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May 15, 2015

Larry Cantwell, Town Supervisor
Members of the Town Board
Town of East Hampton
159 Pantigo Road
East Hampton, NY 11937

Report Number: S9-14-68

Dear Supervisor Cantwell 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, provides 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 Hampton (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. Town officials indicated that they plan to initiate corrective action. Appendix B includes our comment on an issue raised in the Town's response. At the completion of our audit of the 11 municipalities, we prepared a global report that summarizes the significant issues we identified at all the municipalities audited.

Summary of Findings

We found that the Town has met all the terms and conditions of the Legislation. They have purchased one parcel and are under contract to purchase another, together valued at over \$1.97 million. The Town is also in the process of identifying a third parcel that will equal the required replacement value of \$2.2 million to satisfy the Legislation.

Background and Methodology

The Town is located in Suffolk County and is governed by a five-member Town Board (Board), which includes the Town Supervisor (Supervisor). The 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 was approximately \$28.5 million. The Town has designated approximately 248 acres as parkland.

“Parkland alienation” is the process by which a municipality seeks to sell, lease or discontinue 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, municipalities may view parkland as a fiscal resource that can be sold or leased to raise money or used for other government purposes to avoid paying for private land.

In addition, the requirements for this Legislation vary depending upon whether or not State dollars, in the form of grants, have been invested in the municipal parkland that is being considered for a potential change of use. In cases where the State has provided grants, in addition to having the Legislature approve the alienation, there are also statutes that require the municipality to provide lands of equal fair market value to replace the parkland being lost.

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

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).

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 C of this report.

Audit Results

Municipally owned parkland and open spaces 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 of East Hampton and Town of Southampton jointly own the Poxabogue Golf Center (Golf Center). In 2012, the Town of East Hampton sought legislative approval for parkland alienation. Legislation was approved that authorized the Town to alienate, transfer and convey, at fair market value, its interest in the Golf Center to the Town of Southampton. The Legislation included a provision that the Town of Southampton would continue to provide access to parklands and facilities to all Town of East Hampton residents. In addition, the Legislation required that an amount equal to the revenue received from the transfer of parkland shall be used for capital improvements of existing park and recreational facilities or for the acquisition of additional park and recreational facilities.

The Town sold its 50 percent share in the Golf Center for \$2.2 million to the Town of Southampton and paid off \$2.1 million in debt related to the original purchase of the golf course. During fieldwork the Town was still reviewing replacement parkland parcels to satisfy the Legislation. Subsequent, to the end of our audit fieldwork, the Town purchased one parcel and contracted to purchase another, together valued at over \$1.97 million as replacement parcels for the alienated parkland. In addition, the Town is in the process of identifying a third parcel to bring the total value of replacement land to at least \$2.2 million.

Town officials indicated that that sale of the Golf Center has reduced the Town’s debt and related yearly appropriations with no resultant net loss of parkland as Southampton will continue to maintain the Golf Center as parkland for Town residents.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM TOWN OFFICIALS

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



TOWN OF EAST HAMPTON

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East Hampton, New York 11937

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Len Bernard
Budget Officer

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State Office Building
Suite 1701
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Binghamton, New York 13901-4417
Attn: Ann Singer

Gabriel Deyo, Deputy Comptroller
Division of Local Government and
School Accountability
PSU-CAP Submission
110 State Street 12th Floor
Albany, New York 12236

Re: Combined Response and Corrective Action Plan (CAP) for Report Number:
S9-14-68 related to Parkland Alienation and the sale of a 50% share of the
Poxabogue Golf Course by the Town of East Hampton to the Town of
Southampton.

Dear Ms. Singer and Mr. Deyo:

This letter is the official response of the Town of East Hampton to Draft Report Number S9-14-68. We have also included the corrective action plan.

Response to Findings

The summary of findings and recommendations addresses two points: (1) the need to acquire and dedicate parkland/recreational facilities "in an amount equal to or greater than the fair market value of the parkland alienated in accordance with the legislation" (wording used in draft report S9-14-68); and (2) the failure of the Town to obtain an appraisal of its 50% share of the Poxabogue Golf Facility owned jointly with the Town of Southampton to ensure East Hampton was getting proper value for relinquishing its ownership interest.

1. The legislation (S06451A and A9237A) states "An amount equal to the revenue received from the transfer of parkland pursuant to this act shall be used for.....the acquisition of additional park and recreational facilities." The legislation does not use the term "fair market value" to set the requirement for the replacement property, rather an amount "equal to the revenue received" is

See
Note 1
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the precise wording of the legislation. In that regard the Town has actually purchased one parkland parcel for \$1,100,000 which closed on August 28, 2014 and is in contract for a second for \$870,000 (the Town Supervisor has already signed the contract). The Comptroller's Office has copies of the Town Board resolutions on these acquisitions and was told at the exit conference that the one property was already sold for \$1,100,000. There are also two other acquisitions in process that will total several million dollars that will secure the additional \$230,000 needed to meet the threshold established in the legislation of "an amount equal to the revenue received from the transfer." Since there is no time limit on how long the Town has to acquire the replacement property we believe the actions taken in the first 15 months after the Poxabogue sale are timely and in the spirit of complying with the law.

2. The legislation does not require an appraisal. It requires that the sale be based on fair market value. The Town of Southampton, however, did obtain an appraisal of the property and the negotiated price between the respective Town Supervisors was based on that appraisal. Also, the transaction was made between two municipalities and access to Poxabogue for East Hampton residents is guaranteed in the legislation, therefore the Town of East Hampton believes more than adequate measures were taken to ensure "fair market value" as required by the legislation.

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Note 1
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Corrective Action Plan (CAP) in Response to Recommendations

The Town will take steps to comply with the report's recommendations.

1. The Town Board has purchased one park property and is in contract for a second totaling \$1,970,000 to meet the alienation replacement requirement of the legislation, and will shortly acquire additional parkland to meet the remainder of the \$2.2 million obligation. The Town will incorporate the necessary language in the authorizing resolutions for future acquisitions to make it clear the land is being used to meet the replacement requirement for Poxabogue.
2. In the future, whether or not required by the legislation and whether or not the purchaser has obtained an appraisal, a formal appraisal will be performed for East Hampton to ensure the Town is receiving fair value for the transaction.

If there are any questions about the contents of this response you can contact me at the number on the first page of this letter.

Sincerely,

Len Bernard
Budget Officer
Finance Division Director

APPENDIX B

OSC COMMENT ON THE TOWN'S RESPONSE

Note 1

We amended our report to include the Town's additional, updated information. Specifically, we removed the finding that the Town did not obtain its own appraisal for the land being alienated because an appraisal was completed by the purchasing town. In addition, we amended the report to include the purchase of one parcel and contract to purchase another, together valued at over \$1.97 million. Due to these changes, we also removed the respective recommendations.

APPENDIX C

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 the New York State Parkland Alienation Legislation passed in 2011 through 2013.
- We reviewed Board minutes and resolutions regarding the Town's parkland alienation.
- We reviewed contracts and agreements to determine if the terms and conditions were consistent with the Legislation.
- We traced all funds received from the sale of the parkland property transaction back to the general ledger and subsequent accounts.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.