

Village of Tuxedo Park

Board Oversight

NOVEMBER 2018



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

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Report Highlights

Village of Tuxedo Park

Audit Objective

Determine whether the Board of Trustees (Board) provided adequate oversight of Village operations to safeguard resources.

Key Findings

- Incompatible duties are performed by the Clerk/Treasurer and Deputy Clerk/Treasurer with little to no oversight by the Board.
- Competition was not sought for 14 professional services totaling \$926,188.
- Water rates were not clearly documented resulting in underbillings totaling \$4,065 and overbillings totaling \$7,620 for 494 bills during the eight quarters we reviewed.

In addition, sensitive information technology (IT) control weaknesses were communicated confidentially to Village officials.

Key Recommendations

- Segregate the incompatible duties of the Village Clerk/Treasurer and Deputy Clerk/Treasurer or designate a Board member to review their duties.
- Use a request for proposals or quotation process to award professional service contracts.
- Clearly document water rates and ensure water billings are accurate.

Village officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix B includes our comment on an issue that was raised in the Village's response letter.

Background

The Village of Tuxedo Park (Village) is located in Orange County in the Ramapo Mountains. The Village is governed by a five member Board composed of four Trustees and a Mayor.

The Village provides general governmental services, such as police, water, sewer and department of public works services.

The Board also acts as the Board of Water Commissioners and determines the rates and fees for water consumption.

Quick Facts

2017 Budget	\$3.6 Million
Employees	34
Population	623
Area	3.2 Square Miles

Audit Period

January 1, 2015 – May 17, 2017.

We extended the scope of the audit through December 2017 for professional services.

Board Oversight

The board is elected to manage operations and financial affairs of the village, while department heads are responsible for managing day-to-day operations in accordance with Board policies. The board must govern by holding village personnel accountable for operations and ensure that department heads comply with pertinent laws and regulations and adopted policies and control procedures. Failure to provide effective oversight increases the risk of errors and/or irregularities occurring and not being detected in a timely manner.

What Is Effective Board Oversight?

The board should segregate duties so that no one person controls all phases of a transaction. When it is not practical to segregate duties because of limited staff resources, the board must establish compensating controls such as reviewing the work in question. New York State General Municipal Law (GML)¹ requires the board to adopt policies and procedures that govern the procurement of goods and services when competitive bidding is not required. Using a request for proposals or quotation process are effective ways to ensure that services are procured in the most prudent and economical manner without favoritism, extravagance, fraud and abuse. Although GML does not require competitive bidding for professional services,² it is important to enter into written agreements that indicate the contract period, the services to be provided, the basis for compensation, and provide protection in the event of default. Also, local governments should ensure that the board-approved water and capital improvement billing rates are clearly documented. Further, the board should adopt a comprehensive IT security plan that includes a disaster recovery plan, a breach notification policy and an acceptable use policy. Also, the village's Internet usage should be filtered and reviewed and computer users should be informed of the security risks of inappropriate Internet use.

The Board Did Not Segregate Duties

The Village Clerk/Treasurer and Deputy Clerk/Treasurer performed incompatible duties. As a result, they controlled all aspects of their respective cash functions with little or no oversight. The conflicting nature of duties assigned to these two key staff created areas of significant weakness in the internal control structure and there was no evidence of Board review to reduce the effect of those weaknesses. The Village Clerk/Treasurer handled payroll, cash receipts and disbursements, deposits and bank statements and prepared bank reconciliations. In addition, there was no independent review of bank reconciliations for accuracy to mitigate

