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January 2016

Richard Schaffer, Supervisor
Members of the Town Council
Town of Babylon
200 East Sunrise Highway
Lindenhurst, NY 11575

Report Number: P7-15-56

Dear Supervisor Schaffer and Members of the Town Council:

A top priority of the Office of the State Comptroller is to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support local 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 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 eight local governments throughout Nassau and Suffolk Counties. The objective of our audit was to determine whether local governments are complying with the Long Island Workforce Housing Act (Act) when approving qualifying residential units. We included the Town of Babylon (Town) in this audit. Within the scope of this audit, we examined the Town's policies and procedures and reviewed the site plans for residential developments of five or more units for the period January 1, 2009 through December 31, 2014. 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.

This report of examination letter contains our findings and recommendations specific to the Town. We discussed the results of our audit and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated they have implemented corrective action. Appendix B includes our comment on an issue raised in the Town's response. At the completion of our audit of the eight local governments, we prepared a global report that summarizes the significant issues we identified at all of the local governments audited.

Summary of Findings

The Town generally complied with the Act when it approved applications for qualifying residential developments. Three of the four developments approved during our audit period have a combined total of 66 percent of all units built set aside as affordable workforce housing. For the remaining development, the developer is making payments in lieu of building affordable units.¹ However, the payment amount is significantly lower than that required by the Act.

Background and Methodology

The Town covers approximately 53 square miles, has approximately 213,600 residents and is located in Suffolk County. The Town is governed by an elected five-member Town Council (Council), which includes the Town Supervisor. The Town Supervisor is the chief executive officer and is responsible for the Town's day-to-day operations. The Council is responsible for approving multi-unit residential housing projects within the Town's boundaries. The Town's 2014 general fund expenditures totaled approximately \$52.2 million.

The New York State Legislature implemented the Act in 2008 for the purpose of making homeownership more affordable for the workforce in Nassau and Suffolk Counties. Housing affordability is a function of both housing prices and household incomes. While "affordable housing" is often thought to target lower-income residents (usually those below the median income), the term "workforce" generally includes those who are not typically the target of, or eligible for, affordable housing programs (such as those at or above the median income). This usually includes essential workers in a community, such as police officers, firemen, teachers, nurses and medical personnel. However, under the Act, the term "affordable workforce housing" is defined as housing for individuals and families at or below 130 percent of the median income for the Nassau-Suffolk primary metropolitan statistical area² (commonly called the area median income or AMI), which averaged \$105,000 for 2009 through 2014.

Under the Act,³ generally, when a developer makes an application to a local government in Nassau or Suffolk County to build five or more residential units, the local government, in exchange for providing the developer with a "density bonus" that authorizes them to exceed the local residential density maximum by at least 10 percent, must require one of the following:

- The set aside by the developer of at least 10 percent of the proposed units for affordable workforce housing on site, or
- The provision by the developer of other land within the same local government and the construction of the required affordable workforce housing units on the other land, or
- The payment of a fee by the developer for each affordable unit that the developer would have been required to construct. The Act generally sets this fee at the lesser of two times the AMI for a family of four, or the appraised value of the building lot(s).

¹ At the time of our audit, the developer had made two of six scheduled payments.

² As defined by the United States Department of Housing and Urban Development (HUD)

³ The Act was generally effective January 1, 2009.

The local government is then responsible for ensuring that all affordable units created under the Act remain affordable. When a developer elects to pay a fee in lieu of building affordable units, the local government, among other things, may establish a trust fund in which these fees are deposited, separate and apart from all other moneys of the local government, for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing. Within six months of establishing the trust fund, the local government must issue guidelines and policies governing the expenditure of trust fund moneys. Any moneys not expended three years from the date they are collected must be paid into a single trust fund controlled by the Long Island Housing Partnership.⁴

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 are included in Appendix C of this report.

Audit Results

The Town generally complied with the Act when approving applications for qualifying residential developments. The Town typically requires developers to set aside 20 percent of the units in proposed developments for affordable workforce housing. If the developer does not set aside these units, then it needs to make a payment in lieu of the affordable units to the Town's affordable housing trust fund.

The Town received applications for four developments comprising 281 units between January 1, 2009 and December 31, 2014. The developers of the Wyandanch Rising, Main Street Villas and Liberty Village developments have designated a combined total of 186 units, or 66 percent of all units built, as affordable workforce housing. Two of these three developments are completed and occupied. For these developments, there are procedures in place to ensure that the affordable units remain affordable.

