

REGULAR MEETING
December 2, 2015

Board Members Present: Mayor David Hazelton
Trustee Bryan Woleben
Trustee Gary Planty

Board Members Absent: Trustee J. Dale Abram
Trustee Craig Miller

Present: Sonia Luszczak, Village Clerk/Treasurer
Tom Allen, DPW Superintendent
Jim Rizzo, Jr. Fire Chief
Diane Hofner, Solar Chautauqua Project
Ann Belcher, Evening Observer

Mayor Hazelton opened the regular meeting with the pledge to the flag at 7:00 p.m.

Public Comments: No public comment.

Department Reports: Village Clerk, Sonia Luszczak presented an invoice for WNY Imaging Systems for the copier in the office. The amount of the invoice is \$528.00 for a year. This will cover toner and any maintenance on the copier. The Clerk requested help in what information was on the contract and if it would include an upgrade. A motion was made by Trustee Gary Planty and second by Trustee Bryan Woleben to approve the invoice for payment upon further investigation. Vote was unanimous, motion carried.

The Clerk gave the monthly credit card payment report. This service is being used more often.

We continue to explore the paper billing for utilities and have found that the USPS will not allow the billing to be sent as we currently have them. The fold must be at the bottom with two closures at the top 1" from each end. With the template that we currently have, this option would not work. Further work is being done to find a template that would work. It is possible that we will need to use envelopes for mailing. More to follow.

Presented the November Dog Control Report.

Tom Allen, DPW Superintendent – The bridge is completed down on Peerless Street with gravel. It will not open until the Spring of 2016 at which time there will be black top, guard rails and street lighting installed before opening.

The last leaf pick-up was completed the first of the week. All DPW equipment is now ready for winter weather. With no snow, it is helping with the salt/sand budget. Tom asked Ann Belcher, reporter for the Observer to remind everyone of winter parking rules. Tickets will be administered for any vehicle parked improperly.

Jim Rizzo, Jr. – Fire Chief – wanted to congratulate the 4 new firefighter that graduated from Firefighter 1.

Two of the fire trucks passed the pump test. Truck 202 had some repairs completed and Truck 201 would be going for repair and a new battery.

The meeting room looks nice with the new tables and chairs and he wanted to thank everyone once again for all the work.

The fire department will be hosting their Christmas Party at the fire hall on Saturday, December 5th. The Village Board is welcome to attend.

Committee Reports: Trustee Gary Planty gave an update on the grant for the transformer that the Village is still waiting to hear about. It appears that it is still in the system, and Trustee Planty will continue to contact them for updates once a month. Trustee Planty sent an email to SUNY Fredonia on the recommendation of Trustee Craig Miller regarding help with writing grants. Trustee Planty is waiting for a response. Trustee Planty gave an update on the newly formed Board of Utilities who will serve as an advisory board for the Village in getting projects to move forward when old boards move on.

Trustee Bryan Woleben finally received a quote from Cummins Northeast in the amount of \$3,122.82 as well as the one from Emergency Power Systems of Rochester for an amount of \$2,175.00 to service the generators. A motion was made by Trustee Bryan Woleben and second by Trustee Gary Planty to approve engaging Emergency Services of Rochester in the amount of \$2,175.00 to service the generators at the sewer plant and fire hall. Vote was unanimous, motion carried.

Trustee Woleben wanted to congratulate the four (4) new firefighters in passing the test. There was discussion regarding the radios. Trustee Woleben spoke to Bob Frank regarding getting a revolving loan. More to follow.

Mayor Report: Mayor Hazelton notified the Trustees that he received a call from the Regional Water District Engineer to discuss the cost for the new water line. There will be a meeting on Friday, December 4th at 10:30 a.m. with Rex Tolman, Village Engineer, Eric Wise Water District Engineer, Mayor Hazelton, Tom Allen, S. St. George and Trustee J. Dale Abram to further talk about some ways to reduce this cost.

The Mayor received from New York State the report of the water dam inspections that were held in October. There were several minor issues that will need to be addressed.

The Mayor wanted to congratulate Rich Lewis on completing the final courses to get his Wastewater Treatment Plant license.

Dave Spann contacted the Mayor regarding a complaint that he had received from the Snowmobile Club that the land where the snowmobile trail goes through was damaged. According to Dave Spann, he went and reviewed the area and found that the loggers did as they agreed to when they logged. Dave Spann believes that the damage that is being done is from 4 wheelers that go on to the land.

New Business:

Resolution 98-2015 was introduced

RESOLUTION 98-2015

**APPROVAL FOR MAYORS SIGNATURE ON SUPPORT OF SOLAR
CHAUTAUQUA PROJECT OF NORTHERN CHAUTAUQUA COUNTY**

WHEREAS, the Village of Brocton Board of Trustees have reviewed information regarding Solar Chautauqua NY, and

WHEREAS, Diane Hofner appeared before the Village Board meeting held on October 21, 2015 to present information and gain support for the Community Solar NY application to NYSERDA for approval and funding to launch a Solar Chautauqua (SC) campaign in Spring 2016, and

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees authorize the Mayor's signature on a letter giving the Village of Brocton support of the Community Solar NY.

