



# Town of Westerlo

## Selected Financial Activities

### Report of Examination

Period Covered:

January 1, 2012 — January 31, 2013

2013M-323



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**

March 2014

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 Westerlo, entitled Selected Financial Activities. 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 Westerlo (Town) is located in Albany County and has a population of approximately 3,400 residents. The Town Board (Board) is comprised of the Town Supervisor (Supervisor) and four elected members. The Board is the legislative body responsible for managing Town operations, including establishing internal controls over financial operations and maintaining sound financial condition. The Supervisor serves as the chief executive officer and chief fiscal officer.

The Town Clerk collects water payments from customers and records receipts, and the Supervisor's administrative aide prepares the water bills and makes bank deposits. The Court Clerk handles cash, makes bank deposits and prepares monthly reports for the State Comptroller's Justice Court Fund (JCF). The two elected Justices, Justice Kenneth Mackey Sr. and Justice Robert Carl, sign the checks and review, certify and transmit the monthly JCF reports.

The Town's budgeted expenditures for the 2013 fiscal year are approximately \$2.7 million, funded primarily with real property taxes, sales tax and State aid. The water district is comprised of 87 accounts, and had annual billings totaling \$41,704 in water usage and \$22,625 attributable to bond charges for the fiscal year ending December 31, 2012. The Justice Court generated approximately \$50,800 in fines, fees and surcharges during our audit period.

#### **Scope and Objectives**

The objectives of our audit were to examine internal controls over the financial condition of the water district fund and Justice Court operations for the period January 1, 2012 through January 31, 2013. We also reviewed select financial statement information for the period January 1, 2008 through December 31, 2013 for the water district fund. Our audit addressed the following related questions:

- Are Board members adopting realistic budgets, establishing appropriate user rates, routinely monitoring financial operations and taking appropriate actions to maintain the financial condition of the water district fund?
- Are internal controls over Justice Court operations appropriately designed and operating effectively?

#### **Audit Results**

The Board and Town officials were aware of revenue shortfalls in the water district fund, but did not take appropriate action to align estimated revenues in the adopted budgets with actual rate schedules. This resulted in an accumulated operating deficit totaling more than \$14,000 from fiscal years 2011

through 2013 and, ultimately, a \$4,000 deficit fund balance estimated as of December 31, 2013.<sup>1</sup> Furthermore, the water district fund owed the general fund a cumulative balance of \$66,388 as of December 31, 2013.<sup>2</sup> The Board continued its inaccurate budgeting practices with the 2014 budget, which makes it unlikely that the water district fund will be able to begin to repay the general fund or improve its financial condition. In addition, the Board has not adopted a multiyear financial plan to address the fund's future financial needs. Poor budgeting practices, combined with the lack of a multiyear financial plan, makes it increasingly difficult for Town officials to fund operations, especially if an unforeseen emergency event should occur.

We identified weaknesses in the Court's internal controls over financial operations. There was no documentation indicating that monthly bank reconciliations or accountabilities had been performed, and neither Justice reconciled their bail accounts. Furthermore, computerized records for bail were not accurate for Justice Mackey as well as three former Justices. Also, the former Justices' open case files within the computer system had not been properly transferred to the current Justices. Finally, the Board did not perform an annual audit of the Justices' books and records. As a result, there is an increased risk of misuse or misappropriation of Court funds.

### **Comments of Town 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. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comment on an issue raised in the Town's response letter.

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<sup>1</sup> On January 14, 2014, we reviewed the water district fund's trial balance, along with supporting documentation, as of December 31, 2013. The actual water district fund balance as of December 31, 2013 will be determined once the Town's accountants finalize the accounting records.

<sup>2</sup> This is according to the Town's trial balance as of December 31, 2013. The increase in the balance is a result of a \$25,000 transfer which was made on April 9, 2013 from the general fund to the water district fund. The water district fund's bond payment was made on the same day, also in the amount of \$25,000.

# Introduction

## Background

The Town of Westerlo (Town) is located in Albany County and has a population of approximately 3,400 residents. The Town Board (Board) is comprised of the Town Supervisor (Supervisor) and four elected members. The Board is the legislative body responsible for managing Town operations, including establishing internal controls over financial operations and maintaining sound financial condition. The Supervisor serves as the chief executive officer and chief fiscal officer. The Town provides a range of services to its residents including fire protection, highway maintenance, snow removal and water. The Town also has two park facilities, a transfer station, library, Justice Court and museum.

The Town Clerk collects water payments from customers and records receipts and the Supervisor's administrative aide prepares the water bills and makes bank deposits. The Court Clerk handles cash, makes bank deposits and prepares monthly reports for the State Comptroller's Justice Court Fund (JCF). The two elected Justices, Justice Kenneth Mackey Sr. and Justice Robert Carl, sign the checks and review, certify and transmit the monthly JCF reports.

