

**Nassau County
Office of the Comptroller
Field Audit Bureau**



**Nassau County Comptroller's Office
Limited Scope Review
of the
Assessment Review Commission's
Commercial Property Procedures and Controls**

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Executive Summary

Background

Property assessment values in the county are determined by the Nassau County Department of Assessment (“Assessment”). Once the tax roll is established, it is used by the county, towns, schools and special districts for levying real estate taxes on property owners. Nassau County guarantees real estate tax revenues to the towns, school districts and special districts that use its tax rolls. As such, when a property is determined to be over assessed, the county is responsible for refunding the real estate tax on behalf of all jurisdictions to the property owner. In the past ten years, Nassau County has paid approximately \$1.1 billion dollars in refunds.

State and county laws provide administrative and judicial relief to taxpayers whose properties have been over assessed. Property owners who believe their properties are over-assessed seek administrative relief through the Assessment Review Commission (“ARC”). ARC commissioners are appointed by the County Executive and are empowered to correct erroneous assessments.

ARC determines the property’s fair market value and grants reductions in assessed value when warranted. This review process is initiated by the property owner filing an “Application for Correction of Property Tax Assessment” with ARC by March 1st of each year. These applications, or petitions, are filed in electronic form by some 50 law firms and certiorari service bureaus and also through paper applications filed by individual property owners. Approximately 45,000 applications were filed for the tax year 2004/2005.

In recent years, there were a number of important changes to the county’s assessment review process. In 1998, state legislation established ARC as a year round assessment review process to replace the Board of Assessment Review. The Board of Assessment Review was ineffective because it could only make adjustments to the preliminary tax roll. In 2002, further state legislation refined the assessment review process by:

- creating a new assessment and review schedule allowing ARC a full year to correct the final assessment roll starting with the April 2004 final tax roll. Also, a one time provision in the 2002 legislation allowed taxpayers who had not filed grievances (property tax challenges) in 2003 to catch up by filing in 2004 for review of both the 2004/2005 and 2005/2006 final assessment rolls; and
- providing ARC the power to compel commercial property owners to make income and expense information available in order to resolve outstanding grievances. Income and expense information is used in the appraisal process to determine the potential net income that can be generated by the commercial properties. The net income influences the amount a buyer would be willing to pay for the property in an arms-length transaction and is often used by ARC in the determination of fair market value.

Executive Summary

The Department of Assessment establishes and publishes the tentative annual assessments on January 2nd of each year. Commercial property taxpayers then have an opportunity to challenge the assessment by filing an Application for Correction of Assessment with ARC by March 1st. Residential property taxpayers follow a similar process by filing a Small Claims Assessment Review.

ARC will consider each grievance and either reduce the assessment or leave it unchanged. If ARC reaches a decision to reduce the assessment before the tax roll becomes final, it will direct the assessment to be corrected. The tax bills are then based on this corrected assessment and, for school and town taxes for the first half of the tax year, are issued on October 1st of the following year; for first-half county taxes, tax bills are issued January 1st of the second following year. If a reduction decision is reached after the roll becomes final, the county, as guarantor of the tax rolls, is liable for any tax overpayment along with interest on the overpayment. This refund includes overpayments of school and town taxes, even though the county was not the recipient of these tax revenues. These refunds have been a primary cause of the county's fiscal crisis. Any taxpayers, who were not granted reductions by ARC or seek greater reduction, may obtain judicial review by filing a petition within 30 days of the final determination by ARC.

Audit Scope, Objective and Methodology

The objective of the audit was to evaluate ARC's compliance with, and adequacy of, its operating policies and procedures for the receipt and review of property owner's grievances, approval of valuation decisions and implementation of reductions in value of commercial properties during 2003 and 2004. The comptroller's office assisted ARC in the documentation of the procedures by reviewing the drafts and making recommendations. ARC, however is solely responsible for the procedures' content and implementation. (Upon completion of the general and commercial property procedures, ARC was committed to updating and completing the documentation of its residential property procedures. Because we were not provided with existing residential procedures at the audit's outset, our audit only focused on ARC's compliance with general and commercial property procedures.)

Property valuations were performed by ARC's real estate appraisers. The validation of property valuations was not within the scope of the audit. Our audit determined whether the information the appraisers relied upon to determine valuations were subjected to ARC's required quality controls and whether the determinations of value made were subject to the review and approval process prescribed by ARC.

ARC issued its general and commercial property operating procedures and control documentation on January 1st of 2004. ARC committed to document its procedures in a two-phased approach. Initially, ARC was to document the general procedures that pertain to both residential and commercial properties as well as procedures specific to commercial properties. The reasoning behind this approach was that grievances related to commercial property

Executive Summary

assessment have historically resulted in approximately 85% of the real estate tax refunds paid by the county. Therefore, internal controls related to these activities would have a more significant impact than those directed towards 15% of the liability. However, the recent revaluation of all residential properties has caused a significant increase in protests filed; therefore, residential procedures should be given a high priority. ARC has estimated that residential refunds related to 2003 values will be approximately \$47 million.

Our review was based upon cases where settlements were reached in 2003 or 2004. In many cases, the process to reach settlement with property owners was begun in 2003, prior to issuance of the written procedures. Our audit sample included 30 settled cases. ARC began its work on 25 of these cases in 2003 and on five of the cases in 2004. A majority of the commercial property procedures were in place, however, prior to being committed to writing. Therefore, we applied standards established under the written procedures to the entire sample and compared procedural compliance before and after the issuance of the written procedures.

Our audit procedures included interviews with ARC personnel and review of:

- ARC's General and Commercial Procedures and Controls documentation;
- commercial property case files;
- ARC database data screens;
- commercial property data on the Department of Assessment's database (WANG); and
- management reports.

This audit was conducted in accordance with generally accepted government auditing standards. These standards require that the audit be planned and performed to obtain reasonable assurance that the audited information is free of material misstatements. An audit includes examining documents and other available evidence that would substantiate the accuracy of the information tested, including all relevant records and contracts. It includes testing for compliance with applicable laws and regulations, and any other auditing procedures necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and recommendations.

Summary of Significant Audit Findings

We commend ARC for taking the initiative in documenting the first set of Procedures and Controls addressing commercial property valuations. In our review, we had the opportunity to compare valuations made before and after the promulgation of procedures documentation. In so doing, we identified certain areas where ARC's adherence to procedures improved greatly, including:

- completion of "Attorney Action" section in the database;

Executive Summary

- accuracy of inputs into the database of final settlement amount - post supervisory review; and
- documentation of timely faxing of offer sheets to petitioner attorneys.

Numerous exceptions had occurred in 2003 concerning these matters, while none were observed in 2004. The exceptions related to these matters represent control weaknesses, but our audit did not uncover instances affecting valuation conclusions or refunds granted.

While improvements in compliance between 2003 and 2004 were noted, ARC needs to now focus its attention on increasing its efforts to ensure compliance with the remainder of its procedures and controls. It should place a high priority on finalizing its procedures covering the residential review process. The following is a summary of the major audit findings:

Lack of Management Reporting

ARC procedures call for management to monitor the department's compliance with a number of internal control steps. The monitoring is to be accomplished through the review and approval of a number of management reports, issued at regular intervals. While the intent was good, ARC did not prepare the reports at the required intervals and management did not evidence its review of the reports that were prepared.

These reports were designed to provide management with assurance that:

- all applications for assessment review were entered into the Assessor's Protest File to establish an inventory control;
- applications filed by about 50 law firms, that represent the majority of taxpayers, have been filed in accordance with the requirements of ARC and the Real Property Tax Law;
- data, including settlement information, is entered accurately and timely into ARC's database and into the Assessor's antiquated Wang system;
- property owners respond to conveyed settlements before the 45 day offer expiration;
- appraisers with appropriate levels of experience and authority are processing only the cases to which they were assigned; and
- all unilateral reductions (reductions determined by ARC without the agreement of the property owner) implemented by ARC have been properly reflected in the final tax roll.

