

TOWN BOARD REGULAR MEETING  
NOVEMBER 8, 2017

A Regular Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 8<sup>th</sup> day of November 2017.

Present: Daniel M. Engert ----- Supervisor  
Jeffrey M. Dewart ----- Councilman  
Robin R. Jansen ----- Councilwoman  
Tracy L. Carmer----- Town Clerk  
Melvin H. Denny ----- Supt of Water/Sewer/Grounds  
Michael M. Flint ----- Supt. of Highways  
Mindy Austin ----- Confidential Asst. to the Supervisor  
David Haylett----- Attorney

Absent: Brian Sibiga ----- Engineer

Attended by: approximately 100 residents

Supervisor Engert called the meeting to order at 6:35PM with the Pledge to the Flag and prayer for guidance.

The meeting began with a Power Point presentation by Supervisor Engert with the following highlights:

- The jurisdiction breakdown for 2017 was: 65% Barker Central School District (\$17.13); 32% Niagara County (\$8.41); 3% Town of Somerset (\$0.79). The 2018 rates for the county and school have not been established yet, but if everything else remained the same, the Town's portion with the new rate would be 6%.
- Based on an average home of \$100,000 the Barker CSD bill was \$1,713; the County tax amount was \$841; and the Town amount was \$79. The proposed increase would be \$168, a difference of \$89.
- The total Town is only 22% taxable, with 78% of the town being exempt from taxes. Comparing to similar towns, Royalton is 87% taxable, and Hartland and Wilson are 90% taxable.
- The PILOT payment has declined 89%.
- The Town's tax bill for 2018 is \$150.00+ less than similar towns (Hartland, Royalton and Wilson.)
- With the reduced tax rate our residents have seen a savings of \$439 since 2012.
- Strategy:
  - First, we attacked spending. We have implemented work sharing and decreased our work force by 40%, outsourced lab testing and eliminated two full-time highway employees. The expenditures have decreased \$555,000 without any cuts, layoffs or furloughs so far.
  - Next we returned to the taxpayers as much as we could of the \$1.6 million in reserves. This is taxes that were already collected.

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- We maintained the lowest rate possible to attract business and new homeowners. Economic development for the Town was largely focused on the “West Parcel” as we had viable site selectors with possible development projects. The Town did not want to risk losing large scale development by raising the tax rate.
- Invest significantly to make the West Parcel shovel ready. Revenue coming in from new business would help offset the loss in PILOT revenue.

Supervisor Engert stated that the West Parcel has been taken off the market so the power plant could install a 19mw solar farm. He just learned that their proposal for the solar farm has been rejected.

The Supervisor said that he has been asked frequently why we haven’t phased in the tax increase. He stated the property tax cap impacted us in this regard. In 2011 the Town went through a revaluation which reduced the tax rate to correspond with the increase in assessments. After we lowered our rate, the Governor implemented the Tax Cap. He also tied the tax rebate checks to the tax cap so if we increased our taxes above a certain amount, the residents would not get the rebate check. Supervisor Engert stated the rebate being tied to the tax cap has been eliminated for 2018 and only applies to the school tax now. This year, even with the tax rate increase we would have come in just under the tax cap. However, the State Comptroller’s office audited our departments to see how we are addressing the declining revenues. After a very thorough review the only issue they found was in the way we use sales tax revenue to offset refuse fees. Because there are parcels in the Refuse District that do not have refuse, the revenue is not distributed evenly among the residents. Because of this we are not allowed to use Sales Tax revenue in the Refuse District. This put us over the Tax Cap threshold.

Supervisor Engert has had discussions with Modern to add the Village into the contract that we just went out to bid for. If this occurs, it would lower the cost to Village residents and would allow us to use the sales tax for refuse. Over the last 4 years our average refuse tax was \$23/year.

Additional contributing factors on spending pressure include the long wind project application process and the legal costs to defend the will of the community.

