

REGULAR MEETING
March 16, 2016

Board Members Present: Mayor David Hazelton
Trustee J. Dale Abram
Trustee Bryan Woleben
Trustee Craig Miller
Trustee Gary Planty

Present: Peter D. Clark, Village Attorney
Sonia Luszczak, Village Clerk
Thomas Allen, DPW Superintendent
Richard Lewis, Sewer Plant
Phil Gerace, Fire Department
Alan Gustafson, Code Enforcement

Officer
Carol Horlacher
Ann Belcher, Evening Observer

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

Public Comments: Mayor Hazelton thanked those in attendance that put their names out in the public for office and congratulated Carol Horlacher, Craig Miller and Dick Frost that were elected. The Mayor thanked the community for allowing him to serve them for the last four years. With no other comments from the public on to department reports.

Department Reports: The Village Clerk, Sonia Luszczak presented notice that HEAP had extended the season until April 8, 2016. A meeting was scheduled for Good Friday at 9:00 a.m. with John Alessi to sign documents for the EFC loan that was closing. The February Sheriff's report was placed in each of the Trustee's packet. The Mayor asked if it would be possible to have a report of how much HEAP we receive each season. The clerk stated that she would have that information available for the next meeting.

DPW Department - Tom Allen stated he thought he had located the same water meters that we currently are using from another salesperson, only to find out that these are no longer being made.

Tom has found guardrail for the new bridge on Peerless Street but has not found any posts. He is searching for those. More to follow.

Tom spoke to the salesperson regarding the new pick-up. It will be available in the next 35-45 days.

Tom noted that for the summer help, Connor Dolce is going to be coming back to work for the summer with limited hours. He will be in the Village to mow and water the flowers.

Tom asked that the Observer place in the paper that brush pick-up will begin on Monday, April 4, 2016.

Tom went to the County Superintendent Meeting and received information that CHIPS money may be increased for the County which is a good thing. More information to follow.

The youth center floor at the fire hall has heaved and it was taken up and will be replaced with plywood to make it safer.

Tom will be out of town the 26th through the 29th and will have a list of things for the guys to do while he is gone. He will have the Village phone with him should anyone need to get a hold of him.

Trustee Craig Miller asked if the land around the new bridge would be posted? Mayor Elect Richard Frost stated that he felt that if we did post the land several of the area residents currently use the creek to gather minnows and it would be a shame to stop them from getting to the creek. He would like to make sure we talk more about it if this is going to be considered. After further discussion, it may be addressed at a later date.

Sewer Department - Rich Lewis stated that the new pump was installed and working fine. Many thanks to Joe Majkowski and Frank Cole of the Electric Department for their help in installing the pump.

Fire Department - Phil Gerace, Fire Chief - stated that there are 5 (five) new members that had passed the scene support class and three (3) new members taking EMT classes.

Phil wanted the Mayor to know that there is a burning ban posted from March 16th through May 14th.

The Mayor stated that the ambulance had been placed on a recall listed due to a faulty block heater and was scheduled for repairs on March 17th but it will probably be delayed due to a state inspection being completed for the drugs that are carried on board for Wednesday. The Mayor also stated that he was proud of the response time for the fire department and emergency calls. The last call was a total of 5 minutes from the time of the call and when they arrived at the scene.

Joe Majkowski, Electric Lineman - Joe stated that they have been trimming tree limbs and there were no power outages for the month of February. Trustee J. Dale Abram asked Joe if more LED street lights

were going to be completed. Joe stated that once the new budget was in effect he would be working on Old Mill Road as well as the new bridge down on Peerless Street. The Mayor explained to the new elected officials that the Board had made a decision to spend the money on the new LED street lighting.

Alan Gustafson, Code Enforcement Officer - Alan handed in his monthly report. He has issued five (5) permits as well as a shed permit for the Brocton Little League located at Greenbush Street. Alan went on to thank the Board and Mayor for their support for the last couple of years. The Mayor thanked Alan for his businesslike approach with the residents that he encountered in his job.

Committee Reports: Trustee Gary Planty wanted to thank Mayor Hazelton and Trustee J. Dale Abram for their many years of community service to the Village of Brocton and wished them well. Trustee Planty received a contact from Fredonia State College, Jennifer Wilkins, regarding help with writing Grants. Trustee Planty would be contacting the college once the new Mayor and Trustees were on board with an internship writing grants that would be helpful to the Village. She asked what ideas we were interested in pursuing, Downtown Revitalization, unsafe buildings, electric transformer, replacing the water main west of Fay Street to the Village line. Trustee Planty along with the Mayor attended a meeting in Mayville regarding the Health Insurance cost savings that could be achieved under Municipal County Article 47. On May 11th at Southern Tier West will be holding a conference for newly elected officials.

