



**FULTON
COUNTY**

**FULTON COUNTY, GEORGIA
OFFICE OF THE COUNTY AUDITOR
TAX ASSESSORS' OFFICE REVIEW OF
COMMERCIAL PROPERTIES**

July 17, 2019

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EXECUTIVE SUMMARY

At the request of Commissioner Morris, the Office of the County Auditor conducted a review of the Board of Assessors' commercial properties annual appraisals.

The objectives of the review were to compare the sales price of selected commercial properties to the appraised value to determine whether there were reasons for any significant differences and to determine whether the county has a systematic problem with the valuation for tax purposes of commercial properties. In addition, we reviewed the *Georgia law and the Georgia Department of Revenue Rules, Regulations and Guidelines* in reference to commercial property appraisals to determine if proper practices were followed.

The scope of the review is January 2016 through December 2018.

We conducted the audit in accordance with *Generally Accepted Government Auditing Standards* (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We also conducted interviews with management and have highlighted their concerns in the report.

The following summary provides executive management with an overview of our concerns. Areas of review not mentioned in this section appeared to be satisfactory.

- The appeal process may be providing the unintended consequence of lowering commercial values below market value as most values are frozen for a three year period after the decision is rendered;
- The success rate of Tax Representatives appears to be extremely high and could have a significant impact on resolved value versus sales value;
- Inadequate number of hearing officers which could negatively impact the outcome of the cases in reference to timeliness, thoroughness, fairness and impartiality;
- Insufficient supporting documentation that hindered our ability to render an opinion about the validity of the decisions made in reference to the appeals at the Board of Equalization level; and
- Qualification requirements for the Board of Equalization which may contribute to the lack of confidence in the appeals process.

This report represents our concerns and recommendations in reference to the appraisal process of Fulton County's commercial parcels.

INTRODUCTION

At the request of Commissioner Morris, the Office of the County Auditor conducted a review of the Board of Assessors' commercial properties annual appraisals.

BACKGROUND

The Fulton County Board of Assessors (BOA) was established by state law to determine the fair market value of all real and personal property in the county for property tax purposes. Taxation is based on the concept that persons should share the cost of government according to their ability to pay. In the property tax system, ability to pay is measured by the value of property.

The BOA determines the estimate of property value and this process is called the "Appraised Value" of property. The Board then applies the statutory 40% to that appraisal to generate the "Assessed Value" on which taxes are based.

The BOA is responsible for preparing a fair and equitable tax digest in accordance with applicable laws and professional standards. The Tax Digest is the assessment of all real and tangible personal property subject to taxation in Fulton County.

Property owners who disagree with their assessment notice, may file an online appeal or a manual appeal. The appeal must be completed before the appeal deadline date printed on the notice.

According to the Georgia Department of Revenue's Hearing Officer Annual Update:

Any taxpayer or property owner as of the last date for filing an appeal may elect to file an appeal from an assessment by the county board of tax assessors to:

- (i) The county board of equalization as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemption;*
- (ii) An arbitrator as to matters of value pursuant to subsection (f) of this Code section;*
- (iii) A hearing officer as to matters of value and uniformity of assessment for a parcel of non-homestead real property with a fair market value in excess of \$750,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, and any contiguous non-homestead real property owned by the same taxpayer; or*
- (iv) A hearing officer as to matters of values or uniformity of assessment of one or more account numbers of wireless property as defined in subparagraph (e.1) (1) (B) of this Code section with an aggregate fair market value in excess of \$750,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306.*

Property owners who file an appeal to the BOA within forty-five (45) days of the assessment notice date are called an Appellant. The appeal is reviewed by the BOA and reserves the right, when circumstances warrant, to take an additional one hundred eighty (180) days, pursuant to the Official Code of Georgia Annotated (O.C.G.A.) 48-5-311(3)(B), to review the appeal of

assessments of property value or exemption denials. In such case, the BOA will notify each taxpayer of its decision to utilize the additional time period to issue a determination. However, if the Board's decision is a "no change," the appeal is forwarded to the Board of Equalization (BOE).

