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May 15, 2015

Margot Garant, Mayor
Board of Trustees
Village of Port Jefferson
121 West Broadway
Port Jefferson, NY 11777

Report Number: S9-14-71

Dear Mayor Garant and Members of the Board of Trustees:

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 Village of Port Jefferson (Village) 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 Village. 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 Village. We discussed the findings and recommendations with Village officials and considered their comments, which appear in Appendix A, in preparing this report. Village officials indicated that they plan to initiate corrective action. Appendix B includes our comment on an issue raised in the Village's response. At the completion of our audit of the 11 municipalities, we prepared a global report that summarizes the significant issues we identified at all the municipalities audited.

Summary of Findings

We found that the Village has not met all the terms and conditions of the Legislation. Specifically, the Village should have undertaken steps to determine the fair market value of the alienated parkland, such as obtaining an appraisal and maintaining documentation, to help ensure that the fair market value of the parcel received was equal to the parcel alienated, as required by the Legislation.

Background and Methodology

The Village is located in Suffolk County and governed by a five-member Board, which includes the Mayor. The Village's 2013 general fund budget amounted to approximately \$9.5 million. The Village has designated approximately 185 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, common law requires 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

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)

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 C of this report.

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 Village sought legislative approval for parkland alienation that was signed into law in 2011. The Village was authorized to alienate a parcel of parkland of approximately .35 acres on the condition that it acquired an additional parcel of parkland of approximately 2.31 acres, as described in the Legislation. The Legislation required that, in the event that the replacement lands are not equal to or greater than the fair market value of the parklands to be alienated, the Village shall acquire additional lands for parkland or cause funds to be made available for capital improvements to its existing park and recreational facilities, as necessary, to equal the fair market value. The parcel of land was alienated to allow the Environmental Protection Agency (EPA) to conduct remediation efforts to clear pollution that is entering an underground water source. As a result, the EPA has erected a building on the parcel and, under the terms of the agreement between the Village and the EPA, the land will revert back to the Village in 20 years or less and the Village has the option of keeping the building or the land can be restored to its original condition.

The Village has not met all the terms and conditions of the Legislation. Specifically, the Village should have undertaken steps to ascertain the fair market value, such as obtaining an appraisal and maintaining documentation of the appraisal, to help support that the fair market value of the parcel received was equal to the parcel alienated, as required by the Legislation.

In the absence of a fair market value appraisal relating to the property, Village officials cannot ensure that fair market value was obtained for the alienated parkland as required by the Legislation. As a result, Village residents could incur an overall loss of parkland. Village officials explained that incurring the additional cost of an appraisal was deemed unnecessary given the small size of the parcel (.35 acres) they were alienating coupled with the replacement 2.5 acres of additional parkland that has waterfront. Village officials explained that the fair market value of the additional parkland far exceeds the parcel alienated. However, Village officials did not provide documentation of such an analysis or discussion.

Recommendations

Village 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 some documentation thereof, to help support that the fair market value of the parcel received was equal or greater than the parcel alienated.

The Village Board (Board) 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 Village Clerk's office.

We thank the officials and staff of the Village of Port Jefferson for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM VILLAGE OFFICIALS

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



INCORPORATED VILLAGE OF PORT JEFFERSON

Margot Garant
Mayor

Robert J. Juliano
Administrator/Clerk

January 7, 2015

VIA E-MAIL & FIRST CLASS MAIL

Attn. Ann Singer
New York State Comptroller's Office
State Office Building
Hawley Street, Suite #1702, 4th Flr.
Binghamton, New York 13901-4417

Re: Parkland Alienation Audit
Audit Report Number: S9-14-71

Dear Ms. Singer:

Thank you for the opportunity to review and reply to the Parkland Alienation Audit. As noted in the Audit, request for the parkland transfer was initiated by the United States Environmental Protection Agency to conduct remediation efforts to clear pollution that was entering an underground water source. The EPA requested .35 acres on which to construct an EPA monitoring building, in exchange for the Village dedicating 2.31 separate acres to parkland. As noted in the audit, the transfer of the EPA occupied land is not a total alienation, as the land and the federally-constructed building, will revert back to the Village in 20 years or less and the Village has the option of keeping the building or requiring the land be restored to its original condition.

We raise a limited objection to the Comptroller's opinion that we have not met all of the terms and conditions of the enabling legislation by formally evaluating the fair market value of the exchange. While the Village believes that the value of receiving 2.31 acres of prime undeveloped parkland in exchange for the temporary transfer to the Federal Government of .35 acres of parkland for an EPA monitoring facility is self-evident and well exceeds the required "fair market value" analysis, we acknowledge that the Board did not spend additional taxpayer money to confirm this readily apparent fact by commissioning a formal appraisal.

See
Note 1
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Ann Singer
January 7, 2014
Page 2

Our corrective action plan will require that even in the event that the fair market value is self-evident on the face of the transaction, we will otherwise confirm that fact by commissioning a formal appraisal.

Thank you for your assistance in this matter.

Very truly yours,



Margot J. Garant
Mayor

cc: Village Board of Trustees
Robert J. Juliano, Clerk
Brian T. Egan, Esq., Village Attorney

APPENDIX B

OSC COMMENT ON THE VILLAGE'S RESPONSE

Note 1

Without a documented assessment, there is no assurance that the fair market value of the replacement parklands is equal or greater to the fair market value of the alienated parklands.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

We reviewed the Village'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.