



# Town of Richmondville

## Administration of Grant Moneys

### Report of Examination

Period Covered:

May 4, 2009 — September 25, 2013

2013M-374



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## Division of Local Government and School Accountability

May 2014

Dear Town 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 Town 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 Town of Richmondville, entitled Administration of Grant Moneys. 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 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*



## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

The Town of Richmondville (Town) is located in Schoharie County and has a population of approximately 2,600 residents. The Town is governed by an elected five-member Town Board (Board) comprising the Town Supervisor (Supervisor) and four Board members. The Board is the legislative body responsible for the overall management of the Town, including oversight of grant awards. The Board is also responsible for auditing and approving claims against the Town prior to payment.

The Supervisor serves as the Town's chief executive and chief fiscal officer. As chief fiscal officer, he is responsible for overseeing or performing all of the Town's financial duties. A bookkeeper assists the Supervisor with the maintenance of the accounting records. The Town also hired a grant consultant to provide grant administration services.

The Maranatha Family Center Project (Project) redeveloped commercial property located in the Town. The redevelopment included the construction of a new recreational, medical and fitness facility, along with the demolition of most of the existing vacant structures by a private developer (Developer). The Developer is the current owner of the facility.

The Project's overall costs of approximately \$5.6 million<sup>1</sup> were funded with a variety of sources, which included private moneys from the Developer, bank financing and two economic development grants awarded to the Town. The two grant applications were prepared by consultants hired by the Developer on the Town's behalf. A \$2.3 million grant from the New York State Empire Development Corporation (Restore NY grant) was awarded to the Town in September 2009, which was to be used for facility construction, land acquisition and soft development costs such as loan, legal and consulting fees. Also, a \$650,000 Community Development Block Grant Program grant (CDBG grant), to be used for facility equipment and the purchase of additional land, was awarded to the Town in December 2010.

In October 2011, Town officials hired their own grant consultant to assist in the administration of both grant agreements. In November 2011, the construction loan closed, the first draw of money from the Restore NY grant was made and construction began in the following month. In October 2012, the facility was opened to the public; however, in September 2013, the facility was forced to close because the utilities were turned off due to failure to pay. Additionally, the facility is currently facing foreclosure.

<sup>1</sup> Total costs included \$3.8 million for facility construction, \$450,000 for construction overrun costs, \$426,000 for land, \$563,000 for equipment and \$374,000 for soft costs.

## **Scope and Objective**

The objective of our audit was to review the Board's administration of grant fund moneys for the period of May 4, 2009 through September 25, 2013. To provide perspective on events, we extended our audit period to November 14, 2013, when foreclosure notices were first filed on the facility. Our audit addressed the following related question:

- Did Town officials properly administer the Restore NY and CDBG grant funds awarded to the Town?

## **Audit Results**

Grant funds totaling nearly \$3 million have been spent to build and equip a facility that currently is closed and in foreclosure due to lack of working capital. With the facility closed, the local community is receiving no benefit from the grant moneys spent, and other projects throughout the State could have benefited more from these moneys.

Although the Board properly administered some aspects of the grants, it failed in certain key areas. For example, the Town may have to pay for a required audit because the Developer has yet to pay for this service.

The Board also relied on the Developer's consultant to prepare grant applications on its behalf and did not review the consultant's work to ensure that the Town was properly protected. Further, the Board hired its own consultant to monitor the Project and disburse grant moneys. However, it did not review this consultant's work and ensure that moneys were disbursed for proper Project purposes. Instead of monitoring the entire Project as a whole, the consultant monitored grants individually, which resulted in a \$75,000 duplicate payment being made using grant moneys. After our fieldwork ended, Town officials were able to resolve this issue in March 2014 by obtaining an agreement with Empire State Development Corporation (ESDC) that, in effect, corrected the duplicate payment.<sup>2</sup>

Furthermore, neither the Board nor Town officials ensured that the Project stayed within the original facility construction budgeted cost of \$3.8 million, and the Project incurred significant construction cost overruns totaling approximately \$450,000, or 12 percent, over the original estimates.

Had the Board adequately monitored this Project, some of these deficiencies could have been avoided.

## **Comments of Town Officials**

The results of our audit and recommendation have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials disagreed with many of the findings contained in our report. Our comments on certain issues Town officials raised in their response are included in Appendix B.

