

William Wenzel, Town Supervisor
Jennifer Howe, Town Clerk
Carol Sowycz, Deputy Town Clerk
William Reed, Highway Superintendent



Michael Santulli, Council Member
Francis R. Potter, Council Member
Dianne Grant, Council Member
Andrew Lucks, Council Member

Thursday October 26, 2023
Regular Town Board Meeting- Final
Meeting Time: 7:00PM

Meeting called to order by Supervisor Wenzel at 7:00PM

Present: Supervisor Wenzel, Council Members Lucks, Grant, Santulli, and Potter, Deputy Town Clerk Carol Sowycz, Town Attorney Terresa Bakner, Highway Superintendent William Reed.

Call to Order

Pledge of Allegiance

Prayer/Moment of Reflection

Public Hearing: "Proposed Local Law No. 3 of 2023 entitled "Tax Cap Override for FY 2024".

The proposed local law will allow the Town of Duanesburg to override the limit on the amount of real property taxes that may be levied, pursuant to General Municipal Law § 3-C, and allow the Town of Duanesburg to adopt a town budget for fiscal year 2024 that requires a tax levy in excess of the tax levy limit.

Council Member Santulli motioned, seconded by Council Member Lucks to open the floor for comments.

Motion carried, 5 ayes.

Tom McGrath, W Duane Lake Road asked what exclusions for tax cap, tortes and pension payment Duanesburg has?

Town Attorney Bakner stated that during her time as attorney in Duanesburg, the town has not had any tort claims against them that were successful.

Mike Gannon of Duane Lake Road asked what percentage tax cap override was being projected?

Supervisor Wenzel stated that he didn't have the exact figure. He stated that the biggest part of the increase was going to the DVAC, as the ambulance squad was moving from a hybrid, part paid and part voluntary to a full paid ambulance service.

Lynne Bruning, Duanesburg Road read a letter concerning the Tax Cap Override and would like a written response before the November 9th, town board meeting. (See attached) She also requested the name of the current CPA that the Town of Duanesburg uses.

A resident asked if the town has any outstanding liabilities & long-term debt?

Town Attorney Bakner noted that the long-term debt was being paid down and is from the construction of the three sewer districts that were put in for the town residents. There was also a bond resolution for a new snowplow that would be paid over a 5-year period. Supervisor Wenzel stated that the current CPA is West & Company.

Council Member Santulli motioned, seconded by Council Member Lucks to close the public hearing.

Motion carried, 5 ayes.

Public Hearing: Proposed Local Law No. 4 of 2023 entitled "A Local Law to Amend the Duanesburg Zoning Ordinance to Require Septic Inspection Prior to the Transfer of Ownership in the Duane Zoning Lake District (L-2).

Council Member Grant motioned, seconded by Council Member Santulli to open the floor for comments.

Alan Knight, W Duane Lake Road reads a letter on behalf of the Duane Lake Association. (See attached)

Ken Spink, W Duane Lake Road objects to the proposal.

Nancy Weiss, Duane Lake Road requested that Section #7 be amended to 60-90-day time period for the repairs of failed septic inspections instead of the 30 days.

Chris Miller, W Duane Lake Road stated that he supports an inspection be done by the Department of Health or ENCON instead of an inspection being done by sticking a flashlight into the septic tank.

Tom McGrath, W Duane Lake Road stated that he is in support of the law, that it will benefit the lake and it is good for home prices.

Gerald Evans, Duane Lake Road stated that he is in favor of this law but would like to see Section #7 be amended to 90 days.

Mike Gannon, Duane Lake Road questioned when the change of ownership is? There needs to be clarification regarding who the new owners are? Can I transfer this to my kid without any problem?

Town Attorney Bakner replied that the law does not distinguish between sale, transfer and leaving it to your children. It would apply to all instances. The town would have to send this law to real estate agents in the area as well as the Duane Lake Association would have to publish it in the newspaper.

Ken Spink, W Duane Lake Road asked about mortgage foreclosures and tax foreclosures.

Town Attorney Bakner stated that sales of foreclosures are "as is, where is" and is set up by the state.

William Haight, Duane Lake Road asked for clarification on the wording of "Prior Transfer"?

Jay Tanzman, W Duane Lake Road says he is in favor of this law.

Kathleen O'Brien, W Duane Lake Road reads a letter written by Sonya Mulvihill of W Duane Lake Rd. (See attached). Ms. O'Brien is in favor of the proposed law.

Jose Flores said he is in favor of this proposal.

Council Member Santulli motioned, seconded by Council Member Lucks to keep the public hearing open.

Motioned carried, 5 ayes.

Resolution 138-23: Council Member Grant motioned, seconded by Council Member Potter to approve the October 12, 2023 Town Board Meeting minutes.

Motioned carried, 3 ayes, Council Member Lucks & Santulli abstained.

Supervisor William Wenzel read the Supervisor's Report for September 2023 (Please see attached).

Resolution 139-23: Council Member Lucks motioned, seconded by Council Member Grant to pay the attached Payment of Claims (Please see attached).

Motion carried, 5 ayes.

Highway: Highway Superintendent Reed reported that the crew had been putting stuff back together and getting ready for winter.

Public Safety: Council Member Grant said she didn't have anything to report.

Parks: Supervisor Wenzel reported that there will be a meeting in November.

Sewer District #1, 2 & 3: Council Member Lucks had nothing to report.

Technology: Council Member Santulli had nothing to report. Supervisor Wenzel reported that he is in a holding pattern with broadband, trying to find some funding.

Business Meeting:

Resolution 140-23: Council Member Grant motioned, seconded by Council Member Potter to adopt Local Law No. 3 of 2023 entitled "Tax Cap Override for FY 2024".
Motion carried, 5 ayes.

Privilege of the Floor:

Lynne Bruning, Duanesburg Road reads letters concerning Freedom of Information Appeals and one concerning Oak Hill Solar. (See both attached).

Council Member Potter motioned, seconded by Council Member Santulli to go into Executive Session for the purpose of discussing personnel matters. 8:01pm

No business was conducted during the executive session.

Council Member Potter motioned, seconded by Council Member Santulli to come out of Executive Session for the purpose of discussing personnel matters. 8:30pm

Council Member Grant motioned, seconded by Council Member Lucks to adjourn. 8:31 pm

I, Carol Sowycz, Deputy Town Clerk of the Town of Duanesburg, hereby certify that this is a true and accurate transcript of the Regular Town Board Meeting held on Thursday October 26, 2023.

**LEGAL NOTICE
NOTICE OF PUBLIC HEARING
TOWN BOARD
TOWN OF DUANESBURG**

PLEASE TAKE NOTICE, that the Town Board of the Town of Duanesburg, New York, will meet at the Town Offices of Duanesburg, 5853 Western Turnpike, on **Thursday, October 26, 2023** at **7:00 p.m.** for the purpose of hearing all persons interested in the adoption of Local Law No. 3 of 2023.

The Proposed Local Law No. 3 of 2023 is entitled "Tax Cap Override for FY 2024." The proposed local law will allow the Town of Duanesburg to override the limit on the amount of real property taxes that may be levied, pursuant to General Municipal Law § 3-C, and allow the Town of Duanesburg to adopt a town budget for fiscal year 2023 that requires a tax levy in excess of the tax levy limit. A copy of the proposed local law is on file at the office of the Town of Duanesburg Town Clerk, 5853 Western Turnpike, Duanesburg, New York, 12056.

**BY ORDER OF THE TOWN BOARD
TOWN OF DUANESBURG**

Dated: October 12, 2023

PO Box 160
Quaker Street, NY 12141

William Wenzel, Supervisor
Town Board
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Transmitted via email: jhowe@duanesburg.net

October 26, 2023

Re: Public Hearing - Tax Cap Override

Re: Public Hearing - Tax Cap Over Ride

Dear William Wenzell,

Thank you for holding a public hearing on the Tax Cap OverRide for 2024. The board may not wish to answer my questions this evening. I would like a written response before the next town board meeting.

Review of the Town Board meeting minutes reflect that in 2020, 2021, 2022, and 2023 the town approved a Tax Cap OverRide.

What percentage or dollar amount was Tax Cap Override for each year?
Why were the funds needed?
What were the funds used for?

The NYS Comptroller's Audit reports 2002M-206 and 2011M-253 for the Town of Duanesburg reflect serious irregularities and raise concerns on how the town manages taxpayer's funds. Both audits reflect that the town will implement corrective measures.

The February 5, 2021 New York State Comptroller Audit 2020M-116 for the town of Duanesburg shows material irregularities in 2019 and 2020.

- \$590,880 in revenue and \$55,182 in expenditures were not recorded.
- The accounting records' cash balances were overstated by about \$3 million as of December 31, 2019.

This is an unusual report. It reflects serious deficiencies. It does not appear to mention anything being done correctly.

The Town's Corrective Action Plan may be found on the town's webpage url:

https://www.duanesburg.net/sites/g/files/vyhlif4351/f/uploads/cap_for_2020_audit_0.pdf

The plan is not dated, is not signed by the Supervisor, and it does not provide a stamp showing it was received by the Town Clerk.

What is the name of the current accounting firm reviewing the town's accounting and financial processing?

Who is the internal employee who prepares the two-step bank reconciliation process?

Is there an audit or oversight of the accounting firm's work?

Has there been an audit of the town's finances since 2019? If so, who performed it and when was it done?

The report is only as good as the validity of the information behind it.

How are the taxpayers assured the town is managing the town's finances in accordance with the NYS Comptroller's recommendations and thus able to trust a tax cap override is indeed required?

I look forward to your written response before the next town board meeting.

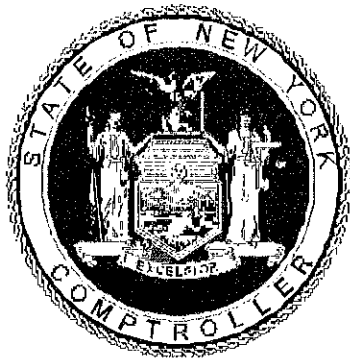
Thank you for your time and consideration.

Respectfully,

Lynne Bruning

720-272-0956

lynnebruning@gmail.com



H. Carl McCall
Comptroller

State of New York
Office of the State Comptroller

Town of Duanesburg

Report of Examination

Period Covered: January 1, 2001 - April 30, 2002
2002M-206



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H. CARL MCCALL
STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

Report: 2002M-206

Filed: December 13, 2002

**TO THE SUPERVISOR AND MEMBERS
OF THE TOWN BOARD
OF THE TOWN OF DUANESBURG
SCHENECTADY COUNTY, NEW YORK:**

Pursuant to Article V, Section 1 of the State Constitution, and further authority vested in the State Comptroller by Article 3 of the General Municipal Law, we have audited selected financial activities of the Town of Duanesburg for the period January 1, 2001 through April 30, 2002. The results of our audit disclosed certain findings and recommendations which are presented in this report. These findings and recommendations have been discussed with local officials, and their comments have been considered in preparing this report.

One of the State Comptroller's top priorities is to establish and maintain a strong partnership between this office and the local governments of New York State. A primary objective of this partnership is to assist local governments in strengthening their financial management systems. Audits such as this are an important component in accomplishing this objective. They are designed to identify current and emerging issues and provide recommendations for improvement.

If we can be of assistance to you or if you have any questions concerning this report of examination, please feel free to contact the local regional office for your County listed at the back of this report.

Office of the State Comptroller
Division of Municipal Affairs

Executive Summary

Background

The Town of Duanesburg provides various services to its residents including general government support, snow removal, and street maintenance. Most of the town's expenses incurred in providing these services are accounted for in the town-wide general fund, town-wide highway fund and the part-town highway fund. For the fiscal year ended December 31, 2001, the town reported expenditures of \$594,822 in the town-wide general fund, \$283,093 in the town-wide highway fund and \$175,865 in the part-town highway fund.

Objectives and Scope of Audit

The objective of our audit was to test for significant instances of non-compliance with fiscally related laws, rules and regulations, and guidance of the State Comptroller relevant to the scope of our audit. Our examination addressed the following questions related to the Town of Duanesburg for the period January 1, 2001 through April 30, 2002:

- Did the town supervisor maintain accounting records and reports that were properly supported and recorded, summarized and reported all financial activity?
- Was cash properly recorded, deposited, and disbursed?
- Were claims properly supported, approved and recorded in accordance with management's directive and statutory requirements?
- Was corrective action taken in response to findings and recommendations in our prior Report of Examination?

Audit Findings

Our audit disclosed findings that should be reviewed by the Town Board for appropriate action. Good management practices require that town officials take prompt action concerning our recommendations. We believe that prompt action by town officials will help protect the town's resources from possible loss or improper use and ensure compliance with appropriate statutory provisions.

Executive Summary (Continued)

Comments of Local Officials

The town supervisor's accounting records and annual financial report were not complete and accurate and the annual financial report was not filed with the State Comptroller within the time required.

Based on our audit tests and procedures, nothing came to our attention to indicate that cash was not properly recorded, deposited and disbursed.

The Town Board lacks adequate control over the processing and payment of claims.

Although the town took corrective action in relation to a certain finding in our prior report, the town has not taken adequate action in relation to reserves, annual accounting and the Section 8 Housing Assistance Program.

We discussed issues in the report with local officials and their comments have been considered in preparing the report. Local officials were given an opportunity to respond to our findings and recommendations within 30 days of the exit conference but they did not respond.

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Introduction

Background

The Town of Duanesburg is located in Schenectady County in eastern New York. In 2000 the town had a population of 5,808. The town provides various services to its residents including general government support, snow removal, and street maintenance. Most of the town's expenses incurred in providing these services are accounted for in the town-wide general fund, town-wide highway fund, and the part-town highway fund. For the fiscal year ended December 31, 2001, the town reported expenditures of \$594,822 in the town-wide general fund, \$283,093 in the town-wide highway fund and \$175,865 in the part-town highway fund.

Audit Scope, Objectives and Methodology

During this audit we examined selected financial activities of the Town of Duanesburg for the period January 1, 2001 through April 30, 2002.

We use a risk-based approach to select areas for audit. This approach focuses our audit efforts on those areas we identify as having the greatest probability for needing improvement. As a result, we prepare our report on an exception basis, highlighting those areas needing improvements and not addressing areas that appear to be functioning properly.

