



Montgomery County Government

DESCRIPTION AND EVALUATION OF THE MONTGOMERY COUNTY OFFICE OF THE PUBLIC ADVOCATE FOR ASSESSMENTS AND TAXATION

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I. SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

This report describes and evaluates the Office of the Public Advocate for Assessments and Taxation (OPA). Major conclusions and recommendations contained in the report are as follows:

Conclusions

1. OPA is appropriately using its authority as described in County Code Section 52-40, and is fulfilling its responsibilities to: (a) seek equity for County taxpayers through its review of assessments and participation in the appeals processes; (b) advise residents and taxpayers of their rights under property assessment and tax laws; (c) perform related duties necessary or appropriate to protect the interest of the public and taxpayers of the County; and (d) report annually to the Council, the Executive, and the public.

2. OPA cannot currently obtain income and expense data from owners of income-producing properties who do not choose to submit that information. In order for OPA to consider all valuation methods applicable to income-producing property, the Office must be able to obtain income and expense information relating to such properties.

3. Based on first year tax increases resulting from OPA appeals and interventions, as compared to OPA annual expenditures, OPA generates revenues on behalf of County taxpayers well in excess of the costs associated with operating the Office. In addition, ratings and comments submitted by workshop participants indicate a high level of satisfaction associated with OPA's public information and education activities.

4. Since OPA is not expected to review all properties, but concentrate its efforts on the most obvious assessment errors, the Office is generally adequately staffed to accomplish its mission. In years when assessments have increased substantially, however, OPA has experienced some difficulty in managing its workload.

5. As an independent office, OPA has functioned well on behalf of County taxpayers. However, it may be possible to retain OPA's independence and achieve organizational efficiencies by co-locating OPA as a separate intact unit with another County office or department. OLO has found OPA missions and responsibilities to be compatible with those of either the Department of Finance or the Office of Consumer Affairs. Without changes to the County Code, the Public Advocate position would become subject to the County's merit system.

6. OPA activities relating to assessment appeals and interventions appear to be unique to Montgomery County. OLO was unable to confirm that any other jurisdiction operates an independent office or conducts similar activities as those provided by OPA. Impressions of those interviewed who have dealt with OPA in the appeals processes were mixed. Some interviewees argued for eliminating OPA, while others perceived that County citizens

generally benefit from OPA activities. Most interviewees were complimentary of the professionalism displayed by OPA in its preparation for and presentation of appeal cases, but noted that some improvements could be made by OPA in its handling of interventions. Some interviewees also suggested organizational or staffing realignments for OPA to improve efficiency or effectiveness.

Recommendations

1. The Council should request the Executive Branch to prepare legislation to amend Section 52-40 to give OPA administrative subpoena power similar to powers granted to the Offices of Landlord Tenant Affairs and/or Consumer Affairs. Such power should provide limitations on the parameters of the subpoena to include obtaining only that information which was not originally produced for the assessor, and requiring that information obtained through the subpoena power be held confidential.
2. The Council should consider whether incorporating OPA into another office or department would alter OPA's effectiveness which has been demonstrated over the years as an independent principal office of the County.
3. OPA should review its standards for preparing intervention cases at the PTAAB level and consider eliminating production of its statistical reports to allow for a realignment of staff responsibilities to provide more concentration on preparation of its intervention cases.

II. AUTHORITY, SCOPE, METHODOLOGY, AND ACKNOWLEDGEMENT

A. Authority

Council Resolution No. 12-144, CY 1991 Work Program of the Office of Legislative Oversight, adopted March 26, 1991.

B. Scope

This report describes and evaluates the operation of the Montgomery County Office of the Public Advocate for Assessments and Taxation (OPA). OPA was created in 1973 by Bill No. 49-73. Under its statutory mandate the function of OPA is to pursue greater equity among all classes of property in the real property assessment structure of Montgomery County.

C. Methodology

This project was conducted by Joan M. Pedersen, assisted by Robert Heckman, III, Public Administration Intern. Research activities for the evaluation consisted of a variety of fact-finding techniques to include:

- Review of applicable State and County laws; County legislative files, including minutes of Committee and full Council work sessions; and transcripts of public hearings and budget sessions.
- Review of public documents relating to activities of OPA, including memoranda, studies, reports, and budget documents.
- Interviews with management and staff of OPA; Executive departments and offices (Finance, Consumer Affairs, County Attorney, and Management and Budget); Council staff; members of the Property Tax Assessment Appeals Board (PTAAB); administrators and staff of the Maryland Department of Assessments and Taxation; and attorneys and property owners who have participated in the assessment appeals process.
- Review of written procedures and observation of activities related to OPA workshops and appearances before the Supervisor of Assessments and the PTAAB.

D. Acknowledgements

The Office of Legislative Oversight (OLO) acknowledges the prompt and courteous cooperation received from management and staff of the Office of the Public Advocate and other Executive departments, the County Council, and the Maryland Department of Assessments and Taxation; members of the Property Tax Assessment Appeals Board; and individual attorneys and property owners.

II. BACKGROUND

This chapter of the report provides background regarding creation of the Office of the Public Advocate for Assessments and Taxation, describes the assessment process in general terms and discusses the appeals process in somewhat more detail.

A. Creation of the Office of the Public Advocate (OPA)

A national survey of property tax assessments performed by the United States Census Bureau in 1967 revealed that Maryland property assessments on residential properties averaged 50 percent of market value, while commercial and industrial properties averaged 44 percent, vacant lots averaged 29 percent, and acreage and farms averaged 18 percent. The County Council interpreted this information to mean that valuable nonresidential properties were frequently under-assessed in comparison to residential properties, which then carried a disproportionate share of the overall property tax burden. Thus, in 1973, the Council determined to establish provisions for the independent review of the property assessment process in the County to address unfair or inequitable assessments which result in a significant tax loss or unwarranted shifting of the property tax burden.

Sponsored by the Council President, Bill No. 49-73 proposed to amend Montgomery County Code Chapter 52, Taxation, by adding Section 52-40, Public Advocate for Assessments and Taxation, to provide for the creation of a new independent office and appointment of an advocate to represent the public interest and County taxpayers in assessment and related tax matters before State administrative bodies and the courts. The bill was introduced October 2, 1973, and a public hearing was held November 13, 1973.

One individual spoke in opposition to the bill because it "would impose an unnecessary expense upon the taxpayers by the creation of an unnecessary office". This individual argued that the County Attorney had sufficient staff available to handle the functions of the proposed office. Supporting the establishment of an independent office were the County Executive, the County Attorney, two individuals, and three civic groups (the Allied Civic Group, the Citizen Planning Association, and the Montgomery County Civic Federation). The Council held a worksession January 4, 1974, and incorporated speakers' suggestions and Executive branch recommendations into the Bill. The Bill was enacted on January 15, 1974, and became effective January 28, 1974.

On June 9, 1981, the County Executive submitted a reorganization plan to the Council in the form of Executive Order 25-81. The reorganization plan proposed to eliminate the Office of the Public Advocate (OPA) as an independent office and establish it within the Department of Finance. Under the proposed reorganization, the Public Advocate position would be subject to the County's merit system and the Director of Finance would supervise the functions of OPA. While encouraging closer ties between OPA and the Finance Department, the Council opposed the reorganization plan as detrimental to maintaining or increasing governmental attention to improve the equity of

assessments and taxation. Consequently, the Council expressed its disapproval of the Executive's plan in Resolution No 9-1432, adopted September 1, 1981. This resolution not only disapproved the reorganization plan, but reaffirmed continuing OPA as a principal office of County government and requiring Council confirmation of appointments to the position of Public Advocate.

In the mid-1980s, major revisions to the County Code were enacted to amend, clarify, and/or relocate various provisions of the Code relating to the general administration and structure of government (Bill No. CR A-85). As a result of these actions, language establishing government departments and offices previously located throughout the Code was removed and either relocated to a new chapter of the Code or rewritten in the new chapter.

As part of the general revisions, a "Public Advocacy for Assessments and Taxation" came to be listed in Code Chapter 1A as a principal office of the Executive branch, and previous language to authorize the Office was removed from Section 52-40 of the Code. A later technical amendment contained in Emergency Bill 15-89, officially changed the name to the "Public Advocate for Assessments and Taxation". Copies of the amended Code are attached to this report for reference. (Attached as Exhibit A is a copy of Chapter 1A, Article II, Section 1A-201, Establishing Departments and Principal Offices; attached as Exhibit B is a copy of Chapter 52, Article V, Public Advocate for Assessments and Taxation.)

B. Assessment and Appeals Processes

The statutory basis for assessment of real property, and related appeals, is contained in the Tax-Property Article of the Annotated Code of Maryland.* Beginning in 1973, the State assumed direct responsibility for selecting and employing personnel to assess properties throughout the State. Prior to that time, each county in Maryland had employed assessors (after applicants were first interviewed, examined, and graded by the State to determine their qualifications) to value properties within its boundaries in accordance with State laws and directives issued by the State Department of Assessments and Taxation.

Assessments

In accordance with the Tax-Property Article, Section 2-105 Supervisors of Assessments - In General, each county and Baltimore City is appointed a Supervisor of Assessments to be responsible for activities relating to the property assessment process in that county. Based on market data, sales trends, and physical condition, State-employed assessors determine a New Market Value for each property in the County once every three years. (A more detailed explanation of the methods used by assessors to determine Market Value is attached as Exhibit C).

* The Tax-Property Article consists of fourteen titles enacted by Chapter 8, Acts 1985 and represents a recompilation of material previously located in Article 81 and various other articles of the Annotated Code of Maryland.

Once the New Market Value has been determined, any increase in the assessment is phased in from the Old Market Value over each of the following three years, with a Phased-in Market Value proposed for each year. Therefore, any increase in the property assessment is equally divided over a three year period so that the full increase is not taxed until the third year.

The Phased-in Assessment is determined by multiplying the Phased-in Market Value each year by an assessment ratio set by the State from time to time. The current ratio is 40 percent for properties used for all purposes except those used for agriculture, and 50 percent of a State assigned value per acre for agricultural use properties. Without additional limitations, the Phased-in Assessment is equivalent to the taxable assessment. However, under the Homestead Property Tax Credit, also known as the Assessment Cap, the State tax computation on owner-occupied residential property is limited to a ten percent annual assessment increase on the home and home site.

Under State law, counties and municipalities may also limit annual assessment increases to be considered for local tax computations to ten percent or less. In accordance with this provision, the County Council established the Assessment Cap for properties in Montgomery County at ten percent for FY92.

For those properties which have been reassessed under the triennial cycle, notices are sent to property owners in the month of December. Following receipt of the notice of assessment, a property owner, or OPA on behalf of the County, may protest the assessment. An explanation of the appeals process and an appeal form is included in the assessment notice package. State statute allows for three levels of administrative appeal.

Appeal to Supervisor of Assessments

Within 45 days from the date on the assessment notice, property owners or other concerned parties, such as OPA, may appeal the total New Market Value assigned to the property. This first level of appeal is handled by the Supervisor of Assessments or a designated representative. Usually the appellate will meet with the assessor who developed the original property assessment to present information as to why the assessment is considered incorrect. This level of appeal is informal, and, although some owners of high-valued property may engage a lawyer or appraiser to represent them at the hearing, it is not generally a necessary expense for the average property owner. The Supervisor of Assessments typically renders a decision within two months of the hearing date by mailing a final notice of assessment.

Appeal to Property Tax Assessment Appeals Board (PTAAB)

The County-located PTAAB is an administrative appeals body comprised of three members and one alternate appointed by the Governor. The Governor selects the three members for appointment from a list of candidates submitted by the County Executive. If an appellant is dissatisfied with the Supervisor's decision, a further protest may be filed with the PTAAB within thirty days of the Supervisor's decision date. In those cases where the

property owner has appealed, the property owner or his representative is allowed five minutes to present arguments to the PTAAB. The assessor then presents the State's position, and may be followed by a representative from OPA who presents the County's estimate of the market value of the property. The owner or representative is then given an opportunity to summarize the opinion of value. Each party generally supplies information on recent sales of comparable properties to support the particular opinion of value.

Although no official transcripts of hearings are prepared, the PTAAB maintains an examination file on each case. Parties involved in the appeal are encouraged to submit to the file, at least five working days prior to the hearing date, any cost, market, income data, independent appraiser opinions, or other documentation relevant to the hearing. The owner, assessor, Public Advocate and PTAAB prepares for the case by reviewing all documents which have been submitted prior to the hearing.

Any party may request that additional information be submitted before the PTAAB decides the case, and all parties are given an opportunity to review and comment on the submissions. A decision is announced in writing within approximately 45 days after the PTAAB hearing date. The PTAAB may increase, decrease, or affirm the original full cash value assessment.

Appeal to Maryland Tax Court

If the property owner, the Supervisor of Assessments, or OPA is dissatisfied with the PTAAB decision, an appeal may be filed with the Maryland Tax Court within 30 days of the PTAAB decision. This body is the highest administrative level of appeal, and consists of five members appointed by the Governor. Unlike the county PTAABs, there is only one Maryland Tax Court for the State, located in Baltimore City. Individual cases are often considered by a local hearing examiner whose recommendations are generally adopted by the Tax Court as its decision. If the appellant does not agree with the Tax Court decision, the remaining recourse is through the civil court system where review of the case must be based on legal arguments alone.

