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Office of the City Auditor

**Audit of the Marketing and Sale of City Real Estate**

Report Date: May 29, 2018

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Office of the City Auditor  
2401 Courthouse Drive, Room 344  
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*"Promoting Accountability and Integrity in City Operations"*



## Office of the City Auditor

*"Promoting Accountability and Integrity in City Operations"*

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## Office of the City Auditor Transmittal Letter

Date: May 29, 2018  
To: David L. Hansen, City Manager  
Subject: Audit of the Sale and Marketing of City Real Estate



I am pleased to present the report of our audit of the Sale and Marketing of City Real Estate. This audit addresses the compliance with City policies and the proper conduct over the marketing and sale of residential real estate acquired by the City under the Accident Potential Zone–One/Clear Zone Program.

Findings considered to be of insignificant risk have been discussed with management. We completed fieldwork on April 6, 2018.

The Office of the City Auditor reports to City Council through the Audit Committee and is organizationally independent of all other City Departments. This report is intended solely for the information and use of the Audit Committee, City Council, Department of Public Works, City Attorney's Office, and appropriate management. It is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

We would like to thank the management and staff of the real estate divisions of the Department of Public Works and the City Attorney's Office for their cooperation and responsiveness to our requests during our audit and their receptiveness to questions, recommendations, and suggestions.

If you have any questions about this report, or any audit-related issue, I can be reached at 385.5872 or via email at [lremias@vbgov.com](mailto:lremias@vbgov.com).

Respectfully submitted,

Lyndon S. Remias, CPA, CIA  
City Auditor

c: Audit Committee Members  
Tom Leahy, Deputy City Manager  
Mark Johnson, Director of Public Works  
Mark Stiles, City Attorney



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## Office of the City Auditor Audit of the Marketing and Sale of City Real Estate

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### **Purpose**

The purpose of the audit was to determine compliance with City policies and proper conduct over the marketing and sale of residential real estate acquired by the City under the Accident Potential Zone—One (APZ-1)/Clear Zone (CZ) Program.<sup>1</sup>

### **Scope and Objectives**

The scope of the audit covered marketing and sale of the above-mentioned residential real estate from 2008 through April 6, 2018. The objectives of the audit were to determine whether the:

- City real estate acquired through the Base Realignment and Closure (BRAC) Program were properly disposed according to City Council and management's decisions
- City real estate sales were adequately marketed to ensure that interested parties were given equal opportunity to participate
- Bid proposals were adequately safeguarded to ensure the confidentiality and integrity of the process
- Bidder selection process was properly performed to ensure the absence of preferential treatment to any party
- City sold real estate at prices that were reasonable and provided the best value for taxpayers

### **Methodology**

To accomplish our objectives, we performed the following:

- Met with appropriate staff to discuss the programs and their respective processes
- Obtained and reviewed policies, procedures, and other pertinent documents
- Performed walkthroughs of the processes
- Obtained data and other relevant information of properties purchased and sold
- Performed analytical procedures of financial and nonfinancial data
- Tested a sample of properties that were sold
- Made recommendations to improve processes, as appropriate

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<sup>1</sup> CZ and APZ-1 have the biggest potential for aircraft accident. CZ is the first 3,000 feet off the runway. APZ-1 starts at the end of the CZ and extends to 8,000 feet off the runway.



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### **Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require 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 during this audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Office of the City Auditor reports to City Council through the Audit Committee and is organizationally independent of all City Departments. This report will be distributed to the City's Audit Committee, City Council, and appropriate management within the City of Virginia Beach. This report will also be made available to the public.



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### **Background** <sup>2, 3</sup>

In response to the 2005 BRAC Commission's condition to remove Naval Air Station (NAS) Oceana from the list of base closures, City Council adopted the APZ-1/CZ Program (BRAC Program), a comprehensive plan to stop additional encroachment and reduce existing encroachment around NAS Oceana. The City deemed that this program is more effective and fair to affected property owners than invoking the power of eminent domain to condemn houses and other incompatible uses. Funding for this program comes from the City and the Commonwealth of Virginia. The program is made up of three components.

