

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, March 25, 1999

7:00 P.M.

Quasi-Judicial Public Hearing

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners William V. Bell and Joe W. Bowser

Absent: Commissioner Becky M. Heron (excused)

Presider: Chairman Black

Chairman Black called the meeting to order.

Appeal of Mitsubishi Semiconductor America Inc. (MSA)

This appeal concerns the appraisal and assessment of certain business personal property for the 1996 Tax Year. Taxpayer was initially denied the opportunity to present this appeal to the Durham County Board of Equalization and Review because it was found that the appeal was not filed in a timely manner.

The Board of County Commissioners is charged with the task of reviewing the assessment and appraisal of Taxpayer's business personal property for the tax year 1996.

County Manager's Recommendation: Conduct a special quasi-judicial hearing to consider the assessment and appraisal of MSA's business personal property for 1996.

Chairman Black said "the hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards. All persons who wish to testify in this case should have signed up on the special sheet for this hearing at the Clerk's station. If you wish to speak, please go now to the Clerk's station to be sworn in or to give your affirmation. If you have not signed up and wish to speak, please sign up now and participate in the swearing in. After the swearing in, you may return to your seat. Swearing in occurs en masse."

The Clerk to the Board administered the oath to everyone who wished to speak.

Chairman Black asked Board members if they had conflicts regarding this item. No one had a conflict.

Chairman Black asked Board members “who have any information or special knowledge about the case that may not come out at the hearing tonight to please describe that information for the record so that interested parties will know and can respond.”

The Board members had received no information or special knowledge.

Chairman Black said, “In this hearing, we will first hear from Tax Administrator Charles A. Clark and other County witnesses, then from the applicant and their witnesses. Parties may cross examine witnesses after the witness testifies when questions are called for.”

Chairman Black stated that Commissioner questions should be directed to the person presenting the item, not to staff.

If presenters “want the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client’s case. Before you begin your testimony, please clearly identify yourself for the record.”

Chairman Black opened the hearing on the appeal of Mitsubishi Semiconductor America, Inc. and asked for testimony from County staff.

After each staff person’s testimony, the Chairman asked if there were questions from the Board or other parties.

Charles A. Clark stated that he is going to introduce the case with written material that I have prepared and I will read into evidence. C.B. (Bart) McLean Jr., attorney representing Mitsubishi Semiconductor America, Inc., and I have agreed that the Durham County Tax Administration appeal of Mitsubishi Semiconductor America, Inc. dated March 25, 1999 documents (Exhibit 1) will be entered into the record as evidence with the exception of Taxpayer’s Exhibit 8.

Mr. McLean said he had no objections to any of the materials contained in Exhibit 1 and Mr. Clark has no objection to my letter dated March 25, 1999 (Exhibit 3) to the County Commissioners and Taxpayer’s Exhibits 1-7 (Exhibit 2). The exhibits will be entered into the record as evidence.

Charles Clark presented the Statement of Case, Statement of Facts, and the Staff Recommendations as follows:

Statement of Case

Mitsubishi Semiconductor contends that the Board of Commissioners should apply the same schedules that were used to settle the appeal of another taxpayer solely because Mitsubishi Semiconductor has the same standard industrial classification as the other taxpayer.

