



# Town of Ontario

## Board Oversight and Information Technology

### Report of Examination

Period Covered:

January 1, 2011 — September 19, 2012

2013M-105



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**

August 2013

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 Ontario, entitled Board Oversight and Information Technology. 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*



## State of New York Office of the State Comptroller

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# EXECUTIVE SUMMARY

The Town of Ontario (Town) is located in Wayne County and has a population of 10,135.<sup>1</sup> The Town provides various services to its residents including water, sewer, lighting, street maintenance, snow removal, and general government support. The Town's 2012 expenditures totaled approximately \$7.5 million, funded primarily by real property taxes, payments in lieu of taxes (PILOTS), sales tax, State aid, fees, and water/sewer rents.

The Town is governed by an elected Town Board (Board), which comprises the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general management and control of the Town's financial affairs. The Supervisor, who serves as chief financial officer, is responsible for the day-to-day management of the Town under direction of the Board.

### **Scope and Objective**

The objective of our audit was to review Board oversight and information technology (IT) controls for the period January 1, 2011, through September 19, 2012. We extended the scope back to 2008 and forward to December 31, 2012, to review fund balance and budgeting trends. Our audit addressed the following related questions:

- Did the Board provide adequate oversight of the Town's budgeting and financial operations to ensure that Town resources are used effectively?
- Are controls over IT adequate to safeguard the Town's computerized data?

### **Audit Results**

We found that the Board has not provided sufficient oversight of the Town's financial operations. The Board has not established an effective system of internal controls over payroll to ensure that the Town has properly classified its FLSA<sup>2</sup> exempt employees, nor enforced established requirements for leave requests, accrual records, and employee time records. The Board also did not properly authorize interfund advances or ensure that the Supervisor and accountant properly accounted for them and repaid them timely in accordance with law. Additionally, the Board has not developed long-term financial plans, policies, or procedures to govern budgeting practices and the level of unexpended surplus funds to maintain. As a result, the Board had consistently adopted budgets with inaccurate estimates for revenues, expenditures, and the amount of fund balance that would be available and used

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<sup>1</sup> From the 2010 Census

<sup>2</sup> Fair Labor Standards Act

to balance the budget. These inaccurate budgets led to the accumulation of significant fund balances in the general, highway, and water funds and, conversely, dangerously low fund balance in the sewer district fund. The Board has improved its budgets and the financial status of three of these funds during the last two years, but lacks assurance that the positive trends will continue without established budgetary guidance and long-term plans.

The Town should institute appropriate policies and procedures to protect its computerized data resources. The Board has not established policies and procedures related to breach notification or disaster recovery. Consequently, IT assets are at risk for damage or loss and the Town could encounter an interruption in services.

### **Comments of Local Officials**

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 generally agreed with our recommendations and indicated they intend to implement corrective action.

# Introduction

## Background

The Town of Ontario (Town) is located in Wayne County and has a population of 10,135.<sup>3</sup> The Town provides various services to its residents including water, sewer, lighting, street maintenance, snow removal, and general government support. The Town's 2012 expenditures totaled approximately \$7.5 million, funded primarily by real property taxes, payments in lieu of taxes (PILOTs), sales tax, State aid, fees, and water/sewer rents.

The Town is governed by an elected Town Board (Board), which comprises the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general management and control of the Town's financial affairs. The Supervisor, who serves as chief financial officer, is responsible for the day to day management of the Town under direction of the Board. The Town accountant<sup>4</sup> performs most financial recordkeeping duties on behalf of the Supervisor, along with a payroll clerk who processes payrolls and maintains leave records, and an accounts payable clerk who processes claims for payment.

The Town has an information technology (IT) Coordinator and uses the services of an outside vendor for IT technical assistance as needed.

## Objective

The objective of our audit was to review Board oversight of financial operations and IT controls. Our audit addressed the following related questions:

- Did the Board provide adequate oversight of the Town's budgeting and financial operations to ensure that Town resources are used effectively?
- Are controls over IT adequate to safeguard the Town's computerized data?

## Scope and Methodology

We examined Board oversight of financial operations and controls over IT for the period January 1, 2011, through September 19, 2012. We expanded the scope back to 2008 and forward to December 31, 2012, to review fund balance and budgeting trends.

Our audit disclosed additional areas in need of improvement concerning IT controls. Because of the sensitivity of this information,

<sup>3</sup> From the 2010 Census

<sup>4</sup> Employed by the Town since September 2010

certain vulnerabilities are not discussed in this report but have been communicated confidentially to Town officials in a separate letter so that they could take corrective action.

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 B 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 generally agreed with our recommendations and indicated they intend to implement corrective action.

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.