Supervisor Engert discussed the aspects of PILOT payments stating that the breakdown between jurisdictions is based on the % of the total bill. In 2017 the Town’s share of a PILOT agreement would be 3%. The PILOT for the power plant was unique and we receive 9.25% of it. To determine the PILOT payment for the proposed wind turbine project you would have to make assumptions since we do not have specific details. If 70% of the project is in Somerset and the PILOT is \$1.5 million, the Town, Niagara County and Barker Central School would share \$1,050,000. Based on our current tax rate the Town would receive \$31,500. Assuming everything stays the same (assessed values, spending, etc.) the savings to Somerset taxpayers is \$.22/\$1,000, or \$22 on a \$100,000 home.

Supervisor Engert stated that we have future challenges. We further offset our current rate by using more of the reserves, but there is not much left to continue to use it. We could cut services like closing Town Hall 3 days per week which would save \$20,000 for the Deputy Clerks position, but then the Town Hall would only be open 2 days per week. We hope not to have to have these types of discussions. Another challenge is the Governor's initiative to close coal plants by 2020. If the plant closes, it is worth much less than if it remained open. The Governor established a mitigation fund to assist the communities where the power plants exist. However, the release of the funds cannot happen until the plant closes and an impact on the closure occurs. Supervisor Engert is trying to get the funds released before then. Senator Ortt will be holding a Senate Hearing in 2018 to bring awareness to the situation.

One expense the Town does not have control over is healthcare costs. Supervisor Engert is trying to establish a healthcare consortium to try to stave off some of the increased healthcare costs.

**PUBLIC HEARING ON A PROPOSED LOCAL LAW ENTITLED, "A Local Law to Override the Tax Levy Limit Established in General Municipal Law §3-c"**

Notice of said hearing was sent to the Lockport Union-Sun & Journal on November 2, 2017 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert opened the Public Hearing at 7:49PM.

Clerk Carmer read the Notice of Hearing.

Dale Howard stated that he supports the override for the 2018 Fiscal Year Budget only.

Jim Hoffman said he appreciates the information and wants the Local Law passed as it is necessary for the budget.

With all persons desiring to be heard, Supervisor Engert closed the public hearing at 7:51PM.

**PUBLIC HEARING ON PRELIMINARY 2018 BUDGET AND 2018 FIRE CONTRACT**

Notice of said hearing was sent to the Lockport Union-Sun & Journal on November 2, 2017 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert opened the Public Hearing at 7:54PM.

Clerk Carmer read the Notice of Hearing.

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Dale Howard wants the budget workshops to return so he can see the background discussion that goes into the budget. He said he does not think .98% raises that are non-contractual are needed since our budget is increasing 113%.

Kathy Pellegrino stated that since the lake property has devalued, she would like to have a reassessment and that will affect the revenue that the Town will receive in the future. If the wind turbines get built she feels that will further devalue property and affect our revenue. She does not care what services get cut or if she has to go to the post office to get her dog license, but she does not want the windmills. She would rather pay more than have her property devalued even more.

Jim Hoffman says the budget is credible and it should be passed. The budget is bare bones and satisfies the needs of the residents. It also satisfies the desires of the majority of the people by having a large amount of money for legal fees to fight the wind turbines. He said that if APEX would pull out we could cut our taxes. He stated the real elephant in the room is the leaders in Albany and the energy policies that come out of Albany.

Herb Meyer stated the Village supplied police services to the Town for over 50 years. In 2011 the Village offered a contract for \$50,000/year and has been offering the Town contracts each year until 2016. He said there is nothing in the budget showing how much the police budget is but he is sure it cost a lot more than \$50,000. He wants the Town to get rid of the police department and contract with the Village again.

Pam Atwater appreciates the explanation about the tax increase and is impressed with the reduction in appropriations. She mentioned that The Town of Yates tax rate is \$2.54/\$1,000. She stated that Sheldon pays \$1.88/\$1,000 and paid \$1.87/\$1,000 in 2016, not \$0 anymore.

