



RPTAC Has Improved the Appeal Assessment Process

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Why ODCA Did This Audit

The audit was conducted pursuant to D.C. Code §47-825.01(a)(j)(2), which requires the Auditor to perform a management audit of the activities of the Commission at least once every three fiscal years (or sooner as considered appropriate by the Auditor) or upon request of a Councilmember, and report on the findings to the Council.

What ODCA Recommends

1. Consistent with the statute, part-time Commissioners should be hired as part-time District government employees rather than as independent contractors.
2. RPTAC should work with the Board of Ethics and Government Accountability (BEGA) to ensure that all of those who are required to file Public Financial Disclosure Statements do so, and properly report to BEGA the names of those who are required to file Confidential Financial Disclosure Statements and ensure that they do so, and review those Confidential Financial Disclosure Statements timely, as required.
3. RPTAC should put in place a recusal process that includes a determination of whether a conflict of interest exists and whether recusal is the appropriate remedy.

What ODCA Found

The Real Property Tax Appeals Commission's (RPTAC) mission "is to conduct fair and impartial real property assessment appeal hearings for the citizens of the District of Columbia." The Commission's objective is "to ensure that appellant's real properties are assessed at 100 percent of market value, based on properties similar in size and utility, so that an equitable tax burden is shared."

Overall, we found that the operation of RPTAC has shown a marked improvement from the operations of its predecessor, the Board of Real Property Assessments and Appeals. By addressing the challenge of meeting the statutory guidelines as a top priority, RPTAC has heard and decided cases in a timely manner before the statutory deadline of February 1st, with few exceptions.

RPTAC also significantly has improved its records management system, annual reports have been submitted timely to the D.C. Council and the Mayor (as required), and RPTAC has held the required administrative meetings and improved greatly the availability of public information about the real property assessment appeals process. We also found that RPTAC has greatly improved the availability of public information about the real property assessment appeals process.

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Background

In 2010, the D.C. Council approved legislation to abolish the Board of Real Property Assessments and Appeals (BRPAA) and replace it with a new Real Property Tax Appeals Commission (RPTAC)¹. In the years leading up to the Council action, BRPAA had been the subject of criticism for delays in decisions, lack of transparency, and poor management. Among the strongest criticism were those included in a [2008 report by the D.C. Auditor](#). That review found that “BRPAA’s operations have suffered from multiple failures including the Board’s failure to (1) provide sound, progressive, engaged leadership; (2) to comply with statutory mandates, and (3) to implement administrative reforms.” The report cited ineffective records management, a website that did not provide sufficient information about the appeals process, and no evidence of BRPAA members recusing themselves when required.²

Witnesses testifying before the Council also charged that, in far too many cases, the BRPAA members reduced the assessments on commercial property. According to the Washington Business Journal,

In tax year 2010, BRPAA heard 6,178 appeals and reduced real estate assessments by \$3.1 billion, slashing potential property tax revenue by \$52.4 million. Commercial property appeals comprised only 1,838 of the appeals but accounted for 93 percent of the reduced potential revenue.³

Committee on Finance and Revenue Chairman Jack Evans, in summarizing the legislation prior to committee action, said the proposal was made “with the intent that we professionalize such a Commission and pay people to do this work – much like Administrative Law Judges.”⁴ The Committee approved the bill on October 15, 2010 and it was given final approval by the Council on December 21, 2010 with nearly a year envisioned for a transition period.

¹ The “Real Property Tax Appeals Commission Establishment Act of 2010” was passed by the Council on December 21, 2010 and signed by the Mayor in January 2011. It went into effect on April 10, 2011. (B18-530; A18-714; L18-363).

² D.C. Auditor report, “Auditor’s Review of the Board of Real Property Assessments and Appeals Operations,” dated September 30, 2008.

³ Michael Neibauer, *D.C. to overhaul assessment appeals*, Washington Business Journal, December 22, 2010. <http://www.bizjournals.com/washington/blog/2010/12/dc-to-overhaul-assessment-appeals.html>.

⁴ Council of the District of Columbia, Committee on Finance and Revenue, Committee Report on Bill 180530, the “Real Property Tax Appeals Commission Establishment Act of 2010, dated October 15, 2010. <http://lms.dccouncil.us/Download/2143/B18-0530-COMMITTEEREPORT.pdf>

As introduced by Evans and then-Chairman Vincent Gray, the RPTAC authorizing legislation would have designated a total of 12 full-time Commissioners, each with significant professional credentials and all employees of the District of Columbia government. As the bill moved through the Council, the make-up of Commissioners was changed to reduce the costs, to six full-time Commissioners including the chairman and vice-chairman, and six part-time Commissioners. The latter number was raised to eight in 2012, before RPTAC began operating.⁵ All Commissioners were to be employees of the District of Columbia government, compensated according to a pay scale to be developed by the mayor.

RPTAC's mission "is to conduct fair and impartial real property assessment appeal hearings for the citizens of the District of Columbia." The Commission's objective is, "to ensure that appellants' real properties are assessed at 100 percent of market value, based on properties similar in size and utility, so that an equitable tax burden is shared."⁶ RPTAC is the second-level real property assessment and appeals process. Prior to filing an appeal with the Real Property Tax Appeals Commission, a first-level administrative appeal must have been filed with the Office of Tax and Revenue-Assessor's Office.⁷

Figure 1 presents the total appeal cases received by BRPAA and RPTAC for tax years 2005-2014.

Figure 1

Total Number of Cases During BRPAA (TY 2005-2011) and RPTAC (TY 2012-2014)

Year	Total Cases Received
2005	2,624
2006	2,709
2007	3,255
2008	3,439
2009	4,480
2010	6,178
2011	4,838
2012	4,277 ⁸
2013	3,467
2014	3,370

Source: RPTAC Annual Reports

⁵ See the "Real Property Tax Appeals Commission Establishment Act of 2012, which was passed by the Council on May 1, 2012 and signed by the Mayor on May 15, 2012. The provisions of this bill, which made clarifications to the RPTAC establishing legislation, became effective July 2012. (B19-271; A19-362; L19-155).

⁶ Source: RPTAC official webpage. <http://rptac.dc.gov/page/about-rptac>

⁷ Ibid.

⁸ The number of cases (4,277) in TY 2012, which was a transition period to RPTAC, included a total of 262 TY 2011 appeals filed in TY 2012.

Real Property Assessment and Appeals Process

The Office of Tax and Revenue, Real Property Tax Administration, Real Property Assessment Division (RPAD) is responsible for annually assessing eligible⁹ residential property (class 1 property) and commercial property (class 2 property) at 100 percent of estimated market value.¹⁰

Property owners must be notified by March 1st of the current year of their assessment for the following tax year.¹¹ Property owners are given the opportunity to dispute the assessment through a formal appeal process. The process involves three levels of appeal, beginning with an Administrative Review (Level 1). Subsequent levels include appealing to RPTAC (Level 2) and the Superior Court of the District of Columbia (Level 3), described below.

Level 1: Assessor Level. The assessor assigned to a property will discuss the basis of the assessment. The property owner may present relevant information regarding their assessment. A successful appeal requires meaningful and accurate supporting information. Simply offering an opinion with no factual basis probably will not result in a reduced assessment. First level appeals must be submitted by April 1st of the current year.¹²

Level 2: Commission Level. If the RPAD assessor and the property owner, or party with an interest, do not resolve a disputed value, the property owner may proceed to the Real Property Tax Appeals Commission. RPTAC appeals must be filed within 45 days from the date of notice of final determination from the first level appeal for notices received on or before August 1st; otherwise, appeals must be filed on or before September 30th. RPTAC will not accept an appeal unless there first has been an appeal to RPAD. All cases timely appealed to the Commission shall be decided by February 1st of the following year.¹³

Level 3: Superior Court Level. If the property owner or party with an interest is not satisfied after a RPTAC hearing, an appeal may be made to the Superior Court of the District of Columbia.

⁹ During TY 2014, there were a total of 200,179 taxable and non-taxable real properties, with 762 of these in mixed use for class 1 and 2. The 762 properties are used as both residential and commercial (mixed use)-and included in both category counts. The Office of the Chief Financial Officer estimates that more than half (57 percent) of the land in the District of Columbia is exempt from real property taxes as they are either federal government, District-owned, embassies, or non-profits such as universities, museums, and hospitals.

¹⁰ Estimated market value is generally defined as the most probable price that a buyer would pay a willing seller on the open market.

¹¹ See D.C. Code § 47-824(a).

¹² Source: D.C. Office of Tax and Revenue website (<http://otr.cfo.dc.gov/page/real-property-assessment-appeals>).

¹³ D.C. Code § 47-825.01a (e)(7)(A).

Snapshot of RPTAC Decisions

Our review indicated that there were 11,114 appeals received during tax years (TY) 2012 through TY 2014. Figure 2 illustrates the difference between total assessed value of the properties at the first level (OTR) and at the second level appeals process after decisions by BRPAA and RPTAC, during TY 2009 through TY 2014.¹⁴ Commercial properties contributed the most towards the property value reductions.

Figure 2

Difference of Assessed Property Values of all Cases Appealed to OTR and RPTAC During TY 2009-TY 2014

Tax Year	Total Cases Received	Difference Between OTR Assessed Property Values and BRPAA/RPTAC Assessed Property Value
2009	4,480	\$3,059,951,215
2010	6,178	\$3,079,374,219
2011	4,838	Not Available ¹⁵
2012	4,277 ¹⁶	\$3,177,374,631
2013	3,467	\$1,737,579,968
2014	3,370	\$1,327,854,033

Source: BRPAA and RPTAC annual reports-TY 2009-TY 2014

Financial Impact to the District Tax Revenues When Appropriate Tax Rates are Applied Based on Property Class

The real property tax is one of the largest revenue sources for the District of Columbia government. The District has approximately 24 tax sources, with real property taxes accounting for almost a third of the total tax revenues. Net real property revenue collected in fiscal year (FY) 2014 was approximately \$1.985 billion and estimated for FY 2015 to be \$2.153 billion. Decisions by RPTAC to reduce or increase real property tax assessments have a direct financial impact on real property tax revenue collected by the District. There was a net total property assessed value reduction of approximately \$6.242 billion for cases appealed to RPTAC during TY 2012 through TY 2014. As a result of this net reduction in assessed values, the net total property tax revenue impact to the District

¹⁴ The total property assessed values by OTR for cases appealed to RPTAC may include repeat property assessment values for more than one year if same property assessment was disputed in more than one tax year during the 3 tax years and is shown here as an absolute value for illustration purposes only. The auditor calculated difference represents the approximate impact of RPTAC decisions on the total assessed property values as appealed and heard at the second level during the 3 tax years reviewed. Impact on District's revenues is obtained by applying applicable tax rates.

¹⁵ There was no annual report published by BRPAA for TY 2011.

¹⁶ The number of cases (4,277) in TY 2012, which was a transition period to RPTAC, included a total of 262 TY 2011 appeals filed in TY 2012.

was approximately \$106 million.¹⁷ Figure 3 presents the financial impact for TYs 2009 through 2014. Although the first full year of RPTAC operations saw a financial impact similar to the last two full years of BRPAA operations, the last two years for which records are available – TYs 2013 and 2014 – show a decline in the negative financial impact of assessment decisions. In addition to preserving more revenue, the decline also may indicate an overall improvement in the accuracy of the assessment decisions.

