

# STATE OF MINNESOTA

## Office of the State Auditor



**Rebecca Otto**  
**State Auditor**

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**PETITION ENGAGEMENT**

**TOWN OF LAKE, MINNESOTA**

**JANUARY 1, 2003, THROUGH DECEMBER 31, 2006**

## **Description of the Office of the State Auditor**

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 160 financial and compliance audits per year and has oversight responsibilities for over 3,300 local units of government throughout the state. The office currently maintains five divisions:

**Audit Practice** - conducts financial and legal compliance audits of local governments;

**Government Information** - collects and analyzes financial information for cities, towns, counties, and special districts;

**Legal/Special Investigations** - provides legal analysis and counsel to the Office and responds to outside inquiries about Minnesota local government law; as well as investigates allegations of misfeasance, malfeasance, and nonfeasance in local government;

**Pension** - monitors investment, financial, and actuarial reporting for approximately 730 public pension funds; and

**Tax Increment Financing** - promotes compliance and accountability in local governments' use of tax increment financing through financial and compliance audits.

The State Auditor serves on the State Executive Council, State Board of Investment, Land Exchange Board, Public Employees Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board.

Office of the State Auditor  
525 Park Street, Suite 500  
Saint Paul, Minnesota 55103  
(651) 296-2551  
state.auditor@state.mn.us  
www.auditor.state.mn.us

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# **TOWN OF LAKE, MINNESOTA**

**January 1, 2003, through December 31, 2006**



## **Petition Engagement**

**Audit Practice Division  
Office of the State Auditor  
State of Minnesota**

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REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500  
525 PARK STREET  
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)  
(651) 296-4755 (Fax)  
state.auditor@state.mn.us (E-mail)  
1-800-627-3529 (Relay Service)

## INDEPENDENT PETITION ENGAGEMENT

Petitioners  
Board of Supervisors  
Town of Lake

### INTRODUCTION

Electors of the Town of Lake petitioned the Office of the State Auditor (OSA) to examine the books, accounts, and affairs of the Town in accordance with Minn. Stat. § 6.54 for the period January 1, 2003, through December 31, 2006. The statute allows the OSA, in the public interest, to confine the scope of the audit to less than that requested by the petition. Through discussion and agreement with petitioner representatives, the scope of our review was limited to addressing the issues discussed below.

#### Warroad Public Safety Facility

The petitioners raised concerns that the Town of Lake is in debt for \$750,000 to participate in the Warroad public safety facility. The Town of Lake does not share in the title or ownership of this building located in and owned by the City of Warroad.

On February 11, 2004, the Town Board authorized the signing of an agreement with the City of Warroad for the construction of the public safety facility. The Town Clerk provided us a copy of the agreement signed by officials from the City of Warroad and the Chair of the Board and Clerk for the Town of Lake. This agreement discusses the distribution of the construction costs to the City of Warroad and neighboring cities and towns who wish to participate in this project, the Town of Lake included. The City of Warroad owns the building and land. The Town of Lake has agreed only to help fund the construction of the public safety facility and retains no other rights.

According to the agreement schedule, the Town of Lake's construction obligation amounts to \$339,312 plus applicable interest. This obligation is scheduled to be paid in biannual installments beginning on August 1, 2004, through February 1, 2025. For each year, the first payment billed by the City includes the principal and interest portion of the year's liability, while the second billing includes only an interest portion. The total debt service amount including interest for the duration of the payment period is \$536,241. Construction costs were divided between the participating cities and towns based on 2003 total tax capacity.

In addition, the Town of Lake contracts with the City of Warroad for fire protection. The Town of Lake, along with the towns of Cedarbend, Laona, Moranville, and the unorganized towns of America, Clear River, and Oaks, have agreed to pay the City of Warroad one-half of the Warroad fire district's annual budget for fire protection. The division of this payment to the City of Warroad will be shared proportionately based on tax capacity of the towns as determined annually by the Roseau County Auditor. In addition, the City of Warroad may also bill each town \$500 per call to a residence within the township.