Non-Compliance with Procedures and Controls

Since the promulgation of the procedures and controls, ARC has not been fully compliant with procedures for data entry quality control and supervisory review functions. We compared compliance for 2003 (before promulgation of the procedures) to compliance during 2004 and found instances where a low rate of compliance existed in 2003 and the trend either continued or

Executive Summary

worsened in 2004. Additionally, we found other control weaknesses because policies were not implemented as intended. Some examples are:

- Procedures specify, either by name or job title, employees who are authorized to perform quality control over settlement data input. We found that supervisory review of valuations was performed by individuals who did not have the appropriate level of authority. This occurred in 24% of those settled cases we sampled that were initiated in 2003. The exception rate for settled cases we tested that initiated in 2004 was 20%.
- ARC did not perform statistical testing to ensure that all applications received in 2004 were entered into the assessor's protest file. This file established accountability for the protest.
- ARC did not identify law firms that may have filed defective applications by examining a statistical sample of applications from each firm.
- Quality control of data entry into the Assessor's WANG system for unilateral assessed value reductions was not consistently performed by authorized individuals. The trend worsened in 2004 when 44% of sampled commercial property cases were not in compliance as compared to 31% in 2003.
- Quality control of ARC database data entry of those cases that initiated and settled in 2004 is not consistently performed by authorized employees. We noted errors with two of the five cases tested that were initiated and completed in 2004.
- ARC uses stipulation checklists and internal review sheets to ensure that properties are properly valued and that the stipulation of settlement conforms to the intent of ARC's management. Procedures require ARC's chairperson or counsel to review, sign and date these documents. While this procedure was complied with for all sampled cases that were settled in 2003, this was not the case for those sampled cases that were settled in 2004. Specifically, for 2004, 13 out of 17 stipulation checklists tested and 17 out of 19 internal review sheets tested were not signed or dated. (Two cases did not have stipulation checklists.)
- ARC procedures call for monitoring overall quality control and procedural compliance through a randomly selected sample of 5% of all cases settled. During the period between January 14th and July 8th, 2004, 71 settled cases were randomly selected for review; however only 17 cases were actually reviewed. It appears that no reviews took place after April 1, 2004.
- "Pro se applications" are those filed by property owners unrepresented by attorneys. ARC's Procedures and Controls state that pro se applications are to be reviewed in

Executive Summary

accordance with the same standards as other applications, but with appropriate variations in procedures. We found that ARC applied a lower level of scrutiny to the review of these properties than when there was attorney representation. There were deficiencies in quality control of data input and a lack of use of information checklists. The Chairperson or Counsel did not sign the stipulations of settlement.

- In cases where petitioners do not supply requested information, ARC requests the petitioner to appear for an examination. ARC's procedures require that it identify cases where the petitioner has shown a willful neglect to appear and consider dismissing these cases with prejudice. As of July 2004, ARC has not investigated any cases to determine if they are suitable for dismissal.
- ARC did not identify cases where reductions granted in earlier years were not properly carried forward to later years. ARC is empowered to settle these years, thereby permitting the payment of refunds and minimizing interest costs. It did not follow its procedure to identify these cases.

Control Enhancements

Upon review of ARC's Procedures and Controls, there were areas where enhancements are warranted. Specifically, we noted that there is no management report in place to monitor the settlement process from the initial receipt of the stipulation of settlement to its signing by ARC's chairperson. Other policies should be strengthened. For example, offers outstanding more than 45 days may be rescinded or unilaterally implemented; however ARC policy provides no guidance for making this decision. While ARC procedures require that about 5% of cases be selected and reviewed for overall quality control, the policy does not establish when, or how often, this procedure should be performed.

Lastly, we observed that ARC analysts rely heavily on automated tools to value properties. During our review, we noted that the work in progress and completed valuations sheets are maintained on a shared drive and there are no required passwords to limit others from making changes. Analysts valuing properties may be unaware of changes made by other ARC employees and rely on the altered data, resulting in unintended fair market value conclusions.

Department's Response:

The matters covered in this report have been discussed with officials of the department during the audit. On October 13, 2004 we submitted a draft report to department officials with a request for comments. The departments response, received on October 27, 2004, and our comments are included as an addendum to this report.

Table of Contents

<u>Findings and Recommendations</u>	<u>Page</u>
Control of Application Intake Process (1)	1
Identifying Defective Applications (2)	2
Quality Control of Database Input (3)	4
Monitoring Conveyed Offers (4)	6
Quality Control of WANG Input of Assessed Value Reductions (5)	8
Monitoring Case Assignments (6)	9
Carry Forward Reductions (7)	10
Dismissal with Prejudice for Willful Neglect to Appear (8)	11
Quality Control of WANG Input of Unilateral Assessed Value Reductions (9)	12
Management Review of Unilateral Reductions (9)	12
Monitoring Quality Control Compliance (10)	14
Management/Supervisory Review of Valuations (11)	15
Review of Pro Se Settlements (12)	16
Review of Stipulation Checklists and Internal Review Sheets (13)	18
Incomplete and/or Inaccurate Data (14)	19
Tracking of Stipulations of Settlements (15)	20
File Security (16)	21
Improvements in Procedural Compliance (17)	22
Appendix 1-Department's Response to our Findings & Recommendations	23

Findings and Recommendations

Control of Application Intake Process

Audit Finding (1):

ARC Procedures and Controls (“procedures”) require it to ensure, through statistical sampling techniques, that all applications received have been entered into the Department of Assessment’s WANG system or in the case of electronic filing, downloaded into the system. This system is used to establish an inventory of all protests filed. These statistical sampling tests are to be completed in time for ARC’s operation manager to prepare a report detailing the test results by May 15th of each year. The report must be reviewed and approved by ARC’s financial analyst in charge of quality control.

Additionally, Real Property Tax Law §523-b (10) requires that each applicant be provided with a notice of ARC’s determination of the protested property’s value on or before April 1st of the following year. Unless ARC is sure that all applications are entered into the system, and control over the application established, it cannot be sure that all applicants are sent the required determination of property value.

In 2003, ARC did not have this procedure in place. It was promulgated for the 2004 filing year; however, ARC’s management informed us that this procedure was not implemented in 2004 due to the large volume of applications submitted. The number of petitions received increased to 44,890 for 2004/2005 as compared to 31,096 for the 2003/2004 tax year. The large number of applications makes it all the more important that the procedure be followed.

Without implementation of the procedure there is no assurance that all:

- petitions have been entered into the protest system;
- have been processed;
- valuation decisions reached; and
- all applicants are provided with a notice of determination.

Ensuring that all petitions are considered and making necessary valuation reductions timely will reduce possible future refunds.

Audit Recommendation:

ARC should promptly perform statistical testing to provide assurance that all applications have been entered in the protest system. A report should be prepared detailing the test results and provided to the financial analyst for review and approval as required by ARC’s procedures.

Findings and Recommendations

Identifying Defective Applications

Audit Finding (2):

In order for ARC to consider a property owner's petition and determine a property's value, the petitioner must provide ARC with relevant information about the property. Real Property Tax Law §523-b (6) a,c notes the information required on the application.

As stated in ARC's General Operating Procedures, GEN 002, "ARC's policy is to address the merits of every application and avoid denying relief on technical grounds". ARC's procedures provide criteria as to the defects which can be cured by the applicant and the criteria as to the defects that cannot be cured. For example, an application with missing signatures can be cured, while an application that is received late cannot be cured. ARC's procedures require it to dismiss applications that cannot be cured to maintain the integrity of the application process.

Most applications are filed by about 50 law firms that represent property owners. In order to ensure that the applications filed meet the statutory filing requirements, ARC procedures outlines the steps required to verify that all required information and signatures are included in the application. The steps include selecting a random sample of approximately 25 applications from each firm and reviewing the applications for the existence of signed authorizations, appropriate dates, signatures of property owners or representatives, and the requested fair market values. If deficiencies are found, all of the firm's applications may be reviewed. The individual who performs the verification must record the results of the test on a list of applications selected for testing and ARC's office manager must review and approve the process. Further, a yearly report summarizing the results of this verification process must be issued in May of the filing year.

During our audit, we learned that in 2003, ARC's staff conducted the application verification; however we could not identify the employees verifying the applications because the majority of the worksheets were not signed or dated to establish accountability for test results. Additionally, there was no indication that the employees' work was reviewed and approved by ARC management. We noted that the procedures promulgated for 2004 did not require the employee performing the test to sign and date the test results.

As of July 2004, the procedure for the current year had still not been completed. ARC had only selected and reviewed applications submitted by one law firm.

The lack of establishing accountability for 2003's verification process and 2004's incomplete verification process does not provide assurance that the law firms submitted applications in accordance with ARC's procedures and the Real Property Tax Law.

