

DOUGLAS R. HOFFER
STATE AUDITOR



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

March 22, 2013

Brian M. Palaia
Town Manager
43 Bombardier Road
Milton, Vermont 05468

Dear Mr. Palaia,

Thank you for your letter of March 20. While disagreements over audit findings are understandable, the personal tone of your letter is unprofessional, maligns the integrity of the SAO team that conducted the audit and is without merit. The documentation for the audit work on the Milton TIF district audit is extensive and available to you and to the public. I have addressed your assertions in the remainder of this letter and the attached appendices.

Access to work papers and correspondence

Assertions in your letter: 1) “ . . . the Office of the Auditor ... has failed to respond to written requests for public information that would enlighten the Town and the public as to how the Chief Auditor came to her conclusions” and 2) “The Town has had to incur expenses of its own to try to make sense of the arithmetic and reasoning in the audit . . .but has been unsuccessful so far because of the denial of work papers and correspondence . . .”.

Your assertion that the SAO denied Milton or its representatives access to work papers and correspondence that would assist them with understanding SAO’s conclusions is demonstrably false. For instance, Attorney Paul Giuliani made a public record request on your behalf for “work papers and related documents identifying, analyzing and quantifying \$277,000¹ of expenditures identified in your report as unrelated TIF district costs [and] communications ...[with] the Vermont Department of Taxes and the office of the Vermont Attorney General ...”. In response, the SAO provided copies of all work papers for the \$177,000 identified as unrelated TIF district costs and final legal opinions from the Office of the Attorney General (AG). Based on the advice of the AG’s office, some documents requested by Attorney Paul Giuliani were determined to be confidential attorney-client communications exempt from public inspection under 1 V.S.A. §317(c)(4).

Further, the SAO communicated detailed information related to the audit directly to you and other town officials on multiple occasions and provided work papers and other

¹ Mr. Giuliani’s request referred to a dollar amount that was not included in the report. The actual dollar amount was \$177,000.

documentation to explain our audit process and findings. (See appendix I – Timeline of Communications). For example, during the exit conference, SAO provided you with a copy of its calculation of the Milton TIF district tax increment and how much the town owed the state education fund. The SAO also explained that the calculation was premised on an opinion from the AG’s office.

Milton owes \$1.3 million to the state education fund

Assertions in your letter: “The Town trusts that in future correspondence when referring to errors which you believe Milton has made that you would take the time to address the particulars of what you think is in error with the Town rather than generically referring to “other errors” valued at \$1.3 million after agreeing to “forgive” \$2.8 million.”

The SAO did not agree with any proposal to forgive Milton’s errors with regard to the \$2.8 million. Rather, in our letter to Secretary Spaulding, we suggested that it might be reasonable to consider a limited forgiveness criterion² as opposed to the blanket forgiveness proposed by the Governor. We offered as an example the effect of applying this criterion to Milton and pointed out that the town would continue to owe \$1.3 million to the state education fund related to other errors. The audit report describes these errors in detail, but the primary driver was Milton’s failure to utilize any of the municipal tax increment to fund the improvements in the TIF district from 1998 to 2008. See appendix II for additional explanation.

Town will argue efforts by anyone to prove that it has violated the law

Assertions in your letter: “While the Town finds merit in the Governor’s proposal . . . , it continues to disagree that any “blanket amnesty” as referenced in your letter, is needed. Amnesty is pre-conditioned on a finding that the Town has actually violated some provision of the law. That has not happened and the Town will argue efforts by anyone to prove that it has violated the law.”

According to guidance provided by the AG’s office to the SAO, the town of Milton violated state statute. Namely, from 1998 to 2008, the town did not use any of the \$1.8 million of municipal tax increment³ to repay TIF district debt. The AG’s office noted that “Milton’s position [that the town did not need to use municipal increment to repay TIF district debt] is inconsistent with the purpose of the TIF district statutes. That purpose is to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region or the state. The purpose was not to provide a windfall or a general source of revenue for municipalities.”

Capstone audit report

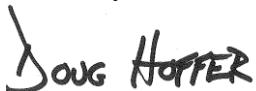
Assertions in your letter: The SAO “deliberately decided not to share a copy of the draft capstone report.”

² We suggested that if the law was changed subsequent to when the error was committed, and if the law had been applied retroactively it would cause the municipality to be in compliance, then forgiveness could be granted.

