

AUDIT/FISCAL COMMITTEE



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Front row, left to right:

Rod Rupp, Samuel Ferry, James Wilson, Ken Taylor

Back row, left to right:

Franklin J. Browning, Dr. Harry Stavros, Ron Brooks, Tom Hale

AUDIT/FISCAL COMMITTEE

The Audit Fiscal Committee assists the Grand Jury Foreman in managing the Grand Jury's budget. Also, the Committee has the responsibility to review the operations and functions of the following County Departments:

Assessor

Auditor/Controller-Recorder

Treasurer-Tax Collector

There were no significant findings or recommendations for the Office of the Treasurer-Tax Collector. The Assessment Appeals Process investigation was completed with the assistance of the Office of the Assessor and the Clerk of the Board. Two topics that the Grand Jury studied at the Auditor/Controller-Recorder (ACR) resulted in investigations into the details of the County's Historical Archives and the ACR's Quarterly Audit Report. The results of the three investigations are published in this 2008-2009 Grand Jury Report.

OFFICE OF THE ASSESSOR

ASSESSMENT APPEALS PROCESS

SUMMARY

The Grand Jury began its review of the assessment appeals process after noticing that the procedure had been the subject of past Grand Jury reports by several other California counties. Those reports were the result of public complaints. The 2008-2009 San Bernardino County Grand Jury discovered two areas of interest in our own County's assessment appeals process. First, the public is poorly informed as to the assessment appeals process. Second, third-party vendors are proliferating in the appeals process.

The assessment appeals process is a simple procedure. The process is governed by California statute and is the same in every county. When a property owner disagrees with an assessment, the property owner has the right to file an appeal. The appeal form is a concise, one-page document, which notes information that any property owner will have on record. On receipt of the application, the appellant is informed by the County as to a hearing date and the necessary documents to be presented.

BACKGROUND

Governed by State statute and largely by Propositions 8 (1979) and 13, the Assessor has responsibility for the assessment rolls, exemptions adjustments, identification of property owners, property value determinations, and reassessments.

An informal review and discussion between the property owner and San Bernardino County's Assessor's Office may be requested by the property owner. The Office of the Assessor endeavors to work with the property owner to clarify the basis for the new values, and to provide any information relating to the value of the property. Failing agreement between the Assessor and the property owner at the informal discussion, the property owner may file an Application for Changed Assessment with the Clerk of the Board (COB).

After the informal meeting between the appellant and the Assessor's staff, the COB administers the remainder of the assessment appeals process. The COB issues the appeal application and reviews the returned applications for accuracy and completeness. The COB then schedules a hearing before the Assessment Appeals Board. The COB also maintains a clerical presence at each board meeting.

The board that hears appeals cases, the Assessment Appeals Board, is appointed by the Board of Supervisors. The Assessment Appeals Board establishes the correct amount, or *equalizes* property valuations, for the purpose of taxation. Residential appeals are heard by one hearing officer. Business property appeals are heard by a panel of three hearing officers. The Appeals Board generates a decision based on the input from a

representative from the Assessor's Office and the appellant. If the appellant disagrees with the Appeals Board's decision, the appellant can appeal to the Superior Court.

Others involved in the process are County Council, the Auditor/Controller-Recorder, and Treasurer-Tax Collector. These entities have minor, but important roles and do not appear at appeals hearings. The Grand Jury checked into the public interaction the County maintains concerning assessment appeals. We looked at public informational handouts, phone help at the Assessor's Office and COB, and pertinent County web-sites. We talked at length with both major department heads on the subject. We also compared San Bernardino County's public outreach with several other counties. The Grand Jury interviewed top personnel in all involved County departments and attended several appeals hearings. The Grand Jury studied the problems of other counties and the ramifications of Proposition 8 (1979) and Proposition 13.

A majority of the appellants had difficulty communicating in English, which is the sole language in which the proceedings are conducted. These appellants' cases take significantly more time to discuss than those cases presented by fluent English speakers.