The objective of this audit was to test for significant instances of noncompliance with fiscally related laws, rules, regulations and guidance of the State Comptroller pertinent to the scope of our audit. We focused our audit on the following areas:

- Chief Fiscal Officer's Records and Reports
- Cash Receipts and Disbursements
- Claims Processing

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and perform our audit to adequately assess those operations that are included in our audit scope. Further, those standards require that we understand the internal control structure at the town and its

Introduction (Continued)

compliance with those laws, rules and regulations that are relevant to those operations, which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings and recommendations.

To accomplish our objectives we interviewed appropriate town officials and employees, reviewed the town's financial reports, tested selected records and transactions, and examined pertinent documents. The specific tests and procedures are noted in the findings contained in the Results of Audit Section.

The management of the town is responsible for its financial affairs and for safeguarding its resources. This responsibility includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that resources are safeguarded against loss from unauthorized use or disposition; that transactions are executed in accordance with management's authorization and are properly recorded; that appropriate financial reports are prepared; that applicable laws, rules and regulations are observed; and that appropriate corrective action is taken in response to audit findings. Nevertheless, errors, irregularities, and instances of noncompliance may occur and not be detected because of inherent limitations in any internal control structure.

Corrective Action

The Town Board has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, the Town Board should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within ninety days. For guidance in preparing your plan of action, you may refer to applicable sections in the publication issued by the Office of the State Comptroller entitled *Financial Management Guide for Local Governments*. We encourage the Town Board to make this plan available for public review in the town clerk's office.

Results of Audit

Supervisor's Records and Reports

Internal Control and Compliance

Our review of the town's 2001 and 2002 accounting records and the annual financial report filed with the State Comptroller for the fiscal year ended December 31, 2001 disclosed numerous deficiencies. We believe that the deficiencies noted during the course of our review represent serious internal control weaknesses, which negatively impacted the Town Board's ability to rely on financial reports for monitoring town operations and making financial decisions. In particular we noted the following:

The town supervisor did not file the 2001 annual financial report with the State Comptroller until June 6, 2002. General Municipal Law, §30 requires that the town supervisor file with the State Comptroller a certified annual financial report of the town's financial condition within sixty days of the close of the fiscal year. Upon written request from the town supervisor the State Comptroller may extend the period for filing such report for an additional sixty days. However, there was no indication that the town had requested such extension. Therefore, the town's annual financial report for the fiscal year ended December 31, 2001 should have been filed by March 1, 2002.

Notes to the financial statements were not included with the annual financial report. Generally accepted accounting principles require the presentation of notes to the financial statements, since such notes are an integral part of the financial statements. These notes should contain a summary statement of the town's significant accounting policies and the presentation of other information necessary for full disclosure and clear understanding of the financial statements.

As of June 11, 2002, year-end adjustments that were reflected in the town's annual financial report were not recorded in the town's accounting records.

Results of Audit (Continued)

General ledgers for the year 2001 were not presented for our review; thus, cash and the other assets and liabilities reported could not be traced to the accounting records.

During the audit we noted certain accounting records, such as the 2002 cash receipts journal, were being taken home by the bookkeeper. As a result, these records may not have been available for public inspection at all reasonable hours of the day. Town Law, §29 and General Municipal Law, §51 provide that the books and records of the town supervisor should be located in a public building and be available for public inspection during regular business hours.

Although reported, general ledger accounts were not maintained for the general fixed assets account group and for the sewer district capital project.

The fixed asset inventory records have not been updated since 1999.

The capital projects fund reported as revenue a transfer of \$20,000 from the town-wide general fund however, the town-wide general fund did not report a transfer to the capital projects fund.

Certain transfers made in March and June 2002 were reported as deposits in transit and outstanding checks at December 31, 2001, in the annual financial report's bank reconciliation. The transfers are as follows:

| Bank Account Transferred From | Bank Account Transferred To | Amount | Date |
|-------------------------------|-----------------------------|---------|---------------|
| | | | |
| Shafer Park Money Market | General Fund Money Market | \$5,000 | March 5, 2002 |
| Park and Recreation Savings | General Fund Money Market | \$ 665 | June 6, 2002 |

Results of Audit (Continued)

In addition, \$5,000 was transferred on June 6, 2002 in error from the Shafer Park bank account, which represented a duplicate transfer of the money transferred on March 5, 2002 noted above.

Accountability over financial resources is greatly diminished when accounting records are inaccurate and incomplete. The lack of complete and accurate accounting records inhibits the necessary monitoring of the fiscal operations of the town by the Town Board. Financial decisions that the Town Board must make will be difficult if such decisions are based on information developed from incomplete and inaccurate records. A timely annual financial report and accurate accounting records provide the Town Board with the necessary financial information to monitor the operation of the town and are useful as a reporting medium to the general public.

1. Recommendation

The Town Board should take the necessary actions to ensure that the town supervisor maintains complete, accurate, up-to-date accounting records and files the annual financial report with the State Comptroller within the prescribed statutory period. Also, the town's annual financial report should be in conformance with generally accepted accounting principles and as prescribed by the State Comptroller.

Interfund Advances

The town made cash advances between funds that were not repaid at year end.

Detailed accounting records were not maintained for interfund activities.

At December 31, 2001, the following interfund advances were outstanding:

Results of Audit (Continued)

| Fund | Due From Other Funds | Due To Other Funds |
|-------------------|----------------------|--------------------|
| | | |
| Town-Wide General | \$43,686 | \$ 0, 000 |
| Part-Town Highway | 0,000 | 2,300 |
| Capital Projects | 2,300 | 43,686 |
| Total | \$45,986 | \$ 45,986 |

Moneys advanced between funds must be repaid as soon as possible but in no event later than the close of the fiscal year in which the advance was made (General Municipal Law, §9-a).

2. Recommendation

The Town Board should ensure that moneys advanced between funds be repaid no later than the close of the fiscal year in which the advance was made.

Annual Accounting

There was no evidence in the minutes of the proceedings of the Town Board or otherwise presented to us by town officials indicating that the Town Board had audited, or caused to be audited, the financial records and reports of town officers and employees who had received or disbursed moneys on behalf of the town for the fiscal year ended December 31, 2001.

On or before the twentieth day of January, each person, who as a town officer or employee received or disbursed any moneys in the previous year, should account with the Town Board for such moneys and should produce all books, records, receipts, vouchers and cancelled checks (Town Law §123). Additionally, Section 2019-a of the Uniform Justice Court Act requires that every town justice present his or her records and dockets to the Town Board at least once a

Results of Audit (Continued)

Reserves

year. Such annual accounting to, and examination by, the Town Board provides an added measure of assurance that financial records and reports contain reliable information on which to base management decisions and gives the Town Board the opportunity to monitor the fiscal procedures of the town.

A similar finding appeared in our prior Report of Examination.

3. Recommendation

The Town Board should develop procedures to ensure that required audits are performed annually on the financial records and reports of town officers and employees who receive or disburse moneys on behalf of the town.

The town has set aside moneys in separate bank accounts that have not been properly established as reserves.

As of April 30, 2002, the town had the following bank account balances for the apparent purposes indicated by their respective account titles:

| | |
|--|---------|
| Park and Recreation Donation Account | \$3,488 |
| Park and Recreation Certificate of Deposit | \$3,071 |

Nothing was presented to indicate that reserve funds were established for these purposes pursuant to Article 2 of the General Municipal Law.

If it is the intent of the Town Board to maintain those reserves provided for by law and continue to sequester moneys therein for future use, then formal action of the Town Board establishing such reserves in conformity with statutory requirements should be taken.

A similar finding appeared in our prior Report of Examination.

Results of Audit (Continued)

Claims Processing

4. Recommendation

The Town Board should review its policies and procedures as they relate to the establishment of reserve funds, giving full consideration to the General Municipal Law. For guidance in this area, we recommend that the Town Board refer to Section 6 of the publication issued by the Office of the State Comptroller entitled *Financial Management Guide for Local Governments*.

The Town Board lacks adequate control over the processing and payment of claims.

In order to test for procedural controls over the verification and approval of claims, we judgmentally selected and tested a total of thirty-five claims paid during the period January 1, 2001 through April 30, 2002. Our tests disclosed the following:

Twenty-five of the claims tested involved the purchase of goods and services. However, in ten instances, the supporting documentation attached to the claim was not signed by a town officer or employee acknowledging receipt of goods and services. For example, documentation attached to one claim totaling \$2,194 for highway equipment was not signed to allow for a proper audit. For improved control of town purchases, delivery slips and invoices should be signed as evidence to the Town Board, when reviewing claims for payment, that goods and services have been received.

Two claims did not have supporting documentation attached, such as delivery slips or invoices. For improved control of town purchases, documentary evidence of delivery of goods and services should be attached to vouchers so that it is available to the Town Board when they review vouchers for payment.

Four claims were insufficiently itemized or lacked adequate supporting documentation to allow for a proper audit. For example,

Results of Audit (Continued)

Section 8 Housing Assistance Program

one claim totaling \$379 was paid from a statement and photocopy of the packing slip. Claims should be accompanied by original invoices and contain sufficient detail to permit a proper audit by the Town Board (Town Law, §118).

Twenty claims did not bear evidence of departmental approval. With certain exceptions, not applicable here, claims should not be approved and paid unless there is an itemized voucher presented to the Town Board that has been approved by the officer whose action gave rise to the claims. Then and only then is the Town Board in a position to audit and allow the payment of the claim (Town Law, §118(1)).

One payment totaling \$345 had no invoice or voucher to support the payment. Town Law, § 118 provides that the town use vouchers to control expenditures.

5. Recommendation

For purposes of good internal control and compliance with statute, the Town Board should take the necessary corrective action to ensure that all claims are properly processed prior to actual payment. For guidance in this area, the Town Board should refer to Section 8 of the publication issued by the Office of the State Comptroller entitled *Financial Management Guide for Local Governments*.

The town does not have sufficient control over expenditures of its housing assistance program funds.

The town has been designated as a public agency by the U.S. Department of Housing and Urban Development (HUD) for administration of housing assistance payments under Title 24, Housing and Urban Development, Chapter VIII, Part 882, Section 8. As a public housing agency, the town has the responsibility of administering rental assistance grants.

Results of Audit (Continued)

The town contracts with a consulting firm for program management, record keeping, and reporting functions. Money is disbursed by the town from a town checking account to the consulting firm based on monthly program information provided by the firm. The consulting firm issues the individual program checks from its own bank account. We found no evidence that the Town Board audited and approved the individual payments as listed on the consulting firm's program printouts. Such board action should have been taken pursuant to Town Law, §118.

While the Town Board may contract with a consulting firm for program administration, the agreement is subject to certain restrictions. Since the town is ultimately responsible for the control over and expenditure of program funds, we believe that such funds should not be advanced or placed in the custody of a private firm.

A similar finding appeared in our prior Report of Examination.

6. Recommendation

The town supervisor should retain custody and control of housing assistance program funds. Such control includes payment of program benefits by town checks from its own bank account. With regard to the processing, approval and payment of benefits (claims), a contract with a firm might authorize the firm to receive, investigate, and recommend approval of benefits (claims). However, the actual auditing and approval of the claims should be performed by the Town Board and the disbursement of funds should be performed by the supervisor.

APPENDIX

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Town of Duanesburg

Financial Condition and Internal Controls Over Justice Court Operations and Information Technology

Report of Examination

Period Covered:

January 1, 2010 — March 3, 2011

2011M-253



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 2012

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 Town of Duanesburg, entitled Financial Condition and Internal Controls Over Justice Court Operations and Information Technology. 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

EXECUTIVE SUMMARY

The Town of Duanesburg (Town) is located in Schenectady County and has a population of approximately 6,000 residents. The Town provides various services to its residents including fire protection, snow removal, and highway maintenance. These services are financed primarily by real property taxes, sales tax distributed by the County, and State aid.

The Town is governed by an elected five-member Town Board (Board). The Town Supervisor (Supervisor) is a member of the Board, and also serves as the chief executive officer and chief fiscal officer. As the chief fiscal officer, the Supervisor is responsible for overseeing the conduct of virtually all of the Town's financial duties. The Board is the legislative body that oversees the Town's operations, finances, and overall management. Although the Board is primarily responsible for overseeing the effectiveness of internal controls, the Supervisor and department heads share responsibility for ensuring that internal controls are adequate and operating effectively.

The Town's budgeted appropriations for the 2011 fiscal year totaled \$3.3 million.

Scope and Objective

The objective of our audit was to examine internal controls over financial condition, Justice Court operations, and information technology (IT). Our audit addressed the following related questions:

- Are Town officials effectively monitoring the Town's financial condition to maintain a reasonable level of fund balance?
- Are internal controls over Justice Court operations appropriately designed and operating effectively to adequately safeguard Town assets?
- Are internal controls over IT appropriately designed to safeguard Town assets?

Audit Results

The Board has not adopted a policy and Town officials have not developed procedures to govern the level of unexpended surplus funds¹ to be maintained and/or to determine whether the amount maintained is reasonable. Further, for fiscal years 2006 through 2010, the Board adopted budgets that underestimated revenues by approximately \$1.4 million and overestimated expenditures by approximately \$235,000, contributing to annual operating surpluses that averaged nearly \$195,000. Consequently, fund balances that the Board appropriated as funding sources were never used. As of December 31, 2010, the Town has accumulated unexpended surplus funds in the general fund totaling \$2,032,986, or 224 percent of the ensuing year's general fund budget. These significant idle moneys were not used to reduce the tax levy; in fact, the amount that the fund balance increased was nearly equal to the cumulative real property taxes raised, which totaled \$979,377 during that time.

Preliminary results show that the pattern of unrealistic budgeting and excessive tax levies has continued. The Town ended 2011 with a reported positive budgetary variance of \$255,000, and unexpended surplus funds are estimated at approximately \$1,981,000, or 217 percent of the budgeted appropriations for 2012, while taxes remain at previous levels. Lastly, the Board and Town officials did not employ long-term financial planning, which would have helped them identify the pattern of significant budget variances, take steps to balance the budget, and bring the Town's fund balance down to reasonable levels.