The BOE is comprised of property owners appointed by the Grand Jury of Fulton County. In addition to being property owners, the appointees to the BOE must also be qualified and competent to serve as grand jurors and be high school graduates. Each member must satisfactorily complete forty (40) hours of certified training before he or she can participate as a member of the Board. Each member must also complete an eight (8) hour continuous education class annually. The Board is charged by the O.C.G.A. 48-5-311 to hear appeals of property tax matters.

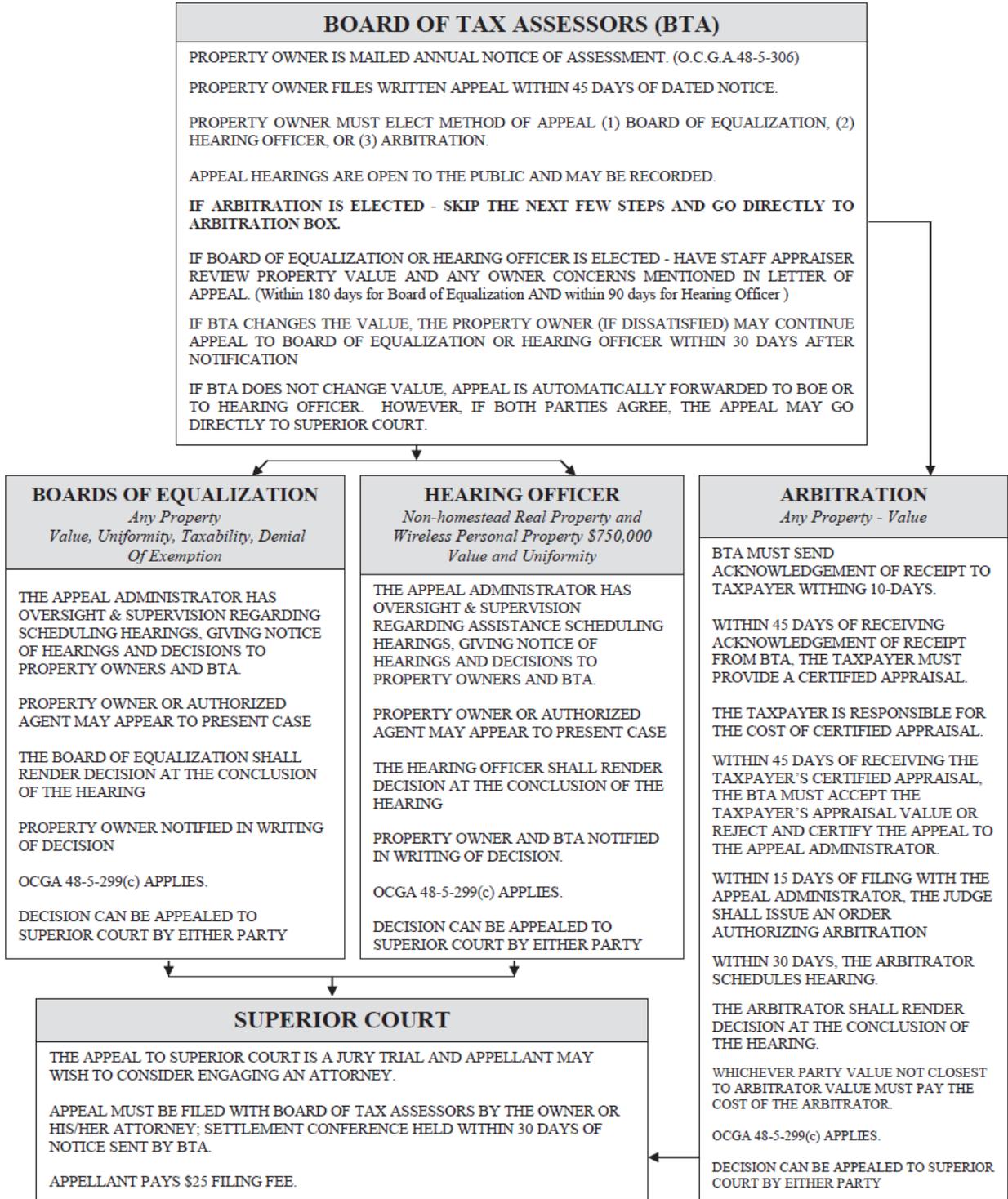
Appellants will receive a notice of the date and time of the scheduled hearing. An Appellant may appear before the BOE or with a representative or authorize a representative to represent him/her in their absence. However, the taxpayer shall specify in writing to the BOE the name of such agent or representative prior to any appearance by the agent or representative before the Board.