<sup>2</sup> The Town received approval from ESDC to substitute previously unreimbursed project construction costs for the duplicate land purchase cost originally charged to the Restore NY grant.

# Introduction

## Background

The Town of Richmondville (Town) is located in Schoharie County and has a population of approximately 2,600 residents. The Town is governed by an elected five-member Town Board (Board) comprising the Town Supervisor (Supervisor) and four Board members. The Board is the legislative body responsible for the overall management of the Town, including oversight of grant awards. The Board is also responsible for auditing and approving claims against the Town prior to payment.

The Supervisor serves as the Town's chief executive and chief fiscal officer. As chief fiscal officer, he is responsible for overseeing or performing all of the Town's financial duties. A bookkeeper assists the Supervisor with the maintenance of the accounting records. The Town also hired a grant consultant to provide grant administration services.

The Maranatha Family Center Project (Project) redeveloped commercial property located in the Town. The redevelopment included the construction of a new recreational, medical and fitness facility, along with the demolition of most of the existing vacant structures by a private developer (Developer). The Developer is the current owner of the facility.

The Project's overall costs of approximately \$5.6 million<sup>3</sup> were funded with a variety of sources, which included private moneys from the Developer, bank financing and two economic development grants awarded to the Town. The two grant applications were prepared by consultants on the Town's behalf. A \$2.3 million grant from the New York State Empire Development Corporation (Restore NY grant) was awarded to the Town in September 2009, which was to be used for facility construction, land acquisition and soft development costs such as loan, legal and consulting fees. This grant required a 10 percent of matching funds contribution by the Developer. Also, a \$650,000 Community Development Block Grant Program grant (CDBG grant), to be used for facility equipment and the purchase of additional land, was awarded to the Town in December 2010. The CDBG grant was awarded through the New York State Office of Homes and Community Renewal and included a requirement that the Project should result in the creation of 44 new full-time jobs.

<sup>3</sup> Total costs included \$3.8 million for facility construction, \$450,000 for construction overrun costs, \$426,000 for land, \$563,000 for equipment and \$374,000 for soft costs.

In October 2011, Town officials hired their own grant consultant to assist in the administration of both grant agreements. In November 2011, the construction loan closed, the first draw of money from the Restore NY grant was made and construction began in the following month. In October 2012, the facility was opened to the public; however, in September 2013, the facility was forced to close because the utilities were turned off due to failure to pay. Additionally, the facility is currently facing foreclosure.

## **Objective**

The objective of our audit was to review the Board's administration of grant fund moneys. Our audit addressed the following related question:

- Did Town officials properly administer the Restore NY and CDBG grant funds awarded to the Town?

## **Scope and Methodology**

We examined the Town's records and reports regarding grant fund moneys for the period May 4, 2009 through September 25, 2013. To provide perspective on events, we extended our audit period to November 14, 2013, when foreclosure notices were first filed on the facility.

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 is included in Appendix C of this report.

## **Comments of Town Officials and Corrective Action**

The results of our audit and recommendation have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials disagreed with many of the findings contained in our report. Our comments on certain issues Town officials raised in their response are included in Appendix B.

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 the 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 Town Clerk's office.

## Administration of Grant Moneys

Direct responsibility for completion of grant activities, compliance with Federal and State requirements and proper financial management of grant funds rests with the Board. Accordingly, the Town, as the recipient of grant funds, should properly evaluate the grant application before approval, enter into a detailed written agreement with any parties involved with the grant implementation, formally monitor the grant-related activities and establish effective controls to safeguard development funds and ensure their proper use.

Although the Town can rely on others to provide information and insight about grant applications, the Board is still responsible for performing its own due diligence. To protect the Town from any liability, Town officials should ensure that written agreements obtain guarantees that are both legally enforceable and collateralized with assets of sufficient available value to protect the Town from loss. If the Board hires a consultant to assist in the grant administration, the Board is ultimately responsible for monitoring the consultant's performance and overall compliance with the grant requirements, completing the project in a cost effective manner, approving grant disbursements, and ensuring that any grant closeout requirements are completed in compliance with grant agreements and in a timely manner.

