



Real Estate/Right of Way

Internal Audit

January 2019

Bernalillo County Internal Audit Real Estate/Right of Way

Executive Summary

SUMMARY OF PROCEDURES

REDW performed internal audit procedures over the acquisition and disposition processes at Real Estate/Right of Way. Our internal audit focused on evaluating the controls and processes related to the acquisition and disposition of real property and land, which includes purchases, sales, leases, encroachments and franchise agreements.

We performed the following procedures:

- Obtained an understanding of the procedures for processing acquisitions, sales, leases, encroachments and franchise agreements, including approvals, selection process, necessary studies and fees.
- Tested a sample of property acquisitions, sales and leases, to determine if these were completed in accordance with the department's policies and procedures, County Administrative Instructions and applicable laws and regulations.
- Tested a selection of franchise agreements to verify that agreements followed general processes in accordance with the County Administrative Instructions, including the receipt of payments.
- Tested a selection of encroachment agreements to determine if these followed procedures as defined by the County Administrative Instructions, including the receipt of payments.
- Evaluated whether policies and procedures in place reflected current processes.

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

During the course of the audit, we identified areas in which processes and related controls appeared to be functioning properly, most noticeably was the area related to sales. Our testing identified sales tested were processed in accordance with department's policies and procedures, County Administrative Instructions and applicable laws and regulations.

As a result of our testing, the following high and moderate risk observations were identified:

- 1) **Real Property of Acquisitions:** There was not sufficient documentation to verify that acquisition processes were followed. Policies and procedures should be updated to reflect current processes and utilization of a checklist to ensure all necessary steps are completed and information is obtained should be considered.
- 2) **Leases:** There was not sufficient documentation to verify that lease processes were followed. The Real Estate/Right of Way Department should consider utilizing a checklist to ensure all necessary steps are completed and information obtained.
- 3) **Franchise Agreements:** There was not sufficient documentation to verify that franchise agreement processes were followed. In addition, one payment relating to a franchise agreement did not have adequate documentation in place to verify that it was handled in accordance with County Administrative Instruction No. AD 02: Collection of Monies and Handling.

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Further detail of our purpose, objectives, scope, and procedures are included in the internal audit report.

We received excellent cooperation and assistance from the Real Estate/Right of Way Department during the course of our interviews and testing. We sincerely appreciate the courtesy extended to our personnel.

REDW LLC

Albuquerque, New Mexico
February 17, 2019

Bernalillo County Internal Audit Real Estate/Right of Way

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Bernalillo County Internal Audit Real Estate

Report

INTRODUCTION

We performed the internal audit services described below solely to assist the Real Estate/Right of Way Department at Bernalillo County in evaluating the processes and related controls over acquisitions, sales, leases, encroachments and franchise agreements. Our services were conducted in accordance with the Consulting Standards issued by the American Institute of Certified Public Accountants and the terms of our Professional Services Contract agreement for internal audit services. Since our procedures were applied to samples of processes, it is possible that significant issues related to the areas tested may not have been identified.

Although we have included management's responses in our report, we do not take responsibility for the sufficiency of these responses or the effective implementation of any corrective action.

An entrance conference was held on December 28, 2018, and fieldwork began January 7, 2019. An exit conference was held on February 6, 2019.

PURPOSE AND OBJECTIVES

Our internal audit focused on evaluating the real property acquisition, sales and leasing processes, including encroachments and franchise agreements, to determine if these processes were in compliance with the departments policies and procedures, County Administrative Instructions and applicable laws and regulations. We evaluated whether policies and procedures in place accurately reflect current process and whether the collection of monies was performed in accordance with County policies and applicable State Statutes.

