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HEARING OFFICER APPEALS

HEARING OFFICER PROCEDURES

HEARING OFFICER APPEALS

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GEORGIA HEARING OFFICER, 2011-PRESENT

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HEARING OFFICER APPEALS

THE ROLE OF THE HEARING OFFICER

A Hearing Officer is an individual that will preside over an appeal filed by the taxpayer or the taxpayer's representative.

The Hearing Officer category began in 2011

The bar to become a Hearing Officer was not set very high.

The criteria was:

- Currently licensed by the Georgia Real Estate Appraisers Board
- Resident of Georgia; and,
- Complete a 7-hour Hearing Officer course offered by the Georgia Department of Revenue

HEARING OFFICER APPEALS

THE ROLE OF THE HEARING OFFICER

- In 2011, at the end of the initial training session, there were 58 Hearing Officers.
- Today there are 34 Hearing Officers; 27 with Certified General and 7 with Certified Residential Real Property Licenses.
- Of the 34 Hearing Officers, 5 are willing to serve in all 159 Georgia Counties.
- Remuneration is generally \$100.00 for the first hour and \$25.00 each hour thereafter.
- Others Hearing Officers are more selective, selecting geographical areas that are easily accessible from their place of business
- The DOR indicated that there were 580 Hearing Officer appeals in 2015 and 622 in 2016.
- This does not include those that were scheduled and ultimately settled.

HEARING OFFICER APPEALS

WHAT IS THE PROCESS?

The Clerk of Superior Court or the Administrator contacts the Hearing Officer. This is supposedly a random process.

There are two distinct areas: 1. Metro-Atlanta; and, 2. the remainder of Georgia.

In Metro-Atlanta the Administrator contacts the Hearing Officer for their availability.

Some jurisdictions may use the same Hearing Officers for all appeals; other jurisdictions will randomly select a Hearing Officer.

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WHAT IS THE PROCESS?

Outside Metro-Atlanta, the Clerk of Superior Court or the Administrator contacts the Hearing Officer.

In my experience, these jurisdictions are not only asking for a Hearing Officer, they also want assistance in the proper procedures.

If I am the Hearing Officer, I will ask them “do you want me to handle the process?” The response is always, Yes!

The process is rather simple. I request from the Clerk the following information:

HEARING OFFICER APPEALS

- WHAT IS THE PROCESS?

1. Email and telephone number of the Taxpayer/Agent, Chief Appraiser, and Clerk of Court.
2. A copy of the appeal faxed to the Hearing Officer.
3. Request the Clerk of Court to provide a location to hear the appeal; once that is confirmed, I will email each party, (Chief Appraiser, Taxpayer/Agent, Clerk of Court) the time, date, and location of the Hearing Officer Appeal.
4. Each party is allowed one (1) reschedule of the hearing.
5. Within the email, the Hearing Officer will direct both the Chief Appraiser and Taxpayer/Agent that all information, appraisals, documents, work papers, and witnesses be exchanged no later than seven (7) days prior to the hearing. The Hearing Officer will provide the time and date for this to occur.

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- WHAT IS THE PROCESS?

The Hearing Officer is part of the process, including the exchange of information.

The Hearing Officer will submit a notarized Disqualification Questionnaire to the Clerk of Court.

Additionally, the Hearing Officer should include their Professional Qualifications.

If at any time, the Taxpayer/Agent, Chief Appraiser or Clerk of Court wants to have the Hearing Officer disqualified, the Hearing Officer should voluntarily remove him/herself.

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APPEAL DAY

If the appeal occurs as scheduled—THEN

On the day of the hearing, meet with the Clerk of Court or the Administrator

Check hearing room, location of restrooms and water fountain, etc.

Appropriate seating arrangements for the Jurisdiction and Taxpayer/Agent

Brief introduction of all individual presents

Parties and witnesses will be called and sworn.

The party who has the burden of proof should present their case first.

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APPEAL DEVELOPMENT

The key is 'preparation.' The jurisdiction is defending their value, therefore:

All data should be verified, prior to exchange of data

The data should be presented in a logical order.

Each party should be able to answer questions in both direct and cross-examination.

Language should be clear and understanding.

HEARING OFFICER APPEALS

APPEAL DEVELOPMENT

The Hearing Officer when questioning the witness should express only one point.

The Hearing Officer should attempt to clarify statements which include, opinions and ambiguous or unclear testimony.

The Hearing Officer must provide ample opportunity to cross-examine, properly control cross-examination, and provide assistance when and where necessary.

The Hearing Officer should not ask or permit improper leading questions on material issues during direct examination.

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The Hearing Officer should conclude the hearing by ascertaining whether the parties have anything to add.

The Hearing Officer should provide the parties ample opportunities to present all of the information pertinent to their case.

The Hearing Officer must conduct the hearing within the scope of issues raised by the notice of the hearing.

The Hearing Officer can only hear cases dealing with value and uniformity; most of the time both value data and equity comparables are presented.

The Hearing Officer shall conduct the hearing in a fair and impartial manner.

The Hearing Officer shall attempt to obtain reasonably available, competent evidence necessary to resolve the issue(s) in the case.

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At the conclusion of the hearing, the Hearing Officer shall notify both parties of the decision verbally and shall either send both parties and/or their representative the decision in writing or deliver the decision by hand to each party, with written receipt, within five (5) days of the hearing.

This function is normally handle by the Clerk of Court or Administrator.

In the Metro-Counties, this is handled exclusively by the Administrator.

Outside the Metro-Counties, I will write a 'Hearing Officer' letter, briefly detailing the results of the appeal. I will request the Clerk of Court to send notification to all parties.

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PRESENTATION

There are no directives for an appeal presentation, that is, either party can present what you believe is most persuasive, and in any order.