Town officials did not properly administer all aspects of the Restore NY grant and CDBG grant funds awarded to the Town; they were successful in some aspects but failed in others. The Board failed to meet certain critical expectations regarding the application and screening process for awarding grant funds, protecting the Town's financial interests, monitoring the proper use of the moneys they awarded or auditing claims paid from the grant proceeds. However, the Board did properly ensure that Town policies were in compliance with grant agreements and that certain grant recordkeeping requirements and external reviews were met. The Board also received appropriate approvals from State agencies before it approved the demolition of the Dutch Barn. Finally, the Board has not closed out the CDBG grant in accordance with the grant requirements; this failure to close out the grant could jeopardize any future grant applications.

Review and Approval of Grant Applications — While the Board can rely on consultants to prepare grant applications on the Town's behalf, it is the Board's responsibility to ensure that the Town and Developer will be able to meet the standards set forth by the grant application. The Board should review the applications prepared by

the consultants and verify the financial viability of the applied-for use and that proposed goals are realistic and obtainable. Such verification will ensure that the grant requirements are met and protect the Town's financial interests.

The Town was awarded nearly \$3 million in total grant moneys for the Project from the Restore NY and CDBG grants as a result of grant applications prepared by consultants. There is no evidence that the Board performed a significant review of the consultant-prepared grant applications, such as assessing the financial viability of the project, before approving either grant application for submission. None of the current Board members were on the Board at the time the Restore NY grant application was filed. However, the Town's attorney told us he was unaware of any significant review performed. Additionally, based upon our discussion with current Town officials, the Board did not review the CDBG grant application in any detail before it was approved and, instead, relied upon the representation and analysis provided by the Developer's consultant.

Our review of the grant applications found that they included a detailed business plan and forecast which predicted that approximately \$400,000 in working capital would be needed in the first three years of operations and the Project would not realize positive cash flow until the fourth year of operations. The plan also assumed that the Developer would contribute the land for the facility site plus approximately \$1 million from the sale of other real estate. The Board did not perform its own evaluation of the business plan assumptions and predictions and did not ensure that the Developer's capital contributions were secure before approving the grant applications. Current Town officials told us they believed their detailed review was not needed, as the Project was well-supported by various politicians and community members and had private financing.

Written Agreements — The Board must enter into a written agreement with the Developer to define the nature of activities to be carried out, the manner in which grant funds may be used, the timeframe for completing activities and the records or reports the Developer must submit to the Town, as grant recipient, to demonstrate compliance. In addition, these agreements should limit the Town's liability by pledging specific collateral that is sufficient to reimburse the Town against any potential losses.

The Board did properly obtain the written agreements that defined the Developer's obligations and afforded the Town proper protections. The \$5.6 million in project costs were funded by grants of nearly \$3 million and moneys provided by the Developer, including private bank financing of \$2.4 million and the Developer's own assets of

\$237,000.<sup>4</sup> The Developer's \$2.4 million in bank debt is collateralized by the Project facility and additional real estate property owned by the Developer that has a total taxable value of \$807,000.<sup>5</sup>

Monitoring Grant Activities — The Board is responsible for monitoring grant activities, which includes ensuring that the terms of the agreements (including any changes) are being complied with. The Board should require that reports of grant activities, including financial reports, be prepared and review such reports for compliance with agreement stipulations. The Board should also ensure that the overall Project stays within budget and is completed. One way to ensure that the Project stays within budget is to include a contingency allowance in the Project plan that would help to fund any cost overruns or unforeseen expenses. If a consultant is hired to assist, the Board should ensure that the consultant provides and verifies sufficient oversight of the Project to satisfy the Board's responsibility.

In October 2011, the Board hired a grant consultant to monitor the Project's activity. As part of the agreement with the Town, the grant consultant ensured that Town policies, environmental and historic preservation reviews and grant recordkeeping were in compliance with grant requirements. The agreement also required the consultant to coordinate administration of the two grants, including monitoring the Project's budget.

With little exception, the Board relied solely on the consultant to monitor the Project's activity. The Board did not monitor the consultant's work to ensure that it was accurate and complete. Further, the Board did not ensure that the consultant monitored the Project as a whole so that both grants were appropriately charged for grant-related activities. As a result, instead of monitoring the entire Project and ensuring that grants were not over-charged, the consultant only monitored each individual grant. The consultant did not compare expenditures charged to each grant to ensure that duplicate payments were not made. As discussed in the Grant Receipts and Disbursements section below, a land purchase totaling \$75,000 was claimed as an expense for both grants because the consultant failed to coordinate the payment of grant expenditures.<sup>6</sup> The Board was unaware of this error until our audit because it relied on the consultant's verbal reports and did not request any grant-related financial or performance reports for its review.

