

# Tuxedo Farms Local Development Corporation

## Collections and Disbursements and Adherence to Bylaws

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DECEMBER 2021

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OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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# Report Highlights

## Tuxedo Farms Local Development Corporation

### Audit Objective

Determine whether collections and disbursements were in accordance with the sewer agreements and whether the Tuxedo Farms Local Development Corporation (TFLDC) Board of Directors (Board) adhered to its bylaws.

### Audit Results

Collections and disbursements were generally in accordance with the sewer agreements, and the Board adhered to its bylaws.

There were no recommendations as a result of this audit.

LDC officials agreed with our findings.

### Background

The TFLDC was established by the Town of Tuxedo (Town) in 2015. The TFLDC is governed by a three-member Board appointed by the Town Supervisor (Supervisor) with the Town Board’s consent.

The TFLDC Board establishes all general policies governing the TFLDC’s operations. The Supervisor is the TFLDC’s Chief Executive Officer (CEO) and performs other duties as assigned by the Board.

The TFLDC uses an accounting firm and a bank to assist with collections and disbursements functions and uses a legal firm to take Board minutes.

Quick Facts	
Total Collections	\$4,942,627
Total Disbursements	\$21,726,582
Active Projects	1
Bond Amount	\$30,000,000

### Audit Period

June 15, 2015 – September 30, 2020

# Collections and Disbursements and Adherence to Bylaws

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The TFLDC was formed to provide funding for and facilitate the construction of a wastewater treatment plant (WWTP) with an initial capacity of at least 311,000 gallons per day to service the Tuxedo Farms Sewer District (District) (which would cover the proposed Tuxedo Farms development), and the Hamlet of Tuxedo Sewer District (Hamlet).

The TFLDC issued \$30 million of bonds in June 2015 to pay for the construction of the WWTP and related piping and pump stations. Final testing of the plant was completed in November 2017. The WWTP was 96 percent complete as of June 2021, and is scheduled to begin operating at the end of December 2021.

## **What Are the TFLDC's Requirements for Collections and Disbursements?**

The TFLDC is a party to a sewer construction and funding agreement between the TFLDC, and the Tuxedo Reserve Owner, LLC and the Tuxedo Sewage Works Corporation (the Owner and the Works Corporation together, the "Developer"), dated June 1, 2015 (the "Construction and Funding Agreement"). Under the Construction and Funding Agreement, the TFLDC is obligated to make payment to the Developer from bond proceeds for the costs of constructing the WWTP upon submission of a requisition from the Developer. The requisitions are subject to a 5 percent retainage of the hard costs (materials and labor) related to the WWTP's construction. The TFLDC reviews each requisition for approval upon receipt of the appropriate engineer's and administrator's certifications and should be either approved or denied within five business days.

An agreement, dated June 1, 2015, between the Town of Tuxedo, the TFLDC, the Tuxedo Reserve Owner, LLC, and the Tuxedo Sewage Works Corporation (the "Sewer Services Agreement") requires the TFLDC to notify the Town by September 1 of each year of the amount of special assessments required to be collected by the Town from parcels within the sewer districts served by the WWTP. Under the Sewer Services Agreement, the special assessments are billed annually and collected and enforced in the same manner as other Town real property taxes. During the audit period, the only parcels subject to a special assessment remained the property of the Tuxedo Reserve Owner, as none of the Developer's parcels had been sold to individual homeowners yet. Under the Sewer Services Agreement, the TFLDC collects from the Town a service fee paid from the Town's special assessments, which is used to pay, among other costs, the amount of principal and interest for the TFLDC's bonds becoming due during the relevant time period.

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## **Collections and Disbursements Were Generally Made in Accordance With the Agreements**

We reviewed all four collections totaling \$4,942,627 and all 137 disbursements totaling \$21,726,582 during the audit period to determine whether they were made in accordance with the above-referenced agreements. We found that, other than minor discrepancies that we discussed with TFLDC officials, all collections and disbursements were made in accordance with the agreements. In addition, we interviewed TFLDC officials and reviewed relevant documents to determine whether the project stayed within its budget. We found that the project stayed within budget.

### **What Do the TFLDC's Bylaws Require?**

The TFLDC's bylaws include a requirement for the TFLDC to obtain an annual independent audit. The Board must also receive an annual report at the annual meeting, which takes place within six months after the end of the fiscal year. The bylaws also require the TFLDC to have an audit committee, a governance committee and a finance committee. Furthermore, the Board was not entitled to compensation prior to September 10, 2020.

### **TFLDC Officials Adhered to the Bylaws**

Based on our interviews with officials and review of documentation, we found that the Board adhered to the sections of its bylaws we reviewed. The Board obtained an annual independent audit and received an annual report at the annual meeting each year in our audit period. The Board held its annual meeting in March for the 2016 through 2019 fiscal years. Due to the COVID-19 pandemic, the Board did not hold the 2020 annual meeting until September 2020. The Board also formed the required committees and did not receive compensation.

### **Conclusion**

TFLDC officials generally adhered to the sewer agreements' terms in regard to collections and disbursements and the bylaws.

# Appendix A: Response From Response From Local Development Corporation Officials

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December 15, 2021

██████████  
Office of State Comptroller  
33 Airport Center Drive, Suite 103  
New Windsor, NY 12553

Dear ██████████

The Tuxedo Farms Local Development Corporation agrees with the Public Facing Report of Examination's key findings.

Sincerely,

Kenneth English  
President, Tuxedo Farms LDC

## Appendix B: Audit Methodology and Standards

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We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed TFLDC officials and employees from the accounting and legal firms assisting with TFLDC operations and reviewed TFLDC's certificate of incorporation, bylaws, Board minutes, sewer funding and service agreements, certified public accountant reports, and letter to the developer to gain an understanding of TFLDC's operations.
- We reviewed the supporting documentation for all four collections totaling \$4,942,627 and 137 disbursements totaling \$21,726,582 to determine whether they were in accordance with the sewer agreements.
- We reviewed the relevant documents to determine whether the project stayed within budget.
- We interviewed TFLDC officials and employees from the accounting and legal firms assisting with TFLDC operations and reviewed Board minutes to determine whether the Board obtained an annual audit, received annual reports, held required meetings and formed the required committees.
- We reviewed disbursement data to determine whether any Board members received compensation prior to September 10, 2020.

We conducted this performance audit in accordance with generally accepted government auditing standards (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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

## Appendix C: Resources and Services

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### **Regional Office Directory**

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### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/local-government/publications](http://www.osc.state.ny.us/local-government/publications)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

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