The jurisdiction task at a Hearing Officer Appeal, is to defend the current value. Therefore, what approaches did you develop; what is the highest and best use of the property; what are the characteristics of the property; past assessment history; photographs; etc.

There are a number of jurisdictions that have developed 'Appeal Packets'. If you have a Hearing Officer Appeal, reach out to Forsyth, DeKalb, Richmond, Tift and other counties for guidance.

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THINGS TO CONSIDER WHEN PRESENTING AT AN APPEAL

Cost Approach

How was the land value developed?

Know your system, be able to calculate the same value as generated by the CAMA system

If you use CoreLogic Marshall Valuation Manual, know the various steps and calculate the various multipliers

Know how PHYSICAL depreciation was calculated, whether it is straight-line, curvilinear, or age-life.

IF FUNCTIONAL and/or EXTERNAL OBSOLESCENCE is used in the Cost Approach, how were they calculated and what method(s) did you employ?

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THINGS TO CONSIDER WHEN PRESENTING AT AN APPEAL

Income Approach

When developing gross income, what sources did you use?

What leases were analyzed?

What is market rent for similar properties?

Vacancy and Collection loss are two different calculations, if combined, know what the percentage of each category.

Expenses are grouped as: Fixed, Variable, and Reserves; if a percentage of expenses is used, know how that percentage was developed.

Estimate of Net Operating Income, is it seem appropriate for the property being valued?

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THINGS TO CONSIDER WHEN PRESENTING AT AN APPEAL

Income Approach:

Capitalization Rates

- Developed from comparable sales?

- Band-of-Investment Method (Mortgage-Equity)?

- Debt Coverage Ratio Method?

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THINGS TO CONSIDER WHEN PRESENTING AT AN APPEAL

Income Approach

Adjust Capitalization Rate for reserves for replacement

UNLESS RESERVES ARE VERIFIED AS PART OF AND IS A LINE EXPENSE IN THE FINANCIAL STATEMENT

Adjust Capitalization Rate for PROPERTY TAXES

Add the Effective Tax Rate to the Capitalization Rate for a 'Loaded Capitalization Rate'

HEARING OFFICER APPEALS

THINGS TO CONSIDER WHEN PRESENTING AT AN APPEAL

Sales Comparison Approach

Comparable sales are exactly that, comparable to the subject property that is being appraised.

Characteristics of comparable sales: similar size, year built, highest and best use, zoning, land-to-building ratio, operating expense ratio, number of floors, construction, location, same taxing jurisdiction (different effective tax rate), traffic count, street frontage, traffic signal, access to site, etc.

Adjustments for the above characteristics are made based on market conditions not arbitrary thoughts.

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THINGS TO CONSIDER WHEN PRESENTING AT AN APPEAL

Furthermore, USPAP Standards Rule 1-2 states in relevant part, in developing a real property appraisal, an appraiser must:

Identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal

- (i) its location and physical, legal, and economic attributes;
- (ii) the real property interest to be valued;
- (iii) any personal property, trade fixtures, or intangible items that are real property but are included in the appraisal;

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The issues involved should be clearly and simply stated in the decision.

The Hearing Officer shall make all of the findings of fact necessary to resolve the issues and support the conclusions of law included in the decision.

The decision shall state reasons and rationale that are logical.

The decision should be worded so that it is understandable to most claimants and employers and it should have a professional appearance.

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A brief review of LIHTC Property

- Origin: 1934 Federal Housing Administration
- 1937 United States Housing Act
- 1965 Housing and Urban Development
- 1950's into the 1960's Congress created a number of programs that leveraged private investment to create new affordable rental housing
- These programs provided low interest rates or other subsidies to private owners who would purchase or rehabilitate housing to be rented at reasonable rates.

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- Section 8: began in 1974 as a subsidy paid to owners of a property to help subsidize the cost of fair market rent for low income tenants. Owners received an amount based on the difference between the tenants portion of the rent (30% of their income) and fair market rent.
- Section 42: Low Income Housing Credit (LIHTC) was enacted by the Tax Reform Act of 1986 and is an indirect subsidy used to finance affordable rental housing. Eligible taxpayers receive the subsidy by claiming a tax credit on their federal income tax returns.
- Once a property is placed into service it is eligible for the tax credit for 10 years. To continue generating the credit and avoid tax credit recapture a LIHTC property must satisfy specific compliance rules for a full 15 year initial “compliance period” and a subsequent 15 year “extended use period”.

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- Section 42, continued:
- A tax credit, or equity syndicator connects private investors seeking a strong return on investments with developers seeking cash for a qualified LIHTC project.
- Developers typically “sell” the credits by entering into limited partnerships with an investor, with 99.99% of the profits, losses, depreciation, and tax credits being allocated to the investor as a partner in the partnership.
- The developer serves as the general partner/managing member, and receives a majority of the cash flow(s).

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Section 515

In 1962, Congress created the Section 515 program for rental housing located in rural areas.

The program is administered by the US Department of Agriculture. Provides direct loans of 1% with a 50 year amortization period.

Section 1602

Under Section 1602 the American Recovery and Reinvestment Act of 2009, State housing credit agencies are eligible to receive Section 1602 grants to States for low income housing projects in lieu of low income housing credits under Section 42 of the Internal Revenue Code for 2009.

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- The Hearing Officer, the Jurisdiction and the Taxpayer/Agent must be aware of the program being appeal. It is not only just a LIHTC appeal, but what type of program.
- As illustrated, there are different programs and different requirements
- THE KEY ELEMENTS IN ANY LIHTC PROPERTY APPEAL IS:
- The use Actual Income and Expenses
- The Capitalization Rate and Value of Tax Credits (what is the appropriate discount rate and number of years remaining for tax credits)

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QUESTIONS and ANSWERS