IV. ORGANIZATION, RESPONSIBILITIES AND ACTIVITIES OF OPA

A. Organization and Responsibilities of OPA

OPA was created as a principal office of the Executive branch to perform independent review of the State assessment process. The current staffing of OPA consists of the Director/Public Advocate, an Assistant Public Advocate, a Program Specialist, and an Office Services Manager. When available, a part-time volunteer is used to assist with special projects. The powers and duties of OPA are mandated in Code Section 52-40 (b) as follows.

- To appear before or to intervene in proceedings before the Supervisor of Assessments, the Property Tax Assessment Appeal Board, the Maryland Tax Court, and the Courts of Maryland on behalf of the interest of the public and the taxpayers in general of the County, and to demand a hearing

pursuant to Section 255, Article 81, Annotated Code of Maryland, or under any other provision of law in any matter or proceeding in which the Public Advocate for Assessments and Taxation may deem the public interest involved, including but not limited to proceedings with respect to:

- (a) the valuation, assessment, classification or exemption from tax of any property, or
- (b) the application for an abatement, modification or reduction of any assessment of property and the tax pertaining thereto, or
- (c) the application for exemption from tax or from any assessment of property and the tax pertaining thereto.

- To make such investigations and employ such consultants or experts as the Public Advocate for Assessments and Taxation may deem necessary to the performance of the duties imposed herein.

- To have full access to all government records necessary in carrying out the duties imposed herein.

- To advise residents and taxpayers of the County generally of their rights under State and County tax laws.

- To prepare and provide to the County Council, the County Executive and the public, an annual report setting forth the activities and accomplishments of the Office of Public Advocate for Assessments and Taxation.

- To exercise and perform such other functions and duties consistent with the purposes or provisions of this section which may be deemed necessary or appropriate to protect the interest of the public and taxpayers of the County.

B. Activities and Funding of OPA

Under the State's triennial assessment process, approximately one third of the real estate properties located in Montgomery County are revalued each year by State assessors. These properties are categorized into six types: Apartment, Residential, Commercial, Commercial Condominium, Industrial, and Farm. To pursue greater equity of assessments among all classes of real property in the assessment structure, the Office of the Public Advocate (OPA) is authorized to represent the County government on behalf of its taxpayers and participate as necessary in the property assessment process in the County.

OPA reviews property assessments, sales and other real property data, compiles statistical reports, and performs special studies. For example, OPA recently compiled data relating to sales of 71 vacant land parcels, 120 commercial, 42 apartment, and 30 industrial properties which occurred during 1989 and 1990. This information will be updated periodically by OPA, and shared with the State assessors as an assist in identifying and valuing comparable properties.

Twice yearly, OPA reviews all State legislative measures relating to assessments and other tax issues and makes recommendations to the County Executive as appropriate. As an assist to the public, OPA also publishes and distributes educational brochures explaining how assessments are calculated and how to appeal an assessment, and annually conducts a series of public workshops on the assessment and appeals processes.

OPA is a principal office of the Executive branch and is funded with County general fund revenues to carry out its activities. OPA is currently staffed with four full-time positions and utilizes the services of one part-time volunteer from the Volunteer Office of Retired Professionals (VORP). On occasion, OPA has also engaged the services of a part-time public services intern to assist with analyzing data and compiling statistical reports. The following table summarizes expenditure activity of OPA beginning with its first full year of operation after its creation in FY74.

Table 1

**Schedule of Expenditure Activity for the
Office of the Public Advocate for Assessments and Taxation**

<u>Activity Period</u>	<u>Personnel</u>	<u>Operating</u>	<u>Capital</u>	<u>Workyears</u>
Actual FY75	\$ 32,800	\$ 5,700	\$ 450	1.0
Average FYs 76-80	55,070	10,330	300	2.5
Average FYs 81-85	104,500	18,330	1,840	3.0
Average FYs 86-90	164,470	28,630	890	3.4
Actual FY91	249,430	40,830	-0-	4.0
Budget FY92	259,790	37,630	-0-	4.0

Source: Compiled by OLO from information contained in Recommended Operating Budget documents.

V. EVALUATION OF THE OFFICE OF THE PUBLIC ADVOCATE

This chapter of the report addresses a number of questions about the responsibilities, authority, staffing, organizational placement, and public perceptions of the Office of the Public Advocate for Assessments and Taxation (OPA), and is organized as follows:

Responsibilities and Authority

Question A1. Is OPA meeting its statutory responsibility to seek equity for County taxpayers through the appeals process?

Question A2. Is OPA meeting its statutory responsibility to advise County residents and taxpayers of their rights under State and County tax laws?

Question A3. Is OPA meeting its statutory other responsibilities to annually produce a report setting forth the activities and accomplishments of OPA; and to perform additional functions and duties which may be necessary or appropriate to protect the public and taxpayers of the County?

Question A4. Does the County law enumerating OPA's authority, duties, and responsibilities need to be clarified or expanded?

Staffing and Organizational Placement

Question B1. Is staffing of OPA adequate to allow for reasonable accomplishment of the intended mission?

Question B2. What benefits have been derived from having a Public Advocate activity as compared to expenses incurred each year?

Question B3. What is the best organizational placement for OPA?

Public Perceptions and Comparisons

Question C1. What are the perceptions of those who have dealt with OPA in the appeals process?

Question C2. Do other jurisdictions have an organizational unit or a position which performs duties similar to the County's OPA?

A. Responsibilities and Authority of OPA

Creation of a Public Advocate's Office was legislated by the County Council (Bill No. 49-73 in January, 1974) to provide for the independent review of the property assessment process in the County. During legislative worksessions, the Council expressed that OPA should concentrate its efforts predominantly on commercial and other nonresidential properties to identify and correct inequitable assessments which could result in a significant tax loss to the County or an unwarranted shifting of the property tax burden to other property owners.

In addition, the Council expected OPA to provide public education and information to property owners relating to the assessment and appeal processes, and "to develop and make available to the public guidelines and procedures specifying when, for whom and under what conditions the Advocate will appeal an assessment decision or intervene in an assessment proceeding" (Section 52-40 (a)).

As legislated, the major responsibilities of OPA are:

- To appear or intervene in proceedings before the Supervisor of Assessments, the Property Tax Assessment Appeals Board, the Maryland Tax Court, and the Courts of Maryland on behalf of the public and the taxpayers with respect to the valuation, assessment, classification, or exemption from tax of any property; the application for an abatement, modification, or reduction of any assessment of property and the tax pertaining thereto; or the application for exemption from tax or from any assessment of property and the tax pertaining thereto. (Section 52-40 (b)(1)).

- To advise residents and taxpayers of the County of their rights under State and County tax laws. (Section 52-40 (b)(4)).

Other legislated duties of OPA are:

- To prepare and provide to the County Council, the County Executive and the public an annual report setting forth the activities and accomplishments of OPA. (Section 52-40 (b)(5)).

- To exercise and perform such other functions and duties consistent with the purposes or provisions of Section 52-40 which may be necessary or appropriate to protect the public and taxpayers of the County. (Section 52-40 (b)(6)).

The statutory authority of OPA is:

- To make such investigations and employ consultants or experts as necessary to the performance of the duties of the Office. (Section 52-40 (b)(2)).

- To have full access to all government records necessary in carrying out the duties imposed under Section 52-40. (Section 52-40 (b)(3)).

Appointment of the Public Advocate is the responsibility of the County Executive, subject to confirmation by the County Council. The first Public Advocate was appointed in July 1974, and OPA began operation during the first month of FY75. Since establishment of OPA, three different individuals have served as Public Advocate, with the current Public Advocate having served since May 1987.

Question A1. Is OPA meeting its statutory responsibility to seek equity for County taxpayers through the appeals process?

Discussion

OPA is expected to concentrate its efforts on commercial and other nonresidential properties to identify and correct mis-assessments which could result in significant tax loss to the County or unwarranted shifting of the property tax burden to other property owners. This concentration of effort

was deemed necessary because of the significantly higher value of nonresidential properties and the complexities involved in valuing such properties. Aside from farm properties, commercial and other nonresidential properties make up approximately three percent of the total number of taxable properties in the County, but represent 27 percent of the dollar value of the taxable assessment base. The predominant methods used for valuing residential properties are based on selling price and replacement cost. For commercial, industrial, and apartment properties the assessor also considers any business income and expenses when valuing the property.

In the State of Maryland, all properties are examined by assessors on a three year (triennial) cycle to determine the current market value to which a percentage is applied (currently 40%) to arrive at the assessment. However, not all properties are actually taxed at the assessed value. Restrictions have been imposed at both the State and local levels to limit the amount by which the taxable assessment may be increased each year. Generally, for owner-occupied residential properties, the taxable assessment cannot be increased by more than ten percent above the previous year's taxable assessment. No taxable assessment limitations or caps are applicable to rented or nonresidential properties.

Improved residential properties are rarely mis-assessed by significant amounts and owner-occupied properties are subject to the ten percent assessment cap. However, if identified and corrected, each \$100,000 of under-assessment for a property NOT subject to the ten percent cap on assessment increases would yield approximately \$1,150 additional property taxes for FY92.

Computation:

\$100,000 times 40% = \$40,000 taxable assessment;
\$40,000 divided by \$100 = \$400 in taxable units;
\$400 in taxable units times \$2.87 average FY92 tax rate = \$1,148.

Although OPA concentrates its major review efforts on nonresidential property assessments, all taxable property accounts are included in a general review of assessments. For this process, the OPA each year performs a computer assisted review of all newly assessed and re-assessed property to identify potential under-assessed or mis-assessed properties and determine whether OPA should enter the appeal process. Table 2 shows the number of residential and nonresidential accounts on the real property tax rolls each year since Fiscal Year 1980, of which, approximately one-third were re-assessed each year and reviewed by OPA. (The table excludes accounts exempt from property taxes, which are also reviewed periodically by OPA, but not as part of the annual process here described.)

Table 2

**Summary of Taxable Real Property Accounts
FY80 - FY90**

<u>Fiscal Year</u>	<u>Residential</u>		<u>Nonresidential*</u>	
	<u>No. of Accounts</u>	<u>Percent Increase</u>	<u>No. of Accounts</u>	<u>Percent Increase</u>
1980	164,120	n/a	8,717	n/a
1981	176,207	7.36%	8,838	1.39%
1982	184,294	4.59%	8,880	0.48%
1983	194,415	5.49%	9,431	6.20%
1984	200,806	3.29%	9,567	1.44%
1985	209,755	4.46%	9,800	2.44%
1986	218,944	4.38%	9,946	1.49%
1987	228,834	4.52%	9,958	0.12%
1988	233,684	2.12%	10,152	1.95%
1989	238,406	2.02%	10,306	1.52%
1990	242,020	1.52%	10,390	0.82%
Net Change from FY80	77,900	47.47%	1,673	19.19%

* Nonresidential Accounts include Commercial, Industrial, Farm, Commercial Condominium, and Multi-Zoned Properties.

Source: Office of the Public Advocate for Assessments and Taxation

Upon completion of its general review of taxable property assessments, OPA transmits to the Supervisor of Assessments a list of "questionable" values assigned to taxable property accounts. State assessors review the list and related assessment files, as necessary, and correct erroneous accounts. This informal process provides for a coordinated effort between OPA and the State assessors to focus on the most obviously mis-assessed properties, and does not preclude OPA from appealing any accounts which were not adjusted. Changes to taxable accounts at the Supervisor level in response to OPA listings resulted in net assessment increases of \$8,076,440 for 1990 and \$5,925,080 for 1991.

OPA participates in the property assessment appeals process in one of two ways: (1) by independently identifying a potentially under-assessed property and filing an appeal on behalf of the County, or (2) by reviewing appeals filed by property owners and intervening in the process. As mentioned earlier, OPA identifies potentially mis-assessed properties through an annual review of assessments. However, OPA also routinely reviews assessment appeals initiated by property owners. This process includes a general review of all appeals, with special emphasis placed on nonresidential properties. Table 3 shows the total number of properties assessed in the County for calendar years 1984 through 1990 and the number of appeals filed, and is indicative of the workload associated with OPA annual reviews of assessment appeals.

Table 3

**Schedule of Total Properties Assessed in Montgomery County
and Number of Appeals by Property Type**

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
# Accounts Assessed							
	80,219	78,328	84,887	80,318	111,015	83,148	81,241
# Accounts Appealed							
Apartment	9	72	100	73	95	Data	
Residential	1,197	1,077	1,039	1,121	957	No	
Commercial	192	276	302	326	279	Longer Available	
Condominium	14	61	46	140	67	for	
Industrial	85	159	69	85	194	Tracking Detail	
Farm	<u>12</u>	<u>27</u>	<u>33</u>	<u>7</u>	<u>18</u>		
Total	<u>1,509</u>	<u>1,672</u>	<u>1,589</u>	<u>1,752</u>	<u>1,610</u>	<u>2,627</u>	<u>10,159</u>
% Appealed	1.9%	2.1%	1.9%	2.2%	1.5%	3.2%	12.5%

Source: Office of the Public Advocate for Assessment and Taxation

The Supervisor level of appeal is an informal process conducted on behalf of a property owner who wishes to appeal an assessment, and OPA does not normally intervene in an appeal at this level. However, OPA can and does intervene at the more formal PTAAB and/or Maryland Tax Court levels of the appeals process. At the PTAAB level, OPA may intervene in an appeal relating to any property category, but primarily concentrates on commercial, industrial, and apartment cases with property values exceeding \$250,000. At the Maryland Tax Court level, OPA will consider intervention to support a PTAAB decision whenever the property owner's appeal is based on a contention that the value is significantly lower than the PTAAB decision.

