board. One countywide solution that appears to be authorized by the Machinery Act is contained in G.S. 105-296, which describes the powers and duties of the assessor. Subsection (i) of that statute reads, "Prior to the first meeting of the board of equalization and review, the assessor may, for good cause, change the appraisal of any property subject to assessment for the current year." This provision is most commonly relied upon by assessors to adjust individual revaluation figures during the "informal" appeal process prior to formal hearings before a board of equalization and review. But because this broad grant of authority is not subject to any express limitations, it presumably could be used to make a blanket or "horizontal" adjustment to all real property in a county or just those parcels in the neighborhoods most affected by the economic downturn.[41]

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38. E-mail from David Baker to the author, May 7, 2009.

39. G.S. 105-290 and 105-322.

40. *In re* Appeal of IBM Credit Corporation, 650 S.E.2d 828 (N.C. App. 2007), *aff'd per curium*, 362 N.C. 228, 657 S.E.2d 355 (2008). The Machinery Act defines true market value as "the price . . . at which the property would change hands between a willing and financially able buyer and a willing seller . . . ." G.S. 105-283.

41. The North Carolina Attorney General's office declined to opine on the legality of this approach in its advisory memorandum concerning the repeal of revaluations after January 1. See *supra* note 26. But, this approach has been implemented at least once before. In September 1999, after Onslow County

The assessor would be required to base this type of adjustment on the new schedule of values and not on the "old" schedule in effect prior to the revaluation year. But, if market forces had truly reduced the values of real property in the county as of January 1, even the new schedule of values would justify a decrease in the revaluation figures. Although the counties concerned about the accuracy of their revaluations received this advice from several assessors and county attorneys, none attempted it on a countywide basis.[42]

A third option is to keep the new revaluation in place but adopt a lower tax rate. As the *Charlotte Observer*'s editorial page and many other commentators suggested, the fact that a county's real property tax values have risen does not automatically mean that all taxpayers will face increased tax bills in a revaluation year. Tax bills have two components: the tax value and the tax rate. The tax value is an objective calculation made by an assessor as required by a county's schedule of values and the Machinery Act. The tax rate, in contrast, is set as part of the policy-driven budget decisions made by a county board of commissioners or a city council.[43] County commissioners always have the option of lowering their county's tax rate to offset increased tax valuations.

In response to taxpayer complaints, some local governments that did not repeal their revaluations announced their intentions to adopt revenue-neutral tax rates at budget time to limit the impact of increased tax values.[44] In a revaluation year, the local governing body is required to publish—but not to adopt—the revenue-neutral tax rate, defined as "the rate that is estimated to produce revenue for the next fiscal year equal to the revenue that would have been produced for the next fiscal year by the current tax rate if no reappraisal had occurred."[45]

The revenue-neutral rate does not guarantee that every taxpayer's property tax bill will remain unchanged, however. The rate is based on the average growth in the tax base. If a taxpayer's property increased at a greater rate than the average property in the county, that taxpayer will still face a higher tax bill in the revaluation year even if the county adopts the revenue-neutral rate.

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had finalized most of its assessment work for the revaluation that was to take effect on January 1, 2000, Hurricane Floyd slammed into the North Carolina coast. The Onslow County assessor subsequently relied upon G.S. 105-296(i) as authorization for a 10 percent decrease in revaluations for properties in the neighborhoods that were most heavily damaged by the storm.

42. Orange County, which has more than 55,000 separate parcels of real property, relied on G.S. 105-296(i) to change the tax valuations of roughly 2,000 property owners who did not appeal their assessments. Mark Schultz, *5,000 appeal tax values*, Chapel Hill News, Jun. 17, 2009, *available at* www.chapelhillnews.com/front/story/50557.html.

43. G.S. 159-13(c) and 105-347.

44. A. Barksdale, *Fayetteville's revenue forecast, debt, leave big hole*, Fayetteville Observer, Mar. 26, 2009 (discussing Fayetteville and Cumberland County); Jesse James DeConto, *Cuts will go 'to the bone,' manager warns*, News & Observer (Raleigh, N.C.), Apr. 1, 2009 (describing Orange County's plan to adopt a revenue-neutral property tax rate); Robert Boyer, *Budget calls for property tax cut*, Times-News (Burlington, N.C.), Apr. 26, 2009 (describing Alamance County's plan to adopt a revenue-neutral property tax rate).