Documentation that can be presented to the BOE may include: audited financial statements; evidence of purchase price; appraisals; photographs of the interior, exterior, and surrounding area; evidence of sale prices; evidence of the rent roll; and comparable property values.

The Appellant or the BOA may appeal decisions of the BOE. The notice of appeal shall be filed within thirty (30) days from the date on which the BOE decision was mailed. The appeal to the Superior Court must be filed with the BOA by the owner or his/her attorney. Within forty-five (45) days of receipt of a taxpayer's notice of appeal and before certification of the appeal to the Superior Court, the county BOA shall send to the taxpayer notice that a settlement conference, in which the BOA and the taxpayer shall confer in good faith, will be held at a specified date and time which shall be no later than thirty (30) days from the notice of the settlement conference. The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer, but no later than thirty (30) days from the date of the notice. If at the end of the forty-five (45) day review period the BOA elects not to hold a settlement conference, then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the BOA as the fair market value for the year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. The Appeal Process Grid is reflected in **Table 1**.

Table 1

APPEAL PROCESS GRID (revised pursuant to HB202)



OBJECTIVE

The objectives of the review were to compare the sales price of selected commercial properties to the appraised value to determine whether there were reasons for any significant differences and to determine whether the county has a systematic problem with the valuation for tax purposes of commercial properties. In addition, to determine if proper practices were followed in accordance with *Georgia law and the Georgia Department of Revenue Rules, Regulations and Guidelines* in reference to commercial property appraisals.

SCOPE

The scope of the review is January 2016 through December 2018.

METHODOLOGY

The main focus of our review was to address concerns as it related to the appraised value of Fulton County commercial properties. During our review of the commercial properties we,

- Reviewed applicable laws and regulations regarding appraisals;
- Conducted interviews and inquiries with appropriate personnel;
- Selected and reviewed one hundred seventy-five (175) commercial property files to determine outcomes of decisions made;
- Reviewed the appraised values prior to the sale to determine if properties were properly assessed;
- Conducted an analysis of appraisals after the sale to determine the appropriateness;
- Worked with key personnel to evaluate processes and internal controls over property valuations and adherence to those controls; and
- Reviewed the current procedures of the department to determine if they were adequate.

We conducted the audit in accordance with *Generally Accepted Government Auditing Standards* (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives and are detailed in the section below.

Review of Assessed Values versus Sale prices

An important aspect of our request was to determine why there were significant differences in the appraised values prior to the sale. A general concern was that the appraised value prior to the sale was under assessed when compared to the sales price. The assumption being the sales price represents the market value of the property.

In order to address this concern, we sampled one hundred and seventy-five (175) commercial properties. Our sample included a review of appraised values compared to sales price as represented by **Table 2**.

