

Town of Hempstead Industrial Development Agency and Valley Stream Union Free School District 30

Green Acres Mall PILOT Payments

DECEMBER 2017



OFFICE OF THE NEW YORK STATE COMPTROLLER
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Report Highlights

Town of Hempstead Industrial Development Agency and Valley Stream Union Free School District 30

Audit Objectives

Determine if TOHIDA followed its policies and procedures when approving and administrating the Green Acres Mall and Commons development projects.

Determine if District 30 appropriately budgeted for the Green Acres payments-in-lieu of taxes (PILOTs) and the 2016-17 tax levy.

Key Findings

The TOHIDA Board:

- Followed its procedures when approving the Green Acres project.
- Had not developed policies and procedures assessing the indirect tax impact of PILOTs.
- Provided timely and accurate information to District 30 concerning PILOT revenues.

District 30 officials:

- Underestimated PILOT revenue resulting in \$1.8 million in excess revenue and an unnecessary increase to class 1 (residential) 2016-17 tax rates.

Key Recommendations

The TOHIDA Board should:

- Develop additional policies and procedures to assess indirect tax impact of PILOTs.

The District 30 Board should:

- Develop accurate budget estimates to avoid levying excessive taxes.
- Return excess PILOT revenue to its taxpayers.

TOHIDA officials agreed with our recommendations. District 30 officials did not agree with some of our recommendations. Our comments to their response are in Appendix E.

Background

The Town of Hempstead Industrial Development Agency (TOHIDA) is a public benefit corporation established in 1971 for the benefit of the Town of Hempstead (Town). TOHIDA is governed by a Board, which includes seven members appointed by the Town Supervisor.

Valley Stream Union Free School District 30 (District 30) is located in the Town of Hempstead in Nassau County and is governed by the Board of Education (District 30 Board), which includes five members, and is responsible for oversight of the District's operations. The Superintendent of Schools and Assistant Superintendent for Business are responsible for developing and administering the budget.

Quick Facts

Green Acres Parcels Property Taxes Paid in 2015-16	\$20.6 million
Green Acres Mall PILOTs in 2016-17	Mall PILOT: \$13.7 million Commons PILOT: \$440,000
District 30 Residents	15,000
District 30 2016-17 Tax Levy	\$47.4 million

Audit Period

January 1, 2014 – June 30, 2017

TOHIDA's Approval of the Green Acres Mall and Commons PILOTs

Industrial development agencies (IDAs) are independent public benefit corporations whose purpose is to promote, develop and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities. The powers and duties of IDAs are set forth under General Municipal Law (GML). The overall goal of IDAs is to advance the job opportunities, health, general prosperity and economic welfare for residents.

IDAs generally assume the title of the real and/or personal property owned by the businesses that are involved in approved projects. This allows the IDA to offer benefits to these businesses, such as exemptions from sales/use taxes, mortgage recording taxes and real property taxes. IDAs are not required to pay taxes or assessments on any property acquired or that is under its jurisdiction, control or supervision. To help offset the lost revenue from tax exemptions and abatements, businesses enter into a payment in lieu of taxes (PILOTs)¹ agreement on approved projects governed by the IDA's Uniform Tax Exemption Policy (UTEP). A pre-determined payment schedule details payments made to the IDA from businesses benefiting from a PILOT agreement. The IDA forwards PILOT payments to all taxing jurisdictions affected by the tax exemption, prorated in a manner consistent with total tax revenue received prior to the establishment of the PILOT agreement.

On August 15, 2014, the Green Acres Mall Developer applied for two separate PILOTs for consideration by TOHIDA. The first PILOT application was in consideration of capital improvements to the Green Acres Mall (Mall). The second PILOT application was in consideration of developing a new two-level shopping center adjacent to the Mall called Green Acres Commons (Commons). Both PILOTs would allow for TOHIDA to assume the title of the properties, while collecting PILOT payments from the Developer, which would be redistributed to affected taxing authorities who would have otherwise collected tax revenue on the properties to be developed.²

On August 27, 2014, the TOHIDA Board approved inducement resolutions for both the Mall and Commons projects. TOHIDA officials began developing the Green Acres PILOT programs, including developing preliminary PILOT schedules and assessing the tax impacts of the PILOTs.

On December 4, 2014, TOHIDA officials announced a public meeting to discuss the proposed Mall PILOT to be held on December 15, 2014.³ TOHIDA officials sent notification of the public meeting via certified mail to the Nassau County

1 PILOTs are amounts paid for certain tax-exempt parcels in lieu of real property taxes that would otherwise have been paid, had the property not been tax-exempt.

2 See Appendix A for the complete timeline related to the PILOTs

3 GML requires that an IDA give at least 10 days public notice prior to the public meeting.

Executive, Hempstead Town Supervisor, Mayor of the Village of Valley Stream, Superintendent of Valley Stream School District 30 and Superintendent of the Central High School District (CHSD). Additionally, TOHIDA officials announced the public meeting in a local newspaper and on the TOHIDA website.

On December 15, 2014 TOHIDA officials conducted the public meeting at the Valley Stream Village Hall at 10:30 AM. With the exception of TOHIDA officials and a court reporter, no one attended the meeting.

On December 17, 2014, the TOHIDA Board authorized the Mall PILOT agreement, which provided for \$13.7 million in PILOT payments⁴ to District 30, the Town of Hempstead and the Village of Valley Stream during the 2016-17 fiscal year.

On April 8, 2015, TOHIDA officials announced a public meeting to discuss the proposed Commons PILOT agreement to be held on April 21, 2015.⁵ Again, TOHIDA officials sent notification of the public meeting via certified mail to the Nassau County Executive, the Hempstead Town Supervisor, the Mayor of the Village of Valley Stream and the Superintendent of Valley Stream School District 30. Additionally, TOHIDA officials announced the public meeting in a local newspaper and on the TOHIDA website. On April 21, 2015 TOHIDA officials conducted the public meeting at the Valley Stream Village Hall at 10:00 AM. With the exception of TOHIDA officials and a court reporter, no one attended the meeting.

On April 22, 2015, the TOHIDA Board authorized the Commons PILOT agreement, which provided for \$440,000 in PILOT payments to District 30, the Town of Hempstead and the Village of Valley Stream during the 2016-17 fiscal year.