The Town's budgeted expenditures for the 2013 fiscal year are approximately \$2.7 million, funded primarily with real property taxes, sales tax and State aid. The water district is comprised of 87 accounts, and had annual billings totaling \$41,704 in water usage and \$22,625 attributable to bond charges for the fiscal year ending December 31, 2012. The Justice Court generated approximately \$50,800 in fines, fees and surcharges during our audit period.

## Objectives

The objectives of our audit were to examine internal controls over the financial condition of the water district fund and Justice Court operations. Our audit addressed the following related questions:

- Are Board members adopting realistic budgets, establishing appropriate user rates, routinely monitoring financial operations and taking appropriate actions to maintain the financial condition of the water district fund?
- Are internal controls over Justice Court operations appropriately designed and operating effectively?

## Scope and Methodology

We examined the financial condition of the Town's water district fund and the internal controls over Justice Court operations for the period January 1, 2012 through January 31, 2013. We also reviewed

select financial statement information for the period January 1, 2008 through December 31, 2013 for the water district fund.

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  
Town 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. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on issues raised in the Town's response letter.

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 Clerk's office.

## Water District Fund

The Board is responsible for making sound financial decisions that are in the best interest of the Town and taxpayers, and for balancing the level of services desired and expected by Town residents with the ability and willingness of the residents to pay for such services. The Board must adopt balanced budgets for all operating funds that provide for sufficient recurring revenues to finance recurring expenditures, and monitor and maintain sufficient cash flow to pay bills and other obligations when they come due. The Board also needs to perform an analysis of possible future revenue and expenditure trends, including potential repairs and improvements, to avoid large fluctuations in user charges.

The Board and Town officials were aware of revenue shortfalls in the water district fund, but did not take appropriate action to align estimated revenues in the adopted budgets with actual rate schedules. This resulted in an accumulated operating deficit totaling more than \$14,000 from fiscal years 2011 through 2013 and, ultimately, a \$4,000 deficit fund balance estimated as of December 31, 2013.<sup>3</sup> Furthermore, the water district fund owed the general fund a cumulative balance of \$66,388 as of December 31, 2013.<sup>4</sup> The Board continued its inaccurate budgeting practices with the 2014 budget, which makes it unlikely that the water district fund will be able to begin to repay the general fund or improve its financial condition. In addition, the Board has not adopted a multiyear financial plan to address the fund's future financial needs. Poor budgeting practices, combined with the lack of a multiyear financial plan, makes it increasingly difficult for Town officials to fund operations, especially if an unforeseen emergency event should occur.

### **Budgeting**

To properly fund water district operations, the Board should determine the district's annual cost of operations and maintenance, and the anticipated future repairs and improvements. Based on that information, the Board should revise, if necessary, water user rates to generate sufficient revenues to pay the total costs necessary to properly operate and maintain the facilities and service lines, and to cover required annual debt service payments.

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<sup>3</sup> On January 14, 2014, we reviewed the water district fund's trial balance, along with supporting documentation, as of December 31, 2013. The actual water district fund balance as of December 31, 2013 will be determined once the Town's accountants finalize the accounting records.

<sup>4</sup> This is according to the Town's trial balance as of December 31, 2013. The increase in the balance is a result of a \$25,000 transfer which was made on April 9, 2013 from the general fund to the water district fund. The water district fund's bond payment was made on the same day, also in the amount of \$25,000.

Budget Estimates – The water district fund has three types of water sales: metered, unmetered and quarterly maintenance fees. Metered water sales are calculated based on meter readings in homes or businesses. Unmetered water sales are based on a flat rate for water district bond repayments and, therefore, must raise sufficient revenues for this purpose. Quarterly maintenance fees are for a few customers who are assessed with a no connection fee.

In an attempt to improve the water district fund's operations, the Board hired a consultant to review user rates, usage and expenses for the fiscal years ending 2006 through 2008. On June 25, 2009, the consultant recommended that the rates and billing structure be adjusted so that the water district fund could be self-sustaining. On January 5, 2010, the Board approved the rates and billing structure recommended by the consultant's review. However, the Board has not budgeted for metered and unmetered water sales appropriately since the Town implemented the consultant's rate changes in 2010. Specifically, the Board should have based its 2011 budget estimates on the new rate structure but did not do so. Instead, it continued to base its budget estimates on the previous rate structure.

For example, prior to 2010, revenues for unmetered water sales were approximately \$64,000. With the new rate structure, revenues for unmetered water sales would now be approximately \$23,000. The Board continued to budget \$63,000 or more for unmetered sales in 2011 and beyond, resulting in shortfalls of more than \$32,000 and \$40,000, respectively, in 2011 and 2012 for unmetered water revenue. Conversely, metered water sales were budgeted for approximately half of what was actually collected. For example, in 2012, the Board budgeted \$20,000 for metered water sales but collected more than \$41,000. As a result, the Board estimates approximately \$83,000 in revenue when actual revenues from metered and unmetered sales will generate approximately \$64,000. With these budgets, associated revenues will fall short by approximately \$19,000. If the Board continues to pass budgets with inaccurate estimates, the water district fund's operating results will continue to decline.