The Clerk of the Board's clerical staff turned away some of the appellants for various reasons before the hearing took place. Those turned away by the clerk generally did not have up-to-date information about their property or comparables. Out-of-date data was a common problem with appellants. However, the greatest difficulties in the proceedings were the language and potential cultural problems that faced the appellants. The appeal hearing officers clearly had a problem understanding most of those appealing. One of the appellants thought that rules governing assessments should be uniform with those of his native country. Each of the individual appeals was complicated not only by the subject matter, but by the cooperation and mental awareness of the appellant.

Continuances were liberally granted for those appellants requesting more time to present their cases.

Although four counties in California charge fees to appellants, San Bernardino County does not. In the early 1990's Orange County, according to their 2005-2006 Grand Jury Report, experienced a massive increase in defaults in favor of the appellant due to the county's appeals process dysfunction, short staffing and a massive increase in appeals. Because some of these appeals were not resolved within the statutory two-year limit, Orange County defaulted in favor of the homeowner. Orange County did not begin charging fees for assessment appeals, but rather chose a much more expensive means to cope with the problem. Orange County expanded the number of assessment appeals processing personnel, expanded the capacity of the existing appeals boards, implemented a new Assessment Appeals tracking system, and refined the intake function of the assessment appeals process. Four California counties did begin charging fees for filing assessment appeals applications: San Luis Obispo, San Mateo, Santa Clara and Stanislaus Counties. These counties also charge a fee for a Finding of Fact.

The Assessor's Office will operate with a 25% decrease in County funding this fiscal year. Also, appeals claims have been increasing rapidly. In 2007 there were about

5,500 appeals filed, 12,000 in 2008, and many more expected in 2009. There are about three years of cases currently in process.

Larger businesses typically hire dedicated outside attorneys to plead their assessment appeals before the hearing officers. These attorneys overwhelm the Board's intellectual understanding of law, appeals, assessments and valuation. One large corporation ranges between \$87 million and \$160 million in downwardly revised assessments every year. The current group of appeal hearing officers is composed of former real estate brokers, an attorney, and a CPA. Their training in the appeals process consists of an on-line course given by the California State Board of Equalization. They are not expertly versed in the law and the assessment and valuation process.

The Assessor's Office does not offer the Assessment Appeals Board legal representation. County Counsel sometimes has a presence at these hearings but does not take an active part in the proceedings. The Assessor hires no outside legal advice and relies on in-house staff to argue its position.

Third-party vendors are those companies that advertise that they will complete required forms and represent the appellant at assessment appeals hearings. By way of radio advertisements and direct mailings, third-party vendors have become a regular part of the appeals hearing process. Since 1991 the number of companies offering assessment appeal services for the public has proliferated into the hundreds statewide. These companies are easily accessible via the Internet and by way of their direct mailings.

Generally, there are two types of product third-party vendors offer clients. The most basic and inexpensive are those companies that for \$39 to \$99 will send an appeal form to the Clerk of the Board for the client. The second type of third-party vendor costs considerably more money. This third-party vendor also files the form for the appellant and further represents the appellant at hearings and promises to have the most current and complete documentation requested by the Office of the Assessor. These vendors may charge a flat fee or a percentage of the recovery, or a combination of both. One vendor charges \$179 for its services plus a \$30 late fee if the respondent does not reply to the mailing within 30 days. Sometimes their costs to the appellant are not clear.

Although third-party representation is not illegal, some of the advertising tactics by third-party vendors are misleading. Numerous mailings are cloaked in official appearing documentation. The homeowner often mistakes these mailings as notices from a government agency. Mailings and advertisements are often not clear as to the services their companies render or the costs of those services. Some vendors are out-of-state, some are without an address or phone number. Website vendors give very little information about themselves or their background and experience.