Findings and Recommendations

Audit Recommendations:

ARC should immediately perform the application verification process and prepare the report which was required to be completed in May 2004. Further, ARC should ensure that the testing and subsequent reporting of the test results are completed timely in subsequent years.

The procedure should be strengthened to require the employee who performs the testing to sign and date their work.

Findings and Recommendations

Quality Control of Database Input

Audit Finding (3):

ARC uses a database to track the progress through various steps of application processing for all commercial properties. The database includes descriptive information about the property that is used to determine property values and to record actions taken, such as information requested and received. It is also used to record final determinations of value.

In order to ensure that all entries that record settlement data were properly approved and correctly entered into the database by authorized personnel, ARC procedures establish a quality control process. Either the office manager or a financial analyst must conduct a quality control review of the inputs and evidence their review in the database. Information is verified back to original ARC documentation and the reviewer must make sure that the revised property value was approved in accordance with ARC's procedures.

We found that for the cases valued and reviewed in 2003, evidence of quality control of the data entry was not found for 13 out of 25 cases tested. In 2004, there was no evidence of quality control in one out of the five cases tested. In addition, for two out of the five cases tested that were valued in 2004, quality control was performed by an individual other than the office manager or financial analyst. Quality control reviews performed by unauthorized individuals is not in compliance with ARC's procedures and might provide a lower level of assurance that:

- revised fair market values are entered properly into the database, or that
- the valuation was approved in accordance with ARC's procedures.

In order to ensure compliance with procedures, ARC requires the database manager to prepare a weekly listing of all settlement entries entered into the database and quality controlled during the prior week. Further, the procedures require that the vice chairman review, sign and date the report to ensure that all input entries were quality controlled and that there are no significant time lags between the input and the quality control.

During our review, it was determined that this procedure was performed only once. ARC was only able to provide one report, dated March 15th, 2004. Although the vice chairman told us that the report had been reviewed, the report was not signed and dated.

Upon our request, the database manager provided another report; however, an examination of this report revealed that the detail information on the report was derived from the WANG protest system, and not ARC's database as required. It appears that ARC had not established database queries that can produce consistent reports on different dates.

Failure to perform weekly reviews of quality controlled settlement entries does not assure the integrity of the database because agreed upon assessed values may not be entered into the system

Findings and Recommendations

and quality control may not be timely. Incorrect or incomplete data may be used to produce management reports that may be relied upon by ARC's management and the Administration.

Audit Recommendation:

ARC should ensure that:

- a. quality control is performed for all data entry in the database;
- b. quality control reviews are only performed by the office manager or the financial manager; and
- c. reports are generated on a consistent basis, at the prescribed intervals and reviewed, signed, and dated by the vice chairman.

Findings and Recommendations

Monitoring Conveyed Offers

Audit Finding (4):

When a valuation performed by an analyst indicates that a reduction in assessed value is warranted, an offer of reduction is communicated to the petitioner or petitioner's attorney. Offers expire 45 days after conveyance and may be rescinded or unilaterally implemented at ARC's option if there is no reply from the petitioner.

Procedures require that ARC produce a weekly report listing all conveyed offers indicating the number of days outstanding since the conveyance date. The report should be used to identify expired offers so that a decision can be made if the offer is to be rescinded or if a reduction should be unilaterally implemented. Failure at this point to implement a unilateral reduction to the value offered may result in higher refund costs if the reduction is implemented at a later date. The report is also to be used to determine if offers are conveyed to property owners timely.

During our audit, we observed that these reports are not being prepared weekly as required. Specifically, only one of these reports, dated March 15th 2004, was provided.

Further, we noted that the one report that was provided had the following flaws:

- The report did not effectively present critical information necessary to properly monitor the outstanding offers. The report should provide an aging of the offers; however, the report sorted the offers on the first digit of the number of days the offer was outstanding. Therefore, this resulted in a 68 day old outstanding offer being listed immediately after a 6 day old outstanding offer.
- While the report lists the date the offer was conveyed, it does not list the date the offer was approved by ARC. Therefore timeliness of conveyance cannot be determined.
- The report lacked a column indicating the name of the petitioner and/or the attorney to which the offer was conveyed. This information would permit ARC to more easily identify all open offers by attorney when contacting each attorney.

Additionally, the procedures need to be strengthened because they did not address the following:

- The procedure did not include steps to be taken to ensure that ARC follows-up on conveyed offers outstanding for more than 45 days. Additionally, it did not require reporting of follow-up status, such as an indication of second requests or telephone calls. This information would permit ARC management to monitor the actions taken to finalize settlements.
- The procedure does not require management review and sign-off of the report.

Findings and Recommendations

- The procedure did not provide guidance as to circumstances where it would be appropriate to rescind offers.

Audit Recommendations:

The report should be issued on a weekly basis and should be revised to:

- list the conveyed offers by total days outstanding (highest to lowest);
- provide the name of the attorney or petitioner (if pro se) to whom the offer was conveyed;
- indicate the date that offer was available for conveyance; and
- include a space for management to indicate their decisions whether the offer should remain open, be rescinded or unilaterally implemented.

ARC should enhance its procedures by:

- including steps to be taken to follow up on conveyed offers where no reply was received;
- requiring management to review and sign-off on the report; and
- providing guidance as to when offers should be rescinded.

Findings and Recommendations

Quality Control of WANG Input of Assessed Value Reductions

Audit Finding (5):

When ARC determines that a current year reduction in assessed value is appropriate, the reduction is entered into the WANG system by ARC's office manager or operations aide. The WANG system is then used by the Department of Assessment to generate the tax rolls. ARC procedures require the quality control review of all reduction data entries. The procedures also require the database manager to prepare weekly reports of all implemented reductions. This report will list all reductions entered into WANG and/or quality controlled in the prior week. The report is to be reviewed and signed off by the vice chairman to ensure that all reductions entered have been quality controlled and that there are no significant time lags between the input and the quality control.

The procedure indicated that the report should be implemented by February 15, 2004. Only one report was generated, on March 15, 2004. There is no evidence that the report was reviewed; it was not signed or dated by the vice chairman. We observed that additional reports had been generated and maintained electronically; however, these reports all were created on the same day in June 2004.

Lack of ongoing reporting and management review of implemented reductions does not ensure the integrity of reductions granted. If the current year reductions in assessed value are entered into the WANG system inaccurately, properties may be improperly taxed, possibly resulting in additional refund payments by the county.

Audit Recommendation:

ARC should implement a procedure by which reports will be generated at prescribed times (1st working day of the week) and list all implemented reductions entered and/or quality controlled during the prior week. If no implemented reductions were entered, a report should still be generated, indicating such inactivity. Upon the vice chairman's review of this report to ensure that all reductions were quality controlled on a timely basis, it should be signed, dated, and filed for future reference.

Findings and Recommendations

Monitoring Case Assignments

Audit Finding (6):

ARC pre-assigns cases to be reviewed by analysts based upon parameters established by the chairperson, according to analyst's level of experience and areas of expertise. ARC procedures permit assignment changes to be made only under certain circumstances, and with specific approvals.

To ensure that settled cases were evaluated by the analyst originally assigned, ARC procedures require the database manager to prepare monthly reports of all cases settled in the prior month and ensure that the analyst who performed the valuation agrees to the original assignment log. Exceptions are to be noted with an appropriate explanation code. This report is to be reviewed by the vice chairman and the review will be evidenced by the vice chairman's dated signature.

During our audit, we concluded that this procedure was officially performed only once. The vice chairman provided the report, dated March 15th, 2004, to us for our review; however, it did not include critical data necessary to comply with the procedure noted above. It was deficient because:

- It was not signed by the vice chairman to evidence review.
- It did not list the past month's settled cases. Instead, it depicted only the prior week's activity; and,
- the report did not include explanation codes for those settled cases where the analyst who performed the valuation was different than the analyst who was originally assigned.

A second report was generated by the database manager in response to our request. Upon review, this report did not contain the same level of detail as the report dated March 15th. Instead of listing cases as of settlement date, it listed cases as of conference date, including conferences to be held in the future. It appears that ARC has no set database program established to produce standard, recurring reports.

The lack of frequent management review and critical data necessary to perform the review does not ensure that the valuations were performed by the analysts assigned by management.