The first component took effect on December 20, 2005 when City Council passed the APZ-1 Ordinance prohibiting new development deemed as incompatible with military flight operations at NAS Oceana. This zoning ordinance immediately prevented future encroachment in the APZ-1 area by 1,326 incompatible units (909 residential and 417 commercial).



**Figure 1: Vacant Lot Rendered Unbuildable**

While the Ordinance stopped incompatible development, it left some properties without reasonable use. For example, a vacant lot with previously zoned residential development right (i.e. to build a house) and surrounded by other residential properties could no longer develop, as the only reasonable use of the property was residential - now a prohibited use.

Because the APZ-1 Ordinance had a real and significant impact on owners' property rights, as they could no longer build on their vacant lots, the City created the APZ-1 Acquisition Program - the second component of the BRAC Program. The purpose of the Acquisition program was to buy properties at values that the properties would have retained if the APZ-1 Ordinance had not been adopted.

The Acquisition Program was subsequently broadened to address residents' concerns. To minimize random pockets of undeveloped land that undermine property values and give the impression of a decaying neighborhood, the City acquired developed properties for the purpose of combining them with the City-owned vacant lots and have a single-family house built on the combined property. The City also acquired single-family houses that were zoned as duplex

<sup>2</sup> Particularly pertaining to APZ-1 residential properties, unless otherwise noted.

<sup>3</sup> Some are exact citations from various yearly NAS Oceana Encroachment Progress reports.



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properties to compensate for the loss of the right to build a duplex. All properties acquired were from owners that volunteered to sell.

The City provides just compensation by buying the property at the higher of two independent appraisal values. Properties that qualify for purchase by the City are the following:

- Vacant, residentially zoned lots
- Underdeveloped residential properties (e.g. a single-family home on a lot zoned for duplex or multi-family use)
- Properties that were vested for new development or redevelopment
- Developed duplexes at the discretion of the City Manager

The third component of the BRAC Program is the Roll Back Plan, which incorporates aspects of acquisition as well as retention and disposition of properties. The City created the Disposition Committee to evaluate each acquired property. For each property, the Committee carefully considers various and sometimes competing factors, including:

- The ability to reduce density
- The potential for future public use
- The impact of a potential disposition on the residential neighbors
- The opportunities to combine adjacent properties to form one single-family building site

Whenever possible, an acquired property is retained for public use to protect and enhance the health, safety, welfare, and quality of life of persons around the neighborhoods. The need for future roadway projects, neighborhood parks, and open space are among the factors considered when retaining the properties.

When the City deems that it is not necessary for a property to be retained, it is declared as excess property and disposed through sale. Selling the property is beneficial to both the affected neighborhoods and the City. Many owners do not want large gaps in their neighborhoods caused by the removal of houses that were on those properties. The City is committed to thinning, but not ruining, the residential neighborhoods, many of which actually pre-existed the base. Consequently, sale replenishes program funds, provides tax revenues, and saves on maintenance costs amounting to approximately \$630 yearly per property.



**Figure 2: Acquisition Converted to a Neighborhood Park**



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Once acquired, the City demolishes the houses and prepares the property for sale. Adjacent property owners are often given the initial opportunity to purchase the acquired properties. Since it is vacant, unbuildable, and can only serve primarily as a lawn expansion, the price is offered at one dollar (\$1.00) per square foot. Alternatively, the property may be offered for sale to the public via the Request for Proposal process.

