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May 15, 2015

Keith Langley, Town Supervisor
Members of the Town Board
Town of East Greenbush
225 Columbia Turnpike
Rensselaer, NY 12144

Report Number: S9-14-67

Dear Supervisor Langley and Members of the Town Board:

The Office of the State Comptroller works to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of 11 municipalities (two counties, one city, six towns and two villages) throughout New York State. The objective of our audit was to determine if each municipality followed the terms and conditions of its Parkland Alienation Bill (Legislation). We included the Town of East Greenbush (Town) in this audit. Within the scope of this audit, we examined parkland alienations that have occurred for the period January 1, 2011 through December 31, 2013. Following is a report of our audit of the Town. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law (GML).

This report of examination letter contains our findings specific to the Town. We discussed the findings with Town officials and considered their comments, which appear in Appendix A, in preparing this report. At the completion of our audit of the 11 municipalities, we prepared a global report that summarizes the significant issues we identified at all of the municipalities audited.

Summary of Findings

We found that the Town has met all the terms and conditions of the Legislation.

Background and Methodology

The Town is located in Rensselaer County and governed by a five-member Board, which includes the Town Supervisor. The Town Supervisor is the Town's chief executive officer and is responsible for the Town's day-to-day operations. The Town's 2013 general fund budget amounted to approximately \$7.9 million. The Town has designated approximately 128 acres as parkland.

“Parkland alienation” is the process by which a municipality seeks to sell, lease or discontinue the use of municipal parkland. Parkland alienation applies to every municipal park¹ in the State, whether owned by a city, county, town or village. In order to convey parkland to a non-public entity, or to use parkland for another purpose, the municipality must receive prior authorization from the New York State Office of Parks, Recreation and Historic Preservation (State Parks) in the form of legislation enacted by the New York State Legislature (Legislature) and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a “parkland alienation” bill.

The core legal basis governing the use of parkland comes from common law, called the “public trust doctrine.” The doctrine is defined by 150 years of State court decisions, which explain when municipalities must seek State legislative approval to alienate public parkland. Otherwise, it would be tempting for municipalities to view parkland as a fiscal resource that can be sold, or leased, to raise money or used for other government uses to avoid paying for private land.

The requirements for parkland alienation bills vary depending upon whether or not State dollars have been invested in the municipal park that is being considered for a potential change of use. In cases where State dollars were invested using a grant, in addition to having the Legislature approve the alienation, the municipality that received the grant is subject to certain requirements upon accepting that grant. In these cases, common law requires the municipality to provide lands of equal fair market value to replace the parkland being lost.

State Parks suggests municipalities follow a 10-step process when considering a change of use of parkland or recreational areas. The role of State Parks is to provide advice and guidance to the municipality, concerned citizens, the Governor and the Legislature. State Parks will work with legislative sponsors, making recommendations regarding provisions that might be included to assure the maximum protection of parklands. State Parks will then advise the Governor on the alienation bill passed by the Legislature prior to it being signed into law. In addition, State Parks may undertake a site inspection of the parkland in question to gather further information.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those operations within our audit scope. Further, those standards require that we understand the 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 is included in Appendix B of this report.

¹ Parkland can either be dedicated for park purposes through a formal action, or parkland can be dedicated through implied dedication (based on how the land is used, i.e., a playground, or land mapped as a park for planning purposes).

Audit Results

Municipally owned parkland and open space are nonrenewable resources that should be carefully preserved in all communities. Once lost to another use, open space is difficult to recover. New York State strongly endorses the maintenance and expansion of municipal parks and open space, and the recreational opportunities they offer. The State also prescribes to a “no net loss of parkland” policy.

The Town sought legislative approval for parkland alienation that was signed into law in 2011. The Town was authorized to lease two parcels of parkland consisting of a public sports facility with athletic fields, concession and related facilities. The Legislation provided that the lease be non-exclusive, that the premises be used for its intended purpose, which was to engage in and promote recreational sports activities for those persons with special needs, and that the facility would be open and accessible to the general public. In consideration, the lessee would maintain the structural integrity of the facilities and field surfaces.

We found that the Town has met all of the requirements of its Legislation as of the date of our site visit. Specially, the Town has entered into a lease with a group that has developed a multi-sport facility designed specifically for special-needs athletes. The facility was designed to adequately accommodate special-needs athletes that use wheelchairs, walkers and other physically assistive devices. The facility offers athletes the opportunity to participate in baseball, football, soccer and track and field events.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM TOWN OFFICIALS

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



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TOWN SUPERVISOR

December 18, 2014

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(via email)**

Reviewing the draft audit results concerning the Town meeting all the terms and conditions of the "Parkland Alienation" Legislation was encouraging.

Thank you for the audit.

If you have any questions please contact George Phillips, Town Comptroller at (518) 477-6461.

Sincerely,

Keith Langley, Supervisor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

We interviewed Town officials to determine if processes were in place to ensure that the requirements of the Legislation were met and to gain an understanding of the processes and circumstances surrounding the parkland alienation.

We reviewed the Town's parkland alienation records including, when available, the Parkland Alienation Municipal Information Form, State Environmental Quality Review, Municipal Home Rule request, Board minutes, Board resolutions, contracts, leases, maps, surveys, planning records and other available documentation and correspondence. In addition, we reviewed general fund reports, capital plans, and general ledger and check information, when appropriate. Our audit included the following procedures:

- We reviewed the *Handbook of the Alienation and Conversion of Municipal Parkland in New York*, a publication issued by State Parks, that outlines the process and the deliberations involved in the change of use of municipal parkland and open space.
- We reviewed New York State Parkland Alienation Legislation passed in 2011 through 2013.
- We reviewed Board minutes and resolutions regarding the parkland alienation.
- We reviewed contracts and agreements to determine if the terms and conditions were consistent with the Legislation.

We 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.