

SPECIAL MEETING
FEBRUARY 8, 2012

A Special 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 8th day of February 2012.

Present:	Daniel M. Engert -----	Supervisor
	Randall J. Wayner -----	Councilman
	Gary R. Alt -----	Councilman
	Robin R. Jansen -----	Councilman
	Jeffrey M. Dewart -----	Councilman
	Rebecca A. Connolly ----	Clerk
	Mindy Austin -----	Confidential Asst. to the Supervisor
	Morgan Jones Jr. -----	Counsel

Attended by: Approximately 30 residents

Notice of said meeting was sent to the Lockport Union-Sun & Journal on February 3, 2012 with same notice being posted on the same day at the Town Hall and on the Town Website.

Supervisor Engert called the meeting to order at 6:00PM with the Pledge to the Flag.

PUBLIC HEARING – Proposed Local Law #1-2012 – Police, Town

Notice of said meeting was sent to the Lockport Union-Sun & Journal on February 3, 2012 with same notice being posted on the same day at the Town Hall and on the Town Website.

Clerk Connolly read the notice of the hearing.

Supervisor Engert opened the hearing at 6:02PM stating the Board has been working on this for the month of January and have arrived to the point where a local law has been proposed. He asked Clerk Connolly to read the proposed local law in its entirety prior to comments from the public.

Clerk Connolly read the proposed local law.

Supervisor Engert asked for any comments.

Jim Ferrington asked what a warrantless arrest is and is there a difference.

Supervisor Engert said there are different types of arrests. He stated a warrantless arrest is an arrest that occurs without the issuance of a warrant with-out a justice of the peace or judge.

Mr. Ferrington asked what the other types of arrest are.

Supervisor Engert explained bench warrants and an arrest warrant.

Attorney Jones explained further the types of warrants.

Mike Randall asked the reason for having to go to this when you already had something and asked if there is that much money involved.

Councilman Wayner said the portion of the police budget that the town has been asked to pay over the years continues to escalate and there was no control over the elements of those expenses.

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He stated they (the Board) decided to transition to a platform where we would have more control.

Mr. Randall asked if a police department is better than constables.

Councilman Wayner said no in his opinion.

Mr. Randall asked how much difference there is money wise.

Supervisor Engert said the total budgeted amount is \$46,000 for 2012. He said they had hoped to arrive at an agreement to continue that service and were unable to reach that agreement so there is no difference for this year.

Ronald Tucker said you claim that you are saving money and asked how many lawsuits have you had in the last 5 years against the Police Dept.

Supervisor Engert said the town had a contract arrangement and any litigation would have been filed with the Village.

Mr. Tucker said you are opening yourself up to lawsuits if something happens and you may be in the hole at the end of the year.

Attorney Jones said there will be a police liability insurance policy in place.

Mr. Tucker said you have lost one good officer who did a tremendous job and feels the town is losing out.

Paul Higgins asked for an explanation of the difference between police, peace officers and constables as referred to in the law.

Supervisor Engert explained this (law) has been established under Town Law §150 to authorize them as police officers. He stated they also added additional special requirements in our local law that requires an officer to be registered on the NYS Division of Criminal Justice Registry as a police officer. He said the terminology is community oriented style policing. He said there will be one shift and the officers will be strategically placed in that timeframe to effectively handle the call volume. He said the Police Constable model is a phraseology that is community oriented but they have full empowerment by the Board so they can provide capable, professional, and comprehensive law enforcement to the citizens in Somerset.

Mr. Higgins asked why so many titles are used.

Supervisor Engert said that some of differences between a police officer and peace officer are when they are empowered with authority and that is determined by the municipality. He said a police officer is empowered with authority 24 hours a day, 7 days a week along with responsibilities for that entire time. He said a peace officer has authority and responsibility while engaged in the special duties empowered by the municipality. He said they have been very clear to protect the interest of the Town. He said it is not a full service police department and they have received feedback from residents that this (24/7) is not necessary.

