

COMPLIANCE AUDIT

New Stanton Borough Non-Uniformed Pension Plan Westmoreland County, Pennsylvania For the Period January 1, 2018 to December 31, 2021

November 2022



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



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**TIMOTHY L. DEFOOR
AUDITOR GENERAL**

The Honorable Mayor and Borough Council
New Stanton Borough
Westmoreland County
New Stanton, PA 15672

We have conducted a compliance audit of the New Stanton Borough Non-Uniformed Pension Plan for the period January 1, 2018 to December 31, 2021. We also evaluated compliance with some requirements subsequent to that period when possible. The audit was conducted pursuant to authority derived from the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984, as amended, 53 P.S. § 895.402(j)), which requires the Auditor General, as deemed necessary, to audit every municipality which receives general municipal pension system state aid and every municipal pension plan and fund in which general municipal pension system state aid is deposited. The audit was not conducted, nor was it required to be, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. We planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the finding contained in our prior report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. To determine if municipal officials took appropriate corrective action to address the finding contained in our prior report, we inquired of plan officials and evaluated supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken. To determine whether the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, our methodology included the following:

- We determined whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the period under audit.
- We determined whether annual employer contributions were calculated and deposited in accordance with the plan's governing document and applicable laws and regulations by examining the municipality's calculation of the plan's annual financial requirements and minimum municipal obligation (MMO) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plan as evidenced by supporting documentation.
- We determined whether annual employee contributions were calculated, deducted, and deposited into the pension plan in accordance with the plan's governing document and applicable laws and regulations by testing total members' contributions on an annual basis using the rates obtained from the plan's governing document in effect for all years within the period under audit and examining documents evidencing the deposit of these employee contributions into the pension plan.
- We determined that there were no benefit calculations prepared for the years covered by our audit period.
- We determined whether the January 1, 2017 and 2019 actuarial valuation reports were prepared and submitted by March 31, 2018 and 2020, respectively, in accordance with Act 205 and whether selected information provided on this report is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.

The New Stanton Borough Non-Uniformed Pension Plan participates in the Pennsylvania Municipal Retirement System (PMRS), which is an agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating municipal pension plans. PMRS issues a separate Annual Comprehensive Financial Report, copies of which are available from the PMRS accounting office. PMRS's financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the New Stanton Borough Non-Uniformed Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. As previously described, we tested transactions, interviewed selected officials, and performed procedures to the extent necessary to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

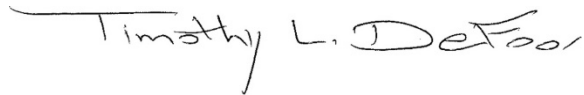
The results of our procedures indicated that, in all significant respects, the New Stanton Borough Non-Uniformed Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

Finding No. 1 – Ordinance Improperly Amended By Resolution

Finding No. 2 – Inadequate Accounting/Reporting Over Activity Of The Pension Plan

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it.

The contents of this report were discussed with officials of New Stanton Borough and, where appropriate, their responses have been included in the report. We would like to thank borough officials for the cooperation extended to us during the conduct of the audit.

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive style with a long horizontal line extending to the left of the first letter.

Timothy L. DeFoor
Auditor General
November 4, 2022

CONTENTS

	<u>Page</u>
Background.....	1
Status of Prior Finding.....	2
Findings and Recommendations:	
Finding No. 1 – Ordinance Improperly Amended By Resolution	3
Finding No. 2 – Inadequate Accounting/Reporting Over Activity Of The Pension Plan.....	5
Supplementary Information	7
Report Distribution List.....	11

BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The Act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the New Stanton Borough Non-Uniformed Pension Plan is also governed by implementing regulations published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

Act 15 - Pennsylvania Municipal Retirement Law, Act of February 1, 1974
(P.L. 34, No. 15), as amended, 53 P.S. § 881.101 et seq.

The New Stanton Borough Non-Uniformed Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Resolution No. 2020-944, and a separately executed plan agreement with the plan's custodian, adopted pursuant to Act 15 (*refer to Finding No. 1*). Prior to January 1, 2020, the plan was controlled by the provisions of Ordinance No. 90-149, and an agreement with the plan's custodian, adopted pursuant to Act 15. The plan was established January 1, 1991. Active members are required to contribute four (4.0) percent of compensation to the plan. As of December 31, 2021, the plan had four active members, no terminated members eligible for vested benefits in the future, and six retirees receiving pension benefits.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
STATUS OF PRIOR FINDING

Compliance With Prior Recommendation

New Stanton Borough has complied with the prior recommendation concerning the following:

- Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid

During the current audit period, municipal officials complied with the instructions that accompany Certification Form AG 385 and accurately reported the required pension data during the audit period.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Ordinance Improperly Amended By Resolution

Condition: The pension plan governing document, Ordinance No. 90-149, was restated in its entirety by Resolution No. 2020-94 dated February 4, 2020, effective January 1, 2020, which adopted a revised plan agreement with the plan custodian with the same effective date.

