



# Town of Lancaster

## Financial Management

### Report of Examination

Period Covered:

January 1, 2006 — May 18, 2012

2012M-130



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

October 2012

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support 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 Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Lancaster, entitled Financial Management. 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 General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

The Town of Lancaster (Town) is located in Erie County (County) and has a population of approximately 41,600 residents. The Village of Lancaster and a portion of the Village of Depew are located within the Town's boundaries. An elected five-member Town Board (Board), presided by the Town Supervisor (Supervisor), is the legislative body responsible for overseeing the Town's operations and finances. It is responsible for the general management and control of the Town's financial affairs and has the authority to levy taxes on real property located within the Town and to issue debt.

The Town provides various services to its residents, including street maintenance, snow plowing, garbage collection, police and fire protection, recreation services, and general government support. The 2012 Town budget totaled approximately \$30.2 million for all funds, including special districts. Town expenditures are funded by property taxes, sales taxes, State aid, user charges, and miscellaneous fees.

The Town's fire protection district, which covers a geographic area of the Town outside of the two villages (referred to as town-outside-village), includes four fire companies that the Town contracts with to provide fire protection services. The contractual costs are funded by real property taxes levied on property owners within the fire protection district.

## Objective

The objective of our audit was to determine if the Town protected the taxpayers' interests and exercised due diligence concerning the acquisition of a building and the Town's fire protection agreements. Our audit addressed the following related question:

- Did the Board adequately protect taxpayers' interests when it acquired a building and contracted for fire protection services?

## Scope and Methodology

We reviewed the events and pertinent documentation relative to the acquisition of a warehouse building in 2003, and the Town's fiscal responsibility over its fire protection agreements for the period January 1, 2006 through May 18, 2012. To obtain historical information related to the Town's facility planning, we reviewed documents from a building study conducted in 1995 and subsequent reports through 1997.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of  
Local Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials disagreed with some of our findings and recommendations. Appendix B contains our comments on issues raised in the Town's response.

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 the 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 Town Clerk's office.

## Financial Management

As stewards of public funds, the Board is responsible for making decisions that are in the best interests of the Town and the taxpayers it serves. This responsibility requires the Board to exercise due diligence when considering significant financial commitments such as property acquisitions and contracts for Town services. Accordingly, the Board must balance the level of services desired and expected by Town residents with the ability and willingness of the residents to pay for such services. Careful planning prior to committing Town funds for a proposed project is an essential step that includes identifying the requirements of the project, evaluating possible options, and estimating the potential costs. Failure to follow a thorough planning process may ultimately be more costly when decisions are made based on inadequate analysis.

Town officials did not exercise due diligence when they purchased a warehouse building in 2003. As a result, the Town invested approximately \$2.5 million in a building that it no longer intends to use and, along with the County and the Lancaster Central School District, lost approximately \$440,000 in property tax revenue. We also found that officials did not properly protect the interests of taxpayers when they entered into fire protection agreements for the 2006 through 2010 fiscal years. Consequently, the Town likely provided more compensation than necessary to four fire companies.

### **Building Acquisition**

When contemplating any capital project to be funded with public moneys, it is critical to first identify its scope by evaluating space and functionality requirements and identifying available properties that would satisfy those requirements. Additionally, Town officials must establish the extent and cost of any necessary repairs and/or renovations, and ensure that the price to be paid for the property is fair based on market conditions. To determine the current market value of real estate, the Board should obtain at least one independent real property appraisal. Such an analysis would allow the Board to compare various options and the associated costs prior to making a final decision.

On April 9, 2003 the former Supervisor,<sup>1</sup> with Board approval, executed an agreement for the purchase of a 77,000-square-foot commercial warehouse building at a cost of \$1.6 million. The intent was to renovate this building for use by the Town's courts and Police

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<sup>1</sup> The former Supervisor served in that position for 16 years, from January 1, 1996 to December 31, 2011.