Audit Recommendations:

ARC should:

- set up a database program to generate this standardized, recurring report and ensure that it contains all required information.
- forward the report to the vice chairman for review. The vice chairperson should sign and date the report to evidence review; and
- file all monthly reports for future reference.

Findings and Recommendations

Carry Forward Reductions

Audit Finding (7):

Prior to the 2002/03 revaluation of all properties, Nassau County did not change the assessed values of a property unless there was a physical change to the property or the property's assessed value was reduced as a result of a certiorari challenge. Generally, assessed value settlements reached were to be carried forward so that the assessed value in future years would not be excessive. However there was concern that in some cases, the subsequent year's values were not properly reduced to reflect prior year settlement values. These over assessments would necessitate refunds to be paid in the future.

ARC procedures allow for the offering of reductions that carry forward settlements for years prior to 2002/03. ARC was to identify these properties and make offers to the petitioners for the subsequent years at the settlement value that was agreed upon for the previous year. We recognize that ARC has implemented carry forward reductions related to properties where it has performed current year valuations. To that extent, the financial impact of the remaining carry forwards is diminished, however; ARC has not performed this procedure to identify all remaining unimplemented carry forwards. As a result of ARC not identifying these settlements and carrying forward the reductions, the county may be liable for increased interest payments when these properties are finally settled and refunds are paid.

Audit Recommendation:

ARC should immediately institute the procedure of identifying those properties that are eligible for carry forward reductions and make offers when appropriate to the petitioners.

Findings and Recommendations

Dismissal with Prejudice for Willful Neglect to Appear

Audit Finding (8):

In order to properly value commercial properties, ARC requires petitioners to provide descriptive and financial information about the property. Pursuant to Real Property Tax Law §523-b (7) (a), ARC is authorized to request such information; however if the information is not submitted, ARC may request the petitioner to appear for an examination. If the petitioner or their attorney willfully neglects or refuses to appear for the examination to answer questions, ARC may dismiss the petition and the applicant is not entitled to any reduction in assessment.

ARC procedures describe the process for identifying cases suitable for potential dismissal with prejudice for willful neglect to appear. The vice chairman informed us that as of July 2004, ARC has not implemented these procedures to determine if cases are suitable for dismissal. Failure to identify cases where requested information has not been provided; and scheduling examinations to obtain the information, may cause delays in the settlement process with resultant higher interest costs. The dismissal of applications where the petitioner has failed to cooperate may result in a reduction in refund liability.

Audit Recommendations:

ARC should immediately identify those cases where the applicant has not submitted requested information and request the applicant to attend hearings and answer questions. In the event that the applicant willfully neglects to appear, then ARC should consider dismissing the petition.

Findings and Recommendations

Quality Control of WANG Input of Unilateral Assessed Value Reductions

Audit Finding (9):

Initial Input of Unilateral Assessed Value Reductions into WANG

ARC enters current year assessed value reductions into the WANG system which is then used by Assessment to produce the tax rolls. As discussed in Audit Finding (5), ARC procedures detail the quality control process for the entry of current year assessed value reductions.

During our review, we selected 22 commercial property cases where current year unilateral reductions were implemented. Unilateral reductions are those where ARC has determined that a property is overvalued and reduces the property value even though it has not reached an agreement with the property owner. Nine of those 22 cases were valued in 2004 (prior to assessment roll cut off on April 1st) and the remaining cases were valued in 2003. While we recognize that the procedures were not promulgated until 2004, our testing revealed that the quality control review of WANG data entry was not performed by an employee authorized to perform the quality control function for 8 out of the 22 tested items (36%). When comparing exceptions by year, we found that there were four instances in each year where the quality control was performed by employees who were not authorized to perform that function, indicating a worsening trend (44% exception rate for 2004 vs. 31% exception rate for 2003).

The performance of the quality control function by unauthorized personnel does not ensure that all reductions made to properties' assessed values are properly approved and correctly entered. As such, the tax levy imposed on the property owner may be incorrect.

Audit Recommendation:

ARC should ensure that only authorized personnel perform quality control reviews of WANG data entries for current year reductions.

Management Review of Unilateral Reductions

ARC procedures require that after all unilateral reductions have been input and the assessment roll has been closed, the database manager, or designee, verify through a sampling process that all changes were properly reflected on the final assessment roll. This verification must be evidenced on a management report.

By failing to perform this procedure, there is no overall assurance that the final assessment roll reflects all of the unilateral reductions approved by ARC.

Findings and Recommendations

Audit Recommendations:

The database manager should:

- ensure through a test sample that all unilateral reductions are reflected in the final assessment roll;
- produce the required management report; and
- provide it to the vice chairman for review and approval.

Findings and Recommendations

Monitoring Quality Control Compliance

Audit Finding (10):

In order to ensure that the entire valuation process is consistently applied and that subsequent reductions of assessed values are proper, ARC procedures require a random quality control of the valuations performed for commercial properties. (Commercial properties comprise 85% of all refunds.) Specifically, 5% of all settled cases are randomly selected for review by a computer program to determine procedural compliance, such as the appropriate analyst, the correct indication of years under review, the completeness of WANG and Database entry quality control, the appropriateness of internal review sheet sign-off, and the stipulation of settlement approval process.

Results of this quality control review are evidenced by the reviewer's signoff on the Quality Control ("QC") checklist and by an indication of the QC review on an Excel spreadsheet titled "QC Data History." This is an important process for ARC management to assess whether the commercial properties are being fairly valued and applications are being processed in accordance with established procedures.

During our audit, we obtained the Excel "QC Data History" file. It revealed that between January 14th and July 8th, 2004, the 5% random sample was comprised of 71 settled commercial cases selected for QC review. However, only the first 17 commercial cases (originally selected and assigned between January 14th and March 22nd) were actually reviewed. There does not appear to be a regular interval for the selection of cases to be reviewed. Regular intervals for performing this quality control function will permit ARC to detect and address quality control failures timely.

Audit Recommendations:

ARC should enhance their procedures to require a regular timetable for the sampling of cases (i.e., weekly, monthly, etc). Further, ARC should ensure that QC reviews are performed timely. We recommend that the results of these reviews be summarized on a report for management's review.

Findings and Recommendations

Management/Supervisory Review of Valuations

Audit Finding (11):

To ensure that the valuations performed by the analysts result in reasonable conclusions of fair market value, the valuations are to be reviewed by supervisory personnel. ARC procedures detail the level of supervisory review required based upon the type of property valued and the amount of reduction proposed.

ARC was not in compliance with this procedure. Specifically, we tested 25 cases that were valued and reviewed in 2003 and five cases that were valued and reviewed in 2004 to determine if the appropriate level manager performed the supervisory review. We recognize that the approval and quality control criteria were not established until January 1, 2004. We noted, however, that six of 25, or 24% of the cases valued and reviewed in 2003 were reviewed by a lower ranking employee than would have been required under the subsequently issued procedure. We found one of the five (20%) of the 2004 cases tested required a higher level of supervisory review than was performed.

The implementation of a formal supervisory approval matrix was an important step in ensuring that reviews are performed at the appropriate level. However, based upon the error rate noted for 2004, we are concerned that valuations and proposed settlements may not always be reviewed at the authorized level. If the appropriate level of supervisor does not review the case, there is less assurance that the appraisal was performed properly and that the final value was reasonable.

Audit Recommendation:

ARC should comply with their procedures to ensure that the appropriate supervisory review is performed for each case.

Findings and Recommendations

Review of Pro Se Settlements

Audit Finding (12):

The majority of the commercial property applications for reductions of assessments are filed by attorneys on behalf of the petitioners, and as such, ARC procedures predominantly address this type of application. However, there are pro se applications submitted by the commercial property owners representing themselves. ARC procedures state that the pro se applications are to be reviewed in accordance with the same standards as other applications, but with appropriate variations in procedures.

During our review, we noted that several procedures are typically completed for commercial property applications but were not completed for pro se applications. Specifically:

- The ARC database-Attorney Action section is not completed for pro se applications. Although attorneys are not involved on behalf of the petitioners for pro se applications, the Attorney Action section allows for the tracking of offers and stipulations. As such, there is no tracking of the status of pro se applications.
- Stipulations for pro se settlements are not required to be signed by ARC's Chairperson or Counsel. This subjects pro se settlement to a lower level of scrutiny than other settlements.