³ Municipal tax increment is one component of incremental property tax revenue and is derived from the growth in property values in the TIF district multiplied by the municipal tax rate.

The SAO obtains comments on draft reports from those entities that are the subject of or participate in audits. As a result, SAO obtained comments on the draft capstone audit report from the Attorney General's Office (AG), Agency of Commerce and Community Development, Department of Taxes and the Vermont Economic Progress Council. Further, the capstone audit report did not contain new findings about the municipalities previously audited, merely a summary. During the course of conducting the capstone audit, SAO invited municipalities⁴ to attend a roundtable discussion or to answer a questionnaire in order to provide input to whether statutory changes could be made to improve municipal administration and state oversight. All towns, including Milton, declined to attend the roundtable and none responded to the questionnaire.

Sincerely,



Doug Hoffer
Vermont State Auditor

cc: Janet Ancel, Chair, House Ways & Means Committee
Tim Ashe, Chair, Senate Finance Committee
Jeb Spaulding, Secretary of the Agency of Administration
Fred Kenney, Vermont Economic Progress Council

⁴ Burlington, Milton, Newport, Winooski, Colchester, Hartford, St. Albans, South Burlington and Barre City.

Appendix I – Timeline of SAO Communication of Audit Status and Findings

Note: This timeline only addresses communications related to the audit's status and findings. It does not include communications used to gather evidence related to the audit.

Date	Communication Type	Description of Communication
2/3/2011	Entrance conference	Tom Salmon, Joe Juhasz, June Sweeney and Tanya Morehouse met with Brian Palaia, Town Manager, and John Cushing, Town Clerk/Treasurer to describe the reason for the audit and the audit objectives.
3/16/2011	Status meeting	Attendees from Milton were Brian Palaia, Town Manager, and John Cushing, Town Clerk/Treasurer. Attendees from SAO were Tanya Morehouse, Chief Auditor, Steve Valentine, Audit Manager, and June Sweeney, Senior Auditor.
6/16/2011	Status email from June Sweeney to John Cushing	Update on status of audit
8/18/2011	Status meeting	Attending : Milton Town Manager Brian Palaia; Milton Town Clerk/Treasurer John Cushing; Carrie Violet, Milton Planning Coordinator; Tanya Morehouse, Chief Auditor; Steve Valentine, Audit Manager; June Sweeney, Audit Senior. The purpose of the meeting was to share some preliminary findings related to SAO's calculations of incremental property tax revenue and the use of expenditures with Milton town officials and to obtain any additional evidence they may have had prior to finalizing the findings. Provided various documents to Milton representatives, including SAO's tax increment calculation.
11/15/2011	Exit conference	Attendees: Brian Palaia, John Cushing and Carrie Violet from Milton. Tom Salmon, Joe Juhasz, Steve Valentine, June Sweeney and Tanya Morehouse from SAO. SAO provided a fact sheet that addressed major findings. In the meeting, the Town Treasurer confirmed that the town officials elected to contribute only the education tax portion of the increment.
12/29/2011	Draft audit report	Provided draft of audit report and requested town's response be provided by January 13, 2012. Added additional week for town response as a result of communication from Brian Palaia that the time period was not sufficient.
1/11/2012	Town response to draft audit report	Town stated that its position was that it "substantially complied with the requirements of Statute" and "has not made any substantive deviation from the direction provided by Statute". The town "disagrees with the finding of your draft report." No information or evidence in support of these assertions were provided
1/19/2012	Final audit report	Posted to SAO website. Distributed to the Town, Secretary of the Agency of Administration, Commissioner of Finance and Administration and the Department of Libraries in accordance with state statute.
7/23/12	Meeting with Paul Giuliani, attorney hired by Milton	State Auditor Tom Salmon, Deputy State Auditor Joe Juhasz and Chief Auditor, Tanya Morehouse met with Paul Giuliani to discuss the results of the Milton TIF district audit.
8/21/2012	Ron Smith, accountant hired by Milton	SAO Chief Auditor Tanya Morehouse met with Ron Smith at request of Paul Giuliani to answer questions he had

Appendix I – Timeline of SAO Communication of Audit Status and Findings

		relative to the Milton TIF district audit.
8/22/2012	Letter to Paul Giuliani, attorney hired by Milton	Provided summary of Ron Smith's questions most germane to the Milton TIF district audit.
9/13/12	Documents provided to Paul Giuliani in response to his records request	SAO provided copies of all work papers for the \$177,000 identified as unrelated TIF district costs and final legal opinions from the Office of the Attorney General (AG).