Once OPA makes a decision to intervene in a property owner's appeal at the PTAAB level, a form letter is prepared and forwarded to the PTAAB as notification that OPA intends to appear at the hearing as a party in interest on behalf of Montgomery County. This notification is placed in a PTAAB review file, which is available for review by the appellant and any representatives of the appellant. At a later date OPA may submit written materials in support of the Public Advocate's estimated value for the property. By law, written materials in support of an intervention may be submitted to the PTAAB any time up to and including the scheduled hearing date. OPA generally tries to submit materials prior to the hearing date.

As representing the County government, OPA has full access to the State's property assessment worksheets and other information contained in the assessor's files for all properties located in the County. This file may include confidential income and expense information relating to income producing properties.

To assist assessors in appraising certain commercial, industrial, and apartment properties, State statute requires owners of such income producing properties to submit income and expense data by July 15th each year. If the property owner fails to submit the required information and later files an appeal, financial information must be provided at the Supervisor's hearing in order to have income and expenses considered. Any further appeal based on income is precluded if the property owner fails to meet this requirement in a timely manner. Thus, if financial information is not timely provided by the property owner, the major penalty is that the owner will be precluded from later using the income approach as a basis of appeal.

While financial documents submitted under the requirement are held confidential from public view, such documents may be examined by OPA on behalf of the County, so as to allow for an independent OPA determination of the market value. OPA is required to submit a formal request to review such documents.

In preparing its case for an intervention, OPA reviews the assessor's file on the subject property; researches sales and transfer documents to identify recent sales of comparable properties; reviews the PTAAB or Maryland Tax Court file in advance of the hearing date; examines income and expense information, if appropriate; and prepares an analysis based on the income approach to valuation, provided financial information has been submitted by the property owner.

The present Assistant Public Advocate has 12 years of experience as a former State assessor in Montgomery County. His geographic familiarity of the County coupled with an in-depth knowledge of State assessment practices and procedures has been valuable to OPA in pursuing equity and fairness in assessments. The County's case for OPA appeals or interventions at the Supervisor or PTAAB levels are prepared exclusively by OPA and presented by the Assistant Public Advocate; whereas for the Maryland Tax Court appeal level, OPA engages independent professional appraisers or consultants, as necessary, and the County Attorney's Office assists in preparing the case and conducts the presentation.

Table 4 contains a summary of decisions made during Fiscal Years 1989, 1990, and 1991 at the various assessment appeal levels in which OPA participated either as an appellant or intervened on behalf of the County.

Table 4

Summary of Decisions Relating to OPA Appeal of Assessments

Appeals Decided During FY89:

<u>Year Appealed</u>	<u>Decision Level</u>	<u>Appealed Value</u>	<u>Decided Value</u>	<u>Net Value Increase</u>
FY87	PTAAB	\$ 28,827,070	\$ 38,383,110	\$ 9,556,040
FY88	PTAAB	83,114,540	92,806,320	9,691,780
FY88	Supervisor	135,883,040	156,784,550	20,901,510
FY89	Supervisor	<u>139,240,440</u>	<u>154,960,850</u>	<u>15,720,410</u>
Totals FY89		<u>\$387,065,090</u>	<u>\$442,934,830</u>	<u>\$55,869,740</u>

Appeals Decided During FY90:

FY89	PTAAB	\$ 16,739,280	\$ 23,606,630	\$ 6,867,350
FY89	Supervisor	2,690,940	2,721,610	30,670
FY90	Supervisor	<u>16,063,140</u>	<u>24,752,530</u>	<u>8,689,390</u>
Totals FY90		<u>\$ 35,493,360</u>	<u>\$ 51,080,770</u>	<u>\$15,587,410</u>

Appeals Decided During FY91:

FY90	PTAAB	\$ 72,842,840	\$ 86,168,970	\$13,326,130
FY90	Supervisor	26,094,340	26,745,210	650,870
FY91	Supervisor	186,887,440	197,876,770	10,989,330
FY90	Tax Court	<u>111,875,960</u>	<u>130,000,000</u>	<u>18,124,040</u>
Totals FY91		<u>\$397,700,580</u>	<u>\$440,790,950</u>	<u>\$43,090,370</u>

Source: Compiled from annual reports of the Office of the Public Advocate for Assessments and Taxation.

In addition to the activity shown in Table 4, negotiated settlements were reached with the owners of three commercial properties. Each of the owners had appealed the assessments at the Supervisor and PTAAB levels. In each instance, OPA supported the assessor's values which had been affirmed at the PTAAB level. OPA prepared for the Tax Court level for these cases, obtaining independent professional appraisals and contributing to negotiations. Settlement of the three cases resulted in property assessment values of \$5.0 million, \$6.0 million, and \$3.7 million above the values the property owners had originally contended.

Conclusion

OPA actively involves itself at each of the administrative levels of assessment appeals authorized by the State of Maryland, and is fulfilling its responsibility to seek equity for County taxpayers through its review of assessments and participation in the appeals process. OPA informal involvement with the local office of the State Department of Assessments and Taxation and formal involvement in each of the various levels of the appeals process have had a beneficial effect on County revenues.

Question A2. Is OPA meeting its statutory responsibility to advise County residents and taxpayers of their rights under State and County tax laws?

Discussion

OPA staff advise taxpayers of how the assessment process works, and how and where to file an appeal. OPA does not file appeals on behalf of individual taxpayers, but advises citizens regarding the necessary steps and provides informational pamphlets and brochures to assist taxpayers. On average, OPA annually responds to more than 200 telephone and written inquiries from individual taxpayers relating to property assessments and the appeals process. During years in which property assessments have risen significantly, OPA has responded to as many as 3,000 inquiries.

Since FY85, OPA has been conducting at least six workshops annually to educate the public on the assessment and appeals processes. In any year, OPA will schedule additional workshops as deemed necessary, or as requested by civic groups or other special interests. For example, during FY90, OPA conducted eight workshops on behalf of citizen groups (attended by 1,140 participants) in addition to its regularly scheduled six workshops (attended by 1,615 participants).

Also during FY90, OPA designed a participant evaluation form to measure the effectiveness of its workshops and used the form to self-evaluate the six workshops sponsored by OPA during the period. Five criteria were identified by OPA and workshop participants were asked to rate each criteria using a range of one to five, with one being the lowest rating and five being the highest rating. The evaluation criteria used by OPA are listed below, and followed by Table 5 which contains a summary of the average ratings awarded by participants in workshops for Fiscal Years 1990 and 1991.

Evaluation Criteria:

- Criteria 1. How well did the workshop meet its stated objectives?
- Criteria 2. How well was the relevant subject matter presented?
- Criteria 3. How well was the relevant subject matter covered?
- Criteria 4. How well were your questions about assessments answered?
- Criteria 5. How useful are the handouts provided?

Table 5

**Summary of OPA Sponsored Assessment and Appeals
Workshop Participant Evaluation Results**

Summary of Response Averages (FY90 Workshops):

	Bethesda 12/14/89	Olney 12/19/89	Potomac 01/04/90	Silver Spring 01/09/90	Rockville (p.m.) 01/10/90	Rockville (a.m.) 01/11/90
<u>Attendees</u>	130	110	600	350	100	325
<u>Criteria</u>						
1	4.14	4.27	4.23	4.41	4.60	4.29
2	3.95	4.14	4.17	4.42	4.61	4.29
3	4.10	4.05	4.04	4.28	4.57	4.13
4	4.22	3.85	3.67	4.05	4.46	4.03
5	4.34	4.42	3.77	4.47	4.49	4.37
Average Score:	4.15	4.15	3.98	4.33	4.55	4.22

Summary of Response Averages (FY91 Workshops):

	Olney 12/18/90	Rockville (p.m.) 12/19/90	Gaithers- burg 12/20/90	Gaithers- burg 01/03/91	Rockville (a.m.) 01/15/91	Burtons- ville 01/16/91	Cloverly 01/17/91
<u>Attendees</u>	150	150	50	180	220	550	51
<u>Criteria</u>							
1	4.14	4.27	4.23	4.41	4.60	4.29	4.73
2	3.95	4.14	4.17	4.42	4.61	4.29	4.82
3	4.10	4.05	4.04	4.28	4.57	4.13	4.71
4	4.22	3.85	3.67	4.05	4.46	4.03	4.41
5	4.34	4.42	3.77	4.47	4.49	4.37	4.58
Average Score:	4.28	4.26	4.39	4.29	4.23	4.13	4.65

Source: Compiled by OLO from annual reports of the Office of the Public Advocate for Assessments and Taxation

To supplement its workshop activities and further assist County property owners in understanding the assessment and appeals processes, during Fiscal Year 1990, OPA developed a video program in cooperation with the County's Office of Public Information. This program was first broadcast on cable television during the December-January timeframe relating to the 1988-89 assessment cycle and was rebroadcast for the 1989-90 cycle. During Fiscal Year 1992, OPA again worked with the Office of Public Information to modify and update the program prior to its re-broadcast in December-January of the 1990-91 assessment cycle. In the last few years, additional media involvement by OPA has included participation in a number of cable broadcast interviews and several radio talk programs.

Conclusion

OPA is fulfilling its responsibility to advise residents and taxpayers of their rights under State and County property assessment and tax laws. Through its workshops, brochures, and other outreach efforts, OPA provides a valuable educational service to property owners in the County.

Question A3. Is OPA meeting its statutory other responsibilities to annually produce a report setting forth the activities and accomplishments of OPA; and to perform additional functions and duties which may be necessary or appropriate to protect the public and taxpayers of the County?

Discussion

Since its creation in FY74, OPA has each year published a report to the County Council, the County Executive, and the public. These reports have provided an overview of OPA operations and activities for the year. The Office of Legislative Oversight (OLO) reviewed annual reports from FY85 through FY91 and determined that the publications are providing necessary and important information to the Council, the Executive, and the public regarding OPA activities and accomplishments.

OLO also reviewed OPA publications for educating and assisting the public in the State's assessment and appeals processes, and analysis papers and statistical reports on decisions made at the Supervisor of Assessment level, the PTAAB level and the Maryland Tax Court level. OPA has consistently made its annual reports and studies available to the Council, Executive, and the public. (See Exhibits D and E for listings of OPA produced documents and other related reports and publications reviewed by OLO.)

As part of its "other duties", OPA reviews and evaluates proposed assessment and tax laws and recommends new tax legislation when appropriate. OPA annually reviews approximately 30 State and/or County legislative measures regarding assessments and related tax initiatives and forwards comments to the Executive as appropriate.

In addition, OPA often works cooperatively with County offices and departments and other groups in a variety of activities, including:

- Assisting the Department of Housing and Community Development on projects related to developing and providing property tax incentives to encourage and maintain affordable housing in the County.
- Participating as the lead in a group to evaluate the County's need to take advantage of State legislation allowing deferral of some property taxes for eligible elderly or disabled property owners.
- Presenting testimony before a State Task Force on Maryland Tax Court practices and procedures, which resulted in some of OPA's suggestions being incorporated into legislation subsequently adopted by the State.
- Working with the local State Department of Assessments and Taxation to establish administrative procedures relating to OPA involvement in settlement negotiations with property owners in those cases where OPA had appealed or intervened at the PTAAB level on behalf of the County.
- Working with the County's Department of Environmental Protection, Division of Construction Codes Enforcement and the State Department of Assessments and Taxation to ensure the timely addition of newly constructed properties to the tax rolls.

OPA also conducts annual studies and compiles statistical data relating to assessment appeal decisions for all categories of real property in the County. Data tracked by OPA includes the number of appeals filed annually, the number of property assessments changed through appeal, and the dollar amounts of value changed by decisions at the Supervisor and PTAAB appeal levels.

According to OPA, this data is used as an information base to answer inquiries from the public, news media, and various governmental agencies. Most inquiries relate to the number of appeals in general and by property type, the success rate of appeals, and any assessment reductions that might be expected from participating in the appeals process.

In FY86, the Public Advocate attended an international conference on Computer Assisted Mass Appraisal (CAMA) systems. Since that time, OPA has encouraged the State to examine the feasibility of adopting a computerized system to uniformly appraise properties. For residential properties, certain variables such as living space, area of a structure, number of bedrooms and bathrooms, quality of construction, etc., could be entered into a data base and standard formulas applied to arrive at uniform assessments. Based on the experiences of several states that have instituted computerized systems, OPA believes that the Maryland assessment system would benefit from such a system.

