



Village of Pomona Financial Condition

Report of Examination

Period Covered:

June 1, 2014 — July 10, 2015

2015M-272



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

December 2015

Dear Village Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support 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 Village Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Village of Pomona, entitled Financial Condition. 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 audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Village of Pomona (Village) is located in Rockland County. Part of the Village is located in the Town of Haverstraw and part is in the Town of Ramapo. The Village covers 2.4 square miles and has approximately 3,100 residents. The Village Board (Board) is the legislative body responsible for managing Village operations, including establishing internal controls over financial operations and maintaining a sound financial condition. The Village Mayor is a Board member and serves as the chief executive officer. The Board appoints the Clerk-Treasurer (Treasurer), who is the chief fiscal officer and Clerk of the Board. The Treasurer is responsible for receiving, disbursing and maintaining custody of Village moneys, maintaining the accounting records, and providing financial reports to the Board.

The Village provides a variety of services to its residents, including street maintenance and improvements, snow removal, refuse collection and general government support. The Village's budgeted appropriations were \$1.7 million for the 2013-14 fiscal year and \$1.8 million for 2014-15. The Village's 2015-16 general fund budget totals \$2.4 million and is funded primarily by property taxes. The Village has two full-time and three part-time employees.

Objective

The objective of our audit was to examine the Village's financial condition. Our audit addressed the following related question:

- Did the Board adequately monitor the Village's financial operations to ensure fiscal stability?

Scope and Methodology

We examined the Village's financial condition for the period June 1, 2014 through July 10, 2015. We extended our audit period back to June 1, 2012 to analyze the Village's fund balance, operating results and financial trends.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

Comments of Village Officials and Corrective Action

The results of our audit and recommendations have been discussed with Village officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Village officials generally agreed with our recommendations and indicated they plan to initiate corrective action. Appendix B includes our comment on an issue Village officials raised in their response.

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.

Financial Condition

The Board is responsible for making sound financial decisions that are in the best interest of the Village and its residents. It is essential that the Board adopt structurally balanced budgets that provide recurring revenues to finance recurring expenditures and manage fund balance responsibly. The Board should also plan for the future by developing a comprehensive multiyear financial plan to estimate the future costs of ongoing services and capital needs. In addition, the Board must monitor the budgets during the course of the year and make any budgetary amendments that become necessary due to revenue shortfalls or actual costs exceeding budgeted appropriations. The Board is responsible for annually auditing, or having an independent public accountant audit, the Village's records in a timely matter.

Village officials did not adequately monitor financial operations to ensure fiscal stability. The Village has experienced extraordinarily high legal costs in fiscal years 2013-14 and 2014-15, resulting in unplanned operating deficits of approximately \$1 million each year. As a result, we estimate the Village will have a fund balance deficit of approximately \$933,000 at the end of fiscal year 2014-15. Village officials have not developed a multiyear plan to address these deficits. In addition, the Board allowed budget line items to be routinely overexpended and budget transfers to be made after the end of the fiscal year rather than throughout the year when needed. Further, the Board does not receive audited financial statements in a timely manner. As a result, the Board does not have a clear picture of the Village's true financial condition so that it can make informed decisions.

