



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

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November 30, 2009

The Honorable Kenneth Chlan  
Chairperson, New Market Town Board  
23765 Texas Avenue  
Lakeville, Minnesota 55044

The Honorable Joel Helmberger  
Supervisor, New Market Town Board  
23765 Texas Avenue  
Lakeville, Minnesota 55044

The Honorable George Silverness  
Supervisor, New Market Town Board  
23765 Texas Avenue  
Lakeville, Minnesota 55044

Dear New Market Town Board:

In early 2008, the Office of the State Auditor (“OSA”) received concerns about the purchase by the Town of New Market (“Town”) of a road grader and a possible conflict of interest involving the operation of the grader by Town Board Supervisor Kenneth Chlan. In a letter dated April 8, 2008, the OSA offered several recommendations to the Town to bring the Town into compliance with Minnesota law. In May 2008, the Town Attorney informed the OSA that the Town would be implementing the recommendations. Therefore, the OSA closed its file on these matters.

In 2009, the OSA again received concerns about the road grader conflict of interest, as well as additional matters. The April 8, 2008, letter is enclosed and its contents, specifically its recommendations, are incorporated herein. In this letter, we respond to questions and concerns not previously addressed in our April 8, 2008, letter.

### **Conflicts of Interest**

The OSA was informed that the Town informally extended its 2007 Road Grader Lease Agreement with Supervisor Chlan for an additional year. We noted that, in April 2009, the Town Board apparently approved a motion to extend the contract for road grading with Supervisor Chlan.<sup>1</sup> Then, in August 2009, after the OSA initiated this current review, the Town Board executed a 2009 Road Grader Lease Agreement with Supervisor Chlan for a term of 12 months, commencing on November 1, 2009.<sup>2</sup> In addition, the required resolution to contract with Supervisor Chlan was approved, and an affidavit

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<sup>1</sup> Town of New Market Meeting Minutes (April 7, 2009).

<sup>2</sup> Town of New Market Meeting Minutes (August 4, 2009).

from Supervisor Chlan was filed.<sup>3</sup> As a result, it appears that, as of August 2009, the Town complied with the required procedures for contracting with a supervisor for road grading, as discussed in our April 8, 2008, letter.

However, according to the minutes and claims lists, it appears the Town Board may have contracted with Supervisors and other Town officials for other services provided to the Town.<sup>4</sup> We recommend that the Town review its records and determine whether the Town complied with the resolution and affidavit requirements of Minn. Stat. §§ 365.37, 471.88, and 471.89 for all contracts with interested Town officials.<sup>5</sup>

### **Storage Fee**

The 2007 Road Grader Lease Agreement (with the one-year extension) required Supervisor Chlan to pay the cost of storing the Town's road grader.<sup>6</sup> It appears, however, that, despite express language in the Lease Agreement, the Town voluntarily took on the responsibility of paying the cost of storage for the road grader.

In December 2008, the Town Board agreed that the Town would rent space from Jeff Pedersen's shop to store the Town's road grader and plow truck, at a cost of \$475.00 per month, beginning November 15, 2008.<sup>7</sup> The monthly claims lists attached to the Town's meeting minutes show that the Town issued rent checks to Pedersen in: 1) January 2009 for \$712.50 (rent shed for grader & truck); 2) February 2009 for \$475.00 (January shop rent); and 3) May 2009 for \$950.00 (Feb. & March shop rent). The current 2009 Road Grader Lease Agreement, effective on November 1, 2009, continued to shift the cost of storing the road grader to the Town.<sup>8</sup>

We recommend that the Town monitor its contracts and enforce the terms as written. Any amendments to written contracts should be in writing.

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<sup>3</sup> See Minn. Stat. §§ 365.37, 471.88 and 471.89, and our April 8, 2008, letter. The August 2009 Resolution stated that contract fees were "as low as, or lower than, the price at which the services or goods could be obtained elsewhere at this time." The Town Clerk reported to the OSA that the Town saved 74 cents on every dollar by contracting with Supervisor Chlan to operate the road grader. Supervisor Chlan's August 4, 2009, affidavit states that he did not use or sub-lease the road grader for personal benefit, and that the grader was only used as intended, to maintain Township roads. Affidavit of Statutory Compliance by Interested Supervisor in Township Grading Contract (August 4, 2009).

<sup>4</sup> See, e.g., check # 5092 for \$122.34 to Joel Helmberger (spray park & chemical) approved at September 1, 2009, meeting; check # 4859 for \$1,560.97 to LeRoy Clausen (snow plowing & sanding) and check # 4862 for \$589.61 to David Frame (snow plowing & sanding) approved at January 6, 2009 meeting.

<sup>5</sup> The requirements are fully discussed in our April 8, 2008, letter.

<sup>6</sup> Road Grader Lease Agreement (October 9, 2007) at ¶ 4. The one-year extension would have extended the Lease Agreement through October 31, 2009.

<sup>7</sup> Town of New Market Meeting Minutes (December 2, 2008).

<sup>8</sup> Road Grader Lease Agreement 2009 (August 4, 2009) at ¶ 4.

## Meeting Minutes

In our April 8, 2008, letter, we recommended that the Town review and implement the suggestions contained in our Statement of Position on Meeting Minutes. A copy of the Statement of Position was enclosed in our April 8, 2008, letter for the Town's review. We continue to have concerns about the Town's meeting minutes.