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<sup>4</sup> The Developer told us some of these assets were retirement funds that she had cashed in.

<sup>5</sup> The Developer has pledged three properties: a residential property, a commercial office property and undeveloped land. Based on 2013 real property tax records, the three properties' total taxable value is \$807,000.

<sup>6</sup> See footnote 2.

Furthermore, neither the Board nor Town officials ensured that the Project stayed within the original facility construction budgeted cost of \$3.8 million. The Board did not ensure that the Project plan had a contingency allowance to assist with cost overruns. In fact, the Project incurred significant construction cost overruns totaling approximately \$450,000, or 12 percent, over the original estimates. The majority of the additional cost was \$260,000 for stone, which was originally planned to be donated to the Project, but this did not occur due to major flooding in the area. Construction changes due to unforeseen circumstances are not unusual and the loss of the stone donation was out of the Developer's control. However, a prudent Project plan would have made allowances for cost overruns by including a contingency allowance. Such an allowance could have provided some funding for the unbudgeted stone cost and the other unplanned costs, such as landscaping and certain site testing. The end result is that the Developer had to obtain additional private financing to cover cost overruns, which contributed to the cash flow problems and the subsequent closing of the facility. These overruns occurred because the Board did not ensure that the initial Project had a contingency for potential unanticipated costs and because no one oversaw the Project as a whole, just each individual grant.

The Board also ensured a significant scope change to the project was approved. Originally, the Dutch Barn (Barn) was to be restored and be a focal point for the exterior building design. However, when the structure was later evaluated, after the other vacant structures had been demolished and the new facility constructed, it was determined to be cost-prohibitive to restore the Barn. Before the Board approved the scope change relating to the demolition of the Barn, the Board properly ensured that it was approved by both State agencies that were involved with the Project. Town officials also confirmed that the Barn timbers were donated after demolition, as stipulated in the Project change agreement.

Board members told us they relied on the grant consultant to ensure that the grant requirements were met, including the preparation of any grant performance reports. The Board did not request financial reports because it believed the grant funds were the Developer's money and not part of the Town's financial activity. Therefore, the Board did not feel it was subject to the same restrictions as Town moneys. However, as the original grant recipient, the Town is ultimately responsible for ensuring that these moneys are expended for appropriate purposes, in the best interest of the taxpayers.

Grant Receipts and Disbursements — The Board should ensure that the receipts and disbursements of grant funds are properly accounted for. The Board should audit claims prior to payment to verify that

amounts disbursed are allowable under the grant agreement, are documented and approved and are not paid multiple times. Only authorized Town officials should have the ability to disburse moneys from Town bank accounts.

Town officials accounted for money received for the grants by depositing the money for each grant in its own, separate bank account. However, the Board did not ensure that grant disbursements were for proper purposes because it did not audit the claims associated with the grants prior to those claims being paid. Payments from the Restore NY grant were made directly by bank personnel (to facilitate the use of grant moneys and the Developer's private money), while the CDBG grant moneys were disbursed by the Town's consultant and bookkeeper. Due to the lack of oversight over the grant disbursements, Town officials did not know that the first Restore NY grant disbursement of \$300,546 was made by bank officials until the Town bookkeeper attempted the bank reconciliation the following month. Subsequently, the Supervisor required that the bank obtain written authorization prior to withdrawing any Restore NY grant funds. For the CDBG payments, the consultant compiled a list of the claims to be paid and prepared the request for reimbursement, which was approved and signed by one Board member; checks were issued by the Town bookkeeper, and these checks were reviewed and approved by two<sup>7</sup> Board members.

Board members said that they did not audit the claims because they were only pass-through moneys, and the Board members did not feel that pass-through moneys were subject to the same restrictions as Town moneys. Again, because the Town was the initial grant recipient, the Board was responsible for auditing associated claims to ensure that they were expended for proper purposes.

Due to the lack of audit of claims, we reviewed 43 payments totaling \$885,053 and found that the costs of a land purchase for the Project, totaling approximately \$75,000, were paid for twice.<sup>8</sup> Town officials were unaware that these costs had been incorrectly charged to both grants until we informed them of our findings. After our fieldwork ended, Town officials were able to resolve the duplicate payment by an agreement made in March 2014 with Empire State Development Corporation which substituted the land costs originally claimed on the Restore NY claim with Project construction costs that had not previously been reimbursed.