On May 7, 2015, TOHIDA officials sent the finalized Commons PILOT Agreement via certified mail to the Nassau County Executive, the Nassau County Assessor, the Hempstead Town Supervisor, the Mayor of the Village of Valley Stream and the Superintendent of Valley Stream School District 30. On June 1, 2015 TOHIDA officials sent the finalized Mall PILOT Agreement via certified mail to the Nassau County Executive, the Nassau County Assessor, the Hempstead Town Supervisor, the Mayor of the Village of Valley Stream and the Superintendent of Valley Stream School District 30.

⁴ Prior to the Green Acres Mall inducement, the Mall developer initiated a tax certiorari proceeding relating to the assessed value of the Mall properties. The proceeding is ongoing. PILOT payments were created with consideration of the potential judgment and the final ruling was not expected to affect the PILOT payments.

⁵ GML requires that an IDA give at least 10 days public notice prior to the public meeting.

How Should the Agency Approve and Administer PILOTs Programs, Such as the Green Acres Mall and Commons PILOTs?

Prior to approving a PILOT project by resolution, an IDA is required by GML to adopt an initial or inducement resolution describing the project and any related financial assistance under consideration. Following this resolution, the IDA must hold a public hearing detailing the project and any related financial assistance. The IDA must provide at least 10 days published notice of the public meeting and provide notice of the meeting to the chief executive officer of each affected tax jurisdiction in the same time period.

The TOHIDA Board established a UTEP and Standard Project Procedures (Procedures). The UTEP details guidelines used by the TOHIDA Board when making project approval or denial decisions and the Procedures provide guidance to TOHIDA officials when preparing and reviewing prospective, or monitoring ongoing, PILOT programs. Applicants for PILOT benefits should prepare a State Environmental Quality Review and a cost benefit analysis prior to the inducement resolution. Once a PILOT program is approved by a second authorizing resolution, TOHIDA officials should notify affected tax jurisdictions of the PILOT and provide a schedule of PILOT payments. Sound business practices also require that TOHIDA officials consider tax impacts to affected (directly and indirectly) taxing jurisdictions.

PILOT Programs Were Generally Approved Appropriately

During our audit period, the IDA approved 25 PILOT programs.⁶ We reviewed seven PILOT programs⁷ including the Mall and Commons PILOT projects to determine if TOHIDA officials followed established policies and procedures when developing and approving the PILOTs. In general, PILOT programs were developed and approved in accordance with policies and procedures. However, we found that the TOHIDA Board induced six of seven PILOTs, including both the Mall and Commons project, prior to receiving a cost benefit analysis. TOHIDA officials indicated that Board members at the time preferred that the cost benefit analysis be prepared in conjunction with preliminary PILOT schedules, so that they would more accurately reflect the PILOT impact. In all of the PILOTs we reviewed, the cost benefit analysis was prepared before the Board authorized the PILOT.

⁶ In order to remain comparatively consistent with the two Green Acres PILOTs, we selected from 18 PILOTs induced prior to June 2016, when requirements for PILOTs changed under GML.

⁷ The five additional PILOTs were selected sequentially from a list of approved TOHIDA PILOTs.

TOHIDA Did Not Have Procedures to Assess Tax Impacts on Taxing Authorities

During the first year of the Green Acres PILOTs, property tax rates increased significantly in District 30. In addition, property tax rates increased in the Valley Stream Union Free School Districts 13 and 24 due to the indirect impact of PILOT payments on funding the CHSD.⁸ While a portion of the increase is attributable to an inaccurate PILOT estimate made by District 30 officials, the tax rate also increased due to factors such as increases to the tax levy and shifts in the proportion of property taxes paid by the school districts to the CHSD. Additionally, the Mall and Commons PILOTs resulted in approximately \$6.5 million in less revenue⁹ for affected taxing entities than in the prior year. This reduction was in consideration and anticipation of the pending tax certiorari proceeding relating to the reduction in value of the Mall properties.¹⁰ TOHIDA officials acknowledged that tax increases were anticipated as a result of this reduction in revenue.

While TOHIDA officials told us that they consider property tax implications when developing PILOT programs, the TOHIDA Board has not approved policies and procedures requiring that a direct and/or indirect property tax impact review be conducted and documented. The importance of such a review is compounded when a PILOT is replacing a significant percentage of tax revenue or may impact an entity that indirectly receives PILOT revenue, such as a central high school district. Without a thorough tax impact review, with consideration of potential indirect impacts, PILOTs can be approved that may negatively affect property tax rates.

What Do We Recommend?

The TOHIDA Board should:

1. Consider PILOT projects for inducement after a cost benefit analysis has been prepared in accordance with its policies and procedures.
2. Develop additional policies and procedures requiring TOHIDA officials to document the direct and indirect property tax impact of significant PILOT agreements and implement methods to communicate this information to all affected taxing entities and taxpayers. Such policies and procedures should also consider the indirect impact to entities benefiting from PILOT revenue, such as central high school districts.

⁸ Valley Stream Districts 13, 24 and 30 levy taxes to support a portion of the CHSD's budget. The Districts receive property tax revenues and forward a percentage to the CHSD.

⁹ Before the PILOTs were approved using conservative estimates, property tax revenues from the parcels totaled \$20.6 million.

¹⁰ Prior to the Mall inducement, the developer initiated a tax certiorari proceeding related to the assessed value of the Mall properties. The proceeding is ongoing.

School District PILOT Estimates

Prior to developing the 2016-17 fiscal year budget, District 30 officials received notification from TOHIDA of two new PILOTs, known as the Green Acres PILOTs. On May 10, 2015 District 30 officials received the Commons PILOT agreement (\$440,000). On June 8, 2015 they received the Mall PILOT agreement (\$13.7 million).

While preparing the 2016-17 budget, District 30 officials contacted TOHIDA and the Nassau County Assessor's office to determine the percentage¹¹ of the Green Acres PILOTs that the District would receive for the 2016-17 fiscal year. On April 5, 2016 TOHIDA advised District 30 officials that it would receive approximately 72.75 percent of the Mall PILOT and 63 percent of the Commons PILOT. Additionally, on April 7, 2016, the Nassau County Assessor's office also advised District 30 officials that the District would receive approximately 72.73 percent of the Mall PILOT.

On April 7, 2016, the former Assistant Superintendent of Business (ASB) drafted a memo advising the District Board to budget for approximately 50 percent of the Mall PILOTs, with the difference in expected revenues for the 2016-17 fiscal year to be funded by tax revenue. The former ASB based the 50 percent recommendation on a previous but unrelated TOHIDA PILOT agreement. However, correspondence between the former ASB and TOHIDA officials show that District 30 officials were informed that projects are assessed differently by Nassau County, taxed at different rates and have different proportionate shares.

