



Long Island Workforce Housing Act

2015-MR-4



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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 2016

Dear Local 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 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 titled Long Island Workforce Housing Act. 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 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

EXECUTIVE SUMMARY

The New York State Legislature implemented the Long Island Workforce Housing Act (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 firemen, nurses and medical personnel. 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 statistical area¹ (commonly called area median income), which averaged \$105,000 for 2009 through 2014.

The Act requires housing developers in Nassau and Suffolk Counties to set aside 10 percent of their housing units as affordable housing in approved developments with five or more units in exchange for local government authorization to exceed existing residential density maximum² levels. Developers can build the affordable housing units in the approved development or in another development located in the local government, or can choose to pay a fee in lieu of constructing the affordable units. These fees are then used by the local government to construct affordable workforce housing, acquire land for the purpose of providing affordable workforce housing or rehabilitate structures for the purpose of providing affordable workforce housing.

The eight local governments included in this audit were the Towns of Babylon, Brookhaven, Huntington, Islip and North Hempstead and the Villages of Farmingdale, Hempstead and Mineola.

Scope and Objective

The objective of our audit was to determine whether local governments ensured that they complied with the Act when approving residential site plans between January 1, 2009 and December 31, 2014. Our audit addressed the following related question:

- Did local governments comply with the Act when approving qualifying residential units?

¹ As defined by the United States Department of Housing and Urban Development

² Residential density maximum is the maximum number of people that may reside within a defined area. For example, if the residential density maximum is 10 one-family homes on a 3.5-acre plot, the density bonus would permit at least one additional home on those 3.5 acres, or a total of 11 one-family homes.

Audit Results

We reviewed 29 developments that were subject to the Act. Local officials generally complied with the Act when approving the applications for 26 developments comprising a total of 3,495 units in eight towns and villages. The developers of 24 of these developments set aside a combined total of 1,000 of 3,439 units (29 percent) for affordable workforce housing. The developer of a 24-unit development in the Town of Babylon opted to pay the fee in lieu of designating affordable workforce housing units. However, the Town's calculation of the fee is less than the amount required by the Act. In addition, the developer of a 32-unit development in the Town of Islip failed to set aside the agreed-upon affordable workforce housing units.

Not all local governments have adopted local laws, policies or procedures specifically addressing the requirements of the Act. Two villages (Hempstead and Mineola) and a town (North Hempstead) approved three developments containing 72 units that did not require the developers to offer affordable workforce housing units or pay the fee in lieu of offering affordable workforce housing units. Furthermore, the town of Brookhaven did not establish guidelines and policies to govern the use of its affordable housing trust fund, while another town (Islip) failed to ensure that a development's residents qualified for, and that the developer actually set aside, the affordable workforce housing units.

Comments of Local Officials

The results of our audit and recommendations have been discussed with local officials, and their comments, which appear in Appendix B, have been considered in preparing this report.

Introduction

Background

Access to a habitable and secure place to live is a basic human need, essential to good health and well-being. To that end, the New York State Legislature implemented the Long Island Workforce Housing Act (Act) in 2008 for the purpose of making homeownership more affordable for the workforce in Nassau and Suffolk Counties.³

In 2012, more than 3 million New York households were at or above the federal affordability threshold – meaning their housing costs accounted for 30 percent or more of household income. More than 1.5 million households statewide were severely burdened and spent half or more of their income on housing. For renters, the cost burden was even worse. Housing costs consumed 50 percent or more of the income in 28 percent of renter households, as compared with 15 percent of homeowner households.⁴

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 firemen, nurses and medical personnel. 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 statistical area⁵ (commonly called area median income or AMI), which averaged \$105,000 for 2009 through 2014.

The eight local governments included in this audit were the Towns of Babylon, Brookhaven, Huntington, Islip and North Hempstead and the Villages of Farmingdale, Hempstead and Mineola.

Objective

The objective of our audit was to determine whether local governments ensured that they complied with the Act when approving residential site plans. Our audit addressed the following related question:

- Did local governments comply with the Act when approving qualifying residential units?

³ Nassau and Suffolk Counties comprise two cities, 13 towns and 97 incorporated villages.

⁴ New York State Comptroller, Office of Budget and Policy Analysis, *Housing Affordability in New York State*, March 2014

⁵ As defined by the United States Department of Housing and Urban Development (HUD)

**Scope and
Methodology**

For the period of January 1, 2009 through December 31, 2014, we interviewed local officials and reviewed approved site plans for qualifying residential units, Board minutes and local ordinances to determine whether the local governments complied with the Act.

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. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

**Comments of
Local Officials**

The results of our audit and recommendations have been discussed with local officials, and their comments, which appear in Appendix B, have been considered in preparing this report.

Workforce Housing

Under the Act,⁶ 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,⁷ 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).

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.⁸

⁶ The Act was effective January 1, 2009.