Resolution introduced by Trustee Bryan Woleben, second by Trustee Gary Planty with vote as follows:

__3__ ayes __0__ nays __2__ absent

Dated: December 2, 2015

Sonia Luszcak
Village Clerk/Treasurer

Resolution 99-2015 was introduced

RESOLUTION 99-2015

**DENIAL OF LEVEL 3 APPLICATIONS FOR CORRECTED TAX
ROLLS FORM RP 554 AND APPLICATIONS FOR
REFUNDS/CREDITS OF REAL PROPERTY TAXES FORM RP 556
FOR THE 2013, 2014 AND 2015 TAX YEARS**

WHEREAS, Level 3 Communications, LLC (“Level 3”) has filed applications for corrected tax rolls pursuant to Real Property Tax Law Section 554 for the 2013, 2014, and 2015 tax years, and

WHEREAS, Level 3 has also filed applications for refund/credit of real property taxes pursuant to Real Property Tax Law Section 556 for the 2013, 2014, and 2015 tax years, and

WHEREAS, the Chautauqua County Real Property Tax Director has investigated the circumstances of the claims of Level 3 in the applications, and

WHEREAS, the Chautauqua County Real Property Tax Director has transmitted a written report of such investigation and his recommendations for action thereon, and

WHEREAS, the Chautauqua County Real Property Tax Director has determined that the applications are without merit and recommends that the applications be denied for multiple reasons, and

WHEREAS, the Chautauqua County Real Property Tax Director has recommended that the applications be denied for the following specific reasons:

1. The fiber optic cable constitutes taxable real property under multiple sections of Section 102 of the Real Property Tax Law as follows:
 - A. Fiber optic cable has been interpreted and taxed as real property for more than thirty years, and should continue to be taxed as real property;
 - B. The fiber optic cable meets the definition of real property pursuant to Real Property Tax Law Section 102 (12)(i) and is taxable under that section;
 - C. The fiber optic cable constitutes property for the distribution of light and is taxable real property pursuant to Real Property Tax Law 102 (12)(f);
 - D. The fiber optic cables constitute fixtures and are taxable real property pursuant to Section 102 (12)(b) of the Real Property Tax Law;
 - E. The Real Property Tax Law does not provide any tax exemption for fiber optic cable;
 - F. Real Property Tax Law Section 102 does not contain any express or implied exclusion for fiber optic cable from the definition of taxable real property;

- G. The Legislative History of Real Property Tax Law Section 102 does not support Level 3's position that fiber optic cable does not constitute taxable real property and is not subject to real property taxation;
 - H. The research articles submitted by Level 3 in the prior court case have no foundation, are not authoritative, were written many years after the New York State Legislature enacted the language contained in Real Property Tax Law Section 102, and there is no evidence the New York State Legislature considered those articles when the Legislation was enacted; and
 - I. The RCN case, which applicant references in its applications, is factually and legally distinguishable from the circumstances involving Level 3's property located in Chautauqua County. The RCN case involved property in New York City in a building, and not underground cables connected to taxable fiber optic cable in the right of way, as is the situation in Chautauqua County. In addition, the RCN case is in a different department and is not binding on the Courts in the Appellate Division, Fourth Department.
2. The applications are procedurally improper. The applications fail to establish a clerical error, unlawful entry, or an error in essential fact as those terms are defined by Section 550 of the Real Property Tax Law. Numerous Town tax assessors have also analyzed Level 3's claims and concluded that its allegations do not constitute an "unlawful entry" as that term is defined in Real Property Tax Law Section 550 (7);
 3. Level 3 failed to pay the taxes under a protest. The Voluntary Payment Doctrine bars Level 3 from recovery of taxes without protest. *See City of Rochester v. Chiarella*, 65 N.Y.2d 92, 98 (1985); *City of Rochester v. Chiarella*, 98 S.D.2d 8, 9, 12 (4th Dept., 1983) aff'd 63 N.Y.2d 857 (1984).
 - A. Level 3's argument that Real Property Tax Law Section 556 allows recovery without protest is without merit since Section 556 does not state or provide an affirmative right to recover taxes without protest. *Level 3 Communications, LLC v. Essex County*, 129 A.D.3d 1255 (3rd Dept., 2015); *Community Health Plan v. Burkard*, 3 A.D.3d 724, 725 (3rd Dept., 2004).
 4. The RP554 applications are time barred and untimely on the basis that they were filed after the expiration of the tax warrants. *See RPTL Section 554; Level 3 Communications v. Essex County*, Supreme Court, Essex County, Hon. T. Buchanan, decided May 29, 2014.