The Police Department of the City of Claremont has issued a warning to Claremont residents concerning third-party vendors who offer a reduction in property taxes for a fee. The State of California Business & Professions Code (B&P), Assessment Appeal Application Filing Services, Section 17537.9, warns the public of third-party scam activity. This year the State Legislature has introduced a bill, AB 992, to amend,

update and toughen B&P Section 17537.9. The Attorney General of California has issued a recent consumer alert concerning third-party assessment appeals vendors. In April, 2009, the San Diego County Assessor released a statement warning the public of the \$179 or more fee charged by third-party vendors who have recently mailed thousands of notices. The Assessors of Ventura, Orange and San Diego Counties display warnings of third-party vendor activity on their official web pages.

FINDINGS

1. Many appellants participating in the assessment appeals process are not fluent in the English language.
2. The Clerk of the Board does not take steps to control frivolous submittals of Applications for Changed Assessments
3. The Office of the Assessor does not adequately defend its assessment positions when challenged by companies and individuals that employ specialist attorneys.
4. The County of San Bernardino does apprise the public of third-party assessment appeals vendors' activities.
5. A time-line of important dates in the assessment process found on other county's websites was helpful to understanding the assessment appeals process. The Assessors of Ventura, San Diego and several other counties now display time-lines on their websites.
6. All the information a property owner needs to process his own assessment appeal, without third-party assistance, is on the County Assessor's website.

RECOMMENDATIONS

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| 09-06 | Provide language translation service to those appellants requesting such a service. (Finding 1) |
| 09-07 | Collect a filing fee for an Application for Changed Assessment and a fee for a Finding of Fact. (Finding 2) |
| 09-08 | Utilize a private legal firm, or County Council personnel, knowledgeable in the field of appraisals and assessment appeals, to represent the Office of the Assessor during major appeals. (Finding 3) |
| 09-09 | Take the necessary steps to regulate third-party assessment appeals vendors. (Finding 4) |
| 09-10 | Post a permanent and more detailed notice on Assessor's website, warning that third-party vendors are not necessary in the assessment appeals process. (Finding 5) |

09-11 Include on the Assessor's website a time-line of important dates to remember during the year in order to assist the public in keeping abreast of time limits and due-dates of the property assessment processes as the year progresses. (Finding 6)

AUDITOR/CONTROLLER-RECORDER (ACR)

HISTORICAL ARCHIVES

SUMMARY

In 2006, the San Bernardino County Historical Archives (Archives) was moved from its old facility on Rialto Avenue to its new home at 1806 Commercenter West. The facility houses the county's oldest and rarest information, plus the first 41 years of the County of Riverside's historical documents. The 2008-2009 Grand Jury checked on the progress and improvement of the preservation of these priceless and one-of-a-kind artifacts and found some interesting results. Those results are documented in the findings and recommendations sections at the end of this report.

BACKGROUND

The old facility on Rialto Avenue had not been adequately equipped to maintain the historical material, nor was it secure. The facility we inspected on Commercenter was secure but still lacked archival storage infrastructure common to similar operations of this kind. There was a need for environmental controls that would prolong the useful life of the materials. The storage area was air-conditioned, but the air conditioning was intended for common warehouse activities and was inadequate for archival storage. Rare documents need more sophisticated and accurate controls and alarms. Archivists agree that temperature and humidity be kept steady in the archive storage area. Humidity must be between 40 and 55 percent, while a temperature between 60 and 70 degrees must be established. If those environmental standards cannot be met, archivists agree that *at least* a storage facility be kept at a *steady* climate using the equipment at the facility's disposal. Upgrades to the current heating and cooling need not be expensive. Additions of dust filtering and secondary humidity and temperature monitoring and logging equipment are essential for long-term preservation of historical materials.