¹ New York State General Municipal Law Section 104-b

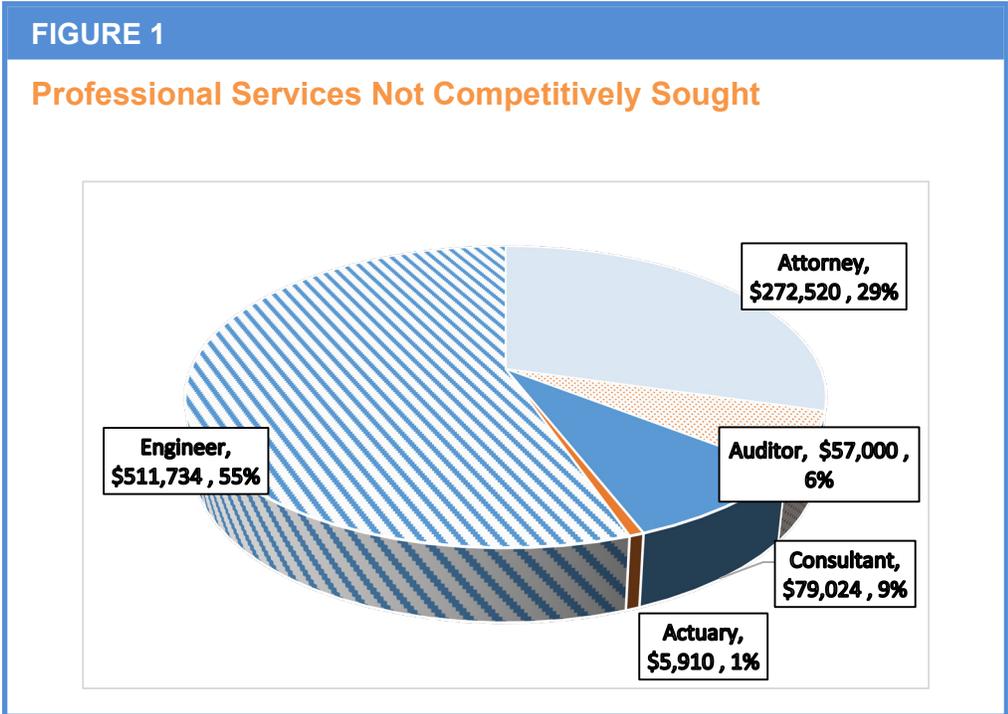
² Services that involve a specialized skill, training and expertise; the use of professional judgment or discretion; and/or a high degree of creativity.

the effect of the incompatible functions. We reviewed cash receipts, deposits and bank statements. Although our audit did not disclose significant findings with respect to the Village Clerk/Treasurer’s activities, the Village Clerk/Treasurer had the ability to easily execute and conceal transactions without detection.

The Deputy Clerk/Treasurer³ served as the water clerk responsible for water billing, collecting and recording water payments, and adjusting water bills but did so without oversight. Because of the lack of segregation and oversight, we reviewed water billings for eight quarters. The results are discussed under the section entitled, “Inaccurate Water Rates and Bills.”

The Board Did Not Seek Competition for Professional Services

We examined payments totaling \$947,042 made to 15 professional service providers from June 1, 2015 through December 31, 2017 and reviewed the process the Board used to select these vendors. Village officials did not seek or solicit competitive proposals or quotations for 14 of the 15 professionals who were paid \$926,188 (Figure 1).



³ The Deputy Clerk/Treasurer was also the building inspector and code enforcement officer, sewer inspector, planning Board clerk, and real property assessor. He was fired in April 2017 and rehired by the subsequent administration in September 2017 as a part-time building inspector and code enforcement officer and water operations consultant.

The purchasing policy does not require the use of competition or provide guidance for obtaining professional services. Due to the lack of guidance, Village officials relied on recommendations from individuals or known service providers.

By awarding contracts without the benefit of a request for proposals or quotations process, the Board cannot assure taxpayers that it is procuring the most economically beneficial and qualified service providers without favoritism.

Professional Service Providers Did Not Have Written Agreements

We reviewed documentation for 15 professional service providers. Due to the lack of Board oversight, the Village did not enter into written agreements with five professional service providers who were paid a total of \$169,330.⁴

In addition, the contract for one of the five professionals with a contract (a consultant) included reimbursement of \$844 per month for health insurance premiums, unlike the other consultants working for the Village. In that contract, the Village (or the Board) also agreed to defend and indemnify the consultant in connection with services provided to the Village.

Without written agreements, there is no clear understanding of what compensation professionals are entitled to and the services they are obligated to provide which deprives the Village of protection in the event that professionals default on their obligations. Further, reimbursing an independent consultant for health insurance premiums and defending and indemnifying the consultant may not be the most prudent way to obtain required services.

No Written Quotes for Goods and Services

Although the Village's purchasing policy does not require the use of competition or provide guidance for professional services, it does require written quotes for other purchases not required to be competitively bid.

