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May 15, 2015

Daniel Dwyer, City Mayor
Members of the City Council
City of Rensselaer
62 Washington Street
Rensselaer, NY 12144

Report Number: S9-14-66

Dear Mayor Dwyer and Members of the City 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 City of Rensselaer (City) 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 City. 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 specific to the City. We discussed the findings with City officials and considered their comments in preparing this report. City officials were provided an opportunity to respond to our findings within 30 days of the exit conference, but they did not respond. 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 City has met all the terms and conditions of the Legislation.

Background and Methodology

The City is located in Rensselaer County and is governed by a seven-member City Council. The City's 2013 general fund budget amounted to approximately \$13.2 million. The City has designated approximately 673 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 A 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 City sought legislative approval for parkland alienation that was signed into law in 2011. The City was authorized to discontinue as parkland a parcel of land of approximately .22 acres. In exchange, the City would provide replacement lands of approximately .17 acres to be used for park purposes. The Legislation indicated that if the replacement land is not equal to or greater than the fair market value of the land to be alienated, the City shall dedicate the difference between the fair market value of the land to be alienated and the fair market value of the land to be dedicated to the acquisition of additional parkland.

We found that the City has met all the terms and conditions of its Legislation. Although the City was unable to provide a copy of an appraisal report while auditors were on-site, subsequent to issuing our draft report, the City was able to provide adequate documentation in the form of an appraisal report dated July 2010 done on the property. City officials explained that the appraisal report was found after reviewing the City’s Common Council meeting minutes.

City officials explained that the parkland that was alienated was unusable for parkland activities because of the location of the land in relation to the current park and fields. The parcel received was more usable when considering the existing park facilities.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

AUDIT METHODOLOGY AND STANDARDS

We interviewed City 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 alienation.

We reviewed the City'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.