Figure 3

Overall Estimated Financial Impact to Property Tax Revenues During TY 2009-TY 2014

Tax Year	Total Cases Received	Difference Between OTR Assessed Property Values and BRPAA/RPTAC Assessed Property Value	Financial Impact
2009	4,480	\$3,059,951,215	\$52,390,997
2010	6,178	\$3,079,374,219	\$54,426,543
2011	4,838	Not Available ¹⁸	Not Available ¹⁹
2012	4,277	\$3,177,374,631	\$50,395,726
2013	3,467	\$1,737,579,968	\$31,124,525
2014	3,370	\$1,327,854,033	\$24,025,888

Source BRPAA: RPTAC annual reports-TY 2012-TY 2014

¹⁷ The total estimated financial impact of \$106 million is based on the reports provided by RPTAC and reviewed as the total population of 11,114 cases.

¹⁸ There was no annual report published by BRPAA for TY 2011.

¹⁹ Ibid.

Objectives, Scope and Methodology

Objectives

Pursuant to District law, “[t]he District of Columbia Auditor shall perform a management audit of the activities of the Commission 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.”²⁰

The audit focused on Commission activities related to the second level appeal process. The objectives of the audit were to determine whether:

1. RPTAC complied with key applicable rules, regulations and laws;
2. RPTAC decisions followed applicable rules, regulations and laws; and
3. The mission of RPTAC was fulfilled in an efficient and effective manner.

Scope

The audit period covered RPTAC caseloads during tax years (TY) 2012 through TY 2014. We also conducted a comparative analysis of the caseloads between the Board of Real Property Assessments and Appeals (BRPAA) and the Real Property Tax Appeals Commission (RPTAC) operations. For this purpose caseloads from TY 2005 through TY 2014 were included.

Methodology

To evaluate compliance with applicable laws and regulations, we reviewed the composition of the Commission Board and relevant provisions of the D.C. Code and D.C. Municipal Regulations (DCMR). We also reviewed other documentation such as administrative meeting minutes, annual reports to the Council, previous audit reports and literature from other third party organizations. Additionally, we conducted interviews with relevant RPTAC representatives.

To evaluate operational effectiveness, we obtained RPTAC summary decision reports for TY 2012 through TY 2014 (the scope period). To determine sufficiency of decisions, and whether RPTAC decisions followed applicable rules, regulations and laws, samples of individual case files

²⁰ D.C. Code § 47-825.01a(j)(2).

were identified for test work from these reports. The reports detailed decisions rendered, property details (defined by lot and square), Office of Tax and Revenue (OTR) initial property assessment values, (by land and building values), RPTAC final property assessed value, and the type of decision rendered. To determine whether the mission of RPTAC was fulfilled in an efficient and effective manner, we reviewed summary decision reports to determine whether cases were heard and decided before required deadlines.

We should note that these were reports and decisions on the cases heard and adjudicated,²¹ as tracked and recorded by RPTAC. We sampled 139 cases and individual property files out of a universe of 11,114 cases over the three tax years. We compared the assessed property value of both residential and commercial properties in the sample at the second level hearing process to the assessed property value at the first level process. Of the 139 files, seven were residential properties (class 1) and 132 were commercial properties (class 2).

We conducted this performance audit 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.

²¹ A formal judgement or decision about a problem or disputed matter.

Audit Results

Overall, we found that the operation of the Real Property Tax Appeals Commission (RPTAC) has shown a marked improvement from the operations of its predecessor, the Board of Real Property Assessments and Appeals (BRPAA). As previously stated, in the [D.C. Auditor's September 30, 2008 review of BRPAA](#), we noted serious deficiencies including, but not limited to:

- A backlog of appeals;
- Maintaining an ineffective records management system that resulted in delays in locating documents, misplaced records, and filing errors ;
- Failing to hold the four required annual meetings for administrative matters, as required;
- Not providing residents and businesses with sufficient public awareness information about the real property tax assessment appeals process; and
- Failing to submit a comprehensive annual report to the Council and the Mayor.

By addressing the challenge of meeting the statutory guidelines as a top priority, RPTAC has heard and decided cases in a timely manner before the statutory deadline of February 1st with few exceptions. In tax year (TY) 2012, BRPAA received 4,277 appeals. Due to a limited number of active Board members during TY 2012, BRPAA was able to complete only 34 percent of the TY assessment appeals by the February 1st statutory deadline. In TY 2013, RPTAC received 3,467 case appeals and decided on all the cases before the statutory deadline. In TY 2014, RPTAC received 3,370 appeals and heard and decided on all but one case before the statutory deadline.

RPTAC also significantly has improved its records management system. All annual reports have been submitted to the D.C. Council and the Mayor, and RPTAC has held the required administrative meetings. RPTAC now posts the annual report and minutes of administrative meetings on their website.

We also found that RPTAC greatly has improved the availability of public awareness information about the real property assessment appeals process. The RPTAC website provides information on the composition of RPTAC, a description of the appeals process, instructions for filing an

appeal, as well as Commission decisions, and a Frequently Asked Questions section. Appeals forms also are available on RPTAC's website. Regarding the quality of written decisions, the Chairman has developed the "Anatomy of a RPTAC Decision" as a general guide to organizing thoughts when writing up decisions.

RPTAC stated that they published regulations for electronic filing of appeals, and have a link on their website for "E-Filing Regulations." Petitioners began using the electronic filing system in TY 2015 and usage is expected to increase. However, upon review, RPTAC only published proposed rules and failed to publish final rules in the D.C. Register, as required, so these rules are not final.²² Therefore, the rules are not legally in effect and are not binding.

The following section details three additional findings and recommendations to address those findings pertaining to how the part-time commissioner are classified, the need to file Financial Disclosure Forms, and the continuing lack of a recusal process.

²² In fact, the regulations found in Lexis and the D.C. government website for the D.C. Register and the Code of Municipal Regulations, do not include any of the proposed changes to these rules.

The Real Property Tax Appeals Commission has failed to hire its part-time Commissioners as District government employees, as the law requires, allowing them to operate outside District personnel and ethics rules.

District law provides that the Real Property Tax Appeals Commission for the District of Columbia (RPTAC) shall be comprised of a full-time Chairperson, a full-time Vice-Chairperson, four full-time Commissioners, and eight part-time Commissioners.²³ Further, District law clearly states that “Commissioners shall be employees of the District government.”²⁴

District law treats full-time and part-time RPTAC Commissioners the same, with one explicit exception. All are to be appointed by the Mayor and confirmed by the Council²⁵, and all shall have relevant professional experience: “All Commissioners shall be active members of the District of Columbia bar, District certified general real estate appraisers, certified public accountants, mortgage bankers, licensed District real estate brokers, or persons possessing significant real property experience.”²⁶ Commissioners can be removed only for cause and are required to meet annual performance measures.²⁷

The one substantive section in the RPTAC statute that specifically addresses part-time Commissioners provides:

The part-time members of the Commission shall be compensated on an hourly basis and shall hear cases of single-family residential property or any noncommercial real property assessed during the administrative review at \$3 million or less (or under the notice of assessment if the administrative review is unavailable); provided, that the Chairperson may assign part-time members to hear cases of other real property assessments.²⁸

A review of the Office of the Chief Financial Officer – Agency Operational Dashboard (Dashboard) for RPTAC reveals that although the full-time Commissioners, including the Chairperson and Vice-Chairperson, are listed as District employees, all eight of the part-time Commissioners are not. The RPTAC Executive Director stated in an email that the eight part-time Commissioners “are treated as independent Contractors” and the

²³ D.C. Code § 47-825.01a (a)(1)(B)(i-iv). Throughout the RPTAC statute, all of the above-listed Commissioners are referred to as “Commissioner” except where specifically identified as full-time Commissioners (e.g. D.C. Code § 47-825.01a(a)(1)(D)(iii)), part-time members of the Commission (e.g. D.C. Code § 47-825.01a(a)(1)(C)), the Chairperson (e.g. D.C. Code § 47-825.01a(a)(1)(D)(i)), or the Vice Chairperson (e.g. D.C. Code § 47-825.01a(a)(1)(D)(ii)).

²⁴ D.C. Code § 47-825.01a(a)(5).

²⁵ D.C. Code § 47-825.01a(a)(1)(F).

²⁶ D.C. Code § 47-825.01a(a)(1)(D)(iv).

²⁷ D.C. Code § 47-825.01a(a)(1)(G).

²⁸ D.C. Code § 47-825.01a (a)(1)(C).

Dashboard shows that the eight part-time Commissioners are paid by Direct Vouchers.²⁹

When asked for a sample of an Independent Contractor contract for one of the eight part-time Commissioners, the RPTAC Executive Director indicated there were no contracts. As support for treating the part-time Commissioners as Independent Contractors, the RPTAC Executive Director cited undated notes that appear to be an earlier proposed alternative to replace BRPAA with a Commission that included part-time Commissioners who would not be District government employees but that proposal was not introduced as legislation.

By working as Independent Contractors rather than as District government employees, the part-time Commissioners are not subject to the Code of Conduct rules in the District Personnel Manual (DPM) that applies to District government employees, including RPTAC's full-time Commissioners. This means that they are not subject to the restrictions in Chapter 18 of the DPM,³⁰ covering issues such as receipt of gifts, representing outside entities, divulging official government information, using public office or position for private gain, or giving preferential treatment to individuals or organizations.

In addition, as Independent Contractors, the part-time Commissioners are not subject to the substantial post-employment restrictions of DPM Section 1811, which include a lifetime ban on appearing before RPTAC on any particular government matter involving a specific party in which the Commissioner participated personally and substantially (DPM § 1811.3), a two-year prohibition against behind-the-scenes work on matters for which the former employee participated personally and substantially in the matter as a government employee, and a one-year prohibition that prohibits former District government employees from having any transactions with their former agency intended to influence the agency with any particular government matter pending before the agency or in which it has a direct and substantial interest. These prohibitions are as important for the part-time RPTAC Commissioners as they are for the full-time ones and should be applicable to the part-time RPTAC Commissioners as well.

To be sure, the RPTAC statute includes conflict of interest and post-employment restrictions applicable to part-time, as well as full-time Commissioners, indicating the Council's sensitivity to potential conflicts:

²⁹ This information was reviewed on December 1, 2015. On that date, the information available covered the period October 16, 2014, through November 16, 2015.

³⁰ 6B DCMR Chapter 18. Hereinafter referred to as the District Personnel Manual or DPM. DPM Chapter 18 defines "Employee/Government Employee" as "an individual who performs a function of the District government and who receives compensation for the performance of such services (D.C. Official Code § 1-603.01(7)), or a member of a District government board or commission, with or without compensation (D.C. Official Code § 1-602.20(3)). It does not include an individual performing services for the District government as an independent contractor under a personal services contract."

(1) a prohibition from representing any client or business interest before the Commissioner for two years after leaving the Commission; (2) a prohibition from reviewing an appeal involving real property with which the Commissioner has had any financial dealings in the prior two-year period; and (3) a prohibition from reviewing an appeal for which that Commissioner has a direct or indirect interest. Subsequent to the creation of RPTAC, the Council approved The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (Ethics Act), effective April 27, 2012,³¹ creating significantly more robust rules for District of Columbia government employees, aimed specifically at ensuring transparency in financial dealings.