Results of Operations – We found that total revenues in the water district fund substantially declined from 2011 to 2012 and ended the year \$18,027 less than budgeted. This resulted in both an operating deficit of \$20,808 and a deficit fund balance of \$6,318 at the end of 2012, as indicated in Table 1. We determined that, based on the rate structures, 2012 revenues were a more accurate depiction of actual revenues to be expected annually than was received in 2011. Revenues received in fiscal year 2011 were inflated by errors and adjustments. Specifically, an incorrect posting for the bond repayment billings occurred in February 2011, which increased 2011 revenues

by \$8,396. In addition, Town officials also recorded an accumulation of water interest and penalties from prior years totaling \$7,292 in 2011, whereas interest and penalty charges were only \$389 in 2012. Because the Town did not have errors or as many adjustments in 2012, recorded revenues were significantly less than in 2011. Town officials could not provide us with valid explanations for these significant errors and adjustments.

**Table 1: Budget-to-Actual and Operating Results Westerlo Water District**

Fiscal Year	2011	2012	2013	Total
Estimated Revenues	\$81,325	\$83,325	\$83,325	<b>\$247,975</b>
Actual Revenues	\$83,034	\$65,298	\$81,516	<b>\$229,848</b>
Over/(Under) Budget	\$1,709	(\$18,027)	(\$1,809)	<b>(\$18,127)</b>
Estimated Appropriations	\$81,325	\$83,325	\$83,325	<b>\$247,975</b>
Actual Expenditures	\$78,789	\$86,106	\$79,250	<b>\$244,145</b>
(Over)/Under Budget	\$2,536	(\$2,781)	\$4,075	<b>\$3,830</b>
Beginning Fund Balance	\$10,245	\$14,490	(\$6,318)	
Operating Surplus/(Deficit) <sup>a</sup>	\$4,245	(\$20,808)	\$2,266	<b>(\$14,297)</b>
Year-End Fund Balance	\$14,490	(\$6,318)	(\$4,052)	

<sup>a</sup>On January 14, 2014, we reviewed the water district fund's trial balance and supporting documentation as of December 31, 2013. The actual water district fund balance as of December 31, 2013 will be determined once the Town's accountants finalize the accounting records.

In fiscal year 2013, water revenues increased approximately \$16,000 because of an increase in the water usage billed in August and November. However, the revenue increase was not a result of a rate increase; instead, it resulted from increased metered sales due to water breaks.<sup>5</sup> For example, a customer with a residential home and horse barns was billed \$11,827 for water usage on the August billing and \$785 for water usage on the November billing. This same customer's bills for February and May water usage were \$484 and \$522, respectively. A Board member, who also serves as the Chairman of the Water Board formed in 2013, explained that this property's August billing was inflated due to a leak on the property. As a result, even though the water district fund had an operating surplus in 2013, it was the result of inflated revenues and not because the Board took action to increase rates. Absent these additional revenues, the water district fund would have ended 2013 with an operating deficit.

<sup>5</sup> Bills for water leaks generally go unpaid by the customer and are re-levied on the tax roll. The County is responsible for making the Town whole and, therefore, pays the Town for re-levied taxes. There is a lag between fiscal years for when the Town collects from the County for re-levied taxes; however, the billings are recorded as water district revenue for the year that the water was consumed.

However, even with the recorded operating surplus from inflated billings, there is an estimated deficit fund balance at the end of 2013 totaling more than \$4,000.

2014 Budget – We reviewed the 2014 adopted budget and found that the Board continued to base revenue estimates on the rate structures that were in place prior to 2010, totaling approximately \$83,000. The Board adopted a new fee schedule for 2014 and a Board member stated that, in the fall of 2013, the Town made repairs to outside remote water readers which were underestimating the meter readings. However, the estimated increases to revenues resulting from these changes will not be sufficient to fund all expenditures and begin to repay the general fund in 2014. For example, the increase for water usage is only 61 cents per 1,000 gallons, resulting in a \$500 increase for the year based on minimum quarterly billing. The increase to the annual bond repayment is \$57 per parcel, resulting in about \$5,000 in additional revenues.

Further, the 2014 budget includes appropriations of \$71,000 for operating the system and \$12,000 to start repaying the general fund. However, for the past three years, the average cost of operations was \$81,400. Therefore, we question the ability to pay \$12,000 to the general fund during 2014 based on historical costs. Finally, because the Board based its budget estimates for metered sales on an outdated fee schedule, it will be difficult to accurately monitor the water district's actual results of operations against the budget. Based on the adopted budget, it is likely the water fund will continue to have a deficit fund balance and be unable to repay the general fund.