Additionally, we judgmentally selected and reviewed a sample of seven pro se applications and noted the following exceptions:

- The information checklists, which are used to ensure that all required information is obtained, were not completed for any of the seven cases examined.
- The offer or denial of application was not sent timely for four applications.
- There was no evidence that the offer or denial was sent to the petitioner for two of seven pro se cases.
- Final Settlement amounts were not entered onto ARC's database for five out of seven cases. Failure to enter data impairs the integrity of data that might be used for management reporting or liability analysis.
- Evidence of database entry quality control was lacking on three out of seven properties. Without quality control, incorrect entries may not be detected.
- For those pro se applications in which ARC determined that a reduction was warranted, the Chairperson or counsel did not sign any of the internal review sheets. Since the stipulation of

Findings and Recommendations

settlement for pro se applications are also not being signed by the Chairperson or Counsel, there is a higher risk of reductions being implemented without proper managerial review.

By not applying the same control standards used when petitioners are represented by attorneys to pro se applications, there is the risk that properties are not valued properly due to missing information and/ or lack of proper managerial review. Further, there is no assurance that pro se applications are settled in a timely manner as there is no formal tracking of such applications.

Audit Recommendations:

ARC should apply the same standard of review to pro se applications as it does for attorney represented commercial property applications. Specifically, ARC should:

- a. track progress of pro se applications via the Attorney Action section;
- b. ensure that internal review sheets and stipulation agreements are signed by the chairperson or counsel; and
- c. perform quality control to ensure that data is entered completely and accurately into ARC's database.

Findings and Recommendations

Review of Stipulation Checklists and Internal Review Sheets

Audit Finding (13):

ARC procedures require that the chairperson or counsel review and sign stipulation checklists and the internal review sheets. The stipulation checklist provides assurance that the stipulation of settlement conforms to the intended settlement while the internal review sheet provides details of the property and the factors from which the valuation was derived.

During our review, we sampled 30 cases, of which 11 cases settled in 2003 and 19 settled in 2004. During 2003, we noted no material exceptions with the signing and dating of stipulation checklists and internal review sheets. However, this is not case for 2004. Specifically, ARC failed to comply with its procedures on a majority of the 2004 test cases. Out of the 19 cases tested:

- two cases did not have stipulation checklists;
- of the remaining 17 cases with stipulation checklists, 13, or 76%, were not signed by the chairperson or counsel; and
- 17 of 19, or 90% of the review sheets were not signed by either the chairperson or counsel.

Lack of dated signatures on the stipulation checklists and review sheets does not provide evidence that a proper review was performed and that the stipulation complies with the intent of the settlement.

Audit Recommendation:

The Chairperson or Counsel should ensure that stipulation checklists are prepared for all settlements and that each stipulation checklist and review sheet is reviewed, signed and dated.

Findings and Recommendations

Incomplete and/or Inaccurate Data

Audit Finding (14):

To aid employees in performing their valuations of the commercial properties, ARC has formulated an Excel file with several spreadsheets containing various data. Some property, income, expense and writ data is manually entered onto the spreadsheets.

We found numerous exceptions where manually entered information on the spreadsheets was either incomplete or incorrect. The exceptions were noted in both 2003 and 2004 valuations tested. However, comparatively speaking, the error trend worsened in 2004. The following is a summary of the exceptions:

- the lot frontage was not entered on the property data spreadsheet for 8 out of the 25 (32%) valuations tested in 2003. In 2004, the exception rate was 80% (four out of five valuations that were tested).
- the analysts failed to identify the county attorney file number on the income and expense spreadsheet for 12 of the 20 cases (nine in 2003 and three in 2004) in which it was determined that the county attorney had a case file on the subject property. County attorney file numbers will alert the analysts that the county attorney has an information file and may have procured independent appraisals that can be used as input towards their valuations.
- The Writ Data spreadsheet requires the input of writ numbers, petitioner's name, writ status, attorney number, attorney name and the year protested on the writ data spreadsheet. We noted a total of three errors on two of the 25 valuations performed in 2003 and one error out of the five valuations performed in 2004 on the writ data spreadsheets.

If data input is either incorrect or incomplete, there is no assurance that the analysts are considering all critical data in their valuation process. ARC procedures do not include a requirement that the manually entered information be quality controlled.

Audit Recommendation:

ARC Management should reiterate to all analysts the importance of complete and accurate valuation sheets. The quality control procedures should be enhanced to include a process to detect and correct missing or inaccurate information.

Findings and Recommendations

Tracking of Stipulations of Settlements

Audit Finding (15):

Stipulations of settlement are drawn by the petitioner's attorney. Final acceptance of the stipulation by ARC can be delayed for a number of reasons, such as incorrect signatures, incorrect language, exclusion of open years, unmatched values, years, parcels etc. Stipulations may have to be returned to the attorney for correction before the stipulation can be signed by ARC. There is no management report in place to monitor the settlement process from the initial receipt of the stipulation of settlement to its signing by ARC's Chairperson.

The monitoring of the stipulation of settlement through the final approval, along with the reason for the delay is an important tool for management to ensure that appropriate timely steps are being taken to expedite the process. Additionally, the timely closure of these accepted offers will minimize the payment of additional interest costs associated with delays.

Audit Recommendation:

ARC should generate a monthly management report that will track all cases in which an offer has been accepted but the stipulation has not yet been fully processed. This report should provide explanations for the delays and provide a basis for ARC managements' review and follow-up.

Findings and Recommendations

File Security

Audit Finding (16):

ARC analysts rely heavily on automated tools to value properties. Specifically, they rely on comprehensive Excel valuation sheets that download information from other systems such as WANG and the Integrated Assessment System used by the Department of Assessment for annual property revaluations. This information is relied upon to calculate fair market values.

During our review, we noted that the work in progress and completed valuations sheets are maintained on a shared network drive and that there are no required passwords to limit other employees within ARC from making changes to these files.

Additionally, we noted that the valuation sheets have imbedded macros (a series of instructions and functions programmed into the spreadsheet) that automatically update the valuation sheets with information from the WANG system and dates the sheets according to the current date. When a valuation sheet was printed upon request, we observed that the dates on the sheet changed to the current date and a more current equalization rate was downloaded instead of the rate used at the time of valuation. As such, the assessed value calculated was different than what was officially offered. We understand that this does not affect the reduction originally offered; however, analysts who access these files may inadvertently rely on data that is not relevant to the properties valuation as established by ARC for settlement purposes.

Audit Recommendation:

ARC should institute the use of passwords to access the Excel files containing valuation data and should disable all macros upon placing completed files in the “Work Complete” folder of ARC’s shared drive.

Findings and Recommendations

Improvements in Procedural Compliance

Audit Finding (17):

ARC began documenting its procedures in August of 2003 and implemented them on January 1st, 2004. Although the procedures were not finalized until January 1st, 2004, the vast majority of the practices documented had already been in place. Of the 30 cases examined during the audit, ARC commenced work on 25 in 2003 and five in 2004. Since cases generally take many months to settle, we were able to compare the trend in procedural compliance before and after the release of the procedures documentation. Our test results revealed a marked improvement in compliance with specific procedures.

We noted procedural errors in the following areas; however, all the exceptions found related to work performed in 2003 and no errors were found for work performed in 2004.

- In 11 cases, the “Attorney Action” section of ARC’s database was not complete.
- There were eight occasions in seven of the 25 cases examined where the final settlement amount was either entered incorrectly or not entered into ARC’s database.
- In six cases, evidence of the Offer Sheet being faxed timely to the Petitioner’s Attorney was absent.
- There was no evidence of follow-up in nine cases where no response to the ARC’s offer was received from the petitioner’s attorney within the allowed 45 days.

In addition to the 30 cases mentioned above, we examined 22 current year unilateral reductions input into WANG to ensure that the valuations were performed by authorized analysts and underwent appropriate supervisory review. Thirteen of the properties were valued in 2003 and nine were valued in 2004. Our testing revealed that ARC made improvement in the following areas:

- In 2003, we noted that 4 out of 13 properties were not valued by analysts with the proper level of experience or expertise (as determined by the 2004 case assignment parameters). In 2004, all properties tested were valued by authorized analysts.
- Three out of 13 (23%) properties that were valued in 2003 were missing evidence of supervisory review as compared to 2004, where only one exception out of nine (11%) was noted.

Audit Recommendation:

Although ARC has demonstrated improved adherence to many of its procedures, it should place a high priority on completing the revisions to its residential property procedures, and must ensure that all of its procedures are followed.

