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**Internal Audit Division**

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Audit Report for  
**Real Estate Management**  
*Gwinnett County Government*  
Audit Plan Year 2020

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## **Background and Scope**

The Board of Commissioners (BOC) acquires and exchanges real property (land and easements) to provide economic benefits and improve services to citizens. Examples include acquisitions for economic development, fire stations, libraries, parks, police stations, road improvements, and water or sewer enhancements. The BOC also occasionally sells real property if land no longer serves the public interest and is declared surplus by them. All real estate acquisitions are governed principally by the Gwinnett County Land Acquisition Policy (the Policy), adopted July 19, 2011, and the County's Code of Ethics Ordinance (the Ordinance), adopted April 20, 2021. The BOC adopted these guidelines to ensure real estate acquisitions are as transparent as possible, follow stringent standards that promote objectivity in the decision-making process, and comply with applicable governmental laws. The Department of Support Services (DoSS) manages real estate acquisitions for Gwinnett County (the County) for non-transportation projects and disposals of property and property rights declared surplus by the BOC. The Department of Transportation (DOT) manages land acquisitions and records for approved roadway projects. The County's land was valued at over \$800 million as of December 31, 2020, according to the General Ledger (GL).

The purpose of this audit was to evaluate on a sample basis whether real estate transactions for the audit period were authorized by the BOC and met key standards contained in the Policy and Ordinance. Internal Audit (IA) interviewed employees, observed certain business activities, and reviewed a sample of real estate documents for the audit period January 2018 through December 2020. We believe the evidence provided a reasonable basis for our assessment (See **Exhibit A** for a summary of our review procedures).

## **Assessment**

Real estate acquisitions were approved by the BOC and generally met key standards contained in the Policy and Ordinance. We found no evidence of abuse or instances of significant non-compliance. We included four recommendations to improve compliance activities.

## **Recommendations**

### **1. Unable to validate surplus status of undeveloped real estate.**

The BOC acquires real estate to better serve residents or provide public goods. Unneeded real estate no longer associated with an authorized project or service should be evaluated for future disposal by the BOC. To evaluate the effectiveness of management's land use, IA asked the departments to provide lists of real estate owned by the County. Also, we sought information regarding surplus plans for vacant or unused property. The following is a summary of our observations based on the information provided to us:

- A. DOT uses a third party for land management. They provided a list of land owned by the County, but the list contained no information about use or unused portions of land, easements, or rights-of-way. Also, there was no evidence the department or the third party periodically performed status reviews of property under management, including plans to surplus unused land.
- B. DoSS provided a list of property owned by the County from the Tax Assessor's Geographic Information Systems (GIS) records as of March 2021. The list contained 261 properties categorized as vacant with purchase dates of 2016 or older. We could not verify the accuracy or completeness of statuses as of the end of fieldwork.
- C. Neither department had surplus reports to help them manage real estate use or document retention. The information provided to us came from several sources and took time to accumulate.

Recommendations:

Management should use shared software or a web-based program to manage the County's real estate holdings. Management should implement review and reconciliation activities to ensure the information is complete. Real estate management procedures should include periodic reviews to identify surplus property that should be sold or placed in service.

**Management Response (DoSS):** *Support Services does not maintain a list of potential surplus properties. Many properties owned by Gwinnett County will remain vacant for various reasons. For instance, properties may have been acquired as greenspace or may include detention ponds. Subdivision recreation areas and properties purchased with FEMA funds may not be sold for legal reasons. Also, it is not feasible to surplus and sell other properties that cannot be developed, are landlocked, or have no economic value.*

*For approximately two years (2014–2016), Support Services employed a part-time Land Disposition Agent to identify, process, and market property in coordination with the operating departments and the Board of Commissioners. Several properties were declared surplus and sold during that time. Subsequently, review of potential surplus property has been on a case-by-case basis.*

*Support Services routinely receives inquiries about whether properties (or portions of properties) are available for purchase, and these inquiries are evaluated and processed individually. Roadway right of way is outside the purview of Support Services unless an abandonment is requested, and Support Services processes those requests. Frequent and comprehensive review of all County-owned land for potential disposal would not be productive due to the time and effort that would be required by multiple departments. Support Services agrees that evaluating software to track and manage real estate holdings and activity would be worthwhile.*

**IA Comments:** We acknowledge there are various reasons why properties may not be sold as surplus. Our concern is with the processes and data used to manage the County's real estate portfolio. We reviewed evidence of the two-year review from 2014–2016 but could not validate DoSS's case-by-case reviews during fieldwork. We support any process improvements that are cost effective, ensure completeness, and satisfy each department's control objectives in this area.