## Board Oversight

The Board is responsible for the oversight of the Town's financial operations and ensuring that adequate internal controls are in place to safeguard its resources. The Board fulfills this responsibility by establishing and enforcing clear and adequate policies and procedures over financial operations to ensure individuals carry out their duties as the Board intends, transactions are properly authorized and recorded, and employees only receive compensation to which they are entitled for hours actually worked. The Board must also adopt budgets with realistic estimates and monitor them against operations throughout the year to ensure the Town's fiscal stability.

We found that the Board has not provided sufficient oversight of the Town's financial operations. The Board has not established an effective system of internal controls over payroll to ensure that the Town has properly classified its FLSA exempt employees, nor enforced established requirements for leave requests, accrual records, and employee time records. The Board also did not properly authorize interfund advances or ensure that the Supervisor and accountant properly accounted for them and repaid them timely in accordance with law. Also, the Board has not developed long-term financial plans, policies, or procedures to govern budgeting practices and the level of unexpended surplus funds to maintain. As a result, the Board had consistently adopted budgets with inaccurate estimates for revenues, expenditures, and the amount of fund balance that would be available and used to balance the budget. These inaccurate budgets led to the accumulation of significant fund balances in the general and water funds and, conversely, dangerously low fund balance in the sewer district fund. The Board has improved its budgets and the financial status of the general and sewer district funds during the last two years, but lacks assurance that the positive trends will continue without established budgetary guidance and long-term plans.

### Payroll Controls

The Board must establish and enforce clearly defined payroll guidelines that set forth the Board's expectations and ensure compliance with laws, rules, and regulations. A complex area of payroll that requires guidance and expertise to administer correctly is the Fair Labor Standards Act (FLSA), which establishes minimum requirements for wages, overtime pay, and recordkeeping for employers subject to its provisions. The FLSA, however, generally provides an exemption from the minimum wage and overtime pay requirements for individuals who qualify as "bona fide executive, administrative, or professional employees."<sup>5</sup> According to the U.S. Department of

<sup>5</sup> See e.g. 29 USCS Subsection 213(a)(1); see also, 29 CFR Section 541, et seq.

Labor (DOL) website, to qualify for exemption, employees generally must meet certain tests regarding their job duties and be compensated on a salary basis<sup>6</sup> at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet the requirements of the related DOL regulations.<sup>7</sup> In addition, certain recordkeeping requirements are not required by employers when an employee qualifies under the exemption.<sup>8</sup>

Employers can help minimize the risks of misclassification<sup>9</sup> of nonexempt employees by formally establishing procedures that define the standards for classification and the individuals responsible for determining classification, and by maintaining appropriate supporting documentation. As appropriate, Town officials should consult with the DOL to assure consistency with the FLSA. Additionally, provided it is not precluded by the FLSA, the Board should require documentation supporting hours worked, leave time used, and the maintenance of leave records to ensure the Town receives the services for which employees are paid.

The Board has classified a number of Town positions as "exempt"<sup>10</sup> for purposes of the FLSA, and has authorized each of them to earn leave-time accruals.<sup>11</sup> The former Town Supervisor issued a memorandum in 2002 in an attempt to clarify how exempt individuals must treat time away from their office for partial days worked. The memorandum provides that exempt/salaried staff is not required to provide time sheets<sup>12</sup> for partial days off. Instead, if an exempt individual works for any part of the day, he or she gets paid for a full day, without reduction in leave accruals when they are absent. The memorandum does require time sheets and leave accrual charges for full day absences.

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<sup>6</sup> An employee is considered to be compensated on a salary basis if he or she regularly receives each pay period a predetermined amount which is not subject to reduction due to variations in the quality or quantity of work performed.

<sup>7</sup> See U.S. Department of Labor, Wage and Hour Division, Fact Sheet #17A, [http://www.dol.gov/whd/regs/compliance/fairpay/fs17a\\_overview.pdf](http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.pdf)

<sup>8</sup> See e.g. 29 USC Section 211(c) and 29 CFR Section 516, et seq.

<sup>9</sup> Which can be determined by the DOL

<sup>10</sup>The Town has classified the following 10 positions as "exempt" for purposes of the FLSA: accountant, Court clerk(s), Deputy Town Clerk, Assessor, water superintendent, recreation director, assistant recreation director, recreation supervisor, and code enforcement officer/building inspector.

<sup>11</sup> The Board authorized leave benefits for non-union employees within the employee handbook; employees earn one sick day per month, two personal days per year, and vacation time based on years of service.

<sup>12</sup> In the memorandum, "time sheets" appears to be used to mean "leave request" as it is required to be submitted for full day absences, for eight hours sick, vacation, or personal time.

