

AUDIT REPORT



**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM G. THOMPSON, JR., COMPTROLLER**

Audit Report on the Administration of the Sales of Surplus City-Owned Real Estate Properties by the Department of Citywide Administrative Services

FN07-100A

June 30, 2008



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the administration of the sales of surplus City-owned real estate properties by the Department of Citywide Administrative Services (DCAS).

The DCAS Division of Real Estate Services manages surplus real estate properties acquired by the City. DCAS sells these properties, primarily vacant lots, at public auctions, thereby returning the properties to the tax rolls. We audit programs such as this as means of ensuring that agencies operate efficiently, effectively, and in the best interest of the City.

The results of our audit, which are presented in this report, have been discussed with DCAS officials, and their comments have been considered in preparing this report. Their complete written response is included in this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written in a cursive style.

William C. Thompson, Jr.

WCT/fh

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Administration of the
Sales of Surplus City-Owned Real Estate Properties by the
Department of Citywide Administrative Services**

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AUDIT REPORT IN BRIEF

The Division of Real Estate Services—a unit of the Department of Citywide Administrative Services (DCAS)—manages surplus real estate properties acquired by the City before 1993 through in-rem tax foreclosure and condemnation proceedings. Surplus properties, primarily vacant lots, are available for sale at annual public auctions conducted by DCAS. A primary goal of the auction program is to return surplus properties to productive use. For the public auction conducted in Fiscal Year 2006, DCAS listed 53 properties and sold 34 properties for a total of \$15 million. During the audit, DCAS officials stated that there were no plans to hold future auctions.

The audit evaluated the adequacy of DCAS practices for selling surplus City-owned real estate properties and whether the revenue generated from the sale of surplus City-owned real estate properties was properly collected and accurately reported.

Audit Findings and Conclusions

DCAS properly collected and accurately reported revenue from the sale of surplus City-owned properties, and appropriately processed and approved all mortgage applications. However, our review found certain inadequacies in the practices of selling surplus real estate properties that impacted DCAS's ability to sell 36 percent of the properties offered for sale at the June 13, 2006 auction; of meeting the primary mission of the public auction program, i.e., returning these properties to the City's tax rolls; and of generating more than \$6.5 million in potential sales revenue. Moreover, DCAS did not track the new property owners' information to ensure it was properly recorded with the Department of Finance. As a result, the City may not be able to bill those new owners for real estate taxes.

Audit Recommendations

DCAS should establish appropriate policies and procedures to ensure that surplus City-owned real estate properties are effectively sold to the public. Guidelines should include, but not be limited to, methods for:

- Identifying and disclosing the legal and physical conditions of the properties being auctioned by inspecting the properties to determine illegal use and potential encroachments; and installing fences and signs that would safeguard the properties and identify them as City-owned.
- Setting up and enforcing proper guidelines with specific timeframe for requiring a City agency land-use request to be submitted before the auction.
- Including and explaining fully the key terminology and certain material terms to allow a buyer to make an informed decision and avoid sales cancellation.
- Studying the characteristics of passed parcels to determine whether those parcels meet any market demand or whether they should be entirely excluded from the auction.
- Ensuring that properties are offered to runner-up bidders.
- Ensuring that the new buyer's information is recorded in the Department of Finance's computerized system.

INTRODUCTION

Background

The Division of Real Estate Services—a unit of the Department of Citywide Administrative Services (DCAS)—manages surplus real estate properties acquired by the City before 1993 through in-rem tax foreclosure and condemnation proceedings. The sale of tax lien properties acquired by the City after 1993 has been assigned to a private trust.

Surplus properties, primarily vacant lots, are available for sale at annual public auctions conducted by DCAS. A primary goal of the auction program is to return surplus properties to productive use. Before the City can sell surplus property, the New York City Charter requires approval under the Uniform Land Use Review Procedure (ULURP), and the subsequent granting of the Mayor's approval through the Mayor Authorization Document.¹

The Division of Real Estate Services consists of six units. The land use planning unit analyzes and selects parcels for auctions based on each property's specific characteristics, submits property information for ULURP review and approval, and assists in developing a preliminary auction list. The appraisal unit performs valuation analysis and determines the appraisal value. The sales unit arranges and undertakes public auctions by reviewing auction lists, requesting appraisals, circulating property list to other City agencies, preparing sales brochures, coordinating advertising, and arranging pre-auction seminars. The sales unit also sets auction upset prices—i.e., the minimum price, which is determined as 75 percent of a property's appraised value. The financial information unit processes and deposits all cash collected. The financial analysis unit manages mortgage applications and the resulting mortgage portfolio. The property management and leasing unit monitors the properties and leasing activities. After the sale process and mortgage application are completed, DCAS submits the sales file to the New York City Law Department for closing and delivery of title conveyance.

For the public auction conducted in Fiscal Year 2006, DCAS listed 53 properties and sold 34 properties for a total of \$15 million. During the audit, DCAS officials stated that there were no plans to hold future auctions.

Objectives:

The objectives of this audit were to:

- evaluate the adequacy of DCAS practices for selling surplus City-owned real estate properties; and
- determine whether the revenue generated from the sale of surplus City-owned real estate properties was properly collected and accurately reported.

¹ The issuance of the Mayor Authorization Document involves the completion of ULURP approval, and statements of acknowledgement on whether a City agency has or has not indicated need for the use of such property, and whether any testimony was offered or amendment made at a public hearing of such property.

Scope and Methodology

The scope period of this audit was July 1, 2005, to June 30, 2006 (Fiscal Year 2006). We reviewed file records for all 53 properties that were listed for auction by DCAS during that period. To obtain an understanding of the program and process, we reviewed background information related to the auction of surplus City-owned properties, such as property files, auction brochures and the listing in the *City Record*. We also reviewed City Charter provisions governing the disposition of City-owned surplus real estate properties and abstracted pertinent sections. We interviewed DCAS officials, conducted a walk-through of the operations, and familiarized ourselves with the auction process and record-keeping functions.

We conducted a walk-through of the DCAS computerized Integrated Property Information System (IPIS). We assessed the reliability of the data recorded in IPIS by testing the controls over transactions, which are recorded in the DCAS sales receivable report that tracks each account's billing and payment records, and in the property milestone report that tracks an individual parcel's auction and administrative history. We then evaluated the adequacy of DCAS's internal controls for administering the sale of surplus real estate properties as well as for revenue collection and reporting functions, and documented our understanding through written narratives and flowcharts.

To determine whether all 53 properties were processed for auction in accordance with Chapter 15, §384, of the New York City Charter, we reviewed documentation pertaining to the auction process. We examined property files to ascertain whether the list of properties selected for public auction was circulated to City agencies and whether any agencies had indicated a need for a particular property. We reviewed the memoranda submitted to the Mayor's Office by DCAS's deputy commissioner to determine whether any public testimony, amendment, or request was given at the public hearings held in connection with the auction. We also compared the upset prices listed in the auction brochure with the approved appraisal amounts and analyzed the bidding process as recorded in the auction video to ascertain whether the properties were auctioned to the highest bidders, as required by the City Charter.

To determine whether DCAS's practices and procedures for selling City-owned properties were appropriate and adequate, we reviewed and assessed file documentation for all 53 properties listed for auction. We reviewed the information disclosed in the auction brochure regarding possible land-use restrictions, encroachments, easements, and related title defects. To verify the adequacy and consistency of the property information disclosed in the auction brochure, we compared the information with DCAS appraisal records and traced it to the New York City Department of Finance property Web site. Additionally, we conducted observations and documented the existing physical conditions of all unsold properties listed for public auction in June 2006.