Criteria: In Wynne v. Lower Merion Township, 181 Pa. Superior Ct., 524, the Pennsylvania Superior Court held that an ordinance may be amended only by another ordinance and not by a resolution.

Cause: Municipal officials believed that the pension plan was properly amended and were not aware that a resolution cannot amend an ordinance.

Effect: The failure to properly adopt the restated plan document could result in inconsistent or improper benefit calculations and incorrect benefit payments from the pension plan.

Recommendation: We recommend that the borough amend the plan’s governing document with a properly executed ordinance.

Management’s Response: The borough disagreed with the recommendation and provided the following written response with the assistance of their solicitor, which states, in part:

With regard to Resolution (No. 2020-944), which the borough enacted on February 4, 2020, to amend its Non-Uniformed Pension Plan Contract, with and administered by PMRS.

1. There are four (4) provisions in the Resolution that:
 - A: Adopts the complete authorization of the amended plan;
 - B: Authorizes the approval, adoption and amendment of the Contract;
 - C: Authorizes the Resolution pursuant to Section 3301.1, subsection (c) of the Borough Code, and
 - D: Sets forth that certified copies of the Resolution and an executed Contract would be filed with PMRS.
2. PMRS’s Legal Counsel reviewed the Resolution and initialed the Resolution at the time of delivery to PMRS.
3. Until recently, the Audit Manager raised an issue that the Contract could not be entered into by a Resolution; but to the contrary, the Borough Council is required to enact an Ordinance for the amended Pension Plan

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

4. ...the Borough Code had amended.... the *changes in the Borough Code in 2019*, which *inter alia*, changed portions of Chapter 33, Subchapter A, §3301.1(c), entitled “Resolutions”. That subsection states that:

“Council shall adopt resolutions in accordance with this part and the laws of the Commonwealth. *Resolutions may be adopted for any purpose, including but not limited to, the following:*

****(3) Adoption of formal agreements of the borough, except for agreements arising under an established purchasing system of the borough.* [Emphasis added per municipality]

Auditor’s Conclusion: The Department acknowledges the borough’s position; however, the Borough Code of 2019 (8 Pa.C.S.A. § 3301.1) subsection (a) further states, “Council shall enact ordinances in accordance with this part and the laws of this Commonwealth in which the powers of the borough shall be exercised as deemed beneficial to the borough and to provide for the enforcement of the powers of the borough. Council may amend, repeal or revise existing ordinances by the enactment of subsequent ordinances.” Additionally, the court case aforementioned in the *Criteria* above, goes on to make two helpful statements regarding resolutions versus ordinances: (1) “A resolution ordinarily is a declaration of a council or legislative body evincing some purpose or intent to do some act, not the doing of the act itself.” (43 C.J.Mun. Corp., Sec. 798 ft. n. 79(a)); and (2) “An ordinance prescribes a permanent rule or conduct of government. A resolution is of a temporary character.” (*American and English Encyclopedia of Law, Vol. 17, page 235*), cited in *Shaub v. Lancaster City*, 1893, 156 Pa. 362–365 [26 A. 1067, 21 L.R.A. 691]. The court clearly laid out these differences and there has been no meaningful change to the meaning and purpose of resolutions since it was published.

The Department does not take exception that a borough may adopt resolutions in accordance with the Borough Code, merely that the pension plan and the benefits therein, were previously established by ordinance (*Ordinance No. 90-149 which adopted the benefits set forth in an agreement dated December 6, 1990*), and as such must be amended by ordinance, accordingly. Therefore, the issue remains as stated.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – Inadequate Accounting/Reporting Over Activity Of The Pension Plan

Condition: The municipality’s accounting/reporting system did not provide effective control over the transactional activity of the pension plan during the years 2020 and 2021. Municipal officials were unable to furnish annual financial statements or custodial account statements summarizing the financial activity of its pension plan during the aforementioned years, accordingly.

Criteria: An adequate system of accounting and record keeping is a prerequisite for sound administration of pension plans. In addition, assets held in a custodial account for the purpose of plan management are to be governed by the terms and provisions of the account contract, provided that the terms and provisions of the contract are within the parameters of all prevailing pension legislation. Although the municipality may contract with a trustee to administer the financial management of the plan, the fiduciary responsibility for the plan remains with the municipality.

Cause: Municipal officials did not maintain a separate detailed accounting of pension plan transactions which, among other things, helps assure the production of proper financial statements to effectively monitor the annual activity of the pension plan. Additionally, municipal officials indicated that the plan’s custodian failed to provide copies of the custodial account transaction statements summarizing activity of the pension plan account for the years 2020 and 2021.

