



City of Fulton

Board of Assessment Review

Report of Examination

Period Covered:

January 1, 2009 — September 30, 2009

2009M-245



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2010

Dear City Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Common Council governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the City of Fulton, entitled Board of Assessment Review. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The City of Fulton (City) has approximately 12,000 residents and is located in Oswego County (County). The City is governed by its charter and general laws of New York State. The Common Council, which consists of the Mayor as the presiding officer, and six Aldermen, is the legislative body responsible for the overall operation of the City. The Mayor also serves as the City's chief executive officer. According to the 2008 final assessment roll, there were 4,335 parcels of real property in the City with a total assessed value of \$471.6 million.¹ The City's property tax levy in 2009 was about \$5.4 million.

The City has a full-time Assessor and a five member Board of Assessment Review (BAR). The Assessor's job is to assess properties within the City to ensure that the taxes collected will be distributed fairly among all taxpayers. A property owner who feels his or her assessment is too high may discuss the valuation with the Assessor. If the discussion does not result in a reduction of the assessment and the property owner still feels the valuation is too high, the owner has the right to file a formal complaint (grievance) with the BAR by the filing deadline.

The BAR, which is appointed by the Common Council, holds hearings for taxpayers who grieve their property assessments. The BAR may request that the Assessor present evidence in support of tentative assessments being grieved by taxpayers. After all of the hearings are finished, the BAR meets privately to deliberate on the complaints, makes its decisions, and orders changes to the assessment roll before it becomes final. The BAR hears all complaints for the City, including those for BAR members' properties. In 2009, 40 of the 181 complaints (22 percent) heard were for BAR members' properties.

Objective

The objective of our audit was to examine the assessment review process. Our audit addressed the following related question:

- Did members of the City's BAR properly disclose their interests in property before the BAR?

Scope and Methodology

We examined the assessment review process of the City of Fulton for the period January 1, 2009 to September 30, 2009.

¹ The total taxable value is lower than the total assessed value due to various property exemptions. According to the 2008 final assessment roll, the City had a total taxable value of \$311 million.

**Comments of
City Officials and
Corrective Action**

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

The results of our audit and recommendations have been discussed with City officials and their comments, which appear in Appendix A, have been considered in preparing this report. City officials generally agreed with our recommendations.

The Common Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Common Council to make this plan available for public review in the City Clerk's office.

Board of Assessment Review

Real Property Tax Law requires that members appointed to a Board of Assessment Review (BAR) disclose any direct or indirect interest² they have in any property for which a complaint has been filed. Such disclosure must be filed with the chief executive officer of the taxing district for which they serve. In the situation where a BAR member has a direct or indirect interest in property before a BAR, the law provides that a municipality may enter into an inter-municipal agreement with another municipality in the county to permit hearing of the complaint in the other municipality. Although the law does not expressly prohibit BAR members from grieving their own properties and voting on those grievances, BAR members generally should not participate in the deliberation or determination of their own complaints.

Two of the five BAR members grieved their 2009 property tax assessments directly to the BAR on which they served, resulting in assessment reductions of \$223,555 and annual tax savings of approximately \$11,411. Although these BAR members disclosed their interest in the properties being grieved to the Assessor, they did not disclose their interests to the Mayor as required by law. In addition, there was no written documentation on file to show whether they voted on the decision made to reduce their assessments.

The grievances were filed by the BAR Chairman and a second BAR member in May 2009. However, because the City did not enter into an inter-municipal agreement with another municipality to hear these complaints, they were handled directly by the BAR. Although these BAR members filed disclosure forms, they were filed with the Assessor, rather than with the Mayor, as required by law. In addition, although the BAR members told us that the BAR Chairman and second BAR member were not present during the deliberations over their own properties and that they did not vote on those properties,

²A BAR member shall be deemed to have a direct or indirect interest in any property for which a complaint has been filed when the member, spouse, or any of his or her minor children: (a) is the owner of such property; or (b) is an officer, director, partner or employee of an entity which is an owner or lessee of such property; or (c) is an officer, director, partner or associate of a law firm or real estate firm which has a financial interest with the owner or lessee of such property; or (d) legally or beneficially owns or controls stock of a corporation which is an owner or lessee of such property, provided, however, ownership of stock shall not constitute an interest where such stock is listed on a major stock exchange or is sold on the over the counter market and the value thereof is less than \$10,000.

there was no written documentation to support this assertion. For example, although the BAR does use a notice of determination letter, as prescribed by the New York State Office of Real Property Services (ORPS), to notify taxpayers of its decisions showing how each BAR member voted (including those who abstained), these forms were not available for review because the BAR did not make copies before sending them to the taxpayers.

