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023:08:YB:gk

**Auditor's Review of the Board of Real Property
Assessments and Appeals Operations**

September 30, 2008

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EXECUTIVE SUMMARY

PURPOSE

In accordance with Section 455 of the District of Columbia Home Rule Act, as amended, Pub.L. No. 93-198,¹ and pursuant to D.C. Code §47-825.01(l)(2),² the District of Columbia Auditor (Auditor) examined the operations and administration of the Board of Real Property Assessments and Appeals (BRPAA).

CONCLUSION

The mission of BRPAA is to conduct timely, fair, and transparent real property assessment hearings. For many property owners, the real property tax is the largest tax paid to the District. Given the financial impact of real property taxes for property owners and the District government, it is imperative that the real property tax assessment and assessment appeals processes are administered in a fair, accurate, and efficient manner. BRPAA's operations have suffered from multiple failures including the Board's failure: (1) to provide sound, progressive, engaged leadership; (2) to comply with statutory mandates; and (3) to implement administrative reforms.

BRPAA's administrative challenges included: an ineffective records management system; a website that provided insufficient information about the real property tax assessment appeal process; and no record of appeals that required the recusal of a BRPAA member. BRPAA should address these administrative issues by: implementing a records management system that relies on information technology; including BRPAA decisions on the BRPAA website; and developing a written procedure to maintain a record of appeals that required the recusal of a BRPAA member.

¹ See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198; 87 Stat. 803); D.C. Code § 1-204.55 (b) (2001) which states: "The District of Columbia shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe. See also D.C. Code § 1-204.55 (c) which states: "The District of Columbia Auditor shall have access to all books, accounts, records, findings, and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit."

² See D.C. Code § 47-825.01(l)(2) which states that, "The District of Columbia Auditor shall perform a management audit of the activities of the Board at least once every 3 fiscal years (or sooner as considered appropriate by the Auditor) or upon request of a Councilmember, and report the findings to the Council.

The Auditor's examination also found that BRPAA did not comply with statutory mandates to: hold annual administrative meetings; include accurate written statements of the basis for decisions; require petitioners to certify to the accuracy of statements made to BRPAA; and prepare comprehensive annual reports on the operations of BRPAA. Compliance with these mandates will substantially improve the real property tax assessment appeal process.

In addition to administrative shortcomings and failure to comply with statutory requirements, BRPAA also notified the Office of Tax and Revenue of incomplete decisions. This practice should be carefully reviewed by the Office of the Inspector General.

MAJOR FINDINGS

1. The Board of Real Property Assessments and Appeals uses an ineffective records management system that results in delays in locating documents, misplaced records, and filing errors.
2. The Board of Real Property Assessments and Appeals did not hold the four required annual meetings for administrative matters, as required by 9 DCMR § 2001.5.
3. At least \$13.7 million in Board of Real Property Assessments and Appeals decisions reviewed by the Auditor did not include accurate, detailed, written statements of the basis for the decision as required by 9 DCMR § 2020.7.
4. The Board of Real Property Assessments and Appeals notified petitioners and the Office of Tax and Revenue of decisions totaling \$39,499,780 in cases that were not final.
5. The Board of Real Property Assessments and Appeals did not require petitioners to certify that statements were true and correct in cases totaling \$3,760,072, as required by 9 DCMR § 2006.7.
6. The Chairman of the Board of Real Property Assessments and Appeals accepted campaign contributions from individuals who filed appeals with the Board.

MAJOR RECOMMENDATIONS

1. The BRPAA Chairman review BRPAA's current filing and record keeping system to assess its adequacy and efficiency and take immediate steps to develop and implement a timely and cost-effective improvement plan that prominently features information technology tools.
2. The BRPAA Chairman ensure that at least four public administrative meetings are called and held annually, as required by 9 DCMR § 2001.5.
3. The Chairman of BRPAA ensure that all decisions contain a detailed, accurate, written statement of the basis for decisions, and that each decision is signed by each member of the panel rendering the decision.
4. The BRPAA Chairman immediately cease the practice of advising OTR and Petitioners of incomplete decisions and conduct the appeals process in a timely and appropriate manner that ensures that all appeals are completed by the statutory deadline.
5. The Office of the Inspector General investigate the BRPAA practice of advising OTR and Petitioners of incomplete decisions.
6. The BRPAA Chairman require all petitioners to sign the form certifying the truth and accuracy of statements made on the BRPAA appeal form.
7. The BRPAA Chairman not accept campaign donations from individuals who appear before the Board of Real Property Assessments and Appeals.
8. BRPAA members not simultaneously hold elected and appointed positions.

PURPOSE

In accordance with Section 455 of the District of Columbia Home Rule Act, as amended, Pub.L. No. 93-198,¹ and pursuant to D.C. Code §47-825.01(1)(2),² the District of Columbia Auditor (Auditor) examined the operations and administration of the Board of Real Property Assessments and Appeals (BRPAA).

OBJECTIVE, SCOPE, AND METHODOLOGY

The objectives of the audit were to determine whether:

1. BRPAA operations complied with key applicable rules, regulations, and laws;
2. decisions issued by BRPAA followed applicable rules, regulations, and laws; and
3. the mission of BRPAA was fulfilled in an efficient and effective manner.

The scope of the audit included fiscal years (FY) 2005 (October 1, 2004) through 2008, as of December 31, 2007.

In conducting the audit, the Auditor reviewed: (1) relevant provisions of the D.C. Official Code (D.C. Code) and D.C. Municipal Regulations (DCMR); (2) literature on the real property tax assessment appeals process in other jurisdictions; and (3) written material from various organizations to identify exemplary practices. Also, the Auditor interviewed current and former members of the Board of Real Property Assessments and Appeals, and a sample of petitioners who appeared before the Board to gain their perspectives on BRPAA operations.

¹ See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198; 87 Stat. 803); D.C. Code § 1-204.55 (b) (2001) which states: “The District of Columbia shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe. *See also* D.C. Code § 1-204.55 (c) which states: “The District of Columbia Auditor shall have access to all books, accounts, records, findings, and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.”

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The audit was conducted in accordance with generally accepted government auditing standards. 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 findings and conclusions based on our audit objectives.

BACKGROUND

The real property tax is one of the largest revenue sources for the District of Columbia government, accounting for an annual average of 26% of total revenue collection for the period of the audit. Decisions by BRPAA to reduce or increase real property tax assessments have a direct financial impact on real property tax revenue collected by the District. In Tax Year 2008, BRPAA made downward adjustments to proposed real property tax assessments totaling \$2.9 billion which had a corresponding estimated negative revenue impact of **-\$49.7 million**. In Tax Year 2007, BRPAA made downward adjustments to proposed real property tax assessments totaling \$2.5 billion which had an estimated negative revenue impact of **-\$44.55 million**. In Tax Year 2006, BRPAA made downward adjustments to proposed real property tax assessments totaling \$1.43 billion which had an estimated negative revenue impact of **-\$25.4 million**. In Tax Year 2005, BRPAA made downward adjustments to proposed real property tax assessments totaling \$1.35 billion which had an estimated negative revenue impact of **-\$23.73 million**.

For many property owners, the real property tax is the largest tax paid to the District. Given the financial impact of real property taxes for property owners and the District government, it is imperative that the real property tax assessment and assessment appeals processes are administered in a fair, accurate, and efficient manner.

The mission of BRPAA is to conduct timely, fair, and transparent real property assessment appeal hearings. According to BRPAA's website, the Board's objective is to ensure that the real properties of appellants are assessed at 100 percent of market value. BRPAA conducts a second level administrative hearing for property owners to adjudicate real property assessments prior to initiating formal litigation in D.C. Superior Court.

D.C. Code § 47-825.01 and 9 DCMR, Chapter 20, govern the activities of BRPAA. D.C. Code § 47-825.01 and 9 DCMR, Chapter 20, include the following key requirements:

1. The Board of Real Property Assessments and Appeals shall conduct at least four annual meetings for administrative matters;
2. Every decision by the Board or a Panel shall contain a **detailed written statement of the basis for the decision** [Auditor's Emphasis];
3. Petitions to the Board shall be certified by the petitioner as being true and correct to the best of his or her knowledge;
4. No three members shall serve together on the same panel for more than one tax year;
5. A member of BRPAA shall recuse himself or herself from participating in any hearing, discussion, vote, or appeal involving real property with which the member has had any direct or indirect financial dealings in the two-years prior to the date of the appeal;
7. The BRPAA shall present to the Council and to the Mayor an annual report on its operations for the preceding year;

In addition to the objectives set forth on page 1, the Auditor specifically focused on these mandates in conducting the audit.

FINDINGS

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS USES AN INEFFECTIVE RECORDS MANAGEMENT SYSTEM THAT RESULTS IN DELAYS IN LOCATING DOCUMENTS, MISPLACED RECORDS, AND FILING ERRORS

1 DCMR § 1502.3 states: “The record of every transaction of public business by any District official or employee shall be complete to the extent required by the following: (a) to facilitate actions by incumbents and their successors in office; (b) to make possible proper oversight by the Council of the District of Columbia, courts and other authorized agencies of the government, and other persons responsible for the manner in which public business has been discharged; and (c) to protect the financial, legal and other rights of the government and of persons affected by the government’s actions.”

BRPAA is required to keep records for a minimum of three years.³ Since 2005, BRPAA received 11,947 appeals.⁴ Consequently, BRPAA maintains over 11,947 files, with each file containing numerous pages of documents. However, BRPAA’s record-keeping system for these official records, including its decisions, consists of manila folders and over-crowded file cabinets. At the time of the audit, files were stored in cardboard boxes. Further, BRPAA’s filing and record keeping system relied principally on paper instead of information technology.

In light of BRPAA’s growing caseload and limited administrative personnel, it is a challenge for BRPAA’s staff to effectively manage and maintain 11,947 case files in an orderly manner. The task of managing BRPAA’s records is even more complicated because files are arranged by tax year, square, and lot number. In other words, there is no cross reference to street address or name of the property owner. It is difficult for BRPAA staff to easily locate documents. When files are located, they may include misfiled documents from other cases.

³See D.C. Code § 47-825.01.

⁴BRPAA processed 2,609 tax appeals in 2005, 2,693 tax appeals in 2006, 3,206 tax appeals in 2007 and 3,439 tax appeals in 2008.

There is no apparent budgetary reason for the failure of BRPAA to implement an efficient, modern, reliable system for organizing and storing official records. By failing to implement improvements in the BRPAA filing and record keeping system, BRPAA shows little regard for its decisions or the impact that its decisions have on District finances, residents, and businesses. The magnitude of files maintained by BRPAA demands an effective and efficient records management system.

RECOMMENDATION

The BRPAA Chairman review BRPAA's current filing and record keeping system to assess its adequacy and efficiency and take immediate steps to develop and implement a timely and cost-effective improvement plan that prominently features information technology tools.