We examined 23 purchases from the various Village departments, totaling \$205,128, during 2015-16 and 2016-17. We found that Village officials did not solicit quotations for 11 of the 23 purchases totaling \$102,543. At almost 50 percent, this level of non-compliance shows that Village employees are not following the purchasing policy and that the Board is not monitoring and ensuring policy compliance as part of the claims audit process.

⁴ The Village entered into agreements with the other 10 professional service providers.

Figure 2: Items With No Quotes

Type	Amount	Percentage
Capital Project	\$56,329	55%
Highway	\$34,614	34%
Sewer	\$11,600	11%
Total	\$102,543	100%

Village officials told us the capital project purchase in Figure 2 was for an emergency in September 2015. However, repairs were completed as late as August 2016, providing sufficient time to obtain quotes. They also stated that some service providers were sole source providers, but did not have documentation to support this assertion or detailed information of exactly what was procured to enable us to verify that the items could not be obtained from any other sources. For example, they told us they needed smaller sized equipment to work on narrow roads in the Village but did not provide specifications on the size of the equipment they used.

By not obtaining quotes, the Board and Village officials do not have assurance they are procuring good and services of the desired quality at the lowest possible cost.

Inaccurate Water Rates and Bills

The Village provided water to about 740 customers and collected, on average, about \$242,000 per quarter in 2017. We tested 81 water accounts billed \$141,791 for eight consecutive quarters from July 2015 through April 2017. The water clerk used incorrect rates for six of the eight quarters. In addition, the Village sent 494 inaccurate bills to the customers.⁵ The water clerk underbilled customers by approximately \$4,065 and overbilled customers by \$7,620. For example, some residential customers were billed using commercial rates and fees and some active accounts were classified as inactive.

⁵ We based our calculations on the number of bills because in most cases the same customers were overbilled and under billed in different quarters.

Figure 3: Inaccurate Rates

Quarters Billed	Under Billed	Over Billed	# Inaccurate Bills
July 2015	\$403	\$1,306	81
October 2015	\$878	\$12	79
January 2016	\$236	\$9	79
April 2016	\$433	\$3,986	81
July 2016	\$410	\$294	79
October 2016	\$421	\$1,556	81
January 2017	\$642	\$79	7
April 2017	\$642	\$378	7
Total	\$4,065	\$7,620	494

This occurred because the Board did not consistently provide information on effective dates of water rates and capital improvement fee increases or ensure the water clerk calculated and charged customers the correct water rates and fees. Some of the water increases were documented as percentages in the Board minutes. Since the Board minutes did not provide specific effective dates for rate increases, the water clerk used his own judgement to determine the amount of increases and when the rates would go into effect.

Without complete, specific, and clear rate and fee change instructions or directions from the Board and procedures to ensure customers are billed at the correct rate, residents will continue to be charged incorrectly.

The Board Did Not Adopt a Comprehensive IT Policy

The Board and Village officials did not develop an IT policy that included a disaster recovery plan to prevent or minimize the loss of computerized equipment and data, and provide procedures for recovery in the event of loss.⁶ Therefore, in the event of a disaster, Village personnel have no guidance to prevent the loss of equipment and data or procedures for data recovery. According to the Board and Village officials, they were unaware they needed to prepare for recovery in the event of a loss. The lack of a disaster recovery plan could lead to the loss of important financial and non-financial data and serious interruptions to Village operations, such as not being able to process checks to pay vendors or employees. It also makes the Village vulnerable to ransomware attack, which has become a common threat to municipalities.

⁶ A disaster could be any unplanned event that compromises the integrity and data of the IT systems. Even small disruptions can require extensive effort and cost to evaluate and repair. Typically, disaster recovery planning involves an analysis of business processes and continuity needs, and defines the roles of key individuals. It also may include a significant focus on prevention.

The Board Has Not Developed a Breach Notification Policy — The Board has not developed a policy as required by New York State Technology Law.⁷ The policy must detail how employees would notify individuals whose personal, private or sensitive information was, or is reasonably believed to have been, acquired by a person without valid authorization. It is important for the disclosure to be made in the most expedient timeframe possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Without this policy, Village officials may not be able to effectively notify individuals in the event that their private information was accessed.