Interfund Advances – General Municipal Law states that moneys advanced between funds are to be repaid as soon as the funds become available, but no later than the close of the fiscal year in which the advance was made. These advances must be authorized by Board action. If advances are made between funds with different tax bases, the statute requires that interest be assessed to the fund that received the advance. While the use of interfund advances is a permissible form of short-term borrowing to meet current cash flow needs, it is not intended to be used as a long-term approach to provide financial resources from one fund to another operating fund.

The water district fund's cash balance also declined from \$18,388 at fiscal year-end 2008 to \$4,134 at fiscal year-end 2012. To provide sufficient cash for operations over this time period, the fund has received various advances from the Town's general fund, with a balance of \$34,388 dating back at least to the 2008 fiscal year. The general fund provided the water fund with another cash advance totaling \$7,000 in November 2012. However, there was no Board

authorization for this cash advance, as we found no mention of it in the Board minutes. The water district fund owed the general fund a cumulative balance of \$41,388 at December 31, 2012 and \$66,388 at December 31, 2013.<sup>6</sup> Because the Town's water district fund has been dependent on advances from the general fund to provide sufficient cash flow, and these interfund advances have not been repaid, the general fund has essentially been subsidizing the water district fund's operations. Being that these funds have different tax bases, taxpayer inequities have occurred.

### **Multiyear Financial Plan**

Planning on a multiyear basis allows Town officials to identify developing revenue and expenditure trends, set long-term priorities and goals, establish reserve funds and avoid large fluctuations in user charges. It also allows Town officials to assess the impact and merits of alternative approaches to address financial issues such as increasing operation and maintenance expenditures and changes to the service levels provided to residents. It is important for the Board to adopt realistic budgets and develop a long-term plan to identify recurring sources of revenue sufficient to finance anticipated recurring expenditures. Furthermore, the Town adopted a local law which states the Board shall conduct no less than two meetings per year for the sole purpose of reviewing and discussing the water district's operations (including maintenance and billing).

The Board has not adopted multiyear financial plans to address the water district fund's deficit fund balance or the outstanding interfund loans. Furthermore, the Board has not established a repair reserve for the water district fund in anticipation of future repair costs. The Supervisor stated the water district fund never had enough money to make repairs, so the Board never made a plan to do so.

Also, Town officials stated that, when the water district was first established, they did hold meetings as required by the Town's local law. However, they did not continue with this practice. The Board currently is trying to implement meetings again because it would like to reduce annual contractual costs.

Significant increases in fixed costs can limit the Town's flexibility in dealing with budgetary expenditures over which the Board exercises some degree of control, such as debt service. When added to the water district's declining fiscal health and increasing reliance on cash advances from the general fund, the Town may find it increasingly

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<sup>6</sup> According to the Town's trial balance as of December 31, 2013. The increase in the balance is a result of a \$25,000 transfer which was made on April 9, 2013 from the general fund to the water district fund. The water district fund's bond payment was made on this same day, also in the amount of \$25,000.

difficult to fund operations, especially if an unforeseen emergency event should occur.

## **Recommendations**

1. The Board should develop realistic and accurate estimates in preparing the annual budget and should monitor the budget during the year.
2. The Board and Town officials should develop a comprehensive plan to ensure that all outstanding interfund advances are repaid, and future interfund advances should be repaid no later than the close of the fiscal year in which the advance was made. In addition, future interfund advances should be authorized by the Board.
3. The Board should develop a multiyear financial plan to establish clear goals and objectives for funding the water district fund's long-term operating and capital needs. The Board and Town officials should frequently monitor and update the plan to ensure that their decisions are based on the most accurate and up-to-date financial information.

## Justice Court Operations

A well-designed system of internal controls ensures that cash received by the Court is safeguarded, and that Court activity is properly recorded and reported. Justices are responsible for adjudicating cases brought before their Court and accounting for and reporting all related Court financial activities. The Justices must ensure that controls are in place and working effectively, particularly when there is a limited segregation of duties. To meet that responsibility, they must maintain complete and accurate records and safeguard all moneys collected. Essential procedures include the monthly reconciliation of bank accounts to Court records, and a monthly accountability which compares cash on hand and on deposit to detailed lists of amounts due to the Justice Court Fund (JCF) and other outstanding liabilities, such as bail.

The Board is also responsible for overseeing Court operations and monitoring Court personnel to help ensure that transactions are properly recorded and reported, and moneys are properly accounted for. This is accomplished, in part, by performing an annual required audit of the Justices' records, either by the Board itself or by engaging the services of an independent public accountant or certified public accountant.