For the years 2003 through 2007, the Town of Lake paid the City of Warroad the following amounts related to fire service:

|       | Fire Protection | Public Safety Facility Principal | Public Safety Facility Interest | Total      |
|-------|-----------------|----------------------------------|---------------------------------|------------|
| 2003  | \$ 24,144       | \$ -                             | \$ -                            | \$ 24,144  |
| 2004  | 23,959          | -                                | 9,360                           | 33,319     |
| 2005  | 27,090          | -                                | 14,041                          | 41,131     |
| 2006  | 27,090          | 11,643                           | 13,889                          | 52,622     |
| 2007  | -               | 11,643                           | 13,587                          | 25,230     |
| Total | \$ 102,283      | \$ 23,286                        | \$ 50,877                       | \$ 176,446 |

The public safety facility amounts paid to the City of Warroad are in agreement with the scheduled payments per the debt repayment schedule with the City. The 2007 fire protection claim had not been paid by December 31, 2007, as confirmed by the City of Warroad.

Itemization of Statements Supporting Disbursements

The petitioners expressed concern that the Town of Lake is spending thousands of dollars with little or no itemization of claims for attorney fees, engineering services, and from the City of Warroad for fire protection.

Minn. Stat. § 471.38 requires that claims made against the town be put forth in writing. It states that “. . . the board or officer authorized by law to audit and allow claims shall not audit or allow the claim until the person claiming payment, or the person's agent, reduces it to writing . . . in items and signs a declaration to the effect that such account, claim, or demand is just and correct

and that no part of it has been paid.” This declaration may, at the discretion of the Board, be printed on the reverse of the check. The endorsement of the check by the payee constitutes the signature of this declaration.

Other than the requirement that the claim must be submitted to the Town Board in writing, Minn. Stat. § 471.38 does not provide any other minimum level of detail for the claim to meet. The Town Board must use its discretion whether to allow the claim, or disallow it and require additional detail for the claim.

We sampled 25 claims paid between January 2003 and December 2007 for attorney billings, engineering services, and billings from the City of Warroad relating to fire protection and public safety.

For legal services, we examined claims approved and paid to Morris A. Grover, Attorney at Law; and Brink, Sobolik, Severson, Malm & Albrecht, P.A. The original invoices provide detail of the services, but for some services lack documentation supporting that the service was for legitimate Town matters. At the time of approval, the Town Board could have had sufficient knowledge of the services performed to approve payment; however, for someone not familiar with the issues, additional information would be needed to determine if the services were for legitimate Town matters. Our review of attorney billings included examining the original invoices and supporting documentation; communications provided by Brink, Sobolik, Severson, Malm & Albrecht, P.A. on February 19, 2008, as a summary of services to the Town of Lake; and inquiry with one of the attorneys. Based on our sample, we are satisfied that the claims presented to the Town of Lake for legal services are for legitimate Town matters.

For engineering services, we examined claims paid by the Town of Lake to KBM, Inc. We noted that the Town of Lake has a written agreement with KBM, Inc., for professional services dated June 23, 2005. In that agreement, KBM supplied the Town of Lake with an hourly rate and expense reimbursement schedule. We compared the rates on the billings received noting that the rates were in agreement. It is not within the scope of our audit to examine actual work performed by the engineers. Our scope is to determine whether enough detail was provided to the Town of Lake to support the claims presented. Based on our sample, we conclude the Town of Lake did have adequate documentation to pay the claims.

For the billings sampled from the City of Warroad relating to fire protection and public safety, we noted that the Town of Lake had invoices for the 2003 and 2004 fire protection billings. However, it did not have any additional documentation available to determine the calculation of those billings. We did contact the City of Warroad and were supplied with documentation to support the claims. The Town of Lake had a written agreement with the City for 2005 through 2007 for fire protection. The original agreement had a breakdown of the amount to be paid by the Town of Lake for the covered years. That amount was calculated based on the fire department budget and allocated to other participating entities. The Town of Lake’s share was calculated to be \$27,090. Our sample confirmed that the Town of Lake was billed this amount for the years 2005 through 2007. Our sample also included debt service billings to the Town of

Lake from the City of Warroad for the public safety facility. The agreement approved by the Town Board on February 11, 2004, included a debt service schedule for payments to be made by the Town of Lake for its contribution to the project. The billings we sampled agreed with the debt service schedule.

