INFORMATION PAMPHLET FOR PROPERTY VALUATION PROTESTS

Your protest will be heard by the County Valuation Protests Board. The Board is independent of the county assessor's office, and is made up of two county residents and a property appraisal officer from the state Property Tax Division. Please review this pamphlet carefully in preparing for the hearing. You may wish to pay particular attention to the sections regarding the presumption of correctness in favor of the assessed valuation (§7-38-6) and how that presumption may be overcome (§3.6.7.13).

This pamphlet and your protest petition will be made part of the record. You must bring **five copies** of any other materials that you want the Board to consider to the hearing with you. A copy of these materials should be provided to the assessor in advance of the hearing. **The Board will not have reviewed any materials you may have already provided to the assessor.** If you wish to inspect records available in the county assessor's office with respect to the valuation of your property, you may do so prior to your hearing date before the Board. Please make any requests in a timely manner as to avoid undue delay in the protest hearing process. The assessor has thirty days to respond to discovery requests you may file, but is only required to provide you fifteen days notice of your hearing. Therefore, **do not wait until you received notice of the hearing to begin preparing your case**. The appeal hearing will be on the record, and you must present all evidence and argument you wish the Board to consider at the hearing.

This pamphlet contains selected material that is commonly applicable. It is not a complete listing of all statutes, regulations or cases that may govern hearings before the Board, and internal citations that have been removed to conserve space are noted by []. Statutes may be found online from the Compilation Commission (www.nmonesource.com/nmnxtadmin/NMPublic.aspx), and the regulations are available from the Commission of Public Records (www.nmcpr.state.nm.us/NMAC/).

If you disagree with a decision of the Board, you may appeal that decision to the district court in your jurisdiction **within thirty days** of the Board's order. See New Mexico Statute §39-3-1.1 and New Mexico Rule 1-074.

Please request in advance any special accommodations or arrangements you may need.

The address for the Board is:

_____County Valuation Protests Board
c/o Appraisal Bureau – Local Assessment Section, NMTRD
1220 S. St. Francis Drive
PO Box 25126
Santa Fe, NM 87504-25126
(505) 827-0885

NMSA §7-36-15 Methods of valuation for property taxation purposes; general provisions

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code [] shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized[] the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority:

(1) shall apply generally accepted appraisal techniques…

NMAC §3.6.5.22 Methods of valuation for property taxation purposes; general provisions

A. Income method of valuation - implementation

(1) The income method of valuation is a method used to value property by capitalizing its income when the market value method cannot be used due to lack of data on sales of comparable properties and no special method specified[] is applicable. The value of the property under the income method of valuation is determined by dividing the annual income by the applicable capitalization rate.

(2) Income is predicated on estimated future income which could be realized from the legally permitted highest and best use or uses of the property.

(3) Where sufficient evidence of the rental value of the property being valued is available, the income is based upon the fair rent which can be imputed to the property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use, provided that use is the legally permitted highest and best use. When the property being valued is actually encumbered by a lease, the cash rent or its equivalent considered in determining the fair rent of the property is the amount for which the property would be expected to rent at its legally permitted highest and best use were the rental payment to be renegotiated in the light of conditions as they exist at the time the property is being valued.

(4) Where sufficient evidence as to rental value of the property being valued is not available, the income used is based upon the fair rent which the property being valued reasonably can be expected to yield under prudent management. The imputed fair rent is developed from market information which reflects the probable rental value of the property being valued in the open market at its legally permitted highest and best use.

(5) "Income" as that term is used in Section 3.6.5.22 NMAC is net income or the difference between annual revenue or receipts, actual or imputed, from rental of the property and the annual expenses relating to the property.

(6) "Expenses", as that term is used in Section 3.6.5.22 NMAC, is the outlay or average annual allocation of money or money's worth that can fairly be charged against the revenue or receipts from the property. Expenses are limited to those which are ordinary and necessary in the production of the revenue and receipts from the property and do not include debt retirement, interest on funds invested in the property or income taxes.