We identified weaknesses in the Court's internal controls over financial operations. There was no documentation indicating that monthly bank reconciliations or accountabilities had been performed, and neither Justice reconciled their bail accounts. Furthermore, computerized records for bail were not accurate for Justice Mackey as well as three former Justices. Also, the former Justices' open case files within the computer system had not been properly transferred to the current Justices. Finally, the Board did not perform an annual audit of the Justices' books and records. As a result, there is an increased risk of misuse or misappropriation of Court funds.

### **Recordkeeping**

Justices are responsible for the accounting and reporting of all the Court's related financial activities. The New York Codes, Rules and Regulations require the Justices to maintain complete, accurate and timely accounting records; reconcile cash activity; maintain separate bank accounts; deposit cash in a timely manner; and report Court activity accurately and in a timely manner. For each case brought before the Court, the Justices must maintain a separate case file and unique index number, as well as a cash book that chronologically itemizes all receipts and disbursements. Such records must include all

relevant case information including the date of appearance, fees and fines imposed, and amount collected.

Bank Reconciliations and Monthly Accountabilities – Justices are required to account for cash receipts and disbursements from month to month, and determine accountability – by preparing a list of Court liabilities and comparing it with reconciled bank balances – on a monthly basis. Bank reconciliations and accountability analyses document the status of moneys held by the Court at any point in time, and provide a means of verifying that the Court is properly addressing its custodial responsibilities.

Although Court personnel told us that Justice Carl performed monthly bank reconciliations, there was no documentation to confirm this, or to show that the adjusted bank balances had been reconciled to the checkbook registers. Additionally, the Justices performed informal monthly accountabilities by reviewing the cash receipts journal and comparing it against the bank statement and the JCF monthly report. However, since neither Justice kept an accurate accounting of bail, there was no reconciliation of cash to amounts of retained bail (see further discussion of bail records in the following section). We reviewed the Justices' informal accountabilities during our audit period, and found that the cash receipts monthly reports and remittances to the Town as documented within the bank statements agreed with the amounts recorded on the JCF monthly reports.

Bail Records – The Justices are responsible for maintaining an appropriate record of all bail received and disbursed, indicating when and by whom the bail was paid and to which case it relates, and identifying the date, check number and to whom the bail was subsequently disbursed.<sup>7</sup> Additionally, the Justices must ensure that the bail record is reconciled to the related bank account balance on a monthly basis.

Although both Justices maintained a separate bank account for the bail, we found that neither Justice reconciled the bail account bank balances with the computerized bail reports. For example, the computerized bail reports had a balance of \$13,687 for Justice Mackey, but Justice Carl told us that the bail account balance was \$1,115, the amount contained in the bail bank account. Justice Carl did not have bail on hand at the time of our review. A computerized bail report for all current and former Justices totaled \$51,657. This computerized bail record was supposed to reflect current pending bail; however, actual current pending bail was \$1,115. We determined that the discrepancies between the Justices' computerized records and

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<sup>7</sup> Bail levied on defendants is either returned when the case has been adjudicated or used to pay fines and fees imposed by the Court.

bank balances occurred because the computerized record was not always updated when cases were closed, as discussed in more detail in the finding entitled “Open Case Files.”

After the completion of our fieldwork in May 2013, Justice Carl had reconciled both his and Justice Mackey’s bail accounts from the beginning of their terms, which were February 2011 and January 2010, respectively. We confirmed the ending bail bank statement balances as of December 31, 2011 – totaling \$200 for Justice Carl and \$27,113 for Justice Mackey – agreed with the outstanding bail balance recorded as of January 1, 2012 in the bail account reconciliations. All activity reflected in the bank statements were traced to the Justices’ bail account reconciliations for our audit period. We determined that the reconciled activity agreed with the amounts held in the bank for both bail bank accounts. We encourage the Justices to continue reconciling the bail bank account with the computerized bail reports.

Open Case Files – When a Justice leaves office, they are required to transfer all pending cases and any moneys received on those cases to the succeeding Justice. They must also file a final report with the JCF reporting all activity, remit any fines and fees due, and close all bank accounts. The Board is responsible for ensuring that a Justice complies with these requirements upon leaving the position.

Although we found that the three previous Justices had remitted the balance of their bank accounts to the Town, and subsequently closed the accounts, the pending cases were not properly transferred to the Justices’ successors. The computerized records indicated that there were 322 defendants with one or more cases from those prior Justices which were still open, and had not been transferred. The oldest case listed from the three Justices dated back to December 30, 1991.

Justice Carl had started to review all open case files for each defendant while we were still conducting field work. As of June 2013, he had reviewed all of the files for two of the three former Justices and reassigned the cases to himself or Justice Mackey. He was still in the process of reviewing the open cases for the remaining former Justice. He told us that he had determined many of the cases were closed and were not required to be reassigned.