#### Maintenance on Road

The petitioners expressed a concern about a Town road replaced with a new road when the City of Warroad extended the airport. The concern by the citizens is that the City of Warroad claims ownership of the new road and right-of-way, but refuses to maintain the new road.

Documents on file with the Town Clerk show that the City of Warroad petitioned for vacation of certain roads running through an area to be used for a new runway expansion. The file contains copies of maps indicating the Town roads vacated, the new road built and owned by the City of Warroad, and a copy of the Town of Lake resolution; however, the copy on file is unsigned.

Mr. Dick Soderberg, Acting Mayor of the City of Warroad, at the time of the project, verified that the new road was built by the City of Warroad on City property. Mr. Soderberg stated that there was some discussion that the roadway easement for the new road would be conveyed back to the Town of Lake at the completion of the project; however, this was not documented in a written agreement. One of the original maps used in the project has a notation that the roadway easement would be conveyed back to the Town of Lake. The City believes as the owner of the new road, it has the right to decide if it wishes to maintain it. The City of Warroad does not maintain the new road. Mr. Soderberg noted that all properties have alternate access through other township roads.

Mr. Chancy Cole, Equipment Operator for the Town of Lake, stated that the Town of Lake has been maintaining the road. He noted that, at one point, a culvert had washed out, and since the City of Warroad did not repair the road, the Town of Lake did. He indicated that the road is used by citizens living within Lake Township and felt the road should be maintained.

The matter of ownership of the road is a legal matter and is beyond the scope of this report. If the Town of Lake wishes to ensure the maintenance of the road, the Town of Lake Board should work with the City of Warroad to reach an agreement. If the agreement involves the Town of Lake providing the maintenance, the minutes of the Town of Lake Board should reflect approval for the Equipment Operator to use the Town of Lake's resources to maintain the road.

#### Annual Board of Audit for 2006

The petitioners stated that the Town of Lake Board of Supervisors failed to hold the required 2006 Town of Lake Board of Audit.



Each year, the Town Board is required to meet as the Board of Audit. This meeting is to take place between the close of the year and one week before the annual meeting. Per Minn. Stat. § 367.11, one of the duties of the Town Clerk is to furnish to the annual meeting of the Town Board of Audit every statement from the County Treasurer of money paid to the Town Treasurer; all other information about fiscal affairs of the Town in the Clerk's possession; and all accounts, claims, and demands against the Town filed with the Clerk.

The Board of Audit will use information from the Clerk to carry out its duties as set forth in Minn. Stat. § 366.21. The Board shall “. . . examine and audit every account presented against the town, and to endorse and state on it the amount allowed and disallowed, . . . to report in detail the items of accounts audited and allowed or disallowed, the nature of each, and the person to whom allowed or disallowed. The report shall contain a statement of fiscal affairs of the town, with an estimate of the sum necessary to be raised for the current expenses or other authorized purpose for the ensuing year, and other recommendations as it may deem advisable.” This report shall be posted at the place of the annual meeting and shall also be publicly read by the Clerk.

We examined documents and Board minutes supplied by the Town of Lake. We were able to find documentation of the posting for the Board of Audit; however, the Town Clerk was not able to provide documentation to support the Board of Audit meeting for 2006 actually took place.

#### Employer's Quarterly Federal Tax Returns (Form 941)

A concern of the petitioners is that the Town of Lake Clerk had not paid or filed 941 federal payroll tax returns timely.

The quarterly federal payroll tax Form 941 is due one month after the quarter ends, or on April 30, July 31, October 31, and January 31 of each year.