B. Cost methods of valuation - implementation: Generally, the cost methods of valuation are methods for valuing improvements or personal property by determining the costs of reproduction or replacement of property with property which is as good as, but no better than, the improvements or personal property being valued. The reproduction or replacement may be duplicate or equally good substitute property. If the improvements or personal property being valued are not in a new condition, the appropriately depreciated value of a new reproduction or replacement, as circumstances justify, is used to determine the value of the used items. In the case

of newly constructed improvements, original cost, in an arm's length transaction, is the closest approximation of value. Trending may be used to implement the cost method of valuation.

C. Implementation by means of schedules and manuals: Implementation of the valuation methods… may be by means of schedules and manuals approved by the division.

D. Improvements and rights not valued separately from the land they serve: Subsection C of Section 7-36-15 NMSA 1978 requires that the improvements and rights listed therein be considered as appurtenances to all land they serve, regardless of whether or not the improvements and rights are owned by the owner or owners of all the land they serve. The value of those rights and improvements are included in the determination of the value of the land served and are not valued separately…

G. MARKET VALUE METHOD OF VALUATION - IMPLEMENTATION:

(1) The market value method of valuation is a process of analyzing sales of similar recently sold properties in order to derive an indication of the most probable sales price of the property being appraised. The reliability of this technique is dependent upon:

(a) the availability of comparable sales data;

(b) the verification of the sales date;

(c) the degree of comparability or extent of adjustment necessary for differences in time of sale and time of appraisal; and

(d) the absence of nontypical conditions affecting the sales price.

(2) "Market value" means a price which a willing and informed buyer, not obligated to buy, would pay a willing and informed seller, not obligated to sell, taking into consideration all uses including the highest and best use to which the property is adapted and might reasonably be applied.

(3) Comparable property is property similar to the property being valued and which recently has been sold or is currently being offered for sale in the same or similar areas. Similarity to the property being valued is determined by examining the characteristics of the properties being compared to discover likenesses or differences between those properties and the property being valued.

(4) Cash market value reflected by recent sales of comparable property, if there have been such sales, may be relevant for determining market value. Proof of the purchase price alone of the comparable property is not sufficient to fix market value without evidence of the terms and conditions of the sale.

(5) This approach to value may be implemented by means of schedules and manuals approved by the division.

(6) Evidence of the sale price of the property being valued is not sufficient to establish a market value under Section 7-36-15 NMSA 1978 if the evidence of the sales of comparable property indicates the sales price was not the market value.

NMSA §7-36-16 Responsibility of county assessors to determine and maintain current and correct values of property

A. County assessors shall determine values of property for property taxation purposes in accordance with the Property Tax Code [] and the regulations, orders, rulings and instructions of the department. Except as limited in Section 7-36-21.2 NMSA 1978, they shall also implement a program of updating property values so that current

and correct values of property are maintained and shall have sole responsibility and authority at the county level for property valuation maintenance, subject only to the general supervisory powers of the director.

NMAC §3.6.5.23(C) Current and correct values of property defined

Assessors shall re-appraise properties either once per year (one-year reappraisal cycle), or once every two years (two-year reappraisal cycle). Assessor's *(sic)* may only change the current reappraisal cycle in their respective county after written approval is granted by the director. The phrase "current and correct values of property" as used in Section 7-36-16 NMSA 1978 means:

(1) For residential property purchased in the year prior to the current tax year the phrase means its market value during the year of purchase;

(2) For residential property not purchased in the year prior to the current tax year, when utilizing a one year reappraisal cycle, the phrase means its' market value of the year prior to the current tax year, and

(3) For residential property not purchased in the year prior to the current tax year, and non-residential locally assessed property, when utilizing a two year reappraisal cycle, the phrase means its market value in the tax year 2001 and, for each of the following odd-numbered tax year, its market value during the preceding odd-numbered tax year.

NMSA §7-36-21.2 Limitation on increases in valuation of residential property

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code []; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:

(1) a residential property in the first tax year that it is valued for property taxation purposes;

(2) any physical improvements made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or

(3) valuation of a residential property in any tax year in which:

(a) a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or

(b) the use or zoning of the property has changed in the year prior to the tax year.

B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined, pursuant to the general valuation provisions of the Property Tax Code [].

NMSA §7-38-6 Presumption of correctness

Values of property for property taxation purposes determined by the… county assessor are presumed to be correct.