In pertinent part, the Ethics Act's conflicts of interest section prohibits employees from using their official position or title, or personally and substantially participating, in a judicial or other proceeding, or other particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.³²

According to the U.S. Office of Government Ethics, "[t]he purpose of both [public and confidential] financial disclosure systems is to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of" current employees.³³ The purpose of the District government's public and confidential financial disclosure statement filing system is the same. Due to the nature of the work the part-time Commissioners do in their non-government positions, there is at least a possibility for conflicts of interest to arise. Therefore, they are exactly the type of government employees who should be complying with all government ethics and conflict of interest requirements.

The District's ethics rules in the DPM and the Ethics Act cover many topics in very detailed ways and apply to all District government employees regardless of position, agency, and job duties. Part-time Commissioners do essentially the same, if not exactly the same, work as full-time Commissioners, for pay, but given their non-employee status,³⁴ today they

³¹ D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*

³² D.C. Code § 1-1162.23(a).

³³ United States Office of Government Ethics website (<http://www.oge.gov/Financial-Disclosure/Financial-Disclosure/>)

³⁴ The Ethics Act defines employee as "unless otherwise apparent from context, a person who performs a function of the District government and who receives compensation for the performance of such services, or a member of a District government board or commission, whether or not for compensation" D.C. Official Code § 1-1161.01(18). Given that RPTAC itself identified its part-time Commissioners as Independent Contractors rather than as part-time employees and the part-time Commissioners were not required by RPTAC or BEGA to file Confidential Financial Disclosure Statements, in context, they do not appear to have been treated as employees. Similarly, although they are paid members of a Commission, they were not treated as if they were subject to the Ethics Act by either RPTAC or BEGA.

are subject only to the minimal ethics rules in the RPTAC statute even though the ethics and conflict of interest risks are the same.

Recommendations:

1. Consistent with the statute, part-time Commissioners should be hired as part-time District government employees rather than as Independent Contractors.

RPTAC staff and Commissioners have failed to consistently file Financial Disclosure Statements pursuant to the Ethics Act.

In addition to the requirements described above, under the Ethics Act all public officials are required to file an annual public Financial Disclosure Statement based on salary and whether they act “in areas of responsibility that may create a conflict of interest or the appearance of a conflict of interest”^{35, 36} According to the Dashboard, the RPTAC Chairperson, Vice-Chairperson, and four full-time Commissioners all make more than the minimum salary required under the Ethics Act to potentially trigger a filing. The RPTAC full-time Commissioners and senior staff make more than the minimum salary required to potentially trigger a filing annually and participate substantially in areas of responsibility that may create at least the appearance of, if not an actual, conflict of interest. The Board of Ethics and Government Accountability (BEGA) confirmed that RPTAC Commissioners, both full and part-time, are required to file Financial Disclosure Statements. BEGA also confirmed that with one exception, the RPTAC full-time Commissioners had filed Financial Disclosure Statements for 2014.

Because the part-time Commissioners do essentially the same, if not exactly the same, work as the full-time Commissioners, although they make less than the triggering salary, they should file confidential, rather than public, financial disclosure statements with the RPTAC Executive Director. BEGA confirmed that the part-time RPTAC Commissioners have not filed Confidential Financial Disclosure Statements previously, but will be required to do so in 2016.

Recommendations:

2. RPTAC should work with the Board of Ethics and Government Accountability (BEGA) to ensure that all of those who are required to file Public Financial Disclosure Statements do so and to properly report to BEGA the names of those who are required to file Confidential Financial Disclosure Statements and ensure that they do so and that those Confidential Financial Disclosure Statements are reviewed timely, as required. This includes RPTAC staff members, including the Executive Director, as well as RPTAC Commissioners, both full-time and part-time.

³⁵ D.C. Official Code § 1-1161.01(47).

³⁶ The definition of public official also includes members of specific Boards and Commissions, pursuant to D.C. Official Code § 1-523.01(e), but RPTAC is not listed under this section. (D.C. Official Code § 1-1161.01(47)(H)).

The Real Property Tax Appeals Commission does not have a recusal process in place to address Commissioner conflicts of interest.

The 2008 D.C. Auditor report found no evidence of BRPAA members recusing themselves when required. In the context of working for the District government, employees encounter conflicts of interest from time-to-time. They may have a financial interest in a private entity or property that would come before them in their official capacity, a personal relationship with someone who has business with the employee's agency, or some other personal connection to a matter that would come before them or their agency. These types of connections give the appearance that the employee could not be fair and impartial or that the employee has interests, including financial interests that could be affected by the employee's own actions. In such situations, recusal may be the appropriate remedy. Recusal requires that there be a process by which it is determined that an employee has a conflict of interest or potential conflict of interest that requires that the employee not work on a particular matter.

For RPTAC, it is important that the Commissioners and staff members are encouraged to disclose any conflicts of interest or potential conflicts of interest so that they do not work on matters for which they may have a conflict of interest. The RPTAC statute prohibits a Commissioner from reviewing a real property tax appeal if the Commissioner had any financial dealings with that property in the last two years³⁷ or for which the Commissioner has a direct or indirect interest³⁸. What is absent from the RPTAC statute is what the Commissioner should do if such a property tax appeal comes to him or her. RPTAC does not have a formal written recusal process. It does, however, have an informal recusal process, whereby if a Commissioner had any dealings with parties coming before the Commission, the Commissioner(s) can recuse themselves.

It is possible, under the Ethics Act, to obtain a waiver of a prohibition of the Conflicts of Interest section³⁹, but of course, the potential conflict must be disclosed first. The Ethics Act provides that an employee may seek a waiver if the employee:

- (1) Advises the employee's supervisor and the Ethics Board of the nature and circumstances of the particular matter;
- (2) Makes full disclosure of the financial interest; and
- (3) Receives in advance a written determination made by both the supervisor and the Ethics Board that:

³⁷ D.C. Code § 47-825.01a(2)(B).

³⁸ D.C. Code § 47-825.01a(2)(C).

³⁹ D.C. Official Code § 1-1162.23(b)

- (A) The interest is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from the employee; or
- (B) Another legally cognizable basis for waiver exists.

The waiver process already exists for those covered by the Ethics Act but RPTAC must have in place its own process so that an employee who should be able to seek and obtain a waiver will be able to do so.

Recommendations:

3. RPTAC should put in place a recusal process that includes a determination of whether a conflict of interest or potential conflict of interest exists and whether recusal is the appropriate remedy. If it is determined that the employee shall recuse him or herself, there must be a resulting written recusal that includes details as to what that recusal entails. The written recusal should be maintained by the agency as well as the employee and all of those within the agency, who could be impacted by the recusal, should be notified. The recusal process must apply to all staff and Commissioners, including both full-time and part-time Commissioners. All staff and Commissioners must be trained on the recusal process, which should include a policy of transparency in dealing with conflicts of interest, the appearance of conflicts of interest and resulting recusals.

Audit Results Summary

Our audit identified recommendations that could improve operations at RPTAC. To ensure compliance with legislative requirements, we recommend:

Finding	Recommendation
The Real Property Tax Appeals Commission has failed to hire its part-time Commissioners as District government employees as the law requires, allowing them to operate outside District personnel and ethics rules.	1. Consistent with the statute, part-time Commissioners should be hired as part-time District government employees rather than as Independent Contractors.
RPTAC staff and Commissioners have failed to consistently file Financial Disclosure Statements pursuant to the Ethics Act.	2. RPTAC should work with the Board of Ethics and Government Accountability (BEGA) to ensure that all of those who are required to file Public Financial Disclosure Statements do so and to properly report to BEGA the names of those who are required to file Confidential Financial Disclosure Statements and ensure that they do so and that those Confidential Financial Disclosure Statements are reviewed timely, as required. This includes RPTAC staff members, including the Executive Director, as well as RPTAC Commissioners, both full-time and part-time.
The Real Property Tax Appeals Commission does not have a recusal process in place to address Commissioner conflicts of interest.	3. RPTAC should put in place a recusal process that includes a determination of whether a conflict of interest or potential conflict of interest exists and whether recusal is the appropriate remedy. If it is determined that the employee shall recuse him or herself, there must be a resulting written recusal that includes details as to what that recusal entails. The written recusal should be maintained by the agency as well as the employee and all of those within the agency, who could be impacted by the recusal, should be notified. The recusal process must apply to all staff and Commissioners, including both full-time and part-time Commissioners. All staff and Commissioners must be trained on the recusal process, which should include a policy of transparency in dealing with conflicts of interest, the appearance of conflicts of interest and resulting recusals.

Conclusion

We found that the operation of the Real Property Tax Appeals Commission (RPTAC) has shown a marked improvement from the operations of its predecessor, the Board of Real Property Assessments and Appeals (BRPAA).

By addressing the challenge of meeting the statutory guidelines as a top priority, RPTAC has heard and decided cases in a timely manner, before the statutory deadline of February 1st, with few exceptions.

RPTAC also significantly has improved its records management system, annual reports have been submitted timely to the D.C. Council and the Mayor (as required), and RPTAC has held the required administrative meetings and improved greatly the availability of public information about the real property assessment appeals process.

Our audit identified recommendations that could improve operations at RPTAC and ensure compliance with legislative requirements. We found that RPTAC did not hire its part-time Commissioners as District government employees, as the law requires; staff and Commissioners did not consistently file Financial Disclosure Statements pursuant to the Ethics Act; and RPTAC does not have a recusal process in place to address Commissioner conflicts of interest.

Agency Comments

Auditor's Response to Agency Comments

The Office of the District of Columbia Auditor (ODCA) greatly appreciates the written response from the Real Property Tax Appeals Commission (RPTAC). We note the positive tone of the Agency's letter and the recognition that RPTAC continues to work to improve its processes, administration and operations.

With respect to the legislative history of the Real Property Tax Appeals Commission Establishment Clarification Emergency Amendment Act of 2011, we appreciate the Agency providing us with additional details and dates. We have made changes where appropriate to reflect this information.

With respect to the Stipulation Agreements between the Office of Tax and Revenue and the Petitioners that also result in reductions, we appreciate the work RPTAC did to provide us with clarification in the form of explanations and annual statistics for several tax years. We have included your detailed information verbatim by attaching your response to the final audit report. Please note that the statistics RPTAC provided regarding the number of case decisions completed before the statutory deadline have been included as well.

With regard to the findings and recommendations concerning the part-time Commissioners, we stand by our findings and conclusions as outlined in the report. We note that RPTAC described the statement of the Board of Ethics and Government Accountability (BEGA) attorney in the February 18, 2016 email, as saying that the "Part-time Commissioners are not required to file Financial Disclosure statements" (p. 8) when, in fact, the BEGA attorney was referring only to whether they would be **Public** filers [emphasis added]. Further, the BEGA response does not address their **activities** [emphasis added] in contrast to what RPTAC stated when it wrote that BEGA had determined that the part-time Commissioners "are not required to file Financial Disclosure statements since they do not engage in activities described in the BEGA regulations/statute" (p.8). We believe it is imperative that the part-time RPTAC Commissioners be part-time employees so they are subject to all of the appropriate District ethics rules.