Chronology of Events

- **April 9, 1996.** Mitsubishi Semiconductor filed its 1996 Business Listing.
- **May 30, 1996.** Durham County mailed the assessment notice to Mitsubishi Semiconductor with an assessed value of \$111,460,726 with 30 days to appeal the valuation.
- Mr. Bill Hayes, acting as tax consultant for the Taxpayer, called the Durham County Tax Office regarding the May 30, 1996 notice of appraisal value and asked for changes and corrections.
- **July 24, 1996.** A corrected valuation sheet was prepared with a lowered value of \$108,511,231 with 30 days to appeal the valuation, and, at the same time, a new tax bill was sent for assessed value of \$108,511,231.
- **November 14, 1996.** Mr. Steven R. Thomas of the National Bureau of Property Administration, Inc., acting on behalf of the Taxpayer, wrote a letter to the Durham County Board of Commissioners asking for changes to the 1996 depreciation schedule and requesting that the County Board apply the same tax treatment that was granted to another taxpayer.
- **November 22, 1996.** David F. Thompson, Durham County Manager, responded by letter to the tax representative's letter of November 14, 1996 and advised the taxpayer that it had failed to timely file an appeal.
- **December 23, 1996.** Counsel for the taxpayer filed a notice of appeal with the Property Tax Commission. Subsequent litigation resulted in the appeal of Mitsubishi Semiconductor being remanded to the Board of Commissioners for hearing.

Statement of Facts

In presenting the Mitsubishi Semiconductor case, two main issues surface:

1. The technical issue of the timeliness of the appeal; and,
2. The technical issue of whether National Bureau of Property Administration, Inc., the tax representative of the Taxpayer, had the right to appeal.

Issue 1.

With respect to the technical issue of the timeliness of the appeal, the County Tax Department asks the Commissioners to consider the following:

On April 9, 1996, Mitsubishi Semiconductor submitted a timely filing of its 1996 Business Personal Property Return.

Staff worked the return and an assessment notice in the amount of \$111,460,726 was sent for Mitsubishi Semiconductor concurrence on May 30, 1996. Mr. Bill Hayes, National Bureau of Property Administration Inc., called the Business Personal Property Section on behalf of Taxpayer, requesting changes and corrections to Mitsubishi Semiconductor assessments.

On July 24, 1996, Ms. Mary Welch of Durham County sent a corrected assessment and new tax bill to Mitsubishi and National Bureau reducing the value from \$111,460,726 to \$108,511,231.

From July 24, 1996 to November 14, 1996 no exception was taken with regard to the bill or assessed value. The County contends that Mitsubishi Semiconductor lost its right to appeal by not taking exception within 30 days of the July 24, 1996 assessment notice with tax bill.

Issue 2.

With respect to the technical issue of whether the Taxpayer's representative had the right to appeal, Durham County has long maintained that the appeal must be signed by the taxpayer. This issue is extensively examined in the County's brief to the Court of Appeals filed January 21, 1998. Please refer to Exhibit #8 for a detailed discussion.

If we go beyond the technical issues, the question then becomes whether Mitsubishi was fairly assessed using state-approved standard trending schedules.

Factors to Consider:

The law requires Durham County to look at the date of January 1, 1996 as the day of valuation and no other.

The North Carolina Department of Revenue each year produces trending schedules to assist in the assessment of market value of business personal property across the state. The Department of Revenue recommends that the schedules be used only as a *guide*, and that in appraising personal property, assessors adhere to N.C.G.S. 105-317.1 which states:

- a) Whenever any personal property is appraised it shall be the duty of the persons making appraisals to consider the following as to each item (or lot of similar items):
 - 1) The replacement cost of the property;
 - 2) The sale price of similar property;
 - 3) The age of the property;
 - 4) The physical condition of the property;
 - 5) The productivity of the property;
 - 6) The remaining life of the property;
 - 7) The effect of obsolescence of the property;
 - 8) The economic utility of the property, that is, its usability and adaptability for industrial, commercial, or other purposes; and
 - 9) Any other factor that may affect the value of the property.

The use of the state-approved schedules produced an assessment of \$108,511,231 for the business personal property of Mitsubishi Semiconductor. The taxpayer and its tax representative, National Bureau of Property Administration Inc., reviewed this market value of \$108,511,231. We must assume that the market value was acceptable to both until the settlement of the other taxpayer's appeal.

Mitsubishi Semiconductor now contends that a different schedule used to settle another taxpayer's appeal should be applied to their property because they share the same industrial code.

