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May 15, 2015

Barry Weinstein, Town Supervisor
Members of the Town Council
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Report Number: S9-14-72

Dear Supervisor Weinstein and Members of the Town Council:

The Office of the State Comptroller works to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of 11 municipalities (two counties, one city, six towns and two villages) throughout New York State. The objective of our audit was to determine if each municipality followed the terms and conditions of its Parkland Alienation Bill (Legislation). We included the Town of Amherst (Town) in this audit. Within the scope of this audit, we examined parkland alienations that have occurred for the period January 1, 2011 through December 31, 2013. Following is a report of our audit of the Town. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law (GML).

This report of examination letter contains our findings and recommendations specific to the Town. We discussed the findings and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. At the completion of our audit of the 11 municipalities, we prepared a global report that summarizes the significant issues we identified at all of the municipalities audited.

Summary of Findings

We found that the Town has not met all the terms and conditions of the Legislation. Specifically, the Town should have undertaken steps to ascertain the fair market value of the alienated parkland, such as obtaining and maintaining documentation of an appraisal, to help support that the Town received the fair market value for its interest in the property.

Background and Methodology

The Town is located in Erie County and is governed by a five-member Town Council, including the Town Supervisor. The Town Supervisor is the Town's chief executive officer and is responsible for the Town's day-to-day operations. The Town's 2013 general fund budget amounted to approximately \$58.9 million. The Town has designated approximately 4,247 acres of parkland.

“Parkland alienation” occurs when a municipality seeks to sell, lease or discontinue the use of municipal parkland. Parkland alienation applies to every municipal park¹ in the State, whether owned by a city, county, town or village. In order to convey parkland to a non-public entity or to use parkland for another purpose, the municipality must receive prior authorization from the New York State Office of Parks, Recreation and Historic Preservation (State Parks) in the form of legislation enacted by the New York State Legislature (Legislature) and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a “parkland alienation” bill.

The core legal basis governing the use of parkland comes from common law, called the “public trust doctrine.” The doctrine is defined by 150 years of State court decisions, which explain when municipalities must seek State legislative approval to alienate public parkland. Otherwise, it would be tempting for municipalities to view parkland as a fiscal resource that can be sold, or leased, to raise money or used for other government uses to avoid paying for private land.

The requirements for parkland alienation bills vary depending upon whether or not State dollars have been invested in the municipal park that is being considered for a potential change of use. In cases where State dollars were invested using a grant, in addition to having the Legislature approve the alienation, the municipality that received the grant is subject to certain requirements upon accepting that grant. In these cases, in addition to common law, there are also statutes that require the municipality to provide lands of equal fair market value to replace the parkland being lost.

State Parks suggests municipalities follow a 10-step process when considering a change of use of parkland or recreational areas. The role of State Parks is to provide advice and guidance to the municipality, concerned citizens, the Governor and the Legislature. State Parks will work with legislative sponsors, making recommendations regarding provisions that might be included to assure the maximum protection of parklands. State Parks will then advise the Governor on the alienation bill passed by the Legislature prior to it being signed into law. In addition, State Parks may conduct a site inspection of the parkland in question to gather further information.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those operations within our audit scope. Further, those standards require that we understand the management controls and those laws, rules and regulations that are relevant to the operations included in our scope. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

¹ Parkland can either be dedicated for park purposes through a formal action, or parkland can be dedicated through implied dedication (based on how the land is used, i.e., a playground, or land mapped as a park for planning purposes).

Audit Results

Municipally owned parkland and open space are nonrenewable resources that should be carefully preserved in all communities. Once lost to another use, open space is difficult to recover. New York State strongly endorses the maintenance and expansion of municipal parks and open space and the recreational opportunities they offer. The State also prescribes to a “no net loss of parkland” policy.

The Town sought legislative approval for two parkland alienations – one in 2011 and another in 2012. The first alienation was the result of a Town study of title descriptions in which officials discovered that a portion of its compost operation (approximately 24.51 acres) was located on dedicated parklands. Therefore, the Town sought to discontinue that portion of lands as parklands and replace it by dedicating other lands (approximately 41.21 acres) which were not dedicated as parklands.

The second alienation was a former church that the Town was authorized to discontinue as parkland (approximately 1.17 acres) on the condition that the Town acquire and dedicate as parkland another parcel described in the Legislation as approximately .66 acres. The Legislation also indicated that in the event that the lands to be acquired are not equal or greater in fair market value than the lands being alienated, the Town shall dedicate the difference in the fair market value for the acquisition of additional parklands or for capital improvements to existing park and recreational facilities.

We found that the Town has not met all the terms and conditions of its Legislation for the alienation of the former church. Specifically, the Town should have undertaken steps to ascertain the fair market value, such as obtaining an appraisal and maintaining documentation of the appraisal, to help ensure that the Town received equal or greater fair market value for the discontinued parkland as provided for in the Legislation.