Tom Carastia said the point that you brought up about a police officer to have the ability to affect a situation when he is off duty, it seems to him that if an officer lives in the town, they are trained, will have the ability to respond faster by living in the community. He said it is very important that the candidates that we interview are actually citizens of Somerset.

Chris Mason asked how much thought has gone into this, what are the options that have been looked at and what other salaries and fringes will be incurred.

Supervisor Engert said the Board has looked at contracting with the Sheriff for a special deputy at the cost of \$83,000 to be on duty for approximately 40 hours a week. However the deputy would work under the Niagara County agreement and with personal time, the average would be about 36 hours a week. He said there were challenges with scheduling the deputy. He said they also explored with the Village to reduce the number of hours that the town would be patrolled. He said the Village came back with a formula that was so much per hour for different amounts of hours. He said they were again in the \$60,000 - \$80,000 range. He said he has been on the Board for 4 years and never heard any concerns about the money budgeted. He said the Town has contracted since 1991 and in January it was the first time we (the Board) had heard that the residents did not want any additional layer of police protection.

Mrs. Mason asked if we are getting revenue and how much will be lost to offset this cost.

Supervisor Engert said the vehicle, insurance and all expenses are included in the costs.

Mrs. Mason asked how many hours will that put someone on staff.

Supervisor Engert said there will be 38 – 40 hours at \$15.75 per hour and that rate is commensurate with other local police agencies.

Mrs. Mason asked what the cost of the vehicle is.

Supervisor Engert said a fully equipped vehicle has been purchased for \$6,500.00.

Mrs. Mason asked what the revenues are.

Supervisor Engert said the average over the last 5 years is \$15,000 - \$16,000. He said between September to December last year the revenues dropped to less than \$500 a month with zero traffic infraction tickets in December. He said the intent of this is not to generate revenue. He said the question of revenue needs to be asked of the Town Justice as the Town Justice administers the fines. He said there is not enough revenue generated to fund the court.

Mrs. Mason said she hopes this is a fiscally intelligent decision and not a power struggle between the village and the town.

Councilman Wayner said it is not a power thing between the village and town. He said it is a management issue on how we can best manage our tax dollars. He said we are going to evaluate this as we go along and at the end of the year we will reevaluate. He said he does not feel that the revenue is going to vanish.

Dale Howard asked when we hire the police officers, the candidate may want to do extra work as a peace officer.

Supervisor Engert said they have the authority under the section to act as a police officer.

Attorney Jones said the law refers to what the officer can and cannot do, referring to Section 84-4 of the proposed local law.

James Hoffman asked why section 84-2 refers to snowmobiles and not all terrain vehicles when they cause more damage.

Attorney Jones said the language came out of the particular section of law.

Mr. Hoffman asked how the whole thing is going to work and asked what authority our officers have in Barker and what authority do the Barker Police have in Somerset.

Supervisor Engert said the local law does not have jurisdiction on how the Village directs its police force. He stated the Village has directed its police force effective January 1, 2012 through a communication by its Chief to the Sheriff's Office that they are not to respond to the Town unless it is an emergency call. He stated under the proposed local law, the Somerset Police Constable has jurisdiction in the Village. He said if there is a need they will be able to respond and render aide.

Mr. Hoffman said as a matter of scheduling you would not have double coverage and then no coverage. He asked if there would be a mutual schedule worked out.

Supervisor Engert said there could be discussions that take place. He said the law establishes the Town of Somerset will have coverage all day.

Mr. Hoffman asked if there was a break-in at his house, who covers that?

Supervisor Engert stated the Sheriff has always been the primary law enforcement and you would call 9-1-1.

Mr. Hoffman stated he was disappointed that something couldn't have been worked out with Barker.

Chris Czelusta said he applauds the Board for taking on the economics. He asked if peace officers will be training young police officers in the Town and he had a bad experience at his home when one showed up.

Supervisor Engert said this is a right-size police operation to provide life and property protection in the town during the hours that the town residents have called for service.

Doug Piskorowski asked how you are going to handle the car responding out of town when they are backing up the Sheriff.

Supervisor Engert said it is addressed twice in the law and that assistance will be provided if requested.