On July 5, 2016 the District Board passed a resolution setting District 30's 2016-17 tax levy at \$47.4 million, of which \$23.1 million would be retained by District 30 and \$24.3 million would be forwarded to the CHSD.¹²

On August 1, 2017 the District Board set its 2017-18 tax levy at \$19.6 million and appropriated "estimated excess PILOT funds" of approximately \$1.9 million¹³ as revenue sources.

What Should a School District Consider When Making a Reasonable PILOT Budget Estimate?

District officials are responsible for preparing and presenting the District's budget, or spending plan, to the public for vote. In preparing the budget, District officials are responsible for estimating what it will receive in revenue (i.e., such as PILOTs

¹¹ PILOT payments are distributed between affected taxing authorities on a proportion of actual prior year tax receipts paid on taxable properties (by section, block & lot) replaced by the PILOT.

¹² The District levies taxes to support a portion of the CHSD's budget.

¹³ In order for taxpayers to fully realize the appropriation of \$1.9 million in excess PILOT funds, District 30 must complete its 2017-18 fiscal year in a planned operating deficit. Otherwise, the District will continue to retain overlevied funds from the 2016-17 year in the amount of the surplus up to and including the revenue appropriation of \$1.9 million.

or State aid) and determine the property tax levy needed to fund the ensuing year's operations. Accurate estimates are essential to ensure that the property tax levy is not greater than necessary. During the budget process, should more accurate information become available, such as updated PILOT estimates, District officials should use this information to adjust the budget and related property tax levy.

District 30 Officials Underbudgeted PILOT Revenues

District 30 shares PILOT revenue with the CHSD.¹⁴ When developing their respective budgets, District 30 and the CHSD work together to develop PILOT revenue estimates in order to determine the amount of the tax levy necessary to fund operations. District 30 then incorporates the PILOT revenue estimates and the tax levy amounts for both in its budget to be presented to District residents.

When budgeting estimated revenue for the 2016-17 fiscal year, both District 30 officials and CHSD officials weighed the recommendations from TOHIDA and the Nassau County Assessor's office and budgeted to receive approximately 50 percent of the Green Acres Mall PILOTs instead of 72.75 percent for the Mall PILOT and 63 percent for the Commons PILOT.

Figure 1: District 30 and CHSD PILOT Calculation

	2016-17 PILOTs Receivable	Estimated Percentage	School District Portion	District 30 Share	CHSD Share ^a
Green Acres Mall	\$13,700,000	50%	\$6,850,000	\$3,116,298	\$3,461,169
Green Acres Commons	\$440,000	50%	\$220,000	\$100,086	
Total	\$14,140,000		\$7,070,000	\$3,216,384	\$3,461,169

^a The CHSD calculated the Green Acres Mall PILOT using \$6.35 million instead of \$6.85 million. As a result, its PILOT estimate for Green Acres Mall was understated by \$272,533. Furthermore, the CHSD did not include the Green Acres Commons PILOT in its estimate.

We recalculated the Green Acres PILOTs receivable using the TOHIDA recommended percentages which were available when District 30 and the CHSD prepared their budgets. The Districts should have estimated the PILOT at approximately \$10.2 million instead of \$7.1 million. The District 30 share would have been almost \$4.7 million of PILOT revenue resulting from the Mall and Commons PILOTs.

Instead, District 30 budgeted only \$3.2 million of PILOT revenue, or about \$1.5 million less than it should have. The CHSD should have budgeted \$5.6 million of PILOT revenue but budgeted only \$3.5 million, or \$2.1 million less. District 30 officials had the estimated PILOT revenue percentages since April 5, 2016 and

¹⁴ The PILOT revenue retained by District 30 is based on a proportion of District 30's amount to be raised by taxes divided by the total amount of the tax levy. The remainder of the PILOT revenue is remitted to the CHSD.

adopted the budget on April 16, 2016. District officials ultimately had until August 15,¹⁵ four months later, to revise the tax levy to incorporate the correct PILOT revenue amounts. However, the property tax levy was not revised.

Figure 2: OSC Recalculated PILOT Calculation

	2016-17 PILOTs Receivable	Recommended Percentage	School District Portion	District 30 Share	CHSD Share
Green Acres Mall	\$13,700,000	72.75%	\$9,966,750	\$4,534,214	\$5,432,536
Green Acres Commons	\$440,000	63%	\$277,200	\$126,108	\$151,092
Total	\$14,140,000		\$10,243,950	\$4,660,322	\$5,583,628

Figure 3: Budget Underestimate of PILOT

	Total Green Acres PILOT Budgeted	OSC Recalculated Green Acres PILOT Available	Difference
District 30	\$3,216,384	\$4,660,322	(\$1,443,938)
CHSD	\$3,461,169	\$5,583,628	(\$2,122,459)
Total	\$6,677,553	\$10,243,950	(\$3,566,397)

On December 2, 2016, District 30 officials received a \$5.1 million payment from TOHIDA, comprised of the first half of the total 2016-17 PILOT amount to be provided to District 30. District 30 forwarded \$2.6 million of this amount to the CHSD on December 19. On May 16, 2017, District 30 officials received another payment of \$5.1 million, comprising the second half of the total 2016-17 PILOT amount to be provided to the District. District 30 forwarded \$2.6 million of this amount to the CHSD 16 days later on June 1, 2017.

Figure 4: PILOT Receivable Variance

	Total Green Acres PILOT Budgeted	Actual PILOT Revenue Received 2016-17	Difference
District 30	\$3,216,384	\$4,989,122	(\$1,772,738)
CHSD	\$3,461,169	\$5,253,630	(\$1,792,461)
Total	\$6,677,553	\$10,242,752	(\$3,565,199)

¹⁵ According to the Nassau County Administrative Code all school districts have until August 15 to file with the Board of Assessors and County Legislature the budget to be raised by taxes.

Ultimately, District 30 received \$5 million in PILOT payments for the Mall and Commons during the 2016-17 fiscal year, while budgeting to receive only \$3.2 million. This resulted in District 30 realizing \$1.8 million more in PILOT revenue than budgeted. The CHSD received \$5.3 million in PILOT payments for the Mall and Commons during the 2016-17 fiscal year, while budgeting only \$3.5 million, resulting in the CHSD realizing \$1.8 million in additional PILOT revenue it had not budgeted for. As a result, District 30 levied \$3.6 million more in taxes than necessary.