45. G.S. 159-11(e). For a detailed analysis of the revenue-neutral rate calculation, see Christopher B. McLaughlin and William C. Rivenbark, "Statement of Revenue-Neutral Tax Rate: Questions and Answers," *Local Finance Bulletin* No. 39 (August 2009), *available at* www.sog.unc.edu/pubs/electronicversions/pdfs/lfb39.pdf.

The Policy Perspective

The legal result of the 2009 controversy seems clear: absent special permission from the General Assembly, counties have the authority to repeal their revaluations only if they do so prior to January 1. That leaves unanswered the policy considerations behind a possible repeal, however. When does it make sense for a county to repeal a revaluation? This question involves a number of factors, not the least of which is the boards of county commissioners' tolerance for taxpayer unrest. Less political but still subjective considerations include the timing of the new revaluations, the cost of repealing and repeating a revaluation, and the accuracy of the existing tax valuations.

Timing

When real estate prices are unsettled, the timing of the new valuation will play a large part in determining its accuracy. Traditionally, assessors were advised to complete work on the revaluation figures as early as possible in the year before the revaluation. The earlier the revaluation figures are finalized and released to taxpayers, the earlier the appeal process can begin. Assessors generally plan for between 5 and 10 percent of property owners to appeal their revaluations, although the recent economic uncertainty generated an unusually high rate of appeals in some counties for their 2009 revaluations.[46] Only after the bulk of taxpayer appeals are completed will a county have an accurate picture of its revalued tax base.

However, the earlier the assessor completes the revaluation work, the greater the chance that the local real estate market could change substantially between the end of that work and January 1 of the revaluation year. Normally, of course, the final few months prior to a revaluation do not produce any material change to local real estate prices, meaning the lag time poses little risk.

But 2008 was not a normal year. Knowing that, many of the counties waited to finalize and mail their revaluation notices until February or March of 2009, in the hope that they would be able to account for any late-year market changes.[47] In theory, the more recent the market data incorporated into the assessments, the less of a need to postpone or repeal a revaluation.

That theory assumes that taxpayer perceptions of market changes match reality, which may not be the case in tumultuous economic times. As 2008 drew to a close, months of terrible economic headlines had convinced many taxpayers that their home prices had tanked, even if local sales data suggested otherwise. Although the volume of existing home sales in North Carolina fell precipitously in 2008, average sales prices dropped only 4 percent.[48] Some markets, including

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46. Pete Rodda, the Forsyth County assessor, planned for between 7,000 and 8,000 appeals from the county's roughly 150,000 parcels. Mario Giunca, *Parcel values soon to change*, Winston-Salem Journal, Sept. 9, 2008. In Cumberland County, almost 12 percent of property owners appealed their 2009 revaluations, compared with 9 percent in the county's previous revaluation in 2003. Francis X. Gilpin, *15,000 appeal tax revaluations*, Fayetteville Observer, Apr. 30, 2009. As of May, Alamance County had received 12,600 appeal notices from its roughly 68,000 property owners, for an extraordinarily high appeal rate of nearly 19 percent. Robert Boyer, *Revaluation figures hold up well; Alamance increase was smaller than in other counties*, Times-News (Burlington, N.C.), May 4, 2009. Orange County received in 2009 more than four times the amount of appeals than the assessor had anticipated based on prior revaluations. Mark Schultz, *5,000 appeal tax values*, Chapel Hill News, Jun. 17, 2009, *available at* www.chapelhillnews.com/front/story/50557.html.

47. According to information provided by the DOR, sixteen of the twenty-seven counties that revalued their real property in 2009 waited until February or March to mail their revaluation notices.

48. The number of existing home sales in North Carolina dropped 26 percent from 2007 to 2008. The North Carolina Association of REALTORS provides market statistics at www.ncrealtors.org/uploads/December081.pdf (last visited May 4, 2009).

the state's second-largest, the Raleigh-Durham-Chapel Hill area, saw average prices increase or remain steady from year-end 2007 to year-end 2008.[49] Rodda, the Forsyth County assessor, viewed national stories about plummeting house values as the "biggest misconception" that taxpayers brought with them into the 2009 revaluation process.[50] He warned taxpayers intent on appealing their tax revaluations not to be "swayed by what's happening in San Diego" or in other large markets that saw huge housing price bubbles burst in 2008.[51] Many of the taxpayers who pushed for revaluation repeals or who simply appealed their individual real property tax values undoubtedly found that their homes' market values did not take as large of a hit as they assumed.