NMAC §3.6.7.13 Effect of the presumption of correctness

A. To overcome the presumption of correctness provided in Section 7-38-6 NMSA 1978, the taxpayer has the burden of coming forward with evidence showing that values for property taxation purposes determined by the… county assessor… are incorrect. Failure to present evidence tending to dispute the factual correctness of the above

determinations in any hearing pursuant to the provisions of the Property Tax Code may result in a denial of relief sought by a taxpayer.

B. Where the only evidence presented by the taxpayer is the purchase price of the property which is the subject of the dispute over value for tax purposes and the evidence of comparable sales indicates the sales price was not the market value, the presumption of correctness of the determination of the… county assessor is not overcome.

C. Once the presumption of correctness is overcome, the burden of showing a correct valuation shifts to the… county assessor

NMSA §7-38-7 Valuation date

All property subject to valuation for property taxation purposes shall be valued as of January 1 of each tax year…

NMSA §7-38-24 Protesting values, classification, allocation of values and denial of exemption of limitation on increase in value determined by the county assessor

A. A property owner may protest the value or classification determined by the county assessor for his property for property taxation purposes, the assessor's allocation of value of his property to a particular governmental unit or denial of a claim for an exemption or for a limitation on increase in value by filing a petition with the assessor. Filing a petition in accordance with this section entitles the property owner to a hearing on his protest.

B. Petitions shall:

(1) be filed with the county assessor on or before:

(a) the later of April 1 of the property tax year to which the notice applies…;

(b) thirty days after the mailing of a property tax bill on omitted property…; or

(c) in all other cases, thirty days after the mailing by the assessor of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of a claim of an exemption or of a limitation on increase in value is incorrect and what he believes the correct value, classification, allocation of value or exemption to be; and

(4) state the value, classification, and allocation of value or exemption that is not in controversy.

C. Upon receipt of the petition, the county assessor shall schedule a hearing before the county valuation protests board and notify the property owner by certified mail of the date, time and place that he may appear to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The county assessor may provide for an informal conference on the protest before the hearing.

NMAC §3.6.7.33 Protesting values, classification, allocation of values and denial of exemptions determined by the county assessor…

B. Informal conferences

(1) After a protest has been set for hearing, if a taxpayer requests or has requested an informal conference, the assessor may schedule and hold such a conference before the date of the hearing. If an informal conference has not been requested by the taxpayer and the assessor believes an informal conference prior to hearing would be useful, the assessor may schedule such a conference and require the presence of the taxpayer.

(2) An informal conference is off the record. Although the persons attending the conference may make memoranda of the discussion, statements made at the informal conference shall not be introduced by either party at a hearing or other proceeding. Any tapes or minutes of the conference are for the information and convenience

of the parties only and shall have no evidentiary value in any later proceeding. The purpose of the informal conference is to discuss the facts and the legal positions of the assessor and the taxpayer, and it is to be in the nature of either settlement negotiations or a "prehearing (trial) conference" or both.

(3) Informal conferences may be held at the assessor's office or elsewhere as circumstances require. If, at an informal conference a pending protest is fully resolved with no reduction in the valuation shown on the protesting taxpayer's notice of valuation, the protesting taxpayer must sign a written document, which may be provided by the assessor, stating that the taxpayer withdraws the protest... If the protest is resolved with the assessor agreeing that the taxpayer's notice of valuation is incorrect, then this settlement must be implemented by a written agreement between the assessor and the protesting taxpayer which contains an explanation of the settlement and must be signed by both the taxpayer and assessor.

NMSA §7-38-25 County valuation protests boards; creation; duties; funding

A. There is created in each county a "county valuation protests board". Each board shall consist of three voting members. Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be appointed as follows:

(1) one member and one alternate shall be a qualified elector of the county and shall be appointed by the board of county commissioners for a term of two years;

(2) one member and one alternate shall be a qualified elector of the county, shall have demonstrated experience in the field of valuation of property and shall be appointed by the board of county commissioners for a term of two years; and

(3) one member and one alternate shall be a property appraisal officer employed by the department, assigned by the director and shall be the chairman of the board…

D. The county valuation protests board shall hear and decide protests of determinations made by county assessors and protested under Section 7-38-24 NMSA 1978.

