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May 15, 2015

Andy Stewart, Town Supervisor
Members of the Town Board
Town of Orangetown
26 West Orangetown Road
Orangetown, NY 10962

Report Number: S9-14-74

Dear Supervisor Stewart and Members of the Town Board:

The Office of the State Comptroller works to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support 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 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 11 municipalities (two counties, one city, six towns and two villages) throughout New York State. The objective of our audit was to determine if each municipality followed the terms and conditions of its Parkland Alienation Bill (Legislation). We included the Town of Orangetown (Town) in this audit. Within the scope of this audit, we examined parkland alienations that have occurred for the period January 1, 2011 through December 31, 2013. Following is a report of our audit of the Town. 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 (GML).

This report of examination letter contains our findings and recommendations specific to the Town. We discussed the findings and recommendations with Town officials and considered their comments in preparing this report. Town officials were provided an opportunity to respond to our findings within 30 days of the exit conference, but they did not respond. At the completion of our audit of the 11 municipalities, we prepared a global report that summarizes the significant issues we identified at all of the municipalities audited.

Summary of Findings

We found that the Town has not met all the terms and conditions of its Legislation. Specifically, the Town has not exchanged the deeds to the lands conveyed by either party. However, the Town has allowed the vendor to build electric transition structures on the land through a separate

agreement. In addition, the Town has not undertaken steps to ascertain the fair market value of the property, such as obtaining an appraisal and maintaining documentation of the appraisal, to help support that the fair market value of the parcel received was equal or greater than the parcel alienated, as provided for in the Legislation.

Background and Methodology

The Town is located in Rockland County and is governed by a five-member Board, which includes the Town Supervisor. The Town's 2013 general fund budget amounted to approximately \$12.1 million. The Town has designated approximately 695 acres of Parkland.

“Parkland alienation” occurs when a municipality seeks to sell, lease or discontinue the use of municipal parkland. Parkland alienation applies to every municipal park¹ in the State, whether owned by a city, county, town or village. In order to convey parkland to a non-public entity or to use parkland for another purpose, the municipality must receive prior authorization from the New York State Office of Parks, Recreation and Historic Preservation (State Parks) in the form of legislation enacted by the New York State Legislature (Legislature) and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a “parkland alienation” bill.

The core legal basis governing the use of parkland comes from common law, called the “public trust doctrine.” The doctrine is defined by 150 years of State court decisions, which explain when municipalities must seek State Legislative approval to alienate public parkland. Otherwise, it would be tempting for municipalities to view parkland as a fiscal resource that can be sold, or leased, to raise money or used for other government uses to avoid paying for private land.

The requirements for parkland alienation bills vary depending upon whether or not State dollars have been invested in the municipal park that is being considered for a potential change of use. In cases where State dollars were invested using a grant, in addition to having the Legislature approve the alienation, the municipality that received the grant is subject to certain requirements upon accepting that grant. In these cases, in addition to common law, there are also statutes that require the municipality to provide lands of equal fair market value to replace the parkland being lost.

State Parks suggests municipalities follow a 10-step process when considering a change of use of parkland or recreational areas. The role of State Parks is to provide advice and guidance to the municipality, concerned citizens, the Governor and the Legislature. State Parks will work with legislative sponsors, making recommendations regarding provisions that might be included to assure the maximum protection of parklands. State Parks will then advise the Governor on the alienation bill passed by the Legislature prior to it being signed into law. In addition, State Parks may conduct a site inspection of the parkland in question to gather further information.

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,

¹ Parkland can either be dedicated for park purposes through a formal action, or parkland can be dedicated through implied dedication (based on how the land is used, i.e., a playground, or land mapped as a park for planning purposes).

conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit is included in Appendix A of this report.

Audit Results

Municipally owned parkland and open space are nonrenewable resources that should be carefully preserved in all communities. Once lost to another use, open space is difficult to recover. New York State strongly endorses the maintenance and expansion of municipal parks and open space, and the recreational opportunities they offer. The State also prescribes to a “no net loss of parkland” policy.

The Town sought legislative approval for parkland alienation that was signed into law in 2011. The Legislation authorized the Town to convey, at fair market value, 1.28 acres of parkland to a utility company for the installation of electric transition structures. The Legislation required the Town to replace the parkland with a parcel in an amount equal to or greater than the fair market value of land conveyed in the transfer.

We found that the Town has not met all the terms and conditions of its Legislation as of the date of our site visit. Although the Town will receive 2.09 acres of land adjacent to the 1.28 acres of parkland conveyed, the Town and the utility company have not exchanged deeds for the parcels. Town officials acknowledged that the transfer of deeds was an oversight. Officials have taken the appropriate steps to ensure that the deeds are transferred. In addition, the Legislation specifically requires that the parkland be conveyed at fair market value. However, the Town has not undertaken steps to determine the fair market value of the transferred land, such as obtaining an appraisal and maintaining documentation of the appraisal, to help support that the fair market value of the parcel received was equal or greater than the parcel alienated, as provided for in the Legislation.

In the absence of a fair market value appraisal of the property, Town officials cannot ensure that the Town received the fair market value for the alienated parkland, as required by the Legislation. As a result, Town residents could incur an overall loss of parkland.

Town officials informed us that the alienation was a benefit to the community because the Town will receive more acres of land than the land conveyed. In addition, the alienation of the land was part of a compromise brokered by the Town to allow the utility company to build the electric transition structures, which were necessary to continue to supply adequate power to local businesses and satisfy Town resident complaints with the initial site chosen by the utility company.

Recommendations

Town officials should:

1. Ensure they obtain the deeds for the parcels conveyed and dedicate the parcels received as parkland.
2. Ensure future parkland alienations comply with all the requirements of the Legislation.
3. Ensure that future parkland alienations include steps to determine the fair market value of the alienated property, such as obtaining an appraisal and maintaining documentation of

the appraisal, to help support that the fair market value of the parcel received was equal or greater than the parcel alienated.

The Town Board (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 GML. 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 Town Clerk's office.

We thank the officials and staff of the Town of Orangetown for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

AUDIT METHODOLOGY AND STANDARDS

We interviewed Town officials to determine if processes were in place to ensure that the requirements of its Legislation were met and to gain an understanding of the processes and circumstances surrounding the alienation.

We reviewed the Town's parkland alienation records including, when available, the Parkland Alienation Municipal Information Form, State Environmental Quality Review, Municipal Home Rule Request, Board minutes, Board resolutions, contracts, leases, maps, surveys, planning records and other available documentation and correspondence. In addition, we reviewed general fund reports, capital plans and general ledger and check information when appropriate. Our audit included the following procedures:

- We reviewed the *Handbook of the Alienation and Conversion of Municipal Parkland in New York*, a publication issued by State Parks that outlines the process and the deliberations involved in the change of use of municipal parkland and open space.
- We reviewed New York State Parkland Alienation Legislation passed in 2012 through 2013.
- We reviewed Board minutes and resolutions regarding the Town's parkland alienation.
- We reviewed contracts and agreements to determine if the terms and conditions were consistent with the legislation.

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.