During FY89, OPA developed Internal Administrative Procedures for OPA Involvement in the Appeal Process for the County. This document explains when, for whom, and under what conditions OPA will either appeal an assessment or intervene in a property owner appeal. (OPA procedures are attached to this report as Exhibit F.)

OPA began a new program on June 15, 1989 to alert taxpayers of their right to a tax adjustment from the State if their home has been damaged by fire or other disasters. This program is designed to provide technical assistance to taxpayers who have suffered sufficient damage to warrant a temporary abatement and possible property tax reduction. For this program, OPA works directly with the Department of Fire and Rescue Services to identify properties that have over \$30,000 in damage and to notify the owners that they may be eligible for a temporary reduction in property taxes due. Through December 1991, 94 owners of fire damaged properties and 93 owners of storm damaged properties had been notified by OPA.

In the last year, OPA was assisted by a volunteer from the County's Volunteer Opportunities for Retired Professionals (VORP) program. The volunteer, a long-time resident of the County with a special interest in agriculture, conducted a special study to examine assessments for small farms of less than 20 acres. The purpose of the project was to identify any small farm properties which may be classified on the assessment rolls for agricultural use but are no longer farmed. The scope of the project included a survey to determine the nature of any agricultural activity being carried out and included a number of questions derived from the law to verify whether the current primary use of the land is farming. OPA has provided data to the Supervisor of Assessments and requested that several properties be removed from the agricultural listing.

Conclusion

OPA is fulfilling its legislated requirement to provide an annual report to the Council, the County Executive, and the public. In addition, OPA often conducts special studies and projects, assists the Offices of the County Attorney, Management and Budget, and State Affairs by reviewing proposed legislation relating to assessment or property tax issues, and sometimes recommends legislation.

Question A4. Does the County law enumerating OPA authority, duties, and responsibilities need to be clarified or expanded?

Discussion

OPA is satisfied that County Code Chapter 52, Article V, Public Advocate for Assessments and Taxation, clearly and succinctly establishes the authority, duties, and responsibilities of OPA as envisioned by the Council when the Office was created. However, OPA did express an interest in expanding its authority to include administrative subpoena power in certain circumstances.

As previously mentioned, State statute requires owners of income producing property (certain commercial, industrial, and apartment property) to each year submit income and expense data relating to the property. However, if the property owner fails to meet the requirement, the only penalty is that the owner will be precluded from later using the capitalization of income approach as a basis for appealing the assessment, unless the owner produces the income and expense data at the Supervisor level of appeal.

On several occasions, OPA has identified potentially under-assessed income producing properties where the property owners have failed to submit income and expense data. In those instances, OPA has not been able to use the capitalization of income approach for valuing the property. If the property is unique and no sales of similar property have taken place for several years, the comparative sales approach would not be applicable, and OPA would be restricted to using only the replacement cost approach to valuing the property.

Since the objective of the assessment process is to identify the market value of properties, sales prices can be considered the best evidence of market value. However, there are not always enough sales of a particular kind of property to give the assessor or OPA reliable evidence of value. This is especially true of commercial and industrial properties which tend to be unique, so that the sales price for one does not indicate much about the value of another.

The market value of any interest in real property that has an income can be estimated by the income capitalization approach. Because income producing properties are usually exchanged in the marketplace as investment properties, their earning power is of critical concern to investors and appraisers. Many assessors prefer to use the income capitalization approach when valuing such properties because it measures the present value of the expected future benefits of ownership. Sales of property are also researched to identify, whenever possible, comparable properties which have recently transferred ownership. The best case scenario for determining an appropriate assessment may include an independent valuation under each of the three methods, followed by a comparison of the results to arrive at a reliable estimate of the fair market value.

Conclusion

In order for OPA to consider all valuation methods applicable to income producing property, the Office must be able to obtain income and expense information relating to such properties. OPA cannot currently obtain income and expense data from owners of income producing properties who do not choose to submit the information. If the County Code were amended to include administrative subpoena authority for OPA, the valuation process used by OPA for income producing properties could include a combination of assessment techniques that have a common objective of determining a reliable estimate of fair market value.

B. Staffing and Organizational Placement

Question B1. Is staffing of OPA adequate to allow for reasonable accomplishment of the intended mission?

Discussion

In its first full year of operation (FY75), OPA was staffed by one position: the Public Advocate. The average staffing of OPA from FY76 through FY80 was 2.5 workyears; from FY81 through FY85, staffing was 3.0 workyears; from FY86 through FY90, staffing was 3.4 workyears; and since FY91, staffing has been 4.0 workyears. These workyears include the occasional use of temporary part-time Public Administration Intern positions to assist with analyzing data and compiling statistical reports.

OPA is currently staffed by the following full-time positions:

- Public Advocate, Grade 30
- Assistant Public Advocate, Grade 26
- Program Specialist I, Grade 18
- Office Services Manager, Grade 15

In addition to these full-time positions, OPA has occasionally utilized the services of contracted consultants or appraisers to assist with appeals and interventions at the Maryland Tax Court level of appeal; County attorneys to prepare cases and participate in Maryland Tax Court appeal and intervention cases; and individuals from the Volunteer Office of Retired Professionals (VORP) to assist with special projects. Except for VORP assistance, either the cost and/or workyears associated with these services have been reflected in OPA or County Attorney budgets and expenditures.

A County attorney becomes involved in each appeal or intervention which OPA is preparing for the Maryland Tax Court level. In addition, an outside appraiser is retained to provide consulting services and/or expert witness testimony. Since FY87, OPA has required assistance from the County Attorney and engaged the services of professional appraisers on the average of twice yearly. Although most appeals and interventions are settled at the Supervisor or PTAAB levels, OPA may participate in a Maryland Tax Court case up to six times in any one year.

The County Attorney's Office estimates that attorney time devoted to providing support for OPA cases averages 15 percent (.15 workyears) of one attorney's time annually. If consultant time is approximately equivalent to attorney time, then an average of about .30 workyears annually is provided to OPA from these two sources.

During FY92, a VORP volunteer performed a special study to examine small farm assessments for OPA, and donated approximately .30 workyears of services. Thus, during FY92, OPA activities consumed about 4.6 workyears, of which approximately 4.3 workyears were County funded.

The workload of OPA is somewhat sporadic. Once the triennial assessment cycle is completed by the State in December of each year, under State law, OPA has 45 days to identify mis-assessments and file appeals on behalf of the County. Also during this period, OPA conducts its workshops to educate and advise interested or concerned taxpayers on how to file appeals on their own behalf. In years when assessments increased significantly, more property owners filed appeals, and OPA workload during this period increased accordingly. Besides an increase in the number of property owner appeals to be reviewed for possible intervention on behalf of the County, there was a greater demand on OPA to conduct additional workshops and answer inquiries.

During the remainder of the year, OPA participates in the appeals process at the various administrative levels, reviews and provides recommendations relating to proposed legislation, and conducts special studies. OPA has somewhat more control over its workload during this period as it relates to resources to be devoted to special studies.

Conclusion

OPA is expected to seek equity for all taxpayers by reviewing assessments and re-assessments, predominantly concentrating its efforts on review of commercial and other nonresidential properties to identify and correct those which appear to be significantly mis-assessed. Since OPA is not expected to review all properties, but to concentrate its efforts, the Office need only work toward correcting the most obvious assessment errors. Thus, under normal circumstances OPA appears to be adequately staffed to accomplish its mission. In years when assessments have increased substantially, however, OPA has experienced some difficulty in managing its workload.

Question B2. What benefits have been derived from having a Public Advocate activity as compared to expenses incurred each year?

Discussion

As mentioned previously, the two major missions of OPA are to monitor the assessment process and seek equitable assessments through the State appeals process on behalf of property owners and taxpayers in Montgomery County, and to inform and educate the public about the assessment and appeals processes. Some of the benefits that accrue to County property owners and taxpayers as a result of OPA activities (such as increases in property tax revenues resulting from successful appeals and interventions), are to some extent measurable in dollars, but other OPA activities (such as public education and review of property tax related legislation) cannot be so measured.

OPA estimates that each time an outside consultant or appraiser is engaged, the cost of these services could range from \$8,000 to \$50,000 depending on the details of the property and the complexity of the case. Table 6 shows the detail of OPA cases at the Maryland Tax Court level for the past five years. Over this period, OPA expended an average of \$17,714 per year for consultants, or an average of \$14,762 per case for six cases.

Table 6

**Schedule of Consultant Costs Associated with OPA Appeals
and Interventions at the Maryland Tax Court Level
(Calendar Years 1987 Through 1991)**

<u>Property Owner</u>	<u>Appealed Value</u>	<u>Tax Court Value</u>	<u>Tax Added First Year</u>	<u>Cost for Consultant</u>
WMAL	\$ 3,052,600	\$ 6,000,000	\$ 32,420	\$ 14,495
Bethesda Metro- WMATA	78,659,920	85,000,000	69,740	23,000
Silver Spring Metro-WMATA	39,805,400	45,853,400	66,528	9,000
Bermil/Pavillion	30,265,000	27,208,500	(33,621)	6,000
White Flint Mall	111,875,960	130,000,000	199,365	28,075
Ardnave	<u>1,054,400</u>	<u>4,750,000</u>	<u>48,437</u>	<u>8,000</u>
Totals	<u>\$264,713,280</u>	<u>\$298,811,900</u>	<u>\$382,869</u>	<u>\$ 88,570</u>

Source: Office of the Public Advocate for Assessments and Taxation.

A significant result of OPA's activities in seeking correction of mis-assessments is the generation of additional property tax dollars. OPA seeks to correct mis-assessments by (1) notifying State assessors of suspected mis-assessments, (2) appealing assessments on behalf of the County, and (3) intervening in property owner appeals.

Although OPA rarely needs to revisit a property in the year following an assessment correction, sometimes further appeals are made by OPA or property owners which carry over into the next year. Other times, an appeal may be filed in one fiscal year but settled in another. In measuring the financial success of OPA, therefore, only the first year additional taxes generated from OPA activities relating to correction of assessments were considered by OLO for comparison to expenditures. Table 7 shows this information for Fiscal Years 1987 through 1991. The table does not take into consideration the fact that assessment increases would likely carry forward and generate additional tax revenues in future years.

Table 7

**Increases to Taxable Assessments and Property Taxes
Versus OPA Expenditures for Five Fiscal Years
(Fiscal Years 1987 Through 1991)**

<u>Fiscal Year</u>	<u>Increase in Taxable Assessment</u>	<u>Approximate Tax Increase First Year</u>	<u>OPA Expenditures</u>
1987	\$23.5 million	\$ 705,000	169,453
1988	43.7 million	1,292,000	198,318
1989	26.3 million	789,000	213,858
1990	27.3 million	824,000	269,336
1991	<u>22.2 million</u>	<u>642,000</u>	<u>298,260</u>
Totals	<u>\$143.0 million</u>	<u>\$4,252,000</u>	<u>\$1,149,225</u>

Source: Compiled by OLO from data contained in OPA Annual Reports and County Executive Recommended Operating Budgets

OPA Expenditures in Table 7 include actual costs associated with using outside consultants or appraisers, plus \$8,000 for each fiscal year as an average value for County Attorney staff time. The County Attorney's Office estimates that on average, 15% of one attorney's time is needed annually for preparation of and participation in Maryland Tax Court cases.

On occasion, OPA assists a concerned citizen by providing information and advice regarding the appeals process, where the citizen is interested in correcting a mis-assessment of a neighboring residential property. Because OPA only provides advice and does not become actively involved in such cases, the Office does not track the success or failure of the endeavors. These kinds of activities fall under the public information and education mission of OPA, as do workshops and radio or television appearances. While OPA workshop efforts do not lend themselves to measurement in dollars, the activities have been measured by OPA through evaluation forms submitted by workshop participants. (See page 16, Table 5, Summary of OPA Sponsored Assessment and Appeals Workshop Participant Evaluation Results).

Conclusion

Both public service and financial benefits accrue to the County as a result of OPA activities. Based on first year tax increases resulting from OPA appeals and interventions, as compared to OPA annual expenditures, OPA generates revenues on behalf of County taxpayers well in excess of the costs associated with operating the Office. In addition, OPA provides valuable public education and assistance services to County taxpayers. While these latter services are not measurable in dollars, ratings and comments submitted by workshop participants indicate a high level of satisfaction.

Question B3. What is the best organizational placement for OPA?

Discussion

In April 1990, the County Council established a commission to examine the programs and operations of County government. Among other things, the Commission to Review the Efficiency and Effectiveness of Government (Commission) was asked to identify initiatives that would increase efficiency and effectiveness through improvement to the structure and operation of the government.