Finally, we note RPTAC's statement that RPTAC includes in its policies, Prohibitions & Ex Parte Communication, which state that, "Commissioner shall be prohibited from reviewing an appeal if the Commissioner has had

some involvement or interest (direct or indirect) with the property during the previous two (2) year period prior to the filing date of the appeal.” This, however, is not a formal recusal process that details things like how a determination is made that there is a conflict of interest, who will make that determination, what the scope of the recusal will be, where such recusals will be maintained, etc. Accordingly, we stand by our audit recommendation that RPTAC put in place a recusal process.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
REAL PROPERTY TAX APPEALS COMMISSION**



February 23, 2016

The Honorable Kathleen Patterson
District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Patterson:

This letter serves as the Commission's response to the draft audit report entitled "RPTAC Has Improved the Appeal Assessment Process". Let me begin by stating the gratitude of the Commission for recognizing the improvements that have been made during the first three years of the Commission's operations. I, along with the other members of the Commission, have worked to improve the processes and overall administration of the operations of the Commission. While we have made some strides, we recognize that there is yet work to be done to achieve this goal. We are therefore appreciative of the work of your audit team and the observations and recommendations that have been compiled in the above-referenced report.

I, along with Richard Amato, Vice Chair of the Commission, and Carlynn Fuller, Executive Director of the Commission, have read the draft report and discovered some observations that were not accurate or perhaps did not present a complete depiction of certain events related to the operations of the Commission. We have addressed those items in this response in addition to addressing the specific recommendations contained in the report. Our comments are detailed below.

Page 2 inaccuracies:

Footnote 1

RPTAC Response:

The Real Property Tax Appeals Commission Establishment Clarification Emergency Amendment Act of 2011 was adopted by the Council on 10/4/11 and signed by then Mayor Gray on 10/11/11, retroactively reinstating BRPAA as of 10/1/11, and delaying applicability of RPTAC until its Chairperson and Vice Chairperson were approved by the Council and appointed by the Mayor. The Commission took effect July 16, 2012.

Page 3 inaccuracies:

“As introduced by Evans and then-Chairman Vincent Gray, the RPTAC authorizing legislation would have designated a total of 12 full-time Commissioners, each with significant professional credentials and all employees of the District of Columbia government. As the bill moved through the Council, the make-up of Commissioners was changed to reduce the costs, to six full-time Commissioners including the chairman and vice-chairman, and six part-time Commissioners. The latter number was raised to eight in 2012, before RPTAC began operating.⁵ All Commissioners were to be employees of the District of Columbia government, compensated according to a pay scale to be developed by the mayor.”

RPTAC Response:

The RPTAC enabling legislation was first introduced as the “Real Property Tax Appeals Commission Establishment Act of 2009”. It was introduced on November 17, 2009. It is in that iteration of the legislation where you find the language referencing 12 Commissioners as well as the language that all will be employees. The legislation was sponsored by then Council Chairman Vincent Gray and Councilmember Jack Evans. There were 5 co-sponsors. The first public hearing was held on February 18, 2010. The BRPAA Reform Working Group was formed and then issued its recommendations on April 26, 2010 (copy attached). Apparently the working group envisioned a mostly part-time Commission with the exception of the Chair, the administrative officer and staff.

In addition to the recommendation and accompanying testimony that RPTAC be an independent agency, one of the recommendations was that RPTAC should be comprised of 24 members including a chair who is a District of Columbia certified general appraiser and a vice chair who is an attorney.

Also included in the recommendations is language pertaining to the \$50 per hour compensation.

The Engrossed version of the Bill (December 7, 2010) contains the more specific composition of the Commission and this is where you find language for the Chair, Vice Chair and 4 full-time Commissioners and 6 part-time Commissioners. The language indicating that “Commissioners shall be employees...” carried over from the initial Bill when it was anticipated that all would be employees.

Bill 19-0271 amended the 6 part-time and increased the number to 8.

There were also some undated notes from the BRPAA Reform Working Group that clarifies how the hybrid structure came to be. In these notes (copy attached) is where it

is made clear that the 6 (at the time) part-time Commissioners would not be DC employees.

Also, as noted in an email to Mr. Marshall Matsiga dated October 14, 2015 (copy attached), this issue was addressed by the DC office of Human Resources (DCHR) in 2012 in a series of emails. It was determined that if indeed the part-time Commissioners were to be “employees” our FTE authority would have been increased by 10 instead of just 6. The Commission’s FTE authority remains at 11; representing the 6 Full-time Commissioners and 5 administrative staff.

Page 3 Footnote 8

8 The number of cases (4,277) in TY 2012, which was the transition period to RPTAC, included a total of 262 BRPAA cases carried over from TY 2011.

RPTAC Response:

The TY 2011 cases were filed in TY 2012. In every Tax Year there are prior year cases that are filed and heard in the current tax year. If the Office of Tax and Revenue hears the case outside of the current tax year yet issues a decision in the current tax year, as long as a timely appeal is filed with RPTAC, the appeal will be heard.

Page 5 - Footnote 16

16 The number of cases (4277) in TY 2012, which was the transition period to RPTAC, included a total of 262 BRPAA cases carried over from TY 2011.

RPTAC Response:

This footnote is the same as footnote 8 on page 3 and our response is the same.

Pages 3-6

RPTAC Response:

The audit discusses the impact of RPTAC reductions but it fails to paint an accurate picture of how Stipulation Agreements between the Office of Tax and Revenue and the Petitioners also result in reductions. This information was provided to the audit team but was not reflected in the report.

For example, in 2012, RPTAC only reduced 575 cases or 15% of the cases heard; while OTR Stipulated 906 cases or 23% of the cases filed. Please see the information and the tables below from the 2012-2014 Annual Reports.

BRPAA FY 2012 Annual Report Appeal Statistics

	TY 2011 Appeals Heard in TY 2012	TY 2012 Appeals	Total
Number of Cases Received	262	4015	4277
Number of Cases Withdrawn	2	263	265
Total Number of Appeals Decided	260	3752	4012
Number of Assessments Sustained	66	2438	2504
Percentage of Assessments Sustained	26%	65%	63%
Number of Assessments Increased	11	15	26
Percentage of Assessments Increased	5%	1%	1%
Number of Assessments Reduced	87	488	575
Percentage of Assessments Reduced	34%	13%	15%
Number of Assessment Reduced by Stipulations	96	810	906
Percentage of Assessments Reduced by Stipulations	37%	22%	23%
Total Assessed Value 1st Level	\$1,008,980	\$4,382,520	\$5,391,500.00
Total Assessed Value 2nd Level (Increased Cases)	\$1,231,330	\$5,156,718	\$6,388,048.00
Difference between 1st Level and 2nd Level	\$222,350	\$774,198	\$996,548.00
Total Revenue Gain	\$1,889.98	\$10,541.24	\$12,431.22
Total Assessed Value 1st Level	\$103,473,470	\$3,408,635,370	\$3,512,108,840.00
Total Assessed Value 2nd Level (Reduced Cases)	\$70,225,431	\$3,029,148,826	\$3,099,374,257.00
Difference between 1st Level and 2nd Level	\$33,248,039	\$379,486,544	(\$412,734,583.00)
Total Revenue Loss	\$539,251.23	\$1,183,901.11	(\$1,723,152.34)
Total Assessed Value 1st Level	\$101,868,060	\$23,581,530,240	\$23,683,398,300.00
Total Assessed Value after Stipulation	\$63,425,088	\$20,855,333,164	\$20,918,758,252.00
Difference between 1st Level and Stipulation	\$38,442,972	\$2,726,197,076	(\$2,764,640,048.00)
Total Revenue Loss	\$634,449.06	\$49,050,555.87	(\$49,685,004.93)

Tax Year 2013 Appeal Seasons Overview

For Tax Year 2013, the Commission received 3,467 appeals. This is a decrease of 810 appeals from Tax Year 2012. Of these appeals, 3,438 were “standard assessment

appeals” which are valuation appeals that are automatically placed in the Office of Tax and Revenue’s tracking system. For Class 1 properties, the Commission received a total of 2,235 appeals, with 50 appeals being withdrawn, for a total of 2,185 appeals heard by the Commission. Of these cases, 1,732 (79%) were sustained, 308 (14%) were reduced, 145 (7%) were resolved by way of Stipulation Agreements between the Office of Tax and Revenue and the Petitioner.

Tax Class 1 Action	Assessed Value (AV)	Dollar Value (DV) (AV ÷ 100 x .85)
1 st Level Cases Appealed to RPTAC	\$2,557,119,490	\$21,735,515.67
2 nd Level Actions including Stipulations	\$2,466,367,523	\$20,964,123.95
Impact (Difference between 1 st Level Cases Appealed to RPTAC and 2 nd Level Actions including Stipulations)	\$90,751,967	\$771,391.72
2 nd Level Increases	\$0	\$0
2 nd Level Reductions	\$431,769,594	\$3,670,041.55
2 nd Level Stipulations (between the Petitioner and OTR)	\$60,449,586	\$513,821.49
2 nd Level Sustained	\$1,974,148,340	\$16,780,260.89

The Commission also received 1,203 appeals in tax Class 2; 38 were withdrawn leaving a total of 1,165 appeals that were heard by the Commission. Of these appeals, 5 (<1%) were increased, 748 (64%) were sustained, 300 (26%) were reduced, and 112 (10%) were resolved by way of Stipulation Agreements between the Office of Tax and Revenue and the Petitioner.

Class 2 Properties (\$3 million or less) Action	Assessed Value (AV)	Dollar Value (DV) (AV ÷ 100 x 1.65)
1 st Level Cases Appealed to RPTAC	\$518,204,010	\$8,550,366.17
2 nd Level Actions including Stipulations	\$461,612,465	\$7,616,605.68
Impact (Difference between 1 st Level Cases Appealed to RPTAC and 2 nd Level Actions including Stipulations)	\$56,591,545	\$933,760.50
2 nd Level Increases	\$2,428,940	\$40,077.51
2 nd Level Reductions	\$95,956,774	\$1,583,286.78
2 nd Level Stipulations (between the Petitioner and OTR)	\$52,697,151	\$869,503.00
2 nd Level Sustained	\$310,529,600	\$5,123,738.40
Class 2 Properties (\$3 million+) Action	Assessed Value (AV)	Dollar Value (DV) (AV ÷ 100 x 1.85)
1 st Level Cases Appealed to RPTAC	\$43,767,313,995	\$809,695,308.91
2 nd Level Actions including Stipulations	\$42,177,077,539	\$780,275,934.48
Impact (Difference between 1 st Level Cases Appealed to RPTAC and 2 nd Level Actions including Stipulations)	\$1,590,236,456	\$29,419,374.43
2 nd Level Increases	\$21,831,360	\$403,880.16
2 nd Level Reductions	\$11,510,495,387	\$212,944,164.66

2nd Level Stipulations (between the Petitioner and OTR)	\$3,093,610,807	\$57,231,799.93
2nd Level Sustained	\$27,551,139,985	\$509,696,089.73

Tax Year 2014 Appeal Seasons Overview

For Tax Year 2014, the Commission received three thousand three hundred and seventy (3,370) appeals. This is a decrease of ninety-seven (97) appeals from Tax Year 2013. Of these appeals, three thousand three hundred and twenty-nine (3,329) were "standard assessment appeals" which are valuation appeals that are automatically placed in the Office of Tax and Revenue's tracking system. For Class 1 properties, the Commission received a total of two thousand one hundred and fifty (2,150) appeals, with one hundred sixty-eight (168) appeals being withdrawn, and three hundred and forty (340) were resolved by way of Stipulation Agreements between the Office of Tax and Revenue and the Petitioner. The Commission decided a total of one thousand six hundred and forty-two (1,642) appeals. Of these cases, two (2) or less than one percent (< 1%) were increased, one thousand three hundred and seventy-nine (1,379) or eighty-four percent (84%) were sustained, and two hundred and sixty-one (261) or sixteen percent (16%) were reduced.