To determine whether all cash received from the auction was properly accounted for and reported, we traced all amounts received from the memorandum of sale and sales receivable report to the DCAS cash collection log and to the bank statements. We also traced the revenue in the cash collection log to the amounts in the City's Financial Management System.

To determine whether DCAS properly processed all mortgage applications, we reviewed the application packages to ascertain the reasonableness of the mortgages being approved, and whether the applications were submitted within the 45-day period required by DCAS. To determine whether mortgage application fees and set-up interests were correctly charged, we reviewed the mortgage notes and closing documents to verify the accuracy of the calculations. To determine whether monthly mortgage payments were properly paid on a timely basis, we reviewed the sales receivable report for payments made through June 30, 2007.

Finally, to determine whether the ownership transfers were properly recorded, we compared DCAS records with the Department of Finance Web site to verify that a change was made in the property owner information. We also reviewed the account history report to determine whether all sold properties were properly registered in the Department of Finance tax roll records. In addition, we reviewed the Department of Environmental Protection records to determine whether water and sewer charges were properly billed to the new property owners when applicable.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included test of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with DCAS officials during and at the conclusion of this audit. A preliminary draft report was sent to DCAS and discussed at an exit conference held on May 19, 2008. On May 30, 2008, we submitted a draft report to DCAS officials with a request for comments. We received a written response from DCAS officials on June 13, 2008. In their response, DCAS officials stated that “we regret that we must disagree with most of the allegations made in this Report, including almost all of the findings and recommendations relating to the auction process.”

We are disappointed with this response since our findings (not allegations) and conclusions are adequately supported in accordance with GAGAS and were carefully considered. Our recommendations, if implemented, will improve the process.

The full text of the DCAS response is included as addendum to this report.

FINDINGS

DCAS properly collected and accurately reported revenue from the sale of surplus City-owned properties, and appropriately processed and approved all mortgage applications. However, our review found certain inadequacies in the practices of selling surplus real estate properties that impacted DCAS's ability to sell 36 percent of the properties offered for sale at the June 13, 2006 auction; of meeting the primary mission of the public auction program, i.e., returning these properties to the City's tax rolls; and of generating more than \$6.5 million in potential sales revenue.

Moreover, DCAS did not ensure that the new property owner's information was properly recorded with the Department of Finance. As a result, the City may not be able to bill those new owners for real estate taxes.

These matters are discussed in detail in the following sections of this report.

Deficiencies in the Auction Process

Our review found certain deficiencies in the manner by which DCAS administers the sales of surplus City-owned properties. As a result of these deficiencies, DCAS did not sell 19 (36%) of 53 listed properties, thereby not succeeding in placing these properties on the City's tax rolls, and losing more than \$6.5 million in potential revenue for the City. We attribute these deficiencies to DCAS's lack of proper policies and procedures for:

- assessing the legal and physical conditions of properties before offering them for sale;
- justifying the cancelling of sales;
- disclosing significant land-use restrictions;
- marketing problematic properties; and
- reselling defaulted properties to runner-up bidders.

DCAS Response: "We regret that we must disagree with most of the allegations made in this Report, including almost all of the findings and recommendations relating to the auction process. This Audit does not reflect the broader perspective that is necessary for evaluating the success of this particular Auction, and the real estate auction process in general. Furthermore, the auditors do not appear to fully understand the auction process, the rules and procedures that govern it, or standard real estate practices in the City of New York. As a result, the auditors have misinterpreted, mischaracterized, and regrettably, have unjustly portrayed the actions of DCAS personnel in a negative manner."

Auditor Comment: The audit report findings reflect the result of a detailed review of the auction process, as documented by DCAS itself, and analysis of the standard real estate procedures as prescribed by City Charter regulations, sales files, correspondence, auction brochure, and supporting documentation provided to us by DCAS. Our review was conducted with a full understanding of the auction process, as confirmed at various audit meetings with DCAS Assistant Commissioners and other senior staff, at which we presented our understanding of the auction process and discussed our concerns regarding the process and especially our assessment of the adequacy of DCAS recent practices for selling surplus City-owned real estate properties. Our audit scope period, Fiscal Year 2006, was sufficient to evaluate the entire process. Therefore, the “broader perspective” that DCAS refers to in its response was not required to arrive at a reasonable conclusion.

Legal and Physical Conditions Not Assessed

DCAS did not properly assess the legal and physical conditions of the properties before offering them for sale. The conditions included identifying border lines, existing easements and encroachments, contacting neighbors about possible title claims, and providing proper disclosures on the properties. As a result, DCAS was compelled to cancel the sale of two parcels, thereby losing \$259,000 in potential revenue and unable to turn the properties into productive use.

For example, after DCAS sold two properties in Queens, one of which is described as parcel 19 block #14240 and lot #113 (see Appendix A), the buyer discovered that the property contained building encroachments that impaired the buyer’s ability to obtain required insurance. Consequently, DCAS was forced to cancel the sale on January 23, 2007, thereby losing \$250,000 in potential revenue. As another example, the second property in Queens and described as parcel 14 (block #14231 and lots #93 and #992) contained a wide easement that was clearly noted in the indenture of the adjacent property’s description. However, DCAS was unaware of the easement until the adjacent neighbor brought the issue to its attention. As a result, DCAS was unable to sell the property, losing \$9,000 in potential revenue. Similarly, our review noted that DCAS was compelled to rescind a sale and issue a refund to the buyer of a property after an adjoining property owner disputed the City’s title claim. Had DCAS taken adequate steps to identify and resolve encroachment issues, disclose potential easements, and review the City’s title rights before the auction, these situations could have been averted.

In addition, DCAS lacked the proper procedures to safeguard vacant City lots. According to a disclosure in DCAS’s own sales brochure, “owners of vacant lots within the City of New York are required by law to fence such lots and maintain them in a clean and sanitary condition.” However, vacant City lots maintained by DCAS and selected for the June 13, 2006 auction lacked fencing and signs to identify them as City-owned. This lack of safeguarding of the vacant lots exposes the properties to potential illegal use and adverse possession,² which could result in title objections when the properties are sold. For example, our observations of the 19 unsold properties selected for the June 13, 2006 auction found that in certain instances City-owned vacant lots had been fenced by adjacent owners for their personal use leaving unfenced

² Adverse possession allows a trespasser to claim title to property if he or she has openly used it for a specified time. In New York the time period is 10 years.

areas for use as unauthorized public parking (see Appendices B, C, and D). Our review of the pictures taken by DCAS prior to the auction of June 13, 2006, also revealed that these types of encroachments and illegal use problems already existed at the time of the auction. Evidently, DCAS did not take any steps to identify and remedy these conditions. Consequently, the properties will lose value, and the City will have to deal with potential illegal use issues or hold the properties in its vacant-lot portfolio indefinitely.

DCAS Response: “DCAS informs buyers of known encumbrances on properties for sale through brochure notes and auctioneer announcements. However, as in private sales, the responsibility is with the buyer to determine whether a particular property is suitable for its intended use. Paragraph 12 of the Terms and Conditions of Sale (Property Sold ‘As Is’) clearly states that all properties are sold in ‘as is’ condition. ‘The purchaser will be required to accept the Property in its ‘as is’ condition of Title Closing.’ It should also be noted that property is sold subject to, among other things, existing encroachments, and encroachments do not necessarily impair the marketability of properties.