ARC Comments on Limited Scope Review

October 27, 2004

THOMAS R. SUOZZI
County Executive



GLENN BORIN
Chairperson

COUNTY OF NASSAU
ASSESSMENT REVIEW COMMISSION
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MEMORANDUM

Date: October 27, 2004

To: Jane Levine
Chief Deputy Comptroller

From: Glenn Borin

Subject: Limited Scope Review of Commercial Property Procedures and Controls

We have completed a preliminary review of the Draft Limited Scope Review dated October 13, 2004, which was based on fieldwork conducted by your Internal Audit Division from June to July 2004. We appreciate the opportunity to comment on the draft.

ARC – the Assessment Review Commission – is a new department with an enormous caseload and a critically important role in the County fiscal recovery. ARC’s control environment can only be appreciated if this context is understood.

Effectively, the department has existed only since 2002 when the current management was put in place. It remains a start-up operation creating and modifying procedures at an emergency pace that is highly unusual in municipal government.

Although initially it produced valuation determinations numbered only in the hundreds, it was contemplated from the inception that production would rapidly grow until it reaches an annual rate of 10,000 commercial and 100,000 residential valuations.

Assessment Review Commission
Commercial Property Procedures and Controls

As a new entity, ARC has the advantage of establishing procedures that are molded to its underlying purpose and philosophy. ARC places the highest level of importance on the essential guarantees of the integrity of its process even above achievement of its fiscally urgent operational goals.

Given our emphasis on these fundamentals we are reassured but not surprised that your “audit uncovered no instances affecting valuation conclusions or refunds granted.”

The fact that you found instances in which the actual procedures implemented varied from the most recent version of our written guidelines is neither a surprise to us, nor an indication of a need for a fundamental change in our plans for development of the department. It does highlight three pressing needs:

- Improvement of ARC’s information technology environment.
- Recruitment and retention of adequate administrative staff.
- Procurement of expert advice on development and documentation of internal controls.

The first two of these needs have been most difficult and continue to present significant challenges although we are working as fast as we can to find solutions. Successful solutions to the technology and staffing issues will assure the overall success of our mission and resolve many of the control issues highlighted in your review.

The third need, technical assistance in developing and documenting controls, is being addressed through a County contract with the consulting division of American Express. ARC is the lead department benefiting from this expertise.

We were well aware of the instances where our actual operations did not conform to all aspects of our extensively documented procedures. In many instances we plan to retain the procedures or put in place even more thorough procedures as our staff and technology development can support them. In the interim we have had to manage our actual resources carefully, weighing the costs and benefits of each process. In some cases we chose to do less than was contemplated when we documented the procedure but never, in our view, creating a less than a sufficient control environment.

In each case where we have not been able to follow a process exactly as documented, we considered whether we could move resources to accommodate the process, or whether the process could be modified in favor of one that is more efficient or whether we must merely revise our documentation to reflect a modification that has already been put in place. As we move forward, we will look to whatever source of expertise can help us in these decisions, including American Express and your office, although of course, the ultimate responsibility rests with us.

Fiscal impact of ARC actions

For the better part of two decades, the County has been paying an average of more than \$100 million in real estate tax refunds year after year and borrowing the necessary funds through long-term bonds. After many years of indecision, the County has begun moving toward reforms that will reduce the weight of this fiscal milestone. It started with a commitment to annual revaluation and continued with the establishment of an effective ARC. It has embraced a deadline of December 2005 to discontinue borrowing for refunds. Only the most significant contributor to the problem, the state-mandated County guarantee, is beyond the County's ability to change through its own efforts.

Until 2003, almost none of the refunds were the result of action by ARC; nearly all were produced by settlement or adjudication of litigation involving commercial or residential property. On average, refunds in commercial cases were paid six years after the assessment was first established. To the extent that there was any prioritization of cases, it was controlled by the taxpayers' attorneys and the courts.

The essential premise underlying the establishment of ARC is that an administrative department with an expert staff could provide a more efficient and effective forum for resolution of assessment errors than the court system.

ARC did not have the option of assembling all of the necessary resources of staff, systems and procedures before commencing operations. The gravity of the County's fiscal difficulties made it essential that ARC start operations immediately. These exigencies continue to dictate how ARC uses its limited resources.

Although it has acquired many of the resources it requires, others are still lacking and will take additional time to put in place. The December 2005 deadline for the elimination of financing refunds requires ARC to increase its production continually over the next 12 months such that its operational goals continue to outstrip the means to carryout these operations in a theoretically ideal control environment.

The best that can and will be done will be to optimize the trade offs between improving the processes and meeting critical fiscal goals. As has been the case from the beginning, this rationing of resources will not sacrifice essential safeguards.

The plan for development of ARC that we adopted at the outset calls for controls that far exceed this minimum standard. We want eventually to serve as a model of effective controls in the real estate appraisal and assessment review environment. After the end of 2005, ARC will have the opportunity to place greater emphasis on stabilizing its procedures and bringing its compliance with those procedures to the highest practical standard.

Development of procedures and controls to date

ARC was created on paper in January 1999 when it replaced the Board of Assessment Review. But this was a change in name only. There was no full-time management and only one full-time staff member.

The existing ARC had no procedures and very little activity. Nonetheless, our predecessors were able to generate a scandal through one of the commissioner's misuse of her office. This episode only highlights the obvious risks inherent in the assessment and review functions of the County.

Our development of ARC's processes has followed a business plan outlined at the beginning of our tenure in 2002. Some aspects of the plan were contingent on actions by other entities, especially the 2002 state legislation that modified the assessment calendar and the cooperation of the commercial certiorari bar and residential grievance firms.

Of necessity, ARC has responded flexibly to these and other events. But the core actions contemplated in the original plan remain unchanged and continue to inform the development of ARC's procedures:

- Annually review the merits of every complete application for administrative review.
- Require relevant information from property owners when and to the extent actually useful to the valuation process, and not as an artificial barrier to review of the merits.
- Offer appropriate reductions consistent with the results expected in cases tried in court.
- Make resolution at ARC attractive to taxpayers and representatives by providing a process that is more efficient than litigation but no less accurate, predictable and fair.
- As appropriate, apply adjustments to the final assessment roll, reducing the need for refunds.

A fundamental premise of our plan was to assure the integrity of the process. We put in place simple, readily understood procedures in the first weeks of operations in 2002. These particularly related to residential assessment review. As we hired more staff and gained the ability to act on commercial cases we put in place additional procedures.

These early-established regulations remain at the core of the more elaborate controls that have been developed over the succeeding 30 months. Among these basic safeguards are

- Random assignment of cases.
- Limiting access to the mainframe system that updates the final assessment roll.

- Creation and preservation of the work product used to reach valuation determinations, including all essential facts, data and calculations.
- Supervisory review of a sample of all valuation work.
- Quality control of the most fiscally significant data-entry functions.
- Compliance with all applicable state and local laws and regulations.
- Transparent procedures accessible to the public.

A further and critical safeguard of the integrity of our process relates to the selection of staff. No system of controls is sufficient unless the staff is honest, reliable and competent for the work to which they are assigned. Therefore, careful review of credentials and work history of potential employees is extremely important. We have taken this effort very seriously and have been able to assemble a staff of 19 professional appraisers, each of whom is well qualified for their assigned tasks, and a similarly high-skilled staff responsible for administrative and operational tasks.

Our initial plan contemplated a high level of automation. Where there is the opportunity to put a modern system in place at the inception, it would be unwise and impractical to build a large staff of clerical employees producing records manually. We sought instead to hire a smaller number of mid and high level operational employees who could bring more valuable skills to bear on designing processes and monitoring operations.

It is in this area that we have encountered the most difficulty and delay. We have developed and acquired excellent technical tools for our valuation work. We have obtained numerous useful modifications of the legacy Wang system. We have used the self-taught skills of our staff with some help from central County IT to build ad hoc databases to serve our basic operational requirements. However, we have not yet been able to acquire dedicated technology resources sufficient to build and maintain modern, full-function case management and workflow systems that would provide all of the automation, controls and reporting that we need.

Similarly, although we have an excellent core group of high-skill operational employees, we do not have enough staff to conduct all of the operational procedures and reporting that we would like. As a consequence, we must ration their time to the tasks that are most critical to ARC's mission.