As part of its review, the Commission contracted with KPMG Peat Marwick Management Consultants to examine the organizational structure of the County's Executive branch. The Peat Marwick study included an examination of the existing functional and organizational structure of the Executive branch and the span of management control exercised by the Executive and the County Administrative Officer (CAO). Two major objectives of the Peat Marwick study were:

- "To assess the organizational structure of the Executive branch of County government relative to established organizational criteria"
- To identify the strengths and weaknesses in the organizational structure of the Executive branch of County government relative to these criteria, develop recommendations for improvement, and identify areas requiring further study"

In the August 1991 final report, Functional and Organizational Study of the Executive Branch of Montgomery County Government, Peat Marwick recommended changes in the location of certain offices and departments to lessen the span of control for the CAO and achieve more efficiency and effectiveness in the organizational structure of the Executive branch. The possibility of combining OPA with the Department of Finance or the Office of Consumer Affairs had been examined by Peat Marwick, and their final recommendation was to combine OPA with Consumer Affairs.*

OLO reviewed the Peat Marwick report, then discussed with the Public Advocate and the Directors of Finance and Consumer Affairs the perceived advantages and disadvantages of OPA as a stand-alone office or as combined with Finance or Consumer Affairs. In meetings with the Directors of Finance and Consumer Affairs, general discussions included concentration on the following questions:

- Does the mission of your Department/Office have any conflicts with the mission or functions of OPA? In what ways do the present missions and functions of OPA conform with the missions and functions of your Department/Office?

* The draft report on the organizational study of the Executive branch recommended placing OPA within the Department of Finance. In the final report to the Commission on Efficiency and Effectiveness, Peat Marwick recommended combining OPA with the Office of Consumer Affairs.

- If you were to review your Department/Office organization chart, where would you place OPA as a separate unit? Alternatively, which section or division would be most appropriate?

- To whom would the Public Advocate report for direction and supervision? Based on the current span of control, could the current manager of the receiving division easily assume the additional supervisory duties?

- Where would you physically locate OPA? Does your Department/Office have the physical space to accommodate four additional positions? How many positions could your Department/Office accommodate within your space limitations?

Organizational Considerations: Organizationally, OPA could be added to either the Department of Finance (DOF) or the Office of Consumer Affairs (OCA) as an intact separate unit reportable to the Director. Under either scenario, OPA would continue to operate as it currently does.

In the DOF model, an Assistant (proposed Chief of Operations), the Revenue and Tax Specialist, the Public Advocate, and three existing Division Chiefs would report to the Director. In an alternate DOF model, the Public Advocate would report to the Director's Assistant, who currently oversees three activities comprised of from one to three individuals in each unit. The combined span of control for the Finance Director and his Assistant are such that an additional unit could be readily managed.

The Finance Director expressed that OPA would best fit in with the Revenue Division as a separate unit. Under the Executive's reorganization plan for the Finance Department, the Division of Revenue will be comprised of two units, each containing from five to 17 positions. The span of control for the Chief of the Revenue Division would be such that an additional unit could be easily managed.

The Director of OCA expressed that OPA would not neatly fit in with any existing group, but should remain as a stand alone office reporting to the Director. The OCA has 34 positions divided into 4 groups. Aside from the Support Services Group, the groups are comprised of from four to nine individuals. The span of control for the Director of OCA is such that an additional unit could be easily managed.

Compatibility of Responsibilities and Activities: The two major responsibilities of OPA are to pursue equitable assessments on behalf of the public and County taxpayers by directly appealing or intervening in appeal proceedings before the various State administrative levels; and to educate and advise County residents and taxpayers of their rights under State and County tax laws. These responsibilities coincide with the OCA's mission to promote fairness in the marketplace and to educate businesses and consumers on their rights and responsibilities. OPA responsibilities also coincide with DOF's mission to provide for a reliable and efficient tax administration system.

Physical Locations: OPA is currently located on the 14th floor of the Metro 1 building at 51 Monroe Street in Rockville. This is the building in which the State assessors' offices are located, as well as the PTAAB offices. The location is also in proximity to the courts and the Executive Office Building (EOB) where the County Attorney Offices are located.

The Finance Director's offices are located on the 15th floor of the EOB at 101 Monroe Street in Rockville, approximately one block from OPA's current location. The Revenue Division is located on the 5th floor of the EOB. Although an EOB location would be somewhat less convenient for OPA in relation to the assessors' offices and the PTAAB offices, it would be closer to the courts and the County Attorney's offices. The Finance Director has indicated that space could be made available to accommodate OPA, if necessary.

The OCA is located on the 3rd floor of the Council Office Building (COB) at 100 Maryland Avenue in Rockville, approximately two blocks from the State assessors' offices, the PTAAB offices, and the courts. This location would not be as convenient for OPA access to the assessor and PTAAB offices as either OPA's present location or an EOB location. The Director of Consumer Affairs has indicated that there is not adequate space to add personnel at its current COB location.

OPA reports that the majority of personnel time devoted to activities outside of the Office is spent either at the assessors' or PTAAB offices. Therefore, the most convenient location for OPA would be to remain in the building in which it is currently housed.

OPA as an Independent Office: While not particularly opposed to becoming part of another department or office, the Public Advocate indicated that OPA should maintain a strong degree of authority and independence in the assessment review and appeals processes, so as to preserve its effectiveness in pursuing equitable assessments on behalf of Montgomery County. The Public Advocate views OPA's current authority as critical to the effectiveness of OPA when dealing with State officials and administrative offices. Visibility of OPA as a separate office, and public perception of the independence of OPA may also be important factors to consider when reviewing the organizational placement of OPA.

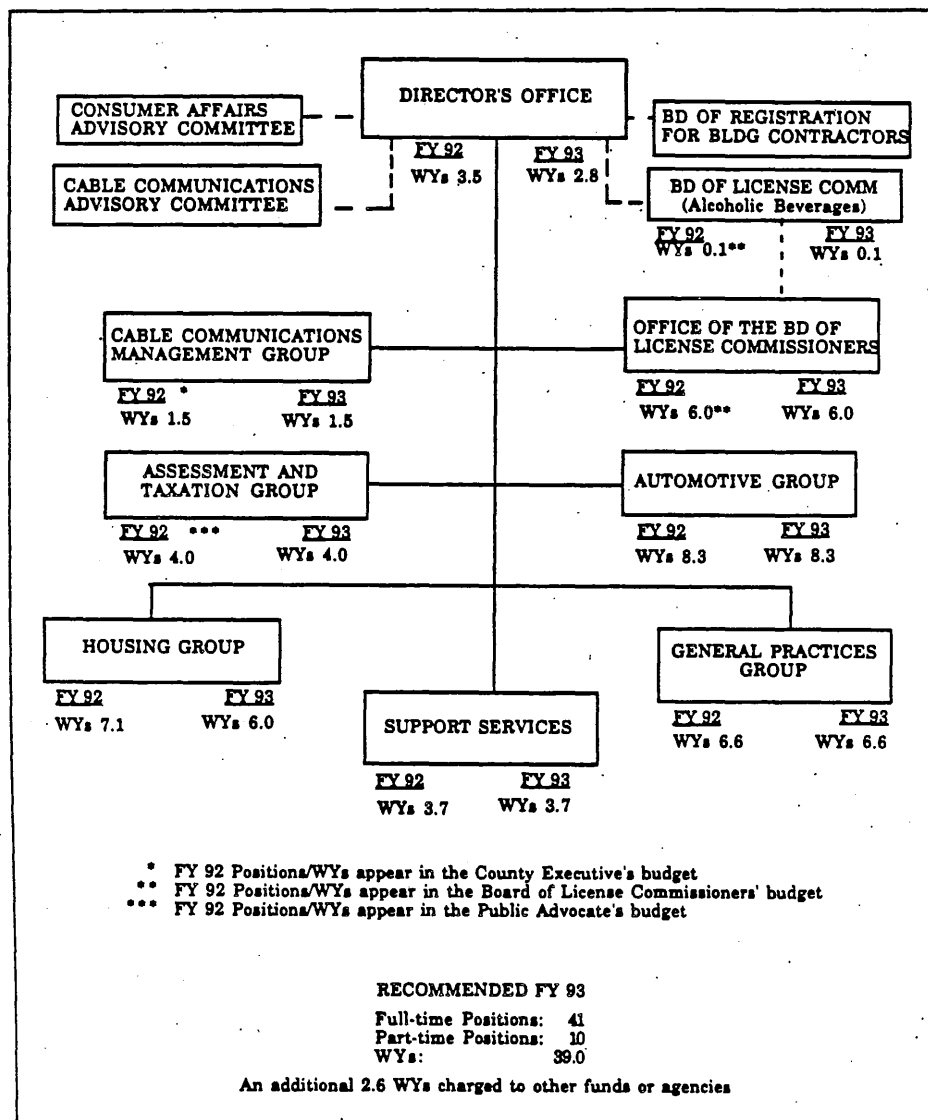
Previous Council Action Regarding Placement of OPA: In August 1981, the County Council considered an Executive initiative to dissolve OPA as an independent principal office of County government and re-establish it as an office within the Department of Finance. Under the Executive's plan, the Public Advocate position would have been changed from an Executive appointment (to be confirmed by the Council) to a merit position.

While not opposed to establishing closer ties between OPA and Finance, the Council rejected the Executive's proposal to place OPA within another County department and eliminate Council confirmation of appointments to the Public Advocate position. On September 1, 1981, the Council adopted Resolution 9-1432 to disapprove the reorganization plan and retain OPA as an independent principal office of County government.

Current Reorganization Proposal: The Executive's FY93 Recommended Operating Budget includes a plan to consolidate OPA into the Office of Consumer Affairs. Upon inquiry, OLO learned that more specific plans for such consolidation include: maintaining OPA as an intact unit; continuing to locate OPA at 51 Monroe Street; and changing the Public Advocate position from an Executive appointment requiring Council confirmation to a merit position. The Executive branch seems confident that the independence of OPA can be maintained while combined with another department, and with the Public Advocate position converted to merit status. However, OLO is doubtful that such arrangements are possible under the organizational placement depicted in the Executive's Recommended FY93 Operating Budget, which shows the status of OPA as reduced to a working group within OCA, as opposed to a distinct office.

Chart 1

**County Executive's Recommended Placement
for the Public Advocate Activity in the Office of Consumer Affairs**

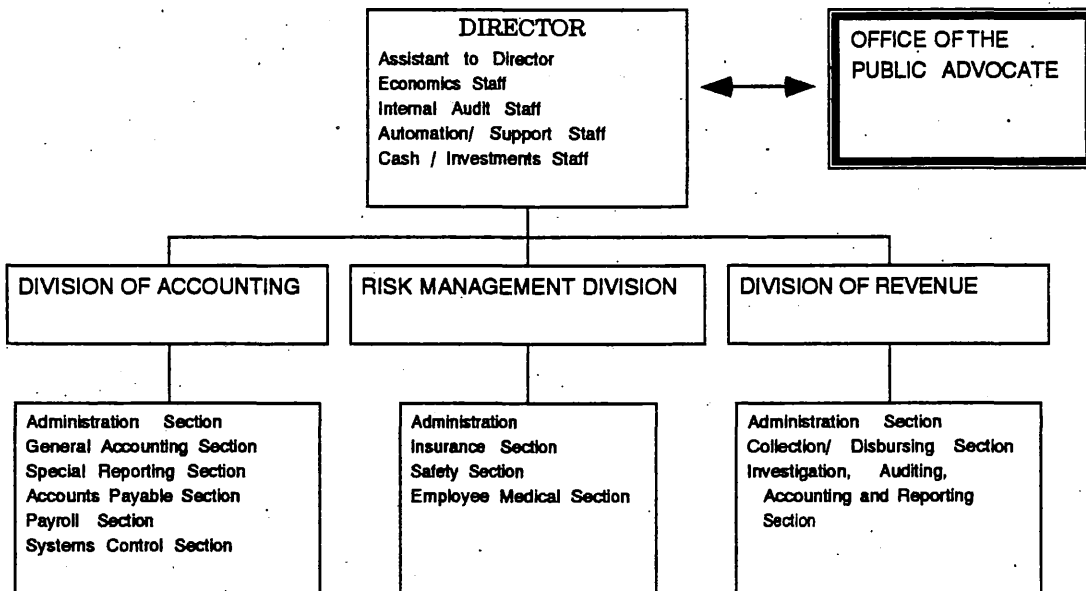


Conclusion

As an independent office, OPA has functioned well on behalf of Montgomery County taxpayers. However, it may be possible to retain OPA's independence and achieve organizational efficiencies by co-locating OPA as a separate intact unit with another County office or department. Without changes to the County Code, the Public Advocate position would then become subject to the merit system. OLO has found the missions and responsibilities of OPA to be compatible with either the Department of Finance or the Office of Consumer Affairs. Possible organizational placements with either Finance or Consumer Affairs, which allow for the greatest degree of OPA independence, would be as follows:

Chart 2

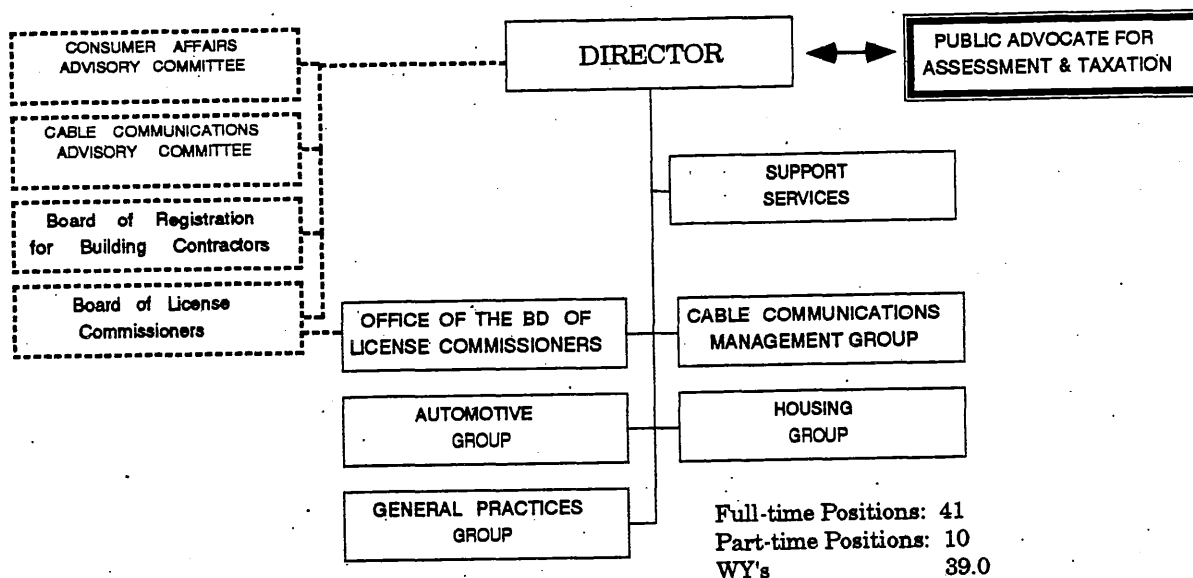
**Possible Placement for the
Public Advocate's Office
with the Finance Department**



Full-time Positions: 119
Part-time Positions: 4
WY's 131.1

Chart 3

Possible Placement for the
Public Advocate's Office
with the Office of Consumer Affairs



C. Public Perceptions and Comparisons

Question C1. What are the perceptions of those who have dealt with OPA in the appeals process?