**Management Response (Law):** *The Law Department agrees that software to track and manage real estate holdings and activity would be worthwhile and will coordinate with DOT and DOSS to provide information as necessary.*

**Management Response (DOT):** *DOT agrees to provide information on a routine basis to support the establishment of an up-to-date surplus property database. DOT recommends increased coordination with DOSS to set up a bi-annual meeting to review potential surplus properties.*

## 2. Reports regarding suitability of land not prepared prior to acquisition.

After identifying property that may be suitable for projects, the Policy requires DoSS to prepare and submit written reports to the BOC with property descriptions, suitability profiles, and recommendations to purchase (see **Exhibit B** for a list of property suitability report requirements). The BOC is supposed to consider the written recommendations in executive sessions prior to authorizing property appraisals and negotiations for the purchase of properties based on their appraised values. For the transactions we reviewed, DoSS did not consistently submit written reports to the BOC as prescribed by the Policy and at times may not have addressed some suitability criteria based on available documents. See **Recommendation 4** for related issue.

### Recommendation:

DoSS should submit property suitability reports to the BOC after identifying properties that may be suitable for projects and before appraisals and negotiations. Reports should address all subjects specified by the Policy. Alternatively, County Administration could update the Policy to reflect current practices that adhere to the objectives articulated in "A Resolution Adopting a Land Acquisition Policy," dated July 19, 2011.

**Management Response (DoSS):** *Per the request of the Law Department, Support Services prepares draft presentations for the County Attorney for use in Executive Session rather than preparing suitability reports. Any known suitability issues are discussed with the operating department and the Law Department prior to presentation in Executive Session. Other information previously included in suitability reports is obtained during negotiations or the contract contingency period.*

**IA Comments:** Internal Audit did not receive draft or final presentations during fieldwork to evaluate current practices.

**Management Response (Law):** *Given the number of inquiries that DOSS was receiving concerning properties for potential acquisition by the County, it became infeasible for them to prepare an exhaustive written report for each property, many of which were small, unbuildable parcels that the County would not consider purchasing. In addition, many if not all of the Commissioners were not interested in receiving or reviewing such lengthy, written reports for each property to be considered prior to authorizing an appraisal. Finally, it seems duplicative and inefficient for DOSS to prepare such a report when the County will ultimately pay for a fee appraisal of any property which it is considering purchasing, including a written report which contains all of the same information. Given these considerations, the Law Department is currently working on an updated Land Acquisition Policy which will effectively substitute the appraisal report for the written report and provide that the appraisal report will be made available to all of the Commissioners.*

### 3. Purchase price and market value disclosures may need enhancements.

Generally, the County and property owners used independent third-party appraisals of property values to determine purchase prices. However, final negotiated purchase prices sometimes exceeded appraised values due to factors such as disagreements between the buyer and seller over property value, anticipated relocation costs, and the prospect of costly legal actions. We were informed that those with delegated authority believed it was more cost effective to accept higher prices rather than litigate or condemn properties. Procedurally, the BOC approves all purchase and sale agreements, except rights-of-way and easements for previously approved DOT and Department of Water Resources projects. Also, the County Administrator, Director of Financial Services, Director of Transportation, Director of Water Resources and Risk Manager may approve negotiated purchase prices that exceed market valuations by up to \$100,000 per transaction. Differences that exceed this threshold must be approved by the BOC. These delegation procedures follow guidelines contained in the Second Amendment to the "Settlement of Claims" ordinance dated October 6, 2009. Our real estate samples included transactions with purchase prices that exceeded appraised values and they generally complied with the guidelines. On a different matter, we found three samples where purchase prices were based on the highest of multiple valuations and did not consistently contain written justifications, approvals, or BOC disclosures. One was for DoSS, and the other two were for DOT. The County currently has no guidelines for approving and disclosing significant property valuation differences between the County and seller to the BOC, including when significantly higher valuations determine purchase prices.