In reality, the other taxpayer that appealed was a much smaller operation experiencing economic downturn. That taxpayer found that they could buy computer chips for much less than they could manufacture the same chip in-house. They felt that the facility was too small to be operated effectively and indicated that the purchase of the plant may have been a mistake.

By contrast, Mitsubishi gave the impression to the County that they were considering an expansion.

Again, these schedules are to be used only as a *guide* to ascertain the market value of the assets.

To allow untimely appeals to the Board would bring chaos to the Ad Valorem Tax System.

Taxpayer's request that the County adjust the assessment of Mitsubishi Semiconductor on the basis of another company's appeal should be denied absent a strong showing that Mitsubishi Semiconductor and the other company were similarly situated in terms of size, objectives, experience, resources, and any other relevant factors.

Staff Recommendations

Deny Mitsubishi Semiconductor's request to have their assessment reduced. Uphold the valuation of \$108,511,231.

Chairman Black asked if there are questions for Mr. Clark.

Chairman Black gave C.B. McLean an opportunity to cross-examine Mr. Clark.

Mr. McLean asked Mr. Clark several questions for Mr. Clark's response relative to various exhibits.

Chairman Black asked Mr. Clark if he had additional witnesses. Mr. Clark responded in the negative.

Attorney McLean distributed his letter dated March 25, 1999 (Exhibit 3) and the Taxpayer Exhibits 1-8 (Exhibit 2) to the County Commissioners.

Attorney McLean presented his client's case by reading a letter (Exhibit 3) dated March 25, 1999.

25 March 1999

The Honorable Durham County Board of Commissioners
Government Administrative Complex
200 East Main Street
Durham, NC 27701

Re: Appeal of Mitsubishi Semiconductor America, Inc.
concerning the assessment and appraisal of its business
personal property for tax year 1996.

To the Honorable Chairperson and Members of the Durham County Board of Commissioners:

This matter is brought before the Board tonight more than two (2) years after the Taxpayer, Mitsubishi Semiconductor America, Inc. [hereinafter "Mitsubishi" or "Taxpayer"] first wrote a letter to you requesting that you apply the same depreciation

schedule to Mitsubishi as that which you applied to its competitor Motorola for tax year 1996.

On November 14, 1996 a representative of the Taxpayer wrote to you, noting that you had decided to apply a newly-developed (and more favorable) accelerated depreciation schedule to Motorola's reported costs for production machinery and equipment for tax year 1996. This schedule is known as the "U-6" schedule. In this letter, the Taxpayer's representative noted that you had applied the new schedule (which allows a 68% good factor in the first year and a residual value of 15% good) to the costs listed by Motorola for tax year 1996, and had issued an appropriate refund to Motorola based on the application of the new depreciation schedule to Motorola's production machinery. The depreciation schedule originally applied to both Motorola and Mitsubishi applied an 80% good factor in the first year and a 25% residual.

Through its representative, the Taxpayer requested that this Honorable Board apply the same depreciation schedule to the Taxpayer's production equipment costs as it had applied to Motorola's production equipment costs. The Taxpayer noted that it is in the same line of manufacture as Motorola, and is subject to the same fundamental causes of functional economic obsolescence as those which justified granting accelerated depreciation to Motorola's production equipment. The Taxpayer enclosed worksheets with its request showing the application of the U-6 accelerated depreciation schedule to its taxable production equipment costs and the resulting value.

A copy of this letter to the Honorable Board dated 14 November 1996 is the first attachment to **Taxpayer Exhibit 1**, the affidavit of Mr. Steven R. Thomas.

On 22 November 1996, David F. Thompson, then Durham County Manager, wrote to Mr. Thomas, responding to his letter of 14 November 1996. A copy of this letter is the second attachment to **Taxpayer Exhibit 1**, the affidavit of Mr. Steven R. Thomas. In this letter, the Durham County Manager stated that Mitsubishi's appeal was untimely and that, for that reason only, "[y]our request to have the schedules which are due in 1997 used for 1996 cannot be honored."