NMSA §7-38-27 Protest hearing; verbatim record; action by county valuation protests board; time limitations

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules of Civil Procedure for the District Courts do not apply at the protest hearings before a county valuation protests board, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearing shall be made but need not be transcribed unless required for appeal purposes.

B. Final action taken by the board on a petition shall be by written order signed by the chairman or a member of the board designated by the chairman. The order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the board and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the director and the county assessor.

C. All protests shall be decided within one hundred eighty days of the date the protest is filed. The protest shall be denied if the property owner or his authorized representative fails, without reasonable justification, to appear at the hearing.

D. The board's order shall be dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The division shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the board.

F. The assessor shall maintain a file of all orders made by the county valuation protests board. The file shall be open for public inspection.

NMAC §3.6.7.36 Protest hearings; valuation determined by the county assessor

A. Protest hearings; withdrawal of protest; failure to appear. If, at an informal conference pursuant to Subsection D of Section 7-38-24 NMSA 1978 or at any other stage prior to final action by the board, a pending protest is fully resolved with no change resulting [sic] the taxpayer's notice of valuation, the protesting taxpayer or the taxpayer's authorized representative must sign a written document, which may be provided by the assessor, stating that the taxpayer withdraws the protest. The county assessor is to notify the county valuation protest board immediately so that the board may vacate the hearing. Failure to sign the written document withdrawing a protest may result in a hearing of the protest by the board. In the absence of a written withdrawal of protest and in the event that a taxpayer fails to appear at a scheduled hearing before the board, the board may decide the protest against the taxpayer on the basis of the presumption under Section 7-38-6 NMSA 1978.

B. Protest hearings; discovery; consequences of failure to allow discovery.

(1) The protestant has the right to discover relevant and material evidence in the possession of the assessor prior to the protest hearing. If the assessor refuses to permit discovery, the county valuation protests board, for the purpose of resolving issues and disposing of the proceeding without undue delay despite the refusal, may take such action in regard to the refusal as is just, including but not limited to, the following:

(a) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the position of the county assessor;

(b) rule that, for the purposes of the proceeding, the matter or matters concerning which the evidence was sought be taken as established against the position of the county assessor;

(c) rule that the county assessor may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied; or

(d) rule that the county assessor may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown.

(2) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the board. It is the duty of the parties to seek and of the board to grant such of the foregoing means of relief or other appropriate relief...

D. Protest hearings; special accommodations; advance dissemination of petition.

(1) Any special accommodations or arrangements required under the Americans with Disabilities Act [42 U.S.C. § 12101 et seq.] shall also be determined and made in advance of the hearing.

(2) The Petition filed with the county assessor shall be made available to the board members in advance of the hearing.

E. Protest hearings; conduct of hearing

(1) The county valuation protests board has the duty to conduct fair and impartial hearings, to take all action necessary to avoid delay in the proceedings and to maintain order in the hearings.

(2) Hearings shall be recorded on audio or videotape unless the board directs recording by stenographic, mechanical or other means.

(3) It is suggested that the hearing be so ordered that the protestant first makes an opening statement and then the county assessor makes an opening statement or reserves it for the conclusion of the protestant's presentation. The protestant presents evidence through testimony of witnesses and the introduction of documents. Then the assessor presents evidence in the same manner. The board may allow each party a closing statement.

Exception: In cases involving removal of the agricultural special method of valuation, the burden of proof may be on the assessor; therefore, the assessor should present first at the hearing §7-36-20 (A).

F. Protest hearings; preliminary matters.

(1) At the beginning of the hearing, the protestant, the protestant's representative or representatives, if any, all other persons present, the property and the amount of valuation in controversy shall be identified. The petition of the protestant filed with the county assessor shall be entered into the record.

(2) The county valuation protests board will confirm that any special accommodations or arrangements required under the Americans with Disabilities Act [42 U.S.C. § 12101 et seq.] have been made.

(3) The board shall inform the protestant of the following:

(a) Other than the rules related to discovery, neither the technical rules of evidence nor the Rules of Civil Procedure for the District Courts apply to the board's proceedings.

(b) The legal presumption is in favor of the valuation placed on the property by the county assessor and the protestant has the burden of presenting evidence to overcome this presumption.