Tax Rate Impact in District 30

The tax rate for class 1 taxpayers¹⁶ in District 30 has been increasing over the past four years.¹⁷ Between 2013 and 2015, this tax rate increased a total of \$61.20 per \$1,000 of assessed valuation (7.8 percent), from \$781.44 in 2013-14 to \$842.64 in 2015-16. The property tax increases experienced during this period were due to increased taxes levied as well as changes in the adjusted base proportions.¹⁸ In 2016-17, the class 1 tax rate increased \$119.97 per \$1,000 of assessed valuation (14.24 percent) to \$962.61. However, the change to adjusted base proportions was greater in 2016-17. Additionally, the amount of property tax levied was higher than necessary due to the inaccurate PILOT estimate.

In order to determine how much of the \$119.97 tax rate increase was attributable to the inaccurate PILOT estimate, we recalculated District 30's class 1 tax rate using a levy amount that would have been used if they budgeted accurately for the Green Acres PILOTs.¹⁹ We determined that had District 30 budgeted accurately for the Mall and Commons PILOTs, the class 1 tax rate would have been \$920.15 per \$1,000 of assessed valuation, or an increase of \$77.51 (9.2 percent).

Of the tax increase experienced by District 30 taxpayers, \$42.46 (or 35.4 percent) was directly attributable to the inaccurate PILOT estimate. The remaining increase of \$77.51 (or 64.6 percent of the increase) was due to other factors including changes to the adjusted base proportions, increases to the tax levy and the PILOT agreement (see TOHIDA Approval of Green Acres Mall and Commons PILOTs).

16 Class 1 properties are 1, 2 and 3 family residential homes.

17 See Appendix B for information on calculating Nassau County tax amounts

18 Districts 13, 24 and 30 levy a prorated portion of the CHSD's overall levy based on the proportion of assessed property values within each district. Upon approval of the PILOT agreement, the Mall parcels were removed from the total amount of District 30 assessed properties on the Nassau County tax roll. As a result, District 13 and 24 became responsible for a greater share of the CHSD's revenue.

19 See Figure 1. The total levy was recalculated by reducing the levy by District 30's underestimated PILOT estimate and a proportionate share of the CHSD's underestimated PILOT estimate.

Figure 5: Class 1 Tax Rate Increase Impact to District 30

	2015-16 Class 1 Tax Rate		Difference Resulting from Other Factors		Projected 2016-17 Class 1 Tax Rate		Difference Resulting from Underestimated PILOT		Actual 2016- 17 Class 1 Tax Rate
District 30	\$842.64	+	\$77.51	=	\$920.15	+	\$42.46	=	\$962.61

In 2015-16, the median taxable household²⁰ in District 30 paid \$6,235.56 in school property taxes. In 2016-17, the same household paid \$7,123.31 in school property taxes, an increase of \$887.75 or 14.24 percent. We calculated that \$314.16 of this increase was attributable to the inaccurate PILOT estimate, while \$573.59 was attributable to a combination of other factors, as noted above (including changes to the adjusted base proportions, increases to the tax levy and the PILOT agreement).

Figure 6: Class 1 Median Tax Bill Increase in District 30

	2015-16 Class 1 Median Tax Bill		Difference Resulting from Other Factors		Projected 2016-17 Class 1 Median Tax Bill		Difference Resulting from Underestimated PILOT		Actual 2016- 17 Class 1 Median Tax Bill
District 30	\$6,235.56	+	\$573.59	=	\$6,809.15	+	\$314.16	=	\$7,123.31

Tax Rate Impacts in Valley Stream Districts 13 and 24

Class 1 tax rates also increased in Valley Stream Union Free School Districts 13 (District 13) and 24 (District 24). Between 2015-16 and 2016-17, this rate increased \$66.56 per \$1,000 of assessed valuation (7.26 percent) in District 13 and \$61.87 per \$1,000 of assessed valuation (7.34 percent) in District 24. We recalculated the class 1 tax rates in these districts using a levy amount²¹ that assumed the accurate PILOT amount was budgeted for the Mall and Commons PILOTs. Tax rates in District 13 increased \$13.17 more than necessary as a result of the CHSD’s inaccurate PILOT estimate and \$53.39 as a result of other factors.²² Likewise tax rates in District 24 increased \$12.05 more than necessary as a result of the CHSD’s inaccurate PILOT estimate and \$49.82 as a result of other factors.²³

20 Calculated using the median household assessed valuation in District 30 of \$740

21 We reduced the total amount levied by a proportionate share of the CHSD’s underestimated PILOT.

22 Other factors include shifts to the adjusted base proportions, changes to District 13 and CHSD levies, and indirect factors related to the Green Acres PILOTs.

23 Other factors include shifts to the adjusted base proportions, changes to District 24 and CHSD levies, and indirect factors related to the Green Acres PILOTs.

Figure 7: Class 1 Tax Rate Increase Impact to Other Districts

	2015-16 Class 1 Tax Rate		Difference Resulting from Other Factors	=	OSC Calculated 2016-17 Class 1 Tax Rate	+	Difference Resulting from Underestimated PILOT	=	Actual 2016- 17 Class 1 Tax Rate
District 13	\$916.91	+	\$53.39	=	\$970.30	+	\$13.17	=	\$983.47
District 24	\$842.82	+	\$49.82	=	\$892.64	+	\$12.05	=	\$904.69

In 2015-16, the median taxable household²⁴ in District 13 paid \$6,931.80 in school property taxes. In 2016-17, the same household paid \$7,435.05, an increase of \$503.25. We determined that \$99.58 of this increase is attributable to the inaccurate PILOT estimate, while \$403.67 of this increase is attributable to other factors.

In 2015-16, the median taxable household²⁵ in District 24 paid \$6,042.99 in school property taxes. In 2016-17, the same household paid \$6,486.62 (tax bill increase of \$443.63). We calculated \$86.37 of this increase to be attributable to the inaccurate PILOT estimate. In contrast, \$357.26 of this increase is attributable to other factors.

