

Town of Cortlandville

Improving Private Property

MARCH 2019



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Town of Cortlandville

Audit Objective

Determine whether the use of Town resources to improve private property was appropriate and properly disclosed.

Key Finding

- Town officials inappropriately spent \$22,600 to improve and maintain a Board member's property with no lease agreement in place.

Key Recommendation

- Consider the legal implications of this arrangement and consult with the Town attorney as to whether it may be appropriate to recoup the initial costs for improving the private property.

District officials agreed with our recommendations and have initiated or indicated they planned to initiate corrective action.

Background

The Town of Cortlandville (Town) is located in Cortland County. The Town is governed by an elected five-member Board (Board), composed of four Council members and the Town Supervisor (Supervisor). The Board is responsible for the general oversight of the Town's operations and finances. The Supervisor is the chief executive and fiscal officer and is responsible for the day-to-day financial operations.

The Highway Superintendent (Superintendent), an elected official, is primarily responsible for the maintenance and repair of roads and parks.

The Cortlandville Fire Department provides fire protection services for the Town.

Quick Facts

| | |
|---------------------|---------------|
| Population | 8,509 |
| Square Miles | 50 |
| 2018 Appropriations | \$8.9 million |

Audit Period

January 1, 2013 – August 28, 2018

Improving Private Property

At the August 2013 meeting, the Board discussed finding canoe and kayak access to the Tioughnioga River (river) for residents and referenced a specific property located in Blodgett Mills. The Board directed the Superintendent to contact the property owner about constructing a boat launch on this property.

In January 2014, a sitting Board member, who was not re-elected in November 2017, purchased the riverfront property previously discussed. In July 2014, the Board member received a permit from the Town's planning and zoning board to expand the parking lot. At that time, the planning and zoning officer stated that the Board member was also working with the NYS Department of Environmental Conservation (DEC) to obtain a required permit for any work to be performed on the river bank.¹

In May and June of 2015, Town highway department employees improved a parking area and access to the river on the Board member's property. At the June 2015 Board meeting, the Board member publicly disclosed that he purchased the riverfront property and received a permit to work on the parking from the Town. Further, the June 2015 Board minutes indicate that the Board member stated that he planned to grant an easement for recreational and fire department use.

In June 2016, the Board authorized the Supervisor to enter into a lease agreement with the Board member for access to the property. The lease agreement was signed in April 2018 (before we began our audit) and back dated to June 2016.

Is It Appropriate to Use Town Resources to Improve Private Property?

The New York State Constitution (Constitution) generally prohibits the expenditure of town money for the benefit of private parties.² However, a town may expend money on a private undertaking if the project is for a proper town purpose pursuant to a statutory obligation or properly authorized contract under which the town receives fair and adequate consideration.

Typically, a town would need a leasehold interest, or at least a license for town use, to spend funds to improve private property.³ The term of the lease should be of sufficient length to ensure the town a reasonable and proper return on its expenditures. Furthermore, a cost benefit analysis should be performed and decisions on whether to spend town resources on private property should be publicly discussed, disclosed and approved by the Board before any work is performed.

¹ A DEC permit is required for any work done in or on the banks of the Tioughnioga River due to its DEC classification.

² New York State Constitution, Article 8, Section 1

³ Refer to the New York State Comptroller's Opinions 1981-359 and 1979-513, as examples.

Resources Were Inappropriately Used to Improve Private Property

Town officials spent approximately \$18,500 on wages, equipment use and materials to improve the Board member's property in May and June of 2015. However, the work performed raises potential issues under the Constitution, because no contract was in place at the time.

Additionally, the Board did not perform a cost benefit analysis to make an informed decision on whether this project was necessary or publicly discuss, disclose or approve the work to be performed. Our review of Board minutes for the audit period did not disclose any Board discussion or authorization for the highway department to work on the Board member's property. Furthermore, the DEC Deputy Regional Permit Administrator told us that any work done on a protected river or river bank, such as this river, would require a DEC permit⁴ and that he had no record of contact from the Board member or Town officials for the work performed.