Department, which had recently absorbed the Village of Lancaster's Police Department. The majority of the 40-year-old building was open warehouse space, and the front portion contained office facilities available for immediate use. The former Supervisor stated that the property appeared to have excellent potential and was located on a main road near the center of the Town. Sales information indicates that it had been on the market for approximately one year prior to the Town's purchase.

The Board did not obtain a professional appraisal to establish the value of this property or determine if the structure would be suitable to be renovated for use by the police and courts. In addition, the Board did not identify and evaluate other possible building options for the Town's current needs prior to purchasing this building. (The Town did hire a consultant in 1995 to prepare a building needs assessment, but did not act on that report.)

The Board also did not seek a feasibility study to identify alternative building options and the associated costs until over a month after committing to the purchase of the warehouse property. In addition, the results of this study were not available to the Board until after the deadline to terminate the purchase agreement<sup>2</sup> had expired. This feasibility study, completed in July 2003 by an independent consultant, presented four options for the Board to consider: a new building, two renovation scenarios of the former Village of Lancaster police building, and renovation of the warehouse building. Because the Board had already signed a purchase contract for the warehouse building three months earlier, the alternatives presented in this study were not considered. Therefore, this feasibility study provided little if any decision-making value.

In January 2004, the Town contracted for a schematic design study<sup>3</sup> to provide a detailed analysis of the court/police facility renovation. This study estimated that the cost for renovating the warehouse building had increased from \$8.5 million to \$11.4 million, including the purchase price of \$1.6 million, from the time that the feasibility study was completed the previous year. A Town official told us that this amount was much greater than the Board had expected. As a result of these unanticipated increases in construction costs and a lawsuit brought against the Board,<sup>4</sup> the Town delayed this project for the next six years.

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<sup>2</sup> The contract states that the purchaser may terminate the contract on or before June 17, 2003 pursuant to certain stipulations.

<sup>3</sup> The schematic design study was contracted with the same consultant who completed the feasibility study.

<sup>4</sup> Several residents sued the Board in October 2003 for the cost of the feasibility study, contending that it was a waste of taxpayer money. This suit was dismissed in July 2006.

In June 2010, the Town hired an architectural firm to plan and design the renovation of the warehouse building. The architect stated that significant changes in the State's building codes, effective January 2011, would require costly modifications and upgrades to the property's foundation, structure, and utility services, again increasing the cost of renovation. As a result, the Board no longer considered the property a cost-effective option. In early 2011 the Board abandoned plans to renovate the warehouse building purchased in 2003 in favor of constructing a new 27,000-square-foot building, and converting an existing garage to a shooting range, on property owned by the Town and adjacent to the current police and courts facility.<sup>5</sup>

Although the office space was used by detective staff and the warehouse for miscellaneous vehicle and equipment storage, the building has never been fully utilized by the Town. As a result, the Town invested approximately \$2.5 million<sup>6</sup> in a property that is no longer a viable option. Included in these costs is approximately \$500,000 in bond interest payments.<sup>7</sup> Moreover, when the Town acquired the property in 2003, as public property it became exempt from real property taxes.<sup>8</sup> As a result, since 2003, the Town, County, and Lancaster Central School District lost more than \$440,000 in tax revenue that had to be generated from the remaining tax base. Town officials have indicated that they intend to sell this property.

Because Town officials did not thoroughly evaluate the suitability, condition, and market value of the warehouse building or properly investigate alternative options before purchasing it, taxpayer money<sup>9</sup> was likely wasted.

## **Fire Protection Contracts**

When a municipality contracts with fire companies to provide fire protection services, it is the responsibility of the local officials to ensure that the amount of funding to be paid to the fire companies is fiscally responsible to the taxpayers. An important part of this process is the review of each fire company's annual budget, as well as financial records and reports, to ensure that only the necessary amount of real property taxes will be raised to fund fire protection services.

