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January 2016

Edward P. Romaine, Supervisor
Members of the Town Council
Town of Brookhaven
One Independence Hill
Farmingville, NY 11738

Report Number: P7-15-57

Dear Supervisor Romaine 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 County. 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 Brookhaven (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 recommendation specific to the Town. We discussed the results of our audit and recommendation with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Town officials generally agreed with our recommendation 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 generally complied with the Act when approving applications for qualifying residential developments. The developers for all four developments approved during our audit period set aside a combined total of 10 percent of all units built as affordable workforce housing. The developments are not completed and occupied; however, the Town did establish procedures to ensure eligibility. The Town did establish a trust fund in August 2014, although it did not issue guidelines and policies governing the expenditure of trust fund moneys.

Background and Methodology

The Town, located in Suffolk County, covers 532 square miles and has approximately 486,000 residents. The Town is governed by an elected five-member Board, 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 Board is responsible for approving multi-unit residential housing projects. The Town's 2014 general fund expenditures totaled approximately \$87 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 metropolitan 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).

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

² 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.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 Town generally complied with the Act when approving applications for qualifying residential developments. The Town has not adopted local laws that specifically address the Act or affordable housing. The Town adopted a resolution in August 2014 establishing a housing trust fund. However, they have not yet set up guidelines and procedures establishing how the expenditures from that fund will be used. There have been no expenditures from the trust fund during the audit period.

The Town received applications for five developments comprising 931 units between January 1, 2009 and December 31, 2014. The Act did not apply to the Forest Homes at Ronkonkoma development comprising seven units. The Town required the developers for the Grunhill Land Division, Head of the Neck Road and Munsell Road, Lakeshore Town Homes and the Meadows at Yaphank developments to designate a combined total of 93 units, or 10 percent of all units built, as affordable workforce housing. None of the developments are completed and occupied; however, the Town does have procedures in place to ensure that eligibility is established and future enforcement is ensured. The Town established a housing trust fund by resolution in August 2014. They did not, however, establish guidelines and procedures establishing how the funds were to be spent within six months of the trust fund being established. Because the Board did not establish procedures and guidelines for how the trust funds were to be spent, there is no assurance that funds will be spent as the Board intended.

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.

Recommendation

1. The Board should develop procedures and guidelines governing the expenditure of housing trust funds.

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 of the Town of Brookhaven 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 Brookhaven Long Island

Edward P. Romaine, Supervisor

September 24, 2015

Ira McCracken, Chief Examiner
Office of the State Comptroller
NYS Office Bldg. Room-3A10
Hauppauge, New York 11788-5533

Dear Mr. McCracken,

The Town is in receipt of your letter, dated September 23, 2015, outlining the preliminary draft of your recent audit of the Long Island Workforce Housing Act. We appreciate your thorough review and examination of the Town's compliance efforts.

We agree with your findings on the audited developments. It is gratifying to know that the various town departments, boards and individuals involved in the approvals and reviews required for the completion of a project performed their work within the provisions of the Act.

The finding regarding the adoption of a policy and guidelines governing the expenditures of the Town's Housing Trust Fund is correct as those were under review and not fully adopted at the time of the audit. After thorough review and approval of the Town Board, the policy and guidelines were adopted at the September 17, 2015 board meeting. I have attached a copy of Town Board resolution number 2015-0663 for your files.

Your audit staff was a pleasure to work with and performed in an efficient and professional manner. If you need any further information, please contact Diana Weir, Commissioner of Housing and Human Services, who coordinated the audit with your staff. We look forward to your final report.

Sincerely,

Edward P. Romaine, Supervisor

CC: Members of the Town Council
Diana Weir, Commissioner of Housing and Human Services

Department of Housing and Human Services
Brookhaven Town Hall
One Independence Hill • Farmingville • NY 11738
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Resolution Submission Form

MEETING OF: SEPTEMBER 17, 2015 RESOLUTION NO. 2015-0663

MOVED BY COUNCILMEMBER: KEVIN LAVALLE

REVISION SEPTEMBER 9, 2015 3:59 PM

SHORT TITLE: ESTABLISHMENT OF POLICIES AND PROCEDURES FOR THE HOUSING TRUST FUND

DEPARTMENT: LAW

REASON: To establish policies and procedures for the Housing Trust Fund.