The Board Has Not Adopted an Acceptable Use Policy — The Board has not adopted a comprehensive policy that addresses the terms and conditions for acceptable network, Internet and email use. Because the Board did not adopt such a policy to set the standards and expectations for the responsible use of computer resources, there is an increased risk that resources could be misused or that data could be lost or corrupted.

Internet Usage Is Not Monitored — The Village's Internet usage is not filtered and reviewed to ensure IT resources are not used for questionable purposes. We examined two computers and identified questionable Internet use by Village employees. Village employees used these computers to visit social media and entertainment websites, and performed other Internet searches and browsing of a personal nature.

This occurred because the Board did not adopt an acceptable use policy. In addition, there are no web filters or reviews of Internet usage and employees are not provided IT security awareness training, which should be provided at least annually to inform them of the security risks of inappropriate Internet use. Because these types of websites are commonly used to spread malware, such Internet use unnecessarily exposes the Village's computer systems to malware infections.

When considering these IT risks it is important to consider the compounded effect of the weaknesses instead of each risk on its own. The Village does not have a policy instructing employees not to visit sites with increased risk of malware, does not provide training to alert them to those risks and then does not filter internet access to prevent exposure to malware. At the same time, the Village is not taking steps to limit exposure to malware and is not prepared to respond to a malware attack. The Village does not have a breach notification policy in place, a disaster recovery plan or backup of financial and other important information.

⁷ New York State Technology Law Section 208

What Do We Recommend?

The Board should:

1. Segregate the incompatible duties of the Village Clerk/Treasurer and Deputy Clerk/Treasurer or designate a Board member to review their duties, including reviews of bank reconciliations for accuracy.
2. Revise the procurement policy to require or encourage a request for proposals or quotation process for professional service contracts. Village officials should retain proper documentation of vendor selection.
3. Enter into written contracts with professionals that indicate the contract periods, the services to be provided, the bases for compensation and provide protection if professionals default on their obligations.
4. Ensure written quotes are obtained as required by the procurement policy for purchases that are not required to be competitively bid. Compliance with the policy should be verified as part of the audit process.
5. Clearly document water rates and capital improvement rates in Board minutes.
6. Review billed water rates for each quarter and ensure that rates are accurate and billings are correct.
7. Determine how to address water account overbillings and underbillings.
8. Adopt an IT security plan that includes:
 - A disaster recovery plan to prevent the loss of equipment and data and procedures for data recovery.
 - A breach notification policy that details how officials will notify residents whose private information was, or is reasonably believed to have been acquired by a person without authorization.
 - An acceptable use policy.
9. Install web filters and review Internet usage.
10. Provide IT Security awareness training, at least annually.

Appendix A: Response From Village Officials

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Website: tuxedopark-ny.gov

VILLAGE BOARD MEETING
THIRD WEDNESDAY OF EACH MONTH

VILLAGE OF TUXEDO PARK
80 LORILLARD ROAD
P.O. BOX 31
TUXEDO PARK, NEW YORK 10987

David C. McFadden
Mayor

VIA EMAIL

10/16/2018

Tenneh Blamah
Chief Examiner
Comptroller's Office
33 Airport Center Drive
New Windsor, NY 12553

Dear Tennah:

Please allow this correspondence to respond to the draft Report of Examination ("Report"). Each Trustee and our Village Clerk/Treasurer has been able to review the Report. We believe that the audit process was a positive experience and educational for our Village team. We would like to express our appreciation for the professionalism, thoroughness, and courtesy of the auditors. The process was helpful and informative, and the Village had already commenced addressing many of your office's recommendations even before the delivery of the draft Report. Additionally, and more importantly, we are pleased that no instances of misappropriation or serious misconduct were discovered during the lengthy and in-depth investigative process.

Overall, the Village concurs with most of the key findings contained in the draft Report insofar as they relate to the periods examined. The audit covered the period June 2015 through June or December 2017 (varying by topic). In June of 2017, a new Village administration was elected into office. The current Village administration has reviewed and reorganized the operations of the Village and implemented many changes addressing concerns included in the Report. Below are the Village's comments on certain of the issues identified in the Report.

Segregation of Duties

It should be noted that the Village of Tuxedo Park is a particularly small unit of municipal government, consisting of only two full-time Village Hall employees. Thus, the Village does not have the same opportunity as some larger governmental units when it comes to segregation of responsibilities and oversight of daily activities. However, the Village intends to implement greater controls in the form of review and oversight by others to minimize the chances of any breach of financial controls and will address these matters in greater detail in the Village's Corrective Action Plan.

