



# Town of Yates

## Water Improvement Area Capital Charges

### Report of Examination

Period Covered:

January 1, 2010 — August 3, 2011

2011M-221



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

February 2012

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Yates, entitled Water Improvement Area Capital Charges. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

The Town of Yates (Town) is located in Orleans County and has a population of approximately 2,560 residents. The Village of Lyndonville is located entirely within the Town. The Town provides various services to its residents, including street maintenance, water, and general government support. An elected five-member Town Board (Board) is the legislative body responsible for overseeing the Town's operations and finances. The 2011 Town budget totaled approximately \$1.6 million for all funds, including special districts. Town expenditures are funded by property taxes, sales taxes, State aid, user charges, fines, and miscellaneous fees.

In 1993, the Board authorized Water Improvement Area #4, Phase 1, on a benefit basis. The first phase of the related project included improvements to a water treatment plant and a water storage and transmission system, as well as the installation of water mains and laterals to customers. Officials told us that the treatment plant and the water storage and transmission system benefited the entire area and were designed to handle future capacity needs, including all anticipated phases of the water improvement area.

The 1993 resolution provided three tiers of benefits based on whether a parcel was developed and had access to a waterline, undeveloped but had access to water, and parcels that did not have access to water. According to Town officials, all phases subsequent to Phase 1 (nine completed as of September 2011) involved the installation of water mains. Currently, the tenth phase of the project has been approved by the Board, but has yet to be started.

The Town financed the various phases of this project with grants and debt. The Town obtains the funds necessary to finance its water capital improvement costs and related debt service through a special assessment that is included on the annual tax bill of certain parcels located in the improvement area.<sup>1</sup> Since 2001, the Board has not charged a special assessment to parcels located in the improvement area that are not connected to, and do not have access to, the waterline.

## Objective

The objective of our audit was to examine the special assessment imposed upon property in Water Improvement Area #4. Our audit addressed the following related question:

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<sup>1</sup> Currently, the Town charges properties that are connected to the waterline \$200 per year, and charges parcels that have access to, but are not connected to, the waterline \$170 per year.

- Is the special assessment levied upon real property located in Water Improvement Area #4 reasonable, equitable and imposed in accordance with statutory requirements?

**Scope and  
Methodology**

We examined the special assessment charges for Water Improvement Area #4 for the period January 1, 2010 through August 3, 2011. However, we extended certain testing back as far as the 1993 fiscal year to identify costs related to the project and review Board resolutions.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

**Comments of  
Local Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they plan to initiate corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Town Board to make this plan available for public review in the Town Clerk's office.

## Water Improvement Area Capital Charges

Special assessments levied upon real property to fund capital and related debt service costs for a water improvement area should be reasonable in amount, equitably apportioned to benefited properties, and imposed in accordance with statutory requirements. Furthermore, the Board must document how it calculated the special assessment charge to provide transparency and accountability, and must document all of the items that it expects to fund with the special assessment charge so that taxpayers are aware of what their taxes are being used to pay.

The annual special assessment charge levied by the Board upon real property located in Water Improvement Area #4 was excessive. For the last five completed fiscal years (2006 through 2010), we found that the assessment charges exceeded debt service costs by approximately \$21,000 to \$40,000 annually. Consequently, results of operations have generally produced year end surpluses which have increased the Water Improvement Area #4 fund balance. The reported unreserved, unappropriated fund balance in this fund was \$387,659 at December 31, 2010, which was 123 percent of its total appropriations of \$316,200 for 2011. This level is excessive. Town officials did not lower the special assessment charge to an amount that was sufficient to fund debt service charges.<sup>2</sup>

In addition, the Board did not distribute this charge to benefited parcels in an equitable manner. The 1993 Board resolution establishing Water Improvement Area #4 addressed how the repayment of debt would be allocated among the parcels in the improvement area. The resolution directed that a charge be assessed upon all parcels located within the improvement area – regardless of whether they had water service – to finance the repayment of debt associated with the treatment plant, system pumping, and storage and transmission system. An additional charge for debt service associated with the installation of water mains and laterals would be imposed upon those parcels receiving water service; parcels not receiving water service in that area would not have to pay this additional charge.

We found that Town officials complied with the Board resolution from 1996 through 2000. However, beginning in 2001, Town officials did not charge an assessment to parcels that did not have water service available. This is contrary to the 1993 Board resolution. When a town board has determined that all property within an area

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<sup>2</sup> The Town also imposes water user fees for customers who are connected to the water system, based on periodic meter readings.

is benefited by the improvement, all non-exempt parcels should be assessed for a portion of the cost. Nevertheless, only those parcels that had water service available were charged for debt service costs associated with improvements that will benefit all the properties in the improvement area. According to the Town Assessor's records, there are approximately 100 parcels<sup>3</sup> within the boundaries of the benefited area that are not being billed by the Town for the capital improvements related to the treatment plant and the water storage and transmission system.

