

# Town of Westfield

## Real Property Acquisition

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NOVEMBER 2019

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

# Contents

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- Report Highlights . . . . . 1**
  
- Real Property Acquisition . . . . . 2**
  - What Should a Town Do When Purchasing Real Property? . . . . . 2
  
  - Good Business Practices Were Not Followed When Acquiring Real Property . . . . . 2
  
  - Officials Should Ensure Good Business Practices Are Followed When Selling Real Property . . . . . 4
  
  - What Do We Recommend? . . . . . 5
  
- Appendix A – Response From Town Officials . . . . . 6**
  
- Appendix B – OSC Comment on the Town’s Response . . . . . 8**
  
- Appendix C – Audit Methodology and Standards . . . . . 9**
  
- Appendix D – Resources and Services . . . . . 10**

# Report Highlights

## Town of Westfield

### Audit Objective

Determine whether Town officials properly acquired real property for a Town purpose.

### Key Findings

- Although the purchase of property for historical preservation is legally allowed, Town officials did not use a thorough process.
- Town officials expended \$361,000 acquiring property for historical preservation. At the time of purchase, the property had an estimated full market value of \$243,000.

### Key Recommendations

- Use a thorough process that fully considers all suitable options and long-term implications prior to the acquisition of property.
- Obtain one or more independent appraisals on real property the Town intends to purchase or sell to help ensure the price is reasonable.

Town officials disagreed with our findings and recommendations. Appendix B includes our comment on an issue raised in the Town's response.

### Background

The Town of Westfield (Town) is located in Chautauqua County. The elected five-member Town Board (Board) is responsible for managing operations and finances. The Town Supervisor (Supervisor) is a member of the Board and serves as the chief fiscal officer. The Town provides various services to its taxpayers, including road maintenance, snow removal, water, sewer and refuse services, a small boat harbor and general government support.

The Town purchased real property, located in the Town, in January 2014. The property includes a 48,000 square foot office building built in 1910 with an addition in 1968, and 13 acres of land. Three tenants lease approximately 13,700 square feet (29 percent) of space in the building and the remaining space is unoccupied.

#### Quick Facts

Population	4,896
2019 General Fund Appropriations	\$2.1 million
Property Purchase Price <sup>a</sup>	\$361,000
2018 Lease Revenues	\$209,000
2018 Building Expenditures	\$182,200

<sup>a</sup> Includes closing costs of approximately \$3,500

### Audit Period

January 1, 2013 – May 15, 2019

# Real Property Acquisition

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## What Should a Town Do When Purchasing Real Property?

A board is responsible for exercising due diligence when considering the purchase of real property. The board has a fiduciary duty to secure the best price obtainable or the most beneficial terms in the public interest. To fulfill its fiduciary duty, a board should take appropriate measures, which may include obtaining one or more independent appraisals. Before real property is acquired, a board should conduct a feasibility study and estimate potential costs.

New York State Town Law<sup>1</sup> and New York State General Municipal Law (GML)<sup>2</sup> provide that a town can acquire real property for the purpose of historical preservation.<sup>3</sup> A town can designate, purchase, restore, operate, lease and sell historic buildings. Sales shall be made upon such terms and conditions as a board deems appropriate to insure the maintenance of the historic quality of the buildings and structures, after public notice is appropriately given. Such sale must be for fair and adequate consideration, and in no event, shall the consideration be less than the expenditure incurred by a town with respect to such buildings and structures for acquisition, restoration, improvement and interest charges.<sup>4</sup>

The method of sale chosen is within a board's discretion, but should be the one that it believes will generate the best price or maximum financial benefit. To fulfill its fiduciary duty, a board should take appropriate measures, which may include obtaining one or more appraisals and using a real estate broker to identify potential buyers, and help ensure that when a property is sold the town realizes the maximum financial benefit.

## Good Business Practices Were Not Followed When Acquiring Real Property

The Supervisor told us she was approached by a real property owner who offered a property for sale to the Town. This occurred after the owner had previously offered the property for sale to Village of Westfield (Village) officials and they declined. The Supervisor told us that before she received the offer she had been working with the Village Mayor and a local development corporation (LDC) who were advocating that the owner develop the building with tenants.