The lag in building the technical systems and operational workforce are not due to a lack of effort. As is the case with operating the department, the task of building it from a blank slate required a rationing of effort. Many parts of our development plan have been completed, including legislation, regulation, agreements with the bar and grievance industry, development of an appraisal staff and valuation tools, and, not least, documentation of our processes and procedures.

ARC's management is making every effort to remove obstacles to obtaining adequate information technology resources and operational staff. Success in these endeavors is critical to the overall success of ARC and will have major impact on achieving the desired control environment.

Documentation of procedures

The basic safeguards that ARC put in place early on were designed as guides to a small number of staff. The documentation was simple and designed for internal use rather than for the auditors coming in without a basic understanding of our process.

We recognized early on that we needed more detailed documentation both to facilitate audit and to inform the implementation of future automation. We sought out and received the willing assistance of your office in developing our control environment and documentation. We have also documented our process from an operational point of view with assistance from central budget and finance staff under Deputy County Executive Art Gianelli.

The documentation of our general and commercial procedures that we compiled with your assistance covers 23 topics and contains several hundred individual procedural steps. As you state in your report, many of the procedures were in place by 2003 but were not documented comprehensively until January 2004. Since then we have documented numerous changes to those procedures, reflecting technical and operational improvements, although our documentation has not kept pace with all of the changes.

We also drafted residential procedures at a similar level of detail. However, the residential process has undergone even more rapid change than the commercial process. We will continue to document this process as it evolves but cannot practically expect it to stabilize until we can upgrade the case management technology.

Despite these difficulties we believe our level of documentation already exceeds what had been done over the years in much longer established and stable departments. Your office could not suggest any other department in the County to use as model for documentation of procedures and controls.

But we can and will go further. Through the assistance of Helena Williams, Deputy County Executive for Compliance, we have engaged American Express to develop our internal ability to create and maintain documentation that keeps pace with our rapidly evolving procedures and assists in our design of those procedures.

Response to recommendations

After completion of a thorough review of our documentation in conjunction with the American Express team we believe that nearly all of the recommendations in your Draft Limited Scope Review will have been resolved through one or more of the following types of action:

- We have already changed the process described. If we have not documented the change, we will do so. We will monitor compliance with the revised procedure.
- We find the procedure unnecessary and will revise our documentation accordingly.
- We are currently in compliance with the procedure and will continue to monitor compliance.
- The procedure has value but is neither essential nor practically achievable in the short-term. We will implement it as technical and staff resources are available. If appropriate, a modified procedure may be put in place as an interim.

As we adapt to changes in circumstances and implement new technology, we will be continuously revising our processes. Our controls and their documentation must move with these changes that are dictated by our business requirements.

Each member of our small operational staff is responsible for multiple complex tasks. Our appraisers also work in a very high-volume complex environment. The controls and their documentation should be lean and efficient.

As part of the work we are doing with the American Express team we will develop the internal ability to document and continuously revise our procedures in a manner that will make them readily accessible to our staff. The initial goal will be to focus on key controls that add the most value and which are sustainable within our current resources. As our processes stabilize and our resources more closely match our needs, we will expand the monitoring and reporting functions accordingly.

Super adequate supervisory review of valuations

A key safeguard is the review of appraisal work by another employee with the relevant appraisal knowledge. As your report mentions, a system of supervisory review was in place early on although we have at several points modified the matrix that matches categories of cases with specific reviewers. For example, during 2003 we created a formal requirement of review by the Vice Chairman in addition to review by the Commercial Appraisal Manager for a category of high-value properties.

Our plan for supervisory review for both commercial and residential case has always contemplated a combination of targeted and random sampling rather than review of every case. In our opinion, review of a sample with some double reviews is more effective as a permanent

program than review of every case. Due to the volume involved, our residential supervisory review has always been done on such a sample basis. We still expect that commercial review will eventually be done on a similar sampling basis and had in fact written the procedures to so provide at one point.

However, the relatively lower volume of commercial cases has allowed us in fact to subject every proposed commercial property reduction to review by the Commercial Appraisal Manager. This has been especially useful as we added new staff to assure consistency.

In addition, from February 2002 until October 2003, I reviewed every settled commercial case upon receiving the stipulation of settlement for signature and continued to review a sample thereafter. I had been the only attorney available to sign the stipulations so that it was convenient to combine that function with a secondary appraisal review. The occasion for the change was the assignment of a full time Deputy County Attorney to act as counsel to the department. At the time that she assumed responsibility for signing most of the stipulations, we added the review by the Vice Chairman for the high value cases.

Overall, every case received at least one review and the higher value cases at least two. This is more than adequate review of this type. We do not believe that there were any cases where the substantive review was conducted to a lesser standard than is required in our current procedures. Further, the 100% review by the Commercial Appraisal Manager and the review of many cases by the Chairman or Vice Chairman, exceed the level of review that we believe will eventually be deemed practical and useful.

Our preliminary review of your report indicates that the noncompliance in this area consisted of the absence of a manual signature in many cases to evidence the supervisory review. In our initial procedures we relied to a large extent on the routing of the case files to assure that the review was conducted. We then added entries on our case database as part of the process but did not have sufficient staff to make this effective until 2004.

A third means of tracking supervisory sign-off was an indication on the valuation worksheet itself although we at first allowed a printed signature from a drop down list. We agreed with your recommendation of a manual signature and made it a requirement for cases that are approved in 2004. We believe that we are in full compliance with this recordkeeping aspect of the procedure and will continue to monitor it closely.

Stipulations of settlement checklists

When we began our commercial settlement process in 2002 the practice for creating a stipulation of settlement was based on a litigation model. We immediately implemented a procedure to verify the accuracy of each stipulation and determine whether it should be approved. A checklist was part of this procedure.

As a litigation document, the stipulation required signatures by counsel for both the County and the taxpayer. The forms were individually crafted by taxpayer's counsel and submitted to ARC for signature. We planned from the outset to streamline this process based on our powers as an administrative agency as enhanced by the 2002 legislation. However, we could not put this change into effect until we completed a process involving discussions with other County departments, negotiations with the bar and major new automation.

The stipulation review does not relate to the substance of the appraisal work, which is reviewed before the offer of settlement is conveyed. Rather, its purpose was to assure that the figures in the stipulation agree with the offer, that the wording is substantially compliant with the standard terms and that all of the pending proceedings are discontinued appropriately. As explained below, the first two purposes have been eliminated by the new procedure, which was implemented in mid 2004.

When we documented our stipulation verification procedure for the compilation that your auditors used, we described the procedure as it was applied when I was the only attorney available to sign the stipulations. I initialed the checklist and attached it to the outside of the file so that the staff member responsible for distributing the signed stipulations would know that I had signed the stipulations that were inside the folder. As explained above, I also conducted a secondary review of the appraisal work at the same time but this duty was not transferred to our counsel when she assumed the review of the stipulation. She adopted a checkmark rather than initials to mark the outside of the folders.

In this respect, our recordkeeping was not done exactly as the January 2004 procedures specified but, in fact, *the actual review occurred*. As the procedures specifies, “[e]vidence of approval is signature on the stipulation.” The use of a checkmark instead of initials caused no confusion as to whether the stipulation was reviewed by our counsel because we retained a signed copy of the stipulation in our file.

You also cited two cases where you found no checklist although our counsel signed the stipulation. In one of these there was a checklist for the stipulation. There were stipulations with two different dates but the terms were identical. The later stipulation replaced one lost by the court. There was no need for a second stipulation as the earlier checklist and signed stipulation provided all of the backup needed to resign the stipulation.

In the other case cited our counsel appropriately signed a *gap year* stipulation. The standard checklist does not apply to these cases where a settlement was not immediately carried forward by the Assessor to subsequent assessment rolls, as was required for years prior to 2003. Although we had a written procedure for carry forwards and gap years, when settled separately from the current year, and had developed a checklist that was used in 2002, we have had only a handful of these cases in the past two years. The signed stipulation is evidence of ARC's approval by the appropriate person and the other documents in the file provide sufficient backup for that approval.

Shortly after the period covered by your review we began implementing the new streamlined stipulation process. The stipulation is produced by ARC and refers to standard terms that are posted on our web page. ARC does not sign the stipulations. We no longer need to examine the document for consistency with the offer or for changes in wording.