We also identified weaknesses in the Justice Court's internal controls over financial operations. There was no documentation of monthly bank reconciliations, and neither of the two Justices performed a monthly accountability analysis or reconciled their bail accounts. We also found that, because the computerized accounting records were not properly updated to reflect bail payments, the balances shown on the computerized report did not agree with those logged in the manual bail books maintained by the Court clerks, and had never been reconciled. Because of these weaknesses, the Justices have limited assurance that all moneys collected are properly recorded and accounted for, and Court funds are at risk of being misappropriated without detection or correction.

Finally, the Town's internal controls over IT need to be improved. Town officials did not develop a disaster recovery plan, and the Town has not adopted policies and developed procedures for proper data backup and storage or for remote access by the Town's system maintenance vendor. As a result, the Town's computer data is at risk of damage, loss, or misuse.

Comments of Local Officials

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

¹ The Governmental Accounting Standards Board (GASB) issued Statement 54, which replaces the fund balance classifications of reserved and unreserved with new classifications: nonspendable, restricted, and unrestricted (comprising committed, assigned, and unassigned funds). The requirements of Statement 54 are effective for fiscal years ending June 30, 2011 and beyond. To ease comparability between fiscal years ending before and after the implementation of Statement 54, we will use the term 'unexpended surplus funds' to refer to that portion of fund balance that was classified as unreserved, unappropriated (prior to Statement 54), and is now classified as unrestricted, less any amounts appropriated for the ensuing year's budget (after Statement 54).

Introduction

Background

The Town of Duanesburg (Town) is located in Schenectady County and has a population of approximately 6,000 residents. The Town provides various services to its residents including fire protection, snow removal, and highway maintenance. These services are financed primarily by real property taxes, sales tax distributed by the County, and State aid.

The Town is governed by an elected five-member Town Board (Board). The Town Supervisor (Supervisor) is a member of the Board, and also serves as the chief executive officer and chief fiscal officer. As the chief fiscal officer, the Supervisor is responsible for overseeing the conduct of virtually all of the Town's financial duties. The Board is the legislative body that oversees the Town's operations, finances, and overall management. Although the Board is primarily responsible for overseeing the effectiveness of internal controls, the Supervisor and department heads share responsibility for ensuring that internal controls are adequate and operating effectively.

Objective

The objective of our audit was to examine internal controls over financial condition, Justice Court operations, and information technology (IT). Our audit addressed the following related questions:

- Are Town officials effectively monitoring the Town's financial condition to maintain a reasonable level of fund balance?
- Are internal controls over Justice Court operations appropriately designed and operating effectively to adequately safeguard Town assets?
- Are internal controls over IT appropriately designed to safeguard Town assets?

Scope and Methodology

We examined the Town's financial condition, Justice Court operations, and controls over IT for the period January 1, 2010 to March 3, 2011. Our audit identified areas in need of improvement concerning IT controls. Because of the sensitivity of this information, certain vulnerabilities are not discussed in this report but have been communicated confidentially to Town officials so they could take corrective action.

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
Local Officials and
Corrective Action**

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

Financial Condition

The Board is responsible for making sound financial decisions that are in the best interest of the Town and the taxpayers that fund its operations. This responsibility requires Board members to balance the level of services desired and expected by Town residents with the ability and willingness of the residents to pay for such services. The Board must adopt structurally balanced budgets for all operating funds that provide sufficient recurring revenues to finance recurring expenditures. The Town may retain a reasonable portion of fund balance, referred to as unexpended surplus funds, to use as a financial cushion in the event of unforeseen financial circumstances, and can legally reserve portions of fund balance to finance future costs for various specified objects or purposes. It is also important that long-term plans are in place to ensure that moneys accumulated in operating funds are used for appropriate and authorized purposes. Therefore, the Board must maintain only a reasonable amount of fund balance and adopt budgets that include realistic estimates of revenues and expenditures, with fund balance used as a funding source when appropriate. By following these practices, the Board can ensure that the amount of real property taxes to be raised is no greater than necessary.

The Board has not adopted a policy and Town officials have not developed procedures to govern the level of unexpended surplus funds to be maintained and/or to determine whether the amount maintained is reasonable. The Board's adopted budgets in the fiscal years 2006 through 2010 were not based on realistic estimates of revenues and expenditures, resulting in repeated operating surpluses in the general fund. Consequently, fund balance that was appropriated as a funding source was neither needed nor used. As a result, the Town has accumulated unexpended surplus funds totaling \$2,032,986, or 224 percent of the ensuing year's appropriations, while continuing to levy taxes that were not necessary, and preliminary results show that the Town ended 2011 with a positive budgetary variance of \$255,000 while taxes remained at previous levels. Further, the Board and Town officials did not employ long-term financial planning, which would have helped them identify historical budgeting trends to help maintain reasonable fund balances and ensure that the amount of tax levied was only as much as necessary.

Fund Balance

Fund balance represents moneys remaining from prior fiscal years that can be appropriated to finance the next year's budget and/or set aside as reserves for specific purposes. Towns may carry over the remaining unexpended surplus fund balance from year to year to help

mitigate the effect of unforeseen contingencies, and to ensure the orderly operation of the Town and continuity of necessary services. However, if the fund balance is kept at excessively high levels, moneys that could benefit the Town are not being used, thereby placing an unnecessary burden on the taxpayers. It is important that the Board adopt policies and Town officials develop budgeting procedures to ensure that revenue and expenditure estimates are realistic, so that the amount of fund balance accumulated is reasonable and, therefore, taxes do not exceed necessary amounts. Additionally, the prudent use of fund balance as a funding source to reduce real property taxes is a basic component of local government budgeting.

The Board did not adopt a policy, and Town officials did not develop procedures, to govern the level of unexpended surplus funds maintained. Additionally, the Board had not developed accurate budget estimates. As a result, the general fund accumulated an excessive amount of fund balance. The Town's reported financial activity for the last five completed fiscal years shows that, in particular, the Board's significant underestimation of revenues contributed to a cumulative budget variance of \$1,635,348:

| Table 1: General Fund - Budget Variance | | | | | | |
|--|------------------|------------------|------------------|------------------|------------------|--------------------|
| Fiscal Year: 2006-2010 | | | | | | |
| | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | Total |
| Estimated Revenues ^a | \$715,778 | \$753,460 | \$775,259 | \$666,207 | \$622,791 | \$3,533,495 |
| Actual Revenues | \$1,034,799 | \$999,694 | \$1,044,530 | \$980,865 | \$873,421 | \$4,933,309 |
| Variance | \$319,021 | \$246,234 | \$269,271 | \$314,658 | \$250,630 | \$1,399,814 |
| Percent Variance | 45% | 33% | 35% | 47% | 40% | 40% |
| Appropriations | \$811,778 | \$826,460 | \$851,259 | \$851,207 | \$853,527 | \$4,194,231 |
| Actual Expenditures | \$715,260 | \$762,936 | \$890,467 | \$813,794 | \$776,240 | \$3,958,697 |
| Variance | \$96,518 | \$63,524 | (\$39,208) | \$37,413 | \$77,287 | \$235,534 |
| Percent Variance | 12% | 8% | (5%) | 4% | 9% | 6% |
| Total Budget Variance | \$415,539 | \$309,758 | \$230,063 | \$352,071 | \$327,917 | \$1,635,348 |
| ^a Does not include appropriated fund balance, which is a financing source but not a revenue | | | | | | |

The Board underestimated revenues by approximately \$1.4 million and overestimated expenditures by more than \$235,000 over that time, which ultimately resulted in operating surpluses and no need to use the fund balance that was appropriated. Had the Board reviewed historical financial data, it may have avoided such significant variations. For example, although for these five years the Town received an average of \$373,000 per year in sales tax revenue, the Board budgeted only between \$180,000 and \$215,000 for sales tax revenue during each of these years. According to the Town's preliminary financial statements for fiscal year 2011, this pattern has continued: due to underestimated

revenues and overestimated expenditures, the Town finished the year with a positive budgetary variance of \$255,000.²

Further, as shown in Table 2, the Board did not make prudent use of fund balance as a funding source to reduce real property taxes, even with increased appropriations of fund balance from 2006 to 2010. While the amounts of both the operating surplus and the tax levy decreased over that time, the cumulative operating surplus amount of \$974,612 (as of December 31, 2010) is nearly equal to the \$979,377 in total taxes levied over the same period. In essence, the Town could have eliminated property taxes in 2006 and still have had sufficient revenues to operate.

| Table 2: General Fund - Operating Surplus, Fund Balance, and Tax Levy Fiscal Years 2006-2010 | | | | | | |
|--|--------------------|--------------------|--------------------|--------------------------|--------------------|--------------------|
| | 2006 | 2007 | 2008 | 2009 | 2010 | Total 2006-2010 |
| Beginning Fund Balance | \$1,308,555 | \$1,628,094 | \$1,864,852 | \$2,018,734 ^a | \$2,185,805 | |
| Revenues | \$1,034,799 | \$999,694 | \$1,044,530 | \$980,865 | \$873,421 | \$4,933,309 |
| Expenditures | \$715,260 | \$762,936 | \$890,467 | \$813,794 | \$776,240 | \$3,958,697 |
| Operating Surplus | \$319,539 | \$236,758 | \$154,063 | \$167,071 | \$97,181 | \$974,612 |
| Less: Reserved Fund Balance | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Less: Appropriated Fund Balance | \$73,000 | \$76,000 | \$185,000 | \$230,736 | \$250,000 | |
| Unreserved, Unappropriated Fund Balance | \$1,555,094 | \$1,788,852 | \$1,833,915 | \$1,955,069 | \$2,032,986 | |
| Total Year-End Fund Balance | \$1,628,094 | \$1,864,852 | \$2,018,915 | \$2,185,805 | \$2,282,986 | |
| Tax Levy | \$205,542 | \$199,357 | \$190,859 | \$193,207 | \$190,412 | \$979,377 |
| Operating Surplus as Percentage of Tax Levy | 155% | 119% | 81% | 86% | 51% | 99.6% |
| ^a The difference from the 2008 Year-End Fund Balance is due to a minor prior period adjustment. | | | | | | |

² Estimated revenues were \$659,000 and actual revenues were \$789,000, a variance of \$130,000. Estimated expenditures were \$951,000 and actual expenditures were \$826,000, a variance of \$125,000.

The Board's consistent appropriation of general fund balance for operating purposes should have resulted in a declining fund balance. However, because of annual operating surpluses, no fund balance was actually used to fund operations and, therefore, the fund balance amount increased to an excessive level. At December 31, 2010, the Town had a general fund unexpended surplus fund balance of \$2,032,986, or 224 percent of the ensuing year's general fund budget.

According to the Town's preliminary financial statements, the general fund ended the 2011 fiscal year in a similar situation. The unexpended surplus funds are estimated at approximately \$1,981,000, or 217 percent of the budgeted appropriations for 2012. Although the Town reported an estimated operating deficit of \$37,000 for 2011, breaking the pattern of operating surpluses, Town officials had planned on a deficit of \$291,000.³ However, this deficit did not materialize because, as in prior years, revenues were underestimated and expenditures were overestimated, resulting in a significant positive budgetary variance. Further, the Town's continuing practice of unrealistic budgeting kept the tax levy at approximately the same levels as before: \$198,000 in 2011.

The Town's 2012 adopted budget does not appear to have taken into account these historical operating results, but rather continues with similar levels of appropriations, estimated revenues, appropriated unexpended surplus funds, and taxes⁴ as in the 2011 budget. While a conservative budget is often a good approach, especially in fiscally uncertain times, the Town's 2012 budget appears overly conservative. Based on prior years' results, the 2012 budget materially underestimates revenues and overestimates expenditures and will continue the pattern of keeping fund balance large enough to finance over two years' operations.

Long-Term Planning

An important oversight responsibility of the Board is to plan for the future by setting adequate long-term priorities and goals. To address this responsibility, it is important for management to develop comprehensive, multi-year financial and capital plans to estimate the future costs of ongoing services and future capital needs. Effective multi-year plans project operating and capital needs and financing sources over a three- to five-year period. Planning on a multi-year basis allows Town officials to identify developing revenue and expenditure trends and set long-term priorities and goals. It also allows them to assess the impact and merits of alternative approaches to financial

³ A planned operating deficit occurs when the Board deliberately adopts a budget with appropriations that are greater than the expected revenues, with the difference funded by appropriated fund balance. The 2011 fiscal year \$291,000 planned deficit is based on the amended budget.

⁴ The adopted budget for 2012 contains a tax levy of \$200,878.

issues, such as accumulating money in reserve funds and the use of fund balance to finance operations. Any long-term financial plans should be monitored and updated on an ongoing basis to ensure that decisions are guided by the most accurate information available.

The Board did not develop a comprehensive, multi-year financial and capital plan, nor did it have any other mechanism in place to adequately address the Town's long-term operational and capital needs. Such plans would be a useful tool for the Board to address the large fund balance in the general fund.

Recommendations

1. The Board should adopt a policy and Town officials should develop procedures to ensure that the amount of unexpended surplus funds is reasonable.
2. The Board and Town budget officer should develop revenue and expenditure estimates for the annual budget that are realistic to ensure that the amount of fund balance appropriated in the budget is actually used.
3. The Board should develop long-term financial and capital plans that project operating and capital needs and financing sources for a three- to five-year period. If the Board believes it is necessary to accumulate money for a future, specifically planned purpose, it should consider formally establishing authorized reserves as provided for in statute.

Justice Court

A well-designed system of internal controls ensures that cash received by the Court is safeguarded and that Court activity is properly recorded and reported. Justices are responsible for adjudicating cases brought before their court and accounting for and reporting all related Court financial activities. The Justices must ensure that controls are in place and working effectively, particularly when there is a limited segregation of duties. To meet that responsibility, they must maintain complete and accurate records and safeguard all moneys collected. Essential procedures include the monthly reconciliation of bank accounts to Court records, and a monthly accountability which compares cash on hand and on deposit to detailed lists of amounts due to the State Comptroller's Justice Court Fund (JCF) and other outstanding liabilities, such as bail.

During our audit period, the responsibilities for recordkeeping, including preparing monthly bank reconciliations, were delegated to the Court clerks assigned to each of the two Town Justices. The Court uses a computerized accounting system that produces a printed record of current pending bail, but does not provide a bail balance for previous points in time. However, each of the Justices' clerks also recorded bail in a supplemental manual bail book.