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1 New York State Town Law, Section 64(17)-a

2 New York State General Municipal Law (GML), Article 5-K

3 GML, Section 119-bb(4) defines historical preservation as the study, designation, protection, restoration, rehabilitation and use of buildings, districts, areas, sites or objects significant in the history, architecture, archaeology or culture of this State, its communities or the nation.

4 GML, Section 119-dd(4)

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The Board and Supervisor told us that although they had concerns about becoming a landlord of a large office building, they wanted to ensure the property would be sold to a buyer who would be committed to maintaining and redeveloping it. In addition, an abandoned historic building in the Town/Village was recently demolished and they did not want that to happen to this property.

In September 2013, the Board authorized the Supervisor to proceed with negotiations to purchase the property and send a non-binding letter of intent to the owner. In October 2013, Town officials had a building inspection performed to determine whether there were any significant issues that needed to be addressed at the property. This inspection, dated October 2013, found no major repairs were needed immediately.

Officials told us that subsequent to the inspection they held meetings, in executive session, with the Town Attorney and LDC officials to decide whether to purchase the property. As part of these meetings, officials reviewed a building acquisition analysis, prepared by LDC staff, who reviewed the current lease and the building inspection results. This analysis showed that approximately 10,000 square feet of the building was leased to one tenant (primary tenant) and the property would generate a net gain of approximately \$144,500 (excluding inflation costs) over the remaining lease term (January 1, 2014 through June 30, 2020). The Town would be required to assume this existing lease if the building was purchased.

However, the analysis did not consider potential major repairs that could be required between the purchase date and the end of the lease term. The inspection report showed that the unfinished area of the building would require significant reconstruction before tenants could occupy the space. The Supervisor told us the Board did not obtain an independent appraisal of the property because officials were familiar with the building's value due to a prior tax certiorari<sup>5</sup> proceeding with the owner. Although a court issued an order and judgment incorporating the parties' settlement agreement which reduced the assessed taxable value from \$500,000 to \$200,000, officials felt it was worth more than the new assessed value.

Using the assessed value from July 1, 2012 and the equalization rate at the time of 80 percent, we calculated the property's full market value at the time of purchase was approximately \$243,000, or \$118,000 less than the price paid by the Town.

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<sup>5</sup> Tax certiorari is the legal process by which a property owner can challenge that their real property assessment is excessive, unequal or unlawful or that the property is misclassified (Refer to New York State Real Property Tax Law, Section 706).

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In November 2013, the Board authorized the Supervisor to purchase the property at a maximum price of \$358,000 plus ordinary and incidental costs of the transaction. This was calculated using the owner's outstanding mortgage of \$258,000 plus an additional \$100,000. Board members told us that the Supervisor did not counter the asking price because officials believed it was already the lowest price and based on the building acquisition analysis, was reasonable. On January 7, 2014, the Town purchased the property. The purchase agreement included a provision that the Town would assume the existing lease.

The lease agreement that was assumed by the Town from the prior owner states that the Town must pay the primary tenant each month an amount equal to the rent collected from the 12,000 square feet of space that yielded the greatest amount of rent for that month, less an amount to cover upgrades to the building for those 12,000 square feet. Therefore, although officials added two tenants (one in May 2015 for 2,200 square feet and a second in October of 2018 for 1,441 square feet) they received no additional rental income from these new leases because, in accordance with the lease agreement, the rents received from these two leases, totaling \$31,000 annually, were paid to the primary tenant.

The Supervisor told us that the Town purchased the building to ensure the building's historic preservation and provide economic development for the Town/Village Main Street. The Board and Supervisor told us that they planned to retain the undeveloped acreage, which includes a baseball field. Officials obtained a \$200,000 grant to create a public trail from the Village to a nearby creek and surrounding land. The land associated with the building has also been designated for a waterfront revitalization program, which is a land and water use plan that will allow for waterfront development through application of grant funding.

Although the purchase of property for historic preservation is authorized by law, because the Board and Supervisor did not perform a thorough analysis before purchasing the building, including obtaining an independent appraisal, they cannot be certain they obtained the property for the best possible price.