Exception: In the certain cases involving the agricultural special method of valuation, the burden of proof may be on the assessor. §7-36-20 (A).

(c) All testimony will be taken under oath.

(d) The protestant will have an opportunity to present oral testimony, either the protestant's own or through witnesses, and that anyone testifying on the protestant's behalf is subject to cross-examination by the county assessor or the assessor's representative and that anyone testifying for the county assessor is also subject to cross-examination by the protestant or the protestant's representative. The protestant may call the assessor or the assessor's employees as witnesses and examine them.

(e) The protestant will have the opportunity to offer into evidence whatever documents the protestant believes necessary. The protestant must have in hand all such documents but copies may be submitted instead of originals.

(f) Documents introduced into evidence before the board may be retained by the board.

(g) A written order deciding the protest will be made within thirty days of the date on which the hearing is concluded. This time limit may not be extended except by agreement of the board and the protestant.

(h) The protestant has the right to appeal the written decision and order of the board in accordance with the Rules of Appellate Procedure [Section 39-3-1.1]. Because the appeal is on the record made at the hearing, all evidence supporting all theories and positions of the protestant must be presented at the hearing.

(i) If the protestant appeals the decision of the board, the protestant must pay the costs of preparing the record.

G. Protest hearings; witnesses.

(1) All witnesses must be sworn. They may be sworn by any member of the board or any person assisting the board. All witnesses either party intends to have testify may be sworn in at one time. A form of oath which may be used is:

"Do you solemnly swear or affirm that the evidence which you are about to give in the proceedings before this board shall be the truth, and this you do under penalties of perjury?"

(2) All witnesses may be cross-examined by the adverse party.

H. Protest hearings; evidence.

(1) Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable or unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded insofar as practicable. The county valuation protests board shall consider all evidence admitted. Board members may use their knowledge and experience to evaluate evidence admitted.

(2) If the protestant and the county assessor have arrived at a stipulation of facts, either party may present the written stipulation to the board. The stipulation shall be signed by both parties or their representatives. The stipulation may present all or a portion of the facts. If all the facts are not agreed to in the stipulation, then either party can establish additional facts at the hearing. If all the facts are stipulated, the board shall note for the record that a stipulation was received, receive oral argument regarding the protest, if any there be, and then take the protest under advisement. The stipulation then is the record of the hearing.

(3) Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the board on all objections shall appear on the record or in the board's order. Any excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(4) Formal exception to an adverse ruling is not required.

(5) When an objection to a question propounded to a witness is made, the board shall note the objection in the record and allow the testimony. In its discretion, the board shall give appropriate weight to the disputed testimony.

I. Protest hearings; decision of board. The county valuation protests board may announce orally its decision immediately after all the evidence is presented or may take the matter under advisement. An oral decision of the board is not binding and may not be appealed. All final decisions of the board must be made by written order. Unless extended by agreement of the board and the protestant, the written order deciding the protest shall be made within thirty days after the date of the hearing

NMAC §3.6.7.37 Appeal of county valuation protests board decision.

A protestant who wishes to file an appeal of a decision of the county valuation protests board must do so within the time prescribed by Section 39-3-1.1 NMSA 1978 by filing a notice of appeal with the district court for the county in which the hearing was held, pursuant to Sections 7-38-28 and 39-3-1.1 NMSA 1978 and Rule 1-074 NMRA 1999. The county assessor will be named as appellee.

Cross-reference – For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

New Mexico Constitution Article VIII, Section 1 Levy to be proportionate to value; uniform and equal taxes; percentage of value taxed; limitation on annual valuation increases.

A. Except as provided in Subsection B of this section, taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class. Different methods may be provided by law to determine value of different kinds of property, but the percentage of value against which tax rates are assessed shall not exceed thirty-three and one-third percent.

B. The legislature shall provide by law for the valuation of residential property for property taxation purposes in a manner that limits annual increases in valuation of residential property. The limitation may be applied to classes of residential property taxpayers based on owner-occupancy, age or income. The limitations may be authorized statewide or at the option of a local jurisdiction and may include conditions under which the limitation is applied. Any valuation limitations authorized as a local jurisdiction option shall provide for applying statewide or multi-jurisdictional property tax rates to the value of the property as if the valuation increase limitation did not apply.