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January 2016

Wayne Hall, Mayor  
Members of the Board of Trustees  
Village of Hempstead  
99 Nichols Court  
Hempstead, NY 11550

Report Number: P7-15-63

Dear Mayor Hall and Members of the Board of Trustees:

A top priority of the Office of the State Comptroller is to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support local government 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 fiscal 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 eight local governments throughout Nassau and Suffolk Counties. The objective of our audit was to determine whether local governments complied with the Long Island Workforce Housing Act (Act) when approving qualifying residential units. We included the Village of Hempstead (Village) in this audit. Within the scope of this audit, we examined the policies and procedures of the Village and reviewed the site plans for residential developments comprising five or more units for the period January 1, 2009 through December 31, 2014. 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.

This report of examination letter contains our findings and recommendations specific to the Village. We discussed the results of our audit and recommendations with Village officials and considered their comments, which appear in Appendix A, in preparing this report. Village officials generally agreed with our recommendations and indicated they will implement corrective action. At the completion of our audit of the eight local governments, we prepared a global report that summarizes the significant issues we identified at all of the local governments audited.

## Summary of Findings

The Village did not comply with the Act when approving one of four applications for residential developments. The Village Planning Board approved the application for a development that has not yet been constructed, comprising 12 units, without requiring that at least 10 percent of the units be designated as affordable workforce housing or requiring payments in lieu of affordable workforce housing units.

## Background and Methodology

The Village is located in Nassau County and has approximately 53,900 residents. The Village is governed by an elected five-member Board of Trustees (Board), which includes the Mayor. The Mayor is the chief executive officer and is responsible for the Village's day-to-day operations. The Board is responsible for approving multi-unit residential housing projects. The Village's 2014 general fund expenditures totaled approximately \$72.9 million.

The New York State Legislature implemented the Act in 2008 for the purpose of making homeownership more affordable for the workforce in Nassau and Suffolk Counties. Housing affordability is a function of both housing prices and household incomes. While "affordable housing" is often thought to target lower-income residents (usually those below the median income), the term "workforce" generally includes those who are not typically the target of, or eligible for, affordable housing programs (such as those at or above the median income). This usually includes essential workers in a community, such as firemen, nurses and medical personnel. However, under the Act, the term "affordable workforce housing" is defined as housing for individuals and families at or below 130 percent of the median income for the Nassau-Suffolk primary statistical area<sup>1</sup> (commonly called the area median income or AMI), which averaged \$105,000 for 2009 through 2014.

Under the Act,<sup>2</sup> generally, when a developer makes an application to a local government in Nassau or Suffolk County to build five or more residential units, the local government, in exchange for providing the developer with a "density bonus" that authorizes them to exceed the local residential density maximum by at least 10 percent, must require one of the following:

- The set aside by the developer of at least 10 percent of the proposed units for affordable workforce housing on site, or
- The provision by the developer of other land within the same local government and the construction of the required affordable workforce housing units on the other land, or
- The payment of a fee by the developer for each affordable workforce unit that the developer would have been required to construct. The Act generally sets this fee at the lesser of two times the AMI for a family of four or the appraised value of the building lot(s).

The local government is then responsible for ensuring that all affordable units created under the Act remain affordable. When a developer elects to pay a fee in lieu of building affordable units,

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<sup>1</sup> As defined by the United States Department of Housing and Urban Development

<sup>2</sup> Effective January 1, 2009

the local government, among other things, may establish a trust fund in which these fees are deposited, separate and apart from all other moneys of the local government, for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing. Within six months of establishing the trust fund, the local government must issue guidelines and policies governing the expenditure of trust fund moneys. Any moneys not expended three years from the date they are collected must be paid into a single trust fund controlled by the Long Island Housing Partnership.<sup>3</sup>

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those operations within our audit scope. Further, those standards require that we understand the management controls and those laws, rules and regulations that are relevant to the operations included in our scope. We believe that our audit provides a reasonable basis for the findings and conclusions contained in this report. More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

## **Audit Results**

The Village did not comply with the Act when approving the application for one qualifying residential development. Furthermore, while the Board has adopted a local law that requires 10 percent of units built in its Downtown Overlay Zone<sup>4</sup> to be designated as affordable, it has not adopted written policies or local laws governing overall adherence to the Act, nor has it implemented procedures to ensure compliance with the Act or its own local law.

