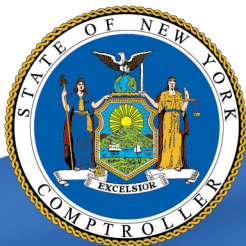


Town of Butternuts

Highway Facility Capital Project

JANUARY 2022



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

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Report Highlights

Town of Butternuts

Audit Objective

Determine whether the Town of Butternuts (Town) Board transparently planned and monitored the highway garage and salt shed capital project (Project).

Key Findings

The Board was not fully transparent in planning and could have improved its monitoring of the Project. As a result, total costs to complete the highway garage exceeded the maximum estimated costs by \$372,318. The Board did not:

- Prepare a budget or disclose all known Project costs and financing sources.
- Fully define the Project scope. For example, a planned highway department office suite was omitted from bid documents, but later added as a \$60,000 change order, which should have been competitively bid in accordance with New York State General Municipal Law (GML).
- Obtain an RFP and written/fax proposal for two other change orders totaling \$43,115, which violated the Town's procurement policy.
- Ensure contractors were properly monitored. As a result, a contractor used less expensive roof material on the highway garage.
- Ensure the required annual financial reports filed with the State Comptroller's Office were accurate and timely.

Key Recommendations

- Approve a capital project budget and require periodic financial reports that show revenues and expenditures compared to the budget.
- Follow the procurement policy, applicable statutes and contract terms.

Town officials disagreed with certain aspects of our findings and recommendations but indicated they planned to initiate corrective action. Appendix C includes our comments on issues raised in the Town's response letter.

Background

The Town, located in Otsego County (County), is governed by an elected five-member Town Board (Board), which consists of the Town Supervisor (Supervisor) and four Board members. The Board is responsible for general oversight of the operations and finances. The Supervisor serves as the chief financial officer.

The Board is responsible for overseeing capital projects, including awarding contracts, authorizing contract amendments and change orders and approving the payment of claims.

Quick Facts

Estimated Final Costs

Highway Garage	\$872,318
Salt Shed	114,303
Total	\$986,621

Number of Change Orders/Amendments	13
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Net Amount of Change Orders/Amendments	\$194,192
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Debt Issued	\$500,000
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Audit Period

July 1, 2014 – April 22, 2021

Highway Facility Capital Project

The old highway garage (Figure 1), built in the early 1960's, was deemed unsafe. In January 2015, based on an engineering study, the Board determined it would not be cost-effective to repair it. In conjunction with the new highway garage, the Board planned to construct a new salt shed because the location of the old salt shed threatened the water quality.

Officials hired an engineer in 2016 to assist in planning and overseeing the construction of a new highway garage and a new salt shed (Figures 2 and 3).

FIGURE 1

**Old Highway Garage
(October 2020)**



FIGURE 2

**New Highway Garage
(June 2021)**



FIGURE 3

**New Salt Shed
(June 2021)**



Officials decided that the most cost-effective option for the new highway garage was to purchase property and rehabilitate an existing building located on the property through consultation with the engineers.

The first construction bid to rehabilitate the existing building was awarded in October 2018. Once the new highway garage rehabilitation neared completion, construction for the new salt shed began in Spring 2020.

However, construction of the new salt shed faced delays due to the COVID-19 pandemic. As of June 1, 2021, salt shed construction was approximately 74 percent complete.¹

Project costs totaled \$986,621, including construction and engineering for both the highway garage and salt shed, and were financed with various sources (Figure 4).

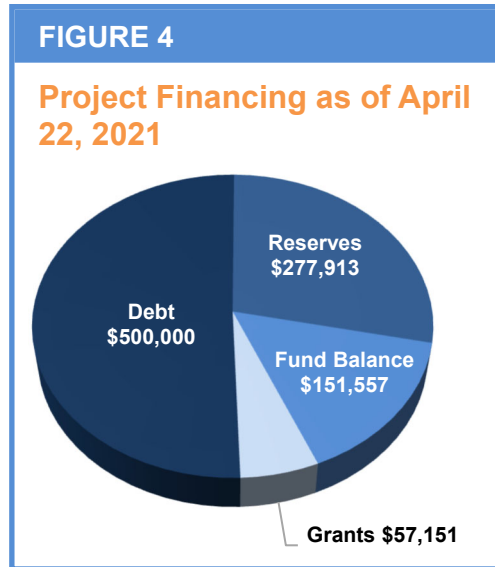
How Should a Board Transparently Plan, Procure Goods and Services and Monitor a Capital Project?