Discussion

As part of the evaluation of OPA activities, OLO conducted a limited number of interviews with persons who either deal often or have had recent dealings with OPA. The purpose of the interviews was to obtain some indication of the range of impressions of those who have dealt in various capacities with OPA in the appeals process. Although only a small number of interviews were conducted and the process was not "scientific", OLO expected that some general conclusions could be drawn from the comments and suggestions offered by interviewees.

OLO specifically asked those interviewed to express their impressions relating to the preparedness of OPA in its appeal and intervention filings; the adequacy of OPA presentations at hearings; the demeanor and conduct of the OPA representative; and to offer any suggestions for improving the effectiveness of OPA. Those interviewed included current members and staff of the PTAAB, the Supervisor of Assessments and staff assessors, lawyers who have dealt with OPA in an adversarial capacity, and a citizen who received guidance from OPA in the appeals process. Following are brief discussions of input received from these various sources.

Members and Staff of the PTAAB: OLO discussed activities of OPA with current members and/or staff of the County's local PTAAB on two different occasions. In August 1991, OLO met with all three PTAAB members, and in February of 1992, OLO met with two members and the Clerk to the Board. All agreed that a representative of the County's interests in the appeals process is vital and were generally complimentary of OPA and the professionalism displayed by the Assistant Public Advocate who often appears on behalf of the County.

PTAAB members related that, when OPA appeals a case on behalf of the County, the presentation is clear, in-depth and always supported by written evidence submitted within the requested time limit (five working days prior to the hearing date). However, OPA initiates less than twenty appeals per year and the majority of OPA time before the PTAAB relates to interventions in property owner appeals.

For interventions, PTAAB members and staff noted a change in OPA documentation submissions over the past six months. Currently, OPA hearing presentations often include additional information and opinions, but written materials are rarely submitted covering the additional arguments. PTAAB members agreed that OPA intervention procedures are not as effective as they were six months ago, and are less effective than procedures used by OPA as an appellant.

PTAAB members did not consider the statistical reports OPA supplies to them as particularly useful and suggested that OPA staff time should not be devoted to producing the documents. Some PTAAB members speculated that by eliminating work associated with producing the statistical reports, OPA staff responsibilities could possibly be realigned to concentrate more effort on research in support of OPA interventions at the PTAAB level. Some members further speculated that efficiencies may be achieved for the County overall if OPA were discontinued as an independent office and combined into the County's Department of Finance.

Supervisor of Assessments and Staff Assessors: The Supervisor of Assessments for Montgomery County noted that he has worked with two former Public Advocates and the current Public Advocate. When OPA was first established in the mid 1970's the Supervisor recognized the need for an entity to represent the interests of Montgomery County. However, he now opposes the existence of OPA, citing that OPA is the only office of its kind in Maryland. He believes that the State assessment system has become much more efficient and accurate in its property valuations and does not require the same form of oversight that it required in the past. He noted that the Montgomery County Assessment Office has a better assessment record than other counties in Maryland.

Staff assessors stated that OPA has helped correct some errors in the assessors' calculations and assessment valuations. They noted that the Assistant Public Advocate conducts himself in a professional manner, but sometimes presents arguments which are not always reflected in his appraisal workup for the property. The assessors expressed opinions that OPA assessment review activities may be a good form of oversight in the assessment process,

but appeal activities probably represent some burden to individual commercial property owners. The assessors also noted that OPA sometimes assists the assessors at the PTAAB level by intervening to support the original assessment workup.

Attorneys Dealing with OPA: One of the attorneys interviewed represents both residential and commercial property owners in the assessment appeals process. On average, the attorney encounters OPA from two to four times per year on commercial cases at either the Supervisor or the PTAAB level of appeal. This attorney stated that OPA generally appears to be well prepared and conducts very professional presentations, but noted that OPA presentations sometimes involve narrative not always included in the written documentation.

As an aside, this attorney questioned the cost effectiveness of OPA in relation to the amount of additional tax revenues resulting from OPA activities, citing that a \$100,000 increase in a property has a taxable assessment of \$40,000, yielding about \$1,400 per year in additional taxes. The attorney suggested that the County might want to consider merging OPA into an existing department to achieve a better cost benefit relationship.

Another attorney interviewed by OLO deals with OPA, almost daily during the appeals process. This attorney noted that OPA appears at almost every commercial PTAAB hearing as an interested party, and expressed the opinion that OPA is trying to generally raise commercial property values in the County. This attorney opined that the assessors in Montgomery County are excellent and the best in State. Therefore, the purpose for which OPA was originally created is no longer a factor. This attorney suggested that OPA is not working on behalf of property owners and should work next year to lower assessments.

Both attorneys opined that OPA tends to extend the appeals process and cause added legal expenses for commercial property owners who appeal assessments.

Citizen Who Received Guidance from OPA: As part of OLO's review and evaluation of OPA, this writer attended a recent workshop conducted by OPA. OLO noted that OPA was assisted by two individuals in charge of signing-in participants and collecting the \$1.00 fee from those who wished to obtain written materials. Upon inquiry, OLO learned that OPA was being assisted by a husband and wife team who had volunteered their services, and that the gentleman volunteer had recently been advised by OPA for an appeal he wished to pursue.

This citizen had discovered OPA in 1990 when he wished to file an appeal relating to the assessment of a neighboring property. He did not know how the appeals process worked or how to file the appeal, so he inquired of the State Assessment Office in Rockville and was referred to OPA. Through OPA he received "valuable" guidance to pursue the appeal, and gives credit to OPA for his success in appealing the property assessment and winning the case. He believes OPA acts as a valuable source of information to the public and can be a "tremendous" help to confused property owners who are struggling through the appeals process.

Conclusion

Because of the different roles played by OPA in the appeals process, those interviewed expressed varying impressions about OPA. Of those who generally dealt with OPA in an adversarial capacity, some viewed OPA only in that light and argued for elimination of the Office, while others perceived that County citizens generally benefit from the activities undertaken by OPA. Most were complimentary of the professionalism displayed by OPA in its preparation for and presentation of OPA appeal cases, but noted that some improvements could be made by OPA in its handling of interventions. Finally, some interviewees suggested organizational or staffing realignments for OPA to improve efficiency or effectiveness.

Question C2. Do other jurisdictions have an organizational unit or a position which performs duties similar to the County's OPA?

Discussion

OLO contacted the Assistant Director of the Maryland Department of Assessments and Taxation to determine whether any offices similar to OPA exist in other counties of the State. The Assistant informed OLO that no known offices similar to OPA exist in other Maryland counties, nor are the activities of OPA known to be duplicated elsewhere. OLO next contacted several counties in Maryland to verify that a similar office was not being operated, and to expand the inquiry to ascertain whether the county was using any existing position in a capacity to represent their interests in the assessment and appeals processes. In this regard, the following were contacted: Allegany, Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, Prince George's, St Mary's, and Washington Counties. None of the ten counties reported having an office similar to OPA, or even a position devoted to activities similar to those performed by OPA.

Finally, OLO contacted the Society of Real Estate Appraisers in Chicago, Illinois to identify any states, counties, or cities in the nation which may have a position or positions which perform activities similar to OPA. This organization reported no knowledge of any similar activities being carried out by other states, counties, or cities in the United States.

During the course of this evaluation, the Public Advocate informed OLO that an interest group in the District of Columbia had contacted the County regarding the possibility of initiating a review process similar to that which is conducted by OPA for Montgomery County. Based on information provided by OPA, this Office contacted the Service Employees International Union in Washington, D.C. to determine whether the District is considering instituting an activity similar to OPA.

Upon inquiry, a union representative provided OLO with two studies prepared by the group which reported on the assessment of commercial properties in the District of Columbia. The reports concluded that, in recent years, commercial property assessments in the District had failed to keep pace with rapidly appreciating values for office buildings, and recommended the City establish a procedure to correct assessments that are below market value.

The writers noted that the City is not adequately equipped to match resources brought to the appeals process by wealthy office building operators, and suggested establishing a third-party appeal procedure that would permit a person or entity other than the property owner to appeal an assessment. The report further suggested that an independent office "similar to one in Montgomery County" should be established to seek out and appeal assessments of properties that are below their market values.

To date, the Service Employees International Union has not been successful in its attempts to convince the D.C. government to institute an activity to provide for the independent review of the assessment and appeals process in the District. The group, however, is still interested in pursuing the possibility.

Conclusion

The assessment appeal and intervention activities of OPA appear to be unique to Montgomery County. OLO was unable to confirm that any other jurisdiction operates an independent office or conducts similar activities as those provided to Montgomery County by OPA. Although an interest group in Washington, D.C. has requested that an independent office or activity similar to OPA be established by the District government, no such office has yet been established.

VI. CONCLUSIONS/RECOMMENDATIONS

Chapter V, EVALUATION OF OPA, is organized in a question and discussion format, followed by a conclusion paragraph. Each question has been numbered within a letter designation which relates to the subject covered in the three sections contained in Chapter V. In this Chapter of the report, the conclusions from Chapter V are repeated and followed by OLO recommendations as appropriate.

A. Responsibilities and Authority

Conclusion A1: OPA actively involves itself at each of the administrative levels of assessment appeals authorized by the State of Maryland, and is fulfilling its responsibility to seek equity for County taxpayers through its review of assessments and participation in the appeals process. OPA informal involvement with the local office of the State Department of Assessments and Taxation and formal involvement in each of the various levels of the appeals process have had a beneficial effect on County revenues.

Conclusion A2: OPA is fulfilling its responsibility to advise residents and taxpayers of their rights under State and County property assessment and tax laws. Through its workshops, brochures, and other outreach efforts, OPA provides a valuable educational service to property owners in the County.

Conclusion A3: OPA is fulfilling its legislated requirement to provide an annual report to the Council, the County Executive, and the public. In addition, OPA often conducts special studies and projects, assists the Offices of the County Attorney, Management and Budget, and State Affairs by reviewing proposed legislation relating to assessment or property tax issues, and sometimes recommends legislation.

Conclusion A4: In order for OPA to consider all valuation methods applicable to income producing property, the Office must be able to obtain income and expense information relating to such properties. OPA cannot currently obtain income and expense data from owners of income producing properties who do not choose to submit the information. If the County Code were amended to include administrative subpoena authority for OPA, the valuation process used by OPA for income producing properties could include a combination of assessment techniques that have a common objective of determining a reliable estimate of fair market value.

OLO Recommendation: The Council should request the Executive branch to prepare legislation to amend Section 52-40 to give OPA administrative subpoena power. As suggested by the County Attorney's Office, the new authority could be modeled after and made similar to powers granted to the Offices of Landlord Tenant Affairs and/or Consumer Affairs. Such power should provide limitations on the parameters of the subpoena to include obtaining only that information which was not originally produced for the assessor, and require that information obtained through the subpoena power be held confidential.

B. Staffing and Organizational Placement

Conclusion B1: OPA is expected to seek equity for all taxpayers by reviewing assessments and re-assessments, predominantly concentrating its efforts on review of commercial and other nonresidential properties to identify and correct those which appear to be significantly mis-assessed. Since OPA is not expected to review all properties, but to concentrate its efforts, the Office need only work toward correcting the most obvious assessment errors. Thus, under normal circumstances OPA appears to be adequately staffed to accomplish its mission. In years when assessments have increased substantially, however, OPA has experienced some difficulty in managing its workload.