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS DID NOT HOLD THE FOUR REQUIRED ANNUAL MEETINGS FOR ADMINISTRATIVE MATTERS, AS REQUIRED BY 9 DCMR § 2001.5

9 DCMR § 2001.5 (2008), states that the Board of Real Property Assessments and Appeals shall meet at least four times annually for administrative matters. To comply with this requirement for the four years of the audit period, BRPAA should have held a minimum of 16 administrative meetings. The statute also requires administrative meetings to be open to the public. In addition to providing BRPAA's members with a forum to discuss issues pertaining to operations, the administrative meetings could provide the public with an opportunity to increase their knowledge and understanding of BRPAA's operations, goals, and challenges.

The Auditor found that only 2 of the 16

RECOMMENDATION

The BRPAA Chairman ensure that at least four public administrative meetings are called and held annually, as required by 9 DCMR § 2001.5.

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS DID NOT PROVIDE RESIDENTS AND BUSINESSES WITH SUFFICIENT PUBLIC AWARENESS INFORMATION ABOUT THE REAL PROPERTY TAX ASSESSMENT APPEALS PROCESS

BRPAA recently launched a website that provides basic information about BRPAA. The site does not provide guidance which helps residents understand the assessment appeals process and how to prepare an effective appeal. A customer focused website educates the public on elements that are most important on appeal, such as square footage versus the number of bedrooms and may advise petitioners to submit photos or proof of recent sales.

The website for the Arlington, Virginia Board of Equalization of Real Estate Assessments includes Board decisions, real estate assessments, and answers to Frequently Asked Questions. In addition to decisions, the Kansas Board of Tax Appeals and the Kentucky Board of Tax Appeals websites include guidelines on the preparation of appeals. The Indiana Board of Tax Appeals is developing a searchable data base of decisions that will be accessible on its website.

At a minimum, the BRPAA website should include answers to Frequently Asked Questions, guidelines on the preparation of appeals, and decisions of the Board. At the present time, BRPAA provides the Office of Tax and Revenue (OTR) with a digital record of BRPAA decisions. Therefore, it should be a simple matter to post decisions on BRPAA's website. Posting other useful information on the website regarding BRPAA decisions would decrease the perception that BRPAA's decisions are inaccessible, and should increase public confidence that decisions are honest, fair, and based on applicable, clearly articulated legal principles.

RECOMMENDATION

BRPAA's Chairman and Administrative Officer revise the BRPAA website to include decisions of the Board of Real Property Assessments and Appeals.

AT LEAST \$13.7 MILLION IN BRPAA DECISIONS REVIEWED BY THE AUDITOR DID NOT INCLUDE ACCURATE, DETAILED, WRITTEN STATEMENTS OF THE BASIS FOR THE DECISION AS REQUIRED BY 9 DCMR § 2020.7

9 DCMR § 2020.7, states that every appeal decision by the Board or a Panel shall contain a detailed written statement of the basis for the decision. The Auditor found that BRPAA members did not always comply with this mandate.

The Auditor's review revealed numerous cases that did not include a written explanation of the basis for the Board's decision. In one example, BRPAA recommended a reduction of \$530,000 in the real property tax assessment, however the decision did not contain a written explanation of the basis for the reduction. In another example, BRPAA recommended a reduction of \$447,520 in the real property tax assessment and again the decision did not include a written explanation of the basis for the \$447,520 reduction. Similarly, the file for a BRPAA decision to increase an assessment by \$109,655 did not include a written explanation for the decision.

Equally troublesome were cases in which BRPAA members included a written basis for the decision but the decision lacked sufficient detail. For example, BRPAA recommended a \$1,315,217 reduction in a real property tax assessment based on the following rationale: "The parties agreed to the assessment value as noted here". This BRPAA decision failed to address the parties agreement and the underlying basis for reducing the assessment by 36%.

According to an oral explanation recently provided by a BRPAA member during a meeting with the Auditor, the \$1,315,217 reduction was the result of a "Rule 2020.6 stipulation." However, this was not the language used in the decision, and no such explanation was given in the written decision. Under Rule 2020.6, any stipulation, agreement or assessor recommendation that both parties agree to, BRPAA shall accept as the new proposed value. While Rule 2020.6 may have been the appropriate resolution of this matter, it is impossible to make this determination based on the language used in the written decision. The BRPAA decision and file, quite simply, should have included a statement that the decision was based on Rule 2020.6.

The Auditor noted another problematic decision that resulted in a reduction of \$10,806,310 in the real property tax assessment for Potomac Electric Power Company (PEPCO).⁵ Based on the first level property appeal with the Office of Tax and Revenue, the assessment was sustained at \$45,868,520. When appealed to BRPAA, the real property tax assessment was reduced by \$10,806,310 million to \$35,062, 210. The Auditor reviewed the file to determine the rationale for the 23% reduction, however, BRPAA’s decision form was blank thus no written basis was given to justify and support the \$10,806,310 assessment reduction. A notation on the file folder stated, “go w/Castro”, an attorney with the law firm Holland & Knight who represented PEPCO before the Board in this matter.

The Auditor reviewed the record of another case that resulted in a \$581,890 reduction in the real property tax assessment. BRPAA’s decision form again was blank. The petitioner in this case was also represented by the same attorney in the PEPCO case. Table III presents additional examples of decisions issued without a detailed written explanation.

Table III
BRPAA Decisions Issued Without a Detailed Written Explanation for the Decision

Tax Year	Square	Lot	First Level Appeal	BRPAA Decision	Amount of Reduction
2007	370	846	\$23,915,840	\$20,285,000	\$3,630,840
2007	0078	0039	\$58,758,920	\$55,983,251	\$2,775,669
2007	0081	0829	\$26,665,000	\$23,968,326	\$2,696,674
2007	0186	0039	\$40,503,000	\$37,980,700	\$2,522,300
2007	4359	0834	\$10,662,390	\$9,576,100	\$1,086,290
2007	0096	0019	\$1,876,800	\$1,400,000	\$476,800
2007	1449	0095	\$1,513,030	\$1,287,330	\$225,700
TOTAL					\$13,414,273

⁵BRPAA File for Tax Year 2007 for Square PAR Suffix 0169 Lot 0114.

Inconsistent BRPAA Procedures Documenting Decisions Did Not Produce an Adequate Audit Trail

In addition to the failure of BRPAA members to include a written rationale for decisions, the Auditor reviewed five files ⁶ for Tax Year 2007 that included the following language as the explanation for each decision;

The Board finds that the Assessor's pro forma NOI of \$___⁷ was \$___ higher than the actual NOI of \$___. Assessor's NOI has never been attained in the property based on the historical NOI's from 2003-2005. The Petitioner's approach to value is more indicative, and reflects the current, and historical operation of the subject.

An inspection of the files of the five cases in question revealed that the phrase was cut and pasted on each of the five BRPAA decision forms. These cases were handled by the same board members. The following are the five BRPAA decision forms that included the same cut and pasted language.

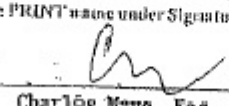
⁶ BRPAA File for Tax Year 2007, Square 5824, Lot 0804, BRPAA File for Tax Year 2007, Square 5809, Lot 0824, BRPAA File for Tax Year 2007, Square 5809 Lot 0819, BRPAA File for Tax Year 2007, Square 5824, Lot 0053, BRPAA File for Tax Year 2007, Square 5809, Lot 0820.

⁷Amounts deleted by the Auditor to protect proprietary interests.

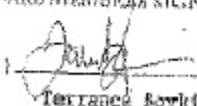
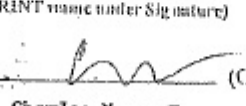
BRPAA File for Tax Year 2007, Square 5824, Lot 804

REAL PROPERTY ASSESSMENT APPEALS One Judiciary Square 441 4th Street, N.W., Suite 420 Washington, D.C. 20001		REAL PROPERTY ASSESSMENT APPEALS FORM TAX YEAR 2007		★ ★ ★ APPEALS APPEALS																					
PRINT OR TYPE ALL ITEMS NUMBERED 1-6. APPEALS MUST BE FILED NO LATER THAN SEPTEMBER 15, 2007.																									
1. PETITIONER Name <u>Keith McIntosh</u> <u>Trammell Crow Company</u> Street <u>1055 Thomas Jefferson St., NW</u> AUG - 9 2006 City <u>Suite 600</u> State <u>Washington, DC 20007</u>			2. NAME AND ADDRESS OF OWNER: Name <u>Horning Associates</u> Street <u>1350 Connecticut Avenue, NW, #800</u> City <u>Washington, DC 20036</u> State _____ Zip _____																						
Square <u>Square 5824 Lot 0804</u> Type of Property (res., etc.) <u>residential</u> Class <u>001</u> Premises Address <u>2420 16th St SE</u> Neighborhood Code <u>043</u> Year Estimate of Value <u>\$330,681.13</u>			4. ASSESSED VALUE OF TAX YEARS: First Level Assessment Appeal Decision <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">Last Year</td> <td style="width: 20%;">2006</td> <td style="width: 20%;">Proposed</td> <td style="width: 20%;">2007</td> <td style="width: 20%;"></td> </tr> <tr> <td>Land</td> <td>\$111,000</td> <td>\$126,850</td> <td></td> <td></td> </tr> <tr> <td>Building</td> <td>\$372,160</td> <td>\$558,750</td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>\$483,160</td> <td>\$683,600</td> <td>\$545,202</td> <td></td> </tr> </table>			Last Year	2006	Proposed	2007		Land	\$111,000	\$126,850			Building	\$372,160	\$558,750			Total	\$483,160	\$683,600	\$545,202	
Last Year	2006	Proposed	2007																						
Land	\$111,000	\$126,850																							
Building	\$372,160	\$558,750																							
Total	\$483,160	\$683,600	\$545,202																						
DECISION OF THE BOARD																									
The Board finds that the Assessor's pro forma NOI of \$332,158 was \$70,000 higher than the actual NOI of \$258,999. Assessor's NOI has never been attained in the property based on the historical NOI's from 2003-2005. The Petitioner's approach to value is more indicative, and reflects the current, and historical operation of the subject.																									
NO CALCULATIONS Square Footage _____ of Land Rate \$ _____ Sq. Ft.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left; padding: 5px;"> 12. ACTION TAKEN </th> <th rowspan="2" style="text-align: center; padding: 5px;"> TOTAL </th> </tr> <tr> <td style="width: 30%; padding: 5px;"> FROM </td> <td style="width: 40%; padding: 5px;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> A. ☐ No Change B. ☒ Decrease C. ☐ Increase </td> <td style="width: 50%; padding: 5px;"> LAND 126,850 126,850 </td> </tr> <tr> <td style="width: 50%; padding: 5px;"> BUILDING 418,350 203,831 </td> <td style="width: 50%; padding: 5px;"> 545,200 330,681 </td> </tr> </table> </td> </tr> </table>				12. ACTION TAKEN		TOTAL	FROM	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> A. ☐ No Change B. ☒ Decrease C. ☐ Increase </td> <td style="width: 50%; padding: 5px;"> LAND 126,850 126,850 </td> </tr> <tr> <td style="width: 50%; padding: 5px;"> BUILDING 418,350 203,831 </td> <td style="width: 50%; padding: 5px;"> 545,200 330,681 </td> </tr> </table>	A. ☐ No Change B. ☒ Decrease C. ☐ Increase	LAND 126,850 126,850	BUILDING 418,350 203,831	545,200 330,681											
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BUILDING 418,350 203,831	545,200 330,681																								
3. SIGNATURES (Please PRINT name under Signature) (B) Terrence Boykin (C) Charles Mayo, Esq. Date <u>12/29/06</u>																									

