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May 15, 2015

Dixie Lee Sacks, Village Mayor
Board of Trustees
Village of Round Lake
49 Burlington Avenue
Round Lake, NY 12151

Report Number: S9-14-75

Dear Mayor Sacks and the Village Trustees:

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 Village of Round Lake (Village) 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 Village. 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 and recommendations specific to the Village. We discussed the findings and recommendations with Village officials and considered their comments in preparing this report. Village officials were provided an opportunity to respond to our findings within 30 days of the exit conference, but they did not respond. At the completion of our audit of the 11 municipalities, we will prepare a global report that summarizes the significant issues we identified at all of the municipalities audited.

Summary of Findings

We found that the Village has not met all the terms and conditions of the Legislation. Specifically, the Village should have taken steps to determine the fair market value of the lease in order to help support that the revenues received by the Village were equal to the fair market value of the lease.

Background and Methodology

The Village is located in Saratoga County and is governed by a five-member Board of Trustees (Board), which includes the Village Mayor and Deputy Village Mayor. The Village's 2013 general fund budget amounted to approximately \$1.47 million. The Village has designated approximately 244 acres of Parkland.

“Parkland alienation” occurs when 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.

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 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, 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 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 conduct 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

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).

included in our scope. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit is included in Appendix A of this report.

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 Village sought legislative approval for parkland alienation that was signed into law in 2011. The Legislation amended 1997 legislation that authorized the Village to discontinue the use of certain parcels of land no longer needed for park purposes and to lease the parcels to be used for a public utility/personal wireless facility for a period of time. Each piece of Legislation provided that the parcels be leased for consideration equal to the fair market value of the interest to be transferred, upon such terms and conditions as the Board may fix and determine. The Legislation also required that the net proceeds from the lease of the lands be used by the Village exclusively for the purchase of additional parkland or the capital improvement of existing park and recreational facilities within the Village.

We found that the Village has not met all the terms and conditions of the Legislation. Specifically, the Village should have taken steps to determine the fair market value of the lease to ensure that the revenues received by the Village were equal to the fair market value of the lease.

In the absence of fair market value appraisal relating to the property, Village officials cannot ensure that fair market value was received for the alienated parkland as required by the Legislation. As a result, Village residents could incur an overall loss of parkland.

Village officials explained that the alienation was a benefit to Village residents because the land that was alienated was previously unused by residents and now brings in revenue to help support Village operations.

Recommendations

Village officials should:

1. Ensure future parkland alienations comply with all of the requirements of the Legislation.
2. Ensure that future parkland alienations include steps to ascertain the fair market value, such as obtaining an appraisal and maintaining documentation of the appraisal, to help support that the fair market value received for the parcel was equal to or greater than the parcel alienated.

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 GML. 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 Village Clerk's office.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

AUDIT METHODOLOGY AND STANDARDS

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

We reviewed the Village'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 traced all funds received from the 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.