#### Recommendations:

We agree there should be appropriate delegations of authority to promote efficiency. However, the Settlement of Claims ordinance is over 10 years old and should be reviewed by management to ensure the guidelines remain compatible with the current business environment. We also recommend BOC disclosures include purchase prices that are based on significant disputed values.

**Management Response (DoSS):** *The settlement ordinance applies to real estate transactions that are in litigation or that may be litigated. Settlements are approved or denied at the authorized authority level upon recommendation from the user department director, Director of Financial Services, Risk Manager, County Attorney, and County Administrator. Support Services provides appraisals to the Law Department for review. The Law Department communicates authorization for counteroffers to Support Services.*

**Management Response (Law):** *The current Land Acquisition Policy (the "Policy"), adopted by the Board of Commissioners on July 19, 2011, provides that it applies to the acquisition of all real property by Gwinnett County. Note that this Policy does not apply to the acquisition of property by various authorities related to Gwinnett County, such as the Urban Redevelopment Agency of Gwinnett County, purchaser of the OFS and Gwinnett Place Mall properties. The Policy states that the Board of Commissioners may meet in executive session to authorize negotiations for the purchase of property "for the appraised amount." Thus, in most instances, the Board of Commissioners is limited to paying the appraised, fair market value for property.*

*However, with regard to land acquisition for the Department of Transportation and the Department of Water Resources, the Policy states, "Approval by the Board of Commissioners of a project for these departments is sufficient authority to acquire rights-of-way and easements necessary for the project for the appraised value of the rights-of-way and easements. Acquisition of such necessary rights-of-way and easements **in amounts over and above the appraised value shall be governed by the terms of the Gwinnett County Settlement Ordinance.**" (Emphasis supplied). Thus, for these purposes, which constitute the vast majority of land acquisition by Gwinnett County for its many projects, the Settlement Ordinance is used to delegate authority to authorize purchases for amounts over and above the appraised, fair market value. This makes sense in that in these instances the property owner is making a "claim" that the property to be acquired is worth a certain amount over and above Gwinnett County's appraised, fair market value, the difference being considered as the amount of the "claim" under the Settlement Ordinance.*

*The Gwinnett County Settlement Ordinance, which is set forth in Section 2-1 of the Gwinnett County Code of Ordinances, provides for delegated authority to settle claims and litigation for certain designated amounts. Specifically, the insurance manager has the authority to settle claims up to \$5,000.00. The insurance manager, any assistant county attorney, and the director of financial services have joint authority to settle claims up to \$50,000.00. The county administrator, county attorney, director of financial services, and the chairman of the board of commissioners have joint authority to settle claims up to \$100,000.00. All such settlements must be made in consultation with the appropriate department director or elected official. Where the amount of the proposed settlement exceeds \$100,000.00 it must be approved by the Board of Commissioners. As a matter of practice, the Board is briefed in an executive session on these matters prior to approval in a public meeting.*

*Note that these same procedures and delegated authority are also used when a property is unable to be acquired through negotiation and is therefore the subject of a condemnation action, as the Settlement Ordinance also applies to lawsuits and causes of action.*

*In this regard, the Land Acquisition Policy states, "When unable to successfully negotiate acquisition of property needed for County purposes, the County may utilize the powers of condemnation granted to it under State of Georgia law. Decisions related to settlement of condemnation actions shall be treated as litigation matters." All proposed real estate acquisitions by the County, with the exception of those for economic development purposes, can potentially be the subject of condemnation actions if negotiations fail.*

*When negotiations for the purchase of property are successful, and the amount of the purchase price is \$250,000.00 or greater, the Law Department will prepare a written Purchase and Sale Agreement to be approved by the Board of Commissioners in a public meeting. This is done regardless of the amount by which the purchase price exceeds the appraised, fair market value and regardless of which department or use the property is being purchased for. For purchases of property for less than \$250,000.00 for right-of-way and easements, which constitute the vast majority of acquisitions for Gwinnett County, written Purchase and Sale Agreements are usually not prepared. Instead, closing documents are prepared by the Law Department and the parties proceed directly to closing. For purchases of property for less than \$250,000.00 other than right-of-way and easements, written Purchase and Sale Agreements may or may not be prepared, depending upon the size of the acquisitions.*