BRPAA File for Tax Year 2007, Square 5809, Lot 0824

BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS One Judiciary Square 441 4th Street, NW, Suite 430 Washington, D.C. 20001		REAL PROPERTY ASSESSMENT APPEALS FORM TAX YEAR 2007		★ ★ ★ OFFICE OF THE CHIEF OF STAFF																									
PRINT OR TYPE ALL ITEMS NUMBERED 1-9. APPEALS MUST BE FILED NO LATER THAN SEPTEMBER 30, 2007.																													
1. PETITIONER Name <u>Keith McIntosh</u> Street <u>Trammell Crow Company</u> City <u>1055 Thomas Jefferson St., NW</u> State <u>Suite 600</u> State <u>Washington, DC 20007</u>		2. NAME AND ADDRESS OF OWNER: Name <u>Horning Associates</u> Street <u>1350 Connecticut Avenue, NW # 800</u> City <u>Washington, DC 20036</u> State <u>DC</u> Zip <u>20007</u>																											
FROM YOUR ASSESSMENT NOTICE																													
3. SQUARE <u>Square 5809 Lot 0824</u> Type of Property (res., etc.) <u>Residential</u> Class <u>001</u> Premises Address <u>1425 Morris Rd SE</u> Neighborhood Code <u>043</u> Your Estimate of Value <u>\$294,023.71</u>		4. ASSESSED VALUE OF TAX YEARS: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td align="right" colspan="2">First Level Assessment</td> </tr> <tr> <td></td> <td></td> <td align="center" colspan="2">Appeal Decision</td> </tr> <tr> <td>Last Year</td> <td>2006</td> <td>Proposed</td> <td>2007</td> </tr> <tr> <td>Land</td> <td align="right">\$87,200</td> <td align="right">\$174,410</td> <td></td> </tr> <tr> <td>Building</td> <td align="right">\$373,750</td> <td align="right">\$433,410</td> <td></td> </tr> <tr> <td>Total</td> <td align="right">\$460,950</td> <td align="right">\$607,820</td> <td align="right">\$484,764</td> </tr> </table>						First Level Assessment				Appeal Decision		Last Year	2006	Proposed	2007	Land	\$87,200	\$174,410		Building	\$373,750	\$433,410		Total	\$460,950	\$607,820	\$484,764
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13. SIGNATURES (Please PRINT name under Signature)  (B) <u>Terrance Boykin</u>  (C) <u>Charles Mayo, Esq.</u> Date <u>12/29/06</u>																													

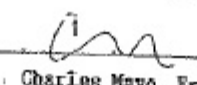
BRPAA File for Tax Year 2007, Square 5809, Lot 0819

DISTRICT OF COLUMBIA GOVERNMENT BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS One Judiciary Square 401 4th Street, N.W. Suite 430 Washington, D.C. 20001		REAL PROPERTY ASSESSMENT APPEALS FORM TAX YEAR 2007		★ ★ ★ 12/29/06																									
PRINT OR TYPE ALL ITEMS NUMBER 3-6 APPEALS MUST BE FILED NO LATER THAN DECEMBER 31ST																													
1. PETITIONER Name <u>Keith McIntosh</u> <u>Trammell Crow Company</u> Street <u>1055 Thomas Jefferson St., NW</u> City <u>Suite 600</u> State <u>Washington, DC 20007</u>		2. NAME AND ADDRESS OF OWNER: - AUG - 9 2006 Name <u>Horning Associates</u> Street <u>1350 Connecticut Avenue, NW # 800</u> City <u>Washington, DC 20036</u> State _____ Zip _____																											
APPEAL FROM YOUR ASSESSMENT NOTICE																													
3. Square <u>Square 5809 Lot 0819</u> Type of Property (res., etc.) <u>residential</u> Class <u>001</u> Premises Address <u>1418 Howard Rd SE</u> Neighborhood Code <u>043</u> Your Estimate of Value <u>\$425,305</u>		4. ASSESSED VALUE OF TAX YEARS: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>Last Year 2006</th> <th>Proposed 2007</th> <th>First Level Assessment Appeal Decision</th> </tr> <tr> <td>Land</td> <td align="right">\$90,340</td> <td align="right">\$180,670</td> <td></td> </tr> <tr> <td>Building</td> <td align="right">\$369,360</td> <td align="right">\$698,540</td> <td></td> </tr> <tr> <td>Total</td> <td align="right">\$459,700</td> <td align="right">\$879,210</td> <td align="right">\$701,210</td> </tr> </table>					Last Year 2006	Proposed 2007	First Level Assessment Appeal Decision	Land	\$90,340	\$180,670		Building	\$369,360	\$698,540		Total	\$459,700	\$879,210	\$701,210								
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BOARD MEMBERS SIGNATURES (Please PRINT name under Signature)																													
 Terrance Boykin		(B)  Charles Mayo, Esq.		Date <u>12/29/06</u>																									

BRPAA File for Tax Year 2007, Square 5824, Lot 0053

DONOR OF REAL PROPERTY ASSESSMENTS AND APPEALS One Judiciary Square 1414 4th Street, N.W. Suite 430 Washington, D.C. 20001		REAL PROPERTY ASSESSMENT APPEALS FORM TAX YEAR 2007		★ ★ ★ 																									
PRINT OR TYPE ALL ITEM NUMBERS. APPEALS MUST BE FILED NO LATER THAN SEPTEMBER 30, 2007.																													
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3. Square <u>Square 5824 Lot 0053</u> Type of Property (res., etc.) <u>residential</u> Class <u>001</u> Premises Address <u>1601 Morris Rd SE</u> Neighborhood Code <u>043</u> Your Estimate of Value <u>\$247,846.38</u>		4. ASSESSED VALUE OF TAX YEARS: <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:20%; text-align: center;">Last Year <u>2006</u></td> <td style="width:20%; text-align: center;">Proposed <u>2007</u></td> <td style="width:30%;"></td> </tr> <tr> <td>Land</td> <td style="text-align: right;">\$91,850</td> <td style="text-align: right;">\$102,620</td> <td></td> </tr> <tr> <td>Building</td> <td style="text-align: right;">\$330,150</td> <td style="text-align: right;">\$408,740</td> <td></td> </tr> <tr> <td>Total</td> <td style="text-align: right;">\$422,000</td> <td style="text-align: right;">\$512,360</td> <td style="text-align: right;">\$408,630</td> </tr> </table>					Last Year <u>2006</u>	Proposed <u>2007</u>		Land	\$91,850	\$102,620		Building	\$330,150	\$408,740		Total	\$422,000	\$512,360	\$408,630								
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(U) MEMBER SIGNATURES (Please PRINT name under Signature)																													
 Terrence Boykin		 Charles Mayo, Esq.		Date <u>12/29/06</u>																									

BRPAA File for Tax Year 2007, Square 5809, Lot 0820

BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS One Judiciary Square 411 4th Street, NW, Suite 420 Washington, D.C. 20001		REAL PROPERTY ASSESSMENT APPEALS FORM TAX YEAR 2007		★ ★ ★ 12/29/06																					
PRINT OR TYPE ALL ITEMS NUMBER 19, APPEALS MUST BE FILED NO LATER THAN SEPTEMBER																									
1. PETITIONER Name <u>Keith McIntosh</u> Street <u>Trammell Crow Company</u> <u>1055 Thomas Jefferson St., NW</u> City <u>Suite 600</u> State <u>Washington, DC 20007</u> Zip <u> </u>		2. NAME AND ADDRESS OF OWNER: Name <u>Horning Associates</u> Street <u>1350 Connecticut Avenue, NW, # 800</u> City <u>Washington, DC 20036</u> State <u> </u> Zip <u> </u>																							
FROM YOUR ASSESSMENT NOTICE																									
3. Square <u>Square 5809 Lot 0820</u> Type of Property (res., etc.) <u>residential</u> Class <u>001</u> Premises Address <u>SE</u> Neighborhood Code <u>043</u> Your Estimate of Value <u>\$330,216.75</u>		4. ASSESSED VALUE OF TAX YEARS: <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:20%; text-align: center;">Last Year <u>2006</u></td> <td style="width:20%; text-align: center;">Proposed <u>2007</u></td> <td style="width:30%;"></td> </tr> <tr> <td>Land</td> <td style="text-align: right;">\$84,360</td> <td style="text-align: right;">\$144,610</td> <td></td> </tr> <tr> <td>Building</td> <td style="text-align: right;">\$411,530</td> <td style="text-align: right;">\$538,030</td> <td></td> </tr> <tr> <td>Total</td> <td style="text-align: right;">\$495,890</td> <td style="text-align: right;">\$682,640</td> <td style="text-align: right;">\$644,436</td> </tr> </table>					Last Year <u>2006</u>	Proposed <u>2007</u>		Land	\$84,360	\$144,610		Building	\$411,530	\$538,030		Total	\$495,890	\$682,640	\$644,436				
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JUDICIAL OFFICERS SIGNATURES (Please PRINT name under Signature)  Terrance Boykin  Charles Mayo, Esq. Date <u>12/29/06</u>																									

Each of the decisions containing the cut and pasted language was signed by Board members and offered as a complete detailed written statement of the basis for the decision.

According to BRPAA, each of the five decisions are related and complete information is contained in a “master file”, however, it should not be necessary for BRPAA to have to interpret files. Each BRPAA file should contain all the information that is necessary to understand the decision. Despite the inter-relationship between the five files, none of the five files refers to a master file.

BRPAA is required to ensure that each decision includes a detailed written statement of the basis for the decision. A reference to a master file is an extremely important detail. If master file X contains information that is relevant to file Y, then file Y should include a reference to master file X and vice versa. Each of the five decisions should have included two-way references to and from the master file.

RECOMMENDATION

The Chairman of BRPAA ensure that all decisions contain a detailed, accurate, written statement of the basis for decisions, and that each decision is signed by each member of the panel rendering the decision.

