

Town of Pendleton

Special Districts

APRIL 2018



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

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Report Highlights

Town of Pendleton

Audit Objective

Determine whether Town officials are properly accounting for sewer operation financial activity.

Key Finding

- Town officials are not properly accounting for sewer operations.

Key Recommendation

- Determine whether the sewer operations were created as a special district or sewer improvement and then budget and account for them accordingly.

Town officials disagreed with certain findings in our report but indicated they plan to initiate corrective action. Appendix B includes our comments on issues raised in the Town's response.

Background

The Town is governed by an elected five-member Town Board (Board), which is composed of a Town Supervisor (Supervisor) and four Council members. The Board is responsible for the general oversight and control of the Town's operations and finances. The Supervisor serves as the Town's chief fiscal officer and is responsible for preparing the accounting records and financial reports.

The Town provides various services to its residents, including highway maintenance, snow removal, water and sewer, refuse collection and general government administration. The budget is funded primarily by sales tax, real property taxes, State aid and user charges. Towns typically create special districts to provide water and sewer services to their residents and businesses.

Quick Facts

2017 Budgeted Sewer Appropriations	\$393,400
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2017 Sewer Customers	1,559
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Audit Period

January 1, 2016 – December 1, 2017

Special Districts

What is a Special District?

A special district¹ is a geographic area within a town established to address specific needs of the properties within that district. District costs are raised by assessments against benefited properties in the district and/or fees charged to district service users. Each special district in the Town constitutes a separate accounting entity with its own tax base. The Board and other Town officials should develop individual budgets for each special district that include estimated revenues and appropriations. In addition, the Supervisor is responsible for maintaining accounting records that document the assets, liabilities, fund equity and operating results (revenues and expenditures) for each special district. The Board and Town officials should monitor special district financial operations to ensure that each district is self-sufficient.

Town Officials Are Not Properly Accounting for Sewer Operations

The Town apparently has three sewer districts but the Supervisor recorded and reported all sewer operation revenues and expenditures as one special district. In addition, the Board does not adopt individual budgets for each sewer district. Capital costs are allocated to three sewer districts, but operating and maintenance costs are combined under one district. Town records, on a combined basis, show that as of December 31, 2016, the Town reported operating cash of \$303,875, a capital reserve of \$185,339 and unrestricted fund balance of \$393,842 from sewer operations.

The Board minutes indicate that at least one of the sewer districts may have been undertaken as an Article 12-C sewer improvement rather than a special district, which further complicates the sewer financial activity. A sewer improvement and a sewer district are not synonymous, and the methods for raising costs may vary depending upon whether the project was authorized as a sewer improvement or a district. While sewer improvements and sewer districts both function to provide sewer services to a town's properties, the method of forming, assessing and improving each is distinct and different.²

1 See New York State Town Law Articles 12 and 12-A.

2 Among the differences between an improvement under Article 12-C and a special district are that (1) a district apportions costs among the benefited properties within the set boundaries that are determined when the district is established; (2) an increase or improvement of facilities within the district may be undertaken without establishing a new district or improvement; (3) the cost of a sewer district can only be raised on a benefit basis to the extent not raised by user fees; and (4) the threshold for requiring the Comptroller's consent, assuming debt will be issued, is based on different criteria.

Under Article 12-C of New York State Town Law, sewer improvements may be undertaken without the formation of a special district. A town can charge the associated capital costs to an area of benefited properties, by imposing a general tax levy,³ or by a combination of both. User fees also may be used to fund both operation and maintenance and capital costs.⁴ The improvement's financial activity is typically accounted for in the general fund.⁵ Each new project constructed pursuant to Article 12-C represents a separate and distinct improvement.

The Town appears to be using Town Law provisions on sewer districts and sewer improvements as if they were interchangeable, which may have contributed to the confusion with respect to the accounting and reporting requirements for sewer districts and improvements.

What Do We Recommend?

1. Town officials should determine whether the sewer operations were created as a special district or sewer improvement and then budget and account for them accordingly.

3 Capital costs can be borne by the area of the town outside any villages. Where a town does not have any villages, the charge is borne by the whole town.

4 To the extent operation and maintenance is not raised by user fees, the cost of such management, maintenance, operation and repair is a charge upon the area of the town outside of any villages.