The properties sold via the RFP process include the following requirements:

- Where adjoining lots are acquired, they are combined and sold for the construction of one single-family house
- Every property is sold with a deed restriction that it can never be a duplex
- Every new single-family house that is rebuilt must have enhanced noise protection features and adhere to architectural design criteria that complements the neighborhood
- Construction must be completed with an occupancy permit issued on or before twelve (12) months after a site plan has been approved by the City

**Figure 3: Simple Illustrated Example of the BRAC Program**

<p style="text-align: center;"><b>Prior to BRAC</b></p> <p><i>Residential properties developed and/or with rights to develop. All potentially eligible for purchase by the City</i></p>	
<p style="text-align: center;"><b>Ordinance Passed</b></p> <p><i>Six dwelling units prevented</i></p>	
<p style="text-align: center;"><b>Acquisition</b></p> <p><i>Two vacant properties acquired Three dwelling units acquired &amp; demolished</i></p>	
<p style="text-align: center;"><b>Roll Back: Disposition &amp; Rebuild</b></p> <p><i>Acquired properties combined and sold as two single-family building sites</i></p>	<div style="text-align: center;"> <p style="color: red; font-weight: bold; margin-top: 10px;">Results: Density is Reduced by a Net of Seven Incompatible Dwelling Units and Neighborhood Integrity is Maintained</p> </div>

Prior to the BRAC Program's implementation in 2005, there were 4,520 existing and potential incompatible residential dwelling units in the APZ-1 and CZ areas. As of the first quarter of 2018, the City was able to reduce that number by 1,292 dwelling units (net of 39 single-family rebuilds) through:



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- APZ-1 Ordinance – 909 dwelling units
- Acquisition and Roll Back – 383 dwelling units

Public Works Real Estate receives all RFP proposals and compiles them for presentation to the Disposition Committee, the Special Real Estate Disposition (SPREAD), and the City Council.

The Disposition Committee is composed of managers from the City Attorney's Office and from Public Works, Public Utilities, Facilities Management, Planning & Community Development, and Housing & Neighborhood Preservation departments. The Disposition Committee evaluates the bid proposals based on requirements established in the RFP. Evaluation results are forwarded to SPREAD for review.

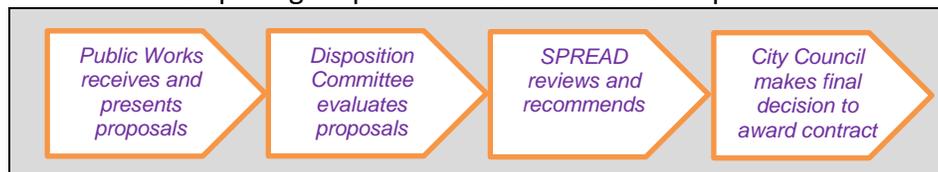


SPREAD oversees the processes for acquisition and disposition of real estate. The purpose of the SPREAD meeting is to further evaluate the proposals made by the Disposition Committee and to make sound recommendations to City Council. It further ensures that City Council is provided with complete and accurate information from which to base decisions. The City Manager leads the meeting and typical attendees include the Deputy City Manager over real estate; the Deputy City Attorney over real estate; and the department directors of Public Works, Public

Utilities, Finance, Economic Development, and Planning & Community Development.

The information discussed in the SPREAD meeting is subsequently presented in a formal City Council session. City Council makes the final decision as to which company or individual is awarded the contract to purchase and build on the property. City Council's decision may or may not be in accordance with SPREAD's recommendation.

Figure 5: Process for Disposing Acquired Residential APZ-1 Properties via RFP at a Glance





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### Results

#### **Finding 1: RFP did not Expressly Include Individuals as Potential Bidders**

The sale of City real estate acquired through the APZ-1 Acquisition Program for construction of single-family homes is conducted through the Request for Proposal (RFP) process. Participation is open to all interested parties. Since construction of a single-family dwelling must adhere to stricter building requirements and deadlines, the RFP is worded to solicit proposals from building contractors who have a Virginia Class A or B contractor license only. However, the wordings in the proposal inadvertently disqualifies other willing participants who do not have the requisite building license yet are willing to work with those who have them. As a result, the City did not sell any property to individuals but only to developers that are listed in Table 1 below.

**Table 1: RFP Sales for Rebuilding Single-Family Houses**

<b>Purchaser</b>	<b>Number of Properties<sup>4</sup></b>	<b>Percentage (rounded)</b>
1. Ocean Bay Homes /BRIBRA Building	44	50%
2. Bishard Homes	19	22%
3. Murray Homes	10	11%
4. Cashvan Homes	9	10%
5. Franciscus Homes	6	7%
6. Individuals	0	0%
<b>Total</b>	<b>88</b>	<b>100%</b>

### Recommendation

- 1.1 Management should revise the wordings in the RFP to state that participation is open to all interested parties as intended in the program.