Cathi Orr thanked the board for the work they are doing and feels what is happening in Albany may be retribution for our Town standing up for home rule. She said that the Town of Orangeville passed a resolution that they are going to sue the wind company. Residential property in Orangeville is selling 12% below assessed value since 2012. In 2016 they started selling for 30% below assessed value. She said the wind company only pays the Town portion of the taxes, not the whole tax. The lawsuit is for not maintaining the roads that cranes are tearing up when going there to fix a blade. She also said that she would gladly pay a couple hundred dollars more not to have turbines.

Agnes LaPorte is glad the Town does not buy into the wind turbines. She said the area will never be the same as views and life as we know it will be destroyed for generations. She said citizens would be forced to accept it in the name of progress or the almighty dollar. She would also like to pay a little more in taxes to keep the turbines out.

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Andy Atwater spoke with someone from Orchard Park who said he would not want to be Andy facing a 120% tax increase which will be thousands of dollars. He corrected the amount and clarified that it is only the Town tax. He said that the Supervisor did a great presentation and unfortunately the banks were not here to hear it. He said that when banks hear that a Town's tax rate is increasing they increase escrow so we need to make sure we speak clearly how much the actual tax increase is.

Roberta Dawson stated that she has been in Somerset for a few years and every year her taxes have changed. She said we have to plan for the future and wants consistency. She does not want the Town to put all their eggs in one basket. She said the Supervisor did a good job explaining it, but her concern is the future.

With all persons desiring to be heard, Supervisor Engert closed the public hearing at 8:10PM.

Supervisor Engert clarified a few incorrect statements.

- He stated the police proposal in 2011 was \$98,000 and there were other issues attached to it.
- The average increase in the Town tax is \$89 not a couple hundred dollars.
- The tax rate has been consistent at \$.79 for the past 4 years, and was \$.88 the prior year.

Supervisor Engert opened the regular meeting at 8:12PM.

RESOLUTION 103-2017

**APPROVAL OF THE MINUTES**

On a motion of Councilwoman Jansen, seconded by Councilman Dewart, the following resolution was

ADOPTED: Ayes                5            Engert, Jansen, Dewart, Bronson, Hotaling  
              Nays                0

Resolved the minutes of October 11, 2017 be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Police Report  
Code Enforcement Report

RESOLUTION 104-2017

**APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT**

On a motion of Councilman Dewart, seconded by Councilwoman Jansen, the following resolution was

ADOPTED: Ayes                5            Engert, Jansen, Dewart, Bronson, Hotaling  
              Nays                0

Resolved the Supervisor's Monthly report be accepted as submitted.

COMMUNICATIONS

Clerk Carmer read a letter of resignation from the Town Board submitted by Councilman Alt due to moving out of the Town of Somerset. She read a letter of resignation submitted by Jon Hotaling, Chairman of the Town of Somerset Planning Board, due to being appointed to the Town Board.

RESOLUTION 105-2017

**DECOMMISSIONING OF HIGHWAY FUEL TANK**

Supervisor Engert stated that one tank must be closed per DEC regulation. The other failed an inspection due to a faulty alarm so we submitted an RFP to address it. The amount has been encumbered from last year and we originally thought the cost would be approximately \$70,000. One contractor responded to the RFP, the other qualified contractor has existing work so did not respond. Our engineering firm has endorsed the proposal as being in line with rates they would expect to see.

On a motion of Councilwoman Bronson, seconded by Councilwoman Jansen, the following resolution was

ADOPTED: Ayes	5	Engert, Jansen, Dewart, Bronson, Hotaling
Nays	0	

**WHEREAS** the Town desired to decommission an existing fuel tank located at the Town Highway facility, and

**WHEREAS** the nature of the decommissioning work is unique and highly specialized, and

**WHEREAS** the Town solicited proposals for decommissioning of the existing fuel tank at the Town Highway facility, and

**WHEREAS** the Town received one written proposal from Nature's Way Environmental in the amount of \$6,311.00, and

**WHEREAS** the Town Engineer has confirmed that the written proposal conforms with the RFP, and

**WHEREAS** the Town Board determined that it is in the public interest to ensure that the out of service fuel tank is in compliance with all federal, state and local laws; now therefore be it

**RESOLVED** upon review and approval of the Town Attorney the Town of Somerset Supervisor is hereby authorized to execute an agreement with Nature's Way Environmental to decommission the existing 500 gallon fuel tank located at the Town Highway Garage at a cost not to exceed the amount in the written proposal.