⁷ Residential density maximum is the maximum number of people that may reside within a defined area. For example, if the residential density maximum is 10 one-family homes on a 3.5-acre plot, the density bonus would permit at least one additional home on those 3.5 acres, or a total of 11 one-family homes.

⁸ Long Island Housing Partnership, Inc. 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.

We reviewed 29 developments that were subject to the Act. Local officials generally complied with the Act when approving the applications for 26 developments comprising a total of 3,495 units in eight towns and villages. The developers of 24 of these developments set aside a combined total of 1,000 of 3,439 units (29 percent), while one developer of a 24-unit development in the Town of Babylon opted to pay a fee in lieu of designating affordable workforce housing units and the developer of a 32-unit development in the Town of Islip failed to set aside the agreed-upon affordable workforce housing units. However, not all local governments have adopted local laws or policies and procedures governing overall adherence to the Act. As a result, two villages (Hempstead and Mineola) and a town (North Hempstead) approved three developments containing 72 units that did not set aside any units for affordable workforce housing or require the developer to pay the fee in lieu of offering affordable workforce housing units even though the developments exceeded the residential density maximum. Furthermore, the Town of Brookhaven did not establish guidelines and policies to govern the use of its affordable housing trust fund, while the Town of Islip did not ensure that a development's residents qualified for, and that the developer actually set aside, the affordable workforce housing units.

Policies and Procedures – While we found that most local governments generally complied with the requirements of the Act when approving applications for developments, not all of them have complied with the requirement that they adopt local laws or develop policies and procedures to provide guidance that specifically addresses affordable workforce housing requirements.

The Towns of Babylon, Huntington and Islip and the Village of Farmingdale have each adopted local laws, policies or procedures that specifically address the requirements of the Act. For example, the Town of Huntington passed a local law that requires developers to set aside 20 percent of units in a proposed development for affordable workforce housing. The Town of Islip passed a similar local law, but Town officials did not establish procedures and guidelines to ensure that developers actually set aside the designated units, established eligibility for the units and ensured that the affordable workforce units remain affordable in the future. As a result, one developer did not set aside seven of the 32 units in an approved development as affordable workforce housing, as required by the Town of Islip.

The Towns of Brookhaven and North Hempstead and the Villages of Mineola and Hempstead did not adopt local laws or policies and procedures governing overall adherence to the Act. As a result, these local governments did not always require developers to set aside affordable workforce housing units in approved developments.

- The Village of Hempstead and the Town of North Hempstead each has a development with all units offered as affordable housing⁹ (136 units in total) because the developers were subject to requirements of financing and tax credits they obtained through the New York State Housing Finance Agency and New York State Homes and Community Renewal.
- The Village of Hempstead did not require any units to be set aside for affordable workforce housing in another development that was approved under the Act. All 12 units in this development were in excess of the residential density maximum because this developer was granted a special permit for a residential housing development in an area that was previously zoned non-residential.
- The Town of North Hempstead also did not require any affordable workforce housing units to be set aside in a 32-unit development that was subject to the requirements of the Act. This development was not granted a density bonus due to other restrictions in place.
- The Village of Mineola did not require one of its three qualifying developments to set aside 10 percent of the 28 units as affordable workforce housing. These 28 units were in excess of the residential density maximum because this developer was granted a special permit for a residential housing development in an area that was previously zoned non-residential.

Without established policies or procedures, there is the risk that these towns and villages will erroneously approve projects that are subject to the Act without ensuring compliance with the Act’s requirements.

Payments In Lieu of Affordable Workforce Housing – The Town of Babylon was the only local government we audited that required a developer to pay a fee in lieu of setting aside five of 24 proposed units¹⁰ as affordable workforce housing. However, the Town’s calculation of the fee does not appear to comply with the Act.¹¹ 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 the equivalent thereof, for each additional unit created by the “density bonus.” As shown in Figure 1, the Town of Babylon’s calculation of the fee due is

⁹ Residents of these developments must have incomes of no more than 60 percent of the AMI.

¹⁰ Twenty percent of the units, as required by the Town Board

¹¹ 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 of Babylon’s application of the Act to the rental units constructed by this developer.

significantly less than the appraised value of the lot, which is the amount of the fee due according to the Act.

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			

Affordable Housing Trust Funds – Three of the eight local governments, the Towns of Babylon, Brookhaven and Huntington have established affordable housing trust funds. Huntington and Babylon have each expended approximately \$1.2 million from their trust funds since 2008 and 2009, respectively and Brookhaven has not yet used its trust fund. Under 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. Local governments must adopt guidelines and procedures governing the expenditure of trust fund moneys within six months of establishing the trust fund. The Town of Brookhaven has not adopted guidelines and procedures governing how expenditures will be made from the trust fund. Furthermore, the Town of Babylon’s affordable housing trust fund does not comply with the Act since Town officials have comingled the fees in the Town’s affordable housing trust fund along with moneys used for the Town’s down payment assistance program. Because the town Boards did not establish procedures and guidelines for how the trust funds were to be spent, there is no assurance that these moneys will be used in a manner that complies with the Act.