Trustee Bryan Woleben had no report.

Trustee Craig Miller had no report.

Trustee J. Dale Abram reported that he and Trustee Woleben completed an interview for the new part time help for the office. He believes that we have a good candidate for this position. Also Trustee Abram spent some time with the Sewer department and found once again that all of our employees are always there to "get er done". He really appreciates that and how much easier it makes all of their jobs. Trustee Abram wanted to thank all of the employees along with former employees for all of their hard work and dedication to the Village.

Mayor Report: Mayor Hazelton stated that the water main replacement would be getting underway with the contractors taking down trees on March 28th.

The Mayor wanted to remind everyone that there would be a conference call for EFC for funding on the water main project on March 31st and has asked Peter Clark, Trustee Planty, Mayor Elect Frost to attend the call. Mayor Hazelton wanted to stress that this loan should become part of the Regional Water System. There will be a blip this year in the water department but that will only be for this year. The Mayor gave each of the Trustees a copy of the preliminary budget for their review and would recommend that the budget hearing be completed on April 6th and voting to pass the budget on April 20th. The Mayor recommends that the Board increase in sewer from \$4.03 to \$6.03 - \$2.00 increase and would be in effect for at least 2 years. The Mayor also believes that we should raise the rate from 33% to 44% to NYSDOCC. Trustee Planty also went on to explain that the Attorney and our accountant are split out each of the funds. Mayor Hazelton said that he would hold a budget workshop if the Board would be interested. The workshop meeting will be held on Wednesday, March 23rd at 6:30 p.m.

Trustee Miller asked if when the trees that were being removed were going to the toll house? Mayor Hazelton stated that the Village is not responsible for the wood that is left after the trees are cut down, but if someone wanted the wood, he thought you could ask for it.

New Business:

Resolution 17-2016 was introduced

RESOLUTION 17-2016

**ADVERTISE IN THE EVENING OBSERVER FOR YOUTH
RECREATION ATTENDANTS**

WHEREAS, the Village of Brocton and the Town of Portland offer residents the Summer Youth Recreation Program, and

WHEREAS, the recreation committee recommends that an advertisement be placed in the Village of Brocton local authorized paper,

NOW THEREFORE BE IT RESOLVED, that the Village Clerk is hereby authorized to place an ad in the Evening Observer that reads as follows:

2016 Ad for Youth Recreation:

The Village of Brocton is accepting applications for:

Summer Youth Program:

Applications are being accepted for the Summer Youth Program. Interested applicants that are CPR certified or have a certificate in First Aid Training are a plus.

Applications are available at the
Village Clerk's Office
34 West Main St.,
Brocton, NY
From 9:00am-4:00pm

Applications will be accepted from March 21, 2016 through April 8, 2016.

Resolution introduced by Trustee J. Dale Abram, second by Trustee Gary Planty with vote as follows:

 4 ayes

 0 nays

 0 absent

Dated: March 16, 2016

Sonia Luszcak
Village Clerk/Treasurer

Resolution 18-2016 was introduced

RESOLUTION 18-2016

APPOINT SUMMER RECREATION YOUTH DIRECTOR

WHEREAS, the Village of Brocton and the Town of Portland offer residents the Summer Youth Recreation Program, and

WHEREAS, the Director of the Youth Program has various responsibilities before the program begins (i.e.: Lunch program seminars, scheduling, registrations and surveys),

NOW THEREFORE BE IT RESOLVED, that Cynthia Ferguson is re-hired for the position, effective April 1, 2016 at a rate of \$12.00 per hour.

Resolution introduced by Trustee Craig Miller second by Trustee Bryan Woleben with vote as follows:

 4 ayes

 0 nays

 0 absent

Dated: March 16, 2016

Sonia Luszczak
Village Clerk/Treasurer

Resolution 19-2016 was introduced

RESOLUTION 19-2016

APPROVE APPOINTMENT OF CLERK/TYPIST PART TIME

WHEREAS, an opening exists in the Village Clerk's Office for a part time clerk/typist, and

WHEREAS, the Office Committee has reviewed and interviewed qualified applicants,

NOW THEREFORE BE IT RESOLVED that the Village Board hereby approves the Mayor's appointment of Jeannie Oliver, 2 Haywood Drive, Brocton, New York as Clerk/Typist part time for Village of Brocton at an hourly rate of \$ 9.50 per hour for six months, with no other benefits other than required by law, except she may receive 5 paid compensatory days per fiscal year starting June 1st through May 31st which cannot exceed a total of 20 hours of pay per fiscal year and no accumulation of compensatory days (i.e.: if not taken within the fiscal year, they are lost). This appointment is effective March 21, 2016 and subject to civil service rules and regulations.