Conclusion B2: Both public service and financial benefits accrue to the County as a result of OPA activities. Based on first year tax increases resulting from OPA appeals and interventions, as compared to OPA annual expenditures, OPA generates revenues on behalf of County taxpayers well in excess of the costs associated with operating the Office. In addition, OPA provides valuable public education and assistance services to County taxpayers. While these latter services are not measurable in dollars, ratings and comments submitted by workshop participants indicate a high level of satisfaction.

Conclusion B3: As an independent office, OPA has functioned well on behalf of Montgomery County taxpayers. However, it may be possible to retain OPA's independence and achieve organizational efficiencies by co-locating OPA as a separate intact unit with another County office or department. Without changes to the County Code, the Public Advocate position would then become subject to the merit system. OLO has found the missions and responsibilities of OPA to be compatible with either the Department of Finance or the Office of Consumer Affairs.

OLO Recommendation: The Council should consider whether incorporating OPA into another office or department would alter OPA's effectiveness which has been demonstrated over the years as an independent principal office of the County.

C. Public Perceptions and Comparisons

Conclusion C1: Because of the different roles played by OPA in the appeals process, those interviewed expressed varying impressions about OPA. Of those who generally dealt with OPA in an adversarial capacity, some viewed OPA only in that light and argued for elimination of the Office, while others perceived that County citizens generally benefit from activities undertaken by OPA. Most were complimentary of the professionalism displayed by OPA in its preparation for and presentation of OPA appeal cases, but noted that some improvements could be made by OPA in its handling of interventions. Finally, some interviewees suggested organizational or staffing realignments for OPA to improve efficiency or effectiveness.

Conclusion C2: The assessment appeal and intervention activities of OPA appear to be unique to Montgomery County. OLO was unable to confirm that any other jurisdiction operates an independent office or conducts similar activities as those provided to Montgomery County by OPA. Although an interest group in Washington, D.C. has requested that an independent office or activity similar to OPA be established by the District government, no such office has yet been established.

OLO Recommendation: As suggested by PTAAB members, OPA should review its standards for preparing intervention cases at the PTAAB level and consider eliminating production of its statistical reports to allow for a realignment of staff responsibilities to provide more concentration on preparation of its intervention cases.

VII. DEPARTMENT AND AGENCY COMMENTS

On March 18, 1992, OLO circulated a draft of this report to the offices of the State's Supervisor of Assessments for Montgomery County and the County-located Property Tax Assessment Appeals Board, appropriate Executive branch departments and offices, and Council staff. All technical corrections received either orally or in writing are incorporated into this final report. Written comments received on the draft report by April 8, 1992 are included in their entirety starting on page 38.




Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

April 8, 1992

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

FROM: William H. Hussmann, Chief Administrative Officer 

SUBJECT: DRAFT OLO Report #91-7, Description and Evaluation of the Montgomery County Office of the Public Advocate for Assessments and Taxation

Thank you for the opportunity to comment on the Draft OLO Report #91-7, Description and Evaluation of the Montgomery County Office of the Public Advocate for Assessments and Taxation. This report provides a comprehensive review of the operation of the Office of the Public Advocate for Assessment & Taxation. The comments from the Office of the Public Advocate for Assessment & Taxation and the Office of Management & Budget are attached. The Directors of the Office of Consumer Affairs, Department of Finance and the County Attorney have stated that they have no comments.

The Executive Branch's comments concerning the organizational placement of the Office of the Public Advocate for Assessment & Taxation will be the subject of a separate memorandum. This memorandum will be forwarded to the Council's Public Safety Committee during its review of the Executive's FY 93 Operating Budget.

WHH/rm

Attachments

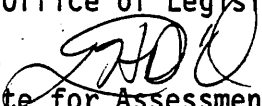


Montgomery County Government

MEMORANDUM

March 31, 1992

TO: Andrew Mansinne, Director, Office of Legislative Oversight

FROM: Louis H. D'Ovidio, Director 
Office of the Public Advocate for Assessments and Taxation

SUBJECT: Response to OLO Draft Report No. 91-7

Enclosed are comments from the staff of the Office of the Public Advocate for Assessments and Taxation to the Draft OLO Report No. 91-7, Description and Evaluation of the Montgomery County Office of the Public Advocate for Assessments and Taxation. Technical corrections to the report were suggested to Joan Pederson by phone call.

The process through which OPA went with OLO in gathering data discussing and evaluating the activities of the office was productive and educational. The OPA goal in requesting this evaluation was to help determine which functions and delivery of services to the citizens of the County have been met and which could be improved. I believe this goal for the most part was achieved.

LHD:aaj

Enclosure

RESPONSE TO CONCLUSION/RECOMMENDATION C1

REASONS WHY OPA'S APPEALS AND INTERVENTIONS BEFORE PTAAB MAY BE PREPARED DIFFERENTLY

(1) There is a distinct difference regarding burden of proof between OPA filed appeals and OPA interventions at the PTAAB level. OPA files an appeal when it believes that a particular property is considerably undervalued. OPA files interventions in cases where the property owner has filed an appeal because of a belief that the property is considerably overvalued. In an appeal OPA instigates the action and the burden of proof is on OPA to show that the assessment is too low. In an OPA intervention at PTAAB, the owner has instigated the action and the burden of proof is on the property owner to demonstrate that the assessment is too high. OPA does prioritize for additional effort appeal cases where the burden of proof is clearly placed on us as appellant.

(2) The scheduling and preparation pressures are very different between the OPA filed appeals and OPA interventions. While two or three OPA filed PTAAB appeal cases might be scheduled in a month, as many as 20-25 commercial cases requiring OPA intervention may be scheduled in a 10 day period. An example of a commercial case scheduling pattern is the time period from March 30, 1992 to April 7, 1992. In this 8 day time frame, 20 cases are scheduled in which OPA has intervened. These 20 cases will involve 18 different property owners and 4 different assessors. OPA cannot prepare a presentation in every single case that would match the thoroughness of the owner's or assessor's presentation just based on relative caseload. We, therefore, must prioritize cases based on which offer the best chance of success.

(3) There is a distinct difference between the State assessor's approach to a case which involves OPA intervention vs. an OPA appeal case. Assessors generally defend their valuation in an intervention case, but frequently resist OPA's increased valuation on an appeal case. Thus, in an appeal case OPA has to prepare a case against two parties (the owner and State assessor), while in an intervention OPA usually is just arguing against one party.

REASONS WHY PTAAB MAY HAVE PERCEIVED SOME CHANGE IN OPA CASE INTERVENTION PRESENTATIONS

As long as 1990 assessment cases were being heard with a date of finality of 1-1-90, OPA was able to compile some positive 1989 sales, market, and income data to present to the Board. However, as 1991 cases began to be heard and the date of finality became 1-1-91, it became increasingly difficult to find positive sales, market and income data because of the extended economic downturn.

Much of the recent data in the Montgomery County commercial real estate market pertains to bankruptcy/foreclosure sales. Arms-length transactions are few and far between. The PTAAB has given the "distress" sale market considerable weight in its recent decisions. When OPA presents the arms-length transaction sales as more representative of the market than the "distress" sales, the Board tends to discount them as too high and too rare and accept the "distress" sales are more indicative of the market. OPA continues to present positive sales data when available.

Arguing against the County position in OPA intervention cases is usually the property owner's attorneys and/or appraisers. They are more able than ever to present a bleak picture with respect to building vacancy, severe hotel and motel revenue problems, rental income declines, and general economic negatives.

Over the past 5 years OPA routinely has prepared discounted cash flow analyses (dcf) for a great majority of commercial cases. Within the last year or so, the State has upgraded its automation to the point where the assessors are developing and submitting dcf on many cases. This improvement by the State has allowed OPA to shift its emphasis from developing in-depth value positions for the PTAAB to consider, to supporting the more detailed work performed by the State. OPA believes that through its emphasis on the importance of the enhanced in-depth analysis and dcf, the State assessors are now more often undertaking these approaches to value.

CONCLUSION

The perceptions of the public and other governmental offices such as PTAAB are important to OPA. PTAAB thinks that the OPA intervention case presentation to PTAAB can be improved to mirror the level of presentation as in OPA appeal cases. That is unlikely for several reasons:

- (1) OPA appeals cases in which there is strong evidence that the property is underassessed.
- (2) OPA intervenes in cases the owners strongly believe involve overassessed property.
- (3) Under present economic conditions, the Board seems more convinced by the negatives than the positives of the real estate market. It is not in the County's best interest to argue the negatives that are already being presented by property owners.
- (4) There is a dearth of typical arms-length market sales for OPA to present to the PTAAB and a substantial number of foreclosure/ bankruptcy sales which we choose not to present because they tend to distort the market picture.
- (5) The State assessors normally defend their valuation in an intervention case, but often oppose OPA's increased valuation in an appeal case.
- (6) PTAAB scheduling pattern of commercial cases forces OPA to prioritize cases and to emphasize those cases on which the most positive impact can be made.

USEFULNESS OF STATISTICAL REPORTS POSSIBLE REPRIORITIZATION

Although some may not consider statistical reports produced by OPA to be "particularly useful," data collected is one means of measuring the accomplishments of the office. These accomplishments must be reported according to the County Code, Sec. 52-40.(b)(5), which states, ".....annual report setting forth the activities and accomplishments of the office of public advocate for assessments and taxation." It should also be noted that if the data were not collected OPA would be unable to respond to requests for information from the County Executive and his staff, the County Council, other departments such as Housing and Community Development, as well as the Property Tax Assessment Appeals Board. PTAAB members do request specific information about their own operation such as numbers of cases, dollars involved, overall results, etc. OPA is the only source of this information.

The "Sales Report" which is a listing of selected commercial property sales since 1984, is mentioned on page 7 but not listed as a reference in the OLO study. This report which is provided to State commercial assessors could be updated on a more timely basis. This data would probably be beneficial in the preparation of OPA's position on interventions. However, it should be understood that there has been minimal sales activity of commercial properties in the last year.

RESPONSE TO CONCLUSION/RECOMMENDATION A1

OPA's oversight and research has been a positive force in the improvement of the work done by the State Department of Assessments and Taxation. In other jurisdictions assessors are subject to no outside oversight of their appraisals or of their decisions made at the Supervisor level of appeal. Montgomery's assessors of commercial property know that OPA is reviewing their appraisal work and their appeal decisions, and that OPA can and will challenge that work. We believe that the work of OPA not only has a beneficial effect for County taxpayers by increasing revenues through our successful appeals, but that our existence minimizes decreases in assessments.

OPA's production of reports such as the "Sales Report" and other statistical information which is shared with State assessors, in conjunction with the introduction of new techniques of valuation in our appeals and interventions which have been adopted by the assessors, have improved the State's work overall.

RESPONSE TO CONCLUSION/RECOMMENDATION A4

OPA supports the amending of the County Code to include administrative subpoena authority for this office. Having the ability to secure income and expense information that would make a valuation more accurate fits directly into the mission of the OPA.

There are several examples of cases which could have been resolved or appraisals improved if OPA could have used subpoena powers or the threat of that power to secure essential data about a property. This authority could save county attorney time in correspondence and negotiation with attorneys representing property owners.

OPA has, in recent years, appealed both the White Flint and Wheaton Plaza Regional Mall valuations to the Maryland Tax Court. Independent appraisers were contracted to establish valuation estimates for these \$100,000,000[±] properties. In both cases, the appraisers were significantly delayed in performing their appraisal assignments due to the property owners' lack of response to requests for the specific income and expense data that was needed. We believe that the property owners would be much less likely to withhold the needed information if OPA had subpoena power and would ultimately have access to the information.

The assignment of this authority to OPA could save staff time (OPA and County Attorney) and improve valuations through the access to better income and expense information.



Montgomery County Government

MEMORANDUM

April 6, 1992

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Robert K. Kendal, Director *RK*
Office of Management and Budget

SUBJECT: OLO DRAFT Report Number 91-7, A Description and Evaluation of the Montgomery County Office of the Public Advocate for Assessments and Taxation

Thank you for the opportunity to respond to this OLO report. Your staff has provided a timely study of the Office's functions and structure.

On page 11, the report states that, "Residential properties are rarely mis-assessed by significant amounts..." I suspect that the many homeowners that annually appeal their assessments at the Supervisor's level would disagree with this statement. As this section is meant to be a discussion of whether OPA is meeting its statutory responsibility to seek equity for County taxpayers, you may wish to change the phrasing of the somewhat subjective statement so it is more sensitive to those who feel that their residential properties are not properly assessed.

On page 22, an estimate of consultant's time spent supporting OPA cases is based on time spent by the County Attorney. It is not clear that this is the case, as the functions performed by County Attorney's staff and the various functions performed by the consultant (independent appraisal of commercial properties, providing expert testimony at Maryland Tax Court) may be quite different. The consultant's services are paid out of Operating Expenses, and are based on hourly rates. OPA should be able to estimate the number of hours worked by the consultants and use these figures rather than the estimates used, especially since page 24 contains the actual consultant costs for cases since 1987. Also, the range of cost of these services cited on page 23 is \$8,000 to \$50,000, based on OPA's estimates, but the actual upper end of the range is \$28,075 according to Table 6. Since none of the cases cited have approached the \$50,000 figure, it would be better to use the actual figures to describe the cost of services rather than OPA's estimates.

