
Coates' Canons Blog: Assessors' Right of Entry on Private Property

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Do county property tax officials have the right to enter private property for appraisal purposes?

This question keeps popping up in my in-box and on the Ptax listserv. With good reason, too, because state law doesn't offer a quick answer. There isn't one particular statute, constitutional provision, or court opinion that neatly resolves the issue.

Instead, we need to pull together guidance from a variety of legal sources to come up with this somewhat muddled answer: County tax officials may enter private land (but probably not buildings unless those buildings are generally open to the public) for appraisal purposes *unless* the owner of the property has made it clear that such entry is not permitted.

How could the owner make it clear that appraisers are not permitted on her property? Shouting maniacally while brandishing a shotgun certainly would work. But less violent means would also suffice: posting "no trespassing" signs or informing the tax office via email that entry was not permitted would also do the trick. Once tax officials are aware of the fact that entry is not permitted, appraisers must do their best to appraise the property from the curb.

Here's a more detailed analysis . . .

Does the Appraiser Possess a Statutory Right of Entry?

Some states explicitly authorize tax appraisers to enter private property. See Indiana Code Sect. 6-1.1-4.15, Mississippi Code Sect. 27-1-23 (commercial buildings only); Texas Code Sect. 22.07 (commercial buildings only for appraisal of personal property). North Carolina is not one of these states.

North Carolina state law gives lots of state and local government officials the right to access private property in lots of different circumstances: to remedy public nuisances and public health risks (G.S. 153A-140 & 160A-193); to enforce environmental regulations (G.S. 143-215.79); and to make surveys and take other actions related to eminent domain proceedings and road construction (G.S. 40A-11 and 136-120), just to name a few.

But nowhere in the General Statutes will you find explicit authority for property tax appraisers to enter private property, be it residential or commercial.

Decades ago the Machinery Act (G.S. 105-317(b)(2), to be specific) mandated that "every lot, parcel, tract, building, structure, and improvement being appraised be actually visited, observed, and appraised by a competent appraiser . . ." Depending on how the term "visit" was interpreted, arguably this provision authorized an appraiser's entry onto private property. That issue became moot when the General Assembly repealed this provision in 1981, likely in deference to the necessity of mass appraisals as our state continued to grow. When this provision disappeared, so too did the best source of North Carolina statutory authority for appraisers entering private property against the will of the taxpayer.

Read together, a few existing Machinery Act sections might provide implicit authority for tax officials to enter private property for appraisal purposes. G.S. 105-317(a) requires accurate appraisals of real property including examination of all factors that might affect value. G.S. 105-296(a) authorizes assessors to take all actions “reasonable necessary in the performance of his duties not inconsistent with the [North Carolina] Constitution or the laws of this State.” It seems reasonable to assume that the entry onto private land, perhaps even private buildings, would be reasonably necessary for an assessor to carry out her statutory duties.

At best, this implicit authority permits an appraiser to enter private land when the owner of that land has not raised an objection to such an entry. It would *not* permit an appraiser to enter land over the objections of the taxpayer nor would it allow for the entry into a private building without the consent of the owner. Such actions might violate state criminal trespass statutes (G.S. 14-159.12 and -159.13) as well as the prohibition against warrantless searches of private property found in the Fourth Amendment of the United States Constitution. Two old but still relevant letter opinions (one from 1978 and one from 1980) support the conclusion that taxpayer objections trump property tax appraisers’ implicit authority to enter private land.

The Bottom Line

An appraiser has the authority to:

1. Enter private land for appraisal purposes *unless* the owner or lawful occupant of that property objects to the appraiser’s entry. The owner’s objection could be expressed orally, in writing, or by conspicuous placement of “no trespassing” signs on the property.
2. Enter the public portions of commercial buildings for appraisal purposes.

An appraiser does *not* have the authority to:

1. Remain on private land after being asked to leave by the owner or lawful occupant of the land.
2. Enter residential buildings or private portions of commercial buildings without the express consent of the owner or lawful occupant of that building.

How Can You Appraise Property If You Can’t Inspect It?

If the taxpayer will not permit the appraiser to enter the property being appraised, the appraiser needs to make the most accurate appraisal possible from the street with the comfort of knowing that if it is appealed the burden of proof will fall on the taxpayer.

Tax appraisals are presumed to be correct. In re: Amp, 287 N.C. 547 (1975). In other words, the taxpayer has the burden of presenting information about her property that proves the county wrong. It would be difficult to satisfy that burden while at the same time refusing to offer county tax officials the opportunity to enter and inspect the property. I think taxpayers have a simple choice: permit county tax officials to enter their properties or accept the resulting (and likely too high) appraisals.

Share Your Appraisal Stories

What’s the most unusual appraisal situation you’ve faced? How have you dealt with cranky taxpayers who refuse to allow access to their properties? I’ve heard of appraisers chased by snarling dogs and trapped in their cars by gun-wielding taxpayers. Share your best stories and solutions in the comment box below.

(Hat tip to Christina Hausner, an attorney in Lancaster, Pennsylvania who blogged on this issue a few years ago and graciously shared her research with me.)

Links

- canons.sog.unc.edu/wp-content/uploads/2013/09/trespass.jpg
- www.in.gov/legislative/ic/code/title6/ar1.1/ch4.pdf



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 - www.statutes.legis.state.tx.us/Docs/TX/htm/TX.22.htm#22.07
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