A governing board is responsible for the oversight and management of capital projects, including ensuring that projects are properly planned and managed, funding is authorized and costs are within an approved budget. Initial estimated costs must be realistic so a board can plan financing and inform taxpayers. After the board adopts a capital project budget, the supervisor is responsible for properly recording the budget and subsequent financial activities in the capital projects fund.

A board should ensure that any changes to the project's plans are within the project's scope and update the corresponding budget. Further, a board should ensure that all actions and proceedings are documented in official records to ensure transparency to taxpayers.²

With construction undertakings, changes or amendments are generally expected given the possibility of many unknown variables at the start of a project. GML, Section 103 generally requires a board to competitively bid contracts for public work involving expenditures exceeding \$35,000.

In the case of a capital project, a change order is often a formal construction contract modification, agreed upon by town officials and the contractor, to authorize a change in a project's work, cost or estimated completion time. Because the board authorizes construction contracts, it should also review proposed changes to these agreements.



A board should ensure that any changes to the project's plans are within the project's scope and update the corresponding budget.

¹ Refer to Appendix A for additional details on the Project's timeline.

² Refer to our publication *Capital Projects Fund* available at <https://www.osc.state.ny.us/files/local-government/publications/pdf/capital-projects-fund.pdf>.

When the original contract is subject to competitive bidding and an agreed modification materially varies from the original contract specifications, an agreement by town officials and the contractor to modify the original contract may not occur without further competitive bidding.

In addition, GML Section 30 generally requires a supervisor to file an accurate annual financial report (referred to as an AUD) with the Office of the State Comptroller (OSC) within 60 days of year-end. Town officials have the option to request an extension which, if granted, would extend the deadline to 120 days after the year-end. The AUD provides the board, OSC, town residents and other interested parties with a tool to monitor and evaluate financial operations.

The Board Was Not Fully Transparent About the Project's Budget and Scope

The Board was not fully transparent about the Project's budget. The Board did not prepare a budget to disclose a breakdown of the planned cost or total financing of the Project. However, in July 2018, it passed a resolution to finance the reconstruction costs of the highway garage at a maximum estimated cost of \$500,000 and authorized the issuance of serial bonds in that amount to cover the cost of the highway garage.

While officials accounted for the \$500,000 bond proceeds and a portion of the Project expenditures in the capital projects fund, additional costs were paid from the town-wide general fund (general fund) and the town-wide highway fund (highway fund), including, for example, the purchase of property (\$145,000), engineering costs (\$111,925) and demolition and construction costs (\$41,147).

We calculated the total cost of the highway garage to be \$872,318, exceeding the \$500,000 estimate provided to taxpayers in July 2018 by \$372,318. Positively, because Town employees completed the demolition of the existing building's roof and siding and the Supervisor and a Board member volunteered to install air hoses rather than including the work in another contract, we estimate that officials saved approximately \$43,000 on the highway garage.

Project-related expenditures were recorded in the general and highway funds instead of the capital projects fund because officials recorded activity as they spent funds and were unaware they needed to record all activity related to Project construction, from its inception, in the capital projects fund. In November 2018, the Board authorized reimbursement of \$44,075 from the capital projects fund to the general fund for incurred construction-related costs in the general fund.

The lack of a formal Project budget combined with the payment of additional Project expenditures from the general and highway funds made it difficult to

accurately monitor Project costs. These issues likely contributed to the Project cost overruns.

Also, the Board did not fully include the Project scope within the original bids. Although Town officials planned on completing an office suite (including a break room) for the highway department, officials excluded this work from the original contract bid, but later added this work as a change order.

Town officials said they excluded the office suite from the original bid to expedite the construction process. Although the Board discussed the reasons for the change order, it did not document this consideration in the monthly minutes.

By not including the construction of an office suite in the original bid and subsequent contract, Town residents may not have been aware of the Project's total scope and cost.