When Justices do not ensure that monthly bank reconciliations are performed, monthly accountabilities are completed, pending bail records are properly maintained, and open case files are transferred as required, there is a heightened risk that errors or irregularities can occur and remain undetected for several months or years.

## **Annual Audit**

The Justices are required by law to present their records and docket at least once per year to the Town to be examined by the Board, or by a certified public accountant or public accountant. In conducting its reviews, it is important for the Board to determine whether the Town has effective procedures in place to ensure that the Court's financial transactions are properly recorded and reported, and that all moneys are accounted for properly.

Although Board minutes and Town documents indicate that there was an audit of the Court's records, the support merely states that departmental cash and other records were reviewed by an individual hired by the Town. There was no documentation maintained to show the specific records reviewed or the procedures performed. In addition, the individual hired to perform the annual audit did not meet the specific requirements of Town Law. Without an effective annual audit of the Court's records, including available cash, bail, and monthly bank reconciliations and accountabilities, Town officials do not have assurance that all moneys received and disbursed are properly accounted for.

## **Recommendations**

4. The Justices should prepare monthly bank reconciliations and analyses of Court liabilities for comparison with available cash. Any differences should be promptly identified and investigated, and, if necessary, corrective action taken.
5. The Justices should ensure that all bail received and disbursed is properly accounted for.
6. The Justices should continue to review the former Justices' open cases and properly transfer them to the current Justices or close them, as applicable.
7. The Board should provide adequate management oversight of the Court's operations, including performing an effective annual audit of the Justices' records.

## **APPENDIX A**

### **RESPONSE FROM TOWN OFFICIALS**

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

# TOWN OF WESTERLO

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WESTERLO, N.Y. 12193

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**SUPERVISOR**

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WILLIAM BICHTEMAN JR.

ALFRED FIELD

THEODORE LOUNSBURY III

ANTHONY SHERMAN



**SUPERINTENDENT OF HIGHWAYS**

KEITH WRIGHT SR.

**CODE ENFORCEMENT OFFICER**

EDWIN LAWSON

**TOWN ATTORNEY**

ALINE D. GALGAY

**CLERK TO THE SUPERVISOR**

PATRICIA BOICE

March 24, 2014

NYS Office of the State Comptroller  
Division of Local Government and School Accountability  
One Broad Street Plaza  
Glens Falls, NY 12801  
VIA FAX AND FIRST CLASS MAIL

**RE: Town of Westerlo  
Audit Report – January 1, 2012 – January 1, 2013**

Dear Sir/Madam:

As per the direction of [REDACTED] for the NYS Office of the State Comptroller, please accept this letter as the Town of Westerlo's response to the Report of Examination, as well as our proposed corrective action for the deficiencies noted therein. For ease of review, I have organized this letter to reflect the same order as the report.

**WATER DISTRICT:**

**FINDING:** The Report states that while the Board and Town officials were aware of revenue shortfalls in the water district fund, they did not take appropriate action to align the estimated revenues in the adopted budgets with actual rate schedules.

**RESPONSE AND REMEDIAL ACTION:** The Town does not dispute that it was aware of the revenue shortfall for the water district fund, but opines that it did, in fact, reassess rate schedules, billing and operational expenses, and has continued to do so in an attempt to realign the billing to users with the expenses incurred.

As noted in the report, in 2009, the Town tasked Councilman R. Gregory Zeh to review and evaluate the then-current rate schedule, and report to them on how to bring

the same more in alignment with the user usage. Councilman Zeh suggested, and the Board hired a consultant. The Consultant made a number of suggestions, which were adopted by the Town. More specifically, as a result of that evaluation and reassessment, the Water District made the following changes:

- A minimum usage fee of \$40.25 was established, for any usage under 2,500 gallons.
- Billing was changed from semi-annual to quarterly, in order to establish a better revenue stream for the Water District
- Water rates were increased from \$4.60 to \$16.10 per 1,000.00 gallons

These changes resulted in an increase in revenue that more closely matched the Water District expenses.

See  
Note 1  
Page 24

Again in 2013, the Town Board tasked recently-elected Councilman William Bichteman, who was a member of the Water District, to evaluate the Water District revenue and expenses, and to recommend necessary changes to the same in order to make the billing for usage more equitable and to reduce expenses. Councilman Bichteman requested that the Board establish a Water Committee comprised of three persons who were members of the Water District, who would be tasked with evaluating the operation and billing of the Water District. On August 6, 2013, the Board formally established the Water Committee. After numerous meetings, and an onsite physical inspection of every meter in the district (to determine status of operation and accessibility, and to ensure that the Water District was securing actual usage readings and not estimates) the Committee determined and/or suggested the following:

- There were numerous water meters that were either inoperable or inaccessible. This resulted in previous billing of “estimated” amounts. The newly appointed System Operator (see below, bullet 2) corrected the meter issues, monitored water usage to determine any billing deficit for prior usage, and will regularly inspect meters to ensure that all meters are properly functioning and being billing for actual usage and not estimated usage.
- Relieve the current Water System Operator of his duties, which contractually cost the Water District approximately \$33,076.75, and replace him with Doug Story, who would be paid an annual salary of \$26,000.00, thereby resulting in a net savings of approximately \$7000.00.
- Identified expenses that were actually Town expenses that had been included in the Water District expenses (such as portions of the electricity at the Town Park where the water district wells and pump house were located), and separated those expenses from the Water District. This resulted in a reduction in expenses attributed to the Water District, and brought the Water District income more in line with the expenses incurred.
- The water usage rate was increased by 61 cents per 1,000 gallons to \$16.71.

For the 2014 fiscal year, the Water District should have adequate revenue to cover its expenses, as well as begin to repay the Town General Fund towards the balance owed. The Water Committee shall continue to diligently monitor the expenses of the district, and to ensure billing is accurate and timely. The Committee will then reevaluate the rates as compared to usage and expenses and make any modifications necessary to ensure that revenue, at a bare minimum, covers expenses, but also that it will pay the amount owed to the Town.

With respect to continued budgeting, based on the reduction in expenses and increase in rates, the Water District budget is now in the black, and can adequately cover its costs. Consequently, it does not appear necessary for the Town to budget in amounts to “cover” the Water District deficits, as in previous years, and as the Water District repays the previously borrowed sums, this will serve as a budget surplus for the Town’s general fund.

As for fund transfers from the General Fund to the Water District Fund, all transfers are presented to the entire Board at regularly scheduled Board meetings, and all transfers between accounts are put to the Board for a vote. The Board acknowledges that the transfers from the General Fund to the Water District Fund have not been specifically noted, and set out separately, and interest has not been assessed to these transfers. The procedure for these transfers shall be modified as follows:

- all transfers from the General Fund to the Water District Fund will be specifically stated at a regularly scheduled meeting, along with the amount and the purpose, and voted on separate from all other account transfers
- a reasonable interest rate, as suggested by the accounting firm hired by the town, will be assessed to any transfers beginning in 2014, and will be included in the sums to be repaid by the Water District to the General Fund.
- All transfer shall be a priority for repayment in order to comply with the short-term characterization thereon
- The Water Committee, in conjunction with the Town’s accounting firm, shall review the fiscal status of the Water District prior to the establishment of the 2015 budget numbers. The Water District budget shall include and reflect the following:
  - o A rate satisfactory to ensure:
    - that all current expenses are paid from collected revenues
    - that a portion of the General Fund deficit resulting from the transfers to the Water District from 2008 - 2014 shall be repaid during the 2015 budget year. The amount to be repaid must be designated, and be identified with a particular borrowing. The oldest monies owed shall be repaid first.

## COURTS:

FINDINGS: The Report indicated that there were problems with the Court's internal controls over financial operations, including but not limited to an absence of documentation that monthly bank reconciliations or accountabilities had been performed as well as failure to reconcile bail accounts. In addition, the computerized records for bail for Justice Mackey as well as three former Justices were inaccurate. The Report also notes that prior Justices' open case files within the computer system had not been properly transferred to the current Justices, and faulted the Town Board for not performing an annual audit of the Justices' books and records.

### RESPONSE AND REMEDIAL ACTION:

The Town Justices have undertaken numerous actions to correct the issues raised in the Report. The Justices have:

1. assessed all open cases from past judges, and those cases have either been closed or transferred to a current judge. In the future, all closed case files will be provided to the court clerk immediately upon completion, for entry of all required fields. A checklist of closed cases will be prepared, and as the appropriate information is entered into the computerized record, the case file will be removed to a closed file area.
2. instituted new court procedures which shall be implemented by:
  - a monthly reconciliation of both the regular and bail accounts.
  - A monthly update and audit of all bail accounts, including those of past judges
  - provision of all court court records, docket and financial documents to the Town's newly hired accounting firm for an annual audit. The accounting firm shall report to the Town Board with any deficiencies, inaccuracies and/or inconsistencies in the court records and accounts. This shall begin with the 2014 fiscal year records and shall continue on a consistent annual basis. In the event that during the course of the year, but prior to the regularly scheduled audit, the Town Board or the Justices are concerned with the accuracy of the court records and accounts, an interim audit will be performed by the accounting firm and a report issued to the Justices and the Town Board
3. hired a new Court Clerk, who shall be duly trained in the proper computer entry of all case information.

A letter from the current Justices attesting to the foregoing is attached hereto and incorporated herein as part of the Town's response.