We identified weaknesses in the Court's internal controls over financial operations. There was no documentation indicating that monthly bank reconciliations had been performed, and neither Justice performed a monthly accountability or reconciled their bail accounts. Because of these weaknesses, the Justices have limited assurance that all moneys collected were properly recorded and accounted for, and the risk is increased that Court funds could be misappropriated without detection or correction.

We reviewed the bank statements, canceled checks, manual and computerized records, and JCF reports for six months⁵ during the 2010 fiscal year to determine whether proper bank reconciliations and accountability analyses had been prepared.

Bank Reconciliations and Monthly Accountabilities — Bank reconciliations and accountability analyses document the status of moneys held by the Court at any point in time, and provide a means of verifying that the Court is properly addressing its custodial responsibilities. Although Court personnel told us that monthly

⁵ January, February, April, June, September, and October

bank reconciliations were performed, there was no documentation to confirm this, or to show that the adjusted bank balances had been reconciled to the checkbook registers. Additionally, monthly accountabilities were not performed, and neither Justice had kept an accurate accounting of bail.

Bail Records — The Justices are responsible for maintaining an appropriate record of all bail received and disbursed, indicating when and by whom the bail was paid and to which case it relates, and identifying the date, check number, and to whom the bail was subsequently disbursed.⁶ Additionally, the Justices must ensure that the bail record is reconciled to the bank account balance on a monthly basis.

We found that the amounts in the manually maintained bail book did not agree with the balances on the computerized report, and had never been reconciled. For example, the computerized bail reports identified balances of \$6,346 and \$4,950 for the two Justices, but the Justices confirmed to us that their bail account balances were only \$750 and \$2,950, respectively, as noted in their manual records. Since the computerized bail record was to reflect current pending bail, we determined that the discrepancies between the Justices' manual and computerized records occurred because the computerized record was not always updated. As of the end of our fieldwork in September 2011, the Justices were in the process of reviewing the older listed bail balances to ensure their proper disposition.

Because the Justices did not ensure that monthly bank reconciliations were performed, monthly accountabilities completed, and pending bail records properly maintained, there is a risk that errors or irregularities can occur and remain undetected for several months or years.

Recommendations

4. The Justices should prepare monthly bank reconciliations and analyses of Court liabilities for comparison with available cash. Any differences should be promptly identified and investigated, and, if necessary, corrective action taken.
5. The Justices should ensure that all bail received and disbursed is properly accounted for.

⁶ Bail levied on defendants is either returned when the case has been adjudicated or used to pay fines and fees imposed by the Court.

Information Technology

Town officials are responsible for developing internal controls systems, including policies and procedures, to safeguard computerized data and assets. Computerized systems and electronic data are a valuable resource that Town officials rely on for making financial decisions, processing transactions, keeping records, and reporting to State and Federal agencies. It is therefore essential for the Town to develop a disaster recovery plan to help prevent the loss of computerized data and for resuming operations in the event of disaster, implement effective procedures for data backups and secure storage of backup media, and adopt policies that monitor remote access by authorized users.

We found weaknesses in the Town's internal controls over IT. Town officials did not adopt a formal disaster recovery plan, and the Town has not adopted policies and procedures for proper data backup and storage and for remote access by the Town's system maintenance vendor. As a result, the Town's computer data is at risk of damage or loss.

Disaster Recovery Plan

An effective system of internal controls includes a disaster recovery plan to help prevent or minimize the loss of computerized equipment and data and provide procedures for recovery in the event of an actual loss. Even small disruptions in electronic data systems can require extensive effort to evaluate and repair. Therefore, a disaster recovery plan should include precautions to minimize the effects of a disaster so that Town officials can either maintain or quickly resume critical functions. The plan may also include a significant focus on disaster prevention.

The Board has not adopted a comprehensive disaster recovery plan. In the event of a disaster, Town personnel have no formal guidelines or plan to follow to prevent the loss of equipment and data, or procedures for data recovery. This could lead to the loss of important financial data and serious interruptions to Town operations, such as not being able to process checks to pay vendors and employees. The Town Clerk produced a list of data backup and recovery procedures provided by the Town's computer services vendor, which does not constitute an acceptable disaster recovery plan. A formal disaster recovery plan would need to be more comprehensive, address threats to the Town's IT system, and be formally adopted by the Board.

Data Backup

A strong system of internal controls includes a system to back up (create a copy of) computer processed data. Good business practices require Town officials to run daily backups and keep the backup data as current as possible, and to store backup data at an environmentally and physically secure offsite location for retrieval in case of an emergency.

Town officials have not adopted comprehensive data backup policies and procedures for the computer-processed data within the Town's departments. According to Town officials, although the Town's IT service provider performs periodic backups of data files to a tape, the tape is not stored in a secure offsite location for retrieval in case of emergency, but instead on Town premises in a locked safe. While the safe provides a limited level of security, storing the backup tapes on site subjects the backup media to the same risks (disasters) as the original data and defeats the purpose of a backup control procedure.

Remote Access

Effective internal controls ensure that remote access – the ability to access the computer from the Internet or other external sources – is controlled and monitored so that only authorized individuals may enter or retrieve data. Internal controls include policies and procedures addressing how remote access is granted, who is given remote access, and security issues such as how remote access will be monitored.

The Board has not established policies and procedures for remote access to ensure that computerized data is properly safeguarded. Town officials granted remote access to the Town's computer operations to a private firm for repair and maintenance of the computer system. While Town staff does authorize access to the system, the authorization is not granted for each instance of remote access and no one monitors remote users' activity after they enter the system. As a result, there is a risk that computerized data could be compromised and unauthorized activity could go undetected.

Recommendations

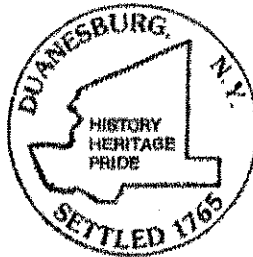
6. The Board should develop and adopt a comprehensive disaster recovery plan that addresses the range of potential threats to the Town's IT system and provides procedural guidance for employees to follow if the Town's computer operations are interrupted or its IT systems or data incur loss or damage. Town officials should distribute the plan to all responsible parties, periodically test the plan, and update the plan as needed.
7. Town officials should ensure that backup copies of data are stored at a secure offsite location.
8. The Board should develop and adopt policies and procedures governing outside users' remote access rights to the Town's computer system.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

René J. Merrihew, Town Supervisor
Leah Lennon, Town Clerk



Jean Frisbee, Council Member
John D. Ganther, Jr., Council Member
Charles Leoni, Council Member
Francis R. Potter, Council Member

Town of Duaneburg

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Duaneburg, NY 12056
Phone 518-895-2331
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April 2, 2012

NYS Office of the State Comptroller
Division of Local Government and School Accountability
One Broad Street Plaza
Glens Falls, NY 12801

Dear office of the State Comptroller:

On behalf of the Town Board of the Town of Duaneburg, this letter is in response to the draft of your Report of Examination covering the period of January 1, 2010 – March 3, 2011. The Town Board would first like to take this opportunity to thank you for your interest in the Town as well as the patience and professionalism of the auditors performing this valuable service. We are generally pleased with the outcome of the audit considering the substantial scope and elements your office reviewed. As we anticipated, the audit confirmed that there were no improprieties or misappropriations of any kind. The internal controls currently in place are more than adequate to assure residents of Duaneburg of the safety of their funds.

Unexpended Surplus Funds

We acknowledge the recommendations made by the Office of the State Comptroller (OSC) with respect to establishing authorized reserve funds to reduce the amount of unexpended surplus funds. The Town, in fact, has distinct plans for a portion of the unexpended surplus funds but admittedly did not set up formal reserve funds for specific purposes. These times are tumultuous and what used to be easy in the past is no longer so. There are so many variables and important things to consider prior to spending the people's money. For example: We have long considered and planned a building addition to our little town hall, to accommodate the growing needs of our residents and of our court. Approximately four years ago the Schenectady County Sheriff's Department discussed locating a substation in our Town. We approached them to gauge their interest in a consolidation of services. The Town Board thought perhaps our Judges could join them in their new building negating the need for a town hall expansion. This concept remains under consideration. We did not want to commit the funds to a designated reserve fund until we had a more definitive plan.

Recently, the County of Schenectady graciously transferred to the Town, ownership of a small parcel of land in the center of town to create a Veteran's memorial park. We intend to set aside a portion of our unexpended surplus funds to improve this parcel as well as tend to some much needed repairs of ball fields and other projects in our other two parks.

The Town is also faced with a consolidation of the dispatching of emergency services within the county of Schenectady. The costs of this project will be passed on by the county to all of the municipalities in the county. At this time the actual cost to the town of Duaneburg is unclear, although preliminary estimates indicated that the annual costs would be substantial. We plan to designate some of our fund balance to offset the cost of this project to taxpayers.

The Town Board has also recognized the need for modifications and/or repairs at our Highway Garage, for which funds must be available.

The most important and most difficult circumstances to plan for are emergencies and catastrophes. Relatively speaking, and as compared to our neighboring towns, Duaneburg survived Hurricane Irene and Tropical Storm Lee very well. The Town did, however, suffer severe damage to our roads. Almost every culvert was impacted in some way. The cost of the resulting repairs is staggering, and is estimated at approximately \$550,000. FEMA should reimburse a portion of some of the costs, but the amount of reimbursement is unknown. Even so, FEMA simply provides reimbursement after the Town expends funds, subject to FEMA's approval. Regardless, the repairs must be made. We understand that the reimbursement process may exceed four years. Also, as a result of the storms, homeowners lost their homes and the Town has recently discussed participation in a "buyout" program for those that qualify. The total cost of this program is unknown.

In addition to the storm related damage, two Town roads need major emergency culvert repair. These repair expenses are not eligible for FEMA reimbursement, and the cost to the taxpayers is estimated to \$349,000. The combined estimated costs from storm damage (\$550,000) and emergency repairs (\$349,000) is approximately \$899,000.

The town is in the process of forming a third sewer district for the hamlet of Duaneburg. This is a very costly process, and until it is constructed and revenue generated from users of the district, the Town must expend substantial funds. During the construction of our first sewer district in the Village of Delanson we were able to use funds from the unexpended surplus fund until we could begin collecting revenue from that district. We hope for that luxury during this project.

Overestimation of Expenditures and Underestimation of Revenues

The Town also acknowledges your recommendation to develop a better plan of estimating expenditures and revenues. We understand your findings when examined and presented as a broad stroke overview. The tables you provided in the report were helpful and will be used in the future. We need to clarify, if only for the people in our Town, that the budget is not just a broad stroke overview but a line by line estimate influenced by many factors.

Concerning revenues, and by way of example, the sales tax revenue provided by Schenectady County is our largest revenue source after tax collection. The Town's share is allocated through a formula that allows for a guaranteed portion. Any additional funds disbursed to the Town are dependent on sales tax collected throughout the county above and beyond the original estimates. The guaranteed portion is \$461,757. Any portion above the guaranteed amount is subject to current levels of spending by consumers and sales tax generated in the county. In the current economic climate, we were not comfortable appropriating more than \$500,000 to our budget funds. We also note that mortgage tax, which is another revenue source, has declined from \$246,312 in 2006 to \$117,296 in 2011. This decline cannot be predicted and speaks volumes as to the difficulty in estimating an accurate amount of revenue.

Concerning expenditures, there have also been mitigating factors during the 2006 – 2010 time period reviewed. For example, in one year we budgeted our usual amount for Election Expense, but Schenectady County took control of the election costs leaving that amount unexpended in our budget. Further, each year the costs of the NYS Retirement system and health insurance are undeterminable until long after we are required by law to have our budget completed and approved. One year we reacted to reports of a 16% increase for retirement system costs. The actual increase came in much lower, again leaving the remaining amount unexpended.

In a budget of our size, even small variations on a budget line can give the appearance of gross over budgeting, especially when presented in percentage form.

Information Technology

The Town acknowledges your recommendation to adopt a comprehensive disaster recovery plan for the Town's IT System. We disagree with this finding as we do have a disaster recovery plan that includes offsite backup of data on a daily basis at an off-site location. We will formally adopt this plan. We also acknowledge that the plan was not distributed nor periodically tested, and that we have not yet adopted procedures governing remote access.

See
Note 1
Page 21

Conclusion

In closing, when considering the "outside" events that have substantial effect on our Town and examining the disastrous results for those Towns not carrying an adequate reserve fund to cover unexpected costs, the Town Board takes pride in having a surplus and not a deficit, having the ability to meet our operating expenses and having funds available should a serious emergency arise.

We would again like to thank you for the report and we look forward to working with you in the future as we develop our Corrective Action Plan.

Sincerely:



Rene J. Merrihew
Duaneburg Town Supervisor

Duanesburg Town Court
5853 Western Turnpike
Duanesburg, New York 12056
518-895-8922

March 30, 2012

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


Dear Sirs,

From January 1, 2010-March 3, 2011 an examination of the Financial Condition and Internal Controls over Justice Court Operations and Information Technology was performed in the Town of Duanesburg. Part of this report dealt with the Justice Court. The two areas that were found to be in the need of some improvements were the bank reconciliations and that the bail funds were monitored and disbursed properly.

Since this report I have instituted a policy that ensures that the bail fund is kept up to date and that the balance is carried forward every month even though no bail was taken in or disbursed thus making it easy to look up the bail monies that are in my account at any given time and match them to a bank reconciliation. I have also implemented the use of monthly bank reconciliations and analyses of court liabilities for comparison with available cash using the monthly checklist for review of Justice Court records from the Justice Court Handbook and will do the report at the end of each month. These new procedures should insure the courts accountability as to any money issues

I would like to thank the auditors for their thoroughness and professionalism while performing their duties. I believe that the recommendations will make this office more proficient as well as accountable.