5 There are no villages located in the Town.

Appendix A: Response From Town Officials

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March 12, 2018

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RE: Report of Examination for the Town of Pendleton

The Town of Pendleton (Town) appreciates the resources devoted by the New York State Office of the State Comptroller (NYSOSC) to ensuring proper local government operation, allocation of financial resources, and accounting for all aspects of operation. The local representative for the NYSOSC spent considerable time reviewing documentation and interacting with town personnel and at the conclusion of the audit identified in the draft report two [2] apparent accounting deficiencies. The Town Board will make any necessary corrections, but as outlined below all current operations are in compliance with proper accounting procedures.

The key finding of the report is that Town Officials “are not properly accounting for Water Districts and/or Sewer Operations”, since there is only one [1] Water District Budget and the Sewer Operations have been accounted for as a single entity. The draft report assumes that the Town has three separate water districts and three separate sewer districts. The draft report does not indicate the origin of the narrative that “[t]he Town established three water districts”. The draft report further does not indicate the origin of the narrative that “[t]he Town also apparently has three sewer districts”. The Water Districts and Sewer Operations will be addressed separately and in the order discussed in the draft report.

See Note 1 Page 7

Water Districts

In 1961 the Town of Pendleton established a Water District to supply public water to its residents. The 1961 records indicate that a single Water District was established. Following an opportunity to meet with the auditor, an extensive review of records maintained in the Niagara County Clerk’s Office was conducted by the Town Attorney, such record review did not reveal the formation of any additional Water Districts by the Town of Pendleton, but for the initial 1961 Water District. The Town Attorney made contact with the Niagara County Treasurer and the Treasurer was unable to provide any enlightenment concerning such multiple Water Districts. The Town Attorney further contacted the Niagara County Director of Real Property Services in order to determine whether any records exist concerning multiple Water Districts. Such conversation revealed a “Water 1” and a “Water 2” for property tax billing purposes. Records provided for Water 1 revealed that such tax payers are Town of Pendleton residents that receive public water through the Town of Pendleton, while Water 2 are those tax payers in the Town of Pendleton that do not receive public water [i.e. utilities, the City of Lockport

water line, well water users and/or those individuals on Lockport Road who receive their water from the Town of Cambria]. In summary, those tax payers in Water 2 are not “incurring costs” for services rendered by the Town of Pendleton Water Department, since such tax payers do not have facilities which can utilize Town of Pendleton water.

It is respectfully submitted, that “water 3” no longer exists for tax billing purposes and is not within the Town of Pendleton Assessor’s data base and/or the County of Niagara Real Property data base. It is uncertain as to when Water 3 was eliminated from the data base. The only record that could be reviewed following the auditor’s work was a 1986 record [i.e. a record more than thirty (30) years old] that indicates that water 3 had one parcel. Conversations with the legal division of NYSOSC in Albany was unable to provide any additional information concerning the assertion that the Town of Pendleton has three [3] water districts.

It is further respectfully submitted that the Town of Pendleton has one [1] Water District that provides public water to its residents and that such District is properly accounting for its revenue and expenditures.

Sewer Operations

See Note 2 Page 7

The Town of Pendleton has provided sewer services to its residents through “sewer improvements” undertaken pursuant to Article 12-C of the New York State Town Law. The only “sewer district created in the Town of Pendleton occurred in 2014 for a subdivision to be formed as “Heritage Landings”. Since more than three [3] years have elapsed since the “date of establishment of such district and that no improvement has been constructed or service provided for such district”, the Town is considering dissolving and/or discontinuing such sewer district for Heritage Landings. [See Town Law Section 202-c (2)]. Upon the dissolution and/or discontinuation of such “paper” district the Town of Pendleton will have **NO** sewer districts.

Since the initial sewer improvement area in the Town of Pendleton there have been many additional sewer improvement areas that have been approved by the Town Board. Many of such additional sewer improvement areas have been created pursuant to Town Law Article 12-C, Section 209, et. seq. to facilitate the development of subdivisions within the Town of Pendleton. Such subdivisions are formed with the developer being responsible for the cost and installation of the sewer service facilities, while the Town does not pay and/or assist in such construction.