RESOLUTION 106-2017

**FUEL TANK ALARM**

On a motion of Councilman Hotaling, seconded by Councilwoman Jansen, the following resolution was

ADOPTED: Ayes	5	Engert, Jansen, Dewart, Bronson, Hotaling
Nays	0	

**WHEREAS** the Town desires to replace the fuel tank alarm on a fuel storage tank locate at the Town Highway facility, and

**WHEREAS** the the Town solicited proposals for replacing the inoperable fuel tank alarm at the Town Highway facility, and

**WHEREAS** the Town received one written proposal from Nature's Way Environmental in the amount of \$7,743.70, and

**WHEREAS** the Town Engineer has confirmed that the written proposal conforms with the RFP, and

**WHEREAS** the Town Board determined that it is in the public interest to ensure that the inoperable fuel tank alarm is replaced to comply with all federal, state and local laws; now therefore be it

**RESOLVED** upon review and approval of the Town Attorney the Town of Somerset Supervisor is hereby authorized to execute an agreement with Nature's Way Environmental to replace the existing inoperable fuel tank alarm located at the Town Highway Garage at a cost not to exceed the amount in the written proposal.

Councilman Hotaling stated that a number of years ago the Planning Board worked with Nature's Way Environmental on a remediation project and they know what they are doing.

RESOLUTION 107-2017

**FAMILY LEAVE BENEFIT**

New York State adopted a paid family leave benefit that covers the private sector. The public sector is allowed to extend the benefit to its employees.

On a motion of Councilwoman Jansen, seconded by Councilwoman Bronson, the following resolution was

ADOPTED: Ayes	5	Engert, Jansen, Dewart, Bronson, Hotaling
Nays	0	

**WHEREAS** the Town of Somerset is permitted but not required to offer family leave benefits to its employees, now therefore be it

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**RESOLVED** that the Town will not offer said benefits. The Town Clerk shall give notice of this determination to all employees and the Worker's Compensation Board prior to December 1, 2017.

RESOLUTION 108-2017

**LOCAL LAW #1-2017**

On a motion of Councilman Dewart, seconded by Councilwoman Jansen, the following resolution was

ADOPTED by Roll Call Vote:	Supervisor Engert:	Aye
	Councilwoman Jansen	Aye
	Councilman Dewart	Aye
	Councilwoman Bronson	Aye
	Councilman Hotaling	Aye

A Local Law to override the tax levy limit established in General Municipal Law §3-c.

Section 1. Legislative Intent

It is the intent of this local law to override the limit on the amount of real property taxes that may be levied by the Town of Somerset, County of Niagara, pursuant to General Municipal Law §3-c, and to allow the Town of Somerset, County of Niagara to adopt a town budget for (a) town purposes (b) fire protection districts and (c) any other special or improvement district governed by the town board for the fiscal year commencing January 1, 2018 that requires a real property tax levy in excess of the "tax levy limit" as defined by General Municipal Law §3-c.

Section 2. Authority

This local law is adopted pursuant to subdivision 5 of General Municipal Law §3-c, which expressly authorizes the town board to override the tax levy limit by the adoption of a local law approved by a vote of sixty percent (60%) of the town board.

Section 3. Tax Levy Limit Override

The Town Board of the Town of Somerset, County of Niagara, is hereby authorized to adopt a budget for the fiscal year commencing January 1, 2018 that requires a real property tax levy in excess of the limit specified in General Municipal Law, §3-c.

Section 4. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.