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<sup>7</sup> At times, one of these Board members was the same Board member approving the list of claims.

<sup>8</sup> The \$75,000 in land acquisition costs were paid using \$41,742 in Restore NY grant funds and the balance from private financing. Later, CDBG grant funds were used to reimburse the Developer for the same \$75,000 in costs.

The remaining payments we tested, totaling \$810,053, were disbursed for proper Project purposes and included supporting documentation. Additionally, we observed 34 pieces of equipment that were purchased with \$274,247 of CDBG grant moneys.

Final Closing — The Board should ensure that each grant is timely and properly closed out. The closeout of grant activities is the final step and should be done in accordance with grant agreement requirements. Town officials should ensure that the necessary data from the Developer is obtained so that the grant closeout can be completed in a timely manner.

The Restore NY grant has been fully expended and the grant has been closed out. However, the final closeout report has not been prepared for the CDBG grant because the Board is waiting for job creation numbers from the Developer. The CDBG grant ended December 9, 2012, and the closeout report was due within 30 days. Town officials have been unable to obtain job creation numbers from the Developer as of the end of our fieldwork. The CDBG grant officer told us that she is aware that the Project has not been closed out and she will continue to monitor the Project status until the final report is submitted. The CDBG grant officer also told us that, currently, there is no penalty for the late filing of the report, but the failure to file timely may be considered if the Town applies for other funding.

The Town is also required to have an audit performed by an independent auditor for the fiscal year ended December 31, 2012, due to the amount of Federal grant money received. The audit would have normally been due within nine months of the end of the year, but the Town received an extension for performing the audit until March 30, 2014. According to the written agreement, the Developer is required to pay for the audit but has not yet provided the money. The Town is required to have the audit performed and may have to pay the cost itself.

Although the Board properly administered some aspects of the grants, it failed in certain key areas which could result in unanticipated losses, such as incurring audit fees. Grant funds totaling nearly \$3 million have been spent to build and equip a facility that currently is closed and in foreclosure due to lack of working capital. With the facility closed, the local community is receiving no benefit from the grant moneys spent, and other projects throughout the State could have benefited more from these moneys.

## **Recommendation**

1. The Board should provide more oversight over reviewing and approving grant applications, awarding and monitoring performance and ensuring a timely and proper grant closeout. If

the Board engages a consultant to perform these duties, the Board is ultimately responsible for the administration of Town grants. This oversight should include the overall Project itself and not just each individual grant. Such administration should ensure that:

- Board members exercise due diligence in reviewing grant applications and enter into written agreements to ensure that the grant is in the Town's best interest,
- The Board monitors grant activities and performance and compliance with grant requirements, including staying within estimated costs and verifying the estimated costs have a contingency allowance to cover additional unanticipated costs,
- Grant financial activity is reported to the Board,
- Grant expenditures are subject to Board audit to avoid inappropriate or duplicate payments,
- Only designated Town officials or employees are allowed to disburse grant funds and
- The grants are closed out in a timely manner.

**APPENDIX A**  
**RESPONSE FROM TOWN OFFICIALS**

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

## TOWN OF RICHMONDVILLE

340 Main Street  
Richmondville, NY 12149

**Richard T. Lape**  
Town Supervisor  
P.O. Box 555  
518-294-7177

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Clerk/Collector  
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### Town of Richmondville Response

The following is the Town of Richmondville's (hereinafter "Town") response to the Report Of Examination (hereinafter "Report") issued by the Office of the State Comptroller concerning the administration of grant funds for the Maranatha Family Center Project. This response was approved on April 9, 2014 by the Town Board of the Town of Richmondville, comprising the Town Supervisor and four Town Councilpersons.

The Town agrees with some of the findings presented therein, and respectfully disagrees with other positions taken in the Report.

See  
Note 1  
Page 23

#### Review and Approval of Grant Applications

The Report asserts that it was the Town's responsibility to carefully review and approve applications for grant funding for the project, and to ascertain the financial viability of the project. Indeed, the Report actually contends that the Town had a responsibility to "ensure that the Town and Developer will be able to meet the standards set forth by the grant application." In so doing, the Report characterizes the Town's responsibility as being "direct", thereby perhaps suggesting that all other parties involved in the administration of the grant moneys were indirect or secondary in nature. The Town respectfully submits that this characterization in the Report is flawed. The Report further states:

"The Board did not perform its own evaluation of the business plan assumptions and predictions and did not ensure that the Developer's capital contributions were secure before approving the grant applications."