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS NOTIFIED PETITIONERS AND THE OFFICE OF TAX AND REVENUE OF DECISIONS TOTALING \$39,499,780 IN CASES THAT WERE NOT FINAL

The Auditor found that for Tax Year 2008, BRPAA provided notice to OTR⁸ and petitioners of decisions in cases BRPAA referred to as incomplete appeals.⁹ In fact, a final decision had not been rendered in these cases. However, tax bills were based on the amounts set forth in BRPAA notices to OTR.

⁸BRPAA Tax Year 2008 Appeal Decision Transmission Dates.

⁹BRPAA Incomplete Tax Year 2008 Appeals.

When BRPAA issues a decision, two key parties receive notice of the BRPAA decision. The petitioner receives a letter outlining the decision and the Office of Tax and Revenue (OTR) receives notification of the decision. If BRPAA makes a reduction in the assessment after March 31st, and the taxpayer paid the bill based upon the OTR assessment on March 31st, the reduced assessment will create a credit on the taxpayer's account. The taxpayer can either request a refund or let the credit be applied to the second half tax bill which is due on September 15th. Consequently, BRPAA's premature notification to OTR has tremendous administrative and financial implications not only for the taxpayer, but for the District. The recent tax refund scandal at OTR highlights the importance of ensuring that each step in the process that leads to the issuance of a tax refund complies with protocol. To determine the full implications of BRPAA's premature notification to OTR of decisions in incomplete appeals, the Auditor believes this matter warrants further investigation by the Office of the Inspector General.

The Auditor documented 13 notices of decisions for incomplete appeals that were also mailed to petitioners. Table IV presents the dates incomplete appeals were transmitted to OTR and mailed to petitioners.¹⁰

Table IV
BRPAA Tax Year 2008
Incomplete Appeal Decisions Sent to OTR and Petitioners*

Square and Lot	Address	Date Mailed to Petitioner	Date Transmitted to OTR
Sq 159 Lot 43	1740 N St NW	April 11, 2008	February 1, 2008
Sq 2665 Lot 42	1400 Fairmont NW	February 14, 2008	February 4, 2008
Sq 253 Lot 66	607 14 th St NW	February 6, 2008	February 1, 2008
Sq 387 Lot 868	450 10 th St SW	October 19, 2007	November 27, 2007
Sq 1232 Lot 73	3144 Dumbarton	April 9, 2008	January 31, 2008
Sq 1663 Lot 2025	4301 Military Rd	April 9, 2008	February 29, 2008
Sq 2991 Lot 80	5601 Georgia Ave	April 11, 2008	February 1, 2008
Sq 117 Lot 877	1112 19 th St NW	April 11, 2008	December 18, 2007
Sq 616 Lot 14	1416 North Capitol	April 11, 2008	February 4, 2008
Sq 2545 Lot 2120	1902 Kalorama Rd	April 11, 2008	February 20, 2008
Sq 785 Lot 810	113 3 rd Street NW	April 11, 2008	February 1, 2008
Sq 165 Lot 26	801 17 th Street NW	February 14, 2008	February 1, 2008
Sq 3499 Lot 2399	104 Michigan Ave	January 4, 2008	December 13, 2007

* Source : BRPAA Tax Year Decisions 2008 - Square, Lot, Date Mailed

¹⁰BRPAA Tax Year Decisions 2008 - Square, Lot, Date Mailed.

BRPAA titled the list of 589 incomplete appeals, “ Incomplete Tax Year 2008 Appeals”, which clearly indicated the decisions were incomplete. Again the Auditor questions why BRPAA advised OTR and the petitioner of a decision in an incomplete appeal.

Within the 589 incomplete appeals, BRPAA identified several categories of incomplete cases. Some decisions were categorized as incomplete because the decision was not written and the members who participated in the review did not sign the decision. In one such case, BRPAA notified OTR of a \$30,262,450 reduction in the real property tax assessment. Only one Board member signed the BRPAA decision form and there was no written explanation for the \$30.2 million reduction.

The most disturbing group of decisions categorized as incomplete, included cases that lacked a written basis for the decision but the blank BRPAA decision form was signed by members who participated in the review. It is a breach of the fiduciary duty of a member of BRPAA to sign a decision form attesting to the accuracy of the document if the form is incomplete and/or lacked a detailed, written statement of the basis for the decision. One example of a decision that lacked a detailed, written statement of the basis for the decision resulted in a \$7,450,970 reduction in the real property tax assessment. Despite the fact that the BRPAA decision form was stamped, “See attached decision” a written explanation for the \$7.4 million reduction was not attached. However, a handwritten notation, “Language to be done by Chair” was attached to the decision form. The incomplete decision form was signed by two Board members. Additional examples involved a \$343,760 reduction in the real property tax assessment and a \$1,442,600 reduction in the real property tax assessment.

BRPAA decisions should be supported by a written rationale. BRPAA’s present approach harms the integrity of the administrative hearing process and minimizes the importance and seriousness of matters reviewed by BRPAA. Table V presents examples of decisions totaling \$39 million issued for incomplete appeals.

Table V
BRPAA Decisions Issued for Incomplete Appeals*

Tax Year	Square	Lot	Amount of Reduction
2008	0770	0809	\$30,262,450
2008	0253	0059	\$7,450,970
2008	0139	0054	\$343,760
2008	2548	0819	\$1,442,600
Total			\$39,499,780

*Source : Records of the Board of Real Property Assessments and Appeals

On April 9, 2008, in testimony before the Committee on Finance and Revenue of the Council of the District of Columbia, BRPAA's Chairman testified that: "The Board received and finalized 3,439 tax year 2008 appeals". No reference is made to the 589 appeals that were listed on BRPAA's Incomplete Tax Year 2008 Appeals list. On February 27, 2006, in response to a request for information in preparation for the Board of Real Property Assessments and Appeals Oversight Hearing before the Committee on Finance and Revenue of the Council of the District of Columbia, BRPAA's Chairman discussed the term "finalized" stating:

"Again, this would depend on the specific definition of the term "finalized". As we understand, the Council's use of the term, we believe it to refer to a case which has been decided by the Board, and where the results have been transmitted to the Office of Tax and Revenue and copies of the written decisions mailed to property owners or their duly appointed representatives".

BRPAA must immediately cease the practice of advising OTR and petitioners of decisions in incomplete appeals cases. BRPAA must first finalize these cases, in all respects, in a timely manner. Steps should be taken to preserve the integrity of the real property tax assessment appeals process, reduce the administrative burden and costs created by this practice, and restore the confidence of residents and businesses in the integrity of the process.

RECOMMENDATIONS

1. The BRPAA Chairman immediately cease the practice of advising OTR and Petitioners of incomplete decisions and conduct the appeals process in a timely and appropriate manner that ensures that all appeals are completed by the statutory deadline.
2. The Office of the Inspector General should investigate the BRPAA practice of advising OTR and Petitioners of incomplete decisions.

BRPAA DID NOT REQUIRE PETITIONERS SIGN DECISION FORMS TO CERTIFY THAT STATEMENTS WERE TRUE AND CORRECT IN CASES TOTALING AT LEAST \$3,760,072, AS REQUIRED BY 9 DCMR § 2006.7

9 DCMR § 2006.7, states that the petition shall be certified by the petitioner as being true and correct to the best of his or her knowledge. The Auditor's examination found appeal forms that did not contain the required certification signature although the BRPAA decision form includes a place for a petitioner to sign certifying that statements made on the form are true and correct ¹¹ According to BRPAA representatives, in some instances, the requisite signature was included in a different file. As previously noted in this report, BRPAA members and staff should not be required to explain a BRPAA record that should be complete and understandable.

In general, the vast majority of these unsigned appeal forms were filed by real estate attorneys. The appeals resulted in significant property tax assessment reductions. For example, BRPAA reduced a tax assessment from \$894,800 to \$571,998 despite the fact that the BRPAA decision form was not signed by the petitioner.¹² In another case, BRPAA recommended a real property tax assessment reduction from \$4,140,660 to \$2,646,905 without requiring the petitioner to certify that the information on the assessment appeal form was true and correct.¹³ In a case involving the same petitioner and without requiring a certifying signature, BRPAA reduced the tax assessment from \$4,639,700 to \$2,965,915.¹⁴ Table VI presents examples of BRPAA assessment appeal forms reviewed by the Auditor that did not contain certification signatures.

¹¹BRPAA File for Tax Year 2006, Square 163, Lot 805, BRPAA File for Tax Year 2006, Square 163, Lot 806, BRPAA File for Tax Year 2008, Square 2548, Lot 0819.

¹²BRPAA File Tax Year 2007, Square 4365, Lot 0805.

¹³BRPAA File Tax Year 2007, Square 4367, Lot 1.
BRPAA File Tax Year 2007, Square 4373, Lot 0001.

Table VI
Examples of BRPAA Reduction Issued without Certification

Tax Year	Square	Lot	Amount of Reduction
2007	5422	02	\$269,730
2007	4365	0805	\$322,802
2007	4367	1	\$1,493,755
2007	4373	0001	\$1,673,785
Total			\$3,760,072

RECOMMENDATION

The BRPAA Chairman require all petitioners to sign the form certifying the truth and accuracy of statements made on the BRPAA appeal form.

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS DID NOT HAVE A PROCEDURE TO PREVENT BOARD MEMBERS FROM SERVING ON THE SAME PANEL FOR MORE THAN ONE TAX YEAR

9 DCMR § 2003.3, states that no three members shall serve together on the same panel for more than one tax year. According to BRPAA's Chairman, in an effort to increase scheduling flexibility, BRPAA abolished assigned panels. Assigned panels were replaced with an informal approach to the assignment of cases. Under the informal approach, BRPAA members provided the Administrative Officer with their schedules and based on the availability of members, cases were assigned.

According to BRPAA members and staff, all too frequently members disregarded the schedule and failed to attend hearings. In addition to scheduling issues, vacancies on BRPAA's board also adversely affected BRPAA's hearing process and schedule. As a result of low participation and vacancies, BRPAA's cases were reviewed by only a few BRPAA members. It is possible that the increased workload and disparate participation by BRPAA members contributed to many of the management and administrative deficiencies discussed in this report.

The Auditor found that under the informal approach to case assignment BRPAA did not track the number of times that the same three members served together on the same panel or the number of times the same member decided appeals involving the same property. Since BRPAA did not track the number of times that the same three members served together on the same panel, BRPAA did not possess the necessary information to comply with the prohibition against having the same three members serve together for more than one year.

RECOMMENDATION

The BRPAA Chairman establish panels to review cases and ensure that no three members serve together on the same panel for more than one tax year.

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS DID NOT MAINTAIN A RECORD OF THE APPEALS THAT REQUIRED THE RECUSAL OF A MEMBER OF THE BOARD

9 DCMR § 2004.2, states that a member shall recuse himself or herself from participating in any hearing, discussion, vote, or appeal involving real property with which the member has had any direct or indirect financial dealings in the two-years prior to the date of the appeal.