Tax Class 1 Action	Assessed Value (AV)	Dollar Value (DV) (AV ÷ 100 x .85)
1st Level Cases Appealed to RPTAC	\$ 2,830,545,510	\$ 24,059,636.81
2nd Level Actions including Stipulations	\$ 2,780,602,684	\$ 23,635,122.82
Impact (Difference between 1st Level Cases Appealed to RPTAC and 2nd Level Actions including Stipulations)	\$ 49,942,826	\$ 424,514.02
2nd Level Increases	\$ 523,313.00	\$4,448.16
2nd Level Reductions	\$ 260,225,652	\$ 2,211,918.05
2nd Level Stipulations (between the Petitioner and OTR)	\$ 202,126,909	\$ 1,718,078.73
2nd Level Sustained	\$ 2,317,726,810	\$ 19,700,677.89

The Commission also received one thousand one hundred and seventy-nine (1,179) appeals in tax Class 2; fifty-two (52) were withdrawn and seventy-six (76) were resolved by way of Stipulation Agreements between the Office of Tax and Revenue and the Petitioner. The Commission decided a total of one thousand fifty-one (1,051) appeals. Of these appeals, three (3) or less than one percent (<1%) were increased, eight hundred and twenty-four (824) or seventy-eight percent (78%) were sustained, and two hundred and twenty-four (224) or twenty-two percent (22%) were reduced.

Class 2 Properties (\$3 million or less) Action	Assessed Value (AV)	Dollar Value (DV) (AV ÷ 100 x 1.65)
1 st Level Cases Appealed to RPTAC	\$ 414,756,770	\$ 6,843,486.71
2 nd Level Actions including Stipulations	\$ 394,765,491	\$ 6,513,630.61
Impact (Difference between 1 st Level Cases Appealed to RPTAC and 2 nd Level Actions including Stipulations)	\$ 19,991,279	\$ 329,856.10
2 nd Level Increases	\$ 0	\$ 0
2 nd Level Reductions	\$ 75,713,371	\$ 1,249,270.63
2 nd Level Stipulations (between the Petitioner and OTR)	\$ 12,107,990	\$ 199,781.84
2 nd Level Sustained	\$ 306,944,130	\$ 5,064,578.15

Class 2 Properties (\$3 million+) Action	Assessed Value (AV)	Dollar Value (DV) (AV ÷ 100 x 1.85)
1 st Level Cases Appealed to RPTAC	\$ 40,656,733,444	\$ 752,149,568.72
2 nd Level Actions including Stipulations	\$ 39,398,813,516	\$ 728,878,050.05
Impact (Difference between 1 st Level Cases Appealed to RPTAC and 2 nd Level Actions including Stipulations)	\$ 1,257,919,928	\$ 23,271,518.67
2 nd Level Increases	\$ 37,243,796	\$ 689,010.23
2 nd Level Reductions	\$ 8,899,215,879	\$ 164,635,493.77
2 nd Level Stipulations (between the Petitioner and OTR)	\$ 2,453,045,557	\$ 45,381,342.81
2 nd Level Sustained	\$ 28,009,308,284	\$ 518,172,203.26

Audit Results

Page 9

By addressing the challenge of meeting the statutory guidelines as a top priority, RPTAC has heard and decided cases in a timely manner before the statutory deadline of February 1st with few exceptions. In tax year (TY) 2012, RPTAC received 4,277 appeals. Due to a limited number of active Board members during the 2012 tax season, the Commission was able to complete only 34 percent of the Tax Year assessment appeals by the February 1st statutory deadline. In TY 2013, RPTAC received 3,467 case appeals and decided on all the cases before the statutory deadline. In TY 2014, RPTAC received 3,370 appeals and heard and decided on all but one case before the statutory deadline.

RPTAC Response:

TY 2012 cases were handled by BRPAA not the "Commission"; the "Commission" did not take effect until July 2012.

Audit Recommendation

1. Consistent with the statute, part-time Commissioners should be hired as part-time District government employees rather than as Independent Contractors.

RPTAC Response:

As noted above in response to a statement on page 3 of the draft audit, it was never contemplated that part-time members of the Commission would be employees. The language in the statute was carry over language from the original bill as introduced that contemplated that all members of the Commission would be Full Time members. To implement this recommendation would require a legislative change to increase the Commission's FTE count to 19. Given the city's budget constraints this recommendation does not seem fiscally feasible. Additionally, in recent email conversations (February 18, 2016) with the Attorney Advisor from BEGA (copy attached), it was determined that the Part-time Commissioners are not required to file Financial Disclosure statements since they do not engage in activities described in the BEGA regulations/statute and their compensation has never reached the statutory threshold.

Audit Recommendation

2. RPTAC should work with the Board of Ethics and Government Accountability (BEGA) to ensure that all of those who are required to file Public Financial Disclosure Statements do so and to properly report to BEGA the names of those who are required to file Confidential Financial Disclosure Statements and ensure that they do so and that those Confidential Financial Disclosure Statements are reviewed timely, as required. This includes RPTAC staff members, including the Executive Director, as well as RPTAC Commissioners, both full-time and part-time.

RPTAC Response:

The Executive Director is current on all Financial Disclosure statements filings from 2012-2015. Full-time Commissioners have been notified that they are required to file FDS. The Part-time Commissioners will be notified and instructed to file FDS for the appropriate years since their initial appointments to the Commission.

Audit Recommendation

3. RPTAC should put in place a recusal process that includes a determination of whether a conflict of interest or potential conflict of interest exists and whether recusal is the appropriate remedy. If it is determined that the employee shall recuse him or herself, there must be a resulting written recusal that includes details as to what that recusal entails. The written recusal should be maintained by the agency as well as the employee and all of those within the agency who could be impacted by the recusal should be notified. The recusal process must apply to all staff and all Commissioners, including both full-time and part-time Commissioners. All staff and all

Commissioners must be trained on the recusal process, which should include a policy of transparency in dealing with conflicts of interest and the appearance of conflicts of interest, and resulting recusals.

RPTAC Response:

Although the Commission might benefit from a more definitive process by which Commissioners shall avoid their involvement in addressing issues when there is a conflict of interests matter, the Auditor should know that the Commission does address the issue in its Commissioner training program. In a written document entitled, "*General Preparatory Class for Commissioners*," the issue is addressed on page 2 - under the sub-heading "*Prohibitions & Ex Parte Communication*" (page attached) where, in very specific terms, it reads that "Commissioners shall be prohibited from reviewing an appeal if the Commissioner has had some involvement or interest (direct or indirect) with the property during the previous two (2) year period prior to the filing date of the appeal."

During this past year, a part-time Commissioner (a professional real estate appraiser) had recused himself twice from hearing an appeal of a property because he had appraised the property within the past two years. Another part-time Commissioner, who happens to be the current President of the Apartment & Office Building Association (AOBA), an organization which advocates for property owners of large apartment buildings and office buildings in the District of Columbia, was restricted to hearing only small residential property appeals in order to avoid any appearance of a conflict of interest.

Thank you and your staff again for the time and attention that was dedicated to this audit. If you have any additional questions, please contact me or Carlynn Fuller, Executive Director, on (202) 727-6860.

Sincerely,



Gregory Syphax
Chair

Attachments

Attachments

**BRPAA Reform
Working Group
April 26, 2010
Recommendations**

BRPAA REFORM WORKING GROUP

Draft Summary of Recommendations

April 26, 2010

MEMBERSHIP - BRPAA REFORM WORKING GROUP

Council of the District of Columbia

Jeff Coudriet, Committee Clerk, Committee on Finance and Revenue
Ruth Werner, Legislative Analyst Committee on Finance and Revenue

DC Office of Tax and Revenue (OTR)

Richard McKeithen, Director, Real Property Tax Administration
David Fitzgibbon, Chief Appraiser, Real Property Tax Administration
Bazil Facchina, Assistant General Counsel

Board of Real Property Assessments and Appeals (BRPAA)

Renee McPhatter, Administrative Officer

Apartment and Office Building Association of Metropolitan Washington, AOBA

David Chitlik, Senior Director, Lodging, Property Tax, Marriott International, Inc.
W. Shaun Pharr, Esq., AOBA's Senior Vice President of Government Affairs
David A. Fuss, Esq., Shareholder, Wilkes Artis, Chartered
Michael Allen, Principal, Ryan & Company, Inc.
Phillip S. Appelbaum, Senior Consultant, Marvin F. Poer and Company
Nicola Y. Whiteman, Esq., AOBA's Vice President of Government Affairs, DC

DC Building Industry Association (DCBIA)

Tanja H. Castro, Esq., Partner, Holland & Knight, LLP

INTRODUCTION

The BRPAA Reform Working Group (Group) was formed at the direction of the DC Council and was charged by Councilmember Jack Evans (D-Ward 2), Chairman of the Committee on Finance and Revenue to consider and report back to him on proposed changes to Bill 18-530, the "Real Property Tax Appeals Commission Establishment Act of 2009" (the "Bill").

The Group is comprised of all of the major stakeholders with a mutual interest in improving BRPAA's operations, including representatives of OTR and legal counsel, AOBA, DCBIA, residential and commercial property owners, and their legal counsel and advisors.

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010

As a result of several meetings of the Group, a broad consensus of changes to the proposed bill has been arrived at and they are summarized below. It is significant that such consensus was achieved on such a broad range of assessment appeal issues.

PURPOSE AND SCOPE

The purpose and scope of this memorandum is to provide a narrative of the proposed changes to the Bill so that the Group's recommendations can be clearly ascertained and confirmed prior to a legislative markup of the Bill.

The scope of the Group's report and recommendations was to examine both the structure and operation of BRPAA so that the new entity that can be imposed under the Bill that can better address and solve all of the current problems that are being encountered at BRPAA by both OTR and DC property owners.

SUMMARY OF THE GROUP'S CONCLUSIONS AND RECOMMENDATIONS

1) INDEPENDENT BOARD/MISSION STATEMENT

o Conclusion and Recommendations

- The Group believes that the second level of assessment appeals should be to an independent entity.
- The Group reviewed and approved the current Mission Statement of BRPAA as the basis for the new entity's goals and objectives.
- The Group proposes that the new entity should be called "The Real Property Tax Appeals Commission" (RPTAC).

2) BOARD COMPOSITION

o Conclusions and Recommendations

- The RPTAC shall consist of up to 24 members who shall be nominated by the Mayor and approved by Council in the same manner as current BRPAA board members. Similar to the provisions in Bill 18-530 as introduced, District residency shall not be a requirement but each member must maintain a DC license or certification or demonstrate some other connection to the District, especially the real estate sector.
- RPTAC shall be run by a full-time chairperson and administrative officer and supported by a vice chairperson and other members of the new Commission. Additionally, a full-time staff shall be approved and funded similar to that which currently supports BRPAA.
- The RPTAC chairperson shall be/have been a District of Columbia certified general appraiser. The Group feels strongly that selecting the right chairperson for RPTAC is the key to ensuring that the new Commission operates efficiently and effectively in discharging its new mission statement.