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<sup>5</sup> This is the same location recommended as an option in the 1996 building needs assessment for constructing a new police and courts facility, as shown in architectural drawings dated April 17, 1996.

<sup>6</sup> This includes the cost of the building, bond interest, and engineering studies and designs.

<sup>7</sup> Bond interest is payable on an annual basis and the interest due in 2012 is \$47,300.

<sup>8</sup> In 2002, the last year taxes were paid by this property, it generated \$44,326 in total tax revenue for the Town, County, and Lancaster Central School District.

<sup>9</sup> The Town spent \$2.5 million on the property, including the cost of the building, bond interest, and engineering studies and designs. The actual return on this purchase will be determined when the property is finally sold.

The Town contracts with the Bowmansville, Twin District, Town Line, and Millgrove volunteer fire companies to provide fire protection services in the Town.<sup>10</sup> All four of the Town's fire protection contracts contain provisions for Town officials to review the fire company's financial records. In addition, the contract in effect through the 2011 fiscal year end required the fire companies to provide the Town a copy of their audited financial statements within 120 days of the close of their fiscal year end. For the most recent agreement, effective through fiscal year 2013, this period has increased to 180 days.

Town officials did not regularly exercise their contractually provided access to fire company budgets or financial records and did not ensure that the amount of real property taxes provided to each fire company was appropriate and necessary. Town officials told us that they rarely requested budgets and did not periodically review the fire companies' financial records. In addition, the fire companies did not always provide financial statements as required by contract. We requested, from the Town, the most recent financial statements<sup>11</sup> for each of the four fire companies. Town officials could initially provide 2010 statements for only one of the companies, and obtained the statements for the other three companies at our request.

As shown in Table 1, the amount of real property taxes levied to fund the amounts due to the fire companies, pursuant to the fire protection contracts, increased by approximately 4 percent each year from 2007 through 2010. However, fire company financial statements show that the fire companies were accumulating a substantial amount of cash during the same period.<sup>12</sup> Since 2007, the fire companies have not needed all of the real property taxes levied by the Town. This enabled them to increase their cash and cash equivalent balances by over \$1.9 million (from a reported \$3,096,306 at December 31, 2006 to \$5,028,081 at December 31, 2010). While a certain amount of cash should be retained for emergencies and contingencies, this level of cash reserves is excessive relative to the amount of property taxes levied. For example, in 2010, approximately a third of the moneys provided to the fire companies was not needed for 2010 expenditures but, rather, was added to savings.

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<sup>10</sup> Fire protection agreements were signed on April 2, 2007 for the five-year period January 1, 2007 through December 31, 2011. The subsequent agreements were signed on March 20, 2012 for the two-year period January 1, 2012 through December 31, 2013.

<sup>11</sup> The 2010 fiscal year was the most recent for which statements should have been available during our fieldwork. These statements should have been provided to the Town by May 1, 2011.

<sup>12</sup> As of December 31, 2010, the fire companies' balances of cash and cash-equivalent investments totaled \$1.7 million for Bowmansville, \$1.1 million for Twin District, \$1.8 million for Town Line, and \$430,000 for Millgrove.

<b>Table 1: Fire Companies – Tax Levies and Cash Balances</b>					
<b>Town Tax Levy for Fire Protection Paid to the Four Fire Companies</b>				<b>Cash Balances of the Four Fire Companies</b>	
<b>Fiscal Year End</b>	<b>Real Property Tax Levy</b>	<b>Increase From Prior Year</b>	<b>Percent Increase</b>	<b>Year-End Balance of Cash and Cash Equivalents<sup>a</sup></b>	<b>Increase/ (Decrease) in Cash Assets</b>
2007	\$2,583,589	\$141,744	5.8%	\$3,827,824	\$731,519
2008	\$2,689,721	\$106,132	4.1%	\$4,684,419	\$856,595
2009	\$2,794,552	\$104,831	3.9%	\$4,078,731	(\$605,688)
2010	\$2,906,335	\$111,783	4.0%	\$5,028,081	\$949,350

<sup>a</sup> Bank accounts, money market accounts, and investments. These totals do not include non-cash assets such as the value of property or equipment.