“Regardless of the existence of the easement reported by the auditors on Parcel 14, this buyer ultimately defaulted on the purchase and the City retained 20% of the purchase price. . . . This situation, therefore, does not support the argument made by the auditors that title-related issues forced DCAS to cancel the sale. The solution recommended by the auditors is for the City to research each property, as a potential buyer ordinarily would, as well as adjacent properties, to discover any potential title-related issues. This solution is not cost-effective, and is overly burdensome, unnecessary, and ill-advised.”

With regard to Fencing and Signage, DCAS responded that “The auditors have raised a valid point in citing the fencing requirement. . . . DCAS fences lots based upon its professional judgment and in response to requests from the community and elected officials. It has never been practical for DCAS to fence each and every vacant lot in its portfolio.”

Auditor Comment: DCAS bears responsibility for performing due diligence to ensure that properties can be transferred to private hands effectively. By selling properties in “as is” condition, DCAS has a responsibility to provide adequate basic information that would allow prospective buyers of vacant City lots to make an informed decision. Contrary to DCAS’s argument, encroachments, if not cleared, represent significant title objections. DCAS should make a better effort to identify and disclose potential title issues before the auction to avoid possible sale cancellations.

Additionally, identifying potential title issues before the auction should not be a burden to DCAS, given the level of resources available. For example, according to DCAS, there are six units involved in the auction process. With such resources, DCAS should be able to properly maintain the inventory of vacant lots to avoid illegal use and eventual adverse possession that can result in title objection and become a legal burden to the City.

Finally, DCAS should be responsible for safeguarding vacant City lots. As indicated in DCAS’s own auction brochure, DCAS states that the Law requires the owners of vacant

lots within the City of New York to fence such lots and maintain them in a clean and sanitary condition. However, based on DCAS's response, it appears that DCAS thinks this law is not applicable to the vacant lots it maintains. If fencing certain vacant lots is not practicable because they are what DCAS describes as "slivers" of property, DCAS should, at a minimum, post appropriate signage and inspect the vacant lots, particularly the ones it selects to offer for sale at public auctions.

Questionable Sale Cancellation

DCAS cancelled a \$3,810,000 sale of a property it sold at auction. On June 13, 2006, DCAS sold at public auction a parcel in Staten Island described as parcel 48 block #5632 and lot #4 (see Appendix E) to a home builder. On July 13, 2006, a month after the sale, DCAS cancelled the sale and assigned the property to the City's Department of Parks and Recreation (Parks). According to DCAS officials, City regulations require that before a parcel is offered for sale at public auction, it has to be made available to City agencies as part of the disposition process. However, in DCAS's request for the Mayor's authorization, dated March 14, 2006, DCAS stated that "This parcel has been circulated through various City departments for the purpose of determining whether it is required for public usage. No agency has indicated a need for it." Moreover, the Mayor Authorization Document signed on April 11, 2006, clearly stated that the public hearing regarding this particular parcel was closed without testimony or amendments. Therefore, we question the basis for cancelling the sale so as to assign the property to Parks when Parks received the parcel list prior to the sale and expressed no interest.

Our review of the parcel's history found that the parcel had been in the DCAS portfolio for over 50 years and that no agency expressed an interest for its use. Our review also noted that during the 50-year period, the parcel had been the subject of numerous complaints regarding illegal use and adverse possession by neighbors, some of whom expressed interest in purchasing the vacant lot for their own personal use. A review of DCAS's records also disclosed that on the July 20, 1998 auction, DCAS tried to sell the property for \$2,475,000. However, the sale did not go through due to the buyer's inability to obtain insurable title resulting from nine substantial possible claims identified against the title. In addition, in August 2002 and February 2003, DCAS received numerous complaints regarding illegal use of the site for the storage of automobiles and a boat of an adjacent home owner who enclosed a portion of the property for his personal use. Based on our review, we were not able to ascertain whether any action was taken by DCAS to address those complaints or to clear any title claim against the property. Nevertheless, in the 2006 auction, DCAS sold the parcel for \$3,810,000, but a month after the sale, DCAS decided to cancel the transaction to assign it to Parks.

According to DCAS officials, DCAS cancelled the sale after it received a letter from Parks requesting assignment of the property for a natural and passive park for the community. However, in an e-mail from Parks to DCAS dated June 26, 2006, it was evident that Parks had little knowledge of the property. As shown in the correspondence, Parks was not aware of the status of the parcel, but nonetheless stated, "If Parks were to take it, it would remain as a passive wooded park." Subsequently, on July 12, 2006, Parks wrote a letter to DCAS requesting the assignment of the parcel. In this letter, Parks stated that it was requesting the assignment after learning that DCAS removed the parcel from auction because of requests by a Councilman and

the community. Yet, the parcel had not been removed from the June 13, 2006 auction; in fact, it was sold for \$3,810,000, and based on our review of the records obtained from DCAS and the disclosure in the Mayor Authorization Document, the public hearing in connection with the sales of this property was closed without testimony by the community.

DCAS's action to cancel this sale transaction undermines the credibility of the City public auction process. According to DCAS officials, the Commissioner of DCAS has the power to cancel a sale when it is in the best interest of the City. However, we found no concrete justification to support that the decision to cancel a \$3,810,000 sale of a vacant lot with a 50-year problematic history was made in the best interest of the City. Therefore, we question DCAS's basis for cancelling the sale.

DCAS Response: "This issue involves a parcel of property that was successfully bid upon at the Auction; however, the sale was subsequently cancelled by DCAS before the closing and transfer of the title to a private owner. This was done upon the request of a City Council Member and Parks, and was in accordance with Paragraph 20 of the Terms and Conditions of Sale as set forth in the auction brochure which states, 'DRES shall have the right in its sole discretion to cancel a sale at any time before delivery of the Deed.' Moreover, Paragraph 18(b) of the Terms and Conditions of Sale (Powers of the Deputy Commissioner To Act in Best Interest of the City) states, 'Nothing contained in the Terms and Conditions shall be deemed to limit the authority of the Deputy Commissioner, in his/her discretion, to take such steps as may be deemed to be in the best interest of the City of New York...' In fact, as noted above, the proper procedures were followed, but the auditors did not agree that such a transfer was in the best interest of the City.

"The auditors 'question DCAS' basis for cancelling the sale.' It is difficult to understand how the auditors could not see a positive City interest in the assignment of this parcel to Parks for the preservation of open space. This action is also consistent with Mayor Bloomberg's stated PlaNYC goals of greening the City of New York. PlaNYC is also supported by the New York City Comptroller. The statements in this section of the Report are inaccurate and the rhetoric is unnecessarily harsh."

Auditor Comment: There is no record that reflects that cancelling the sale of this parcel was in the best interest of the City. Had DCAS reviewed its own records, it would have found that the request to cancel the sale was precipitated by a few private residents of the adjacent lot who, according to letters of complaints received by DCAS, were using part of the lot for their own benefit, such as illegal parking of cars and boats and expansion of their yard. Therefore, the cancellation of the sale was in the best interest of the individuals who requested the Council Member to act on their behalf. It should also be noted that, as evidenced by the correspondence between DCAS and Parks officials regarding the immediate assignment of the parcel, Parks was not even aware of the characteristics of the parcel, nor did it have a plan for this parcel when asked by DCAS to take over the jurisdiction of the lot.