Resolution introduced by Trustee Bryan Woleben, second by Trustee Craig Miller with vote as follows:

absent 4 aye 0 nay 0

Dated: March 16, 2016

Sonia Luszcak
Village Clerk/Treasurer

Resolution 20-2016 was introduced

RESOLUTION 20-2016

BUDGET TRANSFERS

WHEREAS, the Village Board of Trustees has reviewed the recommendations from its auditors/accountants, Bahgat/Laurito-Bahgat, regarding budget transfers which are set forth in their letter dated March 14, 2016 and find said recommendations to be in order,

NOW BE IT RESOLVED, the following budget transfers as set forth in said letter are hereby approved

GENERAL FUND

Modify 2015-2016 Adopted budget by increasing Revenue line A3089 State Aid Court Grant by \$1,745 and increasing Expenditure line A1110.2 Municipal Court Equipment by \$1,745.

To reflect JCAP grant funds received.

\$2,000 From A1990.4 Contingent Account to A1620.4 Shared Services Buildings

\$1,000 From A5110.4 Maintenance of Roads Contractual to A5142.4 Snow Removal Contractual

WATER FUND

\$10,000 From F8320.4 Source Supply Contractual to F8340.4
Transmission & Distribution Contractual

\$6,000 From F8330.4 Water Purification Contractual to F8330.2
Water Purification Equipment

SEWER FUND

\$8,000 From G9010.8 Employee Benefits State Retirement to
G9060.8 Employee Benefits Hospital & Medical

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

absent __4__ ayes __0__ nays __0__

Date: March 16, 2016

Sonia Luszcak
Village Clerk/Treasurer

Resolution 21-2016 was introduced

RESOLUTION 21-2016

**DENIAL OF LEVEL 3 APPLICATIONS FOR
REFUNDS/CREDITS OF REAL PROPERTY TAXES FORM
RP 556 DATED FEBRUARY 9, 2016 FOR THE 2015-2016
SCHOOL DISTRICTS, 2016 CITY AND 2016
COUNTY/TOWNS TAX BILLS**

WHEREAS, Level 3 has filed applications for refund/credit of real
property corrected taxes pursuant to Real Property Tax Law Section
556 for the 2015-2016 school districts, 2016 city and 2016
county/town tax bills, and

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

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

WHEREAS, the Chautauqua County 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 constitutes property for the distribution of light and is taxable real property pursuant to Real Property Tax Law 102 (120)(f);
 - C. The fiber optic cables constitute fixtures and are taxable real property pursuant to Section 102 (12)(b) of the Real Property Tax Law;
 - D. 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;
 - 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 applicant's claims do not fall within the scope of the Correction of Errors procedure contained in Section 556 of the Real Property Tax Law. 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 RP-556 applications are 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.
5. 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.
6. 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).
7. 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).
8. 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.
9. The applicant incorrectly used the wrong application with respect to the 2016 county, town, and city taxes. The proper form with respect to those taxes is RP-554.

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

RESOLVED, that the Applications for Refunds/Credits of Real Property Taxes Form 556 for the 2015-2016 school districts, 2016 city and 2016 county/town tax bills are hereby denied in their entirety for the reasons set forth above.

Resolution introduced by Trustee J. Dale Abram, seconded by Trustee Bryan Woleben with vote as follows:

4 ayes _0_ nays __0_ absent

Dated: March 16, 2016

Sonia Luszczak
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 March 16, 2016.

Sonia Luszczak
Village Clerk/Treasurer

Dated: March 16, 2016

Old Business:

General Code - Received confirmation email of receipt of approval to proceed.

A motion was made by Trustee Gary Planty, second by Trustee J. Dale Abram 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 March 2nd minutes as written. Vote was unanimous, motion carried.

A motion was made by Trustee Craig Miller, second by Trustee J. Dale Abram 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 7:42 pm by Trustee J. Dale Abram, second by Trustee Bryan Woleben. Vote was unanimous, motion carried.

Respectfully submitted by,

Sonia Luszczak
Village Clerk/Treasurer