Mr. Piskorowski asked if they (the officers) are in an accident will that fall back on the Town.

Supervisor Engert said the liability insurance coverage will cover that.

Richard Meyers asked if all the officers are going to be police officers.

Supervisor Engert said the requirements of Section 84-4 states it is mandatory to be registered with NYS Division of Criminal Services Registry.

Mr. Meyers asked if he (the officer) goes out of town will he still be covered.

Supervisor Engert explained the law does not set forth jurisdictional restrictions when responding as requested.

Doug Lewis said constables are now going to be leaving town. He said we have the number one taxpayer but we can't get the county to be our primary police. He said we are already paying for this service and don't need anymore. He said he does appreciate the intended times of service, however.

Councilman Alt said that a Public Safety Committee has been established to evaluate this. He said if they find we don't need it (Police Dept.), we won't have it.

Lee Hoffman asked if we are going to see more Sheriff cars.

Supervisor Engert said data was examined and found when the village police were on duty approximately 50% of the time, they would expect they would pick up more than 22% of the calls and the calls were coming in between 6PM and Midnight. He stated that he has met with the Sheriff and he is committed to having more patrols available. He said the intention is trying to meet the need of what the residents feel is important.

Gary Ackles said the Sheriff should work for the Town of Somerset like he does any other place. He said he is working for us.

Richard Meyers said the coverage of the Barker Police was 22% with the Sheriff and State Police was 78%. He said coverage will be reduced significantly by changing the time when an officer is available.

Supervisor Engert said when you shift the coverage during the time when the calls come in, you will pick up more calls.

Mr. Meyers said there was nothing in the law about the structure of the police department and who will be administering it. He asked who makes that determination.

Supervisor Engert stated the Board is the appointing authority under Section 150.

Mr. Meyers asked if the word "police" can be in the law because the Board does not have the authority to establish a police department.

Attorney Jones said the Board has the authority.

Mr. Meyers asked why have constable and peace officer in there at all.

Supervisor Engert said they used appropriate phraseology and language in the law to define it that the people are comfortable with it.

Attorney Jones explained the different sections of the law.

Ron Tucker asked who he calls if he has an emergency.

Supervisor Engert said 9-1-1.

Chris Mason asked what the timeline is.

Supervisor Engert said by the end of the first quarter of this year hopefully.

Ron Tucker asked if anyone had been hired.

Supervisor Engert said a Special Patrol Officer has been hired for a court officer and there are job specifications under Civil Service that people have to be hired under.

Paul Higgins asked if the person will have to qualify.

Supervisor Engert said yes.

Lee Hoffman said it seems with governments trying to downsize that the town is going in the wrong direction.

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Supervisor Engert said they attempted to downsize our coverage based on the feedback and budget constraints, but were unable to do so in partnership with the Village Police Department. He said this project will be very closely evaluated.

Councilman Wayner emphasized the Public Safety Committee is made up of residents who have volunteered and that the committee should act as the conduit for the resident and businesses to the Town Board.

Pat Fuller asked if there was a pro and con sheet on the cost analysis.

Supervisor Engert said the Board is committed to work within the \$46,000 budgeted.

Dale Howard asked what part of Civil Service will they be hired under and what benefits will they have.

Supervisor Engert said the position will be non-competitive Constable part-time and there will be no benefits.

Lee Hoffman asked what happens if you discontinue the police force and what the next step is.

Supervisor Engert said it will be evaluated at the end of the year.

Ron Tucker said the Board could renegotiate after the trial period.

Supervisor Engert said it is in the evaluation stage and the most important thing is to do what the residents want.

Richard Meyers asked how many officers and how many cars and if it is a new car. He asked what you are going to do if the car breaks down.

Councilman Wayner said 1 used car and the car will be repaired.

Paul Higgins asked how many miles are on the car.

Supervisor Engert said 69,554 miles.

Richard Meyers said those costs need to be calculated.

Supervisor Engert said they have been.

Ron Estep said that once you get on a fixed income it is hard and he doesn't see anyone trying to keep the taxes down.

Supervisor Engert said we are trying to keep that cost from rising.