The lease agreement does not appear to be in the best interest of taxpayers, because there is no mention of the Town's costs of improvements to the property as fair consideration already paid. Additionally, the Town must pay \$10 per year for use of the property and is responsible for maintaining and insuring the property.

Property maintenance costs totaled approximately \$4,100 from 2015 through 2018. Although officials added the property to the Town's insurance policy after the lease agreement was signed, the premium did not increase because there is no structure on the property. The lease also states both parties could terminate the lease with 60 days' notice, with no provision for the Town to recoup any of its costs for the improvements.

Current Board members told us that the former Superintendent took it upon himself to clean up and improve the property after the June 2016 resolution authorizing the Supervisor to enter into a lease agreement, which was not signed until April 2018. However, the work was completed a full year before this Board meeting. The former Superintendent told us that the entire Board was aware that the highway department was performing the work on the property.

Town officials told us that they believed river access was a needed amenity for residents and that the fire department needed easier access to the river in this area because this part of the Town does not have fire hydrants. However, there are two other public boat launches to the river, one approximately three miles upstream. Furthermore, the Fire Chief told us that the fire department did not request or need easier access at this location because they had no problem

⁴ 6 NYCRR, Part 608

accessing the river at the boat launch site before the work was performed and that if there was a fire in this area, the department's first option would be using the nearest hydrant, not the river for water.

Lastly, Town officials inappropriately used Town resources to improve the board member's property and failed to erect signage at the site or post information on the Town's website indicating that the boat launch is open for public use.

What Do We Recommend?

The Board should:

1. Consider the legal implications of this arrangement and consult with the Town attorney as to whether it may be appropriate to recoup the initial costs for improving the private property.
2. Consult with the Town attorney about the lack of a DEC permit to authorize the work done to determine whether a permit must be obtained before using the site.
3. Consider adopting a formal policy to protect the interests of the Town when making improvements to private property.

Appendix A: Response From Town Officials



TOWN OF CORTLANDVILLE
THE RAYMOND G. THORPE MUNICIPAL BUILDING
3577 Terrace Rd.
Cortland, New York 13045
Phone (607) 756-6091
Fax (607) 758-7922
TDD 1-800-662-1220

Supervisor

Richard C. Tupper

Attorney

John A. DelVecchio

Town Board Members

John Proud, Deputy Supervisor
Ted Testa
Douglas E. Withey
Randy Ross

Confidential Secretary

Patty O'Mara

March 13, 2019

****Via Email and Regular Mail****

Attention: Ann C. Singer
Chief Examiner State Office Building
Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

RE: Unit Name: Town of Cortlandville
Audit Report Title: Improving Private Property
Audit Report Number: 2018M-219

Dear Ms. Singer:

Please be advised that I am the Town Attorney for the Town of Cortlandville, NY.

Enclosed is the Town's formal response to your office's preliminary draft findings. Included in this formal response is the Town's Corrective Action Plan.

I am sending this by email to the Chief Examiner at Muni-Binghamton@osc.ny.gov as well as [REDACTED]. Originals of these documents will be mailed to the Chief Examiner State Office Building today.

*The Town of Cortlandville is an equal opportunity provider and employer.
If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866)632-9992 to request*

If you have any questions or concerns, please do not hesitate to contact me.

Thank you for your time and attention to this matter.

Respectfully submitted,

John A. DeVecchio, Esq.

Enclosure(s)

CC:

[REDACTED]
Town Board Members, via email (w/ enclosure)

*The Town of Cortlandville is an equal opportunity provider and employer.
If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866)632-9992 to request the form. You may also write a letter containing all of the information requested in the form or letter in the form. Send your complete complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington D.C. 20250-9410, by fax (202)690-7442 or email at program.intake@usda.gov.*



TOWN OF CORTLANDVILLE
RAYMOND G. THORPE MUNICIPAL BUILDING
3577 TERRACE ROAD
CORTLAND, NEW YORK 13045

Unit Name: **Town of Cortlandville**
Audit Report Title: **Improving Private Property**
Audit Report Number: **2018M-219**

The Town Board agrees with the findings in the referenced report.

Please consider this audit response to also serve as the Corrective Action Plan.