This Report takes the position that the Town had primary responsibility for evaluating the financial soundness of the project, even though the Town itself was not investing any Town taxpayer money into the project. Notably in this regard, the Report fails to state that the Town made a clear, decisive and repetitive commitment to the taxpayers of the local community that the Town would not expend any local taxpayer dollars into the funding of this private developer's project. This commitment made by the Town was the result of insistent and persistent demands made by the local citizens and taxpayers to the Town. In short, the Town of Richmondville was not a funding source, and it did not have any finance or economic development professionals on staff to undertake such analysis as is called for in the Report.

However, there were several parties who did provide funding to the project, including two State Agencies and three commercial banks. These five entities are all much larger and financially more sophisticated organizations than the Town, all of which did have highly qualified finance and economic development professionals on staff. It is those State Agencies and commercial banks that made the decision to provide funds to the Maranatha project, not the Town. While the Town acknowledges and concurs with the conclusions in the Report that it had due diligence responsibilities in this undertaking, the Town disagrees with the Report and vehemently asserts that the primary responsibility for evaluating the soundness of the proposal lies with the entities which actually funded the project. Had the Town refused to cooperate with these five funding sources, with all their knowledge, skills, and expertise, and had the Town refused to act as a conduit for the funding sources, the Town Board would have been sharply criticized for refusing to cooperate with State Agencies and the private sector in a joint state and local effort to bring about a \$5 million dollar investment with the creation of 40 jobs in the local community.

The Report also mistakenly contends that the Town "relied upon the representation and analysis provided by the Developer's consultant", instead of undertaking its own review of the grant applications. The Town sharply disagrees with this contention.

First, while the Town did rely to some extent upon “consultants”, the Report erroneously states it was the “Developer’s consultant.” In reality, the consultants were actually county governmental officials employed as such, and working in their official and professional capacity as County Planners and/or Economic Developers. They were individuals with knowledge and expertise in the field of grant writing, grant administration, planning, economic development and job creation, and other related matters.

Secondly, in addition to the county governmental “consultants”, the Town relied in part upon the representations and guidance of State Economic Development officials and commercial lending institution officials in assessing the viability of Developer’s project.

In retrospect, the Town does concur to a limited extent with the Report in that it would be prudent to have a Town consultant at the outset, representing the Town’s interests at the very beginning of the process, and the Town, should it ever become involved in such a situation in the future, will consider doing so.

#### Written Agreements

The report also opines that the Town may be liable for repayment of CDBG funds as follows:

“Specifically, the Town may be liable to repay a portion of the CDBG grant award based upon the informal job numbers provided”.

See  
Note 2  
Page 23

The Town does not believe this to be the case. The Town is responsible to monitor and report jobs created, and should the developer fail to create the promised jobs, the Town is responsible to undertake enforcement action against the developer to the extent feasible. But, the Town is not liable to repay CDBG grant funds under those circumstances.

Additionally, even though the Report does indeed acknowledge the Town's successful efforts in obtaining proper written agreements with the Developer that outline the parties' obligations and liabilities, the Report goes on to mistakenly claim that the Town is exposed to a risk of loss by reason of the fact that the project premises is in foreclosure. The Town respectfully submits that the Report in this regard is confusing and misleading, and erroneously casts fault or blame upon the Town, while ignoring the proper steps that were undertaken by the Town to protect itself.

The Report fairly summarizes the project costs of \$5.6 million, of which nearly \$3 million in grant monies were awarded. Within the context of these very large numbers the Report then goes on to state that the facility is in foreclosure (an event which actually occurred outside of the time frame and period that the Report was supposed to cover and should perhaps be stricken from the Report). The resultant conclusion drawn from this is that the Town appears to be at some form of risk for nearly \$3 million due to a private foreclosure against the Developer. That is simply not true. The Report does attempt to rectify this misleading characterization by then specifically referring to and limiting the Town's potential exposure to a portion of CDBG monies and/or a \$20,000 audit cost. Notably here, the CDBG grant monies were a fraction of the overall \$3 million in grant monies, and the recapture obligations tied the CDBG grant diminish rapidly each month.