BRPAA members are required to file a Financial Disclosure Statement with the Office of Campaign Finance (OCF). Financial Disclosure Statements are available on the OCF website. Despite the availability of financial disclosure information, BRPAA did not review OCF records to preclude members from participating in cases that required their recusal. At the present time, the only record that BRPAA has regarding the recusal of members from hearing appeals in certain cases is a handwritten notation on the file jacket of a case. BRPAA must implement a formal documented recusal procedure to ensure that BRPAA members do not participate in cases that present a real or perceived conflict of interest. It degrades the integrity of the assessment appeals process to simply note a conflict of interest on a file folder with no formal documentation of the reason for recusal. BRPAA should maintain a separate centralized file of cases that require formal recusal, the BRPAA members that recused themselves, and reasons for their recusal. To increase public confidence in BRPAA's operations, the recusal file should be available to the public for review. As previously stated, BRPAA must conduct fair and impartial hearings. The failure of BRPAA to implement an effective and transparent recusal procedure undermines the ability of BRPAA to fulfill its fundamental obligation to respect the public trust and act with impartiality on behalf of the public.

RECOMMENDATIONS

1. The BRPAA Chairman develop and implement a written procedure to maintain a sufficiently documented record of appeals that required the recusal of a member of BRPAA.
2. Maintain written recusals in a separate file that is available for public review.

THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS DID NOT SUBMIT A COMPREHENSIVE ANNUAL REPORT TO THE COUNCIL OF THE DISTRICT AND THE MAYOR

D.C. Code § 47-825.01 (l)(1), states that the Board of Real Property Assessments and Appeals shall present to the Council and the Mayor an annual report on its operations for the preceding tax year. According to the statute, the annual report shall include statistics regarding appeals and the revenue impact of decisions. The statute also states that the annual report shall include, “an analysis of the Board’s operations for the year, including the identification of any problems and recommendations for dealing with the problems...”

In response to a request for copies of BRPAA annual reports issued during the audit period, the Chairman provided a one page document for each year. According to the Chairman, the one page documents were annual reports. The one page annual reports contained statistical information such as the number of cases sustained, reduced, and withdrawn. At best, the one page documents would be attachments to a traditional annual report. (See Appendix I for an example of the annual report that BRPAA submitted to the Council and the Mayor.)

Members of BRPAA are wrestling with a wide range of issues including the lack of clarity in regulations regarding the role of the Chairman to appoint members to Committees, whether BRPAA would be better served by an Executive Director rather than an Administrative Officer, and how to address the problem of the disparate participation of Board members. The annual report is an appropriate vehicle to highlight and address these issues.

RECOMMENDATION

The BRPAA Chairman develop and submit a comprehensive annual report to the Mayor and Council, as required by D.C. Code § 47-825.01(l)(1). This report should include the requisite statistical data, address issues and problems that face BRPAA, and outline recommendations to address issues, problems, and challenges.

THE CHAIRMAN OF THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS ACCEPTED CAMPAIGN CONTRIBUTIONS FROM INDIVIDUALS WHO FILED APPEALS WITH THE BOARD

In 2006, the BRPAA Chairman was a candidate for the Ward 3 seat on the Council of the District of Columbia. Based on a review of the Report of Receipts and Expenditures that the Chairman filed with the Office of Campaign Finance, the Auditor found donations to the Chairman's political campaign from commercial real estate lawyers and real estate management firms who represented clients before BRPAA. The Chairman also accepted a \$500 donation from a real estate political action committee.¹⁵ The following donations were made by real estate lawyers and real estate management firms who represented clients before BRPAA;

Castle Management	5/30/06	\$ 500.00
Keith McIntosh ¹⁶	7/14/06	\$ 400.00
Keith McIntosh	4/11/07	<u>\$ 400.00</u>
		\$1,300.00

Regarding the \$1,000.00 donation from Castle Management, the Auditor notes that on January 4, 2006, BRPAA reviewed a tax assessment appeal that was filed by Stanton Glenn. Stanton Glenn lists the same business address as Castle Management. BRPAA agreed to a \$984,335 reduction in the Tax Year 2006 assessment of the property represented by Stanton Glenn.¹⁷ In addition, on December 15, 2006, BRPAA reviewed another appeal that was brought by Stanton Glenn. BRPAA agreed to reduce the Tax Year 2007 assessment by \$2,003,100.¹⁸ Although the

¹⁵Washington DC Realtors PAC, August 18, 2006, \$500, Paul Strauss, Report of Receipts and Expenditures, District of Columbia Office of Campaign Finance.

¹⁶Keith McIntosh brought the following matters before BRPAA : BRPAA File, Tax Year 2007, Square 4545, Lot 121, BRPAA File, Tax Year 2007, Square 4545, Lot 135 and BRPAA File, Tax Year 2008, Square 3499, Lot 2399. Paul Strauss was a member of the BRPAA panels that reviewed each of these appeals.

¹⁷BRPAA File, Tax Year 2006, Square 5879, Lot 0011.

¹⁸BRPAA File, Tax Year 2007, Square 5879, Lot 0011.

Chairman did not participate on either of the panels that reviewed the two Stanton Glenn appeals, it is imperative that BRPAA's Chairman and the Board as a whole avoid the appearance of impropriety.

While, at this point, it appears that the above referenced donations did not violate any laws, the Auditor is extremely concerned that the donations create the appearance of impropriety and raise issues about the potential risk from appointing a political office holder to also perform quasi-judicial governmental responsibilities. Commercial real estate attorneys and commercial real estate management firms increase their clients profits by successfully representing their clients in tax assessment appeal cases. Fees for commercial real property tax assessment appeals are based on flat fees or contingency fees. In general, in contingency fee arrangements firms receive 25% to 30% of the tax savings. For example, if after the first level appeal the proposed property value was \$1 million and BRPAA reduced the proposed property value to \$500,000 with a tax savings of \$50,000 the firm would receive 30% of the tax savings or \$15,000.

Given the millions of dollars that are at stake in many of the District's commercial real property tax assessment appeals, the Chairman of BRPAA must be scrupulous in his dealings with commercial real estate attorneys and commercial real estate management firms. It is essential to the integrity of the BRPAA hearing process that the Chairman conduct himself in a manner that is above reproach and does not create the perception that the Chairman may be using his position for personal or political gain. By accepting campaign donations for his Ward 3 Council bid from commercial real estate attorneys and commercial real estate management firms who represented clients before BRPAA, the Chairman blurred the line between his political interests and his official responsibilities thus potentially tainting the reputation of BRPAA.

RECOMMENDATIONS

1. The BRPAA Chairman should not accept campaign donations from individuals who appear before the Board of Real Property Assessments and Appeals.
2. BRPAA members not simultaneously hold elected and appointed positions.

AUDITORS CONCERNS REGARDING THE MANAGEMENT OF BRPAA

The current Chairman began his affiliation with BRPAA in 1996. During this twelve year period, the Chairman had time to become familiar with the laws, rules, and regulations that govern BRPAA. Despite this long history with BRPAA, the Auditor's examination found that the Chairman ignored regulations, conducted himself in a manner that created the appearance of impropriety or lack of integrity, accepted campaign donations from organizations that represented clients before BRPAA, and failed to effectively manage and improve BRPAA's operations, performance, and stature. Specifically, BRPAA and its Chairman:

- Failed to implement an effective records management system.
- Issued decisions that did not include complete, detailed, accurate written statements of the basis for decisions totaling billions of dollars in real property tax assessments.
- Failed to hold mandated annual administrative meetings.
- Failed to consistently require petitioners to certify the truth and accuracy of statements made to BRPAA.
- Informed the Office of Tax and Revenue and petitioners of decisions in cases that were incomplete.
- Failed to establish a formal system to document the recusal of members of BRPAA.
- Failed to submit mandated annual reports of sufficient detail regarding BRPAA's operations to the Council and the Mayor.

The Auditor's review found that the Chairman did not provide BRPAA with the competent leadership that the important work of BRPAA requires thus jeopardizing the integrity of BRPAA and diminishing public trust and confidence in BRPAA's decisions. As Chairman, he did not ensure the implementation of policies that encouraged transparency and increased access to information, and thus provided a dubious level of service to residents and businesses of the District of Columbia.

CONCLUSION

The mission of BRPAA is to conduct timely, fair, and transparent real property assessment hearings. For many property owners, the real property tax is the largest tax paid to the District. Given the financial impact of real property taxes for property owners and the District government, it is imperative that the real property tax assessment and assessment appeals processes are

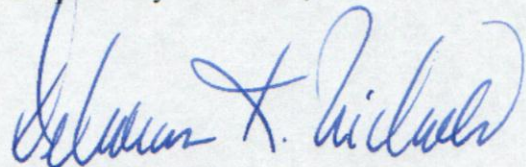
administered in a fair, accurate, and efficient manner. BRPAA's operations have suffered from multiple failures including the Board's failure: (1) to provide sound, progressive, engaged leadership; (2) to comply with statutory mandates; and (3) to implement administrative reforms.

BRPAA's administrative challenges included: an ineffective records management system; a website that provided insufficient information about the real property tax assessment appeal process; and no record of appeals that required the recusal of a BRPAA member. BRPAA should address these administrative issues by: implementing a records management system that relies on information technology; including BRPAA decisions on the BRPAA website; and developing a written procedure to maintain a record of appeals that required the recusal of a BRPAA member.

The Auditor's examination also found that BRPAA did not comply with statutory mandates to: hold annual administrative meetings; include accurate written statements of the basis for decisions; require petitioners to certify to the accuracy of statements made to BRPAA; and prepare comprehensive annual reports on the operations of BRPAA. Compliance with these mandates will substantially improve the real property tax assessment appeal process.

In addition to administrative shortcomings and failure to comply with statutory requirements, BRPAA also notified the Office of Tax and Revenue of incomplete decisions. This practice should be carefully reviewed by the Office of the Inspector General.

Respectfully submitted,



Deborah K. Nichols

District of Columbia Auditor

APPENDIX

BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS (DA)

FISCAL YEAR 2008 ANNUAL REPORT

Class		Number of Cases						Total	* Estimated	
		Sustained	Reduced	Increase	Withdrawn	Stipulation	Recommended		Assessment	Revenue
0		16	20	0	1	2	2	41	Difference	Impact
	Percent	39.02	48.78	0	2.44	4.88	4.88		-11,656,083	0
1		997	533	0	172	199	33	1,934	-187,034,547	1,589,793
	Percent	51.55	27.56	0	8.89	10.29	1.71			
2		546	506	2	49	55	24	1,182	-2,897,437,388	44,352,591
	Percent	46.19	42.81	0.17	4.15	4.65	2.03			
3		49	21	0	2	1	1	74	2,011,009	100,550
	Percent	66.22	28.38	0	2.7	1.35	1.35			
Total		1608	1,080	2	224	257	60	3,231	-2,598,139,027	46,042,934
Report Total		897	2,178	1	107	40	19	3,231	-2,598,139,027	46,042,934

*The revenue impact is estimated based on application of applicable tax rates to assessment difference. Actual revenue impact may be lower based on the application of selected tax credits.