The current Supervisor stated that he was not familiar with the memorandum or practice. However, we did confirm, through discussions with the payroll clerk and individuals classified as exempt by the Town, that the guidance provided in the memorandum defines the current practice in place, and that exempt employees do not charge leave time for partial days not worked. In addition, these individuals are not required to complete time records, except to report use of leave time for a full day. Exempt individuals are required to submit a full day leave request to their supervisor (in most cases, the Town Supervisor for department heads) and submit a monthly report of leave time used (for full days) for the month just ended.

The Town does not have any procedures in place assigning the responsibility, and establishing the process, for determining and documenting the classification of employees as exempt for purposes of the FLSA. In fact, the Town could not provide any written documentation supporting its classification of current FLSA exempt individuals. Without documentation of the classifications and specific exemptions, the Town is unable to support whether these individuals meet the specific requirements for exemption, and the Town could be at risk for penalties of misclassification. In December 2012, after we completed fieldwork, the Board updated the employee classifications section of its handbook to define the criteria that must be met to qualify for an administrative employee exemption. The Board, however, did not add any procedures for determining or documenting support for the designation of employees as FLSA exempt.

Furthermore, we believe the Town's memorandum may have been incomplete in its portrayal of the recordkeeping and leave reduction requirements of individuals who qualify under the "executive, administrative, or professional" exemption to the FLSA. Although not required by the FLSA, it is our understanding that, under certain circumstances, the Town may be permitted to require officers or employees covered under the exemption to prepare time records. Additionally, the one or more full-day deduction requirement alluded to in the Town's memorandum applies to deductions from an employees' salary, which would conflict with the salary basis test for exemption qualification. The Town may not reduce the salary payments of exempt employees as a result of partial day absences. However, when exempt employees are granted leave-time benefits, the employees' leave banks may be reduced for partial day absences without affecting the salary payment.<sup>13</sup> Therefore, unless precluded by the FLSA, the Town should require the preparation of adequate time records by all employees, to help ensure equitable accountability, and use those records along with properly submitted and approved leave

<sup>13</sup> [www.dol.gov/whd/opinion/FLSA/2005/2005\\_01\\_07\\_7\\_FLSA\\_PaidTimeOff.htm](http://www.dol.gov/whd/opinion/FLSA/2005/2005_01_07_7_FLSA_PaidTimeOff.htm)

requests, to reduce the leave banks for all absences from work by exempt (and all) employees.

Because the Board does not require the exempt employees to complete time sheets, we were unable to verify the hours worked, or leave time used, by individuals. While some individuals maintain internal department documentation for hours worked, this documentation is not turned over to the payroll clerk or maintained as an official Town record. Therefore, the Board should consult with the DOL to verify that the individuals presently listed as exempt by the Town meet the requirements for exemption pursuant to the FLSA, and whether these individuals can be required to keep time records and charge leave accruals in increments of less than one day.

Additionally, we found that not all individuals were reporting full-day absences as required by the Town's memorandum. The code enforcement officer does not provide any documentation for days not worked, which prohibits the payroll clerk from maintaining leave records for this individual.<sup>14</sup> The Supervisor did not require him to comply with the policies set forth for all employees. The payroll clerk stated that she initially continued to ask for the reports of leave usage, but she eventually stopped requesting the information since it was never provided, and the policy was not enforced. The code enforcement officer told us that he knew these reports were required, but he did not prepare them.

Without a consistently maintained leave record, the Town has no way to determine how much time off is taken by this individual or how much time is actually spent working. The Town should also be cognizant of the overall effects of giving preferential treatment to this one individual by providing the additional benefit of unlimited leave, which is in direct contradiction of the Town's limited authorized leave days. Furthermore, without a substantiated leave balance, the Town does not have reliable information to enable it to support and provide otherwise available payouts and benefits to the employee at the time of his separation or retirement.<sup>15</sup> This problem, though less extensive, exists for other exempt employees who did not properly reduce their leave balances for partial days worked.

## **Budgeting and Financial Management**

The Board is responsible for making sound financial decisions that balance the level of services desired and expected by the Town's residents with the ability and willingness of the residents to pay for

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<sup>14</sup> This individual also does not maintain his own record of leave or available leave balances, but did tell us that he does (and recently did) take vacation.

<sup>15</sup> The Town's non-union employees are eligible to receive payment for unused vacation leave at the current rate of pay at separation. Employees are also eligible to receive one day of additional retirement service credit for each day of unused accumulated sick leave, up to a maximum of 165 days.

such services. It is important that the Board adopt long-term plans that set forth the Town's financial objectives and goals, as well as written policies and procedures to govern budgeting practices and the level of fund balance<sup>16</sup> to maintain in each fund. The Board should adopt budgets that include realistic estimates of revenues and expenditures, based on actual financial results from prior years along with other relevant available data, and use surplus fund balance as a funding source, when appropriate. The Board may retain a reasonable portion of unexpended surplus funds<sup>17</sup> to be used as a funding source in the event of unforeseen circumstances. The Board may then appropriate a portion of fund balance as a revenue source in the ensuing year's budget to reduce the tax levy. This should lead to a planned operating deficit,<sup>18</sup> which can be a means of prudently using excess fund balance, but requires that the amount of available fund balance be accurately estimated to avoid reducing fund balance to the point of fiscal stress. Conversely, it is not a sound practice to routinely appropriate fund balance that will not actually be used, due to budgetary surpluses built in to revenue and expenditure estimates. This practice misleads taxpayers and, instead of decreasing excessive fund balance, further increases surplus fund balance and causes excessive tax levies.