In 2011, the Town paid a total of \$3,011,362 to the fire companies for fire protection services. While this represents an increase from 2010, the most recent contract (for the 2012 and 2013 fiscal years) does not increase funding to the fire companies over the 2011 amounts. Negotiations for the next fire protection contracts are expected to begin in 2013.

By not exercising the contractual provision for reviewing the fire companies' budgets and financial statements, Town officials did not have the information they needed to determine appropriate levels of Town funding and to negotiate contracts accordingly. As a result, the fire companies retained excessive cash reserves over the past four fiscal years, and the Town has not fulfilled its fiduciary responsibility to levy only the amount of real property taxes necessary to meet the public's need for services.

## **Recommendations**

1. The Board should develop policies and procedures that require specific planning steps to be followed prior to initiating significant capital projects and follow these procedures for the construction of the new building and conversion of the existing garage.
2. With the decision to sell the warehouse property, the Board should exercise due diligence in ensuring that the sales terms are in the best interest of Town taxpayers.
3. The Board should annually review the fire companies' budgets and financial statements to be in a better position to negotiate contracts that are more fiscally responsible to the Town's taxpayers.

**APPENDIX A**  
**RESPONSE FROM LOCAL OFFICIALS**

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



# Town of Lancaster

OFFICE OF THE SUPERVISOR

21 Central Avenue  
Lancaster, New York 14086  
(716) 683-1610  
Fax (716) 683-0512

**DINO J. FUDOLI**  
*Supervisor*

October 5, 2012

*By First Class and Electronic Mail*

Hon. Thomas P. DiNapoli  
New York State Comptroller  
295 Main Street, Room 1050  
Buffalo, New York 14203-2510

Re: Town of Lancaster – OSC Audit Response

Dear Comptroller DiNapoli:

The following constitutes the Town of Lancaster's response to the Report of Examination issued by your office which is entitled "*Fiscal Management*." The Report of Examination covers the period January 1, 2006 through May 18, 2012.

The Town would first like to express its appreciation for the professional and courteous manner in which your staff performed its audit responsibilities.

The Town Board is committed to ensuring that the Town's financial operations are conducted with the highest level of integrity and that the interests of the Town's taxpayers are properly protected.

The Report of Examination reviews the Town's purchase of the former Colecraft Building on Walden Avenue in 2003, and the entry into fire protection contracts with the Town's fire companies during the audit period.

### *The Colecraft Building Acquisition*

There is no doubt that the facilities that currently house the Town's Police Department and its Courts are antiquated and no longer fully serve the needs of those departments. The facilities have been used for over 50 years, and with the growth of the Town, the merger of the Village of Lancaster Police department and new standards required for public safety facilities, the need for a new facility is unquestioned. This reality prompted the Town Board's pursuit of an alternative facility within which to house the Police Department and the Courts.

The Town contracted with a well-known architectural firm experienced in police and court facility capital work to conduct a feasibility study to guide the Board's pursuit of a new

facility. One identified option was to purchase the Colecraft Building, the second two options focused on purchasing and renovating the existing Village of Lancaster Municipal Building and the remaining option was the purchase and construction of a new facility. The strong recommendation at the time from the Town's professional consultant was to purchase the Colecraft Building, including because the consultant identified it as the most cost-effective option. Although the audit report may take issue with the sequencing of events, the bottom line is that the Town continued to move forward with the Colecraft Building purchase based on this recommendation from the Town's professional consultant. And initially, the Town relied on input from a variety of sources – including the Town's professional consultant and the Town Assessor - to ensure that the purchase price for the Building was fair and in the best interests of the taxpayers. It is important to note that, at the time, the Colecraft Building was the only commercial building within the Town of Lancaster of which the Town Board was aware that was listed for sale and was suitable for the Town's unique needs.