AGENCY COMMENTS

AGENCY COMMENTS

On May 19, 2008, the Office of the District of Columbia Auditor submitted a report in draft form for review and comment to the Board of Real Property Assessments and Appeals. The Auditor received oral comments from BRPAA. As appropriate, the Auditor made changes to the draft report in light of those comments. On August 14, 2008, the Auditor submitted a revised report in draft form for review and comment to BRPAA. The Auditor received written comments from BRPAA on August 22, 2008.

The written comments of BRPAA along with the Auditor's response to the comments are included with this report. BRPAA's comments included several attachments. Due to their size, the attachments are not included with this report. Attachments are available for review at the Office of the Auditor upon request.

AUDITOR'S RESPONSE TO BRPAA'S COMMENTS

The Auditor appreciates comments on the revised draft of this report that were provided by the Board of Real Property Assessments and Appeals (BRPAA). The Auditor made revisions to the final report, based on these comments, and also offers the following response to certain BRPAA comments where appropriate.

1. **BRPAA Comment:** With regard to administrative meetings, BRPAA agreed with the Auditor's finding that, "all of the 16 meetings the auditor (sic) believes should have occurred, did not...Given the reality that it was difficult enough to get a quorum of Board members sufficient to hear all of the necessary cases to meet BRPAA's primary functions, the practical difficulties in getting sufficient participation for these non-essential meetings were substantial."

Auditor's Response: 9 DCMR § 2001.5 required BRPAA to meet at least four times annually. The Auditor disagrees with BRPAA's characterization of the meetings as "non-essential". The report stated that in addition to complying with the statutory mandate, administrative meetings provide the public with insight into BRPAA's operations. The Auditor affirms the finding that BRPAA did not hold the requisite number of meetings.

2. **BRPAA Comment:** BRPAA disagreed with the finding that at least \$13.7 million in BRPAA's decisions did not include accurate, detailed, written statements of the basis for decisions as required by 9 DCMR § 2020.7. "Although the Auditor did cite several instances where some Boardmembers (sic) failed to meet this requirement, the finding that the Boardmembers as a whole "did not substantially comply" is not supported by the audit's findings."

Auditor's Response : BRPAA disagreed with the finding that BRPAA's decisions did not include written statements of the basis for decisions, despite the fact that BRPAA stated : "the Auditor did cite several instances where some Boardmembers (sic) failed to meet this requirement...." and "The fact that the result of the decision may be numerically sound and consistent with market data does not excuse the failure to comply with the regulatory requirement of a proper narrative." The Auditor stands by the finding that Board members did not comply with the statutory mandate of detailed, written statements of the basis for decisions.

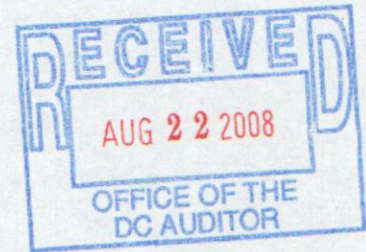
3. **BRPAA Comment:** BRPAA contends that, “as a general rule, no decision or information is mailed or otherwise transmitted to the petitioner that is not final.”

Auditor’s Response: While it may not have been “a general rule”, documentation provided by BRPAA indicates BRPAA transmitted incomplete decisions totaling \$39 million dollars to petitioners and OTR and supports the Auditor’s conclusion that BRPAA transmitted incomplete decisions to OTR and petitioners. This conclusion is further reinforced by BRPAA’s statement, “ To avoid prejudice to the taxpayers, BRPAA attempts to make sure OTR has the numerical values as soon as possible after the panel makes their decision, even though the detailed language of the written narrative may not yet be finalized.” The report retains the finding that BRPAA provided OTR notice of decisions that were not finalized and the Auditor emphasizes the importance of the Office of the Inspector General investigating this matter.

4. **BRPAA Comment :** BRPAA acknowledged that the Chairman of BRPAA accepted campaign contributions from individuals who filed appeals with the Board, however BRPAA states, “they represent a relatively small amount of the total raised in the campaign.”

Auditor’s Response : Regardless of the relative size of the contributions, the Auditor continues to assert that the Chairman should have conducted himself in a manner that was above reproach. The final report retains the assertion that by accepting campaign contributions from individuals who appeared before the Board, the Chairman blurred the line between his political interests and his official responsibilities.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS



August 22, 2008

Deborah K. Nichols
Office of the District of Columbia Auditor
717 14th Street, N.W. Suite 900
Washington, DC 20005

Dear Ms. Nichols:

Thank you for the opportunity to discuss and provide information to the draft report, "Auditor's Review of the Board of Real Property Assessments and Appeals Operations". Based on my review of the draft findings and recommendations, the following comments are offered, and in some cases corrections are recommended:

Section – Background (page 2)

Although the real property tax is identified correctly as one of the District's largest revenue sources, this section seems to suggest that BRPAA adjusts actual existing tax assessments, as opposed to mere proposed tax assessments. Specifically, your report states that, "In Tax Year 2008, BRPAA made downward adjustments to **real estate tax assessments** totaling" (Emphasis added).

Comment: This statement is incorrect. In accordance with D.C. Code 47-825.01, the Board of Real Property Assessments and Appeals can adjust only the **proposed** real property assessments. The real property assessments which are appealed are based on the proposed real property assessments, as determined by the Office of Tax and Revenue. At the point that the proposed assessment is before the Board, it is not yet an actual tax assessment from which the District is entitled to receive revenue. Once the proposed number becomes an actual tax assessment, the BRPAA does not have jurisdiction to make adjustments, downward or otherwise. We believe that it is important to note that the Board does not issue tax refunds, or any other direct payments to property owners, or to taxpayers.

Thus, the presumption that the Board's impact on DC revenue is only negative is shortsighted and misleading. By correcting errors in proposed assessments before they are finalized, it is more accurate to state the BRPAA actually produces a positive revenue impact for the District of Columbia. To put it more simply, if the government receives real property tax revenue that, because of Assessor error, it would not otherwise be

entitled to, the owner can recover the wrongfully assessed amount in court proceedings, and receive not only a refund of their overpayment, but a statutory rate of interest as well. When the erroneous assessment is corrected prior to the initiation of court litigation, the District does not have to pay interest, and is also spared the litigation costs. By avoiding the need for the District to issue property tax refunds later, (which, pursuant to statute require the District of Columbia to pay interest to the receiving taxpayer), the District is saved money.

This comment also applies to tax years 2005, 2006 and 2007, accordingly.

Finally, while BRPAA,, like all agencies, is required to operate in as transparent manner as possible, the Auditor does not mention that a critical obligation of the Board is to protect the confidentiality of taxpayer records, pursuant to a specific statute, DC Code, 47-8** which makes inadvertent release of certain proprietary data a criminal misdemeanor.

Section – Findings regarding BRPAA Records management (Pages 4-5)

The BRPAA maintains a large volume of records. Because the number of appeals, (and consequently the number of records), varies from year to year, it is not possible to determine in advance how much storage space will be generated by these records. The statute requires that the BRPAA maintain three years of records internally, and two additional years in the D.C. Office of Records. Annually, records are sorted and moved into boxes for archiving purposes. During the audit review (inside of the BRPAA office), this annual process was underway. This is the only time that official government records storage cardboard boxes are used by the agency. Records were being moved from the outer file cabinets to accommodate the recently completed 3,526 tax year 2008 appeals and to archive the older records.

To further assist the BRPAA in maintaining an efficient record management system, funding was allocated in this year's budget to address the current record keeping system. The Office of Chief Technology Officer and an outside contractor were consulted to address the issue of transferring paper files to digital format. Although this project will be extensive, implementation of the first phase has already begun and is presently underway.

Although the Auditor has recommended that the BRPAA Chairperson implement changes to the record keeping system, the current governing structure of the Board as set forth in Chapter 20 of Title 9 of the District of Columbia Municipal Regulations, does not actually give the Chairperson direct authority over the records management system

Section – Findings regarding BRPAA meetings for Administrative Matters (page 6)

The assertion that only two administrative meeting occurred, over the entire audit period, is false. In addition to the December 15, 2005, and November 16, 2006 meeting, BRPAA members met together on the following dates;

December 15, 2004 at 2:00 p.m.
November 7, 2005 at 2:00 p.m.
December 15, 2005 at 2:00 p.m.
August 15, 2006 at 10:00 a.m.
August 16, 2006 at 2:00 p.m.
November 16, 2006 at 2:00 p.m.
September 19, 2007 at 10:00 a.m.
September 20, 2007 at 10:00 a.m.
September 20, 2007 at 2:00 p.m.
January 10, 2008 at 12:00 p.m.

While several of these meetings also included training sessions, as well as administrative matters, all of these meetings were open to the public, and were in fact attended by members of the public, as well as employees of the Office of Tax and Revenue. To document these meetings, audio tape recordings of the Board's proceedings on these dates were provided to the Auditor prior to the issuance of this draft report. 9 DCMR 2018.2 states that Board proceedings are to be recorded on audio tape. This year, the Board began the practice of creating written transcripts of its public meetings, even though Section 2018.4 states specifically that "it shall not be necessary to make a written transcript".

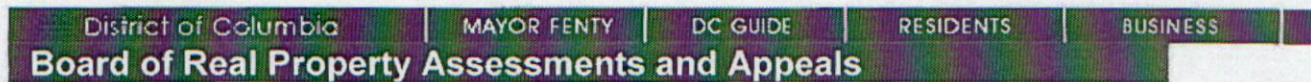
Finally, some of the statements by the Auditor in this section appear to be editorial in nature and simply not supported by actual findings. The assertion that the Chairman did not receive input from BRPAA members outside of these meetings is simply not true. The Chairperson routinely met with and spoke to individual members throughout the appeals season. The statement that "the Chairperson failed to facilitate dialogue amongst BRPAA members on a broad range of issues" is also not supported by any facts in the record. The reality is that the Chairperson engaged in numerous activities, both formal and informal, designed to "facilitate dialogue" amongst members, including the purchasing of meals, and the organization of selected social activities, including holiday parties where input from members and dialogue on a broad range of issues did in fact occur.

Regardless of whether the Board met twice for administrative matters, or twelve times, as we believe the audio recordings substantiate, it is conceded that all of the 16 meetings the auditor believes should have occurred, did not. While the auditor may be correct that additional meetings could have been helpful, it must be remembered that in addition to these so-called administrative meetings, BRPAA members met together on an almost daily basis for thousands of appeal hearings per year. Other than a few formal functions, such as the appointment of Committee members, or the election of BRPAA officers, which by regulation must be done by the Board as a whole, the majority of the Board's actual work is conducted during the actual hearings. Given the reality that it was difficult enough to get a quorum of Board members sufficient to hear all of the necessary cases to meet BRPAA's primary functions, the practical difficulties in getting sufficient participation for these non-essential meetings were substantial.