Sincerely,


Robert B. Butler
Town Justice

APPENDIX B

OSC COMMENT ON THE TOWN'S RESPONSE

Note 1

During our audit fieldwork, Town officials indicated that the backup tape is stored on Town premises in a locked safe, not offsite. We have modified the report to clarify that the Town has no formally adopted policies for disaster recovery and data backups. The distribution and implementation of comprehensive, formally adopted policy guidelines will help preserve the Town's critical data in the event of a disaster.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial condition and control environment, cash receipts and disbursements, cash management, Justice Court operations, water and sewer rents, purchasing, payroll and personal services, and information technology.

During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions, and reviewed pertinent documents, such as Town policies and procedures manuals, Board minutes, and financial records and reports.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft, and/or professional misconduct. We then decided on the reported objectives and scope by selecting for audit those areas most at risk. We selected financial condition, Justice Court operations, and information technology for further testing.

To accomplish our audit objective and obtain valid evidence, our procedures included the following:

- We analyzed various account balances in the Town's accounting records and verified their accuracy.
- We interviewed the Town Clerk and the independent contractor that provided IT services to the Village to obtain an understanding of internal controls over the Town's computerized system.
- We interviewed Court personnel to gain an understanding of their operation.
- We compared cash receipts and disbursements with supporting documentation, such as receipt books, bank statements, and canceled checks.
- We compared amounts recorded in Justices' accounting records to amounts deposited and the amounts included in the Court's monthly reports to JCF.

We conducted this performance audit in accordance with generally accepted government auditing standards (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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

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APPENDIX E
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Steven J. Hancox, Deputy Comptroller
Nathalie N. Carey, Assistant Comptroller

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**LEGAL NOTICE
NOTICE OF PUBLIC HEARINGS
TOWN BOARD
TOWN OF DUANESBURG**

PLEASE TAKE NOTICE, that the Town Board of the Town of Duanesburg, New York, will meet at the Town Offices of Duanesburg located at 5853 Western Turnpike, on **Thursday, October 26, 2023 at 7:00 p.m.** for the purpose of hearing all persons interested in the matter of:

The Town of Duanesburg is proposing a local law requiring the inspection of on-site septic systems prior to transfer of ownership of any real property within the Duane Lake District.

Persons may appear at the hearing in person and may also submit written comments to the Town Board prior to or at such hearing.

BY ORDER OF THE TOWN BOARD
TOWN OF DUANESBURG

Dated: October 12, 2023

LOCAL LAW NO. 4 FOR 2023

A LOCAL LAW TO AMEND THE DUANESBURG ZONING ORDINANCE TO REQUIRE SEPTIC SYSTEM INSPECTION PRIOR TO THE TRANSFER OF OWNERSHIP IN THE DUANE ZONING LAKE DISTRICT (L-2)

BE IT ENACTED by the Town of Duanesburg Town Board ("Town Board") as follows:

SECTION 1: Title of the Local Law

The local law shall be entitled "Septic System Inspection Prior to the Transfer of Ownership of Property in the Duane Lake Zoning District (L-2)."

SECTION 2: Authorization

This local law is adopted pursuant to the NYS Municipal Home Rule Law and General Municipal Law.

SECTION 3. Legislative intent and purpose.

It has been reported to the Town Board that some residents of the Town of Duanesburg use Duane Lake as a source of potable water and that there are older septic systems located on properties proximate to Duane Lake that do not meet the requirements established by local, State and County laws and regulations for on-site private septic systems. The Duane Lake Association has represented to the Town that the majority of the residents surrounding Duane Lake do not support the establishment of a Town Sewer District for Duane Lake with a public sewer system due to the cost of such a system. As a result there are very few options available to the Town of Duanesburg for protecting public health and safety related to Duane Lake which is privately owned and controlled. Given this one means of moving toward ensuring effective protection of Duane Lake waters is the periodic inspection of on-site private septic systems to discontinue the operation of such systems to prevent contamination of Duane Lake.

The purpose of this Local Law is to adopt inspection requirements for on-site private septic systems when property changes ownership in the Duane Lake Zoning District (L-2).

SECTION 4. Inspection of Existing Septic Systems Prior to Transfer of Ownership in the Duane Lake Zoning District (L-2).

Prior to transfer of ownership of any real property within the Duane Lake Zoning District (L-2) which contains a habitable structure, and prior to any further occupation of said residence, the on-site septic system thereupon shall be thoroughly inspected and approved in writing by a qualified inspector (see below) to determine if the on-site septic system meets or does not meet all the requirements of local, County, State and federal law and regulations for such on-site septic systems.

SECTION 5. Qualifications.

Inspections shall be performed by a licensed or qualified inspector: a person, corporation, or similar business entity who a) by authority, certification or license "in good standing" granted by the State of New York is a professional engineer, or septic system engineer/designer, or 2 b) by current certification, training, or licensing in the discipline(s) of septic system design, septic installation and/or septic inspection such inspector has been trained by the New York Onsite Wastewater Treatment Training Network, Inc. (OTN), or equivalent training recognized by the New York State Department of Health or the New York State Department of Environmental Conservation. Proof of such qualifications including a certification by the inspector as to his or her qualifications shall be provided to the Town Building Inspector prior to any inspections being undertaken.

SECTION 6. Submission to the Building Inspector

All inspection reports shall be submitted to the Town of Duanesburg Building Inspector within 10 days of undertaking the inspection.

SECTION 7. Failed inspection requirements.

If the property owner fails to file an inspection report or the report indicates that the system has failed the inspection, the property owner will have thirty (30) days to repair or replace the septic system and submit an approval in writing by a qualified inspector (see above). If after thirty (30) days the property owner does not submit an approval in writing by a qualified inspector, the certificate of occupancy for such residence relying upon such a failing system shall be revoked until such time as the system is repaired or replaced and an approval in writing by a licensed or qualified inspector of the repaired or replaced system has been provided to the Town Building Inspector and accepted by the Town Building Inspector. The Town Building Inspector shall have the authority to reasonably extend the thirty (30) day time periods as necessary due to limitations caused by the weather or unavailability of contractors or materials.

SECTION 8. Supersession

Pursuant to the powers granted by the Municipal Home Rule, this Local Law supersedes all provisions of the Town of Duanesburg Town Code, in so far as such statues are inconsistent with this Local Law and any other laws or regulations of the Town of Duanesburg are superseded to the extent necessary to give this Local Law full force and effect. All other provisions shall remain the same.

SECTION 9 Severability

Each separate provision of this Local Law shall be deemed independent of all other provisions therein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

SECTION IO. Effective Date.

This local law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Municipal Home Rule Law § 27.

Comments by Alan Knight
Hearing, 26 Oct 23

1. The Duane Lake Association holds the deed for Duane Lake, and, as owner, acts as steward of the lake for the benefit of everyone around the lake and the 50,000 people downstream who rely on the Watervliet Reservoir.

For past several years the Duane Lake Association has been sending out newsletters and holding meetings to help our neighbors there consider four alternative ways of keeping septic effluent out of the lake. Everyone around the lake—not just members—was invited to vote and over 70% did so. The strongest consensus was that doing nothing was not an option.

We are here tonight to discuss a proposal signed onto by 77 voting-age residents. This is the course of action a very large majority agreed upon. But it's an action only this Town Board can take.

And we commend this Town Board for giving it serious consideration and the Town Attorney for writing it. Thank you!

2. I have received three suggested modifications to the Town's draft.
 - a. To lengthen the 30-day period specified for compliance. Given a wet summer like this one and the difficulty in lining up a contractor, a longer period—perhaps 90 days—might be more realistic.
 - b. Perhaps septic systems installed and approved in the previous five years could be exempted.
 - c. The wording “. . . upon transfer of ownership” is critical in that properties do transfer from one generation to the next without being sold and thus might escape inspection. This would evade the purpose of inspection. However, at least two properties at Duane Lake are owned by a trust and thus might forever escape necessary inspection. Perhaps some wording could be found to address this loophole.
3. While the Duane Lake Association has promoted this amendment to the zoning rules for Duane Lake, it has also been working for at least five years to have the Schenectady County Legislature enroll in the NY State Septic Replacement Program. I am pleased to inform the Town Board that this has now happened—just this past week. [See the letter.] If there are no further roadblocks, this means that anyone around Duane Lake who replaces his or her septic system would receive a 50% reimbursement, up to \$10,000. This would greatly ease the financial burden for anyone required by this zoning ordinance amendment to replace their septic system.
4. In closing, I would like to address the question of free market solutions and liberty, a concern raised by an opponent of this proposal.

Since 1927 Duane Lake septic systems have been governed—or perhaps ungoverned—by the free market. Anyone who takes a walk around the lake in late February and breathes in the fresh air will also breathe in the aroma of septic effluent from as many as six defective septic systems. Clearly the free market has failed to catch those sources of pollution.

Even in a free society we have necessary laws. The fundamental purpose of government is to put in place necessary limitations to abuses of liberty. That's why we have speed limits and police departments. That's why we have weight limits on bridges. That's why we have mandatory safety inspections for trucks, cars, and buses. And that's why we need mandatory inspections of septic systems.

###



County of Schenectady

NEW YORK

ANTHONY JASENSKI
CHAIR OF THE LEGISLATURE

Legislator, District 4
Rotterdam, Duaneburg,
Princetown

SCHENECTADY COUNTY LEGISLATURE

County Office Building
620 State Street – 6th Floor
Schenectady, New York 12305
Tel: (518) 388-4280 Fax: (518) 388-4591
Website: www.schenectadycountyNY.gov

October 17, 2023

Hon. Neil Breslin
NYS Senate
172 State Street, Capitol Building, Room 430
Albany, NY 12247

Dear Senator Breslin,

Earlier this year, representatives of the Duane Lake Association approached Schenectady County for assistance with replacement of the outdated and failing septic systems located on properties surrounding the lake.

In exploring options to help the Duane Lake residents, we have determined that the best avenue to pursue is the NYS Environmental Facilities Corporation's Septic System Replacement Fund Program. This program provides funding to counties to help homeowners replace cesspools and septic systems. Participating counties provide grants to reimburse property owners for up to 50% of the costs (up to a maximum of \$10,000) of their eligible septic system projects.

We have recently sent a letter to the NYS Environmental Facilities Corporation (enclosed) pursuant to NYS Public Authorities Law § 1285-u (c) seeking the inclusion of Schenectady County in the program.

Once a county is on the list of eligible counties, the state Department of Environmental Conservation and the Department of Health determined priority geographic areas in which property owners are eligible to participate based on the following factors:

- Presence of a sole-source aquifer used for drinking water
- Known water quality impairment linked to failing septic systems, and/or
- The ability for septic system upgrades to mitigate water quality impairments.

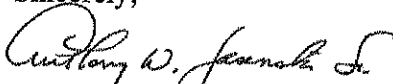
We strongly believe that Duane Lake fits the criteria above, and as such, feel that Schenectady County should be included in the list of counties eligible to participate in the Septic System Replacement Fund Program, and Duane Lake should be designated as a priority geographic area.

On behalf of my colleagues on the Schenectady County Legislature, I am writing to request your assistance in urging the Environmental Facilities Corporation to grant Schenectady County's request to be included in the Septic replacement Program. Further, we would appreciate your assistance in encouraging the NYS Department of Environmental Conservation and the NYS Department of Health to add Duane Lake to the list of priority geographic areas so we can

provide the residents of Duane Lake the help they need to replace their aging and failing septic systems.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Anthony W. Jasenski, Sr.", written in dark ink.

Anthony Jasenski, Sr.

Chairman, Schenectady County Legislature



County of Schenectady

NEW YORK

ANTHONY JASENSKI
CHAIR OF THE LEGISLATURE

Legislator, District 4
Rotterdam, Duaneburg,
Princetown

SCHENECTADY COUNTY LEGISLATURE

County Office Building
620 State Street – 6th Floor
Schenectady, New York 12305
Tel: (518) 388-4280 Fax: (518) 388-4591
Website: www.schenectadycountyNY.gov

October 17, 2023

Ms. Maureen A. Coleman, Esq.
President and Chief Executive Officer
Environmental Facilities Corporation
625 Broadway
Albany, NY 12207

Dear Ms. Coleman,

Pursuant to NYS Public Authorities Law § 1285-u (c) please accept this letter as notice that the County of Schenectady is seeking authority to administer a septic system replacement program within its municipal boundaries and agrees to abide by the program's goals, guidelines, eligibility requirements and reimbursement procedures and provide information to property owners regarding program parameters including eligibility criteria.

Please feel free to contact my office if you have any question or require any additional information.

Sincerely,

A handwritten signature in cursive script, reading "Anthony W. Jasenski, Sr.".

Anthony Jasenski, Sr.
Chairman, Schenectady County Legislature



County of Schenectady

NEW YORK

ANTHONY JASENSKI
CHAIR OF THE LEGISLATURE

Legislator, District 4
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Tel: (518) 388-4280 Fax: (518) 388-4591
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October 17, 2023

Hon. Angelo Santabarbara
NYS Assembly
Legislative Office Building, Room 654
Albany, NY 12248

Dear Assemblyman Santabarbara,

Earlier this year, representatives of the Duane Lake Association approached Schenectady County for assistance with replacement of the outdated and failing septic systems located on properties surrounding the lake.

In exploring options to help the Duane Lake residents, we have determined that the best avenue to pursue is the NYS Environmental Facilities Corporation's Septic System Replacement Fund Program. This program provides funding to counties to help homeowners replace cesspools and septic systems. Participating counties provide grants to reimburse property owners for up to 50% of the costs (up to a maximum of \$10,000) of their eligible septic system projects.

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- Presence of a sole-source aquifer used for drinking water
- Known water quality impairment linked to failing septic systems, and/or
- The ability for septic system upgrades to mitigate water quality impairments.

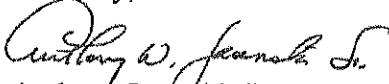
We strongly believe that Duane Lake fits the criteria above, and as such, feel that Schenectady County should be included in the list of counties eligible to participate in the Septic System Replacement Fund Program, and Duane Lake should be designated as a priority geographic area.

On behalf of my colleagues on the Schenectady County Legislature, I am writing to request your assistance in urging the Environmental Facilities Corporation to grant Schenectady County's request to be included in the Septic replacement Program. Further, we would appreciate your assistance in encouraging the NYS Department of Environmental Conservation and the NYS Department of Health to add Duane Lake to the list of priority geographic areas so we can

provide the residents of Duane Lake the help they need to replace their aging and failing septic systems.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Anthony W. Jasenski, Sr.".