Table 2

| Tax Year | Appraised Value | Sale Price | Difference |
|-----------------|------------------------|------------------------|--------------------------|
| 2016 | \$ 567,308,740 | \$ 916,116,268 | \$ (348,807,528) |
| 2017 | \$1,655,879,105 | \$2,218,950,378 | \$(563,071,273) |
| 2018 | \$ 616,374,391 | \$1,109,381,067 | \$(493,006,676) |
| TOTAL | \$2,839,562,236 | \$4,244,447,713 | \$(1,404,885,477) |

We compared the appraised values prior to the sale to the actual sales price to determine why there were significant differences. Our review of the appraised values with significant differences determined that sixty-nine (69) of the one hundred and seventy-five (175) parcels were determined by BOA. The remaining one hundred and six (106) commercial properties were all determined at the BOE level. In order to determine why the significant differences occurred we reviewed the Real Estate Transfer Tax form (PT61) for each property. This form contains detailed information about the seller, specific information about the buyer, property tax computations and property information including location of the property, map and parcel id, land district, acreage and lot. In addition, we reviewed the commercial and industrial review document which, identifies all activity of the property including ownership and sales data, permits, miscellaneous improvements, land data, location factors, property factors and methods used to calculate the appraisal. The form specifically identifies both the income and cost approach used to determine appraised value. In addition, we consulted with BOA officials to obtain additional information when needed.

During the review, we determined the following reasons as to why there were significant differences as follows:

- Sixty-nine (69) commercial properties were decided at the BOA level. Of those properties:
 - Thirteen (13) were aligned with sales price – properties identified as being appraised within 10% of appraised/sale valuation;
 - Twenty-one (21) were multi-parcel sales - multiple parcels included in the sale that cannot be combined into a single taxable parcel;
 - Sixteen (16) were identified as new construction/renovation - little or no physical deterioration on such property and that the fair market value may be diminished due to the incomplete state of construction. Construction occurred prior to the sale;
 - Eight (8) were invalid sales – sales that are not arms-length transactions that could involve related parties transaction; quitclaim deed; government entities, financial entity; schools or the Development Authority as noted in the Georgia Department of Revenue O.C.G.A. 48-5-41;
 - Two (2) were vacant properties – properties that were vacant while being appraised prior to the sale;
 - Four (4) parcels included intangible/tangible assets – sales that included personal properties which are not included in the appraised value properties;

- One (1) was improperly valued – property was improperly appraised prior to the sale due to incorrect data; and
 - Four (4) had no parcel identified prior to the sale – involved in a multi parcel sale with no building value prior to the sale which is later split and parcel created at the request of owner.
- One hundred and six (106) commercial properties were decided at the BOE level. Of those properties:
 - Ninety-six (96) 299C* were applied – property valuation was frozen prior to the sale as a result of previous appeals;
 - Five (5) hearing officer decisions – properties valuation set by a hearing officer
 - Five (5) superior court decisions – properties valuation set by Superior Court decision

As such, the difference in the frozen value and the sales value was significant. Due to values being frozen, no change in the appraised value could have occurred prior to the sale. Furthermore, the property could not be reappraised until after the property was sold. This explains why there were significant differences in these properties.

*- Code section 48-5-299 states a property tax appeal that is settled at the Board of Equalization or Superior Court cannot be increased by the Board of Assessor in the year appeal plus two (2) additional years.

CONCERNS AND RECOMMENDATIONS

Concern 1 – Inadequate Number of Hearing Officers

One of the aspects of the appeal process involves issues to be decided by a hearing officer which include any dispute involving the value or uniformity of a parcel of non-homestead real property with a fair market value in excess of \$750,000 (\$500,000 effective May, 2018). Our review of the hearing process revealed that Fulton County procures the services of two (2) hearing officers to hear these respective cases. In our effort to determine, why properties are appraised lower than the sales value, we reviewed cases heard by the two (2) hearing officers and determined that there were significant reductions of notice values heard by the hearing officers from 2016 – 2018 which, resulted in a reduction of approximately \$2 billion as reflected in **Table 3**.