The developer of the 49 Muncie Road development constructed rental units and opted to pay the fee to the Town's affordable housing trust fund in lieu of designating five of the 24 proposed units as affordable;⁵ however, this fee does not appear to comply with the Act.⁶ The Act provides for the fee to be calculated as the lesser of two times the AMI for each unit which results, or would have resulted, from the "density bonus," or an amount equal to the appraised value of the lot(s), or

⁴ The Long Island Housing Partnership is a not-for-profit organization that was created to address the need for and to provide affordable housing opportunities on Long Island for those who are unable to afford homes, through development, technical assistance, mortgage counseling, homebuyer education and lending programs. It also provides technical assistance to private developers, municipalities and other not-for-profit organizations who are providing affordable housing on Long Island.

⁵ Twenty percent of the units, as required by the Board

⁶ It is unclear whether the phrase "residential units" in the Act includes rental units. For the purposes of this audit, we have assumed the propriety of the Town's application of the Act to the rental units constructed by this developer.

the equivalent thereof, for each additional unit created by the “density bonus.” However, we believe that the Town incorrectly calculated the fee. As shown in Figure 1, the Town’s calculation of the fee due is significantly less than the appraised value of the lot, which is the amount of the fee due under the Act’s calculation.

Figure 1: Fee Due in Lieu of Affordable Units			
Calculation per Act		Town Calculation	
2012 AMI (\$107,500) x 2	\$215,000	Developer Proposed Monthly Rent	\$1,625
Units Over Density Maximum ^a	10	2012 HUD Monthly Fair Market Rent, 1-Bedroom	\$1,425
Total	\$2,150,000	Difference	\$200
Appraised Value of Lot ^b	\$1,300,000	x 20 years (240 months) ^c	\$48,000
		Required Affordable Units (20%)	5
Fee Due in Lieu of Affordable Units	\$1,300,000	Fee Due in Lieu of Affordable Units	\$240,000
^a Town Code requires at least 4,000 square feet per one-bedroom unit. Therefore, 14 one-bedroom units would be permitted on a lot of 58,370 square feet. ^b Lot sold for \$1,300,000 in August 2012. ^c Length of time the Town determined units should remain affordable			

In addition, the Town’s affordable housing trust fund does not comply with the Act. The moneys received from fees in lieu of affordable workforce units should be held in trust, separate and apart from all other Town moneys, for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing. However, the Town has comingled the fees in its affordable housing trust fund along with moneys used for the Town’s down payment assistance program. The Town has spent approximately \$1.2 million from the trust fund since 2009.

Recommendations

The Council:

1. Should ensure that fees paid to the Town in lieu of the designation of affordable units are calculated in accordance with the formula set forth in the Act.
2. Should ensure that any funds held in the affordable housing trust fund are separate and apart from all other Town funds and are used only for those purposes set forth in the Act.

The Council 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 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 Council to make this plan available for public review in the Clerk’s office.

We thank the officials and staff of the Town of Babylon 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 Babylon

200 E. Sunrise Highway
Lindenhurst, New York 11757-2597
(631) 957-3000



RICH SCHAFFER
SUPERVISOR

October 2, 2015

Mr. Ira McCracken, Chief Examiner
Division of Local Government and School Accountability
NYS Office Building, Room 3A10
250 Veterans Memorial Highway
Hauppauge, NY 11788-5533

Report Number P7-15-56

Dear Mr. McCracken:

Enclosed please find the Town of Babylon's response to the draft findings of your recent audit in connection with the Town's compliance with the Long Island Workforce Housing Act.

Our response is attached and identified as "Appendix A" as requested in the Draft Report.

I look forward to reviewing your office's final report.

Thank you.

Sincerely,

Richard Schaffer, Supervisor
Town of Babylon

Cc Joseph Wilson, Town Attorney
Victoria Marotta, Comptroller
Ann Marie Jones, Commissioner, Department of Planning and Development

Antonio A. Martinez <i>Councilman</i> <i>Deputy Supervisor</i>	Thomas Donnelly <i>Councilman</i>	Jacqueline A. Gordon <i>Councilwoman</i>	Lindsay Patrick Henry <i>Councilman</i>	Corinne DiSomma <i>Receiver of Taxes</i>	Carol A. Quirk <i>Town Clerk</i>
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APPENDIX A

RESPONSE FROM TOWN OFFICIALS

1. Should ensure that fees paid to the Town in lieu of the designation of affordable units are calculated in accordance with the formula set forth in the Act.