The Board and Town officials have not developed long-term financial plans, policies, or procedures to govern budgeting practices and the level of unexpended surplus funds to maintain. Without financial plans and budgeting policies, the Board is less able to identify developing revenue and expenditure trends and set long-term priorities and goals to help avoid large fluctuations in financial condition and resultant tax rates. As a result, the Board had adopted annual budgets which included unrealistic estimates of revenue and expenditures and the amount of fund balance that would be available and used to balance the budget.

The Board routinely appropriated fund balance in its adopted general fund budgets, which should have generated planned operating deficits and decreased fund balances. However, the Board also consistently adopted budgets for the general, water, and sewer funds with

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<sup>16</sup> Fund balance represents the resources remaining from prior fiscal years.

<sup>17</sup> The Governmental Accounting Standards Board (GASB) issued Statement 54, which replaces the fund balance classifications of reserved and unreserved with new classifications: nonspendable, restricted, and unrestricted (comprising committed, assigned, and unassigned funds). The requirements of Statement 54 are effective for fiscal years ending June 30, 2011, and beyond. To ease comparability between fiscal years ending before and after the implementation of Statement 54, we will use the term "unexpended surplus funds" to refer to that portion of fund balance that was classified as unreserved, unappropriated (prior to Statement 54), and is now classified as unrestricted, less any amounts appropriated for the ensuing year's budget (after Statement 54).

<sup>18</sup> Operating deficits occur when total expenditures exceed total revenues.

unrealistic estimates for revenues and expenditures, which caused significant variances between budgeted and actual operating results. These inaccurate budgets caused the Town to accumulate excessive fund balances in the general and water funds. Conversely, the Town had unplanned operating deficits and overappropriated fund balance in the sewer fund, which caused it to report negative unexpended funds for 2009 and 2010.

The Board has improved its budgets and stabilized the financial status of the general and sewer funds during the last two years, but lacks assurance that the positive trends will continue without established budgetary guidance and long-term plans. The water fund has seen continued growth in surplus funds. Furthermore, the Board could make its budgets more transparent to taxpayers by including more accurate revenue and expenditure estimates, and by appropriating only the amount of fund balance that will likely be used (and available). Tables 1 through 3 illustrate fund balance trends and operating results over the last five years.<sup>19</sup>

<b>Table 1: General Fund – Fund Balance</b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Appropriated Fund Balance	\$650,000	\$665,000	\$570,000	\$475,000	\$357,513
Operating Surplus/(Deficit)	(\$88,437)	(\$322,446)	(\$355,029)	(\$223,048)	(\$59,212)
Unused Appropriated Fund Balance	\$561,563	\$342,554	\$214,971	\$251,952	\$298,301
Unexpended Surplus Funds	\$2,051,913	\$1,926,463	\$1,613,324	\$1,534,903	\$1,415,822
Unexpended Surplus Funds as a Percentage of Expenditures	85%	72%	56%	51%	51%

The Board has gradually decreased the excessive fund balance in the general fund, but a sizeable balance remains. Over the five years from 2008 to 2012, the Board underestimated revenues by a total of \$707,206 and overestimated expenditures by nearly \$962,135, for a total positive budget variance of approximately \$1.7 million. These budget variances diminished the effect of the annual appropriation of fund balance as a financing source and resulted in much smaller decreases in fund balance than planned. Only \$1.05 million (39 percent) of the \$2.7 million of appropriated fund balance was used, the unexpended surplus fund balance was reduced only 34 percent, and the Town still has more fund balance than necessary.

The underestimated revenues and overestimated expenditures were generally spread throughout the budget. We reviewed budget to actual reports for general fund revenues and expenditures and identified specific examples of revenues and appropriations which were unrealistically estimated in 2010 and 2011; however, we found

<sup>19</sup> In February 2013, we received preliminary unaudited balance sheets and revenue and expenditure budget status reports for 2012. We received updated audited financial results in June 2013.

that, in many cases, the Board had adjusted the 2012 estimates to more closely reflect actual amounts from prior years. We encourage the Board to continue adjusting its budget estimates and budgeting practices, and to carefully monitor operations to maintain a reasonable financial position, while also avoiding overtaxing residents. In its 2013 budget, the Board again appropriated fund balance of \$408,700, and only slightly reduced its budgeted revenues and expenditures, by 4 and 2 percent respectively. If operating results are consistent with prior years, the general fund balance will decrease slightly, but remain at a large amount that could be used to benefit taxpayers.