SCOPE AND PROCEDURES PERFORMED

In order to gain an understanding of the processes and laws/regulations, we interviewed the following personnel:

- Deanna Miglio, Real Estate Manager
- Karen Montano, Real Estate Coordinator

In order to gain an understanding of the processes we read relevant portions of:

- Bernalillo County Administrative Instruction (AI) No. IP 01: Real Property Acquisition and Disposition dated May 27, 2011
- Bernalillo County Administrative Instructions No. AD 02: Collection of Monies and Handling Requirements dated April 16, 2018
- Relevant parts of the New Mexico Administrative Code, Title 1, Chapter 5, Part 23 for Public Property Management
- Relevant portions of the New Mexico Statutes Annotated, Chapter 13, Article 6, Parts 1 through 8 for Public Purchases and Property
- Bernalillo County Administrative Resolution 2012-17 dated March 13, 2012
- Bernalillo County Administrative Resolution 2017-41 dated June 13, 2017
- Bernalillo County Resolution No. 13-84 dated March 6, 1984
- New Mexico Department of Transportation Right of Way Handbook dated January 2016

We performed the following test work:

Purchases: We obtained a listing of all real estate property (land/buildings) purchased between January 2017 and November 2018 and selected all six purchases during the period. We tested to determine:

- Approval was obtained from the County Manager prior to the purchase;
- The property was selected from reasonable alternatives;
- A feasibility work/study was conducted, documented, and included a safety assessment, environmental site assessment, and documentation of site characteristics that may affect proposed public use;
- An appraisal was obtained and approved by the County Review Appraiser;
- Formal offers were directed and supervised by the Real Estate Manager;
- Following acceptance of the offer, approval was obtained from the Real Estate Committee and the County Manager or Board of County Commissioners; and
- Necessary closing procedures were completed, including clearances to title, final payments, granting of tax-exempt status through the Assessor's Office and providing of final paperwork to requesting and applicable departments.

In addition, we tested if additional studies as required by the AI No. IP 01 were completed for the acquisition of buildings, including an Energy Conservation Study, Building Inspection, Study of Land Issues, and Bandwidth Study.

Sales: We obtained a listing of all real estate property (land/buildings) sold between January 2017 and November 2018 and selected the two finalized transactions and tested to determine if:

- Required documents were in the file, including sale agreement and the quit claim deed with a legal description of property;
- An appraisal was completed and the report was reviewed by the Property Tax division of the New Mexico Taxation and Revenue department;
- The reason for sale and selection process were documented;
- Documentation of purchase price and, if applicable, the cost per square foot, cost per acre, or cost per acre foot of water rights existed;
- Approval was obtained from the Board of County Commissioners, State Board of Finance, Department of Finance and Administration, and State Engineer when applicable; and
- The sale price was not lower than the appraised value.

Leases: We obtained the listing of all active leases between January 2017 and November 2018. From the total population of 35, we selected a total of 11, testing approximately 30% of the population. For the leases selected, tested to ensure:

- A copy of the lease was maintained in the file;
- Approval was obtained from the Real Estate Committee, Board of County Commissioners, and if applicable, from the State Board of Finance;
- A description of the process used to determine the lessee was documented;
- An appraisal was obtained and reviewed by the New Mexico Taxation and Revenue department; and
- Rent or other consideration was not less than fair market value according to the appraisal.

Franchise Agreements: We obtained a listing of all active franchise agreements between January 2017 and November 2018. From the total population of 8, we selected 3, testing approximately 40% of the population. For the agreements selected, we tested to determine if:

- A franchise agreement was on file;
- The franchise agreement was approved by the Real Estate Committee;
- The franchise agreement was not expired;
- The latest payment was received in accordance with the franchise agreement; and
- Latest payment was handled in accordance with the Bernalillo County AI Collection of Monies and Handling Requirements.

Encroachments: We obtained a listing of all active encroachment agreements between January 2017 and November 2018. From the total population of 10, we selected four, testing approximately 40% of the population. For the agreements selected, we tested to determine if:

- An encroachment agreement was on file;
- An encroachment agreement was approved by the Real Estate Committee;

- The encroachment agreement was not expired;
- An appraisal was completed;
- The latest payment was received in accordance with the agreement; and
- Latest payment handled in accordance with the Bernalillo County AI for Collection of Monies and Handling Requirements.

OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

During the course of the audit, we identified areas whose processes and related controls appeared to be functioning properly, most noticeably was the area related to sales. Our testing identified sales tested were processed in accordance with the applicable Administrative Instructions, Resolutions, and State Administrative Codes.