5. The RP556 applications are also time barred and untimely on the basis that they were filed after the expiration of the tax warrants. *Level 3 Communications, LLC v. Essex County*, supra.
6. The applicant's proper remedy is to bring a tax certiorari proceeding under Article 7 of the Real Property Tax Law challenging the assessments prospectively. The applications improperly seek retroactive tax refunds under inapplicable sections of the Real Property Tax Law.
7. The applications should be denied on public policy grounds because Level 3 voluntarily deferred its challenges to the public assessments for multiple years and exposed the municipalities and school districts to unnecessary retroactive disruption of their budgets. *Press v. County of Monroe*, 50 N.Y.2d 695 (1980); *Solnick v. Whalen*, 49 N.Y.2d 224 (1979).
8. The applications are untimely and barred by the four-month statute of limitations because they were filed more than four (4) months after the assessment rolls became final and binding. *See Press v. County of Monroe*, 50 N.Y.2d 695 (1980).
9. The applications contain only conclusory allegations with respect to fiber optic cables, and fail to contain detailed and sufficient evidence with respect to the identity, location, composition and usage of its property and lines. The application fails to contain any information from any engineer, expert, person, or employee with personal knowledge with respect to the cable lines in question, and

WHEREAS, the Village of Brocton has carefully considered and fully agrees with the investigation and recommendations of the Chautauqua County Real Property Tax Director, it is hereby

RESOLVED, that all of the Applications for Corrected Tax Rolls Form 554 and the Applications for Refunds/Credits of Real Property Taxes Form 556 for the 2013, 2014, and 2015 tax years are hereby denied in their entirety for the reasons set forth above.

Resolution introduced by Trustee Gary Planty, seconded by Trustee Bryan Woleben with vote as follows:

 __3__ ayes __0__ nays __2__ absent

Dated: December 2, 2015

Sonia Luszcak
Village Clerk/Treasurer

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Village of Brocton Board of Trustees, at its meeting held on Wednesday, December 2, 2015.

Sonia Luszcak
Village Clerk/Treasurer

Dated: December 2, 2015

Resolution 100-2015 was introduced

RESOLUTION 100-2015

APPROVAL TO ATTEND TRAINING SEMINARS

WHEREAS Joe Majkowski and Frank Cole have requested approval to attend the Safety Training Classes, sponsored by MEUA in January; April; May; August; September; November; and December, 2016 at the Mayville Fire Hall in Mayville, New York. The schedule of days to arrive at a later date. The registration fee is \$1860.00 each. Means of travel will be Village Truck. The courses will certify annual training on pole top rescue and qualified electrical personal safety training.

NOW THEREFORE BE IT RESOLVED authorization is approved for Joe Majkowski and Frank Cole to attend the safety training classes as listed.

Resolution introduced by Trustee Bryan Woleben, second by Trustee Gary Planty with vote as follows:

__3__ ayes __0__ nays __2__ absent

Dated: December 2, 2015

Sonia Luszcak
Village Clerk/Treasurer

Resolution 101-2015 was introduced

RESOLUTION 101-2015

APPROVAL TO ATTEND CHAUTAUQUA COUNTY MUNICIPAL CLERK MEETING

WHEREAS Sonia Luszczak has requested approval to attend Chautauqua County Municipal Clerk Meeting on Wednesday, December 16, 2015 at 1:00 pm at Andriaccio's Restaurant, Mayville, NY. The lunch fee is \$20.00 and travel will be shared with Roxanne Sobecki, Town Clerk, Portland.

NOW THEREFORE BE IT RESOLVED authorization is approved for Sonia Luszczak to attend the Chautauqua County Municipal Clerk Meeting as listed.

Resolution introduced by Trustee Gary Planty, second by Trustee Bryan Woleben with vote as follows:

__3__ ayes __0__ nays __2__ absent

Dated: December 2, 2015

Sonia Luszczak
Village Clerk/Treasurer

Old Business:

General Code – Peter Clark is currently finalizing.

Collection Agency – Village Trustees are working on.

Webster Road Water District – On Going – Waiting for Petition to be filed. Working on Grant money.

Water, Sewer, Rent Charges – Landlords – This was approved at last meeting.

Water Meter Reading – Crestview - New owners. The Village will be in contact with them to discuss the water meters in the Park.

A motion was made by Trustee Gary Planty, second by Trustee Bryan Woleben to authorize payment of signed approved vouchers. Vote was unanimous, motion carried.

A motion was made by Trustee Bryan Woleben, second by Trustee Gary Planty to approve November 18th minutes as written. Vote was unanimous, motion carried.

A motion was made by Trustee Gary Planty, second by Bryan Woleben to approve the written reports as presented. Vote was unanimous, motion carried.

With no further business brought before the Board, a motion was made to adjourn the meeting at 7:33 pm by Trustee Bryan Woleben, second by Trustee Gary Planty. Vote was unanimous, motion carried.

Respectfully submitted by,

Sonia Luszcak
Village Clerk/Treasurer