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January 2016

Scott Strauss, Mayor
Members of the Board of Trustees
Village of Mineola
155 Washington Avenue
Mineola, NY 11501

Report Number: P7-15-61

Dear Mayor Strauss and Members of the Board of Trustees:

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 complied with the Long Island Workforce Housing Act (Act) when approving qualifying residential units. We included the Village of Mineola (Village) in this audit. Within the scope of this audit, we examined the policies and procedures of the Village and reviewed the site plans for residential developments comprising 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 Village. We discussed the results of our audit and recommendations with Village officials and considered their comments, which appear in Appendix A, in preparing this report. Village officials generally agreed with our recommendations and indicated they will implement corrective action. 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 Village did not fully comply with the Act when approving applications for qualifying residential developments. The Village's Board of Trustees (Board) required the developers of two developments to designate a combined total of 59 units, or 10 percent of all units built, as affordable workforce housing. However, the Board failed to require the developer of another project to designate 10 percent of the 28 unit complex as affordable workforce housing.

Background and Methodology

The Village is located in Nassau County and has approximately 18,800 residents. The Village is governed by an elected five-member Board, which includes the Mayor. The Mayor is the chief executive officer and is responsible for the Village's day-to-day operations. The Board is responsible for approving multi-unit residential developments. The Village's 2014 general fund expenditures totaled approximately \$19.2 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 firemen, 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 statistical area¹ (commonly called the area median income or AMI), which averaged \$105,000 for 2009 through 2014.

Under the Act,² 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).

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,

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

² Effective January 1, 2009

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 these fees are collected must be paid into a single trust fund controlled by the Long Island Housing Partnership.³

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 B of this report.

Audit Results

The Village did not fully comply with the Act when approving applications for qualifying residential developments. In addition, the Village has not adopted local laws or written policies or procedures that specifically address the Act. Village officials stated that it is not necessary to address the Act in a local law or develop guidelines because the Act was established under General Municipal Law and is already enforceable under that law. Officials also stated that, although there are no policies or procedures requiring the Act to be considered during the building review process, the Board considers the Act while reviewing all building applications. However, without established policies or guidelines, there is a risk that the Board will fail to ensure that developers comply with the Act, as we found it did with one development.

The Village received applications for three developments comprising five or more units between January 1, 2009 and December 31, 2014. The Board required the developers of the 250 Old Country Road and 199 Second Street developments to designate a combined total of 59 units, or approximately 10 percent of all units built, as affordable workforce housing and to perform eligibility screening of all residential candidates based on Village-reviewed eligibility protocols. The developers must also submit to the Village an annual report in which they attest that the affordable workforce housing units in these developments remain affordable year after year. However, the Board failed to require the developer of the 210 Old Country Road development to designate 10 percent of the 28 units as affordable workforce housing or to pay a fee in lieu of these affordable workforce housing units. As a result, no affordable units were built in this development, the developer did not agree to build affordable housing elsewhere in the Village, and the developer did not pay the Village the fee in lieu of affordable units it would have been required to build under the Act.

³ 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.

Recommendations

The Board should:

1. Establish polices and develop guidelines that require all developments that exceed zoning density to be compliant with the Act.
2. Seek recourse to bring the housing development into compliance with the Act, such as requiring the developer to offer 10 percent of the 28 units as affordable housing when leases are renewed, executing an agreement with the developer to build the affordable workforce housing units elsewhere in the Village, or requiring the developer to pay the fee in lieu of each affordable unit that the developer would have been required to construct under the Act.