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010

- Vice chairperson to be an attorney licensed in the District of Columbia. This position is intended to assist the chairperson in resolving legal issues related to the assessment appeals.
- The current three-member panel format shall be retained.
- The Group recommends that the chairperson be given the power to select all panel members to hear cases before the RPTAC and to schedule those hearings. At BRPAA this function is vested in the administrative officer rather than the chair. The Group believes that adding this authority to select panels and set hearing schedules is required in order to ensure the efficient operation and quality of the RPTAC appeal process.
- The Group recommends that the current term limits for BRPAA members shall be used for RPTAC.

2) ROLE OF THE CANDIDATE QUALIFICATION REVIEW COMMITTEE (CQRC)

o Conclusions and Recommendations

- The purpose of the new CQRC is to assist the Mayor and Council in ensuring that the best possible candidates for appointment to the RPTAC are selected and approved.
- The Group feels that the current appointment process has not worked to ensure the selection of the best possible candidates to serve on BRPAA. While the Mayor's Office of Boards and Commissions (OBC) will have the discretion to reject or accept recommendations from the CQRC, it should give the recommendations of the CQRC great weight.
- By inserting an initial filter in the form of the CQRC before candidates are referred to the OBC, the Mayor and then the Council, the overall selection process should help to ensure that proposed candidates have the necessary core credentials, experience, and lack of bias to contribute to the success of RPTAC.
- It is intended that CQRC would serve at the pleasure and under the direction of the Council in order to help it exercise its oversight functions. The Group suggests that the composition of CQRC should be seven members: three from the government (e.g., OTR), three from property owners (commercial and residential owners combined) or their representatives, and one to be appointed by the Council. Members of the CQRC should serve for a minimum of two-years.
- CQRC's mission would be to try to identify unfitness and lack of credentials prior to, or subsequent to, the Mayor recommending a RPTAC appointment to the DC Council.
- CQRC's recommendations and comments would be provided to the Mayor and DC Council for their review during the nomination and appointment process.

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010

- CQRC shall review and make recommendations for the re-appointment of members as well.
- CQRC would also review and comment upon new RPTAC rules.

② **MEMBER QUALIFICATIONS**

○ **Conclusions and Recommendations**

- The basic requirements to serve as a commissioner with RPTAC (other than in the posts of chair or vice chair) shall remain the same as those specified for members of BRPAA.
- All board members should be nominated based primarily on their ability to serve on the RPTAC and to render informed and unbiased decisions on real property valuation for assessment purposes without reference to the fiscal impact of their decisions.
- Applicants with valuation experience will be given priority, particularly with regard to commercial properties.
- The Group does not believe that it is reasonable or possible to require that all members of the Commission shall have professional appraisal designations; however, those applicants that hold or have held such designations should be given priority in the selection process and will usually earn CQRC's endorsement more easily.

② **TRAINING**

○ **Conclusions and Recommendations**

- The Group strongly believes that a RPTAC comprised of better qualified and trained members is the key to avoiding many of the existing problems at BRPAA. Requiring RPTAC members to receive specialized training is key to realizing any improvement in the quality and timeliness of second level assessment appeal decisions.
- Commissioners should receive training upon joining the RPTAC. Similar training will be required on an annual basis for all returning RPTAC members who shall submit to and participate in continuing education courses to ensure their competency and creditability in performing their functions.
- Accordingly, the Group strongly recommends that all RPTAC members shall be trained through a specific assessment valuation program to be designed and approved by the new CQRC. Accordingly, all new RPTAC members will be required to attend these training sessions.
- At the direction of the new chairperson, RPTAC members may be required to undergo specialized valuation training in order to hear assessment appeals for particular types of real property.
- At the conclusion of the course work, the CQRC shall administer a test to determine whether prospective RPTAC members

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010

understand the basics of property valuation and the documents and forms used in the appraisal process.

- The curriculum for this training shall be proposed by the CQRC to the chair of RPTAC and designed in consultation with the various stakeholders who use RPTAC. The curriculum shall include a course which provides basic instruction in the assessment appeal process. (OTR suggested purchasing International Association of Assessing Officers (IAAO) study materials to create the training curriculum for prospective CQRC members.)
- It is intended that the training will be specific to DC assessment appeals, although it will include general appraisal principals and practice as well as applicable DC law and an analysis of OTR's forms (i.e., assessor worksheet and I&E forms).

o) COMPENSATION

o Conclusions and Recommendations

- Current compensation rate of \$50 per hour shall remain unchanged from what was paid to BRPAA board members.
- Upon completion of mandatory training all members would receive an additional lump sum bonus payment to be set by the RPTAC chair, provided that they otherwise meet all member requirements including hearing the minimum number of appeals set by the chair.
- The chair may also establish additional lump sum awards for any member who attends additional training for the valuation of specific types of real property at the chair's sole discretion.
- The chair may not award any training lump sum payment in excess of \$2,000 per member, per appeal season.

o) HEARINGS

o Conclusions and Recommendations

- The Group proposes that RPTAC hearings be held both during the day, in the evenings, and on weekends.
- It is anticipated that this expanded access to the hearing process will benefit both the number of RPTAC members who can participate and taxpayers who might otherwise not be able to attend.
- The Group recommends that the current BRPAA three (3) member panel rule be applied to RPTAC for all hearings.
- Similarly the Group recommends that the current BRPAA rule that allows for two (2) member hearings, if the petitioner-taxpayer signs a waiver to permit such a panel, also be incorporated into the RPTAC process.
- The Group also recommends that the current BRPAA prohibition against the same three panel members serving together for more than one year also be adopted by RPTAC.

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010

○ **Appeal Rights –New Property Owners**

- The Group proposes that upon the acquisition of property within the District, that the new owner shall have the right to appeal the most recently issued assessment for that property by filing an appeal with OTR within 60 days from the date of acquisition.

○ **HEARING DECISIONS**

○ **Conclusions and Recommendations**

- In order to obtain both transparency and reduce the number of requests for re-hearings and judicial appeals, it is a major goal of the Group that this reform ensures more detailed, consistent, and value-based decisions from the RPTAC panels.
- All decisions must be in writing signed by the RPTAC panel members hearing the case and shall provide a detailed explanation that, at a minimum, addresses the principal appeal issues raised by the petitioner and the responses given by OTR.
- All decisions will be rendered within 20 calendar days from the date of the hearing. The same deadline shall apply to rehearing decisions.
- Commission members shall meet to discuss each case and each Commissioner shall sign the final decision.
- The Group believes that these changes will increase the timeliness, the quality, and give better transparency to the RPTAC decisions which may in turn lead to a reduction in the number of requests for re-hearing and/or the filing of judicial appeals.

○ **RE-HEARINGS**

○ **Conclusions and Recommendations**

- In order to address OTR's request for the right to appeal BRPAA decisions to the judicial level, the Group arrived at a compromise by formulating a more robust re-hearing process at the second level of appeal.
- OTR's main concern was that it needed a further avenue of appeal to correct obvious errors in certain BRPAA decisions.
- The Group proposes a three-person re-hearing panel.
- The Group proposes that all re-hearings at RPTAC should be held before a special re-hearing panel to consist of the Chair, Vice-Chair and one other member of RPTAC from the panel that heard the original appeal.
- Both OTR and the taxpayer shall have the right to petition for a re-hearing.
- Re-hearing petitions shall be filed with the chair within 15 calendar days of receipt of the RPTAC panel decision.
- Re-hearings shall be granted based only upon a finding by the chair of "plain error."

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010

- Burden of proof to show plain error shall be upon the party seeking the re-hearing.
- With the written consent of both parties, the re-hearing panel may change the original RPTAC decision without holding a hearing.
- Re-hearings that are granted shall not be considered "de novo" but rather a continuation of the original RPTAC appeal hearing.

➤ **MAXIMUM AND MINIMUM NUMBER OF CASES**

○ **Conclusions and Recommendations**

- The Group recommends that the new chair of RPTAC possess the authority to establish, as needed, a minimum and/or maximum number of appeals that each RPTAC member shall hear in each appeal season.
 - Vesting the Chair with this authority is necessary to address concerns expressed by Group members with BRPAA members who continue to hear appeals despite having a significant backlog of cases where a final decision has yet to be issued.
- The Group anticipates that, if adopted, the prior recommendations with regard to qualifications and expanded hearing times shall mean that the current imbalance of cases heard by BRPAA members (some too few and some too many) will be redressed.

➤ **ELIMINATION OF SUPPLEMENTAL ASSESSMENTS**

○ **Conclusions and Recommendations**

- The Group, with the specific urging of OTR, recommends that the current supplemental assessment process be eliminated in favor of a single annual assessment.
- The current twice a year supplemental assessment is burdensome on both the OTR and the property owner. Notices are often not received in time to be appealed; furthermore the appeal deadlines and forums are complex. Such appeals interfere with the normal functioning of the regular assessment appeal cycle.
- Accordingly, it is proposed that supplemental assessments to reflect an incremental increase in the value of a property's improvements as a result of change of use or new construction shall no longer be issued. Rather, a single annual assessment shall be issued to reflect the value of both land and improvements as of January 1 of the year prior to the payment of the property taxes.
- It is proposed that this elimination of supplements assessments commence with tax year 2012.
- As a result of this change, proposed assessed values as of January 1 shall capture both the value of the land and, if appropriate, any partially completed improvements as of that date.
- The Group recommends that in the event that a property is demolished or has been vacated and a major renovation begun

Summary of BRPAA Reform Working Group Recommendations
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after January 1, that the property owner shall be granted the right to petition the OTR for a revaluation of that property and that OTR's decision may be appealed to RPTAC within 45 days once a decision has been rendered.

② **FIVE-DAY RULE**

○ **Conclusions and Recommendations**

- The Group recommends retaining the current five-day rule used by BRPAA. The taxpayer's current right to supplement its original appeal filing shall continue, as long as served on OTR prior to the scheduling of the appeal by RPTAC. Overall, the BRPAA 5 day rule shall be applied in the same fashion to RPTAC appeals, except as detailed below.
- The Group recommends that the notice of a RPTAC hearing to OTR should be reduced to 20 calendar days.
- In order to expedite the hearing of cases OTR will agree to schedule hearings on less than 20 days notice of an appeal provided that the taxpayer waives the 5-day requirement for that appeal.
- If OTR does not wish to change its assessment from that adopted at the 1st level of appeal, then OTR does not have to issue a 5-day response and the RPTAC appeal will be decided entirely based on the OTR's last worksheet/decision as supplemented by any relevant sections of OTR's pertinent data book or attachments to the 1st level decision.
- OTR's 5 day response shall explain and set out the proposed assessed value that OTR seeks to defend at the RPTAC hearing. The 5 day letter must match the proposed assessed value being sought by OTR.
- The Group recommends the continuance of the current practice that if an increase in assessed value is reflected on the 5-day response, and is sought by OTR at RPTAC, then it must have been first expressly approved by the OTR's Chief Assessor or Director of Real Property Administration before the issuance of the 5-day response. The burden of proof in such cases of a requested increase shall be on OTR.
- OTR's 5-day response at RPTAC will continue to be subject to the current BRPAA rules that requires it to state OTR's entire case and proof, which cannot be changed at the RPTAC hearing [except as rebuttal to new information introduced by the taxpayer].
- Failure to submit a 5-day response will no longer be a basis for a postponement of the RPTAC hearing.