See  
Note 1  
Page 15

A lawsuit was commenced against the Town shortly thereafter challenging the purchase. The Town Board was advised by the then-Town Attorney to suspend any work in relation to the renovation of the Colecraft Building until the lawsuit was fully resolved. In order to gain some interim benefit from the Building during the pendency of the lawsuit, and to avoid incurring other costs, the Town began to use the Colecraft Building to house the Police Detectives' Bureau, for storage of Highway Department and other Town equipment as well to address other Town needs.

The lawsuit was not fully resolved until 2008. The delay caused by the lawsuit has without question added to the Town's overall costs in relation to the Colecraft Building.

See  
Note 2  
Page 15

During the entire pendency of the lawsuit, the Board was actively seeking aid from state and federal governments to assist in financing the Building renovation. The Board was successful in obtaining a \$350,000 grant to assist in this process. In 2009 the Town Board determined to move forward on the project and interviewed several engineering firms for the purpose of design work for renovation of the Colecraft Building. A professional firm was selected and design work began in early 2010.

See  
Note 3  
Page 15

However, principally due to the substantial building code changes that had been enacted by state authorities during the pendency of the lawsuit, the Town Board, after consultation with its professional consultant, concluded that the renovation project at the Colecraft Building was no longer in the best interests of the Town's taxpayers, and the Town began to assess alternative cost-effective approaches for a new Police/Court facility. Ultimately, the Town Board determined, based on all available information, that the construction of a new facility on Pavement Road was the best option for moving forward.

See  
Note 4  
Page 15

The conclusion in the audit report that the Town "wasted" \$2.5 million in taxpayer money with respect to the purchase of the Colecraft Building is unfortunate and unsupported. First, the Town has for many years used the Colecraft Building to house the Detectives' Bureau, to store Highway Department and other Town equipment and for other Town needs. The Town has thereby gained value from its ownership of the Building, including by avoiding costs that otherwise would have been incurred by the Town if it had to address those needs by leasing or

See  
Note 5  
Page 15

purchasing other properties. In addition, the audit report ignores that the Colecraft Building remains a Town asset, which the Town is actively marketing for sale. The Town is confident, based upon current information, that the Building retains significant commercial value. The purchase price that will ultimately be received by the Town for the sale of the Building obviously offsets purchase and other related costs already incurred by the Town.

The purchase of the Colecraft Building in 2003 was based on careful review and consideration by the Town Board of the information available to it at the time, including input and recommendations from its professional consultant. Similarly, the Town Board is currently moving forward on an informed basis with regard to the development of the Pavement Road site and the sale of the Colecraft Building, and the Town Board is confident that the Town's residents will ultimately be well-served by a new state-of-the-art Police/Court facility.

### Fire Company Contracts

During late 2011 and early 2012 (well before the start of this audit), the Town undertook negotiations with its four fire companies for successors to the expiring fire protection contracts. The Town insisted on and was successful in obtaining modifications to those contracts to provide the Town with greater access to fire company financial records. The Town's express purpose in doing so was to permit the Town to gain a greater understanding of the fiscal condition of the fire companies, including with regard to cash reserves, in order to ensure the wise expenditure of public monies.

See  
Note 6  
Page 15

In fact, the Town also insisted upon language – which was ultimately included in the new contracts – affirming that Town and fire company representatives will “*engage in communications and discussions during the term of this Agreement relating to the [fire company]’s fiscal and budgetary operations.*”

The parties agreed on freezing the level of the Town's financial support of fire company operations during the new two-year term of these successor agreements, which run through December 31, 2013. The Town is looking forward to exercising its rights under the new fire company contracts to assess the fiscal condition of the fire companies in preparation for the negotiations of the new agreements to take effect in 2014. Meantime, any public monies held by the fire companies, including cash reserves, are required by law and by contract to be used for appropriate public fire protection purposes.

