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May 15, 2015

Phil Barrett, Town Supervisor  
Members of the Town Board  
Town of Clifton Park  
One Town Hall Plaza  
Clifton Park, NY 12065

Report Number: S9-14-73

Dear Supervisor Barrett and Members of the Town Board:

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 Town of Clifton Park (Town) 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 Town. 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 Town. We discussed the findings and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Town officials indicated that they plan to initiate corrective action. Appendix B includes our comment on an issue raised in the Town'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 Town has not yet used the proceeds from its parkland alienation transaction to make capital improvements or acquire new parkland as required by its Legislation. However, officials have placed the revenues received in a reserve account for its parks. In addition, the Town,

currently has no specific plan on how the funds will be used. We also found the Town has not collected and properly deposited all of its lease payments. On a positive note, the Town determined the fair market value for its alienated parklands prior to awarding the contract by seeking a request for proposals.

## **Background and Methodology**

The Town is located in Saratoga County and is governed by a five-member Board, which includes the Town Supervisor and Deputy Town Supervisor. The Town Supervisor is the Town's chief executive officer and is responsible for the Town's day-to-day operations. The Town's 2013 general fund budget amounted to approximately \$17.7 million. The Town has designated approximately 960 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 park<sup>1</sup> 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

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<sup>1</sup> 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)

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 Town sought legislative approval for parkland alienation that was signed into law in 2012. The Legislation authorized the Town to discontinue the use of certain municipally owned parklands for the purpose of erecting, maintaining and operating a wireless communications facility and to provide an easement for access and utilities purposes. The Legislation specifies that all proceeds from the lease shall be used for capital improvements to existing park and recreational facilities. The Legislation also stipulates that the Town shall dedicate an amount equal to or greater than the fair market value of the easement interests for capital improvements or acquisition of additional park and recreational facilities.

Although the Town has not yet used the proceeds to make capital improvements or acquire new parkland as required by the Legislation, it has placed the lease payment revenues in a reserve account for its parks and sought a request for proposals to obtain the fair market value of the alienated parklands. The Town currently has no specific plan on how to use the funds. However, Town officials indicated they intend to use the funds for capital improvements to the park when necessary.

In addition, while reviewing the lease payments made to the Town, we found that the Town did not receive its February payment of \$1,750. The March, April and May payments were received. Town officials indicated they would have caught the discrepancy upon a review of the account. Officials indicated they would contact the company to seek the February payment.

Lastly, we found that the Town inappropriately deposited \$100 of funds received from the lease agreement in a miscellaneous fund rather than the reserve fund set aside for parkland. Town officials corrected the discrepancy while the audit team was on-site.

## **Recommendations**

Town officials should:

1. Ensure that all lease payments are collected and deposited into the appropriate parkland account.
2. Consider developing a plan outlining how the funds received will be used for parkland capital improvements or for the acquisition of additional parkland.

The Town 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 Town Clerk's office.

We thank the officials and staff of the Town of Clifton Park for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## **APPENDIX A**

### **RESPONSE FROM TOWN OFFICIALS**

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



## Town of Clifton Park

One Town Hall Plaza • Clifton Park, New York 12065 • (518) 371-6651 • FAX: (518) 371-1136

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January 5, 2015

Via email: [Muni-Binghampton@osc.state.ny.us](mailto:Muni-Binghampton@osc.state.ny.us)

Ms. Ann Singer  
Office of the State Comptroller  
State Office Building  
44 Hawley Street  
Binghampton, NY 13901-4417

Dear Ms. Singer,

On behalf of the Town of Clifton Park I would like to respond to the Local Government and School Accountability Office regarding the audit of the implementation of our Parkland Alienation bill which enabled the construction of a wireless communications facility on the Clifton Common, which is the primary active park within the Town.

Acting on anecdotal evidence of a gap in service at and near our largest active park, especially during large events, the Town of Clifton Park released a request for proposals (RFP) in the fall of 2011. The request sought proposals for a wireless communications facility at the Clifton Common, but with particular emphasis on proposals that would exhibit “sensitivity to the visual aesthetics of the property and surrounding land uses,” and which would “suggest the most efficient and compatible style and location for the facilities at the park.”

The proposal from Independent Towers scored favorably on the developed scoring matrix, not only for its highest financial return but also because of its creative use of an existing light pole illuminating one of the baseball fields at the park. The project replaced an existing 70-foot light pole with lights at the 60-foot level with a 110-foot communications tower, with replacement of the light configuration at the existing 60-foot level. The project needed an easement for a total of under 5,000 square feet of space over an outfield wall, much of which was already in use for the existing utilities. The 4,000 square foot equipment shed was planned for an area of brush and yard maintenance debris not actively used as part of any of the fields. Financially, the proposal included a \$15,000 lump sum payment upon Planning Board approval, as well as annual escalators and increases for any additional carriers committing to the site beyond AT&T, which was the carrier anchoring the project.