As a result of our testing, REDW identified the following observations:

1) Real Property Acquisitions

The County's Administrative Instruction No. IP 01: Real Property Acquisition and Disposition requires various steps and actions to be completed in relation to the acquisition of real property. Completion of these steps help identify potential problems with the property, associated costs, and provide knowledge to make informed decisions in compliance with laws and regulations. For our testing of six acquisitions, we identified:

- Two acquisitions requiring County Manager approval did not have documentation indicating the approval was obtained.
- Three acquisitions did not have documentation that the Real Estate Committee approval was obtained.
- Three acquisition appraisals were not signed off as reviewed by the County Appraiser.
- One acquisition did not have documentation that the Real Estate Manager was involved in the offer process.
- One acquisition did not have documentation for how the property was selected.
- Two acquisitions did not have the required feasibility studies performed.
- Five acquisitions did not have documentation that the final documentation was provided to all necessary departments.
- Two acquisitions for buildings did not have additional studies performed.

Additionally, the AI has not been updated since 2011 and appears to be outdated based on current processes.

Potential Risk: High—There is a risk purchases are processed without proper authorization or necessary procedures to ensure the acquisition meets the County's objectives.

Recommendation: Policies and procedures should be updated to reflect current processes and reviewed to ensure compliance with applicable laws and regulations. Additionally, the Real

Estate/Right of Way Department should develop a checklist, which can be used to ensure all necessary steps are completed and information obtained for each acquisition. The file structure should be consistently followed to ensure all required documentation is maintained for each acquisition.

Management's Response: Staff concurs with recommendations above. The Administration Instruction will be reviewed and updated as necessary. In addition, a Real Property (Acquisition) Checklist will be created and incorporated into all files to ensure all necessary steps are completed and all applicable documentation is obtained for each type of real estate transaction. By June 30, 2019, the Administrative Instruction will be reviewed and updated, a Real Property (Acquisition) Checklist will be created, and staff will review the current filing system to ensure Acquisition Files are complete.

2) *Leases*

Leases entered into by the County are subject to both New Mexico Statute and the New Mexico Administrative Code to ensure all transactions are completed in the public's best interest. Our testing of 11 leases identified:

- One lease did not have documentation showing approval was obtained from the Real Estate Committee.
- Two leases did not have documentation showing approval was obtained from the Board of County Commissioners.
- Two leases requiring approval from the State Board of Finance did not have documentation showing the approval was obtained.
- One lease tested was expired, causing the County to be operating out of contract.
- Five leases had no appraisal completed. Due to this, we were unable to determine whether rent payment was not less than fair market value.
- Four leases lacked documentation on how the lessee was selected.
- One lease did not have a file and as such, we were unable to test.

Potential Risk: High—If proper authorization is not obtained and action steps not followed as outline in the policy, there is a risk the County might be entering into leases that are not in the best interest of the County.

Recommendation: Management should ensure all requirements according to their policy are met prior to entering into a lease. The Real Estate/Right of Way Department should consider creating a checklist to ensure all necessary steps are completed and information obtained. The file structure should be consistently followed to ensure all required documentation is maintained for each lease.

Management's Response: Staff concurs with recommendations above. The Administration Instruction will be reviewed and updated as necessary. In addition, a Real Property (Leases) Checklist will be created and incorporated into all files to ensure all necessary steps are completed and all applicable documentation is obtained for leases. By June 30, 2019, the Administrative Instruction will be reviewed and updated, a Real Property (Lease) Checklist will be created, and staff will review the current filing system to ensure all Lease Files are complete.

3) *Franchise Agreements*

The County enters into Franchise Agreements primarily to allow utility companies to build structures on County property in order to better serve the public. The current Administrative Instructions No. IP 01: Real Property Acquisition and Disposition does not refer to how these types of agreements should be handled, however the department handles these similar to other agreements. For the franchise agreement tested with fees, we were unable to determine if the most current payment was correctly calculated as no verification was performed by the Real Estate/Right of Way Department. In addition, this payment was not handled in accordance with the AI No. AD 02: Collection of Monies and Handling, as the check was not deposited within 24 hours of being received.