Audit Recommendation & Implementation Plan of Actions:

Below are the recommendations listed on the audit report. For each recommendation included, the following details our corrective action(s) taken or proposed; there are no recommendations for which corrective action has not been taken or proposed.

The Board Should:

- 1. Consider the legal implications of this arrangement and consult with the Town Attorney as to whether it may be appropriate to recoup the initial costs for improving the private property.**

The Town Board has already consulted with the Town Attorney to consider the legal implications of this arrangement, and will seek to ameliorate the fact that Town funds were used to make these improvements on private property in one or more of the following ways:

- Seek to have the land owner reimburse the funds to the Town voluntarily, or in the alternative, seek to have the land owner convey the portion of real property in question to the Town;
- If the land remains private property, the Town will seek to enter into a longer term lease with modified terms that will better reflect than the existing lease the funds already expended by the Town on this property;
- If a satisfactory resolution is not achieved, the Town Board will consider to approve legal action against the land owner seeking reimbursement of the Town funds expended;

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- In conjunction with the foregoing, the Town will post prominent signage indicating that the improved location is a public boat launch site, available for use by persons interested in canoeing or boating on the Tioughnioga River.

Implementation Date: April 30, 2019

2. Consult with the Town Attorney about the lack of a DEC permit to authorize the work done to determine whether a permit must be obtained before using the site.

After consultation with the Town Attorney, the Town has instructed its current Highway Superintendent to contact the DEC in order to obtain any permits necessary for use of the site.

- In addition, the Town will adopt a resolution adding a provision to the Town Employee Manual mandating if any Town employee is to do any work on Town or private property which requires a DEC permit, the permit is to be obtained prior to the commencement of the work.

Implementation Date: April 30, 2019

3. Consider adopting a formal policy to protect the interests of the Town when making improvements to private property.

The Town will adopt a resolution adding a provision to the Town Employee Manual that explicitly states the following:

“The Town shall not expend Town money which results in the improvement of private property, unless such expenditure is for a proper Town purpose pursuant to a statutory obligation or authority, or a properly authorized contract under which the Town receives fair and adequate consideration. In the event that the Town decides to make any expenditure which results in an improvement to or on privately-owned property, the Town shall first require the following:

- A cost/benefit analysis shall be performed by the Town Board;
- Before approving any such expenditure, the Town shall obtain either a leasehold interest or a license to have access to the private property, both to perform the work to be completed, and to provide continued access as appropriate, so that the term of such a lease or license should be of sufficient length to ensure the Town a reasonable and proper return on its expenditures;

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- Before approving any such expenditure, the decision shall be publicly discussed, and the expenditure shall be specifically approved by the Town before any work is performed;
 - Upon completion of the project, the Town will take steps to fully inform the public of the extent that the property is available for public use.”

Implementation Date: April 30, 2019

Person Responsible for Implementation: Richard C. Tupper, Supervisor

Signed:

Richard C. Tupper
Supervisor of the Town of Cortlandville

Date

Appendix B: Audit Methodology and Standards

We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed current and former Town officials, reviewed property records and meeting minutes for the entire audit period to gain an understanding of events surrounding the improvement of private property.
- We calculated the cost to improve and maintain private property from Highway employee timesheets, invoices and vouchers, and the Federal Emergency Management Agency (FEMA) schedule of equipment rates.
- We reviewed the lease agreement signed between the Town and a former Councilman.
- We interviewed Fire Department officials to determine whether the department requested or needed the private property improved.
- We inquired with DEC officials, used mapping software, and searched municipal websites to determine the number of public boat launching sites in the county.
- We reviewed the Town website and visited the boat launch to determine whether it was publicly disclosed as a Town park.
- We inquired with DEC and Town officials to determine whether applicable permits were granted for work on the banks of a protected river.
- We reviewed relevant laws and determined whether the Town complied with these laws.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided 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 the CAP available for public review in the Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/localgov/costsavings/index.htm

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/localgov/planbudget/index.htm

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/localgov/finreporting/index.htm

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

www.osc.state.ny.us/localgov/index.htm

Local Government and School Accountability Help Line: (866) 321-8503

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