In countering the Report's conclusion in this regard the Town points out that the Report fails to include any specific reference to the written agreements between the Town and the awarding Agencies. Instead, the Report only refers to the written agreements between the Town and the Developer. However, the written agreement between the Town and the Agency that awarded the \$2.3 million RestoreNY grant specifically excludes any recapture obligation of the Town in the event that the project facility is foreclosed. Moreover, there is believed to be no monetary liability or obligation whatsoever on the Town's part for not being able to complete a routine CDBG audit, particularly in the instant situation in which the project facility is in foreclosure. In short, the Town submits that not only did it protect itself with proper written agreements between itself and the Developer, but equally important it secured binding agreements with the granting Agencies to limit its exposure and risk of loss.

See  
Note 3  
Page 23

## Monitoring Grant Activities

The Report is very critical of the Town for what the Report claims is the Town's reliance upon the Developer's consultant, and for not having its own consultant retained early in the process. However, very shortly after the grant agreements were executed, the Town did indeed, retain its own consultant, to monitor the grant activities. Without question, the Town acted responsibly and properly at that juncture for which direct criticism should be obviated. Strikingly, though, the Report seems to utterly disregard the Town's efforts in hiring an experienced professional, and instead criticizes the Town for not monitoring the consultant's monitoring activities. The Town respectfully submits this would be an imprudent act of micromanaging the activities of a professional engaged in business activities for which the members of the Town are essentially not well versed or experienced in. Indeed, the consultant was hired to perform those specialized services so that the Town would not have to do so to that level. If the Town wished to scrutinize or monitor the workings of the consultant to the depth and degree suggested in the Report, then the Town would essentially have to hire a consultant to monitor the consultant.

Perhaps the Report seems to justify the argument for criticizing the Town over not monitoring the consultant by referring specifically to a \$75,000 land purchase that appeared to be improperly allocated. However, the Town strenuously debunks this position by noting that the \$75,000 land purchase was authorized prior to the consultant even being hired by the Town. Moreover, the \$75,000 land purchase was authorized and even actually directed by the State Agency that approved the RestoreNY grant and the bank that was overseeing the private funding, while at the same time NOT even consulting with the Town over the disbursement. Without question, the attempt in the Report to cast blame upon the Town for this imperfection in grant administration is wholly unjustified and improper.

The Report is critical of the Town's failure to control cost overruns. To quote the report:

“These overruns occurred because the Board did not ensure the initial Project had a contingency in it for potential unanticipated costs and because no one oversaw the Project as a whole, just each individual grant.”

There are four possible entities, which have direct control over cost overruns. These include the owner (developer), the architect or engineer, the building contractor, and the entity that provides to funds to pay for the cost of the overruns. The Town was not the owner of the Maranatha project, was not the architect or contractor, and did not provide any money to pay for cost overruns. More importantly, the Town did not have any legal authority to control cost overruns. Funding for cost overruns was provided with additional bank loans, which the Town neither sought nor approved. The Town, in its legal agreements with the developer, made it clear that any cost overruns were the responsibility of the developer, not the Town.

### Summary

The Maranatha Family Center Project was conceived, reviewed and approved with the input and collaboration of the private Developer and several State Agencies, county economic development and planning officials and private commercial lending institutions. Professionals in those various fields undertook a comprehensive examination and analysis of the Developer's business model and plan. Based upon their conclusions and approvals a joint recommendation was made to move forward with the project with the expectation of bringing much needed positive economic development and the creation of several jobs in the local community.

As part of this project, the Town of Richmondville ultimately became the recipient of two State approved grants whereby grant monies essentially passed through the Town to the hands of a private developer. Critical now to the examination of the handling and administration of those grants is the clear and undisputed fact that all grant monies were approved and awarded by State Agencies, but only after a comprehensive analysis by State Agency professionals and experts.

Moreover, except for a \$75,000.00 disbursement for land acquisition, it is also undisputed that all \$3 million in grant monies was properly disbursed by the Town of Richmondville in accordance with federal, state and local laws, rules, regulations and guidelines. It must be kept in mind, though, the so-called questionable \$75,000.00 “double-billing” associated with the land acquisition was actually an initial grant disbursement authorized and directed by the State Agency that awarded the grant. It should not, and in reality cannot be attributed to any act or omission to act on the part of the Town of Richmondville. The Town did not play a role in the disbursement of those funds.

