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January 2016

Judi Bosworth, Supervisor  
Members of the Town Council  
Town of North Hempstead  
220 Plandome Road  
Manhasset, NY 11030

Report Number: P7-15-62

Dear Supervisor Bosworth 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 complied with the Long Island Workforce Housing Act (Act) when approving qualifying residential units. We included the Town of North Hempstead (Town) in this audit. Within the scope of this audit, we examined the policies and procedures of the Town 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 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. Town 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 Town received applications for three housing projects comprising five or more units between January 1, 2009 and December 31, 2014. The Town Council (Council) did not comply with the Act when approving the application for one qualifying residential development. This occurred because the Council has not adopted local laws, written policies or procedures that specifically address the Act.

## Background and Methodology

The Town is located in Nassau County and has approximately 226,300 residents. The Town is governed by an elected seven-member Council, which includes the Town Supervisor (Supervisor). The 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. The Town's 2014 general fund expenditures totaled approximately \$50 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 area<sup>1</sup> (commonly called the area median income or AMI), which averaged \$105,000 from 2009 through 2014.

Under the Act,<sup>2</sup> 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 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,

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<sup>1</sup> As defined by the United States Department of Housing and Urban Development

<sup>2</sup> 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 they are collected must be paid into a single trust fund controlled by the Long Island Housing Partnership.<sup>3</sup>

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 Town received applications for three housing projects comprising five or more units between January 1, 2009 and December 31, 2014. The Town did not comply with the Act when approving one of these applications for qualifying residential developments.

- The development at 322 Main Street did not meet or exceed maximum density for the zone in which it was constructed and was, therefore, not subject to the Act.
- The developer of the 1020 Prospect Avenue development designated all 36 units as affordable workforce housing and established certification protocols to ensure all applicants demonstrate annual income at or below 60 percent of AMI and that residents recertify their income with the developer annually in order for the developer to retain tax incentives and funding obtained through the New York State Homes and Community Renewal.
- A 32-unit development at 433 Main Street has not yet been constructed. However, the Town approved this development without requiring the developer to set aside 10 percent of the units as affordable workforce housing within this development or elsewhere in the Town, or to make payments in lieu of the required affordable workforce units.

The Council has not adopted local laws, written policies or procedures that specifically address the Act. Town officials stated that although there are no written policies or procedures in place that consider the Act during the building review process, developers are asked to demonstrate how submitted building projects will comply with the Act. However, without established policies or

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<sup>3</sup> 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.

guidelines, there is a risk that the Town will erroneously approve housing projects that are subject to the Act without ensuring compliance, as it did with these developments.

### **Recommendations**

The Council should:

1. Establish polices and develop guidelines requiring all housing projects that meet or exceed zoning density to be compliant with the Act.
2. Contact the developer of the noncompliant development to implement procedures to bring it into compliance with 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 at the Town of North Hempstead 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.

*Supervisor*  
JUDI BOSWORTH

*Town Board*  
VIVIANA L. RUSSELL  
PETER J. ZUCKERMAN  
ANGELO P. FERRARA  
ANNA M. KAPLAN  
LEE SEEMAN  
DINA M. DE GIORGIO

*Town Clerk*  
WAYNE H. WINK, JR.

*Receiver of Taxes*  
CHARLES BERMAN

**TOWN OF NORTH HEMPSTEAD  
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**TOWN HALL  
220 PLANDOME ROAD  
MANHASSET, NY 11030  
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ELIZABETH D. BOTWIN  
*Town Attorney*

November 17, 2015

Ira McCracken  
Chief Examiner  
Division of Local Government  
Office of the State Comptroller  
250 Veterans Memorial Highway  
Hauppauge, NY 11788

[Muni-Hauppauge@osc.state.ny.us](mailto:Muni-Hauppauge@osc.state.ny.us)

Re: Draft Audit of Compliance with LI Workforce Housing Act

Dear Mr. McCracken:

The Town of North Hempstead submits this response to the draft report of examination letter concerning the Town's experience with the Long Island Workforce Housing Act ("the Act").

The Town is supportive of affordable housing and, in fact, has recently amended its zoning code to encourage the creation of tax credit subsidized senior housing by lowering the age limit for such housing to 55.

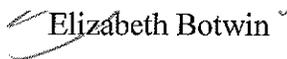
The Town agrees with the auditors that it should amend the Rules of the Town Board to clarify that when a project with five or more residential units comes before the Board for site plan approval, the developer must demonstrate its compliance with the Long Island Workforce Housing Act. The amendment has been drafted and will be considered by the Board at its meeting on November 17, 2015.

The Town Building Department is currently revising its forms for developers to make explicit the requirement that all submissions for projects with five or more residential units comply with the Long Island Workforce Housing Act.

The Town agrees with the auditors that three residential developments were proposed in the Town with five or more units during the audit period of 2009 – 2014. The project at 1020 Prospect Avenue was developed through the Town's Community Development Authority and all units are and will continue to be affordable as defined by the Act. The project at 322 Main Street was not subject to the Act; no Town Board site plan approval was required because the developer did not exceed density limits.

The Town agrees with the finding that the condominium development at 433 Main Street, which came before the Town Board in February 2012 for site plan approval, was subject to the Long Island Workforce Housing Act but did not demonstrate compliance. That building has been fully constructed but certificates of occupancy have not yet been issued for all the units. The Town will contact the developer of the property and implement procedures that direct it to come into compliance with the Act.

Sincerely,

 Elizabeth Botwin

## **APPENDIX B**

### **AUDIT METHODOLOGY AND STANDARDS**

Our overall goal was to evaluate whether the Town complied 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 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 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 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 determined whether the Town has established an affordable housing trust fund and whether it complied with the Act's requirements.
- We surveyed Town officials to identify all developments of five or more units that 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.