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Section 5. Effective date

This local law shall take effect immediately upon the filing with the Secretary of State.

RESOLUTION 109-2017

**2018 BUDGET**

On a motion of Councilwoman Jansen, seconded by Councilwoman Bronson, the following resolution was

ADOPTED by Roll Call Vote:	Supervisor Engert:	Aye
	Councilwoman Jansen	Aye
	Councilman Dewart	Aye
	Councilwoman Bronson	Aye
	Councilman Hotaling	Aye

Resolved the budget for 2018 is adopted as presented.

RESOLUTION 110-2017

**2018 FIRE DEPARTMENT CONTRACT**

On a motion of Councilwoman Jansen, seconded by Councilwoman Bronson, the following resolution was

ADOPTED by Roll Call Vote:	Supervisor Engert:	Aye
	Councilwoman Jansen	Aye
	Councilman Dewart	Aye
	Councilwoman Bronson	Aye
	Councilman Hotaling	Aye

Resolved the Supervisor is authorized to enter into an agreement with the Barker Fire Department for fire protection services for 2018.

RESOLUTION 111-2017

**AUDIT OF CLAIMS**

On a motion of Councilwoman Jansen, seconded by Councilman Hotaling, the following resolution was

ADOPTED: Ayes	5	Engert, Jansen, Dewart, Bronson, Hotaling
Nays	0	

Resolved that the bills have been reviewed by the Town Board and are authorized for payment in the following amounts:

General Fund	No. 406 through No. 450	\$ 54,301.35
Highway Fund	No. 126 through No. 135	\$ 3,328.11
Sewer Fund	No. 110 through No. 122	\$ 4,161.33
Water Fund	No. 89 through No. 101	\$ 13,361.87

PRIVILEGE OF THE FLOOR:

Bob Glidden said the Supervisor never answered Herb Meyer's question on the cost of the police department.

Supervisor Engert stated that it is in the B fund but he does not know the amount off the top of his head.

Herb Meyer stated the figure Supervisor Engert discussed is wrong. He has the letter that shows the proposal was \$50,000.

Betty Wolanyk asked if the "West Parcel" is up for development again?

Supervisor Engert said he can only say that the proposed solar project was taken off.

Betty stated that local and county IDA's have little or no oversight and feels that we should have more local control. She would like to see the Town raise the issue. She is sending a letter to Senator Ortt.

Betty asked if there is any likelihood after Governor Cuomo leaves that the carbon emission regulations will change?

Betty thanked the Board, the Supervisors and the employees of the Town for all of their hard work.

Pam Atwater advised the Board of an article from Vermont about lawmakers approving tighter sound rules on wind power. Statewide limits are 42 decibels during the day and 39 decibels at night within 100 feet of a homeowner who is not participating in the project. She said Vermont is known to be pro-renewable energy so she feels this is significant.

Jim Hoffman asked what are the economic benefits of a wind turbine. He is bothered by the \$1.5 million that APEX says they are going to pay. He asked where that came from. He applied current tax rates to a possible \$400 million investment for a project and assumed that \$200 million would be taxable. He feels they should be paying 5-10 times more to the taxing jurisdictions. He said the \$1.5 million is a giant lowball. He listed other areas that APEX would be getting cuts/credits and says there is no economic benefit for us.

Wally Coates thanked the Board and Clerk Carmer for their support of the Veterans Dinner. He said he has lived here all his life and it is nice to see cooperation among the community like having the auditorium available for our Town meeting. He feels blessed to live here.

Dick Ray stated that he has lived here his whole life and keeps seeing a recurrence of outside entities backing us into corners. He said Albany sets a pattern for us to have to make up for it. We end up with a problem to solve that is forced on us by someone else. He wants us to make sure our voices are heard.

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On a motion of Councilman Dewart, seconded by Councilwoman Jansen, the meeting adjourned at 8:37P.M. subject to the Call of the Clerk.

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Tracy L. Carmer, RMC  
Town Clerk