② **NEW APPEAL DEADLINES**

○ **Conclusions and Recommendations**

Summary of BRPAA Reform Working Group Recommendations
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- The Group agrees that pushing the date by which OTR has to issue its regular proposed assessments from on or before March 1 to on or before April 1 would assist both the OTR and RPTAC in the efficient and timely processing of assessment appeals.
- Accordingly, the first level assessment appeal deadline would be pushed back 30 days as well to May 1.
- The mandatory filing deadlines for income & expense forms would however, remain unchanged as April 15.
- Taxpayer shall continue to have to file any second level appeal within 45 days following the date of the 1st level OTR decision unless that decision not received by August 1, in which case the appeal can be filed by September 30.
- Taxpayer to include the basis and proof of its appeal with the filing to RPTAC, but can supplement it with additional information prior to the scheduling of the RPTAC hearing as now provided by law.
- A copy of the taxpayer's RPTAC appeal shall be served on OTR by the taxpayer. A taxpayer filing an appeal on a commercial (Class 2) property shall serve a copy of the RPTAC appeal on OTR, rather than having the RPTAC effect service on OTR. The Class 2 taxpayer would file one copy of its appeal with the RPTAC and simultaneously send another copy to OTR. This service rule would not apply to residential appeals.

o) **MIXED USE I&E FORM**

o **Conclusions and Recommendations**

- The Group recommends that the penalties associated with the non-filing of the "mixed use" income & expense form be changed from having the entire residential component of the building being assessed as a class 2 property and at the higher class 2 tax rate, to the same 10% penalty imposed on class 2 property owners for non-filing of their I&E expense surveys.

o) **OVERALL GOALS FOR RPTAC**

o **Conclusions and Recommendations**

- Better decisions, more transparent, and rendered timely.
- More qualified board members, trained to hear valuation appeals in specific property types.
- Transparency as to the process and decision making.
- Members who are unbiased and knowledgeable.
- Statistical and annual reviews to benchmark performance.
- Citizen board, run by a full time chair with appraisal credentials.
- Sole focus to be valuation not tax impact of decisions.

Summary of BRPAA Reform Working Group Recommendations
April 26, 2010.

- Hearings to remain informal and to become more taxpayer friendly.
- Web-based applications, forms, board rules, and decisions should be a goal.

**BRPAA Reform
Working Group
Undated
Recommendations**

Board of Real Property Assessments and Appeals (BRPAA) Reform

Background:

Chairman Gray believes that BRPAA is why the District is unable to accurately estimate property tax revenue forecasts, indicating in the past that BRPAA has (1) taken too long to deliberate and decide cases and (2) irresponsibly reduced tax bills. Gray argues that "bolstering" BRPAA will give the second level appeal board the needed support to increase property tax revenue.

He has proposed creating a hybrid "Commission" structure:

- a. Six (6) DC employees, including a Commission Chairman and Vice Chairman appointed by the Mayor and approved by the Council, would be hired to hear commercial cases (though District residency would not be required)
- b. Six (6) non-DC employees would be appointed to hear residential cases

Additionally, the bill would give OTR the ability to appeal the second level appeal Commission's decisions.

Budget Issues with Proposal:

- OCFO estimated property tax revenues totaling approximately \$1.8 billion in FY2010. **BRPAA's actions in FY2010 resulted in a \$52 million impact on the revenue projection – a 2.8% impact on property tax revenues.** Given the tough budget pressures the city is facing, restructuring an agency that has a 2.8 percent impact on the city's property tax revenue WILL NOT increase property tax revenue.
- Additionally, of the 6,178 appeals heard by BRPAA during FY2010, the Board only reduced 1,252 assessments (20% of all square/lot assessment appeals heard by the Board). The other assessment appeals were sustained at the original OTR assessment level (3,716 total cases) or OTR came to the BRPAA hearing recommending a lesser assessment (594 total cases), citing their own errors with the original assessment.
- Ideally, BRPAA would not be necessary if OTR property assessments were fair and reasonable. Instead of bolstering BRPAA, the money should be spent on bolstering the initial OTR assessments, allowing OTR to hire the "experts" needed to provide property tax equity across the city.

More Cost Effective Solution / Suggestion:

- In place of the current legislation (instead of paying the legal fees for OTR to appeal BRPAA decisions before the courts), **OTR should provide legal support to the assessors who participate in BRPAA proceedings in order to better argue OTR's position regarding appealed assessments.** Currently, OTR assessors attend BRPAA proceedings without legal representation, yet the commercial petitioners oftentimes have entire legal teams present. The legal teams representing the commercial petitioners often present stronger arguments than the OTR assessors, who have no legal training.

October 14, 2015

Email to

Marshall Matsiga

Fuller, Carlynn (RPTAC)

From: Fuller, Carlynn (RPTAC)
Sent: Wednesday, October 14, 2015 5:08 PM
To: Matsiga, Marshall (ODCA)
Cc: Syphax, Gregory (RPTAC); Bellanca, Amy (ODCA); Perry, Lawrence (ODCA)
Subject: RE: Part Time Commissioners

Good afternoon Marshall,

The emails I sent you yesterday from 2012 when the Commission was created indicated that initially there was some confusion as to the appropriate interpretation of this language. It was determined by DCHR legal that only Full time Commissioners are employees and the Part Time Commissioners are paid a stipend.

At the time of the creation of the Commission and until the present time the stipend amount is \$50. I was hired in 2011 and the stipend amount at that time was \$50. I do not have any knowledge of a \$35 stipend. So for all relevant time periods for purposes of this audit the stipend has been \$50 with the exception of the Chair or Acting Chair of BRPAA who was entitled to receive a higher stipend. Employees receive salaries, not stipends, so the language pertaining to the salary schedule only pertains to the Full-time Commissioners and the language pertaining to stipends applies to the Part Time Commissioners.

As I explained to you yesterday, if it was the intent of Council for Part-time Commissioners to be employees the FTE count for the Commission would be larger than 11. The FTE count was increased with the creation of the Commission from 5 to 11 to allow for the hiring of 6 Full time Commissioners.

Perhaps it would better and more efficient if another meeting was scheduled to resolve this issue and any other outstanding issues. We are in the midst of our hearing season as well as closing out FY 15 with reports and such so to keep going back and forth is very time consuming. This process has been going on for four months. It was represented to us in the initial meeting back in June that this process would be completed well before the hearing season started. That has not happened. Please advise as to how much longer you anticipate this audit taking. Thank you.

Carlynn Fuller, Esq.
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From: Matsiga, Marshall (ODCA)
Sent: Wednesday, October 14, 2015 3:39 PM
To: Fuller, Carlynn (RPTAC)
Cc: Syphax, Gregory (RPTAC)
Subject: RE: Part Time Commissioners

Hi Carlynn,

Additional questions:

I dug in some more since the last document seemed to reference BRPPA and \$35 per meeting; and came up with this document showing the \$50 per hour for RPTAC . DC Code 47-825.01a(C) states that, " the part-time members of the Commission shall be compensated on an hourly basis and shall hear cases of single –family residential property or any noncommercial real property assessed during administrative review at \$3 million or less (or under notice of assessment if the administrative review is unavailable): provided , that the Chairman may assign part-time members to hear cases of other real property assessments.

That part I think is clear—part –time Commissioners paid an hourly rate and we have determined that it is \$50.

This is where my confusion is now and frankly this is the subject of the current office discussion:

DC Code 47-825.01a(5) states that , "Commissioners shall be employees of the District Government. The mayor shall establish a separate salary schedule applicable to Commissioners."

Questions:

Who is being referenced here—Is it full time only or both full-time and part –time Commissioners?

If both, why the provision under DC Code 47-825.01a (C) specifically for part-time Commissioners and the hourly compensation basis?—Whose salary is the Mayor supposed to establish on a separate schedule?

OR is it that both the part-time and full time Commissioners are District Employees but simply command a different salary structures with part-time Commissioners paid a fixed \$50 per hour?

Which then brings the question; if all Commissioners are District employees, why the different treatment for part-time Commissioners as independent contractors?.

Thanks.

From: Matsiga, Marshall (ODCA)
Sent: Wednesday, October 14, 2015 11:13 AM
To: Bellanca, Amy (ODCA)
Cc: Perry, Lawrence (ODCA)
Subject: FW: Part Time Commissioners

Hi Amy—additional information

From: Fuller, Carlynn (RPTAC)
Sent: Wednesday, October 14, 2015 10:32 AM
To: Matsiga, Marshall (ODCA)
Subject: RE: Part Time Commissioners

Good morning Marshall,

The Mayor's Office of Talent and Appointment, formerly the Office of Boards and Commissions, sets the pay for all part time members of the various Boards and Commissions. They are all treated as Independent Contractors. They are nominated by the Mayor and approved by the Council. Ms. Patterson would probably remember this practice from her days on the Council. I have attached a document produced by the former Office of Boards and Commissions that details the pay and stipend structure.

From: Matsiga, Marshall (ODCA)
Sent: Wednesday, October 14, 2015 9:52 AM
To: Fuller, Carlynn (RPTAC)
Cc: Syphax, Gregory (RPTAC)
Subject: FW: Part Time Commissioners

Hi Carlynn

FYI—please see additional questions below--tried to look for the \$50 rate establishment—couldn't find it under D.C. Official Code §47-825.01(a)(5). Is there anywhere where this is stated?—thanks.

From: Bellanca, Amy (ODCA)
Sent: Tuesday, October 13, 2015 3:09 PM
To: Matsiga, Marshall (ODCA); Perry, Lawrence (ODCA)
Subject: RE: Part Time Commissioners

The Council merely confirms the appointments of the Commissioners. How was the rate of pay established? They are considered IC's, but have no contracts? What is the document that governs their duties and responsibilities?

From: Matsiga, Marshall (ODCA)
Sent: Tuesday, October 13, 2015 2:57 PM
To: Bellanca, Amy (ODCA); Perry, Lawrence (ODCA)
Subject: FW: Part Time Commissioners

Hi Amy—per Ms. Fuller, they do not have contracts for the part-time Commissioners as they go through the Council. Also, she sent me discussions back then that mentioned paying stipends to the part-time commissioners. Please see below.

From: Fuller, Carlynn (RPTAC)
Sent: Tuesday, October 13, 2015 1:58 PM
To: Matsiga, Marshall (ODCA)
Subject: FW: Part Time Commissioners

FYI

From: Harvey-Johnson, Laverne (DCHR)
Sent: Thursday, May 10, 2012 2:07 PM
To: Fuller, Carlynn (OCFO)
Subject: RE: Part Time Commissioners

Hi Carlynn,

I remember our first conversation and you indicated that they would be part-time and not dc government employees. However, during other brief discussions with the JWB, it was determined that they would all be dc gov't. employees. I agree with you that in order for this to occur you would definitely need to have the available FTE. If the legislative does not call for all to be dc gov't. employees, we should follow the process for looking into a stipend. I will check w/the Director and the legal team that was on the call.