Councilman Wayner said we are trying to manage this more effectively.

John Brent said we have 3 department heads including Superintendent Bigelow, Superintendent Denny and DPW Remington that help each other and asked why we can't work this out with the Village.

Supervisor Engert said this discussion has been ongoing for the last three years to try to reign in the costs.

Mr. Brent said we had 2 police officers with 70 years experience and we had a good thing going.

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Councilman Wayner said the main reason is management of police services. He stated they have no quarrel with the performance of the police officers or the police service received. He said the Board could no longer ignore the escalating budgets and the Town Board said they need to manage the expense.

Supervisor Engert said the Village faced the same issue and read from the Village newsletter stating that the escalating costs of the police budget is deterring some projects. He said the Village came to the Town and asked for more money. He said the Village asked for \$65,000 and then they came down to \$50,000 within a month. He said that volatility in a budget is not good. He said we are trying to do what is best for our residents and said both Boards are struggling with this.

Pat Fuller said the Village contract was for \$50,000. She said she is a Village Board member and asked why the Town Board couldn't sit at a table to work things out. She said this is a power struggle.

Richard Meyers thanked the Board for allowing the 2 way conversation. He asked if shared services had been considered and he said he would be surprised if the Village can sustain the department. He said the Town will then be covering the Village. Supervisor Engert said we do not have a department and the contract was severed at the end of December.

Norman Jansen asked if the Village drops the Police Department will the village help pay for police coverage.

Supervisor Engert said services will be provided. He stated the Village residents do not currently pay for the police portion of the contract. He said the town has the authority to impose taxes to pay for services.

Chris Mason said the Village will have to cut and maybe in the long run it will be a cooperative service. She said she appreciates the steps you (the Board) have taken and you are making good decisions.

Norm Jansen said he is extremely happy with the Village Department and hopes the new one will be as good.

With all persons desiring to be heard, Supervisor Engert closed the hearing at 7:24PM.

SPECIAL MEETING

Supervisor Engert opened the special meeting at 7:25PM.

RESOLUTION 39-2012

ADOPTION OF LOCAL LAW #1-2012 POLICE, TOWN

Supervisor Engert asked if the Board members had any further discussion regarding the police.

Councilman Wayner stated a communication was distributed in various forms yesterday from the Police Chief Ross Annable and he takes issue with several of the points, but one in particular. He said he finds it extremely troubling that the communication states that the constables will not have the same powers as police officers. He said the Board has established that the officers will have all the authority and to suggest otherwise in a public communication, he finds that this communication is extremely irresponsible and dangerous. He said "the reason I say dangerous is that we are going to have officers out there and people will be interacting with perpetrators and if those perpetrators in their mind think they are dealing with some kind of, excuse the expression, 'local yokel', the officer may be put in the position that they are where their authority is being challenged unnecessarily." He further stated that he will communicate with the Chief that he would like him to execute a public retraction of those comments. He said it is his understanding that the Chief had not read the local law.

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

ADOPTED	by Roll Call Vote	Supervisor Engert	Aye
		Councilman Wayner	Aye
		Councilman Alt	Aye
		Councilman Jansen	Aye
		Councilman Dewart	Aye

Resolve Local Law #1-2012 entitled Police, Town is approved as follows:

Be it enacted by the Town Board of the Town of Somerset as follows:

To amend the Code of the Town of Somerset by adding a new Chapter 84 entitled **POLICE, TOWN** as follows:

ARTICLE I

§84-1. Purpose and intent.

The purpose of this Article shall be to promote the health, safety and general welfare of the Town of Somerset, including the protection and preservation of the property of the Town and its inhabitants, by specifying and establishing a Town Police Department within the Town of Somerset, as hereinafter set forth and described pursuant to such authority provided under Town Law § 150.

§84-2. Special duties.

