City Auditor's Office

Public Works – Real Estate Audit

Report Issued: October 17, 2023

Audit Report No. 23-06

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TO: Mayor Gunter and Council Members

FROM: Andrea R. Russell, City Auditor

DATE: October 17, 2023

SUBJECT: Public Works – Real Estate Audit

The City Auditor's Office has completed the audit of Public Works – Real Estate. The audit was conducted in conformance with Generally Accepted Government Auditing Standards by the authority granted through City Ordinances 28-02 and 79-10.

We would like to express our sincere appreciation to the Public Works Department management and staff for the courtesy, cooperation, and proactive attitude extended to the team members during the audit. If you have any questions or comments regarding this audit, please contact Andrea Russell at 242-3380 or Philip Toby at 242-3381.

C: Michael Ilczyszyn, City Manager
Connie Barron, Assistant City Manager
Aleksandr Boksner, City Attorney
Kimberly Bruns, City Clerk
Persides Zambrano, Interim Public Works Director
Damon Grant, Interim Deputy Public Works Director
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Audit Committee

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EXECUTIVE SUMMARY

The City Auditor's Office conducted a performance audit of the Public Works – Real Estate section. This audit is included in the City Auditor's updated FY23 approved Audit Plan.

Based on the test work performed and the audit recommendations noted below, we concluded that policies and procedures with defined roles and responsibilities do not exist and should be established to allow Real Estate to operate more efficiently and effectively. In addition, monitoring and tracking of City leases needs improvement to provide for proper administration of leases.

For further details on these findings and recommendations, see the Findings and Recommendations section. We noted significant deficiencies in certain controls over monitoring and record keeping; however, the City's real estate and lease inventories appear to be materially correct and real estate transactions comply with applicable laws and regulations.

BACKGROUND

The Real Estate section (Real Estate) of the Public Works (PW) Department is responsible for establishing and maintaining the City's land inventory with specialized knowledge of land acquisition for the public domain. This work is performed within the scope of established State and City ordinances, policies, and procedures and often requires communication with property owners, appraisers, and expert consultants.

Real Estate is responsible for all City land acquisitions, leases, disposition of surplus real property, easements, and rights-of-way for City roads, parks, utility improvements, and other capital projects. Real Estate also assists the citizens of Cape Coral with questions regarding their property. According to the Lee County Property Appraiser's website, the City of Cape Coral is listed as the owner of 1,677 parcels of property.

Based on Finance Department data, the City received revenues of approximately $2 Million[1] in lease and rental revenues during FY22[2]. The City incurred land acquisition costs of approximately $2.8 million in FY22 and $1.7 million for FY23 through August 31. In the FY22 Annual Comprehensive Financial Report, the City reported land assets with a total book value of approximately $194 million.

AUDIT OBJECTIVE

To determine whether internal controls over the City's real estate processes are in place to maintain the City's property inventory and provide appropriate administration of real estate transactions and leases.

STATEMENT OF AUDITING STANDARDS

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS AND RECOMMENDATIONS

FINDING 2023-01: Develop Real Estate Policies and Procedures
Rank: High

Condition:
Controls over Real Estate need improvement to ensure the efficient operation of the section and that documentation is maintained in a current and organized manner. Based on walkthroughs during audit planning, we noted there are currently no documented policies and procedures in place for the operation and administrative processes of the Real Estate function

[1]. This amount includes rent and royalties, tower lease, and capital lease revenues.
[2]. Final revenue amounts for FY23 were not available at the time of the audit.

including record maintenance, retention and monitoring of broker/agent licenses. We noted that files have numerous copies of documents, such as lease agreements, in various stages of review, as well as some documents that appear to be obsolete or irrelevant, such as one lease that was never executed.[3]

Real Estate has several internal Excel and Word files for tracking and monitoring real estate transactions; however, except for the Eminent Domain Process and Policy to Apply Proceeds of Tax Certificates, these documents are inaccurate and incomplete. These internal documents include the following spreadsheets:

- Master Lease and License Agreements
- Purchase History 2017 Forward
- City Lease List
- City Parcel Inventory – Master

A policy and procedures manual is an essential tool that provides management and staff with the guidelines and detail for day-to-day operations. A policy and procedures manual also helps ensure business continuity by identifying specific steps of how work is performed and how it should be documented in a consistent manner. The manual also should be periodically reviewed and updated to ensure it documents current requirements and daily operations and practices.

We selected several types of real estate transactions for testing including leases[4], acquisitions, licensing agreements, and disposals. Although all requested information was provided, it was difficult and time consuming for Real Estate personnel to locate requested records due to the lack of systematic organized record management. Maintaining current, accurate, complete, and organized records for real estate activity and inventory are necessary to ensure proper recording and tracking of transactions and leases as well as accurate and complete land inventory records. City Ordinance Chapter 24 - Records Management and Archives Program, adopted 11/20/1995, provides guidance for City records management, with section 24-7 specifically addressing the record management responsibilities of the various City departments. The City Clerk has additional records management guidance available including General Records Schedule GS1-SL for State and Local Government Agencies, published by the Florida Department of State, and the City of Cape Coral Records Management Program Manual.