It is a matter of public record that Durham County applied the newly-developed U-6 schedule to Motorola for tax year 1996, but refused to apply the same schedule to Mitsubishi for tax year 1996, asserting the Mitsubishi's appeal was untimely.

It is further a matter of public record that Durham County applied the accelerated depreciation schedule, U-6, to the manufacturing equipment of both Motorola and Mitsubishi for tax years 1997 and 1998.

It is clear that the old schedule, I-5, which was applied to Mitsubishi for tax year 1996, produced an unfair and excessive tax value for tax year 1996. See **Taxpayer Exhibit 1**, Affidavit of Steven R. Thomas, dated 23 March 1999. This is particularly

unfair because Durham County applied the new schedule, U-6, to Mitsubishi's competitor Motorola for tax year 1996. The I-5 schedule and the U-6 schedule are set forth on the third attachment to **Taxpayer Exhibit 1.**

Responding to the Durham County Manager's letter of 22 November 1996, the Taxpayer appealed to the North Carolina Property Tax Commission. After the Taxpayer's Notice of Appeal and Application for Hearing were filed with the Commission, the Durham County Attorney filed a Motion To Dismiss the appeal. In its Motion, the County Attorney asserted that the appeal should be dismissed because Mitsubishi had failed to make a timely appeal to the Durham County Board of Commissioners.

After a hearing, the Property Tax Commission entered its unanimous decision, a certified copy of which is **Taxpayer Exhibit 2.** At page one of the Order, the Commission finds that the following issues were presented by the County:

1. Was the Taxpayer's November 14, 1996 appeal to the Durham County Board of Commissioners timely filed? and
2. Was the Taxpayer's December 23, 1996 Notice of Appeal to the Property Tax Commission timely filed?

The Commission answered both issues in the affirmative, concluding as a matter of law that

"G.S. §105-322(f) requires the county board of equalization and review to publish in the newspaper a notice of meetings and adjournment. Pursuant to this provision, the Durham County Board of Equalization and Review's [sic] advertised that its adjournment date would be May 16, 1996." [Conclusion of Law No. 4.]

"The advertised adjournment date by the Durham County Board of Equalization and Review occurred prior to Taxpayer's Notice of Appraised Value that was mailed on May 30, 1996." [Conclusion of Law No. 5.]

"The Taxpayer was entitled to a hearing by the appropriate county board regarding its 1996 business personal property assessment." [Conclusion of Law No. 7.]

"The Taxpayer made a timely request for a hearing in its letter of November 14, 1996, to the County Board." [Conclusion of law No. 8.]

“The Taxpayer’s appeal to the Property Tax Commission was made pursuant to the Authority of G.S. §105-290.” [Conclusion of Law No. 9.]

On the final page of its Order, the Commission Ordered, Adjudged, and Decreed that:

- “1. The County’s Motion to Dismiss the Taxpayer’s appeal is denied; and
- “2. The Taxpayer’s appeal is hereby remanded to Durham County to be heard by the appropriate County board with regard to the assessment and appraisal of Taxpayer’s business personal property for tax year 1996.”

Emphasis added.

Durham County, through counsel, appealed the Order of the Property Tax Commission to the North Carolina Court of Appeals. The Court found that Property Tax Commission had entered a lawful, valid, and proper order remanding the matter to the Durham County Board for hearing. The Court dismissed Durham County’s appeal. A certified copy of the Court’s Order dismissing the County’s appeal is **Taxpayer Exhibit 3**.

Durham County then, through counsel, filed a Petition for Discretionary Review with the North Carolina Supreme Court. That court denied the County’s Petition. A certified copy of the Order denying the Petition is **Taxpayer Exhibit 4**.

The North Carolina Court of Appeals, on 17 November 1998, entered its order certifying to the Secretary of the North Carolina Property Tax Commission that the North Carolina Supreme Court had denied the County’s Petition For Discretionary Review. A certified copy of this Order is **Taxpayer Exhibit 5**.