Table 3

| Tax Year | Commercial Appeals Heard by Hearing Officers | Sum of Change from Notice Value | Percentage of Reduction Change in Notice Value |
|--------------|--|---------------------------------|--|
| 2016 | 129 | \$(415,498,321) | 16% |
| 2017 | 412 | \$(748,816,093) | 18% |
| 2018 | 305 | \$(828,696,853) | 14% |
| TOTAL | | \$(1,993,011,267) | |

Data retrieved from the Tax Assessors' Office

Although the hearing officers appear to be productive, due to the number of appeals and the size of Fulton County, a more robust team of state certified hearing officers are needed to ensure that the fundamentals of fairness, impartiality, and thoroughness are met. Additionally, the fact that there are only two (2) hearing officers precludes the County from implementing a reasonable rotation of hearing officers to hear cases. A reasonable rotation of hearing officers should move

hearings rapidly and will provide a more effective process. Management from the Clerk of Superior Court relayed that Fulton County only has two (2) hearing officers because the County is unable to compete with the recruitment and hiring efforts of surrounding counties. However, only procuring two (2) hearing officers could negatively impact the outcome of the cases in reference to timeliness, thoroughness, fairness, and impartiality.

Recommendation

The Clerk of Superior Court, in conjunction with the County Attorney's office, created a resolution that was approved by the Board of Commissioners to address the Clerk's inability to procure more than two (2) hearing officers. We recommend that the departments continue to collaborate to ensure Fulton County remains competitive and have the necessary resources to adequately hear and process commercial appeals. Additionally, having more than two (2) hearing officers will result in the County having a more diverse pool of hearing officers and will allow the hearing officers to be rotated and/or assigned to various hearings.

Concern 2 – Tax Representation on the Appeal Process

An appellant may appear before the BOE, with a representative or authorize a representative to represent him/her in their absence. We reviewed the effect of having a tax representative, during the appeal process and noted having a tax representative has a significant impact on the success of an appeal.

Our review of the 2016-2017 commercial property appeals, revealed the following:

- Of the hearings conducted in 2016, 82% had tax representation. An analysis of the top ten (10) tax representatives revealed that the tax representative obtained a reduction of the appraised value of commercial parcels 59% of the time.
- Of the hearings conducted in 2017, 75% had tax representation. An analysis of the top ten (10) tax representatives revealed that the tax representative obtained a reduction of the appraised value of commercial parcels 69% of the time.

Based on our analysis, the number of appeals reduced by a tax representative appear to be extremely high and could have a significant impact on resolved value versus sales value. As a result of appeals being reduced, these reductions remain in place for a period of three (3) years according to Code section 48-5-299. The three (3) year freeze would be significant in the evaluation of appraised versus sales price differences.

Recommendation

We recommend periodic reviews of decisions made at the BOE level be performed to ensure that the decisions are justified.

Concern 3 – Insufficient Supporting Documentation

Supporting documentation should be thorough and detailed as it helps tell the narrative for decisions made. Our office reviewed the valuation of approximately one hundred and seventy-five (175) commercial parcels. During our review, we determined that the assessments conducted at the BOA level appeared to be adequate as they provided sufficient evidence for the appraised parcels. However, of the 175 parcels reviewed, 61% were appealed through the BOE process and resulted in decreases of approximately \$4 billion for years 2016-2018. Various reasons were cited, such as the application of 299C, uniformity of assessment, value, etc., however, in the comments section of the Board of Equalization's decision letter it only reflects the statement "Based on evidence presented," and no additional evidence was provided or available for our review. Due to the absence of sufficient supporting documentation and/or records, our office could not render an opinion about the validity of the decisions made in reference to the appeals at the BOE level.

Recommendation

The *Board of Equalization Manual* states:

If an appeal is not filed to the Superior Court, the appeal administrator is authorized to properly destroy any records from the hearings before the county Board of Equalization or hearing officers, but shall maintain records of all notices to the taxpayer and the taxpayer's attorney and certified receipts of returned or unclaimed mail for 12 months. If an appeal to the Superior Court is filed, the appeal administrator shall file such appeal and records in the civil action that is considered open by the Clerk of Superior Court for such appeal, and such records shall become part of the record on appeal.