*With regard to the issue of multiple appraisals, I agree that it should be disclosed to the Commissioners if there were prior appraisals that the final purchase price exceeded by more than \$100,000.00, even if the appraisal that is ultimately relied upon is within \$100,000.00 of the final purchase price. The explanation for the difference in appraised values can be attributed to any number of factors, including the date of the appraisal and new sales information becoming available, not to mention that appraisals are subjective opinions of value.*

**Management Response (DOT):** *DOT agrees with the recommendation of a policy review to ensure compliance with existing accountability and transparency standards. To ensure transparency, DOT takes all transactions over \$250,000.00 to the BOC for approval. While this action currently serves as a "best practice", DOT recommends it be adopted as policy.*

#### **4. Real estate documents unavailable for inspection.**

The County must complete property due diligence and certain required legal steps when purchasing land. Many of the legal steps are required by Georgia law, particularly steps for transferring property titles from sellers. To evaluate whether the County completed the required steps and disbursed funds according to agreement instructions, IA sought key documents for a judgmental sample of 56 real estate acquisitions, agreements, condemnations, and donations completed during the audit period. Key documents include the following (as applicable): appraisals, attorney title certificates, BOC agenda items, closing statements, environmental assessments, judicial orders for condemnations, purchase & sale agreements, settlement memorandums, surveys, and warranty deeds.

We noticed the County's real estate document management varied by department and appeared to lack consistency. No one kept a comprehensive real estate closing list to evidence complete document retention or a catalog and indexing system for file control. Overall compliance was still good, but we could not confirm during audit fieldwork whether DoSS performed some steps because of missing documents, which included eight purchase and sale agreements, seven closing statements, and five appraisal reports.

After fieldwork, we were able to obtain evidence of environmental assessments for most of the transactions. There were only three missing environmental assessments from DoSS and these appear to be aberrations. However, environmental assessments were not always complete in the closing files we reviewed. We understand that the assessments may be completed at different phases of projects and can be lengthy. However, the closing files should be updated and could include summaries of the assessments if volume becomes an obstacle.

Recommendations:

Departments should retrieve missing documents and, if applicable, consider steps to improve retention of documents or adopt variance procedures. Departments should use closing checklists for each real estate transaction to ensure completeness and adopt cost effective file control procedures. Consider retaining all original copies, digitizing them, and only providing copies for use by others rather than the originals.

**Management Response (DoSS):** *The Phase I Environmental Report is usually ordered within the due diligence period after a Purchase and Sale Agreement has been approved by the Board of Commissioners. If a property purchase requires the use of eminent domain, the Law Department handles the due diligence unless a request is made directly to Support Services. Also, in cases where Support Services had limited involvement in the purchase, the file documentation is often only as complete as what has been provided by other departments. Support Services can establish procedures to collect missing documentation in cases where we are not involved in the initial phases of the project.*

*Support Services has provided copies of the environmental reports for 13 of the 16 properties noted as missing by the audit. These reports were stored in electronic format rather than hard copies in the file due to the size of the reports. The remaining three properties were acquired through DOT or the Law Department.*

**IA Comments:** We believe there are opportunities to improve document retention procedures, particularly regarding coordination, ownership, and completeness.

**Management Response (DOT):** *DOT staff retrieved the missing documents as requested. Upon review of Section IX of the Gwinnett County Land Acquisition Policy, staff confirmed that DOT is currently meeting the standard for environmental assessment documentation and other land suitability reports if the acquisition is associated with a BOC approved SPLOST project. DOT agrees to improve file control procedures, retain original copies, and digitize land acquisition documents.*

### Other Considerations

IA observed opportunities to improve certain business activities based on best practices and included advisory comments for management consideration only. Management is not required to provide written responses or corrective action plans. The advisory comments are as follows:

- Many real estate closing documents are in paper rather than electronic format. DoSS and DOT should evaluate the cost–benefit of using eClosing software for some or all aspects of the real estate closing process. This includes storing real estate documents in electronic format for document retention purposes.

**Management Response (DoSS):** *Real estate closings remain primarily based in paper with wet ink signatures, although some electronic processing is now available. Pertinent closing documents are uploaded to FileNet for electronic retention purposes when a property file is created.*

- The County leases properties to various agencies and commercial businesses. DoSS maintains an Excel spreadsheet with property descriptions, lessee information and key rental terms, but we did not receive sufficient documentation to validate that the spreadsheet is used to ensure lessee payments comply with lease terms. IA tried to reconcile the Excel spreadsheet to billing and collections data in SAP, but the information did not agree. We suggest DoSS monitor collections in SAP for accuracy and timeliness.