	2008	2009	2010	2011	2012
Appropriated Fund Balance	\$0	\$26,000	\$0	\$0	\$0
Operating Surplus/(Deficit)	(\$44,974)	\$3,391	\$72,908	\$210,165	\$75,190
Unused Appropriated Fund Balance	N/A	\$26,000	N/A	N/A	N/A
Unexpended Surplus Funds	\$867,711	\$893,817	\$949,260	\$1,219,892	\$1,288,427
Unexpended Surplus Funds as a Percentage of Expenditures	48%	56%	56%	80%	71%

In the water fund, the unexpended surplus funds have increased 57 percent from 2008 to 2012 and, at December 31, 2012, accounted for 71 percent of the 2012 expenditures. The Board does not have any established plan for use, or explanation for the purpose of maintaining, such a high fund balance. The Board generated operating surpluses in four of the last five years, totaling almost \$316,700, by adopting budgets with inaccurate estimates.<sup>20</sup> The Board overestimated expenditures by a total of more than \$524,000 over the five years and generated positive budget variances totaling more than \$204,000. In its 2013 budget, the Board further increased its budgeted expenditures, and did not adjust its revenue estimates, but did appropriate \$96,143 of fund balance. While the appropriation of fund balance is a good step to begin responsibly reducing the water fund balance, based on prior years' results of operations, a budgetary surplus will occur and prevent the use of the appropriated fund balance.

	2008	2009	2010	2011	2012
Appropriated Fund Balance	\$43,000	\$157,700	\$120,043	\$0	\$0
Revenues	\$994,375	\$984,908	\$988,471	\$1,024,214	\$1,049,200
Expenditures	\$1,258,014	\$1,089,702	\$1,088,863	\$926,929	\$989,805
Operating Surplus/(Deficit)	(\$263,639)	(\$104,794)	(\$100,392)	\$97,285	\$59,395
Unexpended Surplus Funds	\$16,781	(\$93,574)	(\$21,060)	\$66,904	\$121,614
Unexpended Surplus Funds as a Percentage of Expenditures	1%	(9%)	(2%)	7%	12%

<sup>20</sup> The Board appropriated \$26,000 in the 2009 budget; however, there was an operating surplus that year, so it was not needed.

The sewer fund had sizeable annual operating deficits from 2008 to 2010, due to overestimated revenues for five years<sup>21</sup> and the over-appropriation of fund balance (by \$260,962)<sup>22</sup> in the 2009 and 2010 budgets. These operating deficits caused total fund balance to decline by more than \$468,825 (87 percent) from 2008 through 2010. The Board's appropriation of more fund balance than was available created budgetary deficits in 2009 and 2010 and the Town reported deficit unexpended surplus funds of \$93,564 and \$21,060 respectively. The Board improved its budgeting practices by eliminating the appropriation of fund balance in the 2011 and 2012 budgets, and reported positive surplus funds for both years. In its 2013 budget, the Board again did not appropriate fund balance, and slightly decreased its total budget for revenues (1 percent) and expenditures (10 percent). However, the Board again did not adopt a sewer rate increase to support the budgeted 15 percent increase in sewer rent revenue in the 2013 budget, the same practice which led to revenue shortfalls and operating deficits in prior years.<sup>23</sup> Thus, the sewer fund will have another negative revenue variance, which will limit the operating surplus and fund balance growth for 2013.

The Board must make responsible decisions to adopt and monitor more structurally sound budgets that include realistic estimates of revenues, expenditures, and fund balance that will be available and used to fund operations, to ensure the Town maintains reasonable fund balance levels and sound financial condition. For example, the Board should not keep sewer rents at the same level while budgeting for a 15 percent increase in revenue.

## Interfund Advances

General Municipal Law authorizes cash advances between town funds and requires that repayment be made as soon as monies are available, but no later than the close of the fiscal year in which the advance was made, and with interest if between funds with different tax bases. These advances must be authorized by Board resolution. When these advances are not repaid in a timely manner and are maintained for a period of time, they are, in effect, transfers of moneys instead of temporary cash advances. It is also essential that adequate records be maintained for interfund advances<sup>24</sup> to indicate which funds owe or are owed money, the reason advances were necessary, and established plans for repayment.

<sup>21</sup> The Board overestimated sewer fund revenues for a negative budget variance of more than \$773,000 from 2008 to 2012.

<sup>22</sup> \$157,700 in the 2009 budget, less \$16,781 available surplus funds, plus \$120,043 in the 2010 budget

<sup>23</sup> The Board increased its rent revenue budget (in both sewer districts) in the 2011 thru 2013 budgets without increasing sewer rates, and thus had revenue shortfalls for sewer rents, totaling over \$168,000 for those three years.