Most of the archives were stored on open shelves. If the fire sprinklers were activated, the Archives would be heavily damaged, if not destroyed outright. Acid-free storage boxes were in abundance and a primary means of protection of materials from light, dust and moisture. The ability of the proper storage box to preserve the material cannot be understated. However, there is not much that boxes can do to protect the valuables from a discharge from the standard-type sprinkler system now employed at the Archives. For archival use, the sprinkler systems are customarily the Victaulic or *dry* type. In a dry system the piping between the valve and sprinklers is filled with pressurized air or nitrogen rather than water. A sprinkler-head opening causes air pressure to drop. When the pressure deteriorates in the pipes sufficiently, the valve clapper is allowed to open, flooding the lines with water. This system prevents the entire collection from being soaked.

The storage area of the Archives was an open warehouse-type interior with metal shelving located below and open to sprays of water from overhead fire sprinklers. The shelving meets San Bernardino City codes and was inspected by the City Fire Marshal when installed. However, two equipment standards were lacking. One, cross bracing between standing metal shelving and two, the addition of bungee-style strapping across the shelf openings to reduce the incident of materials falling in case of an earthquake.

The expansion of the Archives to adjacent offices as they become vacant would increase the volume of materials stored at the archives. The current contents of materials held by Historical Archives and by other County departments necessitates expansion of storage area. The Archives currently hold about 60% to 65% Auditor/Controller-Recorder (ACR) records, and the remainder belong to other departments. Some departments hold their own historical documents in less than satisfactory storage areas.

Security consists of ACR-hired private agency 7 AM to 7 PM. There was an every-other-hour check of the premises, and the security personnel was shared with the main ACR building across the street. After 7 PM, the Archives relied on burglar and fire alarms monitored by an agency. The ACR building manager would be called in case of an alarm anytime during the night. Two staff were on duty during business hours. The Archives maintained a policy that absolutely no one can remove material of any kind from the archives. However, there were no security cameras in the archives. The staff wore personal alarms. Archivists stressed the importance of a video recording security system.

The public was not allowed in the storage area and must wear cotton gloves when inspecting materials. Many of the very oldest books needed restoration. Technology exists that allows old material to be digitized for public use. There was no computer database of materials and the resulting handling of documents contributed to excessive wear on the original document. Staff says they were shopping for software to facilitate creation of a document database.

Staffing was an original concern of the Grand Jury when it noticed that the organizational chart for ACR showed only one employee working at the archives. There were four positions allocated, but three were unfilled. ACR sent two employees on a part-time basis to the Archives at different times of the day, so no one was there alone. No approval from the County Administrative Officer (CAO) to interview and hire anyone to fill the empty positions has been received by the ACR. Archivist literature states that it is important to secure the old documents from public mishandling and that knowledgeable people are necessary to protect the documents.

FINDINGS

1. The current environmental climate and control is not adequate for historical document preservation.
2. Nearly all of the documents are vulnerable to damage from the fire sprinkler

system if that system activates. The current fire sprinkler system is not appropriate for historical document preservation.

3. Metal shelving is not adequately braced to protect valuable documents from falls during an earthquake.
4. The Historical Archives are in need of additional storage space.
5. The addition of a video security system will enhance document and employee protection.
6. The Historical Archives does not have a program in place to digitize, catalog, and backup its historical documents.
7. The Historical Archives is understaffed and in need of full-time employees.

RECOMMENDATIONS

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| 09-12 | Upgrade environmental controls to approximate archival climate conditions. (Finding 1) |
| 09-13 | Modify the County Historical Archives fire sprinkler system and change to the zone type, dry charge system. (Finding 2) |
| 09-14 | Add security bracing between shelves and straps across shelf openings to help decrease damage to documents during an earthquake. (Finding 3) |
| 09-15 | Expand the square footage of the Historical Archives as adjacent space becomes available. (Finding 4) |
| 09-16 | Upgrade security measures with the addition of a video security and surveillance system. (Finding 5) |
| 09-17 | Digitize, catalog, and backup all historical documents. (Finding 6) |
| 09-18 | Fill the three vacant positions at the Archives with permanent employees. (Finding 7) |

INTERNAL AUDITS DIVISION

BACKGROUND

By mandate of the County Charter, the Internal Audits Division of the Auditor/Controller-Recorder (ACR) Office performs audits of all County departments, offices,

agencies and special districts. Though not distinguished in the Charter, these audits are determined to be operational, performance, and financial in content. These audits provide management with objective appraisals as to the status of operations of the audited organizations, and evaluate internal controls and assess business risks.