Transaction Testing

We selected a random sample of real estate acquisitions and temporary use and licensing agreements from a list of City Council agenda items provided by the City Clerk. We noted that three of five (60%) acquisitions were not included on the property acquisition list and two of five (40%) were not included on the property inventory list provided by Real Estate. For disposals, we noted only two items in the population for our scope, therefore we elected to test both. One (50%) transaction was not on the Real Estate disposal list and was not removed from the inventory list maintained by Real Estate.

[3] See Finding 2023-02.
[4] See Finding 2023-02 for lease test results.

Criteria:

- Florida State General Records Schedule GS1-SL for State and Local Government Agencies
- City Ordinance 24-7
- City of Cape Coral Records Management Program Manual
- City of Cape Coral Records Retention 101
- Formal policy and procedures manual with clearly defined roles and responsibilities.
- Internal documentation including:
    - Eminent Domain Process
    - Policy to Apply Proceeds of Tax Certificates and Tax Deed Sales
    - Master Lease and License Agreements (spreadsheet)
    - Purchase History 2017 Forward (spreadsheet)
    - City Lease List (spreadsheet)
    - City Parcel Inventory – Master (spreadsheet)

Cause:

- Lack of formal policy and procedures manual
- Lack of current transaction and inventory records
- Lack of administrative staff
- Lack of systematic organized record management
- Personnel changes/turnover/length of vacancies
- Noncompliance with record retention policies and procedures

Effect:

- Incomplete, outdated, and inaccurate inventory and other real estate records
- Potential disruption of daily business continuity
- Increased potential for errors

RECOMMENDATIONS:

2023-01a: Develop Real Estate policies and procedures that provide clearly defined roles and responsibilities for operations and administrative functions to ensure transactions and records are accurate and complete.

2023-01b: Develop a plan to establish policies and procedures for electronic maintenance of real estate records to assist with organization and searchability.

Management Response and Corrective Action Plan:

2023-01a Select one of these boxes: ☒ **Agree** ☐ **Partially agree*** ☐ **Disagree***
***For partially agree or disagree a reason must be provided as part of your response:**

2023-01a Agree to develop policies and procedures that provide clearly defined roles and responsibilities for operations and administrative functions to ensure transactions and records are accurate and complete.

2023-01a **Management Action Plan Coordinator:** Interim Public Works Director
2023-01a **Anticipated Completion Date:** 5/31/2024

2023-01b Select one of these boxes: ☒ **Agree** ☐ **Partially agree*** ☐ **Disagree***
***For partially agree or disagree a reason must be provided as part of your response:**

2023-01b Agree to develop a plan to establish policies and procedures for electronic maintenance of real estate records to assist with organization and searchability.

2023-01b **Management Action Plan Coordinator:** Interim Public Works Director
2023-01b **Anticipated Completion Date:** 04/30/2024

FINDING 2023-02: Improvement Needed in the Administration and Monitoring of Leases
Rank: High

Condition:
In addition to acquisitions and disposals, Real Estate is also responsible for all City leases and temporary use and licensing agreements. The City is party to several leases, both as lessee and lessor. Real Estate provided a list of 22 leases for our audit scope, and we judgmentally elected to test 100% of the population. While reviewing lease documentation, we noted two leases during our audit scope that were not included on the list from Real Estate, resulting in a total test population of 24. Of these 24 leases, 19 (79%) did not have current Certificates of Insurance (COI) on file, and four (17%) leases that were renewed or extended did not have renewal documentation on file. It is important to note that the COIs were also not on file with the City's Risk Management division.

Real Estate does not have a documented method or policies and procedures in place for tracking leases and lease terms, or ensuring required documentation is on file. Real Estate maintains multiple copies of leases, cell tower leases, and temporary use and licensing agreements which do not always agree. During testing, we noted one lease that originated in 2007 and approved by City Council, had an incorrect lessee named in the City Ordinance. This was a scrivener's error by the City Attorney's Office who prepared the ordinance. The typographical error resulted from editing and updating existing documents rather than utilizing blank templates. This same lease was also assigned to another party in 2013 by the lessee, as allowed under the original lease terms with the consent of the City; however, the assignment was not presented for approval by Council until 2023 because the lessee did not communicate the change to the City. There are other lessees that, due to unclear language for lease terms regarding repair and maintenance, have requested new leases be drafted to clarify the responsibilities of each party and specifically the dollar amount each party is required to pay for repairs to the property.

While reviewing lease revenue data, we noted payments received in FY22 and FY23 from a tenant for which no documentation of an active lease was provided. Upon further inquiry of Real Estate, we determined there was no formal agreement with this tenant. They were existing tenants when the City acquired the property in September 2021; however, as of June 1, 2023,

they were no longer tenants of the property. A monitoring process would help to identify discrepancies and necessary updates and address them in a timely manner.