### **Officials Should Ensure Good Business Practices Are Followed When Selling Real Property**

The Supervisor and Board members told us they plan to sell a portion of the property to a developer who could repurpose the building to maintain existing jobs and create new jobs. The Town was awarded a \$1 million grant to be used by the party that restores the building. Officials believe the grant will assist in securing the sale of the property to a developer who agrees with the Town's plan for preservation and development. If officials are unable to sell the building, they

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have no plans to move the Town offices into the building because the current shared Town and Village hall is in a central location and accessible for Town and Village residents.

In September 2017, officials listed the property<sup>6</sup> for sale for \$495,000. Any offeror was to submit a proposal for intended use and plan for the building's restoration. Proposer information was to be submitted by October 16, 2017 and redevelopment proposals were to be submitted by October 30, 2017. The Supervisor and Board members told us that officials were to select the proposal that aligned with the goals of historic preservation and economic development rather than the maximum financial benefit.

In October 2017, the Town received one proposal. As of the end of our fieldwork, officials were in ongoing negotiations, but this proposal offered less than the amount paid for the property. Since acquisition, officials told us they made general maintenance repairs and that all three tenant leases will expire by August 1, 2020. The Supervisor told us that the primary tenant contacted the Town and indicated that they may be pursuing other rental options if the building is not developed, because the tenant believes the rental rate is too high.

The Town is at additional risk as the primary tenant's lease covers general maintenance performed in the building of up to \$120,000 each year. In addition, the Supervisor and Board members told us that the building will require a capital improvement for new windows. Therefore, if the Town continues to own the property and cannot maintain the current leases, there is a risk it may no longer be in the taxpayers' best interests.

## **What Do We Recommend?**

The Board and Town officials should:

1. Use a thorough process when pursuing the purchase or sale of property to help ensure it generates the best price obtainable or maximum financial benefit for taxpayers.
2. Obtain one or more independent appraisals on real property it intends to purchase or sell to help ensure the price is reasonable.
3. Review the long-term financial impact and other implications before making a decision to purchase a building to help ensure it is the best financial decision for the Town and its taxpayers.

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<sup>6</sup> Listed property included the 48,000 square foot building, 1.2 acres of land and a one acre parking lot. The Town will retain the remaining acreage.

# Appendix A: Response From Town Officials

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*Westfield, New York*  
CHAUTAUQUA COUNTY

Eason Hall • 23 Elm Street  
Westfield, New York 14787  
Phone: 716.326.3211



Fax: 716.326.3611  
Email: [town@townofwestfield.org](mailto:town@townofwestfield.org)  
Web: [www.townofwestfield.org](http://www.townofwestfield.org)

TOWN OF WESTFIELD

September 12, 2019

Jeffrey D. Mazula  
Chief Examiner  
Office of the New York State Comptroller  
295 Main Street, Suite 1032  
Buffalo, New York 14203-2510

**Re: Response to Audit Report – 2019-M119**

Dear Mr. Mazula:

The Town of Westfield has received the report of the Office of the New York State Comptroller regarding the Town's purchase of the Welch Building in 2015. Your staff was very professional and courteous during its six-month stay in our offices, and we thank them for that, but we must disagree with their conclusions.

We believe that the preservation of historic buildings is a Town purpose and a public purpose under Section 119-dd(4) of the General Municipal Law, and that the wording of the "Key Findings" is potentially misleading in this regard. There is no requirement that the Town use space in the historic building for Town offices in order to justify the purchase of the building. Preservation alone justifies the purchase.

See Note 1 Page 8
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Over the years we watched the Portage Inn, which is just a few doors down from the Welch Building, and other important buildings in Silver Creek, Forestville, Brocton, Ripley, and elsewhere slowly decline until expensive repairs or demolition were required. The owner of the Welch Building had shown little interest in investing in the building and using it to its full potential, and his primary lease with Welch's would expire in 2020. We wanted to find a developer who both could and wanted to re-develop the building, and the Town would be best positioned to do that if we owned it.