Effect: Although we were able to obtain alternate documentation from the municipality to evidence the propriety of individual transactions tested during performance of the audit, the failure to maintain annual financial and/or account transaction statements prohibits municipal officials from effectively monitoring the plan’s financial operations and could lead to undetected errors or improprieties in account transactions.

Recommendation: We recommend that municipal officials establish and maintain a financial accounting and reporting system that allows the municipality to effectively monitor the plan’s financial operations, even in the absence of statements from the plan custodian. Municipal officials should refer to the Auditor General’s Bulletin No. 2-88 entitled “Preparation, Maintenance and Auditability of Financial Records,” for further guidance in establishing adequate accounting and record-keeping procedures. In addition, we recommend that municipal officials contact the plan custodian and obtain annual financial statements of the custodial account for its pension plan for the years 2020 and 2021 to ensure the accuracy and propriety of the transaction activity.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Management's Response: Municipal officials agreed with the finding without exception.

Auditor's Conclusion: It was noted that the plan custodian recently went through a substantial upgrade to the plan administration software and implemented a new accounting system. The modernization process, along with the COVID-19 pandemic, resulted in unforeseen delays in the year-end reporting process for financial statements and GASB 68 reports. In addition, the custodian has taken active measures to resolve these issues and recently distributed the 2020 reports and statements for their plans and expects 2021 financial reports to be distributed before the end of 2022. Compliance with the finding recommendation will be evaluated during our next audit of the plan.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan’s funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2015, is as follows:

	(1)	(2)	(3)	(4)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)
01-01-15	\$ 345,889	\$ 346,311	\$ 422	99.9%
01-01-17	365,838	377,045	11,207	97.0%
01-01-19	377,627	406,821	29,194	92.8%

Note: The information presented represents the most recently filed actuarial information available and although the actuarial valuation report valued 01-01-21 is currently due in accordance with Act 205, the municipality is working with the Municipal Pension Reporting Program as of the date of this report to finalize the information submitted.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS

<u>Year Ended December 31</u>	<u>Actuarially Determined Contribution</u>	<u>Actual Contributions</u>	<u>Contribution Deficiency (Excess)</u>	<u>Covered- Employee Payroll*</u>	<u>Contributions as a Percentage of Covered- Employee Payroll*</u>
2014	\$ 2,204	\$ 3,808	\$ (1,604)	\$ 128,660	2.96%
2015	4,388	4,509	(121)	161,745	2.79%
2016	4,724	4,747	(23)	176,208	2.69%
2017	3,690	3,998	(308)	169,647	2.36%
2018	2,846	6,166	(3,320)	195,122	3.16%
2019	6,790	6,790	-	197,113	3.44%
2020	6,714	8,193	(1,479)	194,385	4.21%
2021	8,248	8,178	71		

* Due to the timing of this audit, covered-employee payroll for 2021 was not provided in this schedule.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
 SUPPLEMENTARY INFORMATION
 NOTES TO SUPPLEMENTARY SCHEDULES
 (UNAUDITED)

The information presented in the supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2019
Actuarial cost method	Entry age normal
Amortization method	Level dollar for plan bases and an average for Aggregate Gain/Loss, 10% of surplus is credited against aggregate cost where applicable.
Remaining amortization period	12 years
Asset valuation method	The Actuarial Value of Assets equal the sum of all audited reserve funds as of the valuation date, including Member, Municipal, Retired, Disability, and DROP Reserves, when applicable, and a one year administration expense reserve, plus the portion of any additional investment income to be distributed as excess interest, based on PMRS Policy Statement 05-2. This asset valuation is based on the unique legislative structure of PMRS and the administrative rules adopted by the PMRS Board in conjunction with Pennsylvania Municipal Retirement Law. ¹

Actuarial assumptions:

Investment rate of return *	5.25%, compounded annually, net of investment and administration expenses.
Projected salary increases *	2.8%-7.05%
* Includes inflation at	2.8%
Cost-of-living adjustments	2.8% per year, subject to plan limitations.

The information presented represents the most recently filed actuarial information available and although the actuarial valuation report valued 1-1-21 is currently due in accordance with Act 205, the municipality is working with the Municipal Pension Reporting Program as of the date of this report to finalize the information submitted

¹ The administrative rules adopted by the PMRS Board, which are not subject to comply with Actuarial Standards of Practice (ASOP), when defining the Actuarial Value of Assets (AVA), does not necessarily meet the requirement of ASOP 44 Selection and Use of Asset Valuation Methods for Pension Valuations. The AVA provided within this report follow the Pennsylvania Municipal Retirement Law and the PMRS policy statement.

NEW STANTON BOROUGH NON-UNIFORMED PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

The Honorable Thomas Smith
Mayor

Mr. Alex Brown
Council President

Mr. Jeffrey McLaughlin
Borough Manager

Ms. Anita Hoffman
Assistant Borough Manager

Mr. Richard Cardamone, CPA, CGMA
Pennsylvania Municipal Retirement System

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: news@PaAuditor.gov.