Anthony Jasenski, Sr.
Chairman, Schenectady County Legislature

CHARLES V. PATRICELLI
MAYOR

CITY OF WATERVLIET



JOSEPH LACIVITA
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COUNCILWOMAN

PETER M. TORNCELLO
COUNCILMAN

January 31, 2020

Mr. Tom Berkman
General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1500

Dear Mr. Berkman:

A major tributary for our Watervliet Reservoir in Guiderland is Duane Lake.

It has come to our attention that Duane Lake, listed by the Department of Environmental Conservation (DEC) as "impaired," is becoming ever more frequently the subject of your department's HABs—harmful algae bloom—bulletins that warn users of the lake water to refrain from drinking and recreational contact. This poses a serious problem for a municipal water supply such as ours.

Fortunately, a partial remedy is at hand; the *New York State Septic Replacement Program*. It offers up to \$10,000 (or 50 percent) per home owner to upgrade underperforming backyard septic systems, which are known to leak phosphorus into the water, thereby fueling the algae blooms.

However, we have been informed that the DEC Office of Legal Counsel has taken the position that the Duane Lake community is ineligible for these funds since the lake is closed to public recreational access and that such use of funds would violate a State Constitution prohibition, specifically Article VII, Section 8: "*The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking . . .*"

While we fail to understand how recreational access might overcome this Constitutional prohibition, it is clear that protecting a public water supply is an important public purpose, one specifically targeted by the enabling legislation that created the program.

Indeed, the announcement of the program issued by Governor Andrew Cuomo's office stated, "*Through this program, the state will provide funds to counties to reimburse eligible property owners for a portion of the cost of replacing failing septic systems and installing more environmentally effective systems.*"

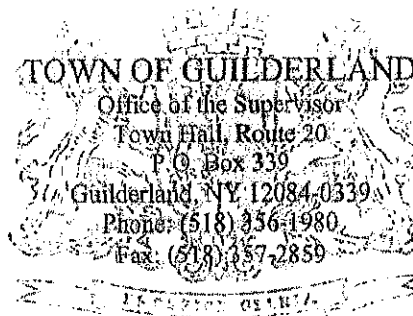
On behalf of the citizens of Watervliet, I ask that you please reconsider your department's position on this matter and confirm to the Duane Lake community and the Schenectady County Legislature that homeowners at Duane Lake do indeed qualify, and encourage them to enroll in the program. The health of at least 50,000 people is at stake.

Respectfully,



Charles V. Patricelli
Mayor

cc: John McDonald, New York State Assemblyman
Neil Breslin, New York State Senator
Mark Klotz, Director, NYSDEC Division of Water



PETER G. BARBER
SUPERVISOR

JESSICA MONTGOMERY
SECRETARY

February 10, 2020

Thomas Berkman, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12205

Dear Mr. Berkman:

As DEC's Region 4 Office knows well, the Town of Guilderland and City of Watervliet actively protect and seek to improve water quality of the Watervliet Reservoir which is the sole source of potable water for City residents and a major water source for Guilderland residents.

Duane Lake is a private lake located in the Town of Duanesburg, Schenectady County. Duane Lake is identified as an "Impaired Water Body" in "New York State 2014 Section 303(d) List of Impaired/TMDL Waters." DEC cites "failing and/or inadequate on-site septic systems" as the root cause for the water quality's degradation including harmful algae growth, poor water clarity, and increased levels of phosphorus and nitrogen. DEC's bulletins warn of harmful algae bloom and urge residents to refrain from drinking and recreational contact.

Duane Lake is the headwater of the Bozenkill Creek which is a main tributary to the Watervliet Reservoir. Both the City and Town have undertaken expensive, with DEC's approval, measures to improve the water quality of the Watervliet Reservoir, including water agitators to discourage surface growth of invasive species and expensive chemical treatments. Among the greatest threats to water quality is the influx of phosphorus and nitrogen from off-site sources like Duane Lake. The Town's cost of treating surface water at its filtration plant has substantially increased due to the explosion in organic materials, algae, and water chestnuts caused, in large part, by nitrogen and phosphorus laden water. During the relicensing of the City's hydroelectric facility at the Reservoir, DEC Region 4 Office, US Fish & Wildlife Service, City, and Town have reviewed numerous studies, including a draft 2019 Water Quality Report

which notes the negative impact of inflows of nitrogen and phosphorus into the Reservoir. A copy of this draft report is available at DEC Region 4's Office.

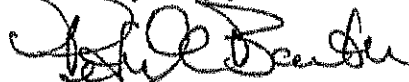
The New York State Septic System Replacement Program offers up to \$10,000 (or 50 percent) for homeowners to upgrade underperforming septic systems, which are known to leak phosphorus into the water and lead to harmful algae blooms. In announcing this program, Governor Andrew Cuomo stated that: "Through this program, the state will provide funds to counties to reimburse eligible property owners for a portion of the cost of replacing failing septic systems and installing more environmentally effective systems."

We have been informed that DEC's Office of Legal Counsel has concluded that private septic systems on Duane Lake are not eligible because Duane Lake is closed to the public, and the use of public funds for private sewers would violate New York State Constitution, Article VII, Section 8 ("The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking...").

We urge DEC to reconsider. This important program is administered by counties to replace private septic systems. Nearly all septic systems serve private homes, and the program makes no distinction on whether the water body is private or public. But even if a public benefit is required, there is no dispute that, as shown in 2019 Water Quality and other reports, the reduction of nitrogen and phosphorus discharges into Duane Lake would help in the multi-agency effort to protect water quality at the Watervliet Reservoir. The protection of public water supplies is a fundamental obligation of all government bodies, and is the essential public benefit behind the septic replacement program.

Upon behalf of Town of Guilderland residents, we urge your office to support our joint effort to protect public water sources and inform Schenectady County that it can participate in the program for the replacement of failing septic systems on Duane Lake.

Very truly yours,



Peter G. Barber
Town Supervisor

cc: NYS Senator George Amedore
NYS Assemblyperson Patricia Fahy
Mark Klotz, Director, NYSDEC Division of Water
Watervliet Mayor Charles V. Patricelli
Duane Lake Association, Inc.

**THE SENATE
STATE OF NEW YORK**

VICE PRESIDENT PRO TEMPORE

CHAIR
ETHICS AND INTERNAL GOVERNANCE

CHAIR
INSURANCE COMMITTEE

CO-CHAIR
LEGISLATIVE ETHICS COMMISSION

MEMBER
**LEGISLATIVE COMMISSION ON RURAL
RESOURCES**



NEIL D. BRESLIN
SENATOR, 46TH DISTRICT

COMMITTEES
FINANCE
HIGHER EDUCATION
JUDICIARY
RULES

October 27, 2023

Maureen A. Coleman, President
New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207

RE: Schenectady County, Septic System Replacement Fund Program

Dear President Coleman:

As the State Senator who represents a portion of Schenectady County, I wish to express my strong support for the inclusion of Schenectady County in the Septic Replacement Fund Program. This much needed financial benefit may reach members of my constituency in households in need of repairs beyond personal capabilities.

The County of Schenectady submitted a request for this inclusion on October 17, 2023, agreeing to abide by the program's goals, guidelines, eligibility requirements, reimbursements procedures, and provide information to property owners regarding the program parameters and eligibility criteria. Please see contact information below for Anthony Janenski, Sr., Chairman of the Schenectady County Legislature, if further discussion on this matter is needed.

Anthony Jasenski, Sr.
Chairman Schenectady County Legislature
620 State Street, 6th Floor
Schenectady, New York 12305
Tel: (518) 388-4280 Fax: (518) 388-4591
www.schenectadycountyNY.gov

Thank you for your time and consideration. Should you require any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink that reads "Neil D. Breslin".

Neil D. Breslin
Member of Senate

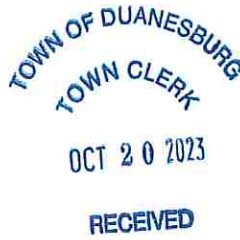
ALBANY OFFICE: ROOM 430 STATE CAPITOL • ALBANY, NEW YORK 12247 • TEL (518) 455-2225 • FAX (518) 426-6807
SATELLITE OFFICE: 61 CHURCH STREET • 3RD FLOOR • AMSTERDAM, NY 12010 • TEL (518) 842-2159
E-MAIL: BRESLIN@NYSENATE.GOV • TWITTER: @NeilBreslin46 • FACEBOOK: NeilBreslin

ALL MAIL SHOULD BE SENT TO THE ALBANY OFFICE.



Sonya Mulvihill
449 W Duane Lake Rd
Duanesburg, NY 12056

Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056
October 15, 2023



I'd like my opinion to be 'on the record.' Please read letter aloud if that is the only way to ensure this. Thank you.

To all members of the Duanesburg Town Board,

Unfortunately, I am unable to attend the Oct 26th meeting of the Town Board; however, I would like to voice my support **IN FAVOR** of the septic resolution for Duane Lake. It is important that a *thorough* inspection (efficacy of system, condition of tank, etc.) not *cursory* inspection ("Yup, there's a septic") of a home's septic system take place at the time of transfer of ownership. A complete septic inspection and timely remediation of any issues are the goals, regardless of who pays for the improvement.

Why do I feel so strongly about this issue?

1. Septic tanks, like any other aspect of a home, are not designed to last indefinitely. At some point they will require updates/repairs/replacement. This inspection just helps to ensure that any potential issues do not go undetected.
2. Many residents of Duane Lake use the lake for drinking water. No one should have to drink contaminated water - filter or not!
3. Fresh, clean water should be a concern for every citizen in the Town of Duanesburg. When the lake water is high, its overflow exits through a culvert and then eventually becomes part of the watershed for a nearby reservoir. The pollution caused by faulty septic systems is not limited to Duane Lake but extends far into the community. Contaminated water does not remain confined to one small area.

At a recent meeting, one resident felt that this 'law' would violate his 'property rights.' It should be clear that one person's property rights do not extend to polluting the fresh water of his neighbors.

Yes, this resolution is not a 'cure' for the excess phosphorus and nitrogen present in the lake; however, it is one piece of the puzzle. This is a non-invasive measure that can help improve the quality of the water of the Duanesburg area.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Sonya Mulvihill", with a long horizontal flourish extending to the right.

Monthly Statement of the Town Supervisor

TO THE TOWN BOARD OF THE TOWN OF DUANESBURG, NEW YORK

Pursuant to Section 119 of Town Law, I hereby render the following statement of all money received and disbursed by this office during the month of SEPTEMBER 2023

Revenues

| Fund | Amount |
|----------------------|----------------------------|
| General Fund | \$29,730.64 |
| Highway Fund | \$602.74 |
| Drainage | \$0.00 |
| Fire District | \$0.00 |
| Lighting District #1 | \$0.00 |
| Lighting District #2 | \$0.00 |
| Lighting District #3 | \$0.00 |
| Sewer District #1 | \$7.08 |
| Sewer District #2 | \$470.87 |
| Sewer District #3 | \$12.15 |
| Total | <u>\$ 30,823.48</u> |

Disbursements

| | |
|----------------------|-----------------------------|
| General Fund | \$78,304.03 |
| Highway Fund | \$38,726.23 |
| Fire District | \$0.00 |
| Lighting District #1 | \$0.00 |
| Lighting District #2 | \$0.00 |
| Lighting District #3 | \$0.00 |
| Sewer District #1 | \$14,894.21 |
| Sewer District #2 | \$11,401.93 |
| Sewer District #3 | \$4,291.66 |
| Total | <u>\$ 147,618.06</u> |

TOWN OF DUANESBURG
CASH REQUIREMENTS PER FUND
10/26/23

| FUND | | AMOUNT |
|----------------------|------------------------------|------------------|
| General Fund A | | 25,841.22 |
| | | |
| General OV B | | 873.61 |
| | | |
| Highway Fund DA | | 1,049.36 |
| | | |
| Highway OV-DB | | 1,482.48 |
| | | |
| Lighting District #1 | | 53.49 |
| | | |
| Lighting District #2 | | 140.40 |
| | | |
| Lighting District #3 | | 94.77 |
| | | |
| Sewer District #1 | | 5,701.10 |
| | | |
| Sewer District #2 | | 3,041.51 |
| | | |
| Sewer District #3 | | 2,275.20 |
| | | |
| | TOTAL TRANSFERS TO AP | 40,553.14 |

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION NO. 140 2023

October 26, 2023

Adopting Local Law No. 3 of 2023

WHEREAS, Local Law No. 3 of 2023 entitled "Tax Cap Override for FY 2024" (the "Proposed Local Law") will allow the Town of Duanesburg to override the limit on the amount of real property taxes that may be levied, pursuant to General Municipal Law §3-C, and allow the Town of Duanesburg to adopt a town budget for fiscal year 2024 that requires a tax levy in excess of the tax levy limit; and

WHEREAS, the proposed local law was introduced at the meeting of October 12, 2023 of the Town Board and each member of the Town Board received the Proposed Local Law; and

WHEREAS, a public hearing was duly noticed and held on October 26, 2023.

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby adopts Local Law No. 3 of 2023 and directs that the local law be filed in the Town Clerk's office and with the New York State Secretary of State's Office.

Motion made by _____

Motion seconded by _____

William Wenzel, Supervisor

Town Clerk/Deputy Town Clerk

Present:

Absent:

Council Members:

| | | | |
|------------------|-----|-----|---------|
| Dianne Grant | Yea | Nay | Abstain |
| Michael Santulli | Yea | Nay | Abstain |
| Rick Potter | Yea | Nay | Abstain |
| William Wenzel | Yea | Nay | Abstain |
| Andrew Lucks | Yea | Nay | Abstain |

PO Box 160
Quaker Street, NY 12141

William Wenzel, Supervisor
Town Board
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Transmitted via: Privilege of the Floor at the October 26, 2023 Town Board Meeting

October 26, 2023

Re: Request clarification on how Freedom of Information Appeals are provided to New York State Committee On Open Government to meet compliance with New York State Public Officers Law Article 6 Section 89.4.(a)

Dear William Wenzel,

Thank you for this opportunity to address the town board during tonight's privilege of the floor. I request that my written statement, as provided to the town board clerk at this meeting, is included in the minutes.