Section - Findings regarding the BRPAA WEBSITE – (page 7)

Although the Auditor is critical of the BRPAA website, and states that it does not provide guidance to help residents understand the appeals process, and how to prepare an effective appeal, a review of the website content suggests the auditor is mistaken in this conclusion. Specifically, the Auditor alleges that the website should “educate the public on elements that are most important on appeal, such as square footage versus the number of bedrooms and **may advise petitioners to submit photo’s proof of recent sales.**” **(emphasis added).** A casual review of the BRPAA website indicates that this specific content which the auditor claims is lacking does in fact appear on the website, and has so appeared since the beginning.

ACTUAL BRPAA WEBSITE CONTENT:



Preparing to File an Appeal

The following information will help ensure that your appeal form is filled out properly. Once you have the necessary documents and filing requirements, you should view the [instructions for filing an appeal](#).

Before Filing an Appeal

- You should have received a “Final Notice of First-Level Decision” from the Office of Tax and Revenue
- Have an estimate of what you believe to be the correct market value of the property and be prepared to state why you believe the proposed assessment is in error
- Decide whether or not you desire a personal appearance before the Board to explain your appeal. Indicate your preference by checking yes or no on line 8 of the [Real Property Assessment Appeal Form*](#)
- Be prepared to justify your estimate of value with supporting information
- Collect all available supporting evidence to be submitted with the appeal. In order to be considered by the Board, all supporting evidence must be submitted when the appeal is filed

Residential Forms and Documents Requirements

Attach supporting documents such as:

- Photographs – interior and/or exterior
- Appraisals – recent and within valuation period

- Settlement statements – HUD 1 forms
- Sales data – multiple listings, sold properties, including sales information regarding subject property (listed, sold, expired listing, withdrawn, etc.)
- Assessment data found on the Office of Tax and Revenue website

Commercial Forms and Documents Requirements

Apartment Buildings (larger than 4 units)	Cooperatives	Hotels /Motels	Office Buildings/Stores	Other Income Producing Properties	New Construction
Copy of Income-Expense Form (FR-308); leases, appraisals (within one year); other applicable documents.	Copies of Real Property Cooperative Housing Questionnaire (FP-437)	Copies of Hotel-Motel Income-Expense Statement (FP-421) and Income-Expense Form (FR-308); appraisals (within one year); other applicable documents.	Copies of Annual Leasing Report (FP-422) and Income-Expense Form (FR-308) other applicable documents.	Income Expense Form (FR-308); leases, appraisals (within one year)	Schedule of Costs Form (FP-315), other applicable documents.

Note: Properties exempt from these requirements by the Office Of Tax and Revenue are not required to file these specific documents with the Board.

Resources to Obtain Information

- Recent sales information obtained from newspapers, online property sales databases, local realtors, and so forth
- Office of Tax and Revenue website
- Neighborhood assessment and/or sales information
- Office of the Recorder of Deeds
- Electronic resources and roll books within the Office of the Board of Real Property Assessments and Appeals

Notwithstanding the Auditor's error in determining what actually appears on the website, we do not disagree with their suggestion that the addition of a Frequently Asked Questions section would be a positive development. We do note that the website currently features an "ASK THE CHAIRPERSON" section, where members of the public can get their specific questions answered. However, adding a general question section is certainly a fine idea. Throughout the process of developing the website, the BRPAA

Administrative Officer has been currently in the process of reviewing websites from other comparable jurisdictions' Boards, to determine best practices.

Section – Findings regarding Appeals that did not contain a detailed decision (page. 8)

The auditor correctly cites 9 DCMR 2020.7, which requires a detailed written statement of the basis for the decision. Although the Auditor did cite several instances where some Boardmembers failed to meet this requirement, the finding that the Boardmembers as a whole “did not substantially comply” is not supported by the audit’s findings. Because the Auditor did not cite the specific cases by square and lot number on page 8, we are unable to address the specifics of these anecdotal examples.

In the other cases described as “troublesome” based on the Auditor’s own description of the Board’s language, we believe the decision as the Auditor described it would be sufficient to meet the requirements of this regulation. Specifically, the Auditor alleges that in an uncited case where the “BRPAA recommended a \$1,315,217 reduction...” the simple notation that both parties agreed on the new assessment is appropriate. 9 DCMR 2020.6 states that the BRPAA must concur with an agreement between the Office of Tax and Revenue and the Petitioner. The BRPAA simply concurs. Whether the decision simply cites the rule numerically, or describes the undisputed factual basis which triggers the same rule, is not materially significant. Either one is and should be sufficient to comply with both the letter and spirit of the regulation.

A review of the other cases cited by the Auditor, including those in Table III reveals that, with one exception (TY 2007, Sq. 81 - Lot 829), the decision did not contain a narrative part of sufficient detail to comply with the requirements of 9 DCMR 2020.7. Four of these five cases were the result of hearings on a specific day¹, and are more likely the result of a breakdown of procedures on that one particular day before that one specific panel² than the pattern of substantial non-compliance suggested by the Auditor. While the amount of the reductions is not insignificant, based on the total BRPAA case load, and potential revenue at issue it represents more of an isolated incident than a substantial pattern of non-compliance.

It should be noted that the Chairperson of this specific panel in question, is not an attorney. Although she is a talented and respected DC licensed appraiser, she lacks formal legal training. The fact that the result of the decision may be numerically sound and consistent with market data does not excuse the failure to comply with the regulatory requirement of a proper narrative. Although the Auditor did not include any specific recommendations designed to address this situation, the BRPAA Chairperson has been on record in numerous occasions requesting both the appointment of more attorneys by the Executive, to fill the existing vacancies, as well as the hiring of staff attorneys or trained paralegals to assist with the drafting of narrative decisions.

¹ December 1, 2006

² P. Ianotti, T. Boykin, and C. Mayo

Findings regarding BRPAA Procedures not producing a clear audit trail. (page 10)

BRPAA's review of the five cases cited by the auditor in this section indicates that each of them complies fully with all regulatory requirements. Although the narrative portion of these cases was in fact "cut and pasted", the language used by the Panel in all five cases accurately reflected the Pro-forma NOI information as indicated in the Assessor's Comments, and represented correctly the subject property's historical net operating income. The fact that this property had five specific square and lot numbers, and that each parcel had a separate street address is of no consequence. Each of these five individual lots was part of one consolidated economic unit, and operated as one economic unit, and owned by a common property owner. In this case, the Panel chairperson properly consolidated the cases, conducted one hearing, and decided the matter appropriately. Both parties agreed with this approach, and filed only one set of pleadings applicable uniformly to the subject property.

Multiple lots within the same property are not an uncommon situation in real estate valuation. In this specific example, the Auditor's confusion regarding these decisions is more likely the result of a lack of required specialized knowledge in the specific subject matter, than the allegedly inconsistent procedures used in documenting these decisions.³

Finally, although the Auditor recommends that the BRPAA Chairperson take action in this regard, in the absence of a request for re-hearing pursuant to 9 DCMR 2019, the Board Chairperson has no authority to intervene in the proceedings of a BRPAA panel, unless he or she has been assigned to it. To the extent that action in this regard is warranted, it is the Panel Chairperson⁴ who must ensure compliance with these recommendations.

Findings alleging BRPAA notified petitioners and the OTR of BRPAA decisions that were not final. (page 22)

These allegations are false. The Auditor may be referring to the fact that the BRPAA transmits an electronic copy of decisions via the appeals tracking system to the Office of Tax and Revenue, independent of the actual mailing of the decision to both parties. BRPAA contends that, as a general rule, no decision or information is mailed or otherwise transmitted to the petitioner that is not final.

The use of a joint centralized Appeals tracking system is done pursuant the request of the Office of Tax and Revenue, and is done for the purpose of ensuring that the actual tax bills reflect the numerical results of BRPAA decisions. This Appeals tracking system permits the uploading of numerical values only, and not the actual detailed decision

³ GAO Auditing Standards require that those conducting the audit possess the needed technical knowledge and competence standards prior to beginning an audit. Specifically, real estate valuation is a specialized subject matter in which some expertise would be required. SEE GAO Standards Section 3.43(5).

⁴ See DCMR 2003.1, 2003.4

required by 9 DCMR 2020.7. BRPAA is presently required to finalize all numerical decisions on or before February 1 of each year. Once these numerical values are finalized, OTR is able to generate correct tax bills. Because the number of cases has increased exponentially from year to year, BRPAA has had to deal with more and more cases in a shorter amount of time. To avoid prejudice to the taxpayers, BRPAA attempts to make sure OTR has the numerical values as soon as possible after the panel makes their decision, even though the detailed language of the written narrative may not yet be finalized. While it is conceded that this is not ideal, the alternative would be worse for both the taxpayers and OTR. If OTR were to be deprived of these numbers unless and until all of the narrative language was written, almost none of the tax bills for appealed properties could be issued correct or timely.

In the specific case of Table IV, we contend that the auditor is mistaken in the contention that these cases were mailed to petitioners in an incomplete state. A review of all 13 case files which appear on that specific table indicates that the decisions that actually were mailed to the taxpayers were, in fact, complete. We believe that the Auditor based her false conclusion that the decisions were mailed in an incomplete form on the fact that these 13 cases were listed on an internal document, which listed a series of cases which were still pending at the time. This undated document was prepared as a working document, and made available to the Auditor at her request, despite the fact that it dealt with cases still pending after December 31, 2007.⁵

Most of the narrative language in these cases was finalized in late January or early February of 2008. The fact that the numerical value was electronically transmitted to OTR in advance of the narrative finalization is simply a result of inter-agency cooperation for the purpose of ensuring accurate tax bills. 9 DCMR 2010.2 specifies 1st class mail as the general method for providing notice of decision, 2020.12 makes clear that this is only required "unless the petitioner or the Deputy CFO requests otherwise". Since the Deputy CFO has requested that the numerical values be transmitted electronically via the tracking system as soon as possible, nothing about this process violates any section of the law, or of any applicable regulation.

We do concur that no decision should be mailed to the party that is not complete and final with the appropriate narrative. As to the Auditor's recommendation that we cease the practice of electronic transmission of the numerical value without the narrative language to OTR, we believe that this is a question better directed to OTR. While BRPAA could withhold release of the numerical values until all narratives are drafted, the result would likely be prejudicial to both OTR and taxpayers. We therefore disagree with the Auditor's recommendations in this regard.

Section – BRPAA did not require the petitioners to certify that statements are true and correct (page 20)

The Auditor has provided three copies of forms where they allege the Petitioner has failed to sign their name on the appropriate line in Box #9 of the BRPAA Appeal Form.

⁵ This is apparently beyond the scope of the audit as set forth by the Auditor on the first page of this report.