The Order of the Property Tax Commission in this matter, finding that the Taxpayer’s appeal of 14 November 1996 was timely, is consistent with every single decision of the Property Tax Commission on this issue since the decision entered in the *Appeal of Schneider Mills, Industries, Inc.* 92 PTC 1084 in 1993. A certified copy of the *Schneider Mills* Order is provided for the Board’s information as **Taxpayer Exhibit 6**.

Since 1993 when the *Schneider Mills* Order was entered, the Property Tax Commission has held, consistently and without exception, that taxpayers in North Carolina have until December 31 to appeal the assessment and appraisal of their personal property. No order to this effect has been reversed by the North Carolina appellate courts.

The majority of North Carolina counties allow taxpayers to have until December 31 to appeal their personal property appraisals. Wake County, among others, has consistently followed this practice, as reflected in the letter from Mr. Greg Wood of the Wake County Tax Department to counsel for Mitsubishi dated 17 February 1998. An affidavit from Mr. Wood with a copy of this letter is **Taxpayer Exhibit 7**.

It is clear from the foregoing that this matter is before the Durham County Board of Commissioners pursuant to the lawful, valid, and binding Order of the Property Tax Commission under which this matter is required to be heard by the Board “. . . with regard to the assessment and appraisal of Taxpayer’s business personal property for tax year 1996” as set forth on the last page of the Commission’s Order.

The Taxpayer respectfully renews its request that the Board determine the tax value of its machinery and equipment for tax year 1996 by applying the “U-6” schedule, applied to the original historical costs and years of acquisition of Taxpayer’s machinery and equipment and added to the other values as initially determined by Durham County, produces a tax value of **\$85,448,652** as set forth in the attachment to Mr. Thomas’ letter of 14 November 1996. The value previously applied by the County was \$108,511,231. The difference in value is \$23,062,579.

The Taxpayer respectfully requests that the Durham County Board of Commissioners find as a fact that the “I-5” schedule was an arbitrary method of appraisal as applied to the Taxpayer’s machinery and equipment costs for tax year 1996, which resulted in a tax value which was substantially greater than the true value in money of the property as of 1 January 1996. The Taxpayer requests that the Durham County Board of Commissioners apply the “U-6” schedule to the Taxpayer’s machinery and equipment for tax year 1996 just as it did for Motorola in 1996 and for Motorola and Mitsubishi for tax year 1997.

Based on the foregoing, the Taxpayer requests that the Board refund to Mitsubishi the difference between the taxes paid by Mitsubishi based on the incorrect and illegal value previously determined for tax year 1996 and taxes based on the true value of Mitsubishi’s property as determined by applying the U-6 schedule to Mitsubishi’s machinery and equipment for tax year 1996.

Respectfully submitted,

/s/ C.B. McLean Jr.

C.B. McLean Jr.

Attorney for Mitsubishi Semiconductor
America, Inc.

Attorney C.B. McLean Jr. introduced two witnesses for Mitsubishi Semiconductor. The two witnesses are:

Cris Simmons, 522 Dixie, Raleigh, NC 27607
Gary Edge, 5509 Falkirk Drive, Durham, NC 27712

Mr. McLean asked Mr. Simmons to review the verification attached to my letter dated March 25, 1999. The verification follows:

I, Christopher Robert Simmons, being duly sworn, depose and say:

1. I held the position of Senior Accountant with Mitsubishi Semiconductor America, Inc. from July 1996 to June 1998. From June of 1998 to October of 1998, I held the position of Section Manager-Finance for Mitsubishi Semiconductor America, Inc.
2. I am personally familiar with the business personal property listing filed by Mitsubishi Semiconductor America, Inc. with Durham County for tax year 1996. I am also personally familiar with the actual machinery and equipment, the historical cost of which was listed for taxation with Durham County for tax year 1996, and the utilization of that machinery and equipment by the Company.
3. The file cycle of semiconductor products, including those manufactured by Mitsubishi Semiconductor America, Inc. as of 1 January 1996, was approximately two (2) to three (3) years. Three (3) years after its acquisition by Mitsubishi, the manufacturing machinery and equipment which is at issue here had very little value because of improvements in production technology and changes in the marketplace.
4. The I-5 depreciation schedule which Durham County applied to historical cost of Mitsubishi Semiconductor America, Inc.'s production machinery and equipment in tax year 1996 used an 80% good factor in the first year and a residual factor of 25% good. These factors were unrealistic and produced an estimate of value much greater than the fair market value of the machinery and equipment. It is my opinion that the U-6 schedule with a first year factor of 68% good and a residual of 15% good more closely approximates the fair market value of the machinery and equipment as of 1 January 1996.
5. I have read the attached letter from C.B. McLean, Jr., counsel for Mitsubishi Semiconductor America, Inc., to the Durham County Board of Commissioners dated 25 March 1999 and attached hereto, and the same is true and correct to the best of my knowledge and belief.

This the 25th day of March, 1999.

Attorney McLean asked questions of his witness—Mr. Cris Simmons. Mr. Charles Clark objected to the questions.

Chairman Black said the objection was overruled. Mr. McLean continued with his questions to Mr. Simmons.

Mr. Charles Clark cross-examined Mr. Simmons by asking him several questions.

Attorney McLean asked questions of his second witness--Jennings Gary Edge.

Mr. Edge reviewed the verification that was attached to Mr. McLean's letter dated March 25, 1999.

The verification follows:

I, Jennings Gary Edge, being duly sworn, depose and say:

1. I am currently employed by Mitsubishi Electronics America, Inc. My position is Director of Design Engineering. I have been employed by Mitsubishi Semiconductor America, Inc. and Mitsubishi Electronics America, Inc. in various positions from June 1984 to the present.
2. I am personally familiar with the manufacturing machinery and equipment owned by Mitsubishi Semiconductor America, Inc., the value of which has been appealed for tax year 1996. I was personally involved in the decision-making process leading to the purchase of a substantial part of the machinery and equipment which was on-site in Durham County as of 1 January 1996. I am personally familiar with the use of this manufacturing machinery and equipment by Mitsubishi Semiconductor America, Inc. both before and after 1 January 1996. I was personally involved in the sale and other disposition of much of this machinery and equipment during calendar year 1998. Much of this machinery and equipment was sold by Mitsubishi for less than ten percent (10%) of its original cost. A substantial portion of it was sold as scrap metal.
3. The life cycle of semiconductor products, including those manufactured by Mitsubishi Semiconductor America, Inc. as of 1 January 1996, was approximately two (2) to three (3) years. Three (3) years after its acquisition by Mitsubishi, the manufacturing machinery and equipment which is at issue here had very little value (on average, less than ten percent of original cost) because of improvements in production technology and changes in the marketplace. In our industry, the production of new products generally requires the use of new production machinery and equipment. Because our competitors, including Motorola, are competing in the same rapidly-moving market, most of our used machinery and equipment has little market value to anyone when it is more than three (3) years old.
4. The I-5 depreciation schedule which Durham County applied to historical cost of Mitsubishi Semiconductor America, Inc.'s production machinery and equipment in tax year 1996 used an 80% good factor in the first year and a residual factor of 25% good. These factors were unrealistic and produced an estimate of value much greater than the fair market value of the machinery and equipment. It is my opinion that the U-6 schedule with a first year factor of 68% good and residual of 15% good more closely approximates the fair market value of the machinery and equipment as of 1 January 1996.
5. I have read the attached letter from C.B. McLean Jr., counsel for Mitsubishi Semiconductor America, Inc., to the Durham County Board of Commissioners dated

25 March 1999 and attached hereto, and the same is true and correct to the best of my knowledge and belief.

This the 25th day of March, 1999.

Taxpayer Exhibit 8 (Exhibit 4) was requested by Mr. Edge to be entered into the record as evidence.