The town's website url: <https://www.duanesburg.net/town-clerk> informs that the town clerk's services include Freedom of Information requests.

Between April 2021 and June 2023 I submitted at least five Freedom of Information Appeals to the Duanesburg Town Clerk. My email records indicate that the town clerk acknowledged receipt of some appeals, responded to some appeals, and yielded documents for some appeals.

New York State Public Officers Article 6 Law Section 89.4.(a) states "In addition, each agency shall immediately forward to the committee on open government a copy of such appeal when received by the agency and the ensuing determination thereon." The law may be found on the NYS Committee On Open Government website url: <https://opengovernment.ny.gov/system/files/documents/2023/05/foil-law-text-05232023.pdf>

For the town clerk's convenience my Freedom of Information of Appeals included this section of New York State law.

On July 21, 2023 I submitted a Freedom of Information request to the NYS Committee on Open Government for all Appeals for Freedom of Information to the Town of Duanesburg between January 1, 2019 to July 21, 2023.

On July 25, 2023 the New York State Committee on Open Government informed me that they do not have any record of Appeals for Freedom of Information to the Town of Duanesburg for the dates requested.

It appears that the town is not compliant with New York State Law. Is the town clerk responsible for submitting the required information to the state? Does the town require confirmation of receipt from the State? Does someone within the town direct the town clerk on how to respond to Freedom of Information Appeals? Is the town attorney involved with the response to Freedom of Information Appeals?

I request that the town board provide clarification in writing on:

- how the town answers Freedom of Information Appeals; and
- how the town submits this information to the NYS Committee On Open Government to meet compliance with state law.

Thank you for your time and consideration.

Respectfully,

Susan Biggs

Lynne Bruning

720-272-0956

lynnebruning@gmail.com

CC: New York State Committee on Open Government
Town of Duanesburg Ethics Board



lynne bruning <lynnebruning@gmail.com>

RE: FOI - Appeals to the Town of Duanesburg

1 message

dos.sm.Coog.InetCoog <dosCOOG@dos.ny.gov>

Tue, Jul 25, 2023 at 7:55 AM

To: lynne bruning <lynnebruning@gmail.com>

Good Morning Ms. Bruning,

The Committee on Open Government has conducted a diligent search of its records and I certify that we are unable to locate any records which are responsive to your request ("Appeals to the Town of Duanesburg for Freedom of Information Dates: January 1, 2019 to July 21, 2023"). Please note that our record retention period for these records is three years, so any appeal received by the Committee prior to January 1, 2020 would have been destroyed pursuant to that record retention and disposition schedule.

Sincerely,

Kristin O'Neill

Assistant Director

Pronouns: she/her/hers

New York State Committee on Open Government

One Commerce Plaza, Albany, NY 12231

(518) 474-2518

<http://www.opengovernment.ny.gov>**From:** lynne bruning <lynnebruning@gmail.com>**Sent:** Friday, July 21, 2023 3:53 PM**To:** dos.sm.Coog.InetCoog <dosCOOG@dos.ny.gov>**Subject:** FOI - Appeals to the Town of Duanesburg

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear NYS Committee on Open Government,
Please see the attached two page PDF Freedom of Information request.
Please confirm receipt to lynnebruning@gmail.com
Thank you for your time and consideration.
Respectfully,
Lynne Bruning
720-272-0956
lynnebruning@gmail.com

PO Box 160
Quaker Street, NY 12141

William Wenzel, Supervisor
Town Board
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Transmitted via: Privilege of the Floor at the October 26, 2023 Town Board Meeting

October 26, 2023

Re: eMails to town clerk did not receive confirmation of receipt

Dear William Wenzell,

I emailed the town clerk and cc town board members, planning board chair and zoning board chair the attached correspondence. I did not receive confirmation of receipt of the emails as requested from the town clerk. These emails contain important information about Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC that should be on the record. I respectfully request that the documents are entered into the record of tonight's town board meeting.

October 9, 2023 Re: Emergency Plan and Notification for Battery Energy Storage Systems at Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC (total 4 page letter and two color satellite maps with annotations)

October 19, 2023 Clarification requested for the power source of the tracking panel motors at Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC (total 2 pages)

October 19, 2023 Schletter, Inc. Bankruptcy Proceedings. (total 1 page email)

~~OCTOBER 19, 2023 OAK HILL SOLAR 1, LLC and OAK HILL SOLAR 2, LLC EMERGENCY PLAN FOR~~
In the October 19, 2023 Clarification requested for the power source of the tracking panel motors ~~FOR~~
and the October 19, 2023 Schletter, Inc. Bankruptcy Proceedings I requested a written reply from ~~FOR~~
the board. I have not received a reply. ~~FAILURE~~

Thank you for your time and consideration.

Respectfully,
Susan Biggs
Lynne Bruning

720-272-0956

lynnebruning@gmail.com

CC: Jeffery Schmitt, Chair Duanesburg Planning Board
Nelson Gage, Chair Duanesburg Zoning Board
Jennifer Howe, Clerk Town of Duanesburg

PO Box 160
Quaker Street, NY 12141

William Wenzel, Supervisor
Town Board
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Transmitted via email: jhowe@duanesburg.net

October 9, 2023

Re: Emergency Plan and Notification for Battery Energy Storage Systems at Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC

Dear William Wenzel,

I request that the town board issue a stop work order to Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC for the construction and installation of the battery energy storage system ("BESS") until the State, County and Town provide an emergency plan which includes, but is not limited to:

- How neighboring homes and businesses will be notified of an emergency at the facility;
- How neighboring homes and business will be notified of evacuation / shelter in place orders;
- What distance will homes and businesses be notified of fire and evacuation / shelter orders;
- A minimum duration of time the orders may be in place;
- How motor vehicle traffic on neighboring roadways will be managed;
- How air quality will be tested both at the project site and neighboring homes;
- How remediation of contaminated soils and water at the fire site will be managed; and
- How will victims that may suffer from fire risk and unsafe air quality be housed and treated?

Neighbors requested emergency plan information in 2021 and 2022 when the Amendment to add BESS to the Project was under review. A notification and emergency plan was not provided as requested.

TOXIC FUMES

The Project specifies BESS using lithium-ion batteries housed in containers that vent to the outside. There are two HVAC systems per container to control the air temperature inside the container. The HVAC system may also vent to the outside. An explosion or fire may create holes in the storage container allowing the toxic fumes to escape outside.

Lithium-ion battery fires emit toxic gases such as hydrogen fluoride and phosphoric fluoride. Fluorine mixed with water vapors may produce hydrofluoric acid. This is particularly dangerous because victims exposed to the vapor may not feel the effects until hours after exposure. Exposure to these gases may cause eye irritation and damage, respiratory distress, lung damage, and cardiac failure.

Released fumes may not be contained. The toxic gases may follow the prevailing winds.

The Project is located at an elevation of 1,150 feet. It is the highest point in the residential / agricultural neighborhood. Prevailing winds are from the west and are frequently more than 15 miles per hour. Winds in excess of 20 miles an hour are recorded. Satellite imagery shows that between October 2018 and June 2019 the Project site was clear cut to the north, east and west property lines. The site does not provide any wind breaks.

HAZARDOUS MATERIALS

BESS fires may result in contamination from hazardous materials. Lithium-ion batteries and other failed equipment may shed contamination on the surrounding soils. Removal and transportation of the damaged batteries and equipment may spread hazardous materials further from the site of the fire.

Contaminated soil and groundwater may follow the watershed.

The National Wetlands Inventory mapper shows an intermittent stream runs through the Oak Hill Solar 2, LLC site next to the two equipment pads containing BESS. This stream runs through neighboring properties and drains into a brook that empties into Schoharie Creek. For your convenience the NWI Map of the Project site is attached showing the stream and BESS locations.

Neighboring properties rely on well water as their only source of drinking water. Any contamination of neighboring wells may diminish the property owners use, enjoyment, and future development of their lands. It may make their properties uninhabitable without a source of clean safe water.

BESS FIRES MAY RESULT IN ORDERS TO EVACUATE or SHELTER IN PLACE

Media coverage of recent BESS fires in Chaumont, Warwick, and East Hampton, New York report that evacuation or shelter in place with windows closed orders were issued for distances ranging between 1/2 mile to 1 mile from the site of the fire. In California evacuation and shelter in place orders for BESS fires have extended up to three miles from the site of the fire.

Evacuation or shelter in place orders may require that town, county and state roads are closed to traffic. The September 20, 2022 battery fire at Moss Landing, California closed State Highway 1 for five hours. The March 8, 2020 explosion and fire at the dilapidated building on the Oak Hill Solar 2, LLC site required New York State Route 7 to be closed to all traffic for at least four hours.

Transportation of the failed BESS may require a special permit from the NYS Department of Transportation. Due to its fire risk there may be additional precautions issued for the town, county and state roadways.

GUIDANCE

In 2020 the New York State Energy and Research Development Authority issued a Battery Systems Guidebook. It is found at url: <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/Battery-Energy-Storage-Guidebook>

The 2020 Battery Energy Storage System Model Law Model Law Section H.13.g states "Other procedures as determined necessary by the town to provide for the safety of occupants, neighboring properties, and emergency responders.

In January 2023 the town of Duanesburg may have held a meeting with the Project owner AMP, the battery provider Powin, and local emergency responders. Freedom of Information requests to the town has not yielded meeting minutes or guidance issued due to the meeting.

July 28, 2023 Gov. Hochul announced the formation of the NYS Inter-Agency Fire Safety Working Group. When testate may issue guidance is unknown.

CONCLUSION

In June 2023 the Project informed the town that the BESS is not installed. Freedom of Information requests have not yielded any documents indicating that the BESS has been installed. It appears that little to no work has occurred at the Project site in 2023.

To date, the town has not provided an emergency plan for BESS fires to the public. The Project's neighbors do not know if they will be notified of a BESS accident or how they should respond.

It is unknown when NYS may issue guidance.

I request that the town instruct the Code Enforcement Officer to place a stop work order at the Project site to halt all work on the BESS until the town provides the public with a safety plan, how the public will be notified, and how the public's health will be protected.

Thank you for your time and consideration.

Respectfully,
Susan Biggs
Lynne Bruning
720-272-0956
lynnebruning@gmail.com

Enc: National Wetlands Inventory Mapper - color image

June 25, 2018 color satellite view of Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC provides the approximate location of the four 53' containers intended for Powin BESS. The four red circles reflect a distance of 1 mile from the location of each BESS.

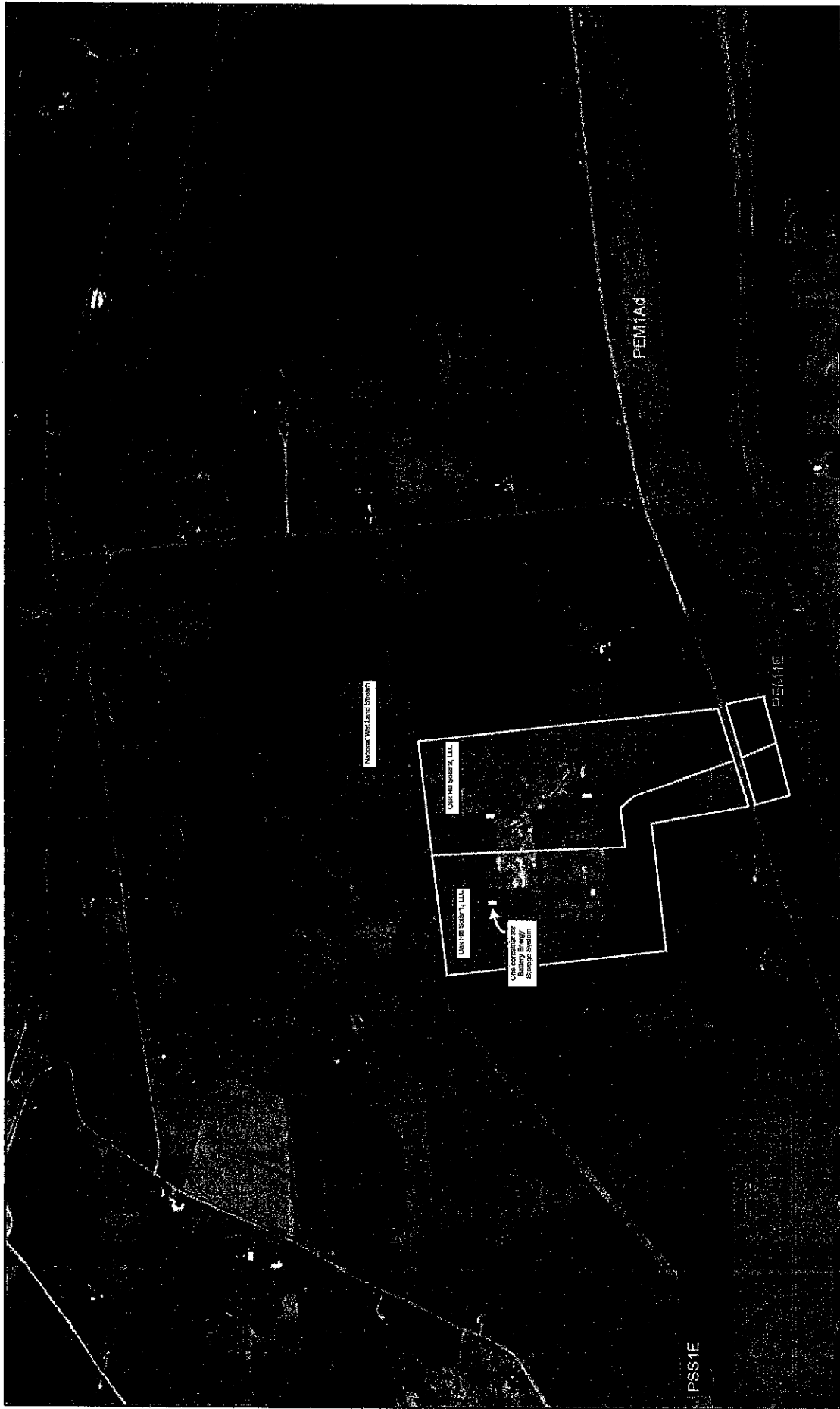
CC: Jeffery Schmitt, Chair Duanesburg Planning Board
Nelson Gage, Chair Duanesburg Zoning Board
Jennifer Howe, Clerk Town of Duanesburg



U.S. Fish and Wildlife Service

National Wetlands Inventory

Wetlands



October 9, 2023

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland

- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond

- Lake
- Other
- Riverine

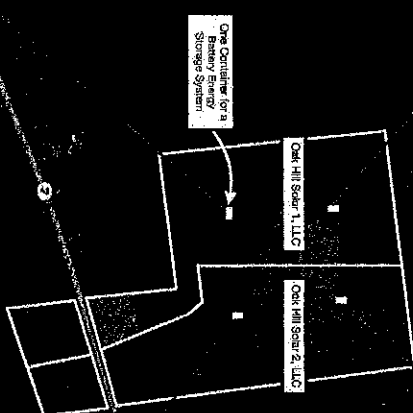
This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI mapper

6/22/2018

Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC
13690 Duaneburg Road, Delanson, Schenectady County, NY 12039
Google Earth Image from 25, 2018
Submitted to the Town of Duaneburg October 9, 2023

Request that the Town of Duaneburg issue a stop work order to Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC until the State, County, and Town provide guidance on:
How neighboring homes and businesses will be notified of an emergency at the facility.
How neighboring homes and businesses will be notified of fire and evacuation shelter orders.
What stationing, signage, and business hours will be in place.
A minimum stationing of three the orders may be in place.
How motor vehicle traffic on neighboring roadways will be managed.
How all utility will be spaced both at the project site and neighboring homes.
How utility will be spaced both at the project site and neighboring homes.
How utility will be spaced both at the project site and neighboring homes.
How utility will be spaced both at the project site and neighboring homes.