Recommendations

Town and Village officials:

1. Should contact the developers of the noncompliant developments to implement procedures to bring them into compliance with the Act.

The Town and Village Boards:

2. Must establish guidelines and policies to require all developments that exceed zoning density to be compliant with the Act.

3. Should establish guidelines for establishing eligibility and for ensuring that affordable units remain affordable.
4. Should ensure that fees paid to the Town or Village in lieu of the designation of affordable units are calculated in accordance with the formula set forth in the Act.
5. Must establish guidelines and policies to govern the use of its affordable housing trust fund to ensure that it complies with the Act.
6. Should ensure that any funds held in the affordable housing trust fund are separate and apart from all other Town or Village funds and are used only for those purposes set forth in the Act.

APPENDIX A

AFFORDABLE WORKFORCE HOUSING UNITS, BY LOCAL GOVERNMENT

Suffolk County

Local Government	Town of Babylon
Qualifying Developments	4
Total Units	281
Units Designated as Affordable Workforce Housing	186
Percent of Total Units Designated as Affordable Workforce Housing	66%

Local Government	Town of Brookhaven
Qualifying Developments	4
Total Units	924
Units Designated as Affordable Workforce Housing	93
Percent of Total Units Designated as Affordable Workforce Housing	10%

Local Government	Town of Huntington
Qualifying Developments	5
Total Units	802
Units Designated as Affordable Workforce Housing	436
Percent of Total Units Designated as Affordable Workforce Housing	54%

Local Government	Town of Islip
Qualifying Developments	2
Total Units	182
Units Designated as Affordable Workforce Housing	30
Percent of Total Units Designated as Affordable Workforce Housing	16%

Nassau County

Local Government	Village of Farmingdale
Qualifying Developments	6
Total Units	253
Units Designated as Affordable Workforce Housing	26
Percent of Total Units Designated as Affordable Workforce Housing	10%

Local Government	Village of Hempstead
Qualifying Developments	3
Total Units	448
Units Designated as Affordable Workforce Housing	134
Percent of Total Units Designated as Affordable Workforce Housing	30%

Local Government	Village of Mineola
Qualifying Developments	3
Total Units	609
Units Designated as Affordable Workforce Housing	59
Percent of Total Units Designated as Affordable Workforce Housing	10%

Local Government	Town of North Hempstead
Qualifying Developments	2
Total Units	68
Units Designated as Affordable Workforce Housing	36
Percent of Total Units Designated as Affordable Workforce Housing	53%

APPENDIX B

RESPONSES FROM LOCAL OFFICIALS

We provided a draft copy of this global report to the five towns and three villages we audited and requested responses. We received responses from three of the local governments – the Towns of Babylon and Islip and the Village of Mineola.

We also provided a draft version of the respective individual letter reports to each of the eight local governments and received responses from seven of them. The seven local governments indicated that they planned to initiate corrective action. Each local government’s individual letter report includes the local government’s response to our audit.

The following comments were excerpted from the responses received:

Town of Babylon: “The town continues to question the language in the Act; it is our position that the unclear language creates technical issues with both interpretation and compliance. ...Since the Town’s interpretation of the Act differs from the NYS Comptroller’s office, I will be contacting our NY State legislative delegation for review and recommendation, including possible introduction of legislation, regarding the correct interpretation of the Act and its application going forward.”

Town of Islip: “...[The Act] is sufficiently unclear so that municipalities have varied greatly in their enforcement. To insure future compliance, it is important that the directives contained in the statute be made clear and consistent. ...I am pleased to inform you that my staff has reached out to the Long Island Housing Partnership and is working on implementing the corrective measures to address the Town of Islip’s deficiencies contained in the report, namely to establish procedures and guidelines to ensure that developers actually set aside the designated units, establish eligibility for the units and ensure that the affordable workforce units remain affordable in the future.”

Village of Mineola: “By way of constructive comment, when laws (such as the Act) are passed which impose or purport to impose administrative and enforcement obligations upon a local government, it would be very helpful if guidelines for implementation and ongoing compliance were provided. ...It would also be very helpful if the laws would contain enabling legislation which would give the local government the ability to itself pass local laws governing enforcement. ...The citizens of Mineola, along with its governing board, fully support the goals of the [Act]. ...But the Act should be amended to provide a delegation of appropriate and effective enforcement authority to local municipalities upon which it has assigned unfunded but mandated responsibilities.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid audit evidence, we performed the following procedures:

- We interviewed local 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, 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 local government ensures that the units remain affordable.
- We reviewed the Act and applicable sections of local codes to gain an understanding of the applicable statutory requirements regarding affordable workforce housing and residential density restrictions.
- We obtained information regarding housing trust funds established by the local governments, including any guidelines and policies adopted to govern the trust funds, to determine whether these funds complied with the Act's requirements.
- We surveyed the local government 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 of 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 local government 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.

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