The Grand Jury reviewed audits from three different calendar quarters and interviewed staff from seven different departments including the Auditor/Controller-Recorder Office, Board of Supervisors (BOS), and the County Administrative Officer (CAO). Some staff interviewed are not familiar with the blue-bound books published each quarter. All audits are conducted in compliance with the referenced County Charter, and the Board of Supervisor's Policy Statement on Internal Operational Auditing. The Grand Jury review shows that all audits were accomplished according to professional standards.

FINDINGS

1. The San Bernardino County Policy Manual states that all departments "will be subjected to an annual internal operational audit." As an "essential element of management control" the Policy further states the function "must be carried out regularly and properly under the general direction of the County Administrative Officer."

Furthermore, the County Charter, amended by Charter Amendments adopted through November 7, 2006, in Article V, Section 6, states that "thorough audits from time-to-time, and not less than annually" will be accomplished for all departments under the control of the Board of Supervisors. Nowhere does the Charter reference, differentiate, or even acknowledge the Risk-Based Internal Audit Plan approved by the Board of Supervisors in February of 2003. The Risk-Based Plan divides the County departments into three classifications known as "High Risk," "Moderate Risk" and "Low Risk." This Plan establishes a different practice and picture of the auditing process than the Charter displays.

2. A review of the Internal Audits ending June 30, 2008, September 30, 2008, and December 31, 2008, by the Grand Jury, shows varied responses from management to the findings of the auditors. ACR and department management quite often maintain that the difficulty of enforcement of recommendations is due to habits and procedures established out of complacency and ignorance. Throughout, there is a constant practice of ACR referring to the *Internal Controls and Cash Manual* (ICCM) with specific chapters and pages. Also throughout, there is a constant response from management that the Manual is not available in the department. Evidence has shown the Grand Jury that even if the Manual were available, policy is often disregarded. Language used throughout the ICCM is more "advisory" than "directory" with no presence of giving command.
3. Oversight of Internal Operational audits by the Board of Supervisors and the County Administrators Officer to ensure enforcement of ACR's Findings and Recommendations has not been required and is not being accomplished. Recent

reviews of audits by the Grand Jury show rhetorical and representative Responses to ACR Recommendations as opposed to specific Responses and problem-solving conclusions to ensure compliance. Grand Jury review further indicates that County management and supervisory controls on administering Auditor recommendations need to be strengthened.

Without enforcement, compliance to Recommendations is nonexistent.

4. The Grand Jury learned during review of the audit reports that cash handling controls within the County departments are not always effective. While some departments have video surveillance cameras operating at some of their locations, other locations are lacking this security tool.

RECOMMENDATIONS

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| 09-19 | Amend the Charter to include language to establish the numbers and names of the audit classifications, and the time frame the various audit classifications are to be accomplished. (Finding 1) |
| 09-20 | Revise the ICCM to be commanding instead of instructional. Replace the words should and must with the word will . The Grand Jury recommends Manual language that encourages support to management and supervisors, while giving instructions and direction to staff. (Finding 2) |
| 09-21 | Establish oversight of internal operational audits along with the ACR office to ensure enforcement. Continued follow-up by ACR as done currently, along with a review each quarter from the Board of Supervisors and County Administration Officer to support department management in compliance with written procedures and policies. (Finding 3) |
| 09-22 | Install video surveillance cameras at all cash-handling locations in all departments throughout the County to safeguard against cash-handling overages and shortages and to ensure better security for County employees and the general public. (Finding 4) |