In at least two of these three cases, the Auditor acknowledges that the cases were part of a consolidated case involving multiple lots, and that in the primary case file which lists all of the squares and lots, the box was in fact signed by the taxpayer's attorney. Although the Auditor has suggested that this is somehow problematic, the consolidation of contested matters with common parties, arising out of the same transactions, matters, or occurrences, is a routine and proper practice followed by all of our courts, and many DC Administrative agencies.

Finally, although in the 3rd matter, TY' 08 Sq. 2548 – Lot 819, the signature line in the Box was did in fact lack a human signature in cursive script, it does not legally follow that the Petitioner's representative did not in fact certify the truthfulness of the information provided in the petition. This matter has been discussed with various attorneys, all of whom agree that taxpayers who would make false representations to BRPAA in appellate filings could not point to the mere lack of a signature as a defense to a prosecution for perjury pursuant to the appropriate section. The Auditor claims that "the vast majority of the unsigned appeal forms were filed by real estate attorneys". As officers of the court, these attorneys are under an ongoing duty of candor to BRPAA and any other government adjudicatory tribunal. The physical signature is not necessarily a legal requirement to certify truthfulness. We also note that DC Superior Court, (and other judicial forums) which have moved to an e-filing system, no longer have a requirement for a cursive script personal signature to certify the truthfulness of filed pleadings, but still maintain the legal ability to sanction attorneys and prosecute perjury.

Nevertheless, in response to this recommendation, the agency will refine its processes to include a review all incoming appeals, for completion of all signatures on each individual form.

Section – BRPAA did not have procedures to prevent members from serving on the same panel for more than one tax year. (Page 25)

The allegation that the BRPAA Chairperson abolished year long assigned panels is inaccurate. From a historic perspective, the former chairperson, Libby Kavoulakis abolished the year-long assigned panel composition. Frankly, given the lack of availability of some BRPAA members, without the assistance of the other members that were most available to hear cases, the BRPAA would stand in jeopardy of not completing the requisite caseload.

The Board has made every effort to comply with the requirement that "no two members shall serve together for two consecutive tax years", based on the current composition, vacancy factors, and levels of participation, this requirement is incompatible with the completion of the current workload. While the intent of this requirement is admirable and worthy, the actualization of this requirement is statistically impossible. The Board hears and decides, in excess of, 3,000 cases annually. The cases must be finalized between the months of September through February 1st. The average Board composition is 12 members, of which only half of the members consistently participate. The members

that consistently participate are the same members that commit their time and efforts on an annual basis.

Section – BRPAA did not maintain records of recusals except in the cases where the actual recusal took place. (page 26)

While the BRPAA will bring this issue before the Board for implementation, we are pleased that, notwithstanding the recommendations, there were no documented cases that the Auditor cited, where members who should have recused themselves, in fact did not. Regarding the reference to the OCF FDS forms, we note that a majority of the situations in which members were required to and did in fact recuse themselves, would not have been apparent based on a review of this OCF form. It is not accurate to state that the only records maintained by the Board are the handwritten jacket entries in the specific case file. Each audio recording of the hearing also contain the record of the recusal. The statement by the Auditor that this practice “degrades the integrity of the process” is neither true, nor fair. This is the same practice which the DC Superior Court, and Court of Appeals follow. Although we are not aware of any other judicial or quasi-judicial forum which maintains a record of recusals in the manner suggested by this report, BRPAA remains committed to the highest ethical standards, and will move to consider all of these recommendations.

Section - Annual Report (page 28)

The BRPAA notes that the Annual reports, while admittedly brief, did provide the basic information, consistent with and required by the DC Code. Notwithstanding the formal compliance, BRPAA will make efforts in the future to expand the BRPAA Annual Reports.

Section – Chairman’s Ward 3 Campaign reported contributions from a political action committee and individuals who may have filed appeals (page 29)

Although the Auditor is correct in noting that these contributions did not violate any laws, we do not share her conclusion that the acceptance and reporting of these lawful donations through the appropriate campaign finance disclosure requirements create any inherent appearance of impropriety. The Auditor has made clear that, as a matter of general principle, she disapproves of the fact that a political office holder has been appointed and confirmed to the BRPAA, because of its quasi-judicial responsibilities.

First, by way of background, the Chairperson was a member of BRPAA prior to first seeking election to public office in 1996. At that time, he sought an ethics review by the then Office of the Corporation Counsel, in order to determine the appropriateness of the potential for holding both positions at the same time. In a written ruling, it was determined by that office that no conflict of interest existed, and that the performing of the dual responsibilities was appropriate. It should also be noted that the Chairperson did not seek to be originally appointed as Chair, but became the Chairperson under some

unusual circumstances. The previous Chair had left the position as a result of some difficulties, and the Board lacked any leadership. The Board members elected the individual in question as Vice-Chairperson, and he took over as the acting Chairperson, in the absence of an appointed Chairperson. As a result of his conduct in the office, he was appointed as the Chairperson, and later reappointed for an additional term which expired last month. During this re-appointment process, the appropriateness of the dual roles was again explored by the District Attorney General's office, and the subject of debate and inquiry by the DC Council. At each step in the process, the legality and appropriateness of these dual responsibilities was considered carefully by all parties and determined to be legally and ethically sufficient.

Regarding the amounts of the contributions highlighted by the Auditor, it should be noted that they represent a relatively small amount of the total raised in the campaign, and that there has been no suggestion that any party received any special consideration, or benefited as a result of those contributions in any way. Contributions to a political campaign committee do not benefit the individual candidate in a direct financial sense, and there has been no suggestion that the campaign committee targeted these parties for solicitation or specifically sought these donations from these particular sources.

This Chairperson has always sought to maintain the highest ethical standards in the performance of his BRPAA duties, and there is no evidence to suggest that he ever used this position for personal, or even political gain, or that any contributor ever sought or received favorable treatment.⁶

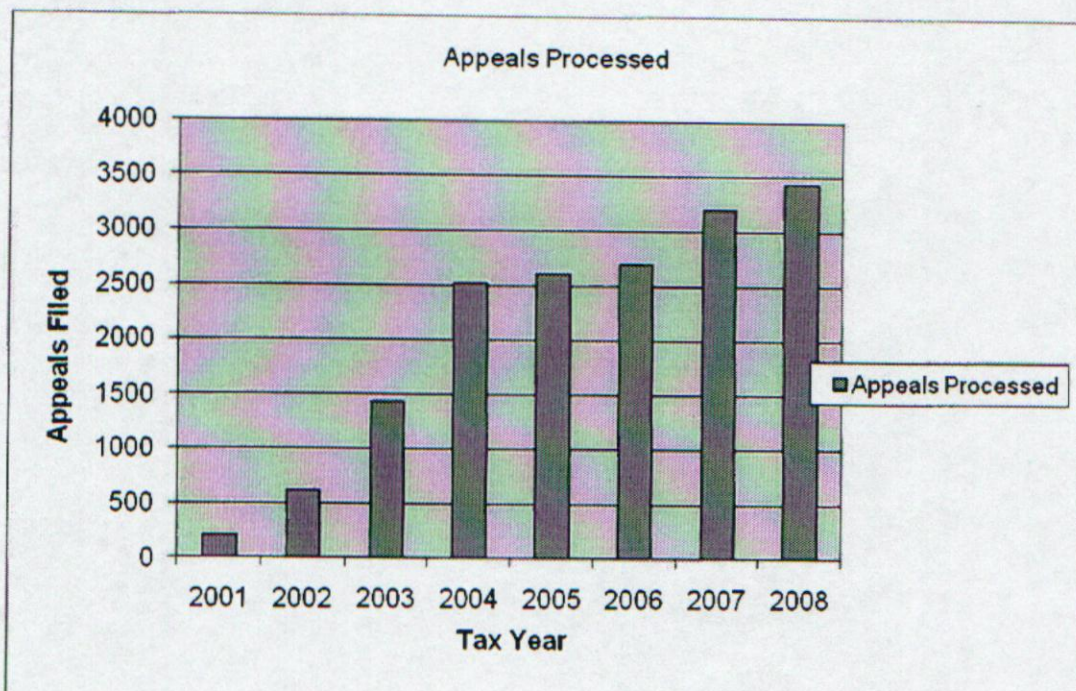
In regards to his own personal conduct, the Chairperson has never sought the review of his own personal real property assessment, at any level of review, nor does he even avail himself of the statutorily permissible homestead deduction despite no legal prohibition of his doing so. Despite the Auditor's opinion, the Chair contends that he has conducted himself in a manner above reproach, and taken great pains to avoid the perception or appearance of any impropriety. As this particular individual's term of service has expired, and given the unlikely potential for another office holder to be appointed, the agency does not anticipate the need for specific action on these recommendations.

Section – Auditor's Concerns (page 30)

With respect to the Auditor's stated concerns, the agency respectfully disagrees. Despite whatever perceptions the Auditor alleges to exist in the community, the evidence gathered from oversight hearings, community outreach activities, and reviews by stakeholders and other government agencies do not appear to support the Auditor's opinion that BRPAA's operations did not improve, or were not effectively managed. The ever-increasing caseload, chronic vacancies, and lack of adequate resources created challenges for BRPAA's operations, which became greater over the years.

⁶ The report does not in fact allege that the Chairperson directly reviewed any of the matters brought by these parties, and in the case of one cited example, makes clear that he did not.

The following chart shows the dramatic increase in the BRPAA caseload, all of which occurred without the designation of comparably increasing resources. Taken in the proper context, we contend that on a per case basis, BRPAA provided a relatively inexpensive adjudication process, especially when compared to other DC Boards and Commissions. Rather than a "dubious" level of service, we believe most agency clients perceived BRPAA to be an agency lacking adequate resources, performing admirably in challenging circumstances. We also believe that the report may have mistakenly attributed responsibilities to the Chairperson in his individual capacity, that from a legal and regulatory standpoint, are in fact, vested with other entities or individuals.



We thank the auditor for the opportunity to comment on this draft report.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer

Office of Integrity and Oversight



August 19, 2008

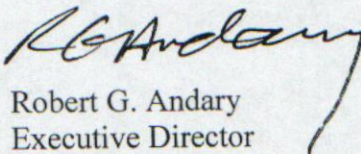
Deborah K. Nichols
District of Columbia Auditor
Office of the DC Auditor
717 Fourteenth Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Nichols:

This will respond to your August 14, 2008, letter transmitting a draft audit report entitled "Auditor's Review of the Board of Real Property Assessments and Appeals Operations." My review of the draft report indicates that there are no recommendations addressed to the Office of the Chief Financial Officer. Instead, all of the recommendations are addressed to the Board of Real Property Assessments and Appeals (BRPAA) and its Chairman. Accordingly, the Office of the Chief Financial Officer defers to the Chairman, BRPAA, to comment on the specific findings and recommendations in your report.

Thank you for sending us a copy of the draft report. If you have any questions, please contact me at (202) 442-6445.

Sincerely,


Robert G. Andary
Executive Director