In the absence of a fair market value appraisal for the property, Town officials cannot ensure that the fair market value was obtained for the alienated parkland as required by the Legislation. As a result, Town residents could incur an overall loss of parkland.

Town officials indicated that the replacement parcel is adjacent to another Town park, which increases the size of the park and creates greater outdoor recreational opportunities.

Recommendations

Town officials should:

1. Ensure future parkland alienations comply with all of the requirements of the Legislation.
2. Ensure that future parkland alienations include steps to ascertain the fair market value, such as obtaining an appraisal and maintaining documentation, to help ensure that the fair market value of the parcel received was equal or greater than that of the parcel alienated.

The Town Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of GML. For more information on

preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

We thank the officials and staff of the Town of Amherst for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM TOWN OFFICIALS

The Town officials' response to this audit can be found on the following pages.



February 5, 2015

Office of the State Comptroller
Division of Local Government and School Accountability
Attn: Ann C. Singer, Chief Examiner
State Office Building, Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417

RE: Response to Report Number S9-14-72; Town of Amherst, Erie County
Parkland Alienation Bill Audit

Dear Ms. Singer:

On January 9, 2015, the Town of Amherst participated in a conference call for an exit discussion regarding the Office of the State Comptrollers preliminary draft findings of the recent examination of the Town's recent Alienation of Parkland procedures. This letter is a response to those findings as requested by [REDACTED], Division of Local Government and School Accountability.

The findings of the investigation were that the Town did not undertake steps to "ascertain the fair market value of the alienated parkland, such as obtaining and maintaining documentation of an appraisal, to help support that the Town received the fair market value for its interest in the property." The requirement for this part of the alienation process was written into the legislation for the alienation of parkland for Town-owned property located at 4110 Bailey Avenue (Eggertsville Community Center).

Following the Guidance of the Handbook on the Alienation and Conversion of Municipal Parkland (the Manual) and the NYS Office of Parks, Recreation and Historic Preservation, the Town did not secure appraisals to determine the fair market value of the Eggertsville Community Center or the substitute parkland parcel (4743 Harlem Road). Since no State or Federal funding was used to acquire the parkland being alienated, the Town incorrectly interpreted the Manual to understand that providing substitute lands that had "equivalent potential for recreational usefulness" was sufficient to meet the requirements of the Alienation of Parkland for the Eggertsville Community Center. In this circumstance, the Town substituted .66 acres of undeveloped natural area adjacent to an existing Town Park for the 1.17-acre community center which is property primarily covered by building and paved parking.

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The purpose of the alienation was that it was the Town's belief that the Eggertsville Community Center Property was incorrectly declared a park by a previous Town Board. The property is completely burdened by an old church which the Town purchased, renovated and leased to a Boys and Girls Club to provide services for area youth. The lease provided that the club was the sole tenant of the entire property. Some years after that lease was signed the Town Board declared the property parkland. Since it is fully encumbered by the lease it was our position the parkland declaration was in error and this action sought to correct it. The Town has not sold this property.

The Town of Amherst concurs with the findings of the Office of the State Comptroller that "the Town should have undertaken steps to ascertain the fair market value, such as obtaining an appraisal and maintaining documentation of the appraisal, to help ensure that the Town received equal or greater fair market value for the discontinued parkland as provided for in the Legislation."

A written Corrective Action Plan will be prepared and submitted to the Office of the State Comptroller prior to April 9, 2015, to insure that all future Parkland Alienations that the Town of Amherst may need to pursue will include appraisals of the property being alienated and the substitute property to determine that the fair market value of the substitute property is equal to or greater than the property being alienated.

The Town of Amherst understands the importance of following the policies and procedures that have been put in place by the State of New York and routinely endeavors to strictly adhere to these rules to protect the interests of Town residents. Thank you for your continued assistance with our Parkland Alienation procedures.

Sincerely,

Barry A Weinstein, MD.
Supervisor, Town of Amherst

BAW/RCW/jb

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APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

We interviewed Town officials to determine if processes were in place to ensure that requirements of its Legislation were met and to gain an understanding of the processes and circumstances surrounding the parkland alienation.

We reviewed the Town's parkland alienation records including, when available, the Parkland Alienation Municipal Information Form, State Environmental Quality Review, Municipal Home Rule Request, Board minutes, Board resolutions, contracts, leases, maps, surveys, planning records and other available documentation and correspondence. In addition, we reviewed general fund reports, capital plans and general ledger and check information when appropriate. Our audit included the following procedures:

- We reviewed the *Handbook of the Alienation and Conversion of Municipal Parkland in New York*, a publication issued by State Parks, that outlines the process and the deliberations involved in the change of use of municipal parkland and open space.
- We reviewed New York State Parkland Alienation Legislation passed in 2011 through 2013.
- We reviewed Board minutes and resolutions regarding the parkland alienation.
- We reviewed contracts and agreements to determine if the terms and conditions were consistent with the Legislation.

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