If you have questions regarding the foregoing, require further information, or would like to discuss the same, please do not hesitate to contact me. I am hopeful that the Office of the State Comptroller recognizes that the Town of Westerlo is diligently correcting any deficiencies noted by said office, and will continue to monitor its operations to ensure continued compliance with all audit requirements.

Very truly yours,

Richard H. Rapp

Cc: Town Board  
Deputy Supervisor

# WESTERLO TOWN COURT

P. O BOX 148, 671 County Route 401  
Westerlo, New York 12193  
Telephone 518-797-3239 FAX 518-797-3598

Hon. Robert A. Carl

February 27, 2014

Hon. Kenneth R. Mackey, Sr.

State of New York  
Westerlo Town Court

County of Albany  
Town of Westerlo

Audit Response/Corrective Action Plan

Westerlo Justice Court  
Financial Activities  
2013M-323

To Office of the State Comptroller:

We are in possession of your audit conducted for January 1, 2012 – January 31, 2013 and have corrected all issues brought up in the report.

1. Justices reconcile both the regular and bail accounts monthly.
2. All bail accounts including past judges are up to date and audited monthly.
3. All open cases from past judges have been closed or transferred to a current judge.
4. Justices will continue to provide all financial documents to the town for an annual audit.

Respectfully submitted,

Hon. ~~Kenneth~~ R. Mackey Sr.

Hon. Robert A. Carl

## **APPENDIX B**

### **OSC COMMENTS ON THE TOWN'S RESPONSE**

#### Note 1

This statement is not accurate. The Town's changes have not resulted in revenues more closely matching water district expenses. The revenues recognized during 2012 are the most accurate depiction of annual revenues the water district can expect from the rate changes adopted in 2010. The 2012 revenues fell short of budget estimates by more than \$18,000 and were significantly less than annual expenses the district has historically incurred.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to determine if internal controls over selected financial activities were appropriately designed and operating effectively. 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: control environment, financial condition, budgeting, accounting records and reports, cash management, cash receipts and disbursements, purchasing, claims processing, payroll and personal services, billed receivables, Justice Court, real property taxes, departmental receipts and information technology.

During the initial assessment, we interviewed appropriate Town officials to gain an understanding of the internal control structure and determine the effectiveness of such controls. We also performed limited tests of transactions and reviewed pertinent documents such as adopted policies and procedures, Board minutes, and financial records and reports. Through our completion of the IT questionnaire, we gained an understanding of the Town's information systems controls. Further, we reviewed the Town's internal controls and procedures over the computerized financial databases to help ensure that the information produced by such systems was reliable.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for inherent control risks. We then decided on the reported objectives and scope by selecting for audit those areas most at risk. We selected the financial condition of the water district fund and Justice Court operations for further audit testing.

To accomplish the objective of this audit, we performed the following audit procedures:

- We interviewed Town officials, and reviewed Board minutes and local laws related to the water district fund.
- We reviewed the Town's annual update documents, annual adopted budgets and year-end trial balance reports (for modified budget figures) for fiscal years ending 2008 through 2013.<sup>8</sup> For these fiscal years, we analyzed the water district fund's fund balance, operating results and interfund advances. We also reviewed the adopted budget for the 2014 fiscal year.
- We compared the water district fund's adopted budgets with the actual results of operations for fiscal years ending December 31, 2008 through December 31, 2013 to determine if the budgeted revenues and appropriations were reasonable, if the budgets were balanced, and if budget to actual variances amongst revenue and expenditure account codes were significant.
- We reviewed a review conducted by a consultant in 2009 which recommended water district user rates and a billing structure to Town officials. We compared the recommended rates to the established rates used by the Town.

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<sup>8</sup> On January 14, 2014, we reviewed the water district fund's trial balance and supporting documentation as of December 31, 2013. The actual water district fund balance as of December 31, 2013 will be determined once the Town's accountants finalize the accounting records.

- We interviewed Town officials and reviewed Board minutes and year-end interfund loan amounts for fiscal years ending 2009 through 2013.
- We interviewed Court personnel to gain an understanding of the Court's operation.
- We determined whether Court personnel properly performed bank reconciliations and monthly accountabilities.
- We compared monthly amounts recorded in the Justices' accounting records to the amounts deposited and disbursed at the bank, as well as the amounts reported to the JCF as documented within the monthly reports for our audit period.
- We reviewed a current listing of bail and determined the accuracy of the report. We then reviewed a Court-prepared reconciliation of bail and the monthly bank statements for our audit period. We completed this review after the end of our field work, once the Court reconciliations were complete.
- We reviewed the former Justices' computerized records to determine the number of defendants with open cases that had not been transferred to the current Justices.
- We reviewed the Board minutes and supporting documentation regarding an annual audit of the Justice Court.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX D

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

Andrew A. SanFilippo, Executive Deputy Comptroller  
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