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 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.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM VILLAGE OFFICIALS

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



Village of Mineola

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Mineola, New York 11501
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Mayor
Scott P. Strauss

Trustees
Paul S. Cusato
Paul A. Pereira
George R. Durham
Dennis J. Walsh

Village Attorney
John M. Spellman

Village Clerk
Joseph R. Scalero

Office of the State Comptroller
State of New York
110 State Street
Albany, New York 12236

November 17, 2015

Attention: Ira McCracken, Chief Examiner
Division of Local Government and School Accountability

Re: Long Island Workforce Housing Act
Report of Examination P7-15-61

Dear Mr. McCracken:

The Incorporated Village of Mineola ("Village") is in receipt of the preliminary draft findings of your office's recent audit of the Village's compliance with what is popularly known as the Long Island Workforce Housing Act (GML Section 699-b).

The audit covers three (3) residential or mixed-use development projects which fall under the applicability of the Act:

250 Old Country Road
210 Old Country Road
199 Second Street

With respect to the 250 Old Country Road project, a total of 315 units were approved and the Village's approval decision required the setting aside of 32 units (of a quality equivalent to market-rate units) as affordable workforce housing.

With respect to the 210 Old Country Road project, a total of 28 units were approved and the Village's approval decision failed to set aside the 3 units required under the Act as affordable workforce housing.

With respect to the 199 Second Street project, a total of 266 units were approved and the Village's approval decision required the setting aside of 27 units (of a quality equivalent to market-rate units) as affordable workforce housing.

Thus, in the combination of all three (3) projects, full compliance with the Act required a total of 61 units to be set aside as affordable workforce housing. Only 59 were required to be set aside by the Village.

The Village has taken the following corrective action:

1. The Board of Trustees enacted Local Law No. 4 of the year 2015 which amended the Village's Development Incentive Bonus Law (Section 550-5 of the Municipal Code of the Incorporated Village of Mineola) by adding thereto the following subsection:

- I. Development Incentive Bonuses.

(12) In any instance in which a unit count incentive bonus beyond that allowed as-of-right in the Village's Code shall be granted for a residential or mixed-use development which incorporates five or more residential units, the applicant shall set aside at least ten (10%) percent of such units for affordable workforce housing on site or shall otherwise comply with Section 699-b of the New York State General Municipal Law. For purposes of this subsection, affordable workforce housing means housing for individuals and families at or below eighty (80%) percent of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development. Affordable workforce housing units shall be of consistent design to those of the rest of the development. Applicant and its successors shall annually submit a certification to the Village that it is in compliance with Section 699-b of the New York State General Municipal Law.

2. The Village has sent correspondence to the developer/owner of the premises at 210 Old Country Road advising of non-compliance with the Act and requesting the preparation of a compliance plan. The developer/owner has responded to this communication by requesting a copy of the final audit once it is received by the Village so that it may be reviewed. The Village will provide a copy upon receipt and will work with the developer/owner on a compliance plan.

Just prior to the effective date of the Act, the Village approved a residential project at Old Country Road and Willis Avenue ("Modera Mineola") which contains 275 units. In the spirit of the impending applicability of the Act, the Village required the developer to create 36 affordable senior units at a nearby site. Thus, in recent years, the Village has approved a total of 917 units in major residential/mixed use development projects and has required that 95 units be set aside as affordable.

By way of constructive comment, when laws are passed in this state imposing administrative and enforcement obligations upon a local government (such as the Act has), it would be very helpful if guidelines for implementation and ongoing compliance are provided. Most local governments do not have housing authorities or other agencies with the personnel and training to manage these tasks.

Should you have any questions concerning this matter, please do not hesitate to contact me.

~~Very truly yours,~~

John P. Gibbons, Jr.
Village Attorney

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APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

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

- We interviewed Village 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 applications and plan approvals addressed workforce housing requirements, fees were required of developers not designating units as affordable, how eligibility was determined for the newly created affordable units and how the Village ensures that the units remain affordable.
- We reviewed the Act and applicable sections of Village Code to gain an understanding of the applicable statutory requirements regarding affordable workforce housing and residential density restrictions.
- We determined whether the Village has established an affordable housing trust fund and whether it complies with the Act's requirements.
- We surveyed Village 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 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 Village 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.