Furthermore, public auction procedures require that before City properties are sold, Community Boards and the City Council be notified of the public hearings with respect to the sale. Properties also have to be circulated throughout City agencies to determine whether there is a public need for them. As evidenced in DCAS's records, the public hearing on this parcel was closed without any opposition by the Community Boards and the City Council. In addition, documentation indicated that no agency had expressed a need for the property.

With regard to the property being considered as part of the goals of greening the City of New York, it should be noted that the sale of this property was authorized by the Mayor. In addition, the PlaNYC was initiated in December 2006—six months after the auction.

Sales Brochure Lacks Disclosure on Land-Use Restrictions

DCAS did not properly advise prospective buyers about significant building restrictions before auctioning and selling properties. Although DCAS's sales brochure aims to help a buyer make an informed decision, it fails to include or explain significant terms that can materially impact a buyer's decision. For example, DCAS's inadequate disclosure of significant terms resulted in the cancellation of three sales totaling \$450,000. One of the properties was in Queens, block #14255 and lot #1691, and two in Staten Island, blocks #3671, #3813, and lots #15 and #21 (see Appendix F). As evidenced in DCAS's records, the sales were cancelled because DCAS neglected to initially inform the buyers about land-use restrictions, such as "percent-in-bed-of-street"³ and did not disclose that the correct zoning designation would have required a 40-foot-wide⁴ minimum requirement to build a home. DCAS's brochure advertising forthcoming sales clearly disclaims responsibility for any existing conditions. Specifically, according to paragraph 15 of the Terms and Conditions of Sale in DCAS sales brochure, "All Sales Are Made Subject to: (a) building restrictions and zoning regulations in effect up to Title Closing and any facts disclosed in the City of New York tax and zoning maps and zoning resolutions." However, although DCAS's sales brochure indicated that some restrictions existed, it failed to explain what the specific restriction terms meant. As a result, DCAS was forced to cancel the sales. DCAS would not have had to cancel the sales if it had carried out due diligence beforehand by appropriately disclosing information to prospective buyers making them aware of these conditions.

DCAS Response: "The sales of the three properties cited in this section were in fact cancelled by DCAS on the basis of hardship to the high bidders, and in the best interest of the City of New York. There was no legal requirement to cancel any of these sales. These cancellations were done under the same provisions of the 'Terms and Conditions of Sale.'

"Every potential use contemplated by every potential purchaser cannot be anticipated. . . . As stated earlier, in any real estate transaction, the buyer is responsible to determine

³ "In bed of street" means that the City reserves the right to a certain portion of the parcel to expand the street at a future time. In that event, the owner is obliged to render the land as needed.

⁴ According to the DCAS sales brochure, the District Code for the property advertised in Queens was R3-1, which permits uses as follows: Single- or Two-Family Residence, Attached or Semi-attached; Community Facilities. However, R3-1 also requires a lot width minimum of 40-feet.

whether a particular property is suitable for its intended use. . . . The auction brochure contained a substantial amount of information, including but not limited to, the zoning and dimensions of each parcel.”

Auditor Comment: Contrary to DCAS’s argument, the properties in question were not cancelled on the basis of hardship, but rather to avoid negative action regarding lack of disclosure of material terms in DCAS’s auction brochure, as expressed in the buyer’s correspondence to DCAS. DCAS’s claim that it does not have any legal requirement to cancel a sale should not release DCAS from its responsibility to provide adequate information.

Ineffective Marketing for Problematic Properties

DCAS was unable to sell six of the 53 parcels in its auction list that contained specific problematic characteristics, such as irregular shape, water front, or flooding zone. These properties, referred to as “passed,” were listed with a total upset price of \$1.5 million. Of the six passed properties, five were in Queens described as parcel 33 (block #14253 and lots #1488 and #1492), parcel 34 (block #14253 and lots #1512, #1513, and #1514), parcel 35 (block #14254 and lots #1638, #1639, #1640, and #2037), parcel 38 (block #15306 and lot #11), parcel 42 (block #15600 and lot #325); and one in Staten Island described as parcel 49 (block #6253 and lot #9). In these cases, it appears that, DCAS did not attract any prospective bidders because the properties were burdened with various problems that would have discouraged potential buyers. Given the level of demand for vacant land in the City, DCAS should have utilized a better method to market these properties and ensured that they become productive, rather than keeping them in its portfolio and allowing them to deteriorate. Alternatives might be to evaluate the parcels to reflect the true market value of the properties, given their geographic characteristics; to divide irregular lots; or to offer the vacant lot for community gardens.

DCAS Response: “This conclusion is entirely subjective, and this is an area that requires a broader perspective. . . . Given the overwhelming success of the auction program and our success in selling properties that did not initially generate interest, it is clear that our marketing methods have been extremely effective.”

Auditor Comment: We disagree with DCAS. The audit report conclusion was based on discrepancies found in the comparison between the true characteristics of the properties and the information DCAS illustrated and disclosed in its auction brochure. For example, parcels described as located in flooded zones and identified as below grade that may impact specific structural development are not disclosed in the auction brochure. In addition, the market value established by DCAS for these properties was much higher than the values assigned to similar properties in the same neighborhood. Even in today’s economy, real estate demand in New York City remains strong, so every parcel should draw public interest when the parcel is appraised to reflect its proper geographical features.

Unable to Resell Properties

DCAS did not attempt to resell four properties after the successful bidder failed to promptly pay the City the combined \$470,000 purchase price. DCAS accordingly terminated the sale, but lacked a process to notify and award the properties to the runner-up bidders after the auction process was complete. The four properties in Queens described as parcel 23 (block #14243 and lot #p/o 1116), parcel 24 (blocks #14243 and #14246 and lot #1169), parcel 30 (block #14251 and lot #1666), and parcel 43 (block #15600 and lot #775) remained on DCAS's roster, thereby resulting in a loss of sale and tax revenue to the City. Moreover, given the lengthy time and the costs for arranging public auctions, these properties will continue to languish on the City's rolls for the foreseeable future.

DCAS Response: "We believe this would increase the risk of potential collusion in the auction process. . . . By rapidly bidding up a sale price, the winning bidder could quickly eliminate any competition and then deliberately fail to meet the payment requirements or default on the sale, forcing the award to a colluding next bidder. For this reason, whenever the prospective high bidder fails to meet the auction day requirements for a parcel, that parcel is re-bid at the same auction. Properties that are defaulted after an auction are reviewed for potential reoffering at the next auction."

Auditor Comment: DCAS is incorrect in suggesting that contacting runner-up bidders is a potential for collusion. According to DCAS, there is a level of control at the auction to ensure that the highest bidder wins the bid. For example, in addition to personnel from DCAS, the auctioneer has his own staff as well as that of the Law Department present at the auction. Again, given this level of independent oversight, it would be difficult for any collusion to occur in the process.

Owners Relieved of Paying Real Estate Taxes

DCAS did not track the changes in new ownership of the properties it sold. For example, two properties sold at auction and in the Bronx, identified as blocks and lots #3008/25 and #2719/17, and one property in Brooklyn and identified as block and lot #1703/67 were still listed as City-owned in the Department of Finance's records. Thus, as long as the City continues to be listed as the owner of these properties, the Department of Finance will not bill the new owners for any real estate taxes. According to DCAS officials, DCAS is not responsible for notifying the Department of Finance of title changes; this is the responsibility of the City Law Department and the title company.