The Town of Lake Clerk agreed that the quarterly federal payroll tax Form 941 were not completed timely for several years and provided copies back through first quarter of 2000. All quarters from the first quarter in 2000 through the second quarter of 2006 were dated within the last three days of July 2006. The third quarter in 2006 was dated November 14, 2006. All federal quarterly payroll tax forms since the third quarter in 2006 have been submitted timely.

#### Potential Conflict of Interest

The petitioners were concerned about a potential conflict of interest. The petitioners stated that Mr. Chancy Cole serves on the Town Board as a Supervisor and regularly operates the town equipment used in the maintenance of town roads. They also stated that other individuals have expressed an interest in the Equipment Operator position, but were never given the opportunity.

Mr. Cole served as a Town Supervisor during 2003, 2004, and 2005. He was re-elected as a Town Supervisor in 2007 and is currently serving as a Town Supervisor. Mr. Cole has provided services as the Equipment Operator for the Town of Lake dating back to 1996. Mr. Cole's wife also provides cleaning services for the Town of Lake.

The April 14, 2004, minutes document that the Board passed a motion to have Mr. Cole do road inspections, operate the grader, and provide mowing services for the Town of Lake; however, there is no documentation specifically stating the motion passed upon a unanimous vote of the Supervisors with the interested officer abstaining. Minutes from the March 14, 2006, annual meeting and from the April 12, 2006, and April 24, 2006, Board meetings document discussions of the Equipment Operator position.

On May 3, 2006, and May 10, 2006, the Town of Lake advertised in the Warroad Pioneer for the positions of two part-time heavy equipment operators. The May 31, 2006, minutes document the Board approved hiring Mr. Cole as the Equipment Operator and approved notifying Mr. Philip Otto in writing that if Mr. Cole needs help, he will be contacted as the backup Equipment Operator.

Minn. Stat. § 365.37, subd. 1, and Minn. Stat. § 471.87 generally prohibit a Town Supervisor from having a direct or indirect interest in a contract with the Town unless a statutory exception is found allowing the interest and all of the requirements of the exception are followed.

An exception allowed under Minn. Stat. § 471.88, subd. 5, is for services that do not require competitive bids. Competitive bids are required for contracts estimated to exceed \$50,000. The amounts posted for equipment operations in the 2007 Net Pay Account Distribution monthly reports total \$6,921. Payments made to Mrs. Cole in 2007 for cleaning services were \$1,285. These amounts are far below the \$50,000 requirement for competitive bidding.

To apply this exception, the Town must follow the requirements spelled out in Minn. Stat. § 471.89, which requires the Town Board to “authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere.” Minn. Stat. § 471.89, further requires that “before such a claim is paid, the interested officer shall file with the clerk of the governing body an affidavit” setting forth certain information.

The Town of Lake Clerk receives a monthly affidavit from Mr. Cole containing the necessary information as provided in Minn. Stat. § 471.89 prior to each monthly payment. The minutes, however, do not document that the Town Board authorized the contract with Mr. Cole for equipment operations and the contract with his wife for cleaning services in advance of its performance by adopting a resolution setting out the essential facts and determining the contract price is as low as or lower than the price at which the service could be obtained elsewhere. The minutes also provide no documentation specifically stating the motion passed upon a unanimous vote of the Supervisors with the interested officer abstaining during the times in which Mr. Cole was on the Board.

## Town Zoning Ordinances

The petitioners were concerned that the Planning and Zoning Board has not been provided with a list of updates to the Town ordinances and when those updates were adopted and if the updates are recorded. The Planning and Zoning Board needs positive verification that the zoning areas have been legally updated and the maps changed accordingly for commercial, industrial, agricultural, and residential updates. The petitioners claimed that some properties are conducting businesses that are not properly zoned.