Criteria:

- Formal policy and procedures manual with clearly defined roles and responsibilities[5]
- Inventory of leases and lease terms
- Master Lease and License Agreements (spreadsheet)
- City Lease List (spreadsheet)

Cause:

- Lack of formal policy and procedures manual
- Lack of current transaction and inventory records
- Disorganized record management
- Lack of monitoring of leases/temporary use and license agreements

Effect:

- Incomplete and inaccurate lease inventory and records
- Potential noncompliance with Government Accounting Standards Board Statement No. 87 - Leases
- Increased potential for errors
- Potential increase in liability for the City due to missing or expired COI
- Potential inaccurate lease/rent payments

RECOMMENDATION:

2023-02: Develop and document a monitoring process for tracking of leases, and temporary use and license agreements terms, and all pertinent information associated with them to ensure they are accurately accounted for, and all required information and documentation is current, accurate, and complete.

Management Response and Corrective Action Plan:

2023-02 Select one of these boxes: ☒ **Agree** ☐ **Partially agree*** ☐ **Disagree***
***For partially agree or disagree a reason must be provided as part of your response:**

2023-02 The Real Estate Division will develop and document a monitoring process for tracking of leases, and temporary use and license agreements terms, and all pertinent information associated with them to ensure they are accurately accounted for, and all required information and documentation is current, accurate, and complete.

2023-02 **Management Action Plan Coordinator:** Interim Public Works Director

2023-02 **Anticipated Completion Date:** 08/31/2024

[5] See Finding 2023-01.

SCOPE AND METHODOLOGY

Based on the work performed during the planning and the assessment of risk, the audit covers the PW Real Estate process for the period of October 1, 2021, through July 31, 2023. Testing was performed using applicable City Ordinances and PW procedures that were in place during the scope.

Original records as well as copies were used as evidence and verified through physical examination. To gain a better understanding of Real Estate processes, walkthroughs were conducted with PW Real Estate personnel who handle the various Real Estate transactions. Sample size and selection were based on the CAO's Sample Methodology. We utilized information obtained from the City Clerk and Real Estate to randomly select samples of real estate acquisitions, disposals, and temporary use and licensing agreements. In addition, we tested 100% of the population of leases from the list provided for the scope of the audit, resulting in a population of 24 leases active for the scope of the audit. We analyzed the sampled items to test attributes to support the audit objective and determine whether internal controls over the real estate process and transactions are in place to maintain the property inventory and provide appropriate administration of transactions and leases.

Unless specifically stated otherwise, based on our selection methods, and testing of transactions and records, we believe that it is reasonable to project our results to the population and ultimately draw our conclusions for testing, findings, and recommendations on those results. Additionally, for proper context we have presented information concerning the value and/or size of the items selected for testing compared to the overall population and the value and/or size of the exceptions found in comparison to the items selected for testing.

APPENDIX A

Finding Classification
Findings are grouped into one of three classifications: High, Medium or Low. Those findings that are categorized as low are not included in the report but rather are communicated separately to management. Classifications prioritize the findings for management to address and also indicate the level of testing required to determine if a finding's Corrective Action Plan is fully implemented in accordance with recommendations and Management's Response.

High: A finding that is ranked as "High" will have a significant impact on the organization. It is one that *prevents* the achievement of a substantial part of significant goals or objectives, or noncompliance with federal, state or local laws, regulations, statutes or ordinances. Any exposure to loss or financial impact for a High finding is considered *material*. Examples include direct violation of City or Department policy, blatant deviation from established policy and procedure, such as actions taken to circumvent controls in place, material non-compliance with federal, state or local laws, regulations, statutes or ordinances, or an area where significant cost savings could be realized by the Department or the City through more efficient operations.

High findings require immediate management attention and should take management's priority when considering implementation for corrective action.

Medium: A "Medium" finding is one that *hinders* the accomplishment of a significant goal or objective or non-compliance with federal, state or local laws, regulations, statutes or ordinances, but can't be considered as preventing the accomplishment of the goal or objective or compliance with federal, state or local laws, regulations, statutes or ordinances. Exposure to loss or potential or actual financial impact is *significant but not material* to the Department or City. Examples include lack of monitoring of certain reports, insufficient policies and procedures, procedure in place or lack of procedure that can result in *potential* noncompliance with laws and or regulations.

Medium findings require management attention within a time frame that is agreed upon by the Department and the City Auditor. Priority for implementation of management's corrective action should be considered in light of other High or Low findings.

Low: A "Low" finding is one that warrants communication to management but is one that isn't considered as hindering the accomplishment of a significant goal or objective and isn't causing noncompliance with federal, state or local laws, regulations, statutes or ordinances. Financial impact or risk of loss is minimal to none; however, low findings can *hinder the effectiveness or quality of department operations and thus are communicated to management separately. Low ranked findings are not included in the final audit report.*

The City Auditor's Office will not follow up on the status of Low findings communicated to Management.