<sup>24</sup> Interfund advances are accounted for using the Due From Other Funds (asset) and Due To Other funds (liability) accounts within each operating fund.

The Board has not established appropriate controls over interfund advances. We found that the Board does not approve interfund advances and has not ensured that detailed records of the advances are maintained. As a result, the accountant did not have information available to substantiate old recurring balances, and was thus unable to repay them. Thus, many old outstanding and unsubstantiated balances remained on the Town's financial records and reports as of December 31, 2011, as shown in Table 4. On our inquiry, the accountant prepared a list of activity from recorded entries in the accounting system; however, he could provide no support for balances rolled over from prior years (before his Town employment).

We also found discrepancies in how certain transactions were recorded, using the interfund accounts, such as temporary deposits of sewer rents in the water fund bank account, because they are billed and collected with water rents. Incorrect entries were posted to the wrong interfund account, and sometimes in the wrong fund or with the wrong effect (debit verses credit). This often resulted in outstanding, improper, or nonexistent year-end interfund liabilities in the accounting records. There is a strong possibility that some of the interfund liability balances reported over the years were inaccurate, which could have a significant effect on the financial condition analysis for the individual funds.

<b>Due To Other Funds</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
General				\$345,119	\$11,921
Highway	\$3	\$843			
Drainage	\$60,000	\$60,000	\$64,209		
Fire Protection			\$1,395	\$675	
Water	\$35,396	\$160,208			
Sewer	\$220,000	\$330,969	\$300,448	\$300,597	\$292,250
Capital	\$250,000	\$406,994	\$294,508	\$294,508	\$36,180
Total Liabilities	\$565,399	\$959,014	\$660,560	\$940,899	\$340,351
<b>Due From Other Funds</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
General	\$249,972	\$292,313	\$334,911	\$281,032	\$328,430
Highway	\$40,000	\$40,000	\$2,504		
Drainage				\$88,847	
Water	\$274,727	\$385,696	\$121,685	\$247,357	
Sewer	\$700	\$125,512	\$33,240	\$42,510	
Debt Service		\$4,524	\$9,231	\$11,130	\$11,921
Capital		\$110,969	\$158,989	\$270,023	
Total Receivables	\$565,399	\$959,014	\$660,560	\$940,899	\$340,351

In February 2013, the Town's external audit firm's representative told us that they had worked with the Town accountant to clean up the old interfund liabilities as of December 31, 2012, and had reallocated or moved cash among funds as needed to eliminate old and errantly recorded advances. They significantly reduced the total recorded interfund advances to under \$350,000 from more than \$940,000 that was reported for 2011. The external auditor told us the only significant advance remaining was from the general fund to the sewer fund, which was longstanding and necessary to help pay for sewer fund operations. However, we identified additional unexplained interfund balances. Since neither the accountant nor the external auditor could provide more specific information as to the causes of the old outstanding balances, the Board cannot be certain of the status of the interfund advances.

## Recommendations

1. The Board should consult with the United States Department of Labor to confirm that the officers or employees of the Town listed as exempt are not subject to the requirements of the FLSA.
2. The Board and Supervisor should ensure that all exempt employees have routine work schedules, charge leave time for periods of time taken off during their scheduled work day, and prepare time records supporting hours worked and leave time used to ensure the Town receives the services for which they are paid.
3. The Supervisor should require the code enforcement officer to report time off in the same fashion as other employees.
4. The Board should implement policies and procedures that clearly assign and explain the responsibility and procedures for determining FLSA exemption classification and maintaining appropriate supporting documentation.
5. The Board and Town officials should develop long-term financial plans, policies, and procedures to govern budgeting development and monitoring practices and the level of unexpended surplus funds to maintain.
6. The Board should adopt budgets with realistic estimates of revenues, expenditures, and the amount of fund balance to be used to fund operations. The Board should ensure that it adopts the necessary user fee rate increases to support increases in user fee revenue estimates.<sup>25</sup>
7. The Board should implement plans to address and properly utilize the excessive fund balances in the general and water funds, and

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<sup>25</sup> Unless, of course, the budget is being adjusted to better align with revenue levels actually received in prior years

to continue to closely monitor the financial position of the sewer fund.

8. The Board should approve interfund advances by resolution and ensure appropriate records are maintained detailing the funds and amounts of the transfers, and should plan for repayment.
9. The Supervisor should make sure all entries made to the interfund accounts that are not true advances are properly recorded and documented, and that the moneys are moved and entries reversed timely, to avoid discrepancies and misstated account balances.