Procurement of Professional Services/ Written Quotes for Services

With respect to professional services, we note that the services of our current Village attorney and engineers were acquired through a multi-participant interview and proposal solicitation process.

See Note 1 Page 11

The Village will address the Comptroller's comments in further detail in the Corrective Action Plan but notes that Village legal counsel has advised the Village that General Municipal Law ("GML") § 104-b(2)(b) does not limit the proper methods procurement of professional services to proposals or quotations. Rather, in the alternative to securing proposals or quotations, GML § 104-b(2)(b) provides that the goals of the General Municipal Law may be attained by "any other method of procurement which furthers the purposes of this section." As the Comptroller's Office has recognized, "[t]he primary rationale for this exception is that these services are not the type of 'public work' which may be properly the subject of general competition based solely upon compliance with objective, uniform standards set forth in specifications, with an award to the lowest responsible bidder." Op.St.Comp. 93-7.

With respect to Purchasing, the Village will address remedial measures in the its Corrective Action Plan concerning any deficiencies related to purchasing and the obtaining of required quotes.

Water Rates and Bills

In 2017, the Village conducted an inquiry and review of the water billing in the Village and have since implemented greater oversight and control over such matters. The Village will provide the details of those actions in its Corrective Action Plan.

Comprehensive IT Policy

The Village has replaced the Village Office's outdated information technology equipment and infrastructure, implemented an Information Technology (IT) Acceptable Use Policy, and, through an inter-municipal agreement is working to continue to upgrade our systems and adopt appropriate IT policies and monitoring of internet usage. The Village will provide additional detail in its Corrective Action Plan.

Conclusion

The Village appreciates the opportunity to work with your office and will provide more substantive responses and address the specific recommendations of the Draft Examination Report in the Village's Corrective Action Plan to be submitted within ninety (90) days of receipt of the Final Report. Our goal in local government is to efficiently manage operations and provide transparency while ensuring our residents receive the best possible services at the lowest possible costs while maintaining their quality of life. Thank you again for your efforts in support of this objective.

Very truly yours, ,

David C. McFadden
Mayor

CC:



Appendix B: OSC Comment on the Village's Response

Note 1

Although Village officials may have procured the services of the current Village attorney and engineers through a multi-participant interview and proposal solicitation process, Village officials did not have supporting documentation for our auditors. In addition, GML requires the Board to adopt policies and procedures that govern the procurement of goods and services when competitive bidding is not required. Our report does not indicate that GML limits the procurement methods for professional services.

Appendix C: 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 Village officials to gain an understanding of the Village's policies and procedures.
- We reviewed Board meeting minutes to gain an understanding of personnel appointments.
- We reviewed water cash receipts, deposits and bank statements to determine whether they were recorded, collected and deposited intact.
- We selected all 15 professional service providers based on type of service and total amount paid to the provider during the audit period. We reviewed the procurement policy and documentation to determine whether officials sought competition when obtaining these services. We also determined whether the Board entered into written contracts with the providers and reviewed contract provisions.
- We judgmentally selected 23 disbursements totaling \$205,128 from a population of 70 disbursements totaling \$782,101 below the bidding threshold based on type of vendor and invoice amount. We reviewed bid documents and quotes to determine whether the Board procured goods and services in accordance with the procurement policy.
- We reviewed Board meeting minutes and quarterly water billing reports to determine whether rates were calculated accurately.
- We judgmentally selected 81 water accounts, from a population of approximately 736 accounts. We documented meter readings from the meter reader's list. We calculated the rates to bill water accounts, using Board Meeting minutes, and calculated differences in billing amounts. We also counted how many bills were inaccurate for each period.
- We made inquiries of officials to determine whether there were policies and procedures for data backups, disaster recovery, breach notification, acceptable computer use, Internet usage and monitoring and IT security awareness training.
- We examined the two Village Hall computers by running audit software and examined specific activities, such as web browsing history.

Our audit also examined the adequacy of certain IT controls. Because of the sensitivity of some of this information, we did not discuss the results in this report, but instead communicated them confidentially to Village officials.

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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

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 D: 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#lmgm

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/lgli/pdf/cybersecurityguide.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

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