### Conclusion

Once again, the Town wishes to express its appreciation for the Comptroller's assistance during this audit. Please let us know if your office has any questions regarding the Town's response to the Report of Examination, and the Town looks forward to future opportunities to work with the Comptroller's office.

*Note: Supervisor Fudoli, who first took office January 1, 2012, is executing this letter in conjunction with his role as chief executive officer of the Town and as the preferred signatory*

*pursuant to OSC guidance. He does not have direct knowledge of virtually any of the circumstances addressed herein, and has relied on the information provided by Town Board members. In addition, Supervisor Fudoli does not share any views expressed in this response, which represent a consensus of the other Town Board members.*

Very Truly Yours,

Dino Fudoli  
Supervisor

Mark S. Aquino  
Council Member

## APPENDIX B

### OSC COMMENTS ON THE TOWN'S RESPONSE

#### Note 1

The feasibility study, dated July 2003, appeared to compare the four options using the square footage of the Colecraft Building (77,000 square feet) as the basis, which affected the costs for the other three options (a new building and two renovation scenarios of the former Village of Lancaster police building). The police/court facility currently proposed will be approximately 27,000 square feet.

#### Note 2

A decision rendered by the New York State Supreme Court dismissed this lawsuit as of July 7, 2006.

#### Note 3

Because the Town did not proceed with the renovation of this building, the \$350,000 grant expired in March 2012 and was never used.

#### Note 4

The architect in charge of the current project told us that these building code changes took effect December 27, 2010, long after the lawsuit had been dismissed.

#### Note 5

We revised our report to clarify the issue.

#### Note 6

Fire protection agreements dated January 1, 2007 through December 31, 2011 included language that allowed Town officials to review "all firematic financial books and related records" on an annual basis. Therefore, access to fire company records was available prior to the current contract agreement effective January 1, 2012.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial condition, building acquisition, fire protection agreements, claims processing and procurement, cash receipts, and fuel use.

During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions and reviewed pertinent documents, such as Town policies, Board minutes, and financial records and reports. After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft, and/or professional misconduct. We then decided on the reported objective and scope by selecting for audit those areas most at risk. We selected the acquisition of a building and fire protection agreements for further testing.

To accomplish the objective of the audit and obtain valid audit evidence, our procedures included the following steps:

- We reviewed documents from a building study conducted in 1995 and subsequent reports up until 1997.
- We reviewed all available records concerning the purchase of the warehouse building, including:
  - Letter of intent
  - Purchase contract
  - Visual assessment report
  - Feasibility study
  - Building purchase closing documents
  - Schematic design report
  - Second evaluation of the schematic design
  - Court decision on a lawsuit
  - Grant documents
  - Architectural and engineering services contract.
- We reviewed news articles and other miscellaneous accounts concerning the purchase and renovation of the warehouse building.
- We reviewed claim vouchers for costs associated with the building purchase and renovation process.
- We reviewed property tax history from 2002 to 2012 for the warehouse property and calculated the revenue that was lost once the property was purchased by the Town.

- We reviewed bond payments made by the Town and calculated the interest amount from 2004 to 2012.
- We reviewed the financial statements from the last five completed fiscal years (2006 through 2010) for the four fire companies that the Town contracts with for fire protection services.
- We reviewed the annual budgets for the last five fiscal years from three of the four fire companies. Officials from one of the fire companies stated that they do not prepare budgets.
- We reviewed vendor history reports for the 2011 fiscal year for the four fire companies that the Town contracts with for fire protection services.
- We reviewed Board minutes from 2003 through the end of our audit period pertaining to the audit objectives.
- We spoke with Town officials, fire company officials, and other representatives regarding the audit objectives.

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.

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Andrew A. SanFilippo, Executive Deputy Comptroller  
Steven J. Hancox, Deputy Comptroller  
Nathaalie N. Carey, Assistant Comptroller

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