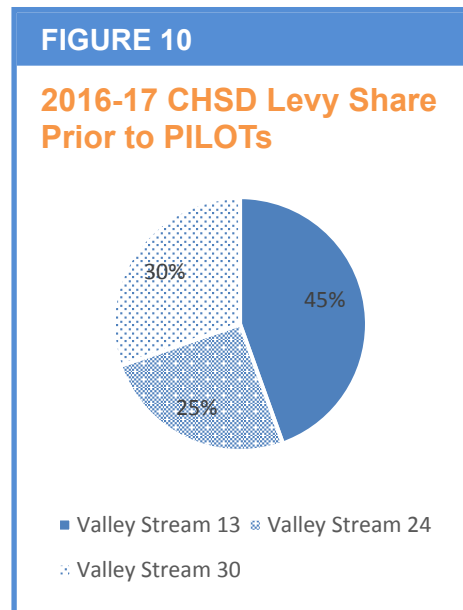
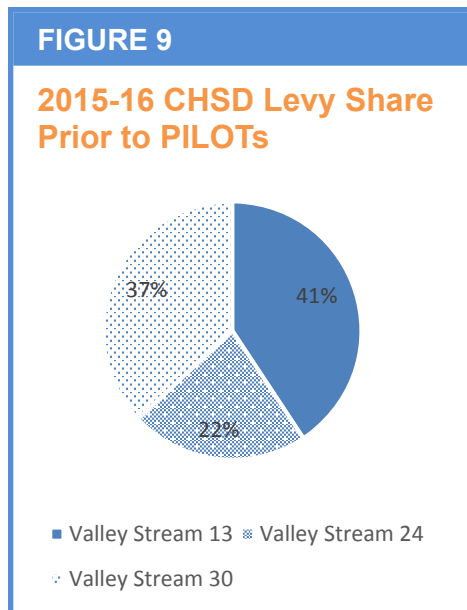
Figure 8: Class 1 Median Tax Bill Increases to Other Districts

	2015-16 Class 1 Median Tax Bill		Difference Resulting from Other Factors	=	Projected 2016-17 Class 1 Median Tax Bill	+	Difference resulting from Underestimated PILOT	=	Actual 2016- 17 Class 1 Median Tax Bill
District 13	\$6,931.80	+	\$403.67	=	\$7,335.47	+	\$99.58	=	\$7,435.05
District 24	\$6,042.99	+	\$357.26	=	\$6,400.25	+	\$86.37	=	\$6,486.62

24 Calculated using a median household assessed valuation in District 13 of \$756

25 Calculated using a median household assessed valuation in District 24 of \$717

The following illustrates how the districts' share of the tax levy changed as a result of the PILOT agreement.



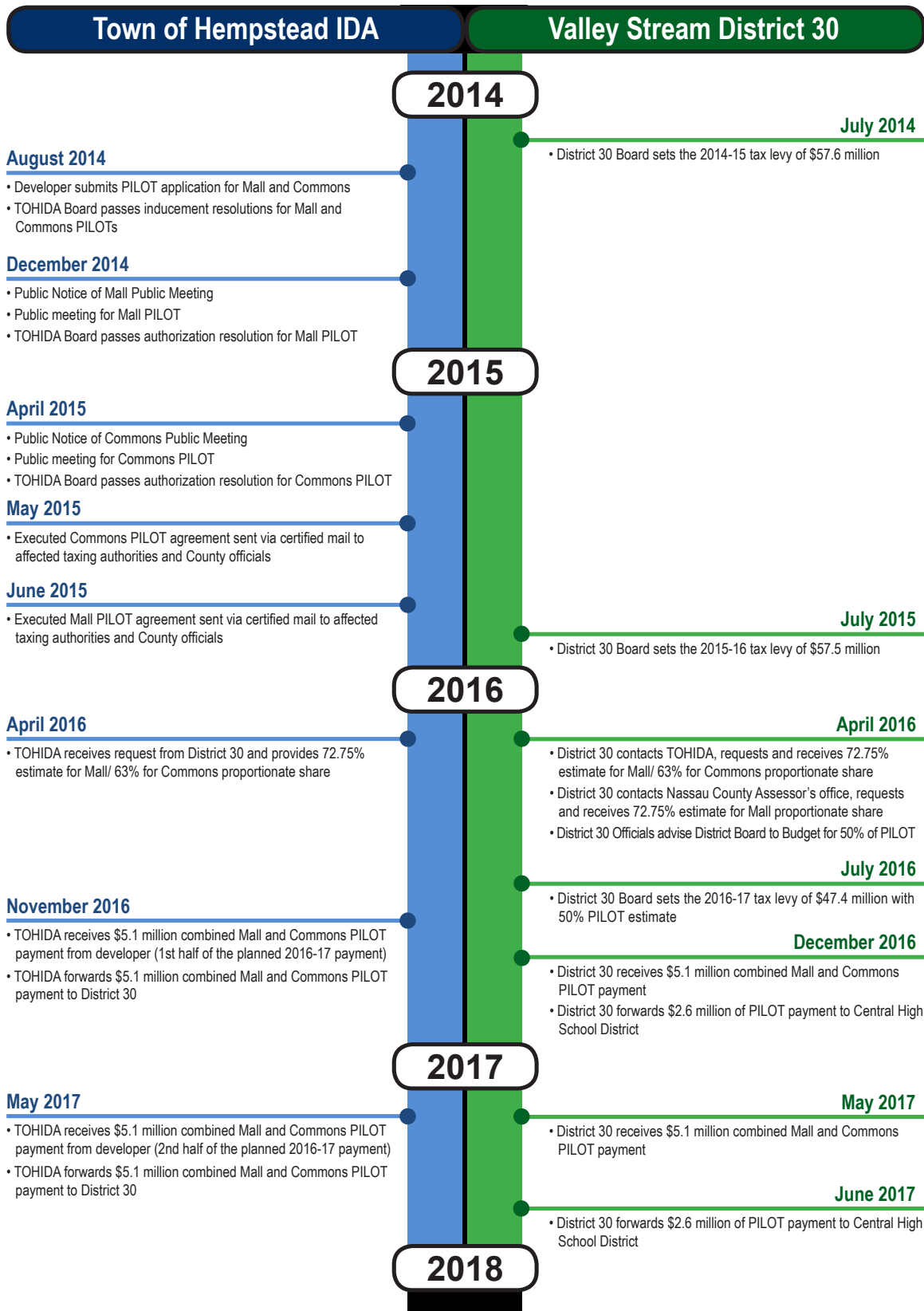
In 2015-16 District 30's share for the CHSD was 37 percent but decreased by 7 percent in 2016-17. District 13's share increased by 4 percent and District 24's share increased by 3 percent in 2016-17.

What Do We Recommend?

The District 30 Board should:

3. Consider information provided by TOHIDA and the Nassau County Assessor's Office when budgeting for future PILOT estimates.
4. Ensure that overlevied tax revenue is returned to District 30 taxpayers.

Appendix A: Timeline of Events Related to the PILOT Payments



Appendix B: Calculating Taxes for Nassau County Residents

How do I Determine My Individual Property Taxes?

