

TOWN BOARD MEETING  
**Town of Westfield**  
February 3<sup>rd</sup>, 2016

The regular meeting of the Town Board of the Town of Westfield was called to order at 7:33pm in Eason Hall, 23 Elm Street, Westfield, NY, with the following members and guests present:

Supervisor:	Martha R. Bills	Jim Pacanowski	Janet Nass	Harold Nass
Councilmen:	Raymond Schuster	David Babcock	William Bauer	Jack Gulvin
	David Brown	Joel Seachrist	Randy McNeal	Rick Snavely
	James Herbert	Marybelle Beigh	Tom Tarpley	
	David Spann			

David Brown moved and David Spann seconded a motion to waive the reading of the minutes inasmuch as all members received a copy thereof and that the minutes be approved. Unanimously carried.

At the request of Rick Snavely, CEO of Family Life Ministries resolutions 14 and 15 were acted on earlier in the meeting. Supervisor Bills mentioned that he needed to sign the Special Use Permit application if approved by the board, with this being said Supervisor Bills motioned to move and Raymond Schuster seconded a motion to move to Resolution#14 and Resolution #15 for Family Life Ministries SUP application. Unanimously carried.

-----

**RESOLUTION N. 14 of 2016**  
Negative Declaration (SEQR) State Environment Quality

Moved by David Spann, seconded by David Brown:

**WHEREAS**, the Town Board of the Town of Westfield is considering the application of Family Life Ministries, Inc. for a Special Use Permit allowing it to construct an FM translator that would stand approximately 58' high at an existing telecommunications tower on Douglas Road, on a parcel designated as tax map Section 242.00, Block 2, Lot 7, and

**WHEREAS**, the use has been subject to environmental review pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), including the preparation and review of a short Environmental Assessment Form, and

**WHEREAS**, Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act requires this Board to determine and give notice of the environmental impact of the use, and

**WHEREAS**, the Board has determined that the translator tower proposed in the application will not have a significant environmental impact

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board hereby issues the attached Notice of Determination of Non-Significance, also known as a Negative Declaration, for the application of Family Life Ministries, Inc.

Voting was as follows:

-----

**Resolution No. 15 of 2016**

**TOWN OF WESTFIELD  
SPECIAL USE PERMIT  
Family Life Ministries**

**Action of the Board:**

To consider the application of Family Life Ministries, Inc., for a Special Use Permit to allow the construction an FM translator, comprising a 43' telephone pole tower with a broadcast antenna projecting upward another 15', at an existing telecommunications tower site on Douglas Road, on a parcel designated as tax map Section 242.00, Block 2, Lot 7, and

**Resolution moved by: Raymond Schuster**

**Seconded by: James Herbert**

**WHEREAS**, Family Life Ministries, Inc. (hereinafter, the "Applicant") submitted an application dated August 27, 2015 requesting a Special Use Permit to allow the placement of an FM translator, comprising a 43' telephone pole tower with a broadcast antenna projecting upward another 15', to be placed near two other existing telecommunication towers on Douglas Road, on a parcel designated as tax map Section 242.00, Block 2, Lot 7, and

**WHEREAS**, the issue of compliance with the State Environmental Quality Review Act has been thoroughly addressed, and a negative declaration was issued after examination of the record and public hearing, and

**WHEREAS**, the Town of Westfield Planning Board reviewed the application during a meeting held January 20, 2016 and recommended approval of the application, and

**WHEREAS**, the matter was referred to the Chautauqua County Planning Board pursuant to Section 239-m of the General Municipal Law, which responded through its designated agent, the Chautauqua County Department of Planning and Economic Development, by letter dated January 11, 2016, to advise that the proposed use would have little or no adverse county-wide or inter-municipal effects since the matter is of local concern, and

**WHEREAS**, the Town of Westfield hereby finds that there is good cause to waive the ¼ mile separation distance required by Section 185-43(I)(8)(f)(4) of the Town of Westfield Zoning Code, as the Town prefers to cluster telecommunications towers, if possible, rather than spread them out along the Chautauqua Ridge and major highways and the proposed tower will have almost no visual impact in comparison to the other towers located on the same property