Town Police Officers as defined pursuant to Criminal Procedure Law § 1.20 (34) (d) shall be referred to hereafter as Police Constables in the Town of Somerset and shall have the following duties:

1. Enforcement of the Vehicle and Traffic Law and issuance of simplified traffic informations pertaining thereto.
2. Issuance of uniform appearance tickets for snowmobile violations pursuant to Parks Recreation and Historic Preservation Law, Article 27.
3. Enforcement of all local laws and ordinances of the Town of Somerset.
4. Service of legal papers such as Summonses, etc.
5. Provision, upon request of such agencies, of assistance to the New York State Police and Niagara County Sheriff's Office.
6. Performance of house/building checks within the Town of Somerset.
7. Performance of traffic control functions for activities within the Town.
8. Maintenance of order at all Justice Court sessions and official Town Board meetings only when necessary.
9. Investigation of any situation which is brought to their attention upon complaint of any citizen or which is encountered by them while on duty and conducting any other assigned duty and which may involve a violation of the New York Penal Law and to take any action within their authority as peace officers as may be warranted under the circumstances.
10. Such other duties as may be assigned by the Town Board by Order, Resolution or Local Law.

§84-3. Powers and Authority.

While engaged in the performance of their special duties as set forth above, Town Police Constables shall have the following powers and/or authority:

1. To patrol, in vehicles or on foot, the entire Town, including Town Parks and Cemeteries.
2. To operate a Town-owned vehicle equipped with emergency lights and siren.
3. To control traffic and enforce the provisions of the Vehicle and Traffic Law; to issue simplified traffic informations for violations thereof pursuant to §207 of such law; and to issue summonses for parking infractions.
4. To assist with crowd control at accident scenes and other emergencies.
5. To protect Town property.
6. To cooperate with and assist Niagara County Sheriff's Deputies and New York State Police upon the request for aid from those agencies.

7. To appear at all sessions of Town Court to provide security, being authorized to handcuff defendants when in the Police Constable's sound discretion same is necessary to prevent escape, preserve decorum or insure safety.
8. To serve civil process.
9. To make collections pursuant to executions and garnishee executions issued upon Judgments rendered in Town Court.
10. Provide or assist in the provisions of dog control services under Article 7 of the Agriculture and Markets Law, to enforce the provisions of such Article, and to enforce the provisions of Article 26 of such Law.
11. To also have, as a peace officer, the following powers as granted pursuant to §2.20 of the Criminal Procedure Law:
 - a. The power to make warrantless arrests pursuant to §140.25 of the Criminal Procedure Law.
 - b. The power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to §35.30 of the Penal Law.
 - c. The power to issue appearance tickets pursuant to Section 150.20(3) of the Criminal Procedure Law.
 - d. The power to carry out warrantless searches whenever such searches are constitutionally permissible.
 - e. The power to issue Uniform appearance tickets pursuant to Article 27 of the Parks, Recreation and Historic Preservation Law, and to issue simplified traffic informations pursuant to §100.25 of the Criminal Procedure Law, and Section 207 of the Vehicle and Traffic Law.
 - f. The power to issue uniform navigation summonses and/or complaints pursuant to Section 19 of the Navigation Law.
 - g. The power to issue uniform appearance tickets pursuant to Article 71 of the Environmental Conservation Law.
 - h. The power to possess and take custody of firearms not owned by the Police Constable, for the purpose of disposing, guarding, or any other lawful purpose, consistent with his duties as a peace officer.
 - i. Any other power which a particular peace officer is otherwise authorized to exercise by any general, special or local law or charter whenever acting pursuant to his special duties, provided such power is not inconsistent with the provisions of the penal law or this chapter.

§84-4. Special Requirements.

1. Town Police Constables, upon appointment, are required to meet all training and other requirements to be registered with the NYS Division of Criminal Justice Services Official Registry as a Police Officer.
2. Town Police Constables may exercise their powers to prevent, detect, and investigate crimes and to enforce the general criminal laws of the State and including other applicable laws, rules, ordinances and regulations as set forth in this section only when acting pursuant to their special duties as set forth by the Town Board.

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

Supervisor Engert announced a communication has been received from the Donate For Life run organizers that the date of the run has been changed from March 17th to March 24th due to conflicts.

On a motion of Councilman Jansen, seconded by Councilman Alt, the meeting adjourned at 7:30 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk