



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued March 24, 2022

Baker Hill Road District

For the period January 1, 2019 through December 31, 2020





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March 24, 2022

Mr. William Prendergast, Chair of the Prudential Committee
Baker Hill Road District
c/o Lanesborough Town Hall
83 N. Main Street
Lanesborough, MA 01237

Dear Mr. Prendergast:

I am pleased to provide this performance audit of the Baker Hill Road District. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2019 through December 31, 2020. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Baker Hill Road District for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular stamp.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Henry Sayers, Member of the Baker Hill Road District Prudential Committee
John Goerlach, Member of the Baker Hill Road District Prudential Committee
Linda Pruyne, Treasurer for the Baker Hill Road District
Mark Siegars, Attorney for the Baker Hill Road District
Lorna Gayle, Clerk for the Baker Hill Road District

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EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Baker Hill Road District (BHRD) for the period January 1, 2019 through December 31, 2020. In this performance audit, we reviewed BHRD’s compliance with Chapter 41 of the Acts and Resolves of 1989—specifically Section 4, which requires BHRD to file an annual report of receipts and expenditures, and Section 6, which requires BHRD to prepare and approve an annual budget. In addition, we reviewed BHRD’s expenditures on contracted services to ensure compliance with the agreed-upon terms.

Below is a summary of our finding and recommendation, with links to each page listed.

Finding 1 Page 5	BHRD did not file an annual report for 2019.
Recommendation Page 5	BHRD should file its report annually with the prudential committee.

OVERVIEW OF AUDITED ENTITY

The Baker Hill Road District (BHRD) was formed in 1989 in response to a home rule petition¹ filed by the Town of Lanesborough. BHRD's scope of authority was expanded by Chapter 47 of the Acts of 2018 to include engaging in economic development (e.g., developing, maintaining, or managing buildings or facilities). The district is overseen by a three-member prudential committee, which consists of two members appointed by the Town of Lanesborough and another member appointed by the owners of property in BHRD. The members serve for one, two, or three years. The committee has the power to appoint a treasurer for BHRD, who cannot be a sitting member of the prudential committee. The committee meets monthly, but it is only required to meet twice a year.

BHRD's purpose is to own, monitor, and maintain US-7/SR-8 Connector Road (formerly Berkshire Mall Drive), and BHRD has the autonomy to purchase goods and services to help maintain the road. Road maintenance, police details, and fire and emergency services are provided by the Town of Lanesborough, and the costs are reimbursed by BHRD. Revenue to pay for the district's operations is derived from taxes levied on the property owners in BHRD. During fiscal years 2019 and 2020, BHRD had total budgets of \$772,411 and \$788,519 respectively.

1. Cities and towns in Massachusetts can submit home rule petitions to the Legislature to request new regulations specific to themselves or to make changes to their charters. City or town residents must vote on such petitions before they are submitted to the Legislature.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Baker Hill Road District (BHRD) for the period January 1, 2019 through December 31, 2020.

We conducted this performance audit in accordance with 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does BHRD file its annual reports with its prudential committee, as required by Section 4 of Chapter 41 of the Acts and Resolves of 1989?	No; see Finding <u>1</u>
2. Does the BHRD prudential committee prepare and approve an annual budget, as required by Section 6 of Chapter 41 of the Acts and Resolves of 1989?	Yes
3. Does BHRD pay for contracted services in accordance with agreed-upon terms and account for those expenditures in its annual budget?	Yes

To achieve our audit objectives, we gained an understanding of the internal controls that we determined to be relevant to the objectives by reviewing BHRD's mission statement, policies, and procedures, as well as conducting interviews with key personnel.

To determine whether BHRD complied with Section 4 of Chapter 41 of the Acts and Resolves of 1989, we collected and reviewed the district's annual reports from the audit period to ensure that they had been prepared. Additionally, we asked BHRD prudential committee members whether they had received and reviewed the 2019 and 2020 annual reports.

To determine whether BHRD complied with Section 6 of the Acts and Resolves of 1989, we inspected a copy of BHRD's budget for fiscal years 2019 and 2020 to verify that it had been created. Additionally, we determined whether the BHRD prudential committee had approved, and signed off on, the budget by reviewing the committee's meeting minutes.

To determine whether BHRD paid for expenses incurred, and complied with all its contracts, during the audit period, we obtained a list of all its expenditures for the audit period. From the data we obtained, we created a population of 106 contracted service transactions. From this population, we selected a nonstatistical, judgmental sample of 41 transactions based on the percentage of the total number of transactions that each type of contracted service represented. The sample consisted of 20 transactions for BHRD's attorney (this type of service represented 50.8% of the 106 transactions), 10 transactions for the Lanesborough Police Department (this type of service represented 23.6%); 10 transactions for the Lanesborough Department of Public Works, which is responsible for highways (this type of service represented 23.6%); and 1 transaction for the Lanesborough Volunteer Fire Department (this type of service represented 2.0%). To conduct our test of details, we reviewed BHRD's bank statements, invoices, and contracts to confirm that each amount paid complied with the agreement signed by BHRD and the contractor.

We used a nonstatistical sampling approach, and as a result, we could not project the results of our testing to the population.

Data Reliability Assessment

To determine the reliability of the data about BHRD expenses during the audit period, we interviewed management personnel who were responsible for the source data. Additionally, we tested for gaps and duplicates in the list of expenditures using Audit Command Language software. We sampled 20 invoices from the BHRD check register using Audit Command Language and traced them back to hardcopy invoices. Additionally, we judgmentally sampled 20 hardcopy invoices and traced them back to the BHRD check register. We determined that the information was sufficiently reliable for the purposes of this audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Baker Hill Road District did not file an annual report for 2019.

The Baker Hill Road District (BHRD) did not file its annual report for 2019. As a result, the prudential committee did not have the information necessary to adequately review and assess BHRD's activities.

Authoritative Guidance

According to Section 4 of Chapter 41 of the Acts and Resolves of 1989, BHRD's treasurer "shall annually render a true account of his receipts and disbursements and a report of his official acts to the prudential committee."

Reasons for Issue

BHRD's attorney and prudential committee members told us, in emails on May 18, 2021 and September 27, 2021 respectively, that they had overlooked preparing and submitting the 2019 annual report because of the 2019 coronavirus pandemic.

Recommendation

BHRD should file its report annually with the prudential committee.

Auditee's Response

*With regard to the **2019 Annual Report**, it has been approved and filed.*

This occurred November 10, 2021.

Auditor's Reply

Based on its response, BHRD is taking measures to address our concerns.

OTHER MATTERS

1. The Baker Hill Road District did not have a written contract with its attorney.

During our audit period, the Baker Hill Road District (BHRD) paid an attorney a total of \$199,119 for legal services without a written contract for the services. According to BHRD's attorney, BHRD had a verbal agreement for legal services with the attorney. In an email to us on May 26, 2021, the attorney stated,

I have an oral contract with the road district, that has two parts, a monthly retainer [\$2,500] and an hourly rate [\$200 an hour]. The monthly retainer covers maintenance issues, research and documentation of issues related to the environment, stormwater management, road construction/maintenance and compliance with the Traffic Control Agreement, safety issues and governance issues with purchasing, economic development, and financial standards. The hourly rate applies to pre-litigation matters, court appearances, including waiting time, travel to and from court, telephone conferences, telephone calls to and from the Client, office conferences, legal research, depositions, review of file materials and documents sent or received, drafting of pleadings, correspondence and memoranda, and preparation for trials, hearings and conferences, and development projects.

During our audit period, the payments totaled \$60,000 in retainers and \$139,119 for hourly services. During our audit, we reviewed invoices and identified the following examples of services provided to BHRD: correspondence and handling of legal proceedings, including traveling to and from court; correspondence with tenants of the Berkshire Mall in Lanesborough; and research related to grants and redevelopment of the Berkshire Mall property. Without a formal, written contract with a defined scope of services and duration, BHRD may incur unnecessary costs.

The "Consultant Contract Requirements" section of the Office of the Comptroller of the Commonwealth and Operational Services Division's joint policy "Procurement/Contracts: Commodities and Services" requires "a scope of services and duration of work . . . [and] a written contract" when executive branch agencies of state government contract for services such as legal services.

Although BHRD is not required to comply with this policy, the Office of the State Auditor (OSA) believes that it is a best practice that BHRD should follow. A formal, written contract ensures that all the terms and conditions, including the contract's duration and each party's duties and responsibilities, are documented.

On June 9, 2021, BHRD and the attorney entered into a written contract for legal services; however, OSA's review of the contract revealed that it did not establish a specific duration.

BHRD should enter into written contracts for all services it purchases, including legal services, that include the scope of services, work duration, and responsibilities of each party.

Auditee's Response

We will discuss adding a term to our contract for legal services.

Auditor's Reply

Based on its response, BHRD is taking measures to address our concerns.

2. BHRD did not ensure that its employees and prudential committee members completed conflict of interest training.

BHRD employees and prudential committee members did not take required conflict of interest training or acknowledge receipt of a summary of the conflict of interest law (Chapter 268A of the Massachusetts General Laws) annually. Specifically, two of six individuals involved with BHRD did not take the required conflict of interest law training during the period. In addition, three of the six individuals involved with BHRD did not sign the annual acknowledgment of receipt of the summary of the conflict of interest law for either year of our audit period.

Certain prudential committee members and employees also act in various positions for the Town of Lanesborough, with which BHRD contracts for certain services, including fire and ambulance, police, and road maintenance. OSA believes this training and annual acknowledgment are important for all state, county, and municipal employees. BHRD prudential committee members are considered employees for the purpose of the "Conflict of Interest Law Education and Training Guidelines" issued by the Massachusetts State Ethics Commission. The training and annual summary keep employees informed about what is allowed by state law and help ensure that they are aware of the ramifications of noncompliance.

The "Conflict of Interest Law Education and Training Guidelines" state,

Each year, every state, county, and municipal employee must be given a summary of the conflict of interest law . . . and, every two years, they must complete an online training program prepared by the [State Ethics] Commission.

BHRD officials told us that the clerk of the Town of Lanesborough usually sends employees and prudential committee members the conflict of interest law acknowledgment, as well as an annual notification that they need to complete the training, but did not always do so during the audit period. They stated that some training notifications were not sent because of difficulties encountered during the 2019 coronavirus pandemic and that acknowledgments were not sent because the town clerk thought they were only needed when a municipal employee was first elected, not every year thereafter.

OSA recommends that BHRD maintain conflict of interest law training certificates and annual acknowledgments to ensure that it complies with State Ethics Commission requirements.

Auditee's Response

*The District will certainly pay closer attention to completing the ethics and open meeting law reporting requirements in a timely fashion. **We have put it in our annual calendar to be addressed during the first meeting of the fiscal year, July.***

Auditor's Reply

Based on its response, BHRD is taking measures to address our concerns.

3. BHRD did not competitively procure road maintenance services.

During our audit period, BHRD maintained an agreement with the Town of Lanesborough for road maintenance services. According to the "Agreement between the Town of Lanesborough and the Baker Hill Road District Road Maintenance Services," these services included the following:

- *SNOW PLOWING AND DE-ICING OPERATIONS . . .*
- *STREET SWEEPING . . .*
- *GENERAL ROUTINE MAINTENANCE OF THE ROAD PROGRAM, INCLUDING POTHOLE REPAIRS, MINOR GUARDRAIL REPAIRS, REPLACING EXISTING SIGNS . . .*
- *CATCH BASIN PROGRAM*
 - *INSPECTION*
 - *CLEANING*
 - *REPAIRS . . .*
- *VEGETATION MAINTENANCE PROGRAM (INCLUDES MOWING, PRUNING, RESEEDING AND FERTILIZATION)*
- *TREE INSPECTION, MAINTENANCE AND TRIMMING PROGRAM*

In addition, the agreement allows BHRD to procure additional services related to road maintenance from the Town. BHRD entered into this agreement, which had a three-year duration, in 2014. The agreement was extended, by mutual agreement between BHRD and the Town of Lanesborough, for five years in 2017. The cost in the 2014 contract was \$102,000 annually, but the cost can be adjusted annually by as much as 5% if BHRD and the Town of Lanesborough mutually agree to do so. During the audit period, BHRD paid the Town of Lanesborough \$104,318 and \$124,244 for road maintenance services for fiscal years 2019 and 2020, respectively.

Although BHRD was not required to competitively procure these services, OSA believes BHRD should ensure that all road maintenance services procured through this contract are the best value available.

BHRD has not attempted to procure road maintenance services from any other vendor since 2014. Although BHRD is required to comply with Chapter 30B of the General Laws, the specific services procured in 2014 were exempt. This was because Section 1 of Chapter 30B of the General Laws exempts snowplowing and contracts with political subdivisions (such as towns) from competitive procurement.

BHRD officials told us that, when attempting to procure these road maintenance services in 2014, they posted a request for response for the services publicly in order to control costs associated with the services. When conducting the competitive procurement, BHRD only received one other bidder, which ultimately decided to withdraw from consideration. Therefore, BHRD decided to use the Town of Lanesborough for road maintenance services.

OSA believes that to ensure that the contract has the best value, BHRD should post a request for response for road maintenance services.

Auditee's Response

We will solicit bids to see if we can achieve savings in our road maintenance budget.

Auditor's Reply

Based on its response, BHRD is taking measures to address our concerns.