LaVerne Harvey-Johnson

Administrative Officer
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D.C. Department of Human Resources
441 4th Street, NW Suite 850N
Washington, DC 20001
202/442-9600 (main)
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From: Fuller, Carlynn (OCFO)
Sent: Thursday, May 10, 2012 1:34 PM
To: Harvey-Johnson, Laverne (DCHR)
Subject: Part Time Commissioners

Hi LaVerne,

I was just thinking about our conversation the other day and you indicated that it looks like the part time Commissioners would also be employees. We do not have additional FTE authority for them; we only additional FTE authority for the 6 full time Commissioners. Additionally, Susan Banta in the Mayor's Budget Office indicated that the part time Commissioners were to be contractors paid a stipend.

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February 18, 2016

Email Exchange with

Cristina Patzelt

BEGA Attorney Advisor

Fuller, Carlynn (RPTAC)

From: Fuller, Carlynn (RPTAC)
Sent: Thursday, February 18, 2016 1:43 PM
To: Patzelt, Cristina (BEGA)
Subject: RE: REQUIRED Financial Disclosure Filers List Training

Ok thanks. They don't meet that requirement.

From: Patzelt, Cristina (BEGA)
Sent: Thursday, February 18, 2016 1:08 PM
To: Fuller, Carlynn (RPTAC)
Subject: RE: REQUIRED Financial Disclosure Filers List Training

Hi Carlynn,

Part-time commissioners will only need to be added to the public filers list if they meet the salary requirement for 2015 (\$101,296).

You don't need to file an amended list for previous years.

Cristina Patzelt
Attorney Advisor
Board of Ethics and Government Accountability
One Judiciary Square
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Washington, D.C. 20001
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From: Fuller, Carlynn (RPTAC)
Sent: Thursday, February 18, 2016 12:43 PM
To: Patzelt, Cristina (BEGA)
Subject: RE: REQUIRED Financial Disclosure Filers List Training

Good afternoon Cristina,

As it relates to our enabling statute that language carried over from the original statute as introduced that would have made all RPTAC Commissioners full time employees. The current composition of the Commission is 6 Full Time Commissioners and 8 Part Time Commissioners who are paid as Independent Contractors and receive a 1099 at the end

of each year. This determination/interpretation of the legislation was reached by DCHR legal back in 2012. Based on this, I did not include the names of the Part Time Commissioners on the Public Filer list in the past.

Upon reading the DCMR for BEGA I now see the definition of Employee/Government Employee and realize that the Part Time Commissioners will have to be added to our list of Public filers. Do I need to file an amended list for previous years?

Thank you for your assistance.

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From: Patzelt, Cristina (BEGA)
Sent: Thursday, February 18, 2016 12:26 PM
To: Fuller, Carlynn (RPTAC)
Cc: Dillion, Jessica (BEGA)
Subject: RE: REQUIRED Financial Disclosure Filers List Training

Hi Carlynn,

Yes, RPTAC employees are required to file, as are RPTAC Commission members. The list of Boards and Commissions on the memo is simply a list of boards and commissions whose members are nominated by the Mayor under a specific section of the D.C. Code.

Your enabling legislation specifically states that the Commissioners are employees of the District government, which means they must file publicly if they meet the standard for employees who are public filers, or confidentially if they meet the standard for confidential filers.

Cristina Patzelt
Attorney Advisor
Board of Ethics and Government Accountability
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From: Dillion, Jessica (BEGA)
Sent: Thursday, February 18, 2016 12:18 PM
To: Patzelt, Cristina (BEGA)
Subject: FW: REQUIRED Financial Disclosure Filers List Training

Please advise.

Thanks,

Jessica Dillion
Administrative Assistant
Board of Ethics and Government Accountability
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From: Fuller, Carlynn (RPTAC)
Sent: Thursday, February 18, 2016 12:17 PM
To: Dillion, Jessica (BEGA)
Subject: RE: REQUIRED Financial Disclosure Filers List Training

Good afternoon Jessica,

The Real Property Tax Appeals Commission is not listed on the memo as being required to file. Please advise as to whether we were inadvertently omitted or if the list is accurate. Thanks!

Carlynn Fuller, Esq.
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Real Property Tax Appeals Commission
Government of the District of Columbia
One Judiciary Square
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From: Dillion, Jessica (BEGA)

Sent: Friday, February 12, 2016 11:19 AM

To: Alexander, Marceline (FEMS); Allsopp, Runako (DCRA); Amato, Maria (DOC); Avery, Gail (DCPL); Baatin, Victoria Murray (CAH); Back, Mark (DDS); Banks, Stephanie (DCPC); Barash, Scott (DCPS); Barnes, Lafayette (EOM); Bassett, Kimberly (EOM); Branson, Karen (OIG); Brown, Lasheka (OEA); Bushman, Esther (DCOZ); Butler, Mannone (CJCC); Caspari, Amy (DPR); Caspari, Matthew (DBH); Cavendish, Betsy (EOM); Chandler, Cory (CFSA); Chandy, Sunu (OHR); Chisley-Missouri, Kimberly (MPD); Cohen, Tracey (DCLB); Davis - Shelton, Madeleine (DBH); Davis, Calvin (DRES); Davis, Christine (DPW); DayMarshall, Maria (DCBC); DeVillier, Mikelle (OCME); DeWitt, Jeffrey (OCFO); Do, David (EOM); Donald, Brenda (EOM); Dubin, Glenn (DDOT); Efros, Ellen (OAG); Fleps, Christina (OCTO); Flowers, Brian (BEGA); Fry, Linden (EOM); Fuller, Carlynn (RPTAC); Funk, Christine (DFS); Garcia, Michelle (EOM); Garrett, Katherine (JNC); Gaston, Darrell (EOM); Giefer, Edward (OP); Glasser, David (DMV); Evans, Gregory M. (EOM); Hapeman, Nancy (OCP); Hayworth, John-Paul (SBOE); Hines, Charon (EOM); Hoffman-Peak, Hillary (OSSE); Hyden, David (OAG); Isaac, Donald (EOM); Jenkins, Martha (ABRA); Johnson, Sheryl (DHCF); Kempf, Purvee (DCHBX); Krainak, Michael (EOM); Kreiswirth, Barry (EOM); Hughes, Kenneth (PSC); Lambert, Tammi (EOM); Lerner, Jacques (DCTC); Levy, Michael (EOM); Linda Manley; Lynch, Tara (EOM); Maxwell, Lindsey E. (PERB); McQueen, Tabitha (DSLBD); Miles, LaTonya (DHCD); Mohamed, Mohamed (OFRM); Natale, Vanessa (OAH); Nesbitt, LaQuandra S. (DOH); Newland, Laura (DCOA); Niles, Herbert (MPTD); Orders, Vonda (DHCD); Parker, Charlotte (DISB); Pittell, Stacie (ODCA); Preston, Herman (DCNG); Reyes, Jackie (EOM); Rich, Polly (DOEE); Robinson, Marcel (HSEMA); Robinson, Tonya (DOES); Rothschild, Richard (CAB); Rudy Glenn; Sabbakhan, Camille (DGS); Samba, Mamadou (EOM); Sampson, Erie (DCRB); Sanford, William (OCF); Saunders, Treva (OCFO); Scott, Eric (OPC); Sean Sands; Shreve, Brittany (OTA); Simon, Gottlieb (ANC); Slattery, Jim (EOM); Smruti Radkar; Streeter, Nicole (DCPS); Taylor, Alexis (DCBC); Taylor, Alexis (EOM); Wooten, Holloway (DHS); Zimmerman, Justin (DCHR)

Cc: Sobin, Darrin (BEGA); Patzelt, Cristina (BEGA)

Subject: REQUIRED Financial Disclosure Filers List Training

Greetings All,

Attached please find a Memorandum we prepared discussing the Financial Disclosure filing process this year and requesting information on Public and Confidential Financial Disclosure filers from your agency, board, or commission.

There are two separate classes of filers: Public and Confidential. Confidential forms are filed only with the agency, while Public forms are filed with BEGA and are publicly available for viewing on our website. A list of Public filers must be submitted to BEGA by close of business on Tuesday March 1, 2016, and a list of Confidential filers must be submitted to BEGA by close of business on Monday May 2, 2016.

In past years there have been some issues with understanding how to designate employees as Public or Confidential filers. This year, we are holding two trainings for Ethics Counselors and others devoted specifically to the question: "Who is a Financial Disclosure Filer?" These trainings will be held in the BEGA Hearing Room, located at 441 4th Street NW, Suite 540 South, and will take place on Wednesday February 24th and Thursday February 25th, at 10:00 a.m.

We are also providing templates for the submission of names of Public and Confidential filers. Please submit your lists of filers in the Excel format set out in the templates.

Also, as a heads up, this year all Financial Disclosure Statements are due by Monday May 16th, 2016, because the 15th falls on a Sunday.

For both Public and Confidential Financial Disclosure Statement filers, please submit your agency's lists of employees to Jessica Dillion, Administrative Assistant, Board of Ethics and Government Accountability at bega-fds@dc.gov.

Thank you for your assistance in this important matter.

Forwarded on behalf of Director, Darrin P. Sobin

By: Jessica Dillion

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Learn the basics of life-saving hands only CPR in 20 minutes. Visit the DC FEMS Hands on Hearts campaign at <http://handsonhearts.dc.gov> to sign up for existing classes or email hands.onhearts@dc.gov to schedule a class for your office or organization.

RPTAC Policy on Prohibitions & Ex Parte Communication

The Formation of the Real Property Tax Appeal Commission (RPTAC)

RPTAC was formed to replace its predecessor, the Board of Real Property Assessments and Appeals (BRPAA) which had been constantly under attack by the public as being “broken,” poorly managed, and unprofessional. BRPAA, for decades, had failed to meet its statutory obligations to complete its hearings and make its decisions for thousands of cases by the deadline of February 1st of each year. The Board was criticized for being manned by Commissioners who did not have the professional skills in real property valuation needed to address the many complex issues associated with major properties. RPTAC was therefore formed based on the idea that a “Commission” manned by professional individuals who have significant knowledge in real estate and real estate valuation would greatly improve the process. The law was rewritten to require that qualified incumbents would need to be certified real estate appraisers, real estate attorneys, certified public accountants, mortgage bankers, property managers, real estate brokers, or others possessing *significant* real property experience with at least five (5) years of professional experience.

RPTAC Legislative Provisions

RPTAC Composition – 6 Full Time Commissioners (DC employees) and 8 part-time Commissioners (independent contractors). Part-timers are generally intended to hear residential and noncommercial properties with values of \$3,000,000 or less. Full timers are intended to hear commercial cases and more complex properties.

Prohibitions & Ex Parte Communication - Commissioner shall be prohibited from reviewing an appeal if the Commissioner has had some involvement or interest (direct or indirect) with the property during the previous two (2) year period prior to the filing date of the appeal.

RPTAC rules and regulations also prohibit Ex Parte Communication. Neither the Petitioner nor OTR, nor a representative of either party, shall communicate with any Commissioner concerning a specific appeal except by written communication served on the other party. Commissioners may communicate with either party regarding routine administrative matters which do not involve material facts in dispute relevant to a specific appeal.

Term – Each Commissioner shall have a four (4) year term, except as provided in subparagraph (B) of this paragraph (having to do with the initial appointments). At least six (6) months before the expiration of any term, a Commissioner seeking reappointment to a new term shall file a statement with the Mayor and the Chairman, requesting reappointment.

Decisions – RPTAC hearings are typically conducted by a three (3) member panel and final decisions are based on the majority opinion. The Commission shall presume that the assessment by OTR is correct. It is the owner, or his/her representatives, who must