Individual property taxes in Nassau County are determined by the following equation:

$$\text{Property Tax (in Dollars)} = \text{Assessed Value} \times \text{Tax Rate} / 100$$

The Assessed Value is the market value of a property (as determined by the County Assessor's office) multiplied by .25 percent. For example, a residential property with a market value of \$500,000 will have an assessed value of \$1,250. The tax rate is a pre-determined rate designed to provide the taxing authority with the funds it levied divided proportionately throughout the tax base.

For example, if the tax rate for a school district is determined to be \$518.87 and the property is assessed at \$1,250, in order to determine the total school property taxes to be paid, multiply \$1,250 by \$518.87 and divide by 100:

$$\$1,250 \text{ (Assessed Value)} \times \$518.87 \text{ (Tax Rate)} / 100 = \$6,485.88 \text{ (Property Tax in Dollars)}$$

Because an individual property tax is calculated by two factors, the assessed value of the home and the tax rate, one or both can impact property taxes in a given year. If the tax rate increases more than the property assessment decreases, property taxes will increase. This is why a homeowner's tax bill may increase in the same year the homeowner was successful in getting his/her property assessment lowered.

What is the Tax Rate and How is it Calculated?

The Tax Rate is a rate determined by three factors; the amount levied in a given year by the taxing authority (Total Tax Levy), the adjusted base proportion of the given property class and the total assessed value of properties within the given property class. The formula is as follows:

$$\text{Tax Rate} = \text{Total Levy} \times \text{Adjusted Base Proportion (of class)} \times 100 / \text{Assessed Value (of class)}$$

What is the Total Tax Levy?

When preparing its annual budget, a taxing authority, such as a school district or village, will determine a specific amount of tax revenue it will need to fund operations in the coming fiscal year. This amount is the tax levy. If a taxing authority determines that it will need \$500,000 to fund operations in a given year, it will levy this amount and the tax rate will be adjusted such that the taxing authority receives the full amount it levied.

What are Property Classes and How are They Used to Calculate Adjusted Base Proportions?

In Nassau County, each taxing authority is divided into four property classes. They are class 1 (Residential 1-3 family properties), Class 2 (Rental and CoOP properties), Class 3 (Utility properties) and Class 4 (Commercial properties). The total Assessed Value of properties in the taxing authority are subdivided by class, totaled and are proportionately divided into a percentage called Base Proportions.

Figure 11: Base Proportions Explained

	Total Assessed Value in Taxing Authority	Base Proportions	Adjusted Base Proportions
Class 1 – Residential	\$53,000	53%	55%
Class 2 – Rental/CoOP	\$2,000	2%	2%
Class 3 – Utility	\$3,000	3%	3%
Class 4 - Commercial	\$42,000	42%	40%
Total of All Classes	\$100,000	100%	100%

In the above example, the total Assessed Value in this district is \$100,000. Class 1 – residential properties comprise \$53,000. The base proportion for a particular class is calculated as the total assessed value of the class divided by the total assessed value within the taxing authority. In this case, Class 1 – residential properties would be $\$53,000 / \$100,000 = 53$ percent.

The Nassau County Assessor’s office adjusts the base proportions to account for tax-exempt properties or properties that have been fully or partially removed from the tax roll due to fire, demolition or destruction. In the above example, we assume a commercial property was removed from the tax roll due to fire, resulting in a shift of 2 percent from class 4 – commercial properties to class 1 – residential properties. Therefore, the adjusted base proportion for class 1 properties increased from 53 percent to 55 percent because it now represents a larger portion of the total tax base of the taxing authority.

Once the adjusted base proportions are calculated, taxpayers within a particular class will be collectively responsible for the tax levy amount multiplied by this adjusted percentage.

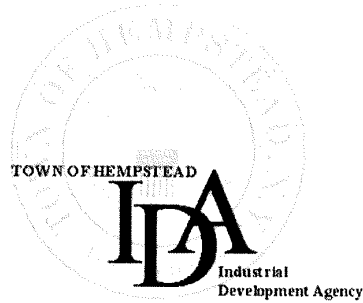
Putting It All Together

In order to calculate the Tax Rate for Class 1 taxpayers using the above information, we revisit the Tax Rate formula:

Tax Rate = \$500,000 (Total Levy) X 55% (class 1 Adjusted Base Proportion) X
100 / \$53,000 (class 1 Assessed Value)

With this example, the Tax Rate is \$518.87.

Appendix C: Response From TOHIDA Officials



INDUSTRIAL DEVELOPMENT AGENCY

Board Members
Florestano Girardi
Eric C. Mallette
Gerilyn S. Smith

Frederick E. Parola
Executive Director
Chief Executive Officer

350 FRONT STREET HEMPSTEAD, NY 11550-4037
(516) 489-5000 EXT. 4200 • (516) 489-3179

November 29, 2017

Ira McCracken, Chief Examiner
Division of Local Government and School Accountability
Office of the State Comptroller
Hauppauge Regional Office/New York State Office Building
250 Veterans Memorial Highway, Room 3A10
Hauppauge, New York 11788

Dear Mr. McCracken,

On behalf of the staff of the Town of Hempstead IDA, please accept this letter as our formal response to your draft audit for the IDA and Valley Stream Union Free School District 30 related to the Green Acres Mall PILOT Payments. We thank you for the exit interview and appreciate the intent of these reports as well as the professionalism the staff was shown during the process. As it has in the past, this Agency staff continues to ensure efficiency, accountability, transparency and accuracy now and in the future.

When the Valley Stream Green Acres and Green Acres Adjacent projects applied to the IDA in August of 2014, the IDA staff engaged in an extensive amount of due diligence to ascertain the condition of the mall, the demographic area it served, the type of project that was envisioned and the impact that IDA benefits would provide. At that time, there were many local malls being designated as "Dead Malls", including one in the Town of Hempstead. The Source Mall once a vibrant economic center anchored by Fortunoff's, has since experienced more than an 80% vacancy rate for approximately 10 years.

The view of the IDA staff, and as recommended to the Board at the time, (which reviewed all these findings) was that this should not be permitted to happen in Valley Stream. The further depreciation of the Green Acres Mall would drastically impact the residents in terms of, among other things, reduced taxes being paid by the Mall.

There was a significant amount of data supporting the impact of "Dead Malls" to local residents and taxpayers, along with the economic impact statement. Accordingly, a determination was made by the IDA Board to assist the Mall, as well as the community and to preserve the 2,000 employees as well as to retain and increase the amount of sales tax generated through a mall of this size.