We compared the adjustments made to the BAR member's properties to the adjustments made to other property owner's properties and found that BAR members had a high success rate in getting their assessments reduced. In total, there were 171 complaints filed for non-commercial properties in 2009 (40 were filed by the BAR members and 131 were filed by other property owners).³ Although the other property owners received 64 percent of the assessment reductions they requested, we found that the BAR Chairman and second BAR member collectively received 92 percent, as follows:

- The BAR Chairman grieved 39 assessments including his personal residence, an adjacent parcel of vacant land and 37 properties, which, for the most part, were co-owned with other investors.⁴ In total, his 39 properties had tentative assessments totaling \$1,173,050 and he requested they be reduced to \$946,100. The BAR granted 92 percent of this request and reduced the assessments by \$207,855 to \$965,195.
- The second BAR member grieved the assessment for her personal residence. This property had a tentative assessment of \$163,700 and she requested that it be reduced to \$148,000. The BAR granted this request and reduced the assessment by \$15,700 to \$148,000.

We calculated the tax benefit of the adjustments and found that the two BAR members received annual property tax savings of approximately \$11,411.⁵ Of this amount, \$10,610 was for the BAR Chairman's 39 properties and the remaining \$801 was for the second BAR member's property.

³ An additional 10 complaints were filed for commercial properties (e.g., gas station, supermarket, office building). For consistency, we excluded the commercial properties from our comparison.

⁴ The 37 properties included 23 parcels of vacant land for building lots and land development and 14 duplexes (rental units).

⁵ The 2009 assessed property values are used for the 2009-10 school taxes and the 2010 City and County taxes. We used the 2009-10 school tax rate for our calculation. However, because the 2010 City and County tax rates were not yet available, we used the 2009 tax rates for City and County taxes for our calculation.

Even if BAR members submit persuasive evidence validating their requests for reductions in their assessments, and abstain from deliberations and voting on their assessments, there still could be an appearance of favoritism in the event other BAR members vote to reduce their assessments. This could cast skepticism over the process and appear improper to the public. If the Common Council were to enter into an inter-municipal agreement with another municipality in Oswego County to hear grievances filed by BAR members, this would lead to a more independent review and help improve the public perception of the BAR process.

Recommendations

1. BAR members should file disclosure forms with the Mayor, as required by Law.
2. The BAR should retain copies of the notice of determination letters showing how each BAR member voted on complaints.
3. The Common Council should consider entering into an inter-municipal agreement with another municipality in Oswego County to hear grievances filed by BAR members.

APPENDIX A
RESPONSE FROM CITY OFFICIALS

The City officials' response to this audit can be found on the following pages.



City of Fulton

Ronald L. Woodward, Sr.
Mayor

Municipal Building • 141 South First St.
Fulton, New York 13069-1765
www.cityoffulton.com
e-mail: mayor@cityoffulton.com

(315) 592-7330
Fax (315) 598-705

February 23, 2010

Eugene A. Camp, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 East Washington Street
Syracuse, New York 13202-1428

RE: BOARD OF ASSESSMENT REVIEW AUDIT

Dear Mr. Camp:

This letter serves as the City's Audit Response.

1. Filing of disclosure forms with the Mayor: §523 of the Real Property Tax Law requires that the disclosure forms be filed with the Chief Executive Officer. Our Board was filing them with the Assessor; therefore, this finding is correct.
2. Not keeping copies of the Notice of determination letters: Apparently on the advice of our County Real Property Office, the Board recently stopped retaining copies. That appears to not be required by Law but would certainly be a more prudent practice. That way, the City would have copies of each member's vote (which would show abstentions) and would be better prepared for Article 7 challenges. Therefore, we agree with this finding.
3. Inter-municipal agreements: These agreements are authorized by the statute, though not mandated. However, to avoid the appearance of impropriety, it is probably a good idea to enter into one. We therefore also agree with this finding.

We await your final audit report so that we may prepare our Corrective Action Plan.

Thank you.

Sincerely,

Ronald L. Woodward, Sr., Mayor

cc: Members of the Common Council
BAR Members

James Laboda, Clerk/Chamberlain
Mary Beth Johnson, Assessor
David Hawthorne, Attorney at Law

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To accomplish our audit objective, we interviewed City officials and employees, tested selected records, and examined pertinent documents for the period January 1, 2009 to September 30, 2009. Our procedures included the following:

- We interviewed Board of Assessment Review (BAR) members and the Assessor regarding assessment review policies, practices and procedures.
- We reviewed disclosure forms filed by BAR members for their 2009 assessments.
- We reviewed Office of Real Property Tax Services (ORPS) publications and the City Code to identify requirements for the assessment review process. We also obtained information from various sources (e.g., ORPS, County, and Assessor) to determine the applicable tax rates for the City.
- We compared the list of BAR adjustments to the actual complaints and to the tentative and final assessment rolls for accuracy.
- We examined 2009 assessment complaints and supporting documentation to determine if BAR members had an interest in any properties before the BAR; and to determine whether the BAR adjusted the assessments for those properties.
- We compared adjustments to the BAR members' properties to the adjustments made to other property owner's properties for the 2009 assessments. We also calculated the tax benefit of the adjustments to the BAR members' properties.

We conducted our performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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AND SCHOOL ACCOUNTABILITY

Steven J. Hancox, Deputy Comptroller
John C. Traylor, Assistant Comptroller

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