Pertinent to this audit was the formation of the following three [3] separate subdivisions: “Old Orchard Estates”, June 3, 2003; “the Meadows”, August 5, 2003; and “Bear Ridge Estates”, September 6, 2005. Each of these subdivisions connected to the existing Pendleton Sewer Improvement area. Each of the Notice of Public Hearings for such subdivisions indicate that an extension to the Sewer Improvement area was being created [in actuality a new sewer improvement area was being created], At no time were sewer “districts” created for these subdivisions. The developers installed and paid for the cost of such sewer improvement, the Town of Pendleton did not install and/or pay for such sewer improvements in any of the forgoing subdivisions. Therefore, **NO** sewer districts were created, no Town of Pendleton services and/or money was expended and there were no reporting requirements to NYSOSC.

The confusion concerning these matters was created in 2006 by the Attorney for the Town who apparently had no knowledge concerning the proper filings with the NYSOSC concerning sewer improvement areas. According to minutes for the March 7, 2006 meeting of the Pendleton Town Board,

the following occurred:

Town Attorney, Andrea Sammarco explained to the Board they need to authorize and direct the Town Clerk to certify and file a copy of the Sewer District resolutions for the subdivisions: Old Orchard (est. June 3, 2003) The Meadows (est. August 5, 2003) and Bear Ridge Estates (est. September 6, 2005) . . . The resolutions are to be filed with the State Comptroller and the County Clerk.

Such 2006 resolution caused a filing to be made which erroneously indicates that “Old Orchard”, “The Meadows”, and “Bear Ridge Estates” are separate and distinct sewer “districts”. As stated above, sewer services were provided to such subdivisions by the creation of “Sewer Improvement Areas” not districts. The March 7, 2006 resolution was both unnecessary and erroneous and should for all purposes be disregarded and treated as a nullity. If the intent had been to create sewer “districts” in 2006, none of the prerequisites of Town Law 12-a, 209-c, 209-d, and/or 209-e were complied with and again resulting in such 2006 resolution being a nullity.

Considering this information, it is respectfully submitted that the Town has identified proper evidence to substantiate its position that no current accounting errors exist with the one water district that serves all property owners. No historical evidence has been found indicating the creation of more than one water district in the Town of Pendleton. However, steps will be taken to ensure that all documentation and notations are in place confirming that all taxpayers that use Pendleton public water are within Water 1 and will be billed accordingly for water service by the one water district encompassing the Town of Pendleton. It is further respectfully submitted that the Town of Pendleton has only a “paper” sewer district which presently has no accounting requirements. All other sewer services are provided to Town of Pendleton residents by those sewer improvement areas wherein they reside. In future budget years, such sewer services shall be accounted for as a “Town function”.

In conclusion, the Town Board appreciates the NYSOSC’s efforts dedicated to ensuring that all Town operations are properly documented. The Town Board will continue to diligently work to ensure that Town of Pendleton residents and property owners are properly served by all involved in local government and all can continue to rest assured that any and all actions will be taken to continue prudent budgeting, accounting, and expenditure of public financial resources.

Sincerely,

Joel Maerten

Appendix B: OSC Comments on the Town's Response

Note 1

Based on additional information provided at the exit discussion and in the Town's response letter, we have removed the finding regarding the Town's water districts and the related recommendations. We also modified the audit objective.

Note 2

As indicated in the report, the Town has used the terms "improvement" and "district" as interchangeable terms in describing the nature of particular sewer operations in the Town. These terms are not interchangeable and, depending on whether the entity is an "improvement" or a "district," have accounting and reporting implications. Further, the Town has consistently reported to OSC its sewer operations as sewer districts in the Town's annual update document. To add to this confusion, the Town has used the term "improvement" and "district" interchangeably when describing the creation of a sewer entity in the same record of Town Board proceedings that was used to create the entity. For example, on June 29, 1976, the Town used the term "improvement" and "district" interchangeably in the same authorizing resolution.

Appendix C: 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 reviewed the Town's special district budgets, accounting records, financial reports and Board minutes.
- We interviewed the Supervisor and other Town officials.
- We reviewed special district information on file with the New York State Comptroller's Office and Niagara County.
- We reviewed special district customer records and billing data.

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

The Board has the responsibility to initiate corrective action. Pursuant to Section 35 of New York State General Municipal Law, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

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

www.osc.state.ny.us/localgov/costsavings/index.htm

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

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

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

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm

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

www.osc.state.ny.us/localgov/planbudget/index.htm

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

www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.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/localgov/finreporting/index.htm

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

www.osc.state.ny.us/localgov/researchpubs/index.htm

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

www.osc.state.ny.us/localgov/academy/index.htm

Contact

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