Financial Impact:
No Financial Impact

SEQRA REQUIRED: NO

PERMISSIVE REFERENDUM: NO

Present	Absent		Motion	Aye	No	Abstain	Not Voting
		Councilmember Cartright					
		Councilmember Bonner		2			
		Councilmember LaValle		1			
		Councilmember Kepert					
		Councilmember Foley					
		Councilmember Panico					
		Supervisor Romaine					

ADOPTED
BY THE BROOKHAVEN TOWN BOARD

RESOLUTION NO. 2015-0663
MEETING: SEPTEMBER 17, 2015

ESTABLISHMENT OF POLICIES AND
PROCEDURES FOR THE HOUSING
TRUST FUND

WHEREAS, the Town Board of the Town of Brookhaven, by Resolution No. 2014-456 adopted at the August 12, 2014 Town Board Meeting, established the Housing Trust Fund which provides funding to eligible applicants to construct and fund low-income housing and authorized the Town Board of the Town of Brookhaven to establish policies and procedures for programs to ensure proper implementation and utilization of these funds to qualified persons;

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Brookhaven that following policies and/or procedures are hereby adopted for the Town of Brookhaven Housing Trust Fund:

- I. The funds generated by the trust fund shall not be diverted to other uses. All interest, earnings and unused dollars at year's end must remain in the trust fund.
- II. Trust Fund Revenue Sources may include, but are not limited to:
 - A. Developer fees paid in lieu of the requirements set forth in New York State Law, Article 16-A, Long Island Workforce Housing Act;
 - B. Grants applied for through federal, state or private foundations, including eligible CDBG grants;

- C. Other fees including application fees for municipal programs, permit fees, demolition and vacant housing fees, or fees for housing violations;
 - D. Repayments from various loan programs, interest repaid from loans or earned on balances;
 - E. Special allocations including surplus budget funds, funds from the sale of public property and donations of land or property from private sources;
- III. Trust funds may be used for the following purposes, including but not limited to:
- A. Creation and maintenance of affordable housing through the purchase and rehabilitation of vacant, abandoned and foreclosed properties;
 - B. Homebuyer assistance including counseling, down payment and mortgage assistance and interest subsidies;
 - C. Gap financing providing dollars to complete a financial package, after all other funding sources are secured;
 - D. Loan source providing start up and dependable cash flow for rehabilitation or purchase;
 - E. Support for non-profit housing developers providing pre-development funds to secure land and assist with financial packaging, housing design and management;
 - F. Leverage additional resources providing "matching" funds that other public or private resources may require;

- G. Homeowner loans to assist with funding to bring existing non-conforming rental apartments to code, to provide affordable rentals;
- IV. The Town Board shall establish an Oversight/Advisory Board, which shall recommend to the Town Board Trust Fund policies, funding priorities, regulations for the operation of the fund and monitoring and evaluating outcomes and successes, and will provide connection to the community and work to ensure that the Trust Fund reflects and is accountable to local needs, and shall consist of:
- A. One (1) member appointed from each Town Board Council District, who represents a broad range of housing interests and/or experience within the community;
 - B. The Commissioner of Housing and Human Services will serve as the Executive Officer of the Trust Fund and assure proper implementation, handle day-to-day operations, and compliance with the Town Board's goals and directives for the fund;
 - C. The Town may partner with not-for-profit housing groups and agencies to carry out various portions of any of the approved programs, such as homebuyer counseling, first-home clubs, etc.

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to evaluate whether the Town 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 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 these developments to determine the percentage of units designated as affordable workforce housing.

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.