Although the manual reflects the aforementioned passage, we recommend that any evidence presented to support an appeal remain accessible for a reasonable amount of time.

Concern 4 – Qualification Requirements for the Board of Equalization

The *Board of Equalization Manual* states that an individual desiring to serve on a Board of Equalization may file an application and meet the following qualification:

- Qualified and competent to serve as a grand juror;
- Own real property located in the county where such person is appointed to serve, or, in the case of a regional board of equalization, is the owner of real property located in any county in the region where such person is appointed to serve;
- At least a high school graduate;
- Complete not less than 40 hours of training within the first year of a member's initial appointment;

- Complete not less than 20 hours of training within the first year of a member's subsequent term of office; and
- Complete annually a continuing education requirement of at least eight hours of instruction.

The O.C.G.A. allows a taxpayer or property owner to appeal a Board of Tax Assessor's assessment of their property to the County BOE as to matters of taxability, uniformity of assessment, and value, and for residents, as to denials of homestead exemptions. Appeals may also be filed due to the denial of a covenant application, breach of a covenant, and denial of Freeport. Although these qualifications are mandated by the State of Georgia Department of Revenue, we believe that serving such a pertinent role in the appeal process and considering the values associated with commercial parcels, the current qualifications do not appear to align with the duties that are discharged to the BOE. As a result, in our opinion, decisions made at the BOE level may appear to be inadequate and some taxpayers may lack confidence in the process.

Recommendation

The Office of the County Auditor recommends a thorough review of the qualifications required for individuals hearing commercial appeals. Implementing more robust qualifications for the BOE could increase the confidence in decisions made at that level.

Management Concerns

During our review of the BOA appraisal and appeal process, we interviewed management and have highlighted some of their concerns below:

- **Mandatory reporting of all audited financial statements associated with the commercial property** – mandatory requirement to submit audited financial statements (income and expenses) associated with the commercial property during the appeal process would allow the BOA to verify the value and/or proof of the value of the property being assessed;
- **Mandatory declaration of recent fee appraisals if parcel is appealed** – providing the recent fee appraisal will allow BOA to compare the value of the commercial property to BOA appraisal value;
- **Limiting appeal rights on Development Authority parcels** – management stated that on numerous occasions' properties owned by the Development Authority tend to receive the certificate of completion after January 1st which results in the property not being assessed until the following tax year, therefore given the property owner an additional year to not pay the assessed taxes. In addition, these same properties can appeal the initial assessment in an attempt to lower the amount owe;

- **Audio/Video recording of all appeals to the BOE, Arbitration or Hearing Officer with values over \$1m** – if hearings were recorded it could be used to support evidences of the decision made, as well as foster a more professional environment;
- **Consider all income (including tax credits) in arriving at Fair Market Values** – tax credit income should never be excluded from the income approach;
- **Use change in income, vacancy and cap rates to void 3 year freeze** – Georgia Code Title 48-5-299c section 4 states that the BOA may increase or decrease the value of the real property if, after a visual on-site inspection of the property, it is found that there have been substantial additions, deletions, or improvements to such property, or the board of tax assessors finds an occurrence of other material factors that substantially affect the current fair market value of such property. Therefore, management feels if there is evidence of material change has occurred such as change in income, vacancy and cap rates, the freeze should be lifted;
- **Eliminate parcels with frozen values being used as comparable in appeal hearings** – Parcels with a frozen value (299c) should be eliminated from being used as a comparable in an appeal hearing;
- **Transaction price should isolate portion applicable to the Real Estate - BOA** recommends that the purchase price should be presented on the real estate transfer tax form (PT-61); with a clear breakdown of the amount attributable to the Real Estate; and
- **Subpoena powers for appeals to Superior Court** – the Georgia Code Title 48-5-300 states that the county Board of Assessors may issue subpoenas for the attendance of witnesses and may subpoena of any person any books, papers, or documents which may contain any information material to any question relative to the existence or liability of property subject to taxation or to the identity of the owner of property liable to taxation or relevant to other matters necessary to the proper assessment of taxes lawfully due to the state or county.