Unfortunately, the fact that the Developer’s business has now closed within its first year is certainly an unwelcoming event for the Town that would seem to lead to the conclusion that the Town is at fault to some extent. Understandably, but only by reason of the fact that the Town acted as the pass-through recipient of State approved grant monies, it may appear the Town should shoulder some responsibility for the expenditure of taxpayer grant monies towards a private Developer’s failed business. Nevertheless, while the Town does acknowledge that it bears the obligation of acting with due diligence and fiscal responsibility in the administration of taxpayer grant monies, it also contends that the primary parties involved in the oversight of taxpayer dollars were the State Agencies that reviewed and approved the grants, and the Developer who made material representations to governmental officials, commercial lending institutions and perhaps even private investors. To simply overlook the fundamental obligations and responsibilities of the Developer, and the approving State Agencies, and direct blame towards the Town as a pass-through entity, unfairly targets and labels the Town as the scapegoat for another’s fault.

The Town will certainly look in the future to being more actively involved in the overall administration of grant monies, and not merely concentrate on the steps and procedures implemented in having grant monies properly disbursed after they had already been awarded. The Town is already working on formulating a Corrective Action Plan that seeks to address some of the issues raised in the Report.

Respectfully submitted.

April 10, 2014

\_\_\_\_\_ ✓ *50x*  
Town of Richmondville  
Richard T. Lape, Supervisor  
By: William Lancaster, Deputy Supervisor  
(pursuant to Town Resolution No. 1-2014)  
Signed in the absence/unavailability of Supervisor

## APPENDIX B

### OSC COMMENTS ON THE TOWN'S RESPONSE

#### Note 1

Throughout their response letter, Town officials state that this project was well-supported by politicians and the community. They also indicate that all of the project's associated grant funds were pass-through moneys and, therefore, not the Town's responsibility to monitor. However, it is our position that the Town, as the named recipient of the grant funds, was responsible for performing its due diligence to ensure that these funds were expended for proper purposes and in the best interest of the taxpayers.

#### Note 2

Subsequent to fieldwork, we deleted that the Town may be liable to repay a portion of CDBG grant funds based on informal job numbers created.

#### Note 3

CDBG funds are federal funds that are subject to the requirements of the Single Audit Act of 1996 (Act). The Act requires recipients that receive \$500,000 or more of federal funds to obtain a single or program-specific audit in accordance with the Office of Management and Budget Circular A-133.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to review the Town's grant administration policies and procedures for the period of May 4, 2009 through September 25, 2013. To provide perspective on events, we extended our audit period to November 14, 2013, when foreclosure notices were first filed on the facility. Our audit procedures included the following steps:

- We interviewed Town officials and other key parties about the grant activities and administration of grant funds. We reviewed grant applications and award documents and documented any grant compliance requirements.
- We evaluated written agreements between the Town and the Developer to document what efforts were made to protect the Town from financial losses. We made inquiries of our legal department regarding the written agreements and potential Town liabilities in relation to the grants.
- We performed a search for liens and other legal documents filed under the Developer's name and the names of her businesses using the public record search on the County Clerk's website.
- We reviewed the Town's grant consultant procurement process and compared it to Federal procurement standards to determine if the process was in compliance with the requirements.
- We reviewed Town policies, such as affirmative action and code of ethics, for agreement with grant requirements.
- We reviewed documentation of environmental and historical preservation reviews for compliance with grant requirements.
- We examined the Town's grant accounting records for compliance with grant recordkeeping requirements.
- We reviewed financial and performance reports required under the CDBG grant agreement for timely filing.
- We summarized the change orders issued on the construction contract and compared the amount of the change orders to the original contract to identify any significant contract changes.
- We documented changes in the Project plans by comparing descriptions of the Project in the grant applications to Project site drawings and grant performance reports. We reviewed documentation and correspondence received by the Town regarding the demolition of the Dutch Barn to determine if it was appropriate.
- We determined if all grant revenues were properly deposited into a separate bank account by tracing deposit records and reconciliations of the grant amounts awarded to accounting and bank records.

- We judgmentally selected a sample of three of the nine Restore NY grant draw down requests and traced amounts claimed to supporting documentation. We determined if all contractor forms required under the Restore NY grant agreement were obtained for those three draw down requests.
- We randomly selected a sample of seven disbursements from the CDBG grant bank account; we reviewed corresponding documentation for appropriateness and, for any item of equipment purchased, observed the physical location of the item.
- We scanned the CDBG grant request for reimbursement forms for items with an individual cost of \$5,000 or more. We observed the physical location of the items identified.

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.

## APPENDIX D

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