Additionally, a tax certiorari filing was filed by the Macerich Company, with the Nassau County Department of Assessment for a corrected assessment and substantial refunds for prior tax years. If this mall were to become a "dead mall", the impact of the added tax burden on the residential taxpayer would have been crippling, especially to, the senior population on fixed incomes. The PILOT that was developed sought to prevent such a result.

There was much discussion in the initial review concerning who knew what and when. As was stated in your audit, the Town of Hempstead IDA Board followed its standard procedures when it worked to approve the project. The Agency held two public hearings on the project and no representative of any community institutions or residents attended. All notifications were made by certified/return receipt requested as well as an additional notification to the Central School District, (which was not an Agency requirement).

Through its cost benefit analysis, the Agency also assessed the indirect tax impact of the PILOT. This information was supported through an independent report commissioned from Camoin and Associates. This review of both documents pre-closing and post-closing revealed a tax impact of approximately \$48.00 annually per household (not inclusive of other factors beyond our control). This is also validated in your Audit. As stated on page 6 of the audit, paragraph 1, The Agency and acknowledged the tax increases that were anticipated as a result of the Green Acres PILOT but it also **calculated** the same. Page 7 of your Audit Report cites the "the Agency should develop policies and procedures documenting the direct and indirect property tax impact of significant PILOT Agreements and implement methods to communicate this information".

The IDA has had tax impact policies in place long before these two projects received a PILOT Agreement. The Agency communicated accurate information to School District 30 in a timely manner. The IDA, at the recommendation of State Officials, changed the way applications were presented (July 2016) to the Board for consideration. These measures include the presentation of the PILOT and cost benefit analysis at the time of Preliminary Inducement and prior to the public hearing. Previously, the Agency presented the cost benefit analysis during the public hearing phase of the project and not as early as the Preliminary Inducement process. This previously used procedure provided the community more time to consider the merits of a project prior to adoption of the PILOT by the IDA Board.

Most telling, as you point out in the timeline, School District 30 was notified on a number of occasions what the accurate percentage sum the district would receive as a result of the PILOT. These accurate percentages were also confirmed by the Nassau County Department of Assessment. The Agency was not furnished with the contract agreement between School District 30 and the Central High School District. Therefore, the IDA was unable to ascertain the Central Districts proportionate percentage that they were to receive as a result of these two PILOT Agreements. That was a matter between the two school districts

Ignoring these communications from the Town of Hempstead IDA, School District 30, knowingly or with gross disregard, underestimated the taxes it received which created an unnecessary burden to the residents. As a result, the District increased taxes approximately 14.5% in the 2016/2017, when the matter was vetted by many others, including your office, District 30's Budget amazingly decreased taxes by 15% in 2017/2018 (thereby acknowledging the error of the previous year and causing an unnecessary increase in Class 1 tax rates).

This does not change the status of the funds that have been deposited with the school district for the entire 2016/2017 tax year. Macerich paid all PILOT monies in a timely fashion and those funds were dispersed to School District 30 within 30 days.

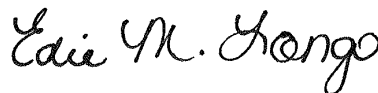
Finally, this project has upheld all job commitments thus far, as promised by the Developer to the community. The Agency's board, to date, has approved 36 new tenants, which have created 575 new employment positions thus far as a result of the PILOT. Furthermore, a new anchor store has opened, Century 21, which has also contributed immeasurably to the success of the Green Acres Mall.

The Agency staff will continue to report accurately and fully and will strive to enhance the procedures necessary to continue to promote job growth and economic stability in the Town of Hempstead.

Sincerely,



Frederick E. Parola
Executive Director/CEO



Edie M. Longo
Deputy Executive Director/CFO

Appendix D: Response From District 30 Officials

District 30 officials included several attachments as a part of their response. We did not include these attachments in the final report, as District 30 officials' response included sufficient information to support their assertions.

VALLEY STREAM UNION FREE SCHOOL DISTRICT THIRTY
Administrative Offices

175 North Central Avenue
Valley Stream, NY 11580

www.valleystream30.com

Dr. Nicholas A. Stirling
Superintendent of Schools

Tel: (516) 434-3600, x5222
Fax: (516) 706-1177
nstirling@vs30.org

December 8, 2017

Ira McCracken, Chief Examiner
Division of Local Government and
School Accountability
Office of the New York State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. McCracken:

Thank you for providing us with a copy of the State Comptroller's preliminary draft findings regarding the Green Acres Mall PILOT Payments. The District remains committed to sound fiscal practices, as evidenced by our compliance with the New York State tax cap since its inception, and reduction of our tax levy over the past five years. We are pleased to report that your recommendation to return any excess PILOT revenue to the taxpayers was implemented months ago when the District reduced its 2017/2018 tax levy by \$1,858,662. When the District prepared and presented its 2017/2018 budget to the public, it included this amount as a revenue source to fund its 2017/2018 estimated appropriations and, therefore, the District is operating in a revenue deficit this year. This amount represents every dollar the District received in excess of its estimate of PILOT revenue from the Mall for 2016/2017 and fulfils a promise we made to our residents that any excess revenue would be returned. As a result, the average home in Valley Stream District 30 received a decrease of \$382 in their school taxes on their October 2017 School Tax bill.

See
Note 1
Page 22

I do think it necessary to respond to certain aspects of the audit report as they do not fully address the complexity of this matter, or the considerable uncertainty that existed in 2016. This uncertainty lingers as the litigation over the Town of Hempstead's action of revoking the Mall's PILOT agreement remains, to date, unresolved. The report also neglects to address the litigation which was commenced on behalf of the District and which resulted in a favorable decision from the Nassau County Supreme Court which will ensure that the Nassau County "Guarantee" will serve to make the District whole for deficiencies in the Mall's PILOT payments. In other words, the District has taken action to protect itself and its residents from even greater tax increases in the future should the Mall successfully challenge its assessment and seek more tax breaks.

In addition, public records demonstrate the Mall was purchased for \$500,000,000 just a year before the Town of Hempstead IDA determined that the property was over-assessed and was similarly valued in an independent appraisal obtained by Macerich and as reported in Macerich's 2014 annual report to its shareholders. TOHIDA's determination was admittedly based solely on an analysis provided by the attorneys who represent the Mall in its pending tax certiorari proceedings that the Mall had a value of only \$169,633,708. No independent analysis of the valuation of the Mall was undertaken by the IDA, nor was the purchase price of the Mall considered.