## Information Technology

The Town relies on its IT system to perform a variety of tasks, including word processing, email communication, Internet access, banking, bookkeeping, payroll, and reporting to State and Federal agencies. Additionally, large amounts of information and data related to finances, taxes, water rents, payroll, and personnel are stored on the IT system. The Town's use of IT presents a number of risks, such as unauthorized access, which can increase the risk that computerized equipment could be damaged or manipulated, or that data could be altered, misused, lost, or corrupted without being detected. Even small disruptions in the IT system can require extensive time and effort to evaluate and repair. Town officials are responsible for designing and implementing a comprehensive system of internal controls over IT to protect these assets from unauthorized, inappropriate use, and damage or loss. This includes designing appropriate policies and procedures to protect its computerized data resources. Both administrative and information system controls should be part of any IT security system. This is especially important because of the increasing use of viruses, malware, and other malicious methods intended to harm data resources and gain unauthorized access to valuable data.

The Town should institute appropriate policies and procedures to protect its computerized data resources. The Board has not established policies and procedures related to breach notification or disaster recovery. Consequently, IT assets are at risk for damage or loss and the Town may encounter an interruption in services.

### **Breach Notification**

An individual's private and/or financial information, along with confidential business information, could be severely impacted if security is breached or data is improperly disclosed. New York State Technology Law requires cities, counties, towns, villages, and other local agencies to establish an information breach notification policy. The policy should detail how the Town would notify individuals whose private information was, or is reasonably believed to have been, acquired by a person without a valid authorization. The disclosure should be made in the most expedient time possible, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

The Board has not adopted a breach notification policy. By failing to adopt a breach notification policy, in the event that private information is compromised, Town officials and employees may not understand or be prepared to fulfill their legal obligation to notify affected individuals quickly.

## **Disaster Recovery**

A disaster recovery plan is intended to identify and describe how Town officials plan to deal with potential disasters. Such disasters may include any sudden, unplanned catastrophic event (e.g., fire, computer virus, or inadvertent employee action) that compromises the availability or integrity of the IT system and data. Contingency planning is used to avert or minimize the damage that disasters would cause to operations. Such planning consists of the precautions to be taken to minimize the effects of a disaster so officials and responsible staff will be able to maintain or quickly resume day-to-day operations. Typically, disaster recovery planning involves an analysis of business processes and continuity needs and should include significant focus on disaster prevention. The plan should also address the roles of key individuals, be distributed to all responsible parties, periodically tested, and updated as needed.

The Board has not developed a comprehensive disaster recovery plan to address potential disasters. The Town only has procedures in place to ensure data backups will be available in the event of data loss. Consequently, in the event of a disaster, Town personnel have no guidelines or plan to follow to help minimize or prevent the loss of equipment and data or to appropriately recover data from the backups. Further, without a disaster recovery plan, the Town could suffer a serious interruption in Town operations.

## **Recommendations**

10. The Board should adopt an information breach notification policy.
11. The Board should develop and adopt a comprehensive disaster recovery plan that documents steps to be taken in the event of an emergency.

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

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

Robert Kelsch  
Supervisor

August 7, 2013

Office of the State Comptroller  
The Powers Building  
16 West Main Street, Suite 522  
Rochester, NY 14614-1608

Dear OFC Audit Staff,

The following is in response to the NYS Office of State Comptroller's audit of the Town of Ontario. We thank the OSC auditors for their hard work and time they spent here. Continuous process improvement has to begin with an honest independent assessment. Your work has provided us with that tool.

While we believe some of the narrative which precedes the recommendations is over-stated. The recommendations are precise, actionable and deserving of our consideration. Over the next several weeks we will be addressing each of the recommendation and developing a Corrective Action Plan (CAP). We also received a separate report with some recommendation regarding the security of our electronic information which we will also address in a separate report.

Following are some thoughts regarding the eleven recommendations. They fall under two broad headings.

**BOARD OVERSIGHT**

Draft Audit Recommendations #1 & #4. These are related. Regarding the classification of some employees as exempt the Town Board follows the guidelines as spelled out under FLSA and the town uses the exact wording of the U.S Department of Labor Fact Sheet 17-A. The Board will follow up, however, with a labor expert to assure our understanding is correct.

Draft Audit Recommendations #2 & #3. These are also related. The Town Board believes the specific issue noted has been corrected and time sheets are being submitted, however, additional work remains that will create a common form and format across the organization where appropriate. This will be the subject of a Town Board workshop on August 12, 2013

Draft Audit Recommendations #5. The Town Board believes the 5 year financial planning tool that the NYS Comptroller's office provided towns will be of value and plans to utilize it going forward to help with the budgeting process both long and short term as well as the future of the operating fund balances. This work tool will become part of our budgeting process.