An ordinance is a formal regulation imposed by the Town Board and is generally enforceable by criminal prosecution, usually as a misdemeanor or by civil actions such as seeking a court order or injunction. Minn. Stat. § 365.125 sets forth the procedures that must be followed. These procedures require approval by a majority vote of all members of the Town Board and the signature of the Town Board Chair attested by the Clerk. The ordinance must have a title and begin with words like “The board of supervisors of the Town of Lake ordains”, be published in a qualified newspaper having general circulation in the Town, be posted in the public library or other designated public place, and the ordinance must be recorded in the Town’s ordinance book within 20 days. Proof of publication must be attached to the recorded ordinance.

The Town of Lake has a copy of its zoning ordinance, including early amendments dated September 14, 1988, on file at the Town hall. Changes to the ordinances since September 1988 are not maintained in an official book of ordinances. According to the Town Clerk, changes in ordinances are filed in with the minutes or kept in separate files.

Section 8.61 of the Lake Township Zoning Ordinance and Land Use Plan provides that a zoning change shall be considered an amendment to the Lake Township Zoning Ordinance and Land Use Plan. This section also provides that the Town Board shall consider the request to amend the ordinance for zoning changes at a public hearing within 45 days after the receipt of the application. It further provides that a notice will be published in a local newspaper and posted at one posting place at least ten days prior to the public hearing. All property owners within 500 feet of a residential or commercial area or 1,500 feet in any other area shall be notified by U.S. mail as to time and place of the public hearing.

We reviewed Board minutes and zoning documents provided for the period of January 2003 through December 2007, noting three zoning changes:

- For rezoning of the Hasso Rothenbacher property from agricultural to commercial, the Clerk provided copies of the notice to adjoining property owners and the hearing notice for a public hearing on June 9, 2003. Minutes from that meeting document approval of a rezoning, but the minutes were mistitled Plovie Rezoning. An affidavit of mailing notice to adjoining property owners and the notice to applicant were not provided to us.

- For the rezoning of Steve Plovie property from agricultural to industrial, the Clerk provided copies of the notice to adjoining property owners including an affidavit of mailing notice dated July 29, 2003, signed by the Clerk and Postmaster; the hearing notice for public hearing on August 11, 2003; and the notice to applicant of the public hearing. Board minutes from the August 11, 2003, meeting were not provided.
- For the rezoning of Jeff Johnston property from commercial to industrial, the Clerk provided copies of the notice to adjoining property owners including an affidavit of mailing notice dated December 3, 2007, signed by the Clerk and Postmaster; a copy of the hearing notice for a public hearing on December 19, 2007; and the notice to applicant of the public hearing. The December 19, 2007, minutes document a discussion on an application submitted by Jeff Johnston, but no motion was documented.

Because our review of changes to the Town of Lake zoning ordinances was limited to the period of January 2003 through December 2007, and because the Town of Lake does not maintain an ordinance book as prescribed in Minn. Stat. § 365.125, we cannot conclude that the changes in use prior to 2003 were or were not properly rezoned for the new use. For properties rezoned in the period of January 2003 through December 2007, it appears the Town of Lake has made some attempts at complying with Minnesota statutes and the Lake Township Zoning Ordinance and Land Use Plan; however, the Town records lack sufficient documentation to support compliance with some of the requirements.

The Town of Lake Board should provide the directive and resources necessary to ensure compliance with Minn. Stat. § 365.125 and Section 8.61 of the Lake Township Zoning Ordinance and Land Use Plan by researching old minutes and other records, dating back to 1988 if necessary, for documentation supporting all changes in Town zoning ordinances. If documentation cannot be located to support the current use of some parcels, the Town should consult its attorney and the Minnesota Association of Townships to determine what corrective action should be taken. The Town of Lake should maintain a current and accurate ordinance book.

#### Other Issue - Town Board Minutes

As part of our procedures to address the petitioners' concerns as discussed above, we reviewed the minutes to the proceedings of the Town Board meetings for the years 2003 through 2007 and noted the following:

- Some of the Board minutes are handwritten and difficult to read.
- The minutes are not always clear as to whether there was just discussion or an actual motion made.
- Minutes from August 11, 2003; October 12, 2005; and September 2006 were not available for our review.