The audit's finding that the Town of Hempstead IDA followed its procedures when approving the PILOT agreement also suggests the IDA had legal authority to grant financial assistance on the basis that a pending tax certiorari proceeding would be resolved in a favorable manner to the Mall. In this instance, the lack of due diligence unnecessarily shifted an additional tax burden of at least \$6,500,000 (an average of \$574 per household) per year onto the residents of Valley Stream. In that regard, we applaud your recommendation that TOHIDA conduct tax impact studies in the future prior to awarding a PILOT. It is unfortunate that neither the Mall, nor TOHIDA has returned a single penny of the tax increase attributable to their actions.

See
Note 2
Page 22

The District also strongly disagrees with the characterization of its estimate of PILOT revenue as inaccurate. Under the tax cap, school districts are obligated to engage in a process of developing a reasonable and good faith estimate of PILOT revenue prior to setting the tax levy. Until tax rates are set, it is not possible to know definitively how much PILOT revenue a school district will receive. As per guidance from your office, the process requires a review of the District's respective PILOT agreements. The findings in this audit do not appear to have considered the detailed analysis of the PILOT agreements the District undertook in developing its estimates or the fact that in at least one other instance, the District received significantly less PILOT revenue than it should have following the successful resolution of tax certiorari proceeding. The audit also does not address that the portion of the tax increase attributable to school districts' estimating of PILOT revenue was split between District 30 (\$150) and the Central High School District (\$164). In that regard, we respectfully request the audit be revised to provide detailed guidance as to what would constitute a "good faith" and "reasonable" estimate of unknown PILOT revenue, so that both school districts may implement such guidance in the future.

See
Note 3
Page 22

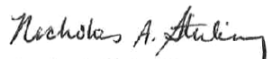
See
Note 4
Page 22

See
Note 5
Page 22

See
Note 6
Page 23

I have also attached a copy of the Nassau County Supreme Court decision, the deed to the Mall, and excerpts from Macerich's 2014 annual report and appraisal of the Mall. I also request that this letter and its supporting documentation be included in the final report, as I believe the information provided is necessary for a complete record of this matter. Should you require any additional or further information, please do not hesitate to let me know. Thank you for your time and attention to this matter.

Sincerely,



Nicholas A. Stirling, Ph.D.
Superintendent of Schools

Enclosures

c: C. Dillon
J. Lavery
[Redacted]

Appendix E: OSC Comments on District 30's Response

Note 1

As stated in our report, in order for taxpayers to fully realize the appropriation of \$1.9 million in excess PILOT funds, District 30 must complete its 2017-18 fiscal year in a planned operating deficit. Otherwise, the District will continue to retain overlevied funds from the 2016-17 year in the amount of the surplus.

Note 2

TOHIDA remits PILOT revenue received from a developer to the affected taxing authorities such as District 30. As a result TOHIDA does not retain or realize amounts levied in taxes.

Note 3

OSC's Local Government Management Guide entitled "*Understanding the Budget Process*"²⁶ describes the use of accurate information when making realistic revenue estimates.

Note 4

OSC's tax cap guidance²⁷ and the New York State Education Department guidance indicate that PILOTs should tie back to PILOT agreements/schedules. The guidance does not indicate that all PILOT agreements be used to estimate specific PILOT payments.

Note 5

Our report acknowledges District 30 weighed the 72.75 percent recommendation made by TOHIDA and the 72.73 percent recommendation from the Nassau County Assessor's office while making its PILOT estimate. We also acknowledge that the District considered the one other PILOT payment it receives from TOHIDA, where District 30 received 50 percent of PILOT revenue when developing its budget.²⁸ However, as stated in our report TOHIDA officials informed District 30 officials that the projects are assessed differently by Nassau County, taxed at different rates and have different proportionate shares. There was no other documentation to substantiate why the 50 percent estimate was used.

²⁶ <http://www.osc.state.ny.us/localgov/pubs/lgmg/budgetprocess.pdf>

²⁷ <http://www.osc.state.ny.us/localgov/realprop/schools.htm>

²⁸ An error in proportionate share calculation occurred in the Town of Hempstead Controller's Office resulting in approximately 50 percent of an unrelated TOHIDA PILOT to be paid to District 30 instead of 62 percent. The error was discovered late in the summer of 2016. A correction was applied and the District received approximately 85 percent in 2016-17 and 2017-18. Following the 2017-18 year, District 30 will continue to receive approximately 62 percent of this unrelated PILOT agreement.

Note 6

The ratio between District 30 and the CHSD should reflect only the apportionment of the overlevied PILOT estimate and not the overall levy. Therefore, we calculate that \$217 of the \$314 tax bill increase experienced by a median household in District 30 was the result of District 30's inaccurate PILOT estimate, while \$97 of the \$314 tax bill increase was attributed to the impact of the inaccurate PILOT estimate on the CHSD. Districts 13 and 24 also experienced increases resulting from the inaccurate PILOT estimate for the CHSD.

Appendix F: Audit Methodology and Standards

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, we performed the following audit procedures:

- We interviewed TOHIDA Officials to gain an understanding of the PILOT development process.
- We reviewed TOHIDA's UTEP and Procedures.
- We examined PILOT applications and supporting documentation related to PILOT development and approval.
- We examined TOHIDA Board pronouncements.
- We examined electronic and certified mail communications between TOHIDA, District 30 and the Nassau County Assessor's office.
- We examined County land records obtained from the Nassau County Assessor's office website.
- We selected for review five PILOTs in addition to the Green Acres Mall and Commons PILOTs from a list of 18 PILOTs approved between January 2014 and June 2016, in order to determine if the PILOT approval process was consistent.
- We interviewed District 30 Officials to gain an understanding of the budgeting process.
- We reviewed District 30 policies related to budget development.
- We assessed District 30 budget performance between 2013-14 and 2016-17.
- We projected tax rates and median tax costs for Districts 30, 13 and 24 with accurate PILOT estimates. In order to develop these projections, we used schedules published by the Nassau County Assessor's office detailing tax rates, adjusted base proportions and median home values by district.
- We developed a timeline of significant and related District 30 and TOHIDA events.

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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning

the value and/or size of the relevant population and the sample selected for examination.

TOHIDA:

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 Secretary's office.

District 30:

A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-1(3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the fiscal year. 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 Clerk's office.

Appendix G: Resources and Services

Regional Office Directory

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

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

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

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

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/lgli/pdf/cybersecurityguide.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

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

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