Finally, OMB is aware of the Council's current interest in the location and reporting relationships of OPA within the Executive Branch. It should be noted that all of the possibilities under consideration, including maintaining the Office in its current position, appear to have minimal if any fiscal impact given the productivity of OPA's costs to the revenue it produces through the appeal process.

ARTICLE II. DEPARTMENTS AND OFFICES.

Sec. 1A-201. Establishing departments and principal offices.

(a) *Executive Branch.*

(1) These are the departments and principal offices of the Executive Branch.

County Executive [Charter, § 201 et seq.]

Chief Administrative Officer [Charter, § 210 et seq.]

Addition, Victim, and Mental Health Services [section 2-40 et seq.]

Animal Control and Humane Treatment [section 2-258C]

Correction and Rehabilitation [section 2-28]

County Attorney [Charter § 213]

Economic Development [section 2-64L]

Environmental Protection [section 2-29]

Facilities and Services [section 2-64G]

Family Resources [section 2-58B]

Finance [Charter § 214; section 20-38 et seq.]

Fire and Rescue Services [section 2-39A]

Health [section 2-42]

Housing and Community Development [section 2-27 et seq.]

Information Systems and Telecommunications [section 2-58D]

Liquor Control

Management and Budget [section 2-64K]

Personnel [section 2-64I; ch. 33]

Planning Policies [section 2-64M]

Police [section 2-43; ch. 35]

Procurement [section 2-64N]

Public Advocate for Assessments and Taxation [section 52-40 et seq.]

Public Libraries [section 2-45 et seq.]

Recreation [section 2-58]

State Affairs [section 2-64J]

Transportation [section 2-58A]

(2) There is also a Department of Social Services.

State law establishes this department. The state governs the use of state funds and the county governs the use of county funds by the department.

(3) The county executive determines whether an entity is a department or a principal office.

a. Entities that directly serve the public are departments.

b. Entities that provide internal support to other parts of county government are principal offices.

(b) *Legislative Branch.* There are no departments or principal offices in the Legislative Branch. (1986 L.M.C., ch. 37, § 1; 1986 L.M.C., ch. 60, § 3; 1987 L.M.C., ch. 28, § 4; 1987 L.M.C., ch. 34, § 1; 1987 L.M.C., ch. 47, § 1; 1989, L.M.C., ch. 42, § 1.)

Sec. 1A-202. Supervision of departments and principal offices.

(a) *General provisions.*

(1) Each department and principal office is under the immediate direction of the head of the department or principal office.

TAXATION

§ 52-40

**ARTICLE V. PUBLIC ADVOCATE FOR
ASSESSMENTS AND TAXATION.****Sec. 52-40. Policy; staff; powers and duties.**

(a) *Declaration of policy.* The county council finds that serious inequities exist in the real property assessment structure within the county. Valuable, nonresidential properties frequently are under-assessed in comparison to residential properties, which bear a disproportionate share of the overall property tax burden. The council has stressed repeatedly and continuously the need for closing loopholes and the elimination of under-assessments of real property. As a consequence of the unbalanced assessment structure certain taxpayers have realized millions of dollars of unchallenged tax reductions. This results in added taxes for the remaining taxpayers, who thereby contribute more than their fair share to the cost of government services. Although full consideration is accorded all property owners by the office of the assessor, there are at present no provisions for the independent review of the assessment process. The council finds that the establishment of an office of public advocate for assessments and taxation should increase appreciably the assurance of fair and equitable assessment treatment for owners of all types of property. In this regard, the council does not intend that the public advocate for assessments and taxation investigate each and every assessment within the county. It is expected instead that the advocate will address as first order of priority those assessments that are clearly unfair, inequitable and result in a significant tax loss or unwarranted shifting of the property tax burden. Along these lines, the public advocate for assessments and taxation should develop and make available to the public guidelines and procedures specifying when, for whom and under what conditions the advocate will appeal an assessment decision or intervene in an assessment proceeding. It is intended also that in discharging its duties and responsibilities pursuant to this section, the office of public advocate for assessments and taxation shall receive the full assistance and cooperation from all elements of county government.

(b) *Powers and duties.* The public advocate for assessments and taxation shall have the following powers and duties:

§ 52-40

MONTGOMERY COUNTY CODE

(1) To appear before or to intervene in proceedings before the supervisor of assessments, the property tax assessment appeal board, and the Maryland Tax Court, and the Courts of Maryland on behalf of the interest of the public and the taxpayers in general of the county, and to demand a hearing pursuant to section 255, article 81, Annotated Code of Maryland, and to appeal, pursuant to section 256, article 81, Annotated Code of Maryland, or under any other provision of law in any matter or proceeding in which the public advocate for assessments and taxation may deem the public interest involved, including but not limited to proceedings with respect to:

a. The valuation, assessment, classification or exemption from tax of any property, or

b. The application for an abatement, modification or reduction of any assessment of property and the tax pertaining thereto, or

c. The application for exemption from tax or from any assessment of property and the tax pertaining thereto.

(2) To make such investigations and employ such consultants or experts as the public advocate for assessments and taxation may deem necessary to the performance of the duties imposed herein.

(3) To have full access to all government records necessary in carrying out the duties imposed herein.

(4) To advise residents and taxpayers of the county generally of their rights under state and county tax laws.

(5) To prepare and provide to the county council, the county executive and the public an annual report setting forth the activities and accomplishments of the office of public advocate for assessments and taxation.

(6) To exercise and perform such other functions and duties consistent with the purposes or provisions of this section which may be deemed necessary or appropriate to protect the interest of the public and taxpayers of the county. (1974 L.M.C., ch. 28, § 1; 1986 L.M.C., ch. 37, § 3.)

Cross reference—Office of public advocacy for assessments and taxation created, § 1A-201(a).

SUMMARY OF ASSESSMENT METHODS USED FOR VALUING PROPERTIES

To determine the fair market value of real property, the State assessors use any or all of three standard appraisal approaches that are endorsed by the American Institute of Real Estate Appraisers. These approaches focus on (1) cost, (2) market, or (3) income. The two most widely accepted methods used for valuing residential properties are the market (comparable sales) approach and the cost approach. The third valuation method, referred to as the income approach, is used to value properties which produce an income stream from rents or leases. Although these three approaches differ in calculation methods, each is designed to indicate a property's fair market value.

Assessors in Maryland generally use a combination of both the sales and cost approaches to appraise residential property. The value of the land is calculated using the sales approach, wherein the sale prices of similarly located and zoned parcels are considered. The dwelling value is estimated using the cost approach, wherein the calculated value may be adjusted if sales of similar properties indicate a particular style of house is actually worth more or less than its construction cost.

Cost Approach: The premise of the cost approach is that the fair market value of a given property is equivalent to the value of the land plus the cost to construct a similar improvement, less any depreciation for age and condition of the existing buildings. This valuation approach is used frequently for appraising new construction and special-purpose properties. The assessor first determines the value of the land by examining sales of comparable land. Next, the assessor estimates the cost of replacing the building at the time of the assessment based on available cost data. As construction prices increase or decrease, so will the estimated cost of replacing a building. When applied to existing buildings, the replacement cost is depreciated according to the building's age and functional or economic obsolescence. In general, the older the house, the greater the loss in value due to depreciation. For example, a house which is ten years old will usually sell for less than a similar house which was recently built.

Market Data or Comparable Sales Approach: The premise of the sales approach is that the fair market value of a property may be determined by examining the sales prices of comparable properties. This approach involves a comparison of the property being appraised with similar properties that have recently sold in arm's-length transactions. Any differences in the property comparisons are enumerated and evaluated according to the judgment of the assessor. This appraisal method results in a market value in which any depreciation has already been considered and accounted for by the market itself. The two vital factors in using the sales approach are availability of sufficient recent sales data, and true comparability of the properties being examined. This method is generally used for valuing residential and small apartment or commercial properties.

Income (Capitalization) Approach: The income approach is based on the premise that the market value of a property can be determined by calculating the dollar amount on which it is capable of producing a return equal to investments with similar risk. In its simplest form, the income approach determines the net operating income of the property, judges the risk of investing in the building, and calculates what an investor would be willing to pay for it. Use of this approach would include consideration of rents, vacancy and collection rates, typical expenses, capitalization rates, effective tax rates, discounted cash flow, and risk analysis.

Generally, the income approach is used to value investment properties, such as commercial, industrial, and apartment properties. Many of these properties do not change hands often or are unique in some way, so that either the cost or comparable sales approaches alone may produce unreliable results. Whenever possible, the income approach should be used in addition to the other valuation methods to arrive at a fair market value.

Listing of OPA Reports and Publications Reviewed by OLOIssue Date Annual Reports

July 1981	Annual Report of the Office of the Public Advocate for Assessments and Taxation, July 1, 1980-June 30, 1981
Undated	FY85 Annual Report for the Office of the Public Advocate for Assessments and Taxation
Undated	FY86 Annual Report for the Office of the Public Advocate for Assessments and Taxation
Undated	FY87 Annual Report for the Office of the Public Advocate for Assessments and Taxation
Undated	FY88 Annual Report of the Office of the Public Advocate for Assessments and Taxation
October 1989	FY89 Annual Report, Office of the Public Advocate for Assessments and Taxation
August 1990	FY90 Annual Report, Office of the Public Advocate for Assessments and Taxation
September 1991	FY91 Annual Report, Office of the Public Advocate for Assessments and Taxation

Issue Date Analysis Reports and Papers

May 1985	Analysis of 1984 Maryland Tax Court Property Tax Decisions in Montgomery County
March 1986	Analysis of 1984 Supervisor of Assessments Hearing Decisions on Property Assessment Appeals in Montgomery County
August 1986	Analysis of 1986 Residential Assessments in Montgomery County
September 1987	Analysis of 1986 Supervisor of Assessments Hearing Decisions
June 1989	Analysis of 1987 Supervisor of Assessments Hearing Decisions on Property Assessment Appeals in Montgomery County
August 1989	Analysis of 1984-1988 Supervisor of Assessments Hearing Decisions on Property Tax Assessment Appeals
August 1989	Analysis of 1988 Supervisor of Assessments Hearing Decisions on Property Assessment Appeals in Montgomery County
Undated	Analysis paper of the assessable base and taxes paid on residential and residential condominium properties, indexed for inflation 1979-1990

<u>Issue Date</u>	<u>Pamphlets and Brochures</u>
March 1989	TIPS FOR COMMERCIAL PROPERTY OWNERS CONSIDERING ASSESSMENT APPEALS
July 1990	UNDERSTANDING YOUR PROPERTY ASSESSMENT, How the Homeowner Can Appeal
July 1990	SUPERVISOR LEVEL ASSESSMENT APPEALS, Tips for the Homeowner
July 1990	PREPARING APPEALS TO THE PROPERTY TAX ASSESSMENT APPEALS BOARD (PTAAB), Tips for the Homeowner (also available in Spanish)

Listing of Other Reports and Publications Reviewed by OLO

<u>Issue Date</u>	<u>Reports</u>
August 1963	Report of the Assessments Review Committee (Council Resolution 5-48 of January 15, 1963)
December 1969	Report of the Assessments Review Committee to the Montgomery County Council (Council Resolution 6-1932 of March 18, 1969)
March 1978	Property Assessment in Montgomery County, Summary Report of the Montgomery County Council's Task Force on Real Property Assessment Practices (Council Resolution 8-1159 of December 21, 1976)
May 1988	Missing Monies - Property Tax Reductions on Office Buildings in Washington, D.C. (Service Employees International Union Local 525, Justice for Janitors Organizing Committee)
May 1989	Commercial Office Buildings in Washington, D.C. UNDERASSESSED (Service Employees International Union Local 525, Justice for Janitors Organizing Committee)

<u>Issue Date</u>	<u>Publications</u>
Undated	Explanation of the Montgomery County Assessment Property Worksheet (State of Maryland, Department of Assessments and Taxation)
Undated	APPEALING AN ASSESSMENT, Supervisor Level Assessment Appeals (State of Maryland, Department of Assessments and Taxation)
April 1991	CONSTANT YIELD TAX RATES FOR 1991, The property owners' opportunity to be heard on the issue of property tax rates before they are final (State of Maryland, Department of Assessments and Taxation)
Undated	ASSESSMENT APPEAL PROCESS (State of Maryland, Department of Assessments and Taxation)
Undated	Questions & Answers about REAL PROPERTY ASSESSMENTS (State of Maryland, Department of Assessments and Taxation)
Undated	A HOMEOWNERS GUIDE TO PROPERTY TAXES AND ASSESSMENTS (State of Maryland, Department of Assessments and Taxation)
Undated	Property Owner's Bill of Rights (State of Maryland, Department of Assessments and Taxation)
February 1987	Property Inspections & Assessments (State of Maryland, Department of Assessments and Taxation)
February 1987	The Agricultural Use Assessment (State of Maryland, Department of Assessments and Taxation)