- Approval of the minutes was noted at subsequent Town Board meetings for those subsequent meetings that were typed, but for some of the handwritten minutes, the documentation of approval of the previous meeting was not included.
- The minutes are not signed.

Various statutes that refer to taking or publishing minutes use the term “proceedings” or “official proceedings.” The Minnesota Attorney General has used the definition of “proceedings” found at Minn. Stat. § 331A.01, subd. 6, in analyzing the clerk’s duties to take minutes. This statute states, in part:

“Proceedings” means the substance of all official actions taken by the governing body of a political subdivision at any regular or special meeting, and at minimum includes the subject matter of a motion, the persons making and seconding a motion, the roll call vote on a motion, the character of resolutions or ordinances offered, including a brief description of their subject matter, and whether defeated or adopted.

At a minimum, the minutes must include the information required by Minn. Stat. ch.13D (Open Meeting Law). Minn. Stat. § 13D.01, subd. 4, requires that the individual votes of each member of the governing body on “an action taken in a meeting required by this section to be open to the public” be specifically recorded except for votes on “payments of judgments, claims and amounts fixed by statute.”

If having satisfied minimum requirements, the question of how elaborate and extensive the minutes should be is largely a policy matter for determination by the particular body in the exercise of reasonable judgment and discretion. The Attorney General has explained:

. . . there may be circumstances in which it would be advisable for the town board to provide for the minutes to include information over and above what is necessary to satisfy minimum statutory requirements for a record of its official actions. Op. Atty. Gen. 851-C (March 5, 1992)

For example, the board’s reasons for reaching a particular decision could be crucial in defending a challenge to the action taken. The inclusion of such information may be deemed appropriate under other circumstances, such as where the body determines that the public interest warrants the award of a particular contract to a bidder other than the lowest bidder.

Other examples might be zoning decisions, such as the granting of variances or special use permits. In any case, the amount of detail which is appropriate for inclusion in the minutes of a particular body is likely to vary, depending upon the nature of the proceedings and the subject matter involved.

While the following is not an exhaustive list, some specific items that should be included in the minutes to the proceedings of Town Board meetings are:

- type of meeting (regular, special, adjourned regular, adjourned special, recessed, and emergency);
- whether the meeting is a Town Board or Commission meeting;
- date and place the meeting was held;
- time the meeting was called to order;
- list of Town Board members present and absent;
- approval of minutes of the previous meeting, with any corrections noted;
- identity of parties to whom contracts were awarded;
- abstentions from voting due to a conflict and the Board member's name and reason for abstention;
- reasons the Town Board determines to award a particular contract to a bidder other than the lowest bidder;
- granting of variances or special use permits;
- approval of hourly rates paid for services provided, mileage rates, meal reimbursement amounts, and per diem amounts;
- listing of all bills (including per diems) allowed or approved for payment, noting the warrant number, claimant, purpose, and amount;
- transfers of funds; and
- reason the meeting was concluded and the time the meeting concluded.

The minutes should be signed by the Town Clerk, and attested to by a Board member, preferably the Chair, at the time the minutes are adopted by the Board, usually at the next meeting. We further recommend typing the minutes to make them easier to read. We believe that by following the above guidance, the Town will provide a more adequate history of its meetings.

## CONCLUSION

We were not engaged to and did not perform an audit, the objective of which would be the expression of an opinion on specified elements, accounts, or items relating to the petitioners' concerns identified in this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters may have come to our attention that we would have reported to you.

This report has been prepared solely for the information of the Petitioners of the Town of Lake and the Board of Supervisors, but is a matter of public record, and its distribution is not limited.

*/s/Rebecca Otto*

REBECCA OTTO  
STATE AUDITOR

*/s/Greg Hierlinger*

GREG HIERLINGER, CPA  
DEPUTY STATE AUDITOR

May 20, 2008