The Town of Babylon makes every effort to create affordable housing units when reviewing applications for Multiple Residence (MR) zoning requests. The fact that the audit found that three of the four developments approved during the audit period have a combined total of 66 percent of all constructed units set aside as affordable workforce housing, attests to the town's commitment. According to the Report, of the 281 MR rental units submitted for your review, 186 units, or 66 per cent of all units built, were affordable workforce units. All 281 units are rentals, and there are procedures in place to ensure that the 186 affordable unit's remain affordable, as required by the Act. All affordable workforce units that were created in these three developments received multiple subsidies, with attendant regulations.

At issue is the fourth development, in which a fee to the Town's Affordable Housing Fund was required in lieu of the designated affordable housing set aside. The density bonus is within the purview of the municipality and is determined by the Town Board. In the case of this development, the Town Board granted a density bonus of 10 units. Community character was one factor considered in determining this number, and the overall density of the development is consistent with other MR developments on the same street.

In reading the Long Island Workforce Housing Act, there is reference made to "allowable residential density" "density bonus" and "residential units." Whether these are owner occupied or rental units is not clear. The Draft Report, in footnote 6, states "It is unclear whether the phrase "residential units" in the Act includes rental units. For the purposes of this audit we have assumed the propriety of the Town's application of the Act to the rental units constructed by the fourth developer."

The audit calculates a fee significantly greater than that which the Town imposed. It is based on the following excerpt from the Act which refers to the fee in lieu of Affordable Units, Section 1. (c):

the payment of a fee equal to two times the median income for a family of four for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development, for each additional unit which results, or would have resulted, from the density bonus or, when such fee exceeds the appraised value of each lot resulting from such density bonus, then such fee shall be equal to the appraised value of the lot or lots, or the equivalent thereof, for each additional unit created by the density bonus.

However, when a development is rental rather than ownership, there are no new lots created; a density bonus for a rental development does not result in additional lots. Therefore, there can be no

meaningful comparison between the two calculations; two times the median AMI per bonus unit or the value of the lots created.

Since the Act does not clearly state the definition of “residential units” and since there were no new lots created in the development, and since the fee to be calculated according to the Act is applicable only to ownership developments, the Town based its calculation on the annual HUD FMR for Nassau/Suffolk, for the fourth rental development, which was built without the benefit of subsidies.

See
Note 1
Page 10

2. Removed at exit meeting

3. Should ensure that any funds held the affordable housing trust fund are separate and apart from all other Town funds and are used only for those purposes set forth in the Act.

The Town, by resolution number 846 dated December 15, 2014, formally established a four person committee with the sole purpose of reviewing affordable housing activities for consideration of applying these funds. Those activities which meet the criteria of the use of those funds are then approved. The funds on hand are maintained in a special revenue fund and are earmarked for the specific purpose. The funds can only be used upon committee approval.

APPENDIX B

OSC COMMENT ON THE TOWN'S RESPONSE

Note 1

The Act makes no distinction between rental and other units and sets forth only one formula for the calculation of payments in lieu of workforce housing units. The Town did not use this formula.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to evaluate whether the Town was complying with the Act when using its resources to approve qualifying residential units. To accomplish our audit objective and obtain valid audit evidence, our procedures included the following:

- We interviewed Town officials and employees to gain an understanding of the process for approving residential developments of five or more units from January 1, 2009 through December 31, 2014 and to determine whether fees were required of developers not designating units as affordable, how eligibility is determined for the newly created affordable units and how the Town ensures that the units remain affordable.
- We reviewed the Act and applicable sections of Town Code to gain an understanding of the applicable statutory requirements regarding affordable workforce housing and residential density restrictions.
- We obtained information regarding the Town's affordable housing trust fund to determine whether it complied with the Act's requirements.
- We surveyed Town officials to identify all developments of five or more units that had to comply with the Act and were approved between January 1, 2009 and December 31, 2014. We then examined the planning documents for the identified developments to determine the percentage of units designated as affordable workforce housing or, where no units were designated, whether a fee was required in lieu of those units and how the Town calculated that fee.

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.