This new process substantially changes the purpose of the stipulation checklist. Under the current process we require initials by the employee who prepares the checklist and by a second employee who prepares a notice of final determination based on the accepted offer. We will carefully monitor compliance with the new procedures.

Quality control of key data entry

The Wang-based Protest System is currently the only system to which ARC employees have access that directly impacts assessed values and tax refunds. Each March ARC's entries are moved by a batch program to the Department of Assessment for entry on the final assessment roll.

Starting in 2002 we worked with County IT to make security modifications to this system and limit access to appropriate staff for specified types of data-entry.

For the March 2003 updates we imposed a requirement that all commercial assessment reductions be quality-controlled before the data is passed to the Department of Assessment for entry on the final roll. The currently documented procedures for this quality control process have been in effect since that time.

For the 2003 roll only two employees did the data-entry and quality control. We used their titles in the documentation. In 2004, the increase volume required us to use these two employees and two others. One of these employees had a title that was not listed in the documentation for this task. However, all four employees were authorized to do this work and the system required that two different employees sign off on each record.

The mainframe programming insures that only reductions that were entered and separately approved by two authorized staff members may affect the final assessment roll.

We will review the additional recordkeeping for this process discussed in your report and determine whether they add substantial additional value.

Data security

Your report highlights certain data security issues that have been a concern to us since we began our commercial valuation process. Migration to a more advanced software platform would eliminate these security concerns. In the interim, we have sought to implement improvements in security without loss of critical functionality. Since your fieldwork was completed we have developed automation that saves completed worksheets and deletes the macros. We have also added password protection for some portions of the active worksheets.

We will continue to explore ways to enhance the security of this product as we upgrade it.

Dismissal with prejudice

The 2002 state legislation that ARC drafted to provide for a more effective administrative review process includes a provision for compelling the production of economic information. The legislation provides numerous procedural safeguards to protect the interests of the taxpayer. However, ultimately, ARC has the power to compel submission of relevant data. This power stems from ARC's ability to dismiss a protest with prejudice, which would bar the taxpayer from seeking judicial review.

Following the enactment of the legislation, ARC drafted rules prescribing the information required and the procedures for submission. We established a schedule for the submission of information for each commercial property with a pending protest. The same schedule specifies the date for a settlement conference. The schedule has been updated and reissued several times and will be reissued after each annual protest filing period.

During the period covered by your review, ARC tracked the receipt of the information requested and monitored compliance with its requests. However, as a matter of policy, it chose not to use the power to dismiss with prejudice during that period. ARC determined that its resources during its first two years of operation would best be employed negotiating cases with the thousands of taxpayers who voluntarily supplied the requested information rather than pursuing compulsory submissions in cases that might have little or no merit.

In view of this policy determination there was no need to implement the procedures for examination under oath and dismissal with prejudice. These procedures had been written in anticipation that ARC would commence the process for compelling submission of information during 2004.

In September 2004, when ARC issued its most recent update of its information request and conference schedule, taxpayer's attorneys were notified that ARC will proceed with examination under oath as necessary to compel submission. When these cases reach the appropriate point in the process ARC will apply the procedures for compelling submission of relevant information if it is not supplied voluntarily.

Internal tracking system and management reports

We use an internally developed database to track our commercial review activity. This system is completely separate from the Wang mainframe that has the ability to update the assessment roll. Some features of this database are very useful in our operations and your report notes that we have been able to more consistently track the movement of cases through our internal processes. However, it is far from a complete system. We do not have the type of staff that would be required to make the major modifications it would require to serve as such a complete system. Nor do we have enough staff that we can afford to perform all of the

recordkeeping functions that might be theoretically possible or use features of the database that do not serve our most important requirements.

In our current environment the production of reports is a major investment in staff time that we cannot afford except for the most critical needs.

We will carefully review your recommendations in this area as we work with the American Express team and prioritize our available resources accordingly. Further, in our planning for a fully developed case management system we will include in our requirements all appropriate reporting functions.

Review of protest form signatures and data entry

For many years in Nassau County nearly every commercial property owner has authorized a law firm to protest their property's assessment annually. Until 2003, the fact of protesting was evidenced by the filing of four-page form promulgated by New York State. The law, as interpreted by the courts, allow the filing to be a mere statement of claim. Almost any defect or omission in the form can be cured after it is filed.

In our 2002 legislation we gained the authority to promulgate our own form and electronic filing procedure. In 2003, we streamlined the form and promulgated a rule that required the law firms and grievance services to obtain a fresh authorization each year.

For 2004 we offered true electronic filing and persuaded most of the law firms to use that process, greatly reducing the amount of manual data-entry required. This data entry has always been handled by the Department of Assessment. ARC put a basic quality control process in place for the March 2003 filings and continued it in 2004. We verify the accuracy of the data-entry by issuance of a receipt list to each filer, which is generated from the data-entry, and spot checking as we receive the hard copy.

We designed a procedure for auditing the authorizations, which we carried out for the 2002 and 2003 protest filings. We had not been able to carry out the 2004 audit as early as planned due to more pressing needs for the available staff time. Because of the right to cure, we do not expect our audit of the authorizations to result in any application being dismissed. Nonetheless, we agree that enforcing the requirement of a fresh authorization provides a meaningful consumer protection and helps reduce the time that we expend on clearing duplicate protests. We will conduct the 2004 audit as soon as we can allocate staff for this task and plan to continue this procedure in future years.

Pro se commercial filings

Only a handful of commercial property owners chose to handle protesting their assessment on their own. As our procedures state, we apply the same substantive standards to these cases as we do to all other similar commercial cases. However, most of the properties are small and completely owner-occupied. Therefore, there is relatively little data required from the

owner compared to more complex properties. In most cases there are no pending back writs by the current owner and therefore no need for most of the language in the stipulation of settlement.

We adopted our ARC-generated residential stipulation of settlement for the pro se commercial cases filed in 2003. As discussed above, at that time in other commercial cases the stipulations were individually crafted litigation papers prepared by each law firm. But it would have been inappropriate and unnecessary to require unrepresented business owners to draft legal papers.

The residential stipulation and the handful of pro se commercial stipulations issued in 2003 and early 2004 are similar to our current commercial stipulation, which we had already designed but not implemented by early 2003. It does not require a signature by ARC. The appraisal review occurs before the offer is issued. Presently we have only two stipulation forms, one for single-year residential case and the other for all commercial and multi-year cases.

Conclusion

ARC has made safeguarding the integrity of its process its highest single priority. Throughout our 31 months as an operating entity we have balanced the need for immediate progress in meeting our important fiscal goals against the need to make our interim procedures safe against errors and malfeasance. As we move forward, these needs will coincide and support each other rather than compete. Additional operational staff, more robust information technology systems and more effectively documented procedures will all contribute simultaneously to enhanced production and a more secure control environment.

In the near term we cannot have everything at once. Compromise is unavoidable. We think we have struck the right balance. You found many instances where you recommend more thorough quality control and documentation. But you did not find any instances where the existing procedures produced inappropriate tax reductions or refunds. Although clearly we would like both more production and more thorough controls, your findings support our belief that where we had to choose we made the appropriate choices.

ARC appreciates the amount of time and effort that the professional auditors in the Comptroller's office have devoted to assisting us with documenting the controls and procedures that we had put in place in our first year and half of operation and in recommending enhancements to those procedures. In this review, the Internal Audit staff digested a large amount of material with minimal disruption of our operations. We look forward to working with your office on a continuing basis to make further improvements in our control environment.

Auditor's Follow-up Response:

ARC's response indicates that it is not surprised that the actual procedures implemented vary from the promulgated procedures and it acknowledges the pressing need for information technology improvement, adequate administrative staff and continued development and

documentation of internal controls. It also acknowledges that operational goals continue to outstrip the means to carryout the operations in a “theoretically ideal” control environment. ARC’s mission is vital to Nassau County and will result in the negotiation and expenditure of tens of millions of dollars per year in tax refunds. We believe that in an environment of substantial fiscal impact, subjective property valuations and negotiated settlements, operational goals should not be permitted to outstrip the need for strong internal controls.

We encourage ARC’s efforts to use the resources provided by the administration to develop the ability to create and maintain operating procedures to both meet the operational and control needs of the department. In the interim, we recommend that where the evolution of the department’s operations has caused ARC to re-assess its procedures, that the written procedures be modified to reflect the intentions of management, be disseminated to the staff and that compliance with stated procedures be strictly enforced.