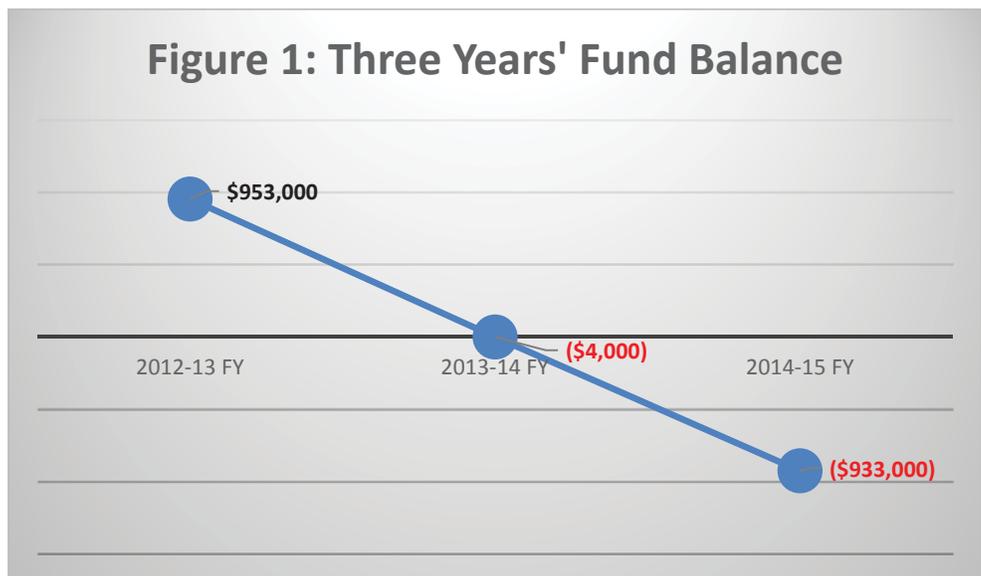
Fund Balance/Budget Estimates

A key measure of the Village's financial condition is its level of fund balance, which is the difference between revenues and expenditures accumulated over time. The Village may retain a reasonable level of fund balance as a financial cushion in the event of unforeseen financial circumstances. Village officials should assess the adequacy of unrestricted fund balance in the general fund based upon their specific circumstances.

At the end of the 2012-13 fiscal year, the Village's unrestricted fund balance was approximately \$953,000; however, by the end of the 2013-14 fiscal year, the unrestricted fund balance had fallen to a deficit of approximately \$4,000. This decline was due to the Village incurring more than \$1.2 million in legal fees. The Board budgeted \$185,000 for legal fees in 2013-14; however, actual legal costs exceeded the budgeted amount by \$1 million, resulting in an operating deficit of

\$957,266. The Board again budgeted \$185,000 for legal fees for the 2014-15 year although it was aware of the ongoing litigation and the likelihood of incurring large legal fees. Actual legal fees for the 2014-15 fiscal year were approximately \$1.3 million; this was more than \$1.1 million (almost six times) more than what was budgeted. Based on unaudited financial statements, the Village incurred an operating deficit of \$929,281 in fiscal year 2014-15.

The Village did not have funds to pay all legal fees in 2014-15. Therefore, Village officials deferred legal fees totaling approximately \$633,000 for payment until July 2015, the beginning of the subsequent fiscal year. As a result of operating deficits due to these legal fees, we estimate that at the end of the 2014-15 fiscal year, the Village will have a deficit of approximately \$933,000.¹ The Village's unrestricted fund balance has declined over the last three fiscal years by 198 percent, as indicated in Figure 1.



The Board budgeted \$710,000 in 2015-16 for legal fees. However, \$633,000 of this amount was used to pay for the prior year's legal fees. Therefore, the Village is left with only \$77,000 for the current year's legal fees. As of the end of our fieldwork on October 7, 2015, the Village had not paid additional legal fees for the 2015-16 fiscal year.

The Board increased the Village's real property taxes by 46 percent for the 2015-16 fiscal year, resulting in increased revenue of

¹ As of the end of fieldwork on October 7, 2015, the Village had not closed out the books for the 2014-15 fiscal year. We calculated the operating deficit by subtracting the actual expenditures from the actual revenues for the 2014-15 fiscal year.

approximately \$600,000. However, the Village may still experience fiscal problems because the increase in revenue may not be enough to cover legal fees based on the actual amounts incurred in the last two years.

Multiyear Financial Plan

Multiyear financial planning is a tool the Village can use to improve the budget development process. Planning on a multiyear basis will enable Village officials to identify developing revenue and expenditure trends, establish long-term priorities and goals and consider the impact of current budgeting decisions on future fiscal years. It also allows Village officials to assess the merits of alternative approaches to finance Village operations. Any long-term financial plan should be monitored and updated on a continuing basis to provide a reliable framework for preparing budgets and to ensure that information used to guide decisions is current and accurate. The Board and Village officials have not developed a multiyear financial plan to address the current fund balance deficit. As a result, the Village does not have an effective plan to address its current financial problems.