The timing of the decision to repeal a revaluation matters just as much as the timing of the new revaluation itself. Without knowing the value of its tax base, a government cannot determine the tax rate necessary to meet its financial needs. The tax rate is a required component of the budget that must be submitted to the governing board by June 1 and approved by the start of the fiscal year on July 1.[52] If a county board waits too long to repeal a valuation, the county will not be able to meet these budget deadlines. County revenues may also suffer due to the resulting delay in tax collections, which cannot begin until the tax values and tax rate are determined.

Cost

Counties considering the repeal of a completed revaluation cannot ignore the substantial costs involved. According to the DOR, the average cost of recent revaluations statewide was $830,000, but those figures vary widely.[53] Forsyth County, for example, spent about $3 million to revalue approximately 150,000 parcels of real property in 2009. County assessor Rodda estimates that had the county repealed that revaluation, the additional costs for the delayed revaluation would have ranged from $500,000 for a one-year postponement to the full $3 million for a two-year or longer postponement. Simply sending notice of the fact that the county is reverting to the "old" assessment figures can be costly. Rockingham County, one of the three that repealed its revaluation after January 1, spends more than $25,000 every time it mails assessment notices to its property owners.[54]

Accuracy

The accuracy of existing tax values should be considered when evaluating the viability of a new revaluation. Neighborhoods within a given county often increase in value at dramatically different rates in-between revaluations. If so, the longer the county retains the existing the tax values, the less and less equitable the distribution of the county tax burden becomes.

Consider two properties, Parcel A and Parcel B, both located in the same county, each of which was valued at $200,000 for tax purposes in 2003. If Parcel A sits in a "hot" neighborhood and has increased in value 10 percent per year, as of 2009 it is worth about $354,000. If Parcel B sits in a less popular neighborhood that has increased in value only 3 percent per year, as of 2009 its market value is roughly $238,000. Without a revaluation, these two properties would

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49. *Id.*

50. Wesley Young, *How much? The anger over rising assessments amid a declining economy*, Winston-Salem Journal, Mar. 29, 2009.

51. Winston-Salem Journal, *supra*, note 46.

52. G.S. 159-11(b) and 159-13.

53. North Carolina Department of Revenue, *Past Reappraisal Costs Countywide as of January 1, 2009.*

54. Telephone conversation with Karen Carter, Rockingham County assessor (May 28, 2009).

pay the same annual tax bills, despite the fact that today one property is worth nearly 50 percent more than the other. Revaluation would capture these different growth rates and more fairly allocate the tax burden across all real property owners.

Another perhaps more immediate concern regarding the accuracy of existing tax values involves property owned by public service companies such as railroads, trucking companies, and public utilities. When tax values fall short of actual sale prices, a county risks losing a substantial portion of its public service property tax revenue. Property owned by public service companies is assessed by the state and then allocated to each county based on such factors as miles of wire and tons of freight.[55] When a county's sales assessment ratio—that is, the ratio of tax values to actual sales prices—drops below 90 percent in either the fourth or seventh year following a revaluation, the value of the public service property allocated to that county is reduced by a corresponding percentage.[56] The lower the property value, of course, the less tax revenue that property will generate. When property values are generally increasing, a county's sales-assessment ratio falls in every nonrevaluation year. The Orange County assessor estimated that if the county had postponed its 2009 revaluation, it would have lost more than $225,000 in public service company tax revenue due to its low sales-assessment ratio.[57]

Lessons for 2010 and Beyond

Assuming that the economy does not rebound quickly, the fourteen counties scheduled to conduct revaluations in 2010 are nearly certain to face the same criticism aimed at the counties that attempted revaluations in 2009. Once again, taxpayers will argue that assessments completed in 2009 do not accurately reflect market values as of January 1, 2010, and—even if they do—that a recession is not the time to raise property taxes. Once again, county officials will need to balance their desire for more equitable distributions of their governments' tax burdens against the public sentiment that the revaluations are inherently unfair.

There is no clear solution to such a subjective balancing test. What is clear, however, is that a county board of commissioners considering the repeal of its 2010 revaluation should make up its mind before January 1, unless it expects the General Assembly to come riding to the rescue as it did for several counties in 2009. The wisdom of the Machinery Act's revaluation provisions may be up for debate, but its mandate is not: once a revaluation takes effect on January 1, it may not be repealed. It remains to be seen how this mandate will play out in uncertain economic times.

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55. G.S. 105-335 and 105-338.
56. G.S. 105-284(b).
57. Mark Schultz, *County advised to keep revaluation*, News & Observer (Raleigh, N.C.), Mar. 22, 2009.

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