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**PHILIP C. BARRETT**  
Supervisor

**LYNDA M. WALOWIT**  
Councilwoman

**JAMES M. WHALEN**  
Councilman

**AMY J.H. STANDAERT**  
Councilwoman

**JAMES J. ROMANO**  
Councilman



Based on that proposal, the Town then sought legislative approval for the alienation of easement and leasehold interests for the square footage necessary for the facility as well as access for utility, fiber optics, and maintenance over and under existing park access roads. The bill submitted closely followed the alienation guidelines published by OPRHP in all respects, and contained a commitment to use all revenue from the project for capital improvements to existing park facilities.

After receiving legislative approval, the lease was then carefully negotiated with additional lump sum payments included for additional wireless providers committing to the site as with additional monthly rent. Lease payments commenced on May 28, 2013, in accordance with the lease provisions, and escalated 3% one year later. These sums, as well as the annual escalators, are being collected in the ordinary course of business and deposited in a reserve account which is accumulating funds in anticipation of future capital projects at the park.

On April 24, 2014, staff from the Division of Local Government and School Accountability notified the Town that we had been selected for an audit to determine the Town’s compliance with the terms and conditions of the Parkland Alienation bill covering “the period from January 1, 2011 through current.”

Town staff met with Division representatives on April 30, 2014 at 10:00 a.m., providing the auditors with the entire file for the legislation, including the RFP process, home rule message, lease and easements, an amended bill, and correspondence to legislative representatives and the Governor which identified the need for the additional wireless service capacity to be provided by the facility for park patrons, as well as the minimized intrusion on Town parkland resulting from the creative use of the existing light pole, and the general ledgers for the project showing revenues received.

During the April 30 review, audit staff asked whether the rent check for February 2014 had been received. Town staff contacted Independent Towers, and reported to audit staff that the company apologized for any oversight and indicated that its check would be forthcoming, and it was received on May 16, 2014. As noted in the draft report, the initial \$100 deposit received upon signing of the lease was initially placed in a miscellaneous fund, but reclassified into the correct reserve account on April 30.

While the draft report correctly recites these two items in the “Audit Results” section, the “Summary of Findings” is misleading in asserting that the Town has not “collected and properly deposited all of its lease payments.” In both instances, corrections were made the same day of the audit, and audit staff were told that the February payment was forthcoming. Further, the account is reviewed periodically and the February discrepancy would clearly have been picked up in any subsequent review, as the draft audit report ultimately notes. For these reasons, we disagree with the characterization of these items in the Summary of Findings.

See  
Note 1  
Page 9

Relative to planning for a capital project to spend the funds received to date, the Town has invested \$1,835,594 into the Park at the Common since 2010, as follows:

2010: Drainage Improvements –baseball fields	\$28,186
2011: Fencing Replacements -2 baseball fields	\$14,913
2012 Guard Rails, Common Parking Lots	\$2,460
2013 Drainage Improvements-baseball and softball fields	\$336,190

2013	Sprinklers and Irrigation System-Soccer fields	\$146,092
2013	Basketball Court Improvements	\$116,715
2014	Ice Arena Improvements	\$1,191,038

While over \$64,000 has been collected in the reserve account from lease payments received as a result of the wireless project approved by the legislation, the Town plans to allow the account to continue to accumulate funds sufficient to offset a capital improvement as dictated by the need for parkland capital improvements as identified by staff and our user groups.

Considering the recent projects which were already accomplished or planned when the legislation was approved, we expect that the revenue stream from the wireless lease will be available for long term planning. We note that a second carrier committed to the site in the fourth quarter of 2014, and that overall revenues will be up substantially in 2015 and beyond, as will wireless service for park visitors.

Finally, in light of the Audit Notification letter's identification of the time from January 1 2011 to the present as the scope of the audit for the project, we were surprised that the RFP process received so little comment. The Town Board took care to craft bid documents specifically seeking proposals in harmony with the existing park facilities, and included the wireless communication needs of park patrons attending major sports and entertainment events in our correspondence with State representatives considering the bill as a significant reason for the requested legislation. Audit staff visited the facility as part of the review, and commented to Town staff on the minimal impact the facilities had on park purposes, yet were silent on these positive aspects of the project in the draft report.

Beyond these items, the Town agrees with most of the findings of the audit report, and appreciates the opportunity to have this response included with the final report to include important context for the project.

Sincerely,

Phil Baffrett  
Town Supervisor



## **APPENDIX B**

### **OSC COMMENT ON THE TOWN'S RESPONSE**

#### Note 1

The audit report further explains the actions taken by the Town in regards to the lease payments that were not properly collected and deposited.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

We interviewed Town 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 parkland alienation.

We reviewed the Town'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 traced all funds received from the transaction back to the general ledger and subsequent accounts.

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.