However, part of the mission of the public auction program is to return surplus City-owned real estate properties to the tax rolls. Unless the correct information is reflected in the Department of Finance's records, the City will not be able to bill the new owner for property taxes.

RECOMMENDATIONS

DCAS should establish appropriate policies and procedures to ensure that surplus City-owned real estate properties are effectively sold to the public. Guidelines should include, but not be limited to, methods for:

1. Identifying and disclosing the legal and physical conditions of the properties being auctioned by inspecting the properties to determine illegal use and potential encroachments; and installing fences and signs that would safeguard the properties and identify them as City-owned.

DCAS Response: “Disagree: As discussed, the proposed solution would be far more costly than the identified ‘problem.’ Furthermore, the recommended actions would do nothing to resolve any existing issues, nor would they prevent the sale of those properties. . . . DCAS will continue to fence lots based upon its existing practices. These practices already consider the potential for illegal use and adverse possession when making the determination on whether to fence a particular property.”

Auditor Comment: As discussed in the report, by selling properties in “as is” condition, DCAS has a responsibility to provide adequate basic information that would allow prospective buyers of vacant City lots to make an informed decision. Contrary to DCAS’s argument, encroachments, if not cleared, represent significant title objections. Therefore we feel that DCAS should make a better effort to identify and disclose potential title issues before the auction to avoid possible sale cancellations.

Moreover, to protect properties from unauthorized use, DCAS should follow our recommendation to install fences and signs that would safeguard the properties and identify them as City-owned.

2. Setting up and enforcing proper guidelines with specific timeframe for requiring a City agency land-use request to be submitted before the auction.

DCAS Response: “Disagree: DCAS already has a specific process for obtaining agency input before a property is submitted for auction. However, the auditors are actually proposing that the process become so rigid that the City would have no option but to sell a property even if it were clear that a property was required for another City use, or if other issues had later emerged that made the sale undesirable. We do not believe that such inflexibility is in the best interest of the City.”

Auditor Comment: As discussed in the report text, this recommendation was made in response to a questionable sale cancellation that appears to have been made in response to private individuals who pressured a City Council Member to act on their behalf. These details make our recommendation self evident and DCAS’s refusal to implement it unreasonable.

3. Including and explaining fully the key terminology and certain material terms to allow a buyer to make an informed decision and avoid sales cancellation.

DCAS Response: “Disagree: DCAS believes that the education of bidders is already achieved through its wide distribution of the auction brochure and its substantial marketing campaign, including the Pre-Auction Seminar. The expertise about specific zoning matters resides with other City agencies. DCAS informs potential buyers where such information can be obtained. Furthermore, it is clear that the buyers cited in the Audit did not fully read or comprehend the clear and substantial information already presented in the auction brochure.”

Auditor Comment: As discussed in the report, this recommendation was made in response to our finding that the sales of properties were cancelled due to a lack of explanation in DCAS sales brochure regarding specific restriction terms. We therefore urge DCAS to implement this recommendation.

4. Studying the characteristics of passed parcels to determine whether those parcels meet any market demand or whether they should be entirely excluded from the auction.

DCAS Response: “Agree: DCAS’ process is to review the entire portfolio of properties, including the previously unsold properties, to determine which of these could be included in the next auction. DCAS would not intentionally include properties that were not sellable.”

5. Ensuring that properties are offered to runner-up bidders.

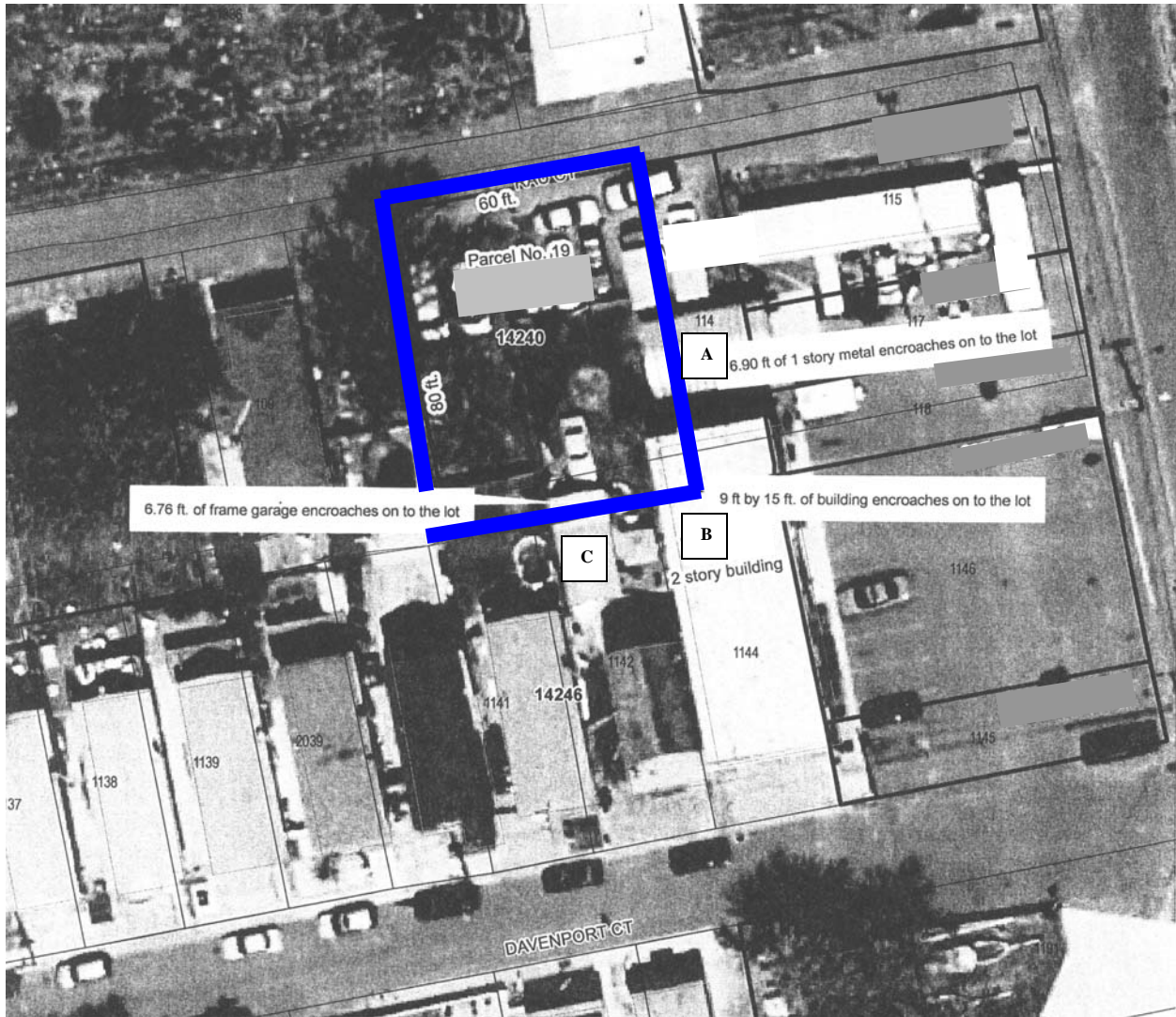
DCAS Response: “Disagree: As previously discussed in greater detail, there are serious integrity-related concerns associated with this approach.”

Auditor Comment: We find it surprising that DCAS does not appear to rely on its own internal controls in this area. According to DCAS’s previous discussion of this matter, a level of control at the auction to ensure that the highest bidder wins the bid requires the presence of the auctioneer’s staff and that of the Law Department in addition to DCAS’s own staff.