Potential Risk: Moderate—Franchise agreements can be a substantial amount as they primarily deal with utility companies which heightens the risk of accuracy if there is not a review/verification process in place.

Recommendation: Policies and Procedures should be updated to include franchise agreements. This will help provided employees guidance and help ensure the Real Estate/Right of Way Department is properly entering into agreements on behalf of the County. All payments should be verified for accuracy and reasonableness by either the Real Estate Department or a delegated department who is familiar with the agreement. Additionally, processes should be implemented to ensure all forms of payments received are deposited within 24 hours.

Management's Response: Staff concurs with recommendations above. The Administration Instruction will be reviewed and updated as necessary to include Franchise Agreements. Staff will work on a process to assist in the verification of payments received from Franchise Agreements. In addition, the Real Estate Section will work in conjunction with the Public Works Division to review current procedures to ensure deposits are made within 24 hours. The Administrative Instruction will be reviewed and updated and a process implemented to verify payments by June 30, 2019. In addition, discussions will be held with the Public Works Division regarding deposits by April 30, 2019.

4) *Encroachment Agreements*

The County often engages in encroachment agreements for construction of property on County property. The current Administrative Instructions No. IP 01: Real Property Acquisition and Disposition makes minimal reference to the handling and processing of these agreements. These primarily follow standard procedures for granting of rights of way, including the appraisal process and Real Estate Committee approval. Our testing identified:

- Three encroachment agreements did not have an appraisal performed.
- Multiple payments were received late for one of the encroachment agreements with fees.
- Two encroachment agreement payments did not have necessary support to determine the AI No. AD 02: Collection of Monies and Handling was properly followed, as record of when the checks were received was unavailable.

Additionally, one of the encroachments selected was for a permit, rather than an agreement. As there are no policies or procedures over encroachment permits, we were unable to determine if this permit required approval from the Real Estate Committee, an appraisal, or fees.

Potential Risk: Low—Encroachment agreements typically provide smaller sources of income as they tend to involve structures such as walls or fences being built on a portion of the County’s property. Procedures related to these agreements should be followed to ensure the public’s best interest is kept in mind.

Recommendation: The Real Estate/Right of Way Department should consider expanding wording for Encroachment Agreements within the Administrative Instructions to include permits, as this will provide guidance on the requirements that are applicable. The Real Estate/Right of Way Department should consider creating a checklist to ensure all necessary steps are completed and information obtained. A standard file structure should be implemented.

Management’s Response: Staff concurs with recommendations above. The Administration Instruction will be reviewed and updated as necessary to expand language for Encroachment Agreements to include permits. In addition, a Real Property (Encroachment) Checklist will be created to ensure all necessary steps are completed and information obtained for each type of real estate transaction. The Administrative Instruction will be reviewed and updated as well as a Real Property (Encroachment) Checklist created by June 30, 2019.

PROCESS IMPROVEMENT OPPORTUNITIES

As a result of our testing, REDW identified the following process improvement opportunities:

1) Project Date (Tracking)

According to Administrative Instruction (AI) No. IP 01: Real Property Acquisition and Disposition, information on real property activity shall be associated with an existing project in the Right of Way Program electronic system. Currently, no such system is being utilized and information is tracked using excel spreadsheets. The County should consider utilizing a program to track all real estate transactions. This will help ensure all transactions are recorded and can help keep track of when agreements expire and payments are due.

2) Late Fees

The Real Estate/Right of Way Department does not assess penalties for payments that are received late. Consider implementing late fees to encourage customers to make payments on time.

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This report is intended for the information and use of the Bernalillo County Real Estate/Right of Way Department, the audit committee, members of Bernalillo County Commission and others within the organization.

We discussed and resolved other minor observations with management and received excellent cooperation and assistance from the Real Estate/Right of Way Department during the course of our interviews and testing. We sincerely appreciate the courtesy extended to our personnel.

REDW LLC

Albuquerque, New Mexico
February 17, 2019