The Commissioners asked several questions to which Mr. Edge responded.

Attorney McLean asked Mr. Edge several questions to which Mr. Edge responded.

Mr. Clark cross-examined Mr. Edge.

Vice-Chairman Reckhow asked Mr. Clark several questions to which he responded.

Commissioner Bowser asked Mr. Edge several questions to which he responded. Attorney McLean also responded to the questions. The question before the Board tonight is what is the correct value, not the question of timeliness. Timeliness is a mute issue.

Vice-Chairman Reckhow and Commissioner Bowser asked Mr. Clark several questions.

Chairman Black asked the parties involved to make their summary statements.

Mr. Clark presented his summary statement. His concluding remarks were as follows:

Mr. Clark asked the Commissioners to find the following:

1. Find that the tax listing was not timely filed;
2. It was not a proper appeal because it was not signed by the Taxpayer;
3. It was not a tax appeal because it did not say it was an appeal; and
4. If it had been an appeal, the value of \$108 million was correct.

Mr. McLean presented his summary statement.

Chairman Black asked County Attorney Chuck Kitchen to give the Commissioners guidance at this point.

Attorney Kitchen suggested to the Board that you make your ruling both as to the technical issues raised by Mr. Clark and as to the substitutive matters regardless of how you come down on the technical issues. The Property Tax Commission did order it back and ruled on the technical defenses as timeliness. The Appellate Courts never addressed that. The Court of Appeals dismissed the appeal saying it was interrogatory. The Court did not decide the issue, but handed it back for a hearing because the issue may become mute if the Taxpayer prevails in the appeal. The Appellate Courts have not resolved the

issues as to the procedural matter and as to the timelines. Those issues are still alive for potential appeal from the Property Tax Commission depending on how this Board initially rules. It is important that you rule as to how you view the timeliness issue and whether or not it has properly been appealed. The County Attorney's Office needs some guidance as to how the Board views those issues and whether or not you would wish those issues be carried forward. We will do whatever you say. We do need a decision as to the merits of the case regardless of how you come down on the technical issues, whether or not it was a valid appeal. We would know the position of the Board if it goes to the Property Tax Commission.

Vice-Chairman Reckhow asked additional questions of the County Attorney to which he replied.

Attorney Kitchen said if the Commissioners are not ready, you can continue the hearing until the next worksession or the first regular session in April to render a decision. The approximate amount of money involved in this case is a tax value of \$23,062,579 and a tax amount of \$238,744. The County would not have to pay attorney fees for Mitsubishi if we rule in favor of Mitsubishi Semiconductor America, Inc.

Commissioner Bell moved, seconded by Commissioner Bowser, to deny the request.

Attorney Kitchen said the Board should say if you want to deny the request on one or both grounds.

Vice-Chairman Reckhow stated she has a concern on the time limit issue. The letter that was submitted was not in an appropriate form, without having a signature of the owner or letter stating who the owner's representatives are. The letter sent to the Manager is not an explicit appeal.

Commissioner Bell said since the General Statute is silent about how much time you have, the County has said how much time the taxpayers have. I also agree with Vice-Chairman Reckhow's comments.

Commissioner Bowser said Mitsubishi has been in Durham a number of years prior to 1996. They should have known the tax rules and regulations in Durham County and North Carolina. The company did not file their appeal in a timely manner as required by General Statutes. The rules have been applied correctly here.

The motion carried unanimously.

Proper documentation will be prepared by the Attorney's office by the next worksession.

Board and Commission Appointment—Nursing Home Community Advisory Committee

Garry E. Umstead, Clerk to the Board, will distribute ballots to make an appointment to the Nursing Home Community Advisory Committee.

*Charles Winston Rogers Sr.—Bell, Black, Bowser, and Reckhow

Mr. Roger's term expires February 2000.

*Indicates appointee.

Adjournment

Chairman Black adjourned the meeting at approximately 9:45 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board