6. Ensuring that the new buyer’s information is recorded in the Department of Finance’s computerized system.

DCAS Response: “Disagree: While we agree that this information should be recorded in a timely and accurate manner, this is not a responsibility of this Agency. DCAS does not conduct title closings, nor does it have any responsibility in that process. We have informed the Law Department of the discrepancies identified by the auditors, and it will initiate corrective actions.”

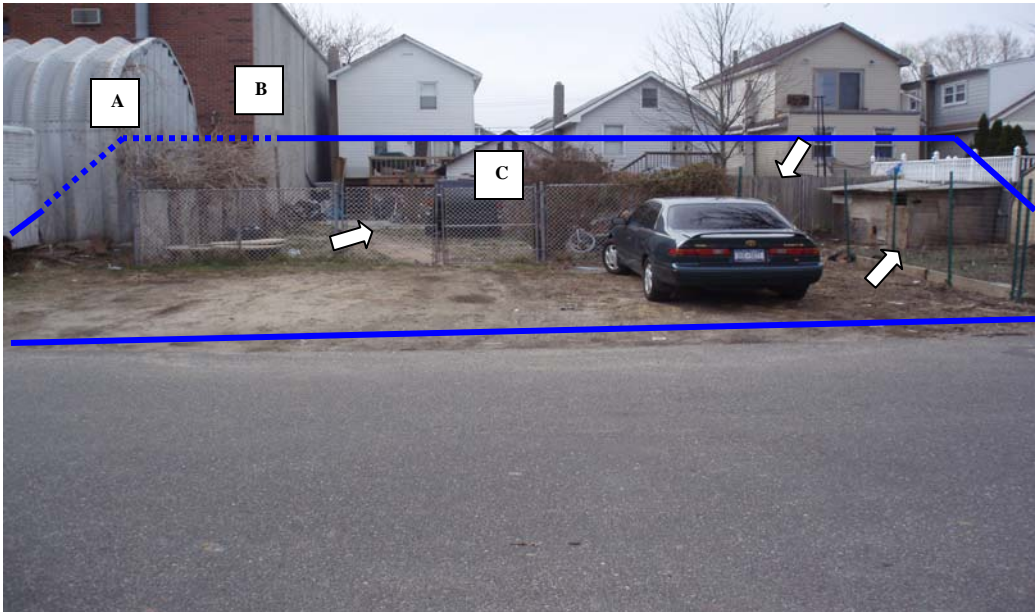
Legal and Physical Conditions Not Assessed



Parcel 19 (Queens, block #14240 and lot #113, size 60 ft. x 80 ft.)

**This aerial view shows the building encroachments identified as:
Encroachments A, B, and C.**

Legal and Physical Conditions Not Assessed



Parcel 19 (Queens, block #14240 and lot #113, size 60 ft. x 80 ft.)

This front view of the parcel shows that the building encroachments, identified as Encroachments A, B, and C, that attributed to the cancellation of sale still exist. In addition, the parcel has been partitioned, as indicated by the three arrows, for car parking and other personal use.



Parcel 19 (Queens, block #14240 and lot #113, size 60 ft. x 80 ft.)

This side view of the parcel shows that the unfenced portion is about 25 ft. deep and being used for illegal parking.

Legal and Physical Conditions Not Assessed



Parcel 34 (Queens, block 14253 and lots #1512, 1513, 1514, size 80 ft. x 80 ft.)
This front view of lot #1514 (size 40 ft. x 80 ft.) shows that the lot has been used for illegal parking.



Parcel 34 (Queens, block 14253 and lots #1512, 1513, 1514, size 80 ft. x 80 ft.)
This front view of lot #1513 (size 20 ft. x 80 ft.) shows that the lot has been fenced for personal use.

Legal and Physical Conditions Not Assessed



Parcel 34 (Queens, block 14253 and lots #1512, 1513, 1514, size 80 ft. x 80 ft.)
This front view of lot #1512 (size 20 ft. x 80 ft.) shows that the lot has been fenced for personal use, see the car parked behind the fence.



Parcel 34 (Queens, block 14253 and lots #1512, 1513, 1514, size 80 ft. x 80 ft.)
This side view of lots #1512 and 1513 (size 40 ft. x 80 ft.) shows that the lots have been fenced for personal use.

Legal and Physical Conditions Not Assessed



Parcel 30 (Queens, block #14251 and lot #1666, size 20 ft. x 80 ft.)

City parcel - front view



Parcel 30 (Queens, block #14251 and lot #1666, size 20 ft. x 80 ft.)

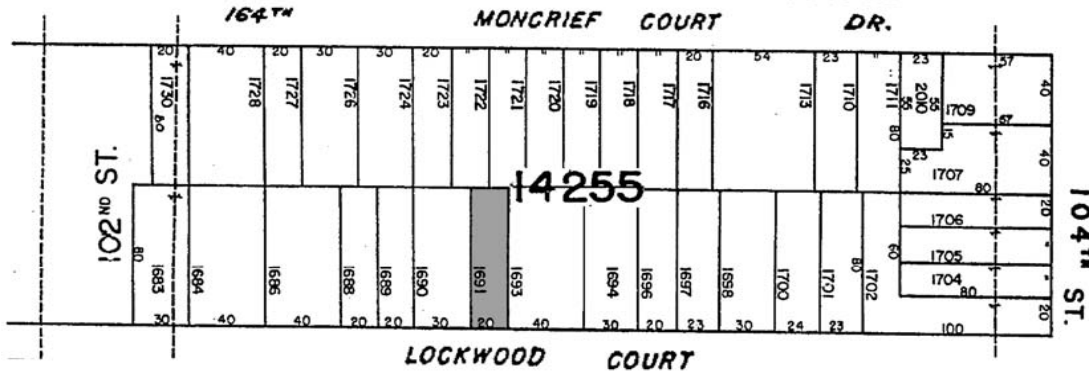
This picture shows that the City parcel has been illegally fenced to extend its boundaries to the privately owned parcels #1664 and 1665.

Questionable Sale Cancellation



Parcel 48 (Staten Island, block #5632 and lot #4, size 50 ft. x 480 ft. irregular)
This aerial view shows the border line of the parcel.

Sales Brochure Lacks Disclosure on Land Use Restrictions



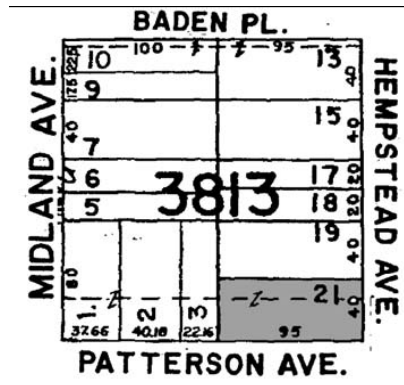
Parcel 36 (Queens, block #14255, lot #1691, size 20 ft. x 80 ft.)

This parcel is 20 ft. wide but is subject to a 40-foot-wide minimum requirement to build a home.



Parcel 46 (Staten Island, block #3671, lot #15, size 45 ft. x 75 ft. irregular)

This parcel has 62% in-bed-of-street that limits the land use to approx. 20 ft. x 75 ft.



Parcel 47 (Staten Island, block #3813, lot #21, size 40 ft. x 95 ft.)

This parcel has 63% in-bed-of-street that limits the land use to approx. 15 ft. x 95 ft.



DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER

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Martha K. Hirst
Commissioner

June 13, 2008

Citywide Personnel
Services

Facilities
Management &
Construction

Municipal Supply
Services

Real Estate Services

Citywide Equal
Employment
Opportunity

Citywide
Occupational Safety
& Health

Transportation
Services

The City Record

CityStore

John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the City Comptroller
One Centre Street, Room 530
New York, NY 10007

Re: Audit Report on the
Administration of the Sales of Surplus
City-Owned Real Estate Properties by
the Department of Citywide
Administrative Services (FN07-100A)

Dear Mr.  Graham:

The Department of Citywide Administrative Services (DCAS) has reviewed the draft report issued by the Office of the Comptroller, dated May 30, 2008. Although we are pleased that the Audit findings state that "DCAS properly collected and accurately reported revenue from the sale of surplus City-owned properties, and appropriately processed and approved all mortgage applications," we regret that we must disagree with most of the allegations made in this Report, including almost all of the findings and recommendations relating to the auction process. This Audit does not reflect the broader perspective that is necessary for evaluating the success of this particular Auction, and the real estate auction process in general. Furthermore, the auditors do not appear to fully understand the auction process, the rules and procedures that govern it, or standard real estate practices in the City of New York. As a result, the auditors have misinterpreted, mischaracterized, and regrettably, have unjustly portrayed the actions of DCAS personnel in a negative manner.

Auctions of surplus City-owned property have occurred regularly for more than 50 years. During that period of time, approximately 75,000 parcels of property have been transferred back to the private sector through the auction process. As recently as 1995, DCAS managed a portfolio of approximately 11,000 lots. Today, as a result of our efforts through the auction process, as well as through the judicious transfers of property to other City agencies for program uses, that portfolio has been reduced to a total of only approximately 2,400 lots. The transferred properties were utilized for important public purposes such as affordable housing, park expansion, and economic development. The properties sold at public auction since 1995 generated approximately \$250 million, in addition to the recurring tax revenues received by the City.

Most of the remaining parcels in our portfolio today are either waterfront lots that cannot be legally sold, oddly-shaped slivers of property, or interior lots without public access, which have extremely limited sales potential. Perhaps no more than 50 of the remaining parcels in our portfolio have the potential for sale at auction. For this reason, the June 13, 2006 Auction may have been the last auction for the foreseeable future. In light of these facts, it is therefore difficult to understand, given the almost total success of the auction process, how this Audit can now allege that auction procedures are inadequate, that buyers do not have enough information, or that marketing is lacking.

In order to begin to explain our issues with this Audit, we must first clarify the outcome of the June 13, 2006 Auction.

The June 13, 2006 Auction

Of the total of 53 parcels of property listed in the brochure for the June 13, 2006 Auction,

- three (3) parcels were withdrawn before the Auction by DCAS,
- six (6) parcels received no bids,
- four (4) buyers defaulted on their purchase (the City retained the 20% of the purchase price),
- three (3) purchases were cancelled by DCAS due to purchaser hardship claims and in the best interest of the City,
- one (1) parcel's sale was cancelled and subsequently assigned to the Department of Parks and Recreation ("Parks"),
- one (1) purchase was cancelled because the purchaser was deemed to be ineligible for a City purchase money mortgage (the City retained 10% of the sums on deposit), and
- one (1) purchase was cancelled due to title-related issues.

Thirty-four (34) parcels of real property were sold and transferred to private ownership. Therefore, the Audit statement that DCAS suffered from "deficiencies" and that "(a)s a result of these deficiencies, DCAS did not sell 19 (36%) of 53 listed properties," is dramatically overstated. Most of these actions had nothing to do with the alleged DCAS "deficiencies" put forward by the auditors. In fact, the specific allegations made in this Audit should potentially apply only to the following subsets:

- the one (1) property that was transferred to Parks,
- the one (1) parcel that was cancelled due to title-related issues, and
- the six (6) parcels that received no bids.

Property Transferred to the Department of Parks and Recreation

This issue involves a parcel of property that was successfully bid upon at the Auction; however, the sale was subsequently cancelled by DCAS before the closing and transfer of the title to a private owner. This was done upon the request of a City Council Member and Parks, and was in accordance with Paragraph 20 of the Terms and Conditions of Sale as set forth in the auction brochure which states, "DRES shall have the right in its sole discretion to cancel a sale at any time before delivery of the Deed." Moreover, Paragraph 18(b) of the Terms and Conditions of Sale (Powers of the Deputy Commissioner To Act in Best Interest of the City) states, "Nothing contained in the Terms and Conditions shall be deemed to limit the authority of the Deputy Commissioner, in his/her discretion, to take such steps as may be deemed to be in the best interest of the City of New York."

The Audit describes this as an “Inappropriate Sale Cancellation” and states, “DCAS did not follow proper procedures...” In fact, as noted above, the proper procedures were followed, but the auditors did not agree that such a transfer was in the best interest of the City. The Report goes on to state that “DCAS’ action to cancel this sale transaction reflects a lack of transparency that significantly undermines the credibility of the City public auction process.”

The auditors “question DCAS’ basis for canceling the sale.” It is difficult to understand how the auditors could not see a positive City interest in the assignment of this parcel to Parks for the preservation of open space. This action is also consistent with Mayor Bloomberg’s stated PlaNYC goals of greening the City of New York. PlaNYC is also supported by the New York City Comptroller. The statements in this section of the Report are inaccurate and the rhetoric is unnecessarily harsh.

Sales Cancelled for Title-Related Issues

The Audit Report states that “DCAS did not properly assess the legal and physical conditions of the properties before offering them for sale.” As a result, the Audit recommends that DCAS take actions to identify and disclose the legal condition of sale properties.

DCAS informs buyers of known encumbrances on properties for sale through brochure notes and auctioneer announcements. However, as in private sales, the responsibility is with the buyer to determine whether a particular property is suitable for its intended use. Paragraph 12 of the Terms and Conditions of Sale (Property Sold “As Is”) clearly states that all properties are sold in “as is” condition. “The purchaser will be required to accept the Property in its ‘as is’ condition as of Title Closing.” It should also be noted that property is sold subject to, among other things, existing encroachments, and encroachments do not necessarily impair the marketability of properties.

The Audit cites two properties whose sales were cancelled for title-related reasons. One of these references is incorrect. The Audit states that Parcel 14 “contained a wide easement that was clearly noted in the indenture of the adjacent property’s description.” Regardless of the existence of the easement reported by the auditors on Parcel 14, this buyer ultimately defaulted on the purchase and the City retained 20% of the purchase price pursuant to the Terms and Conditions of Sale. This situation, therefore, does not support the argument made by the auditors that title-related issues forced DCAS to cancel the sale.

The solution recommended by the auditors is for the City to research each property, as a potential buyer ordinarily would, as well as adjacent properties, to discover any potential title-related issues. This solution is not cost-effective, and is overly burdensome, unnecessary, and ill-advised. Over the past five years only six (6) property sales were cancelled for title-related reasons. During that period, more than 800 properties were offered for sale. If we had implemented this recommendation during that period of time, each property would have required an unnecessary and costly title search. Not only would such title searches be costly, but the benefit of doing this is also unclear since any potential encumbrances discovered would not necessarily render a parcel un-sellable.

Finally, it is not appropriate to refer to the returned monies for Parcel 19 as “forfeiting” the monies. This term implies that an agreement has been breached by DCAS, when in fact, an underlying condition unknown to all parties precluded a sale from being completed. Again, such negativity is pervasive in this Report.