First, as previously discussed in this letter, it appears that in August 2009 the Town complied with the resolution and affidavit procedures required for the road grading contract with Supervisor Chlan. However, we are concerned that the January 2009 and February 2009 Town Board meeting minutes state that the required resolutions and affidavits were approved at those meetings.<sup>9</sup> The OSA requested copies of the purported resolutions and affidavits, but the Town did not provide them to us. In addition, the Town Clerk told us that, contrary to the February 2009 meeting minutes, the Town did not pass a resolution in February 2009.<sup>10</sup>

Second, we noticed that the Town's meeting minutes sometimes use the general phrase "motion carried" when referencing approval of a motion. The minutes do not consistently record individual votes of the Supervisors or any Supervisor who may have abstained from a vote.<sup>11</sup> With certain exceptions, Minnesota law requires the votes of each member on an appropriation of money to be recorded.<sup>12</sup> In addition, the identity of supervisors who abstain from voting should be noted to establish compliance with conflict of interest requirements.

Third, a list of approved claims is included in the Town's monthly meeting minutes. However, a group of checks is included on the Board's monthly list of approved claims that is simply identified as "Administration." The Town Clerk informed our Office that the checks are the monthly compensation paid to the Supervisors, the Town Treasurer and the Town Clerk. The individual checks are not itemized.

Minnesota law requires that claims against a town be itemized.<sup>13</sup> We recommend that the Town individually itemize on its claims list the compensation or reimbursement checks paid to each Supervisor or other elected Town official, as it does with every other claim.

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<sup>9</sup> For example, the January 6, 2009, Town Board Meeting Minutes report that the Town Board approved a motion "to adopt the six resolutions and the six affidavits of Official interested in claim." The February 3, 2009, Town Board Meeting Minutes report that the Town Board adopted a motion to approve "both Resolution Authorizing contracts with interested Officer, Ken Chlan, under Minn. Stat. 471.88, Subd. 5" and a motion to sign "all the affidavits of Officials interested in contract."

<sup>10</sup> Telephone conversation between Nancy Bode (OSA) and Albert Zweber, Town Clerk, on August 4, 2009.

<sup>11</sup> See, e.g., Town of New Market Meeting Minutes (January 6, 2009) (Town Board approved a motion "to adopt the six resolutions and the six affidavits of Official interested in claim"; motion "carried"; no mention of abstentions by any Supervisors).

<sup>12</sup> See Minn. Stat. § 13D.01, subd. 4 (b).

<sup>13</sup> See Minn. Stat. §§ 367.18 and 471.38.

This will provide transparency to Town residents about the use of Town funds. In addition, the listing of individual checks approved for payment is an important internal control procedure designed to reduce the risk of theft of public funds.

Fourth, minutes are required to be taken and serve as the official record of a Town's proceedings.<sup>14</sup> We noted that personal comments were inserted into some minutes.<sup>15</sup> Minutes should provide a neutral reporting of the meeting. They should not contain personal opinions regarding discussions that take place during the meeting.

Given these remaining concerns, we once again recommend that the Town review and implement the suggestions contained in our Statement of Position on Meeting Minutes. A copy was provided to the Town in our April 8, 2008, letter. The Statement of Position is also available on our website at the following link:

[http://www.auditor.state.mn.us/other/Statements/meetingMinutes\\_0710\\_statement.pdf](http://www.auditor.state.mn.us/other/Statements/meetingMinutes_0710_statement.pdf).

### **Records Storage**

The Town's records are apparently maintained at the Town Clerk's personal residence, resulting in access issues and security risks. We recognize that towns must balance these risks with practical limitations on space and business hours. For guidance on this issue, it may be helpful for the Town to refer to our Statement of Position on "Maintenance of Town Records" available on our website at the following link:

[http://www.auditor.state.mn.us/other/Statements/MaintenanceTownRecords\\_0802\\_Statement.pdf](http://www.auditor.state.mn.us/other/Statements/MaintenanceTownRecords_0802_Statement.pdf).

### **Treasurer's Authority**

Finally, the OSA was asked whether the Town Treasurer had the authority to fire Town employees/vendors. Minnesota law sets forth the duties of the Treasurer position.<sup>16</sup> Those responsibilities do not include hiring and firing decisions.

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<sup>14</sup> See Minn. Stat. § 15.17.

<sup>15</sup> See, e.g., Town of New Market Meeting Minutes (April 7, 2009) ("Board is not impressed with that"). However, the Town Board amended prior minutes to remove a different comment. See Town of New Market Meeting Minutes (July 7, 2009) and (June 2, 2009) (criticisms of some Board members "was very wrong to do").

<sup>16</sup> See Minn. Stat. § 367.16.

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**Conclusion**

As required by Minn. Stat. § 6.51, a copy of this letter is being provided to the Scott County Auditor and the Scott County Attorney. If you have any questions or concerns regarding our recommendations, please feel free to contact me directly at (651) 297-7108.

Sincerely,

*/s/ Terrilyn Diamond*

Terrilyn Diamond  
Attorney  
Office of the State Auditor

cc: Mr. Albert Zweber, Town Clerk  
Mr. David Frame, Town Treasurer  
Mr. Chuck Hollenhorst, Town Attorney  
Ms. Cynthia Geis, Scott County Auditor  
The Honorable Patrick Ciliberto, Scott County Attorney