Water sources for volunteer fire departments

The Application for a Special Use Permit, Site Plan, and Mass Site Plan for two 50MW solar arrays each occupying 33 acres inside the fence on a 70-acre lot was submitted to the Town of Duaneburg Planning Board May 17, 2018. The Resolution was approved September 19, 2019 with the conditions to remove the proposed fences on the Oak Hill Solar 2 site and the building of a visual screen along 1500' feet along the westernmost property line starting from the rear of the lot.
July 2021 the project applied for an Amendment to add on each separate project site two 50' x 11' x 6' containers each containing 11.79-MWh lithium battery Energy Storage Systems (BESS) manufactured by Form Energy. The height of the solar panels was increased from 75' to 85' and the height of the solar panels was increased from 75' to 85'.
March 17, 2022 the Amendment to the September 2019 Resolution was approved with the conditions of obtaining appropriate permits from U.S. Army Corps of Engineers, NYS Department of Transportation, NYS Department of Environmental Conservation and a condition that the Planning Board may require that an appropriate water source is provided at or near the project site in the future.
September 2023 both projects are under construction. The four BESS containers are installed on site. The battery systems are not installed.
There is no water source on the site. The town does not provide fire hydrants. The most distant battery storage container from Duaneburg Road is located on the north portion of Oak Hill Solar 1, LLC.
The site plan and SWPPP indicate a 10' wide and 1,200' long access road from Duaneburg Road to the gate. It provides one lane round to the array. It does not provide any pull outs or turn lanes.
The distances from the northwest battery container to the commonly used water sources by volunteer fire departments is 1.1/2 miles.
Prevailing winds are from the west and are frequently more than 15 miles per hour. The project is located at an elevation of 1,150' and is the highest point in the neighborhood.
Mobile coverage of recent BESS fires reports that evacuation or shelter in place with lockdowns and other actions are required for distances ranging between 1/2 mile to 3 miles from the site.
The September 20, 2021 battery fire at Moss Landing, CA closed State Highway 1 for five hours.
The four red circles indicate a distance of 1 mile from each BESS location.

Imagery Date: 6/22/2018 42°43'55.79" N 74°19'58.63" W elev: 1123 ft. size: 17264 ft

Google Earth



lynne bruning <lynnebruning@gmail.com>

Clarification requested for the power source of the tracking panel motors at Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC

1 message

lynne bruning <lynnebruning@gmail.com>

Thu, Oct 19, 2023 at 1:34 PM

To: Jennifer Howe <jhowe@duanesburg.net>

Cc: Bill Wenzel <wwenzel@duanesburg.net>, Ricky Potter <RPotter@duanesburg.net>, Dianne Grant <dgrant@duanesburg.net>, Andrew Lucks <alucks@duanesburg.net>, Michael Santulli <msantulli@duanesburg.net>, Jeffery Schmitt <jschmitt@duanesburg.net>, Nelson Gage <ngage@duanesburg.net>, Chris Parslow <CParslow@duanesburg.net>, Susan Biggs <azurevista@hotmail.com>

Dear Town Clerk please confirm receipt of this email to lynnebruning@gmail.com. Thank you.

Dear William Wenzel and members of the town board,

On October 12, 2023 PureSky Energy updated the town board on their Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC projects. The Projects were represented by Bill Pedersen of PureSky, Couch White LLP, and the local site manager.

Their presentation provided some information about the Project's lack of progress and their hope to complete construction in 2024. Puresky did not specify when interconnection of the two projects with the utility company National Grid may occur. The anticipated date of operation is unknown.

During their presentation Puresky addressed some concerns about the battery energy storage system. However, it appears that the Project has not provided the town with information on how the tracking panel motors are powered.

I request that the town direct PureSky to provide additional information in writing to clarify if the Schletter tracking panel motors are grid powered or self powered with an integrated battery.

REASON FOR CONCERN

More than 200 batteries appear to be provided on the June 6, 2019 Site Plan sheet 3, 4, 6, and 7 of 10 as approved by the Duanesburg planning board on September 19, 2019. During application review the planning board did not require the Applicant to provide specification sheets for the tracking panel system and motor. It is possible that a battery may be required to self power each tracking panel motor. A motor may be located on each row of photovoltaic panels.

The November 23, 2021 Decommissioning Plan and the March 28, 2022 Site Plan approved by the Duanesburg Planning Board on March 17, 2022 do not provide information on how the combined Project's 229 tracking panel motors are powered.

The June 29, 2021 and July 1, 2021 Mechanical Drawing's Ramming Layout show the combined 229 tracking panel motors, but do not provide information or a detailed drawing of the tracking panel motor or how hundreds of these motors are powered.

On October 1, 2022 the Project provided the town designated engineer, Prime AB, with "Schletter Solar Mounting Group DRAFT Original Operating Manual Part 1 of 2 Schletter Tracking System Assembly and Installation." The manual indicates that the tracking panel motors may be grid powered or self powered. It appears that Part 2 of the manual was not provided to the town.

REQUESTED CLARIFICATION

Are the hundreds upon hundreds of Schletter tracking panel motors grid powered or self powered with an integrated battery?

I look forward to your reply in writing before the next town board meeting.

Thank you for your time and consideration.

Respectfully,

Susan Biggs

Lynne Bruning

720-272-0956

lynnebruning@gmail.com

CC: Jeffery Schmitt, Chair Duanesburg Planning Board

Nelson Gage, Chair Duanesburg Zoning Board

Chris Parslow, Town of Duanesburg Code Enforcement



lynne bruning <lynnebruning@gmail.com>

Schletter, Inc. Bankruptcy proceedings

1 message

lynne bruning <lynnebruning@gmail.com>

Thu, Oct 19, 2023 at 12:24 PM

To: Jennifer Howe <jhowe@duanesburg.net>

Cc: Bill Wenzel <wwenzel@duanesburg.net>, Ricky Potter <RPotter@duanesburg.net>, Dianne Grant <dgrant@duanesburg.net>, Andrew Lucks <alucks@duanesburg.net>, Michael Santulli <msantulli@duanesburg.net>, Nelson Gage <ngage@duanesburg.net>, Jeffery Schmitt <jschmitt@duanesburg.net>, Chris Parslow <CParslow@duanesburg.net>, Susan Biggs <azurevista@hotmail.com>

Dear Town Clerk please confirm receipt of this email to lynnebruning@gmail.com. Thank you.

Dear William Wenzel and members of the Town Board,

October 1, 2021 AMP Energy, now PureSky Energy, provided the town designated engineer, Doug Cole of Prime AE, with "Schletter Solar Mounting Group DRAFT Original Operating Manual Part 1 of 2 Schletter Tracking System Assembly and Installation." This 139 page manual is for the mounting system, girder assembly, driveshaft, and motor control system for the single axis tracking system installed at Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC. Curiously, it appears that Part 2 of the manual is not provided.

It appears that on or about November 24, 2020 Schletter, Inc filed their AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF LIQUIDATION with the United States Bankruptcy Court Western District of North Carolina (Charlotte Division).

Schletter's bankruptcy proceedings may have case number 18-40169. The latest filing may be September 28, 2023. It appears they do business as "Schletter," "Schletter Incorporated," "Schletter Solar Mounting Systems," and "Schletter Metal Works."

How may Schletter's bankruptcy proceedings impact the:

- remediation, repair and replacement of the December 2022 tracking system failure at the Oak Hill Solar 2, LLC facility;
- more than eight month delay in removing the more than 2,000 collapsed solar panels and failed racking system from the site;
- warranty on the racking system, tracking gears, tracking motors and if applicable the integrated self powered battery; and the
- ability to obtain replacement parts, maintain, and successfully operate the tracking system for the anticipated 30 to 40 year lifetime of the project?

Is the town adequately protected if Schletter goes out of business and the Oak Hill Solar facilities are unable to generate electricity as promised because their tracking system is not operational?

Has the town done everything possible to protect the abutter's use, enjoyment and future development of their property from a derelict property next door.

Having a non-operational defunct solar facility next door to my property is a nuisance, environmental hazard, safety risk, and eye sore. Oak Hill Solar 2, LLC is in disarray and may diminish my property values.

I look forward to the town board's written reply on how Schletter's bankruptcy may impact the construction and operation of the Project before the next town board meeting.

Thank you for your time and consideration.

Respectfully,

Susan Biggs

Lynne Bruning

720-272-0956

lynnebruning@gmail.com

CC: Jeffery Schmitt, Chair Duaneburg Planning Board
Nelson Gage, Chair Duaneburg Zoning Board
Chris Parslow, Town of Duaneburg Code Enforcement



lynne bruning <lynnebruning@gmail.com>

Oak Hill Soalr 1, LLC and Oak Hill Solar 2, LLC emergency plan for BESS failure

1 message

lynne bruning <lynnebruning@gmail.com>

Fri, Oct 20, 2023 at 8:57 AM

To: Jennifer Howe <jhowe@duanesburg.net>

Cc: Ricky Potter <RPotter@duanesburg.net>, Dianne Grant <dgrant@duanesburg.net>, Andrew Lucks <alucks@duanesburg.net>, Michael Santulli <msantulli@duanesburg.net>, Chris Parslow <CParslow@duanesburg.net>, Jeffery Schmitt <jschmitt@duanesburg.net>, Nelson Gage <ngage@duanesburg.net>, Susan Biggs <azurevista@hotmail.com>

Dear Town Clerk,

Please confirm receipt of this email to lynnebruning@gmail.com.

Thank you.

Dear William Wenzell and members of the Town Board,

On October 12, 2023 PureSky Energy updated the town board on their Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC projects. The Projects were represented by Bill Pedersen of PureSky, Couch White LLP, and the local site manager. The meeting was broadcast on zoom and the video archive may be found on YouTube at url: <https://www.youtube.com/watch?v=AQphWCB01qM>

About minute 35:30 PureSky informs the town board and public that at the time of permitting test reports indicated that there would be no severe adverse impacts on air quality. They do not feel that an emergency evacuation plan is needed.

A concerned citizen pointed out that when a fire is happening is not the time to develop an evacuation or shelter in place plan.

If the fire is not contained it may quickly spread through the dry grass on the 65 acre site and on to neighboring lands. The wind may carry sparks to neighboring properties further spreading the fire. Winds may quickly carry toxic gasses off site.

My family's 1850's homestead is the nearest residence to the east of the solar + storage facility. How will my family and workers be notified of a fire at Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC?

My driveway is more than 800 feet in length. The gate at the driveway is frequently locked. Cell phone reception is unreliable at the property. How will my family be notified of the need to shut windows and remain inside or to evacuate? How is the town protecting my health and safety in a timely manner?

On October 7, 2023 California Governor Newsome approved Senate Bill No. 38 "Battery energy storage facilities: emergency response and emergency action plans." In the state of California it is now a statutory requirement to provide safety that involves the community.

Section 761.3 of the California Public Utilities Code is amended to read:

(g) (2) (1) "In order to ensure the safety of employees, emergency responders, and surrounding communities, each battery energy storage facility located in the state and subject to subdivision (a) shall have an emergency response and emergency action plan that covers the premises of the battery energy storage facility, consistent with Sections 142.3 and 6401 of the Labor Code and any related regulations, including the regulatory requirements applicable to emergency action plans pursuant to Section 3220 of Title 8 of the California Code of Regulations." the emphasis in bold is mine.

And

(2) (B) " Include procedures that provide for the safety of surrounding residents, neighboring properties, emergency responders, and the environment. These procedures shall be established in consultation with local emergency management agencies."

New York State, Schenectady County and the Town of Duanesburg should be forward thinking, adopt precautionary principles, and provide the taxpayers with health and safety planning before a fire occurs.

This may give the neighbors peace of mind and help protect property values of lands abutting the known fire hazards. Proceeding with caution and rigorous due diligence may also save the town from costly and unnecessary lawsuits.

I request that the town of Duanesburg halt all construction on battery energy storage at the Oak Hill Solar + Storage facilities until New York State issues guidance on battery energy storage emergency plans and PureSky provides a plan that protects the neighbors and community.

Thank you for your time and consideration.

Respectfully,
Susan Biggs
Lynne Bruning
720-272-0956
lynnebruning@gmail.com

10/20/23, 9:31 AM

Gmail - Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC emergency plan for BESS failure

CC: Jeffery Schmitt, Chair Duanesburg Planning Board
Nelson Gage, Chair Duanesburg Zoning Board
Chris Parslow, Duanesburg Code Enforcement
Jennifer Howe, Clerk Town of Duanesburg