**Management Response (DoSS):** *The Fiscal Management Division of Support Services and the Treasury Division of Financial Services both monitor the accuracy and timeliness of lease payments, depending on the lease agreement. The Real Estate and Fiscal Management teams within Support Services meet monthly to discuss lease revenue.*

- We observed some variation between departments in performing property due diligence and sales closing procedures. For example, the County received full title warranties for most purchases, but received limited or no warranties for eight properties (excluded easements or rights-of-way). Two purchases did not have documentation of extra steps taken to ensure there were not any outstanding claims against the property. Departments relied on state certified appraisers to calculate property values, but there were no documented guidelines for minimum work experience, job rotations, professional certifications, conflict of interest disclosures, etc. Departments should maintain standards and procedures manuals for critical aspects of property purchase transactions to ensure consistency and continuity where applicable.

**Management Response (DoSS):** *The Real Estate team orders certified title reports and reviews the reports to identify encumbrances or title issues. The title reports are also reviewed by the attorneys in the Law Department prior to closing. The Law Department also orders some appraisals directly.*

**Management Response (Law):** *While there are instances where we are unable to obtain a general warranty deed, such as where the owner is unwilling to provide a general warranty, in all instances a title report for the property is obtained and examined by the Law Department to determine if there are any outstanding claims that need to be satisfied prior to closing. In addition, for larger acquisitions title insurance is purchased to protect against any such claims.*

**Exhibit A**  
**Summary of Audit Procedures**

IA performed the following procedures to evaluate the adequacy and effectiveness of control activities:

- Interviewed management and conducted walkthroughs to confirm understanding of key activities associated with real estate purchases.
- Sought evidence management periodically reviews County's real estate portfolio for surplus property (**Recommendation 1**).
- Compared land values contained in the SAP Fixed Assets module to GIS and Atlas' real estate report to assess accuracy and completeness of management reports.
- Selected a judgmental sample of 56 real estate transactions for the audit period January 2018 through December 2020 and reviewed purchase documents to confirm compliance with key components of the Policy, the Ordinance, and best practices (**Recommendations 2 and 4**).
- Interviewed Law Department management to understand key components of real estate closing procedures.
- Analyzed appraisal reports for mathematical accuracy and reasonable valuation methods. Compared appraised values to purchase prices and obtained explanations for variances (**Recommendation 3**).
- Obtained access to the Georgia Superior Court Clerk's Cooperative Authority website and inquired about deed recording processes with the Clerk of Court.
- Confirmed completion of bi-annual ethics training for County Commissioners as of December 2020.
- Reviewed County Commissioner related party disclosures for audit period to determine none applied to real estate purchases.
- Reviewed management's billing and collection procedures for property leases. Compared management lease report as of March 2021 to related SAP GL accounts to assess accuracy and completeness of billing and collections.

**Exhibit B**  
**Property Suitability Report Requirements**

According to the Policy, property suitability reports submitted to the BOC should be based on the best information available to departments at the time and should address the following subjects:

- Purpose for acquiring property including references to master plans, projects, and programs. Budgeted amount and source of funds.
- Property size, location, and zoning. Description of surrounding properties, land uses, neighborhoods, businesses, and public facilities.
- Description of any adjoining or associated properties that may be the subject of future acquisitions to facilitate or enhance the use of the property.
- Names of all property owners including names of members of limited liability corporations, partnerships, and stockholders with 10% or more interest in corporations. Also, agents, attorneys, brokers, and any other individuals authorized to represent or act on behalf of owners.
- Title history of the property for ten years.
- The existence of pending option agreements, leases or other contracts affecting the property. Threatened or pending lawsuits affecting the property.
- Environmental issues affecting the property.
- Existing improvements to the property.
- Easements, covenants, and other restrictions affecting the property.
- Utilities available to the property.
- Description of access to the property, relevant transportation issues, and any other factors impacting access to the property.
- Topography, floodplain, known subsurface conditions, or drainage issues affecting property. Any other conditions or circumstances that may impact usefulness of property for the intended purpose.
- Sale or listing price of the property during the previous ten years.

*Source: Gwinnett County Land Acquisition Policy dated July 19, 2011*