Upon learning that the owner was interested in selling the building, we worked with a committee established through the Westfield Development Corporation to analyze the purchase. The committee included a real estate appraiser, certified public accountant, real estate attorney, and other long-time professionals in Westfield, all of whom were familiar with the building and the Westfield real estate market in general. They knew that the \$200,000 assessed value for the building was an artificially low number, reached at the conclusion of lengthy litigation as a compromise in order to maintain higher assessments at the Welch plant. After careful review, the committee determined and the Town Board agreed that \$358,000 was a reasonable price to pay for the building and about 14 acres of land that went with it.



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Since the purchase, the Town has leveraged its ownership of the building to accomplish the following:

- Used rent revenues to pay down the amount borrowed to buy the building, with the final payment to be made in December 2019. The Town will own the building outright with all payments having been made solely from rent revenues.
- Built a substantial reserve from “surplus” rent that will amount to about \$85,000 once the final borrowing payment is made.
- Retained approximately 12 acres of land for public use– including the Little League field and creek front-- that is worth \$12,000 to \$15,000 per acre, based on recent comparable sales.
- Granted an easement to the Village of Westfield over the southern end of the property that permitted the Village to complete the West Side Sewer project, which re-located a problematic pumping station. The Village faced expensive demands for the needed easement from other landowners before the Town purchased the Welch property.
- In collaboration with the County and Village, obtained the grant used for the regrettable but necessary demolition of the Portage Inn, at no direct cost to Town and Village taxpayers.
- Obtained \$250,000 in grants to build a 1.25 multi-use trail on the 12 acres the Town will retain. We anticipate construction to begin in 2020.
- Obtained a \$1,000,000 grant from Empire State Development that can be used to develop the building.
- Negotiated with developers to sell just the building for about the same or higher price than the Town paid for the entire facility, including the land.
- Assuming those negotiations are successful, we will have accomplished the primary goal of the entire enterprise, which was to put the building into the hands of a developer who will invest in and develop the building so that it will continue to play an important role in downtown Westfield for decades to come.

Our actions comport with policy goals frequently urged upon us by Albany such as smart growth, preservation of downtown areas, development of waterfront access, historic preservation, smart streets, recreational trails, and others. There is renewed interest from developers in the building and the Town’s ownership puts it in a position to exercise some discretion about how the building is used. We believe this will accomplish the preservation of the building while protecting our taxpayers.

Sincerely,

Martha R. Bills, Supervisor

## Appendix B: OSC Comment on the Town's Response

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### Note 1

There was no evidence provided by Town officials, other than verbally during audit field work, to indicate that the Town purchased the building pursuant to General Municipal Law. However, we have modified the report to clarify that the Town's purchase was proper pursuant to General Municipal Law (GML). It is a fundamental rule of statutory construction that a prior general statute yields to later more specific statutes (see, gen., McKinney's Statutes, Section 397). Applying that rule here, we note that GML Section 119-dd(4) was enacted after Town Law, Section 64(2), which authorizes the purchase of real property for a public purpose.

## Appendix C: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Town officials to gain an understanding of the processes for the property acquisition, operation and possible future sale.
- We reviewed Board minutes from January 2013 through February 2019 for information relating to the real property acquisition and financing.
- We reviewed the building acquisition analysis.
- We reviewed a prior tax certiorari proceeding to determine the assessed value of the real property before purchase and we reviewed property tax bills included in the real property purchase to estimate the fair market value.
- We reviewed the purchase agreement, building inspection, closing documents, loan agreements and operating leases.
- We discussed with officials future plans and uses of the property and reviewed grant award letters relating to property improvements.
- We reviewed the real estate listing, sale request for proposal and submitted proposal to compare the amount offered for the property and the Town's purchase price.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Town Clerk's office.

## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

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

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

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

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

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

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm)

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

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

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

[www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf](http://www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf)

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

[www.osc.state.ny.us/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

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## Contact

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

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

[www.osc.state.ny.us/localgov/index.htm](http://www.osc.state.ny.us/localgov/index.htm)

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

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**BUFFALO REGIONAL OFFICE** – Jeffrey D. Mazula, Chief Examiner

295 Main Street, Suite 1032 • Buffalo, New York 14203-2510

Tel (716) 847-3647 • Fax (716) 847-3643 • Email: [Muni-Bufferalo@osc.ny.gov](mailto:Muni-Bufferalo@osc.ny.gov)

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