Budget Transfers

The Board is responsible for monitoring Village expenditures to ensure they stay within total annual appropriations. Effective budgetary controls limit expenditures to the specific purposes and amounts authorized by the Board in the annual operating budget. According to New York State Village Law, no expenditure can be made unless an amount has been appropriated for that particular purpose and the amount is available. Therefore, it is essential for the Board and Village officials to monitor actual expenditures against budgeted appropriations to ensure that appropriations are not overexpended. Budget transfers must be made before line item accounts in the budget are overexpended.

The Board has not adopted a budget transfer policy to guide officials in making budget transfers. We reviewed all of the Village's 2014-15 budget line items listed in the budget status report and found 20 budget line items were overexpended by \$1.2² million. The Treasurer did not make or request approval for budget transfers prior to expending funds and expended funds when there were not sufficient appropriations in budget line items. The Village Attorney said that, at year-end, the Village's independent auditor prepares a list of transfers to balance the books. However, as of October 7, 2015, the transfers for the 2014-15 fiscal year had still not been recorded.

The Board and Village officials did not monitor actual expenditures against budgeted appropriations to ensure that appropriations were not overexpended. This resulted in overexpended budget line items,

² Includes 2014-15 outstanding legal fees of \$633,000 that were paid from revenue earned in the 2015-16 fiscal year

which places the Village at significant risk of future deficits resulting from expenditures exceeding the annual budget.

Audited Financial Statements

The Board needs accurate and timely financial information to effectively manage the Village's financial resources and properly oversee the Village's financial condition. The Board cannot make informed decisions regarding the Village's financial condition if financial reports are not provided to it in a timely manner. Audited financial statements can help determine whether public money was spent and handled properly and identify conditions in need of improvement and can be a useful tool in providing oversight and review of financial operations.

The Board contracted with an independent auditor to audit the Village's financial statements; however, the auditor did not provide the audited financial statements to the Board in a timely manner. For example, the Board did not receive the 2012-13 audited financial statements until February 2014, nine months after the end of the fiscal year. The 2013-14 statements were not received until July 2015, 14 months after the fiscal year end. In addition, as of October 7, 2015, or four months after the 2014-15 fiscal year ended, the Board had not contracted with an auditor to audit the 2014-15 financial statements. Therefore, the financial statements will most likely not be completed in a timely manner.

Without timely audited financial statements, crucial audited financial information was not available to be used as a tool for managing the Village's finances.

Recommendations

The Board should:

1. Develop a plan to eliminate the fund balance deficit and alleviate the general fund's fiscal stress.
2. Develop and adopt budgets that include realistic estimates based on all information available at the time, including historical data.
3. Develop a multiyear plan that includes provisions to address the fiscal stress in the general fund.
4. Adopt a budget transfer policy, conduct a careful and thorough review of the monthly budget status report and ensure that appropriate funds are transferred in a timely manner so that budget line items are not overexpended.

5. Ensure that its independent auditor provides audited financial statements in a timely manner.

APPENDIX A
RESPONSE FROM VILLAGE OFFICIALS

The Village officials' response to this audit can be found on the following pages.