Ineffective Marketing

At the June 13, 2006 Auction, six (6) parcels did not receive qualifying bids. The auditors' conclusion was that these parcels were not bid upon because DCAS' marketing was ineffective.

This conclusion is entirely subjective, and this is an area that requires a broader perspective. Not all parcels in all areas of the City receive equal interest from the public. Furthermore, in any sales environment, it would be rare that any inventory would be completely sold in a single day. In our experience, parcels that were once "passed over" by the public in an auction have received subsequent interest in later auctions. Given the overwhelming success of the auction program and our success in selling properties that did not initially generate interest, it is clear that our marketing methods have been extremely effective.

Auction Brochure – Disclosure of Land Use Restriction and Zoning

The Audit Report states that "DCAS did not properly advise prospective buyers" and that "DCAS' inadequate disclosure of significant terms resulted in the cancellation of three sales totaling \$450,000." Furthermore, the Report concludes that "... the sales were cancelled because DCAS neglected to initially inform the buyers about land use restrictions, such as 'percent-in-bed-of-street' and did not disclose the correct zoning designation ..."

The sales of the three properties cited in this section were in fact cancelled by DCAS on the basis of hardship to the high bidders, and in the best interest of the City of New York. There was no legal requirement to cancel any of these sales. These cancellations were done under the same provisions of the "Terms and Conditions of Sale" that the auditors previously criticized as "inappropriate," "improper" and lacking transparency.

Every potential use contemplated by every potential purchaser cannot be anticipated. We do not dispute that these buyers did not adequately research whether their intended use of these properties was consistent with the existing zoning and development restrictions, only that DCAS provided the necessary information for any buyer to conduct its own research and consult its own experts in order to make its own determination. As stated earlier, in any real estate transaction, the buyer is responsible to determine whether a particular property is suitable for its intended use.

The auction brochure contained a substantial amount of information, including but not limited to, the zoning and dimensions of each parcel. This brochure also stated that "(w)e strongly urge anyone interested in purchasing a property to inspect the premises before placing a bid on any property." In the case of the latter two parcels cited, the auction brochure clearly indicated the percentage of each of these parcels that were percent-in-bed-of-street. The brochure also referred potential buyers to numerous City agencies for further information, including the Department of City Planning for advice on zoning related issues. DCAS also holds an informational session in advance of every auction where potential buyers can ask questions, and did so before the 2006 Auction.

Fencing and Signage

The auditors criticized DCAS in that "... City vacant lots maintained by DCAS and selected for the June 13, 2006 auction lacked fencing and signs to identify them as City-owned." The auditors raised concerns that potential illegal use or adverse possession would affect the sale of these properties.

The auditors have raised a valid point in citing the fencing requirement, and we agree that the concerns identified need to be factored into the determination of which lots get fenced. We believe that it is self-evident that in the past, at a time when the City was vesting thousands of vacant lots annually, the requirement to fence and maintain those fences on all of these lots was impracticable. DCAS fences lots based upon its professional judgment and in response to requests from the community and elected officials. It has never been practical for DCAS to fence each and every vacant lot in its portfolio. As previously stated, many of these lots are "slivers" of property, or are interior lots without public access, or are designated wetlands; some are even located under water. Apart from the prohibitive cost of fencing all lots, there would also be the unaffordable level of resources required to maintain these fences. There is also no requirement to provide signage on vacant lots.

Auction Integrity

The auditors have recommended that a listing of runner-up bidders be compiled in future auctions so that an award of sale can be made to a runner-up bidder should the winning bidder default. We previously advised the Audit team that we believe this would increase the risk of potential collusion in the auction process. We were surprised the Audit team failed to recognize this serious risk. By rapidly bidding up a sale price, the winning bidder could quickly eliminate any competition and then deliberately fail to meet the payment requirements or default on the sale, forcing the award to a colluding next bidder. For this reason, whenever the prospective high bidder fails to meet the auction day requirements for a parcel, that parcel is re-bid at the same auction. Properties that are defaulted after an auction are reviewed for potential reoffering at the next auction.

Real Estate Tax Issues

The Audit identified three properties sold at auction whose ownership was not updated on the Department of Finance tax rolls. We informed the auditors that the titles for these properties are transferred to the private owners at title closing, a process in which the City is represented by the Law Department, and in which DCAS did not and does not participate. The Law Department has been informed of the discrepancies identified by the auditors, and will initiate corrective actions.

Audit Recommendations:

- 1. Identifying and disclosing the legal and physical conditions of the properties being auctioned, by inspecting the properties to determine illegal use and potential encroachments; and installing fences and signs that would safeguard the properties and identify them as City-owned.**

DISAGREE: As discussed, the proposed solution would be far more costly than the identified "problem." Furthermore, the recommended actions would do nothing to resolve any existing issues, nor would they prevent the sale of those properties.

The record of the auction process speaks for itself. Over the past five years, only six property sales were cancelled due to title-related issues.

DCAS will continue to fence lots based upon its existing practices. These practices already consider the potential for illegal use and adverse possession when making the determination on whether to fence a particular property.

- 2. Setting up and enforcing proper guidelines with specific timeframe for requiring a City agency land use request to be submitted before the auction.**

DISAGREE: DCAS already has a specific process for obtaining agency input before a property is submitted for auction. However, the auditors are actually proposing that the process become so rigid that the City would have no option but to sell a property even if it were clear that a property was required for another City use, or if other issues had later emerged that made the sale undesirable. We do not believe that such inflexibility is in the best interest of the City.

- 3. Including and explaining fully the key terminology and certain material terms to allow a buyer to make an informed decision and avoid sales cancellation.**

DISAGREE: DCAS believes that the education of bidders is already achieved through its wide distribution of the auction brochure and its substantial marketing campaign, including the Pre-Auction Seminar. The expertise about specific zoning matters resides with other City agencies. DCAS informs potential buyers where such information can be obtained. Furthermore, it is clear that the buyers cited in the Audit did not fully read or comprehend the clear and substantial information already presented in the auction brochure.

- 4. Studying the characteristics of passed parcels to determine whether those parcels meet any market demand or whether they should be entirely excluded from the auction.**

AGREE: DCAS' process is to review the entire portfolio of properties, including the previously unsold properties, to determine which of these could be included in the next auction. DCAS would not intentionally include properties that were not sellable.

- 5. Ensuring properties are offered to runner-up bidders.**

DISAGREE: As previously discussed in greater detail, there are serious integrity-related concerns associated with this approach.

- 6. Ensuring that the new buyer's information is recorded in the Department of Finance's computerized system.**

DISAGREE: While we agree that this information should be recorded in a timely and accurate manner, this is not a responsibility of this Agency. DCAS does not conduct title closings, nor does it have any responsibility in that process. We have informed the Law Department of the discrepancies identified by the auditors, and it will initiate corrective actions.

As we noted to the Audit team at the start of its inquiry, the June 13, 2006 auction was likely to be the last large-scale auction held by DCAS. After 50 years of public auctions and successful sales of tens of thousands of properties to the private sector, the auction program has likely run its course. Due to the characteristics of the properties remaining in its current surplus vacant lot portfolio, DCAS will seek alternative methods to reduce the number of these lots that are owned by the City of New York.

Sincerely,



Martha K. Hirst

C: Lori Fierstein
Ilene Lees
Donald Brosen
Christopher Lane