Appendix II

Our report on Milton's TIF district contained the following table that calculated Milton's underpayment to the State's education fund.

Calculation of Milton's Underpayment on Page 25 of Report

Table 5: Calculation of Milton's Percentage of Incremental Revenue Appropriated and Underpayment of Statewide Education Increment

Description	Percentage of Incremental Revenue Appropriated	Calculation of Underpayment
Cumulative debt payments through 6/30/2010	\$625,000	
Statewide education increment set aside in TIF account ⁵	814,000	
Incremental property tax revenue appropriated	\$1,439,000 ⁶	
Incremental property tax revenue that could have been appropriated (incremental property tax revenue from Table 4, net of \$685,000 to reduce allowable retention to 75 percent for FY2007 to FY2010)	\$5,920,000 ⁷	
Percent of incremental property tax revenue appropriated (\$1,439,000/\$5,920,000)		
Amount of statewide education increment actually retained (footnote a in Table 4)	\$4,386,000	
Less: SAO calculation of statewide education increment that should have been retained (\$4,242,000 x 24 percent)	1,018,000	
Amount Milton underpaid the state (Milton's over retention of statewide education increment)		\$3,368,000

Our March 18, 2013 letter to Secretary Spaulding suggested that it might be reasonable to consider a limited forgiveness criterion related to monies owed by TIF districts such that if the law was changed subsequent to when the error was committed, and if the law had been applied retroactively it would cause the municipality to be in compliance, then forgiveness could be granted. Using this criterion, Milton would continue to owe \$1.3 million to the state education fund related to other errors. The following table explains how the \$1.3 million is derived.

⁵ At 6/30/2010, the total balance in the account is approximately \$1,288,000. Approximately \$474,000 of the TIF account balance is not incremental property tax revenue, rather it is investment income earned on incremental property tax revenue and thus has been excluded from this analysis.

⁶ Per the town's audited financial statements, Milton recorded \$4,476,000 in the TIF account which is primarily based on statewide education increment. As previously described, Milton used \$3 million for purposes other than eligible debt payments or prefunding. Since the use did not comply with statute, the \$3 million is excluded from the calculation of the amount appropriated for debt repayment or prefunding.

⁷ Comprised of statewide education increment and municipal increment of \$4,242,000 and \$1,678,000, respectively.

Appendix II

Calculation of Milton's Underpayment If Limited Forgiveness Criterion is Applied

Description	Percentage of Incremental Revenue Appropriated	Calculation of Underpayment
Cumulative debt payments through 6/30/2010	\$625,000	
Other uses	2,800,000	
Statewide education increment set aside in TIF account ^{8a}	814,000	
Incremental property tax revenue appropriated	\$4,239,000 ⁹	
Incremental property tax revenue that could have been appropriated (incremental property tax revenue from Table 4, net of \$685,000 to reduce allowable retention to 75 percent for FY2007 to FY2010)	\$5,920,000 ¹⁰	
Percent of incremental property tax revenue appropriated (\$4,239,000/\$5,920,000)		
Amount of statewide education increment actually retained (footnote a in Table 4)		\$4,386,000
Less: SAO calculation of statewide education increment that should have been retained (\$4,242,000 percent)		3,054,000
Amount Milton underpaid the state (Milton's over retention of statewide education increment)		\$1,332,000

⁸ At 6/30/2010, the total balance in the account is approximately \$1,288,000. Approximately \$474,000 of the TIF account balance is not incremental property tax revenue, rather it is investment income earned on incremental property tax revenue and thus has been excluded from this analysis.

⁹ Per the town's audited financial statements, Milton recorded \$4,476,000 in the TIF account which is primarily based on statewide education increment. As previously described, Milton used \$3 million for purposes other than eligible debt payments or prefunding. Since the use did not comply with statute, the \$3 million is excluded from the calculation of the amount appropriated for debt repayment or prefunding.

¹⁰ Comprised of statewide education increment and municipal increment of \$4,242,000 and \$1,678,000, respectively.