The data shows the balances in the General Fund as a percentage of expenditures are trending down. The Board believes that abrupt changes in fund balances in these uncertain economic times are unwise. Fund balance in the Water Fund is on the increase in anticipation of the needed replacement of our water tower. This potential replacement was verified by an engineering study received in 2009.

Draft Audit Recommendations #6. The Town Board believes that we produce a realistic budget that is presented and discussed with the public. The Town budgets in a conservative manner to make sure there are not short comings in revenues or expenses, and throughout the year review purchases to see where there are opportunities to save or make addition money.

We, like other governmental operations, face great uncertainty which has the potential to put our spending plan at risk. Uncertain revenue items such as sales tax, mortgage tax,

etc. coupled with uncertain expense items such as medical insurance costs and state retirement support our conservative approach to budgeting. Using our past experiences to develop future budgets has proven to be a good guide.

Draft Audit Recommendations #7. The Town Board believes that the Fund balances in the different funds is adequate and at appropriate levels. There are special projects and planned expenses that have increased some fund balances in recent years (such as water tower repair or replacement / drainage projects / etc.). The Town Board believes that we have operated with fiscal responsibility regarding fund balances. We monitor fund balances monthly as part of the Supervisor's Report and we believe they are going in the right direction.

Draft Audit Recommendations #8. The Town of Ontario has done some special projects that were promised funding by NYS. The reimbursement of NYS funds for the Community Center Capital Project has not occurred as originally promised. Thus the Town of Ontario has had to borrow funds from other internal sources to complete the projects while individuals continue to seek reimbursement moneys.

Draft Audit Recommendations #9. The Town of Ontario Supervisor has been reviewing all Journal Entries and Financial records since the beginning of January 2013 on a monthly basis. This is in addition to our reviewing and approving claims twice monthly. The Supervisor will continue to verify accuracy and completeness of journal entries from a daily perspective as well as continue to reconciling bank statement monthly

#### **INFORMATION TECHNOLOGY**

Draft Audit Recommendations #10 & #11. As noted in the audit narrative the town does have extensive electronic data backup but not to handle a disaster such as the destruction of our town hall facility which goes far beyond data recovery. We have sought assistance from outside sources and will include more detail in our CAP.

We are looking forward to making our town better in every way. You and your work have helped in that process

Regards,

Robert J. Kelsch, Supervisor

Lori Eaton-Smith, Deputy Supervisor

Jason Ruffell, Councilman

Frank Robusto, Councilman

Michael Melino, Councilman

## APPENDIX B

### 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: board oversight, financial oversight, cash receipts and disbursements, purchasing, payroll, and information technology. During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions, and reviewed pertinent documents, 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, or professional misconduct. We then decided upon the reported objectives and scope by selecting for audit those areas most at risk. We selected Board oversight and controls over IT for further audit testing.

To accomplish our objective, we reviewed financial management and IT controls for the period January 1, 2011 to September 19, 2012. We expanded the scope back to 2008, and forward to December 31, 2012, to review fund balance and budgeting trends. To achieve the objective of this audit and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed appropriate Town officials and employees to gain an understanding of Town processes and operations and to determine internal controls in place.
- We reviewed Town policies, union agreements, the employee handbook, payroll memos, and minutes of Board meetings from January 1, 2011, through June 11, 2012.
- We distributed our standard conflict of interest forms to 11 Town officials and employees (Board members and department heads) to determine their private business interests for the period January 1, 2011, to June 26, 2012.
- We scanned the 2011 and 2012 abstracts to identify purchases more than \$2,500, which require a purchase order per the Town's procurement policy. Excluding payments for utilities, we randomly selected 10 payments from each year, for a total of 20 claims reviewed, totaling \$169,800.
- We reviewed 2011 and 2012 leave records for employees classified as FLSA exempt to determine if leave records indicated leave time taken by these employees.
- We analyzed fund balance for the period 2008 through 2012. We also compared budgeted revenues and expenditures to actual operating results for 2008 through 2012.
- We reviewed total annual revenues and expenditures to determine the operating deficits or surpluses for each fund. We also reviewed budgets for 2008 through 2013 to determine the amount of fund balance that was appropriated for each fund each year.

- We reviewed the budget to actual report for the period ending June 30, 2012, to determine if there were account codes that were expended over appropriations.
- We reviewed interfund receivable and liability (due to and due from) accounts for 2011 to determine if interfund advances were authorized, appropriate, and repaid as necessary.
- We reviewed cell phone invoices for 2011 and 2012 to determine the phone plans provided to the Town and the usage of the phones for voice and texting plans. We also discussed cell phone usage, necessity, and monitoring with Town officials.

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.

## APPENDIX C

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**DIVISION OF LOCAL GOVERNMENT**  
**AND SCHOOL ACCOUNTABILITY**

Andrew A. SanFilippo, Executive Deputy Comptroller  
Nathalie N. Carey, Assistant Comptroller

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