The Village received applications for four developments comprising five or more units between January 1, 2009 and December 31, 2014. The Act did not apply to the development at 479 Front Street. The developer of the 261 South Franklin Street development designated all 100 units as affordable workforce housing and established certification protocols to ensure all applicants demonstrate annual income at or below 60 percent of AMI and that residents re-certify their income with the developer annually. In addition, the developer of the yet-to-be constructed development at 53 Washington Street has agreed to designate 34 of the 336 units as affordable workforce housing for applicants with income at 80 to 130 percent of AMI. However, the Village failed to require any units be designated as affordable workforce housing in the development at 533 Greenwich Street. Village officials stated that there are no plans to include affordable housing in this 12-unit development to be constructed. Because the Village has no guidelines for compliance with the Act, the Board did not consistently consider workforce housing requirements when approving developments with five units or more.

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<sup>3</sup> The Long Island Housing Partnership is a not-for-profit organization that was created to address the need for and to provide affordable housing opportunities on Long Island for those who are unable to afford homes through development, technical assistance, mortgage counseling, homebuyer education and lending programs. It also provides technical assistance to private developers, municipalities and other not-for-profit organizations who are providing affordable housing on Long Island.

<sup>4</sup> The Village has established a Downtown Overlay Zone which is a geographic zone in its downtown area. The zone allows building developers to construct multi-family housing in areas of the Village that were previously zoned for commercial development. When building within this zone, Village code requires developers to designate 10 percent of the total units as affordable housing (based on 80 to 130 percent of AMI).

## Recommendations

The Board should:

1. Establish guidelines and policies to require all developments that exceed zoning density to be compliant with the Act.
2. Contact the developer of the noncompliant development to implement procedures to bring it into compliance with the Act.

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 forwarded 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 this plan available for public review in the Clerk's office.

We thank the officials and staff at the Village of Hempstead for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## **APPENDIX A**

### **RESPONSE FROM VILLAGE OFFICIALS**

The Village officials' response to this audit can be found on the following page.

**Wayne J. Hall Sr., Mayor**

PATRICIA PEREZ, Village Clerk  
DEBRA URBANO-DISALVO, Village Attorney



LUIS FIGUEROA, Trustee  
WAYLYN HOBBS, JR., Trustee  
PERRY M. PETTUS, Trustee  
DONALD RYAN, Trustee

November 17, 2015

[REDACTED]  
Division of Local Government and  
School Accountability  
Office of the State Comptroller  
NYS Office Bldg., Room 3A10  
250 Veterans Memorial Highway  
Hauppauge, New York 11788-5533

RE: Report of Examination P7-15-63

Dear [REDACTED]

The Incorporated Village of Hempstead is in receipt of the preliminary draft findings Report of Examination noted above. This audit report reviewed this Village's local laws, policies, procedures and other documentation used when approving sites for residential development under the Long Island Workforce Housing Act for the period of January 1, 2009 through December 31, 2014.

It is the intention of the Village to fully comply with the final global report findings and recommendations once issued, which shall be included at a later date in a Corrective Action Plan (CAP).

Yours truly,

Joseph Simone  
Superintendent Building Department

JS:as

cc: Ira McCracken, Chief Examiner  
Wayne Jr. Hall, Sr., Mayor  
Patricia Perez, Village Clerk  
Ray Calame, Village Treasurer  
Village Trustees

## **APPENDIX B**

### **AUDIT METHODOLOGY AND STANDARDS**

Our overall goal was to evaluate whether the Village was complying with the Act when approving qualifying residential units. To accomplish our audit objective and obtain valid audit evidence, our procedures included the following:

- We interviewed Village officials and building developers to gain an understanding of the process for approving residential developments of five or more units from January 1, 2009 through December 31, 2014, and to determine whether applications and plan approvals addressed workforce housing requirements, fees were required of developers not designating units as affordable, how eligibility was determined for the newly created affordable units and how the Village ensures that the units remain affordable.
- We reviewed the Act and applicable sections of Village Code to gain an understanding of the applicable statutory requirements regarding affordable workforce housing and residential density restrictions.
- We determined whether the Village has established an affordable housing trust fund and whether it complied with the Act's requirements.
- We surveyed Village officials to identify all developments of five or more units that were approved between January 1, 2009 and December 31, 2014. We then examined the planning documents for the identified developments to determine the percentage of units designated as affordable workforce housing or, where no units were designated, whether a fee was required in lieu of those units and how the Village calculated that fee.

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.