#### **Finding 2: Deficiencies in the Receipt of Bid Proposals**

Bid proposals for an active RFP usually arrive at the Public Works Real Estate Division in the final two days of the submission deadline. The designated staff member:

- Documents the receipt using a date-stamp machine, affixing it on the package.
- Solely opens the package after the submission deadline.

We reviewed a sample of ten (10) RFPs, comprising 30 properties, and found the following:

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<sup>4</sup> Properties were combined into 39 single-family building sites



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1. Two (2) RFPs did not have any of the bidders' packages and proposals. Thus, we could not:
  - Trace the bid price and other relevant information to their proposals to validate them. Management stated that the documents might not have been retained because the RFPs were beyond the document retention period. However, we deem it was not the case since other documents related to the two RFPs were still available.
  - Verify if proposals were received within the deadline. Accepting late submissions may indicate preferential treatment and improper practices.
2. In one RFP, one (1) of the four packages was opened the day before the May 30, 2013 deadline; the main page was stamped May 29, 2013. Opening the package before the deadline increases the risk of unauthorized disclosure of confidential information.

Additionally, we deem that a witness should be present when the designated staff member opens the packages because this is a critical point in maintaining the integrity of the entire process. Management needs to ensure that the internal control over the confidentiality of bid prices is strong as it is one of the most important criteria in bidder selection.

### **Recommendation**

- 2.1 Management should keep all pertinent documents related to the sale of City real estate, including date-stamped packages and proposals, until no longer necessary or according to the applicable document retention policy.
- 2.2 Include in the Proposal Requirements section of the RFP that bidders should place their documents in a sealed envelope. If delivered without an envelope, Public Works should provide one and, as much as possible, request the bidder to place the documents inside and then seal the envelope to protect the confidentiality of the proposal.
- 2.3 The designated staff member should open the package only after the submission deadline in the presence of another employee, as witness. Annotate the time and date of opening the package on the main page of the proposal, accompanied by signatures from both employees.



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### **Conclusion**

Based on our analysis and tests of transactions for the sale and marketing of City residential real estate in the APZ-1 area acquired under the BRAC program, we determined that the process was properly and appropriately conducted in accordance with City policies.

### **Acknowledgements**

We would like to thank the management and staff of the Department of Public Works and the City Attorney's Office for their cooperation and responsiveness to our requests during our audit and their receptiveness to questions, recommendations, and suggestions.



# City of Virginia Beach

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## INTER-OFFICE MEMORANDUM

**DATE:** May 23, 2018  
**TO:** Lyndon S. Remias, City Auditor  
**FROM:**  Mark A. Johnson, P.E., Interim Director of Public Works  
**SUBJECT:** Audit of the Marketing and Sale of City Real Estate Report – May 7, 2018

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The Public Works Department has completed its review of the subject audit report and acknowledge the findings. The recommendations to (1) amend the RFP language to expressly include individual applicants, and (2) modify RFP intake procedures are acceptable. These recommendations have already been incorporated to better enhance our business practices.

We take great pride in our ability to be accountable, transparent and professional for the services we provide to the City and our customers. We always welcome recommendations to improve upon them.

The Real Estate staff thoroughly enjoyed working with Mr. Antonio (Tony) Gonzalez during this process. His courteous demeanor and ability to quickly comprehend our Real Estate practices made the audit process a pleasant experience. Tony's professionalism is a positive reflection of the City Auditor's Office.

Thank you for the opportunity to review and discuss the findings and recommendations of the audit report.

MAJ/BJW/k

CC: Thomas L. Leahy, P.E., Deputy City Manager  
Bobby J. Wheeler, P.E., Acting Operations Support Administrator  
Christopher B. Cahoon, Acting Public Works Real Estate Agent  
Rebecca D. Kubin, Deputy City Attorney