Town officials did not provide us with any documentation to support how they determined the special assessment charge imposed upon real property in Water Improvement Area #4. We found that the Town has been using substantially the same assessment charge since 1999. Moreover, the Board did not adjust the special assessment charge as property in the improvement area was developed and parcels were subdivided, which would add more assessable parcels to the tax roll. Town officials indicated that they had occasionally reduced the rates when fund balance was too large. However, we determined that since 1999, the special assessment has only been reduced by \$20 per parcel.

We analyzed the amount of the special assessment charges imposed during each phase of the project, from 1996 through 2011, to finance the debt service costs associated with improvements to the treatment plant and the water storage and transmission system. A parcel located in Phase 1 of the project has paid approximately \$800 in special assessment charges, and a parcel located in Phase 9 has paid approximately \$200 for debt service associated with the treatment plant and the water storage and transmission system. On average, we estimate that a parcel located in Phases 1 through 5 has paid approximately \$400<sup>4</sup> more than a parcel located in Phases 6 through 9 for debt service costs associated with these improvements. These inequities occurred as a result of Town officials changing the methodology of assessments from the Board's 1993 resolution, beginning in 2001. When changing the methodology for determining special assessment charges, the Board must consider the impact on all affected taxpayers and clearly document its reasoning for its decisions.

Town officials told us that they stopped charging assessments to parcels without available water service in 2001 because they had accumulated a sufficient amount of resources to fund water operations

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<sup>3</sup> We did not determine which of these properties may be considered exempt.

<sup>4</sup> Parcels identified as Level 1 (tap into the waterline) have paid an average of \$400 more. Parcels identified as a Level 2 (vacant land that does not tap into the waterline) have paid an average of \$330 more.

and no longer needed to tax residents who did not yet have access to public water. However, this approach is not equitable to those property owners that have paid the special assessment in previous fiscal years, as they were required to pay for capital costs prior to receiving a benefit. We found that the Town used approximately \$150,000 of surplus fund balance to supplement at least one phase of the project and to finance several small projects. In effect, the special assessment imposed upon property owners in the earlier phases of the water project was not used to finance only debt service costs in conformance with the 1993 Board resolution, but was instead used to finance improvements from which those property owners received no benefit.

Finally, the Board may not have complied with Town Law when imposing the charge. It appears that several of the later phases may have been undertaken as water districts,<sup>5</sup> rather than Article 12-C water improvements.<sup>6</sup> Under Article 12-C of Town Law, water improvements may be undertaken without the formation of a special district. The Town can charge the associated capital costs to an area of benefited properties, by imposing a general tax levy on the area of the Town outside of any incorporated villages, or by a combination of both. The cost of operation and maintenance of the improvements is a charge against the Town Outside Village area. User fees also may be used to fund both operation and maintenance and capital costs. Each new project constructed pursuant to Article 12-C represents a separate and distinct improvement.

Towns also have the option to provide water service to residents by establishing water districts. District costs are generally raised by either a tax levy or a benefit assessment on property within the district. Among the differences between an improvement under Article 12-C and a district are that (1) a district has set boundaries that are determined when the district is established and do not change with each improvement within the district; (2) the repair, replacement or improvement of infrastructure within the district may be undertaken without establishing a new district; (3) laterals are assessed against the property benefited when the district is on a benefit basis; and (4) the threshold for requiring the Comptroller's consent, assuming debt

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<sup>5</sup> Board resolutions for Phases 1, 2 and 3 referred to the geographic area as a Water Improvement Area. Beginning in 1996, Board resolutions for Phases 4, 5, 6 and 6b referred to the same geographic area as Water Improvement Districts. In 2003, the resolution for Phase 7 was identified as an extension to Water District No. 4, whose geographic area generally makes up the south east quadrant of the Town. Resolutions for Phases 8 and 9 identified specific streets within the Town and referred to the area as Water District No. 4.

<sup>6</sup> See resolutions for Water Improvement District Phase 4, Water Improvement District Phase 5, Water District No. 4, Phase 7, and Water Improvement Districts No. 4, Phases 6, 6-b, 8 and 9.

will be issued, is based on different criteria. In other words, while water improvement areas and water districts both function to provide water to town residents, the method of forming, assessing and improving each is distinct and different. User fees may be imposed to defray expenses for both an improvement and a district.

It appears that the Town may have used the Town Law provisions on water districts and water improvements as if they were interchangeable, and therefore, it is unclear whether assessments for all phases of the water improvements complied with provisions of Town Law applicable to water improvements. The Board initially established three Article 12-C water improvement areas. However, by 1996, the Board resolutions for the fourth phase of the project began referring to the same geographic area as a water district. Water districts are authorized by Articles 12 and 12-A of Town Law, which have substantially different provisions from those applicable to improvement areas. As such, a water improvement area and a water district are not synonymous, and the methods for raising costs may vary depending upon whether the project was authorized as a water improvement or a district. This unexplained change in approach may have caused some confusion with respect to the extent to which the capital charge was imposed upon the property in the benefited area.