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December 18, 2015

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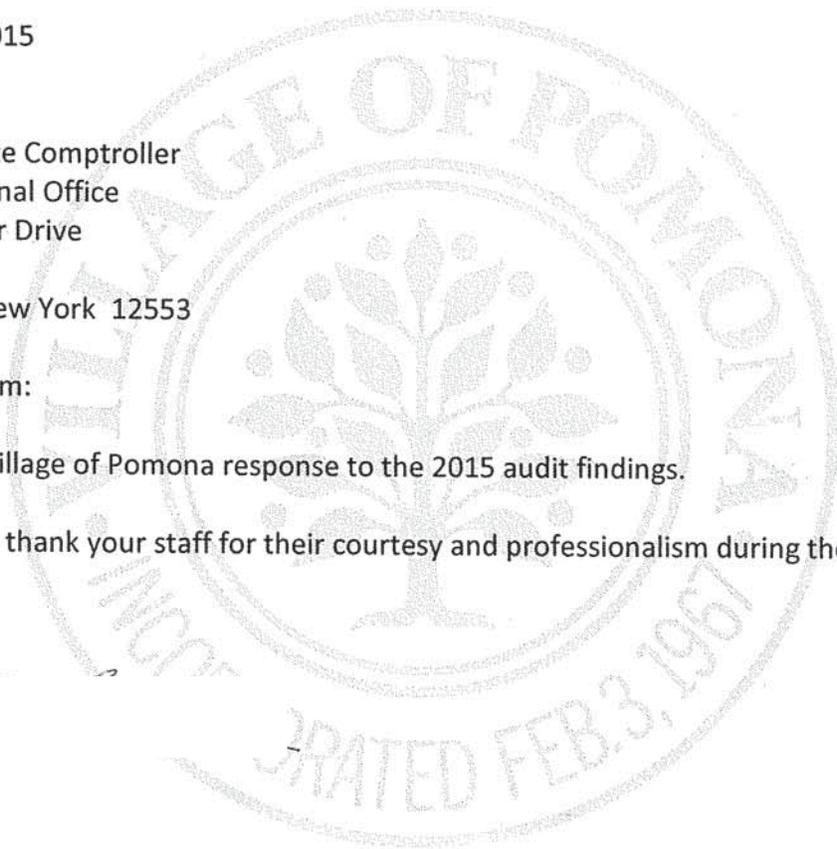
Dear Sir or Madam:

Enclosed is the Village of Pomona response to the 2015 audit findings.

We would like to thank your staff for their courtesy and professionalism during the audit process.

Very truly yours,

✓ Brett L. Yagel,
Mayor



APPENDIX A
VILLAGE OF POMONA RESPONSE TO 2015 COMPTROLLER'S AUDIT

The Village of Pomona disagrees with the statement in the report that the Village did not adequately monitor financial operations. Although the Village did anticipate high legal costs in fiscal years 2013/14 and 2014/15 and did have a large fund balance at the beginning of the 2013/14 fiscal year to pay these costs, the cost of the litigation was extraordinarily high, as stated in the report, and could not have been anticipated. It was difficult, if not impossible, to estimate the total amount required to be spent in these two fiscal years.

See Note 1 Page 14

Our specific responses to the various findings in the report are as follows:

Fund Balance/Budget Estimates:

Annually, a committee of the Board of Trustees is involved in the preparation of the Tentative Budget. The entire Board then reviews, makes changes and votes on the Budget. In 2007, the Board of Trustees began increasing the annual fund balance substantially so that, as stated in the report, the fund balance (budget surplus) was \$953,000. by the beginning of the 2013/2014 fiscal year. The reason for the fund build-up was in anticipation of high legal costs required for the defense of a major lawsuit that was brought by a housing developer against the Village. The fund balance and the amounts budgeted for legal fees in the two fiscal years were totally depleted during the discovery and motion stages of the lawsuit, partially due to what the Village believes was an intentional tactic by plaintiffs to inflate costs. Although the Village monitored the costs, they were essential for the defense of the lawsuit and there was no way to raise revenue to pay the costs during the fiscal year. To meet this challenge, and with the agreement and cooperation of the Village's outside counsel, a large portion of the costs incurred in the 2014/15 fiscal year were not paid until the 2015/16 fiscal year, thus requiring the 46% tax increase to pay those costs.

We believe it is necessary to clarify that the operating deficit referred to in the report for the 2013/14 fiscal year was offset by the fund balance and budget line item so that the actual deficit for the 2013/14 fiscal year was only \$4,000. and was paid in the 2014/15 budget.

Multiyear Financial Plan:

As recommended in the report, the Village will institute a multiyear financial plan, although it must be recognized that, as a small village, its major source of revenue is the real property tax. A committee of the Board of Trustees, the Clerk-Treasurer, the independent auditor and the Village Attorney will prepare a plan for the Board's review.

Budget Transfers:

Although the Village did not make formal budget transfers during the fiscal years, the Board of Trustees monitored budget-line expenditures on a monthly basis and, in all but one prior year, made the transfers at the end of the fiscal year. The Village Treasurer prepares and

distributes to the Board a monthly Profit and Loss Budget Performance Report showing each budget line, the amount budgeted, the amount spent to date and the balance remaining in that account. The Board uses the Report to determine if expenditures can be made in a particular account. Going forward, the Board of Trustees will make the budget transfers during the fiscal year where appropriate.

Audited Financial Statements:

The Board of Trustees will comply with the audit's recommendation that the annual financial statement be prepared in a timely manner. The Board has notified its independent auditor of this requirement. The Village has a verbal agreement with its independent auditor who is providing services to the Village. A contract with the auditor was authorized by the Board of Trustees at the organizational meeting on April 13, 2015. As recommended by the audit report, a written contract will be formalized.

Comptroller's Recommendations:

1. The Village will develop a plan to eliminate the fund balance deficit.
2. The Village will continue to develop and adopt budgets that include realistic estimates based on all information available at the time, including historical data.
3. The Village will develop a multiyear plan to address fiscal stress in the general fund.
4. The Village has begun to transfer funds within budget lines if they become over-expended. A written policy will be developed.
5. At the request of the Village, our independent auditor has agreed to provide the annual financial statement in a timely manner.

EXPLANATION

The litigation that has caused the fiscal stress referred to by the State Comptroller was brought by a multi-millionaire housing developer who has stated that he has more money than the Village and that he will win because he can outlast the Village. This developer wants to build hundreds of apartments on a parcel of land that is zoned for single family residential homes on minimum lot sizes of 40,000 square feet. He is using the Federal law known as the Religious Land Use and Institutionalized Persons Act (RLUIPA) as the basis for his claim.

This developer has made no applications to the Village for his project nor has the Village issued any decisions relating to the project. The developer started the lawsuit in 2007 in Federal Court. The Village has no alternative but to defend its laws and the low density neighborhood that its residents cherish. Although the Village was able to negotiate a reasonable hourly fee with

outside counsel, and that hourly fee has not increased for the past 8 years, the number of hours required during the discovery and motion stages of the lawsuit has been substantial. For example, from May through September of 2014 counsel were required to spend an average of three full days per week at depositions in addition to the time required for preparation and document production requirements. This cost quickly adds up.

If this multi-millionaire developer wins the lawsuit, the Village's zoning and land use laws, as well as every zoning and land use law in every municipality in New York State, and probably throughout the country, could be in jeopardy.

Since Pomona is a small Village with only one commercial ratable, the cost of upholding Village laws is borne almost entirely by Village residential taxpayers. State laws do not permit the Village to borrow funds long-term to pay legal costs and there are no State grants to help pay these costs. Instead, the State has punished our taxpayers by not giving them rebates because the Village has not been able to comply with the tax cap. Unfortunately, the cost of justice has been and will continue to be very high.

APPENDIX B

OSC COMMENT ON THE VILLAGE'S RESPONSE

Note 1

In both the 2013-14 and 2014-15 fiscal years, legal expenditures exceeded their budgeted amounts by more than \$1 million. As discussed in the report, budget transfers to pay these expenses were not made from other line items. Instead, the 2014-15 fees were deferred to the 2015-16 fiscal year, creating a deficit in 2014-15 for the accrued liability. Although Village officials were aware of the impending litigation since 2007, they did not set aside adequate funds or budget for this matter.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to examine the Village's financial condition for the period June 1, 2014 through July 10, 2015. We extended our audit period back to June 1, 2012 to analyze the Village's fund balance, operating results and financial trends. To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed the Board and Village officials to determine the processes that were in place for, and to gain an understanding of, the District's financial operations.
- We compared budget-to-actual revenues and expenditures and investigated significant variances.
- We evaluated the Village's operating results and resulting fund balance for the audit period.
- We reviewed the 2015-16 fiscal year adopted budget.
- We calculated the Village's real property tax increase for the audit period.
- We reviewed compliance with laws and regulations for general budgetary controls.
- We reviewed the budget status report for the 2014-15 fiscal year and documented each budget accounts that had a negative unencumbered balance.
- We obtained and reviewed the 2012-13 and 2013-14 fiscal years' audited financial statements and CPA engagement letters.

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.

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