CONCLUSION

During our review of the Tax Assessors' Office commercial properties appraisals and appeal process, we identified several reasons for significant differences. Such as:

- Multi-parcel sales;
- New construction/renovation;
- Invalid sales
- Intangible/Tangible assets

In addition, our process revealed that properties had been lowered significantly at the BOE level. Sufficient documentation for these properties were not available to support the decision of the resolved value.

Our review also revealed concerns of the appeal process at both the BOE and Hearing Officer levels. It was noted that due to the outcome of the appeals process, notice value was reduced by more than \$7 billion or 13% for commercial parcels over a three year period as illustrated in **Table 4**.

Table 4

| TAXYR | HEARING LEVEL | APPEAL STATUS | Sum of NOTICE VALUE | Sum of RESOLVED VALUE | Sum of CHANGE FROM NOTICE VALUE |
|--------------------|-----------------------|---------------|-----------------------|-----------------------|---------------------------------|
| 2016 | BOE | RESOLVED | 13,473,827,408 | 12,111,103,512 | (1,362,723,896) |
| | HEARING OFFICER | RESOLVED | 2,758,977,283 | 2,343,478,962 | (415,498,321) |
| | SETTLEMENT CONFERENCE | RESOLVED | 1,906,321,523 | 1,652,118,931 | (254,202,592) |
| 2016 Total | | | 18,139,126,214 | 16,106,701,405 | (2,032,424,809) |
| 2017 | BOE | RESOLVED | 10,257,222,685 | 8,942,521,112 | (1,314,701,573) |
| | HEARING OFFICER | RESOLVED | 4,166,160,996 | 3,417,344,903 | (748,816,093) |
| | SETTLEMENT CONFERENCE | RESOLVED | 2,615,761,064 | 1,929,291,728 | (686,469,336) |
| 2017 Total | | | 17,039,144,745 | 14,289,157,743 | (2,749,987,002) |
| 2018 | BOE | RESOLVED | 12,501,677,140 | 11,132,007,524 | (1,369,669,616) |
| | HEARING OFFICER | RESOLVED | 6,037,472,268 | 5,208,775,415 | (828,696,853) |
| | SETTLEMENT CONFERENCE | RESOLVED | 1,081,597,160 | 934,500,358 | (147,096,802) |
| 2018 Total | | | 19,620,746,568 | 17,275,283,297 | (2,345,463,271) |
| Grand Total | | | 54,799,017,527 | 47,671,142,445 | (7,127,875,082) |

Data retrieved from the Tax Assessors' Office

We found that the appeals process has weaknesses that may have resulted in significant differences in the appraised value and sales price. The weaknesses included, insufficient supporting documentation at the BOE level which prevented us from determining whether or not

decisions made at the BOE level were justified; inadequate number of hearing officers, which could negatively impact the outcome of the appeals; the significant impact the tax representatives have on the appeal process, and the BOE educational requirements. We further believe the enhancement of the educational requirements for BOE members would improve the confidence in the decisions made at the appeals process. In addition, for each of the one hundred seventy-five (175) properties, we reviewed the appraisals after the sale to determine if the properties appraisals met the standards as required by *Georgia law and the Georgia Department of Revenue Rules, Regulations and Guidelines* we found those appraisals to be appropriate.

We recommend management and staff give immediate attention to the above concerns.

Please provide a written response to this audit within ten (10) business days. Be sure to address the written response to Anthony Nicks, County Auditor. The written response should be submitted through the County Manager's Office and to Stacy Jones, Assistant Audit Manager, in the Office of the County Auditor at Stacy.Jones@fultoncountyga.gov. We would like to thank management and staff for their timely cooperation and assistance during this audit. The distribution of this report is reserved for the executive management of Fulton County and the Board of Commissioners.