## **Recommendations**

1. The Board should annually calculate the special assessment rates necessary for Water Improvement Area #4 and fully document how it determined the rates.
2. The Board should reduce fund balance to a more reasonable level.
3. The Board should charge all parcels in the improvement area for debt service associated with the treatment plant and the water storage and transmission system in the manner indicated in the 1993 resolution.
4. The Board should review and reconcile the conflicting resolutions for the various phases of the project which refer to Articles 12 and 12-A and Article 12-C of Town Law.

## **APPENDIX A**

### **RESPONSE FROM LOCAL OFFICIALS**

The local officials' response to this audit can be found on the following pages.

TOWN SUPERVISOR  
8 South Main Street  
P.O. Box 484  
Lyndonville, New York 14098

SUPERVISOR

John Belson  
585-765-9716 Phone  
585-765-2961 Fax

TOWN BOARD

Bradley Bentley  
Wesley Bradley  
Rick Harmer  
Steve Freeman

January 31, 2012

Division of Local Government and  
School Accountability  
Office of the State Comptroller  
295 Main Street, Room 1032  
Buffalo, NY 14203-2150

Re: Town of Yates Report of Examination

Dear Sir:

This is in response to the correspondence of Robert E. Meller, Chief Examiner, dated January 3, 2012 and the preliminary draft findings of your recent examination of the Town of Yates. The Town Board has had the opportunity to fully review the preliminary draft findings.

On behalf of the Town, I wish to express its appreciation for the professionalism exhibited and the guidance provided by your Senior Examiner throughout the field audit phase of the examination as well as her thoughtful comments rendered at the exit discussion. The Town appreciates the comprehensive scope of your office's review, given that it commenced with the initial authorization of Water Improvement Area No. 4, Phase I in 1993.

The Town Board wishes to advise you that it is favorably disposed to undertaking the recommendations set forth in the report of examination.

With respect to recommendation number 1, the Town Board will annually calculate the special assessment rates necessary for Water Improvement No. 4 and fully document how the Board determined the rates commencing with the upcoming budget preparation process for the calendar year 2013. The annual calculation process will be undertaken so as to ensure that the special assessments are reasonable in amount, equitably apportioned to benefitted properties and imposed in accordance with statutory requirements. To assist the Town with the task, the Town intends to retain a municipal financial advisor to render independent financial and management advisory services to assist the Town in meeting its goals.

With respect to item number 2, the Town will reduce the fund balance to a more reasonable level. Your Senior Examiner had several suggestions for consideration by the Board at the exit discussion. The Town will more particularly set forth its plan of action in the Correction Action Plan to be submitted in response to the report of examination.

With respect to recommendation number 3, the Town Board will charge all parcels in the Improvement Area for debt service associated with the treatment plant and the water storage and transmission system in the manner indicated in the 1993 resolution. This will be done contemporaneously with the Town's calculations in response to recommendation number 1.

With respect to recommendation number 4, the Board will review and reconcile the conflicting resolutions for the various phases of Water Improvement Area No. 4. The Board has directed the Town's local counsel to initiate a review and report back to the Board for the Board's review and reconciliation as appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "John Belson", with a long horizontal flourish extending to the right.

John Belson  
Supervisor, Town of Yates

## APPENDIX B

### AUDIT METHODOLOGY AND STANDARDS

To accomplish the objectives of the audit and obtain valid audit evidence, we interviewed appropriate Town officials and employees and examined pertinent documents for the period January 1, 2010 through August 3, 2011. Our procedures included the following steps:

- We reviewed Board minutes and resolutions related to all phases of the water improvement project from 1993 through 2011.
- We identified relevant Town Law statutory provisions related to water improvement areas and water districts, and conferred with our Legal Division.
- We documented the process used by officials to calculate the special assessment rates and identify which parcels would be charged for water improvements.
- We documented principal and interest payments associated with all of Water Improvement Area #4's debt service.
- We identified the special assessment rates charged from 1996 to 2011 based on information obtained from the Town Assessor and County Real Property Director.
- We analyzed the amount of the special assessment charges paid by an average parcel during each phase of the project, from 1996 through 2011, and estimated the amount of the charge attributable to finance the debt service costs that are only associated with improvements to the treatment plant and the water storage and transmission system.
- We documented revenues, expenditures, results of operations, and fund balance amounts for the fiscal years 1996 through 2010.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## APPENDIX C

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**DIVISION OF LOCAL GOVERNMENT**  
**AND SCHOOL ACCOUNTABILITY**

Steven J. Hancox, Deputy Comptroller  
Nathalie N. Carey, Assistant Comptroller

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