In addition, although the Board did not pass a formal budget relating to the salt shed construction either, public Board meeting minutes and discussions disclosed its plan to pursue a 50 percent matching grant, use Town funds to cover the remaining costs and had a goal of not exceeding \$150,000 in total costs to complete the salt shed. On January 8, 2020, the Board passed a resolution awarding a bid to complete the salt shed for \$94,690, and the Town was approved for the 50 percent matching grant.

Further, the AUD contained errors and omissions from the 2018 and 2019 financial reports, neither of which were submitted in a timely manner to OSC. For example, when the Town received bond proceeds of \$500,000, officials recorded it on the Town's balance sheet as a liability instead of on the statement of revenues and expenditures as bond proceeds. Although all Project transactions were recorded in the accounting records, \$370,536 of expenditures were omitted from the 2018 and 2019 AUDs.

Town officials told us they were aware of the problems with the AUD filings but unsure of how to fix the errors and omissions. The failure to file accurate and timely AUDs could affect officials' ability to monitor financial affairs and make sound financial decisions. By not accurately reporting facility-related expenditures in the proper fund, officials further reduced transparency related to the total Project costs.

The Board Could Have Improved Monitoring the Project's Contract Terms

The Board monitored Project contracts by conducting a claims audit for work performed. The Board appropriately adjusted several invoices to avoid paying for services that were already included in contractually agreed payments. However,

Although Town officials planned on completing an office suite (including a break room) for the highway department, officials excluded this work from the original contract bid, but later added this work as a change order.

there were areas where the Board could have improved its monitoring of the Project.

Payment Monitoring – Contract terms required, before the Contractor received any partial payments, a statement to the Town showing the total amount owed to date for materials and labor procured under the contract. We found initially that the Contractor was providing the Town with an application for payment form, which included supporting progress estimates of completed construction.

However, starting in September 2019, payments were made on two contracts without the applications for payment and were instead supported by invoices provided by the contractor. As a result, the continuity of payments was never formally recorded, and the Board used a reconciliation prepared by the engineer to calculate the final payment owed to one contractor.

Based on our review of contract costs, change orders and payments made for the Project, we calculated Town officials overpaid one contractor by \$1,887. Town officials told us that, because they were relying on the engineer to correctly reconcile the payments, officials decided the engineer’s final reconciliation was an accurate method to calculate the final payment.

Contract Oversight – There were several instances in which the Board did not ensure contract terms were followed, including issues that were not discovered until after the specific construction phase was completed. For example:

- Although contract terms required installation of a specific type of metal roof on the highway garage, the contractor installed a different, less-expensive roof, which was not discovered until several weeks after the installation was completed. Town officials did not notice a different roof type was installed, and the Board approved and paid for the work after the engineer approved the application for payment.

After officials became aware of the difference, a change order was approved by the engineer and Board reducing the cost of the contract by \$7,000. We determined that the payment for the roof was made without an inspection of the roof before payment, and that officials did not follow contract terms requiring samples of the roof panel be submitted to the engineer before installation.

The Supervisor and a Board member said that the Board believed the resolution (i.e., change order reducing the cost of the contract by \$7,000) was fair and in the best interests of the taxpayers by maintaining the Project’s progress. However, because of insufficient monitoring, a compromise was made in the construction terms.

- The construction of a mezzanine storage area staircase in the new highway garage did not meet contractually required code regulations because it did

There were several instances in which the Board did not ensure contract terms were followed. ...

not provide adequate height clearance. This error could have been avoided by ensuring the engineer completed a framing inspection before construction was completed. The Supervisor told us the staircase was corrected to the satisfaction of the Board, highway department employees and County code enforcement. In addition, the New York State Department of Labor notified the Supervisor that all violations were abated because of the correction.

The Board improved its monitoring of the final contract for the salt shed. For example, because of complications with the highway garage, the Board contracted with a company to test construction materials and directed the engineer to increase onsite inspections. As a result, the engineer discovered that an installed beam for the salt shed did not meet contract specifications. The Board appropriately halted the Project's progress and ensured the beam was replaced in accordance with contract specifications.

How Should Officials Comply With Procurement Policy Requirements, Contract Terms and Change Orders?

GML requires town boards to adopt a written procurement policy governing the procurement of goods and services that are not subject to competitive bidding requirements. With certain exceptions, the procurement policy must require that alternative proposals or quotes for goods and services be secured by use of written or verbal proposals or quotes. The Town's procurement policy requires the Town to obtain a written request for proposals (RFP) and written/fax proposals from three contractors for public work contracts less than \$35,000, but greater than \$15,000.

Towns should have signed contracts outlining the scope of the work, payment terms and construction specifications to be followed. Contracts should also include terms requiring contractors be properly insured and provide proof of coverage. The Town's procurement policy requires all project-related documentation be retained.

Any project-related change orders should generally be reserved for unanticipated job site conditions or to otherwise address conditions that may have changed since the bid specifications were drawn up. Therefore, under normal circumstances, a change order may not expand the scope of work or represent a basic departure from work already included in the contract.

Therefore, if a contract was originally subject to competitive bidding under GML, an agreement by town officials and a contractor to modify the contract may not occur without further competitive bidding if the agreed modification materially varies from the original contract specifications. Otherwise, allowing for the modification places unsuccessful bidders and potential bidders at a material

disadvantage because such bidders or potential bidders were not afforded an opportunity to compete on the amended agreement.

In addition, change orders should be presented to the board for approval in a timely manner and reviewed by the board as promptly as possible to ensure each change order is approved before any additional work is started. A board should document its review and approval of change orders in the board minutes.

The Board Did Not Always Seek Competition for Change Orders and Follow the Procurement Policy or Contract Terms

We reviewed all six Project construction contracts totaling \$525,033 and all 12 construction change orders with a net total of \$156,811 to determine whether they were awarded through a competitive process and properly approved by the Board.

The six Project construction contracts were all competitively bid in accordance with GML and awarded to the lowest bidders based on the engineer's recommendations. Town officials also approved all 12 construction change orders, ranging from a decrease of \$7,000 to an increase of \$60,000.

However, we found that Town officials did not always follow all the bidding requirements of GML or the Town's procurement policy. For example, one change order, totaling \$60,000, was for an office suite to be constructed inside the already-completed exterior shell of the new garage building and included a heated slab for the office space, furnishings and a bathroom.

Based on discussions with officials and our review of the original contracts, we found this work represented a significant departure from the original bid specifications, such that it could constitute a new undertaking and, if so, should have been competitively bid as required by GML.

Also, we found two change orders constituted a new undertaking and required obtaining an RFP and written/fax proposals in accordance with the procurement policy:

- One change order for the flooring contract totaling \$33,165 (for a poured concrete apron in front of the garage doors to provide a place to wash equipment) required a written RFP and written/fax proposals from three contractors. Although the Supervisor told us that he discussed the poured concrete apron with the two contractors that bid on the original flooring contract, officials did not provide us with a written RFP or written/fax proposals to verify that they sought competition for this change order.
- The other change order totaling \$9,950 (for the removal of the old floor in the existing building) required a written RFP and oral/fax proposals from two contractors. The Supervisor told us that he called two vendors to seek

... Town officials did not always follow all the bidding requirements of GML or the Town's procurement policy.

competition, but neither were interested in the project due to the small size. However, officials did not provide us with a written RFP or evidence of oral/ fax proposals to verify that they sought competition for this change order.

The Supervisor told us he was unaware of the requirement to follow the procurement policy for these items because they were being included as part of a previously procured contract. Because officials negotiated certain change order work with existing contractors without seeking some type of competition, it may have resulted in the change order work being more costly than if the work was awarded through a competitive process.

Furthermore, although the Project's six construction contracts were bid in accordance with GML, officials did not always follow the procurement policy's documentation requirements. For example, we could not verify that several contractors had submitted appropriate insurance coverage in the bid submissions.

Officials said they recall reviewing the contractor insurance certificates, such as liability and workers' compensation. However, four contracts did not have either insurance certificate on file, and the other two contracts had proof of liability insurance only on file. As a result, there is an increased risk that the Town could have faced legal liabilities by not ensuring contractors had proper coverage.

What Do We Recommend?

The Board should:

1. Approve an initial project cost and detailed budget for the life of a project that includes all anticipated costs and financing methods.
2. Ensure all Board actions and proceedings are explained in the Board minutes to ensure the project scope is transparent to taxpayers.
3. Ensure the public reporting of a project through the AUD is accurate and timely.
4. Ensure future capital projects are properly procured in accordance with the procurement policy and applicable statutes, including retaining relevant contract documentation.
5. Ensure contract terms related to material and construction specifications, including verification of materials, are followed.

-
6. Improve its understanding of planning, overseeing and managing a capital project to ensure proper compliance with laws and reporting and monitoring of project activity by reviewing our publication *Capital Projects Fund* available at <https://www.osc.state.ny.us/files/local-government/publications/pdf/capital-projects-fund.pdf>.
 7. Recoup the \$1,887 overpayment made to one of its contractors.

The Supervisor should:

8. Ensure complete and accurate accounting records are maintained and provided to the Board with monthly reports comparing the project budget with actual revenues and expenditures to enable the Board to monitor project activity.

Appendix A: Project Timeline, Contracts and Change Orders

Figure 5: Highway Facility Capital Project Timeline

Date	Description
December 2015	Purchased first property for new garage for \$20,000.
March 2016	Signed a \$65,000 contract for engineering services for proposed highway garage of 9,000 square feet and separate salt shed on first property.
June 2016	Purchased second property with existing building for \$117,145.
August 2016	Engineers presented a plan for new building on second property for 9,000 square feet.
November 2016	\$1 million bond resolution adopted for new building and salt shed.
June 2017	Plans and specifications for new garage presented by engineer and reviewed by Board with construction estimates between \$1.1 million and \$1.29 million.
January 2018	Bids received for 9,000 square foot building.
March 2018	Rejected all previous bids due to contractor concerns and low bids exceeding cost estimates. Board paid off the \$1 million bond anticipation note. Board and engineer redesigned a smaller, 7,500 square foot building to reduce cost.
May 2018	Bids received and rejected for smaller building due to costs exceeding acceptable amounts.
July 2018	Board and engineer decided to rehabilitate existing structure on second property to reduce cost. Adopted a \$500,000 bond resolution for rehabilitation of existing building.
August 2018	Demolition of existing structure shell is completed.
October 2018	Low bid accepted for foundation and envelope renovations.
March through September 2019	Low bids accepted for insulation, floor slab, electrical and plumbing and HVAC.
December 2019	Open house held for public to see new garage.
January 2020	Low bid accepted for salt shed.

Figure 6: Project Construction Contracts and Change Orders as of April 22, 2021

Description	Net Change			Totals
	Base Contract	Order/ Amendment	Non-Contract Related	
Engineering Fees	\$125,941	\$37,381	\$0	\$163,322
Non-Contract Allocated Purchase Cost	N/A	N/A	117,145	117,145
Non-Contract Demolition of Building Shell	N/A	N/A	12,247	12,247
General Construction Contract	200,422	158,113	0	358,535
Insulation Contract	29,130	0	0	29,130
Electrical Contract	107,000	205	0	107,205
Plumbing and HVAC Contract	93,791	0	0	93,791
Non-Contract Construction-related Costs	N/A	N/A	10,176	10,176
Overpayment to Construction Vendor	N/A	N/A	1,887	1,887
Salt Shed Contract	94,690	(1,507)	0	93,183
Total	\$650,974	\$194,192	\$141,455	\$986,621

Appendix B: Response From Town Officials

Town of Butternuts NY

Supervisor Bruce Giuda
PO Box 318 Gilbertsville NY 13776
607-783-2127

Town Clerk Rebekah Huff
Town Board Members
Keith Lilley Scot Lueck
John Hill Paul Irwin

December 9, 2021

Town of Butternuts response to OSC Highway Facility Capital Project 2021M-94 provided by Town Supervisor Bruce Giuda

This response to audit 2021M-94 has been developed after review of the draft report and discussions with the auditors who compiled the data and performed on site observations of the new highway facilities. These facilities consist of a new highway garage, a new salt shed and a new fuel depot, with other supporting infrastructure improvements. This response will address the five major findings as identified by OSC auditors, and will add context and clarification on several key issues. This project has evolved and actually has four distinct phases that may not be clear in the report. Over the course of more than five years the Town Board bought two adjacent properties and actually developed and sought bids for three distinctly different options for a new highway garage. After bids for two different garages were deemed to be too expensive, the Board decided to repurpose and add to a building that was already on the second property. The fourth phase was to build a new salt shed at the new site.

Finding # 1 – The Board did not prepare a budget or disclose all known project costs and financing sources.

- Prepare a budget - While it is apparent that the Board did not develop an official budget for the final design, there was constant discussion and disclosure every two weeks at regular Board meetings. The Supervisor gave regular reports, both orally and in writing, stating the costs incurred to date, funds appropriated, and funds remaining, as well as projected costs for the next steps in the project. To say the Board did not “disclose all known project costs” is not accurate. All financial data, estimates, and projections were fully disclosed to the Board as well as anyone who had an interest to know. It is difficult to project costs when demolishing an existing building and rebuilding it, since it is impossible to predict what problems or issues will be found there. The Board relied on the Town’s engineering firm and industry data to estimate what these costs would be.
- “As a result, total costs to complete the highway garage exceeded the maximum estimated costs by \$372,318”. It is difficult to reconcile this statement since OSC stated there was no budget. It is not possible to exceed a budget that does not exist.

See
Note 1
Page 17

See
Note 2
Page 17

-
- Disclosing project financing sources – The Town Board had developed reserve funds for “buildings” and the amount of this reserve fund was well over \$200,000. Regardless of which project phase was approved, the Board had always planned to use these building reserve funds for the new highway garage. This was fully disclosed and prepared for by previous Boards as well as the current Board. Funds were added into the budget for the past two years to provide necessary capital to continue and complete the project. This funding plan was fully disclosed at budget workshops, Board meetings, and public hearings. The 2019 and 2020 budgets will clearly show that several budget lines were increased substantially for the sole purpose of completing the new highway garage out of budget funding rather than borrowing the money. This is all public information available to anyone who is interested. The issue that creates this misperception is the \$500,000 loan that was used for the bulk of the construction costs. Although the bond counselor was clearly told that the loan would be a PART of the funding stream, he incorrectly issued a product that stated that the loan would be the total amount of the project. There is no way to build these highway facilities for \$500,000 and everyone, including the Board and the residents, knew that. The incorrect technical language and terms produced by the bond counselor were overlooked, even after review by the Town attorney.

See
Note 3
Page 17

Finding # 2 Fully define the project scope -

This issue deals with change orders and states that “a planned office suite was omitted from bid documents, but later added as a change order”.

- When the Board decided to demolish and renovate the existing structure, bids were requested for a new outer shell, new roof, adding approximately 1700 square feet of new floor space. The office suite was never in the original bid documents. After consultation with the engineers and the Town attorney, the Board was advised that the office could be added later as a change order. OSC states that this action was incorrect and inconsistent with GML. In fact, the actual location and layout of the office suite was developed well after the original bid was awarded and construction was under way. The current layout and design was established in large part due to input and suggestions from the highway crew, and has maximized utilization of space.

See
Note 4
Page 17

Finding # 3 - Obtain an RFP and written / fax proposal for two other change orders totaling \$43,115, which violated the Town's procurement policy.

- This deals with removal of the old concrete floor in the original building and, at a later date, adding a new concrete apron outside the new garage. As discussed with OSC auditors, requests were made to several contractors to submit bids for removal of the old concrete floor. The contractors names were made known to the auditors, but will not be revealed in this reply. A Town can ask for bids and / or proposals from contractors, but if no one is interested in doing the job an RFP or quote request is futile. The contractor on the job was the only one interested in removing the old concrete floor and the only one who submitted a quote for the job.

See
Note 5
Page 18

The new concrete apron outside the completed building was originally bid as one project along with the entire interior floor. Only two contractors submitted bids for the concrete project and both requested that the outside apron be deleted from the interior floor, and added later as a change order. It was agreed that the price per square foot for the outside apron would be kept the same as the winning bid for the interior concrete floor. After the concrete bid was awarded, the unsuccessful contractor made it known that he was not interested in doing the apron. Subsequently, the Board then had the apron done by the same contractor who did the interior floors. There were many factors involved, including under floor insulation, thousands of feet of pex pipe embedded in the concrete floor, concrete treatments, floor drains, water pipes and other conduits to be installed simultaneously. The success of RFP's and bids is directly affected by the number of bidders. The Board found that in the case of this renovation project, many contractors were simply not interested in bidding.

Finding # 4 – Ensure that the contractors were properly monitored

- At the outset of this project, including all three original phases, the Board discussed and researched ways to monitor the contractors on the job. Options included “clerk of the works” candidates and construction management companies. The engineering firm that designed the project stated that they would do basic monitoring of steps throughout the construction phase. They were also responsible for inspecting every step in the process before signing off on payment of the contractors. As the project moved along it became apparent that these inspections were not taking place sufficiently. The most obvious example was the fact that the roof panels were never inspected prior to installation by the engineers. The roof panels that were installed were not the same as those that were specified, and by the time this was discovered, the roof was

completed. Having put their faith in the engineers, the Board was not in a position to spend every day on the job double checking everything. The one solid conclusion drawn from this experience was that strict oversight is necessary from an independent source. A construction management firm (unrelated to the engineers) will prevent this lack of oversight and attention to details. The extra cost of a construction management firm should not be a deterrent from hiring them.

Finding # 5 - Insuring annual reports are accurate and timely

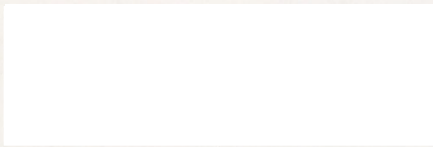
- Construction projects should be accounted for, and paid from a certain fund (H Funds) in the Town budget. From the outset of this project, the accounting software used by the Town was unable to correctly process and record funds properly. The Supervisor, bookkeeper, and Town Board were all aware of this problem. Accurate records were kept through other means, and all funds were accounted for on a separate system. The annual AUD was incorrect as filed because of this issue. It is a problem that exists to the current day and the Supervisor is working with the Comptroller's office to reconcile the H Fund expenditures correctly. The highway facility project is now complete so changes to software will have to be made prior to any new construction projects in the town.

SUMMARY –

- The new highway garage is a hybrid of sorts with renovations of existing space and new space added. Industry standards show that costs per square foot for a new facility (prior to Covid) was around \$200 per square foot. The cost of this project comes in at \$147 per square foot. However, even this low price per square foot is misleading because it also includes a new fuel depot and 2000 gallon fuel tank with pump, a new automatic backup generator, and a 5000 gallon underground oil / water separator system.
- The Board has borrowed \$500,000 for a period of ten years. Three annual payments have been made with seven payments left. There has been zero impact on taxes as a result of this project, because of reserves used and several other factors.
- As a result of this completed project, the Town is able to apply for an abatement payment from NY Department of Labor that should be close to ¼ the cost of the new building.
- The new salt shed is now completed and the Town will receive a grant payment of \$75,000 which is slightly less than half of the cost of construction.

See Note 6 Page 18

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- Several considerations influencing the purchase of the new properties were the location which is much safer than the old garage and the realization that there is an enormous amount of sand and gravel there, which is needed to build and maintain town roads.
 - After more than a decade of trying, and due to the many efforts of previous and current Board members, the Butternuts Highway Department is now working out of a clean, safe, and efficient facility that meets the needs of the Town.



Bruce Giuda - Supervisor

Appendix C: OSC Comments on the Town's Response

Note 1

We state that the Board did not disclose all known Project costs for more reasons than a lack of a formal budget:

- A cumulative report of all Project expenditures was not maintained or disclosed in Board meeting minutes.
- Expenditures were made out of three different funds – the general fund, highway fund and capital projects fund – making it difficult to accurately monitor Project costs, avoid cost overruns and provide transparency of total Project costs.
- The bond resolution indicated a maximum estimated cost of \$500,000 to complete the highway garage even through the Supervisor conceded it was known the costs would exceed that amount.
- Town officials planned to include an office within the new highway garage as evidenced by the original designs of the Project. The Supervisor's concession that an office could instead be added later as a change order is further indication that not all known Project costs were disclosed.
- All known Project costs were not disclosed and the reported AUDs omitted \$370,536 of the Project's expenditures.

Note 2

Our report did not state that costs exceeded a budget; rather, the total costs to complete the highway garage exceeded the maximum estimated cost of \$500,000 provided in the bond resolution.

Note 3

Absent a formal capital project budget or disclosure of total planned financing sources and amounts in the Board's meeting minutes, it is unclear how much money the Board planned to use from each funding source. As a result, there was a lack of transparency to taxpayers and other interested parties.

Note 4

The Board planned to include an office in the new highway garage as evidenced by the original designs of the Project and, therefore, it should have been included in the original bid documents and contracts. Change orders should be reserved for unanticipated conditions that occur during project construction, not for predetermined work to be completed outside of the initial contract. However, because the office suite was not included in the original bid documents, we found this work represented a significant departure from the original bid specifications and, if so, should have been competitively bid as required by GML.

Note 5

As outlined in the Town's procurement policy: "A good faith effort shall be made to obtain the required number of proposals or quotations. If the Purchaser is unable to obtain the required number of proposals or quotations, the Purchaser shall document the attempt made at obtaining the proposals." Town officials did not provide us with any documentation to indicate attempts were made to obtain proposals for the instances noted in our report.

Note 6

The Town's operating budgets included real property taxes as a financing source. If several budget lines were increased substantially for the sole purpose of completing the new highway garage out of budget funding rather than borrowing the money, as previously indicated, then the Project had an impact on real property taxes. In addition, reserve funds are able to be funded when operating revenues (including real property taxes) exceed operating expenditures; therefore, while reserves provide a mechanism to prudently manage accumulated funds, real property taxes are a component of those funds.

Appendix D: Audit Methodology and Standards

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, our audit procedures included the following:

- We interviewed Town officials and reviewed Board minutes and meeting recordings, real estate purchase information and other preliminary planning documents and reports to develop a Project timeline.
- We interviewed Town officials and reviewed Board minutes to determine whether the Board adopted a resolution that established and identified the Project, authorized the maximum estimated cost and established how the Project would be financed, and to determine whether the Board and Town officials prepared an itemized budget. Also, we reviewed Board minutes to assess whether the Board properly established and documented bond resolutions.
- We examined the old highway garage, condemnation documentation and the new highway garage before and after it was placed in operation. We also examined the old salt shed and new salt shed as it was nearing completion.
- We reviewed the Town's procurement policies and procedures and examined available bid documentation to determine whether the Project was procured in accordance with Town policy and applicable statutes.
- We reviewed all six construction contracts, the engineering contract, all 12 construction change orders and the engineering contract amendment to determine whether the terms were properly followed. We also compared payment terms to actual payments to determine whether the Town paid the proper amount to all contractors.
- We reviewed all payments related to the Project for proper authorization and approval and to determine the cost of the Project.
- We interviewed Town officials, reviewed concrete test results and reviewed Board minutes to assess the adequacy of Project monitoring.
- We allocated the cost for the building based on the assessed value of the building and land as determined by the Town, to construction costs for the highway garage.
- We reviewed documents related to the New York State Department of Environmental Conservation grant obtained for the salt shed to determine the estimated funds received for the structure.
- We assessed the adequacy of the monthly financial reports the Supervisor provided to the Board to monitor the Project.

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- We reviewed and summarized all capital projects fund expenditures related to the Project to determine whether they were correctly recorded in the Town's general ledger and reported on the AUDs.
 - We reviewed Board minutes, spoke with Town officials, reviewed contract documents and price estimates for corrugated and standing seam roof panels to assess the timing and resolution of the roof change order.
 - We discussed with the Project's engineer and reviewed documentation to support the costs and estimated savings from using Town resources to demolish the existing building and reviewed documentation to support the costs and savings realized from using Town resources to install the air hoses.

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.

The 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 provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. 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 the CAP available for public review in the Town Clerk's office.

Appendix E: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

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

www.osc.state.ny.us/local-government/publications

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

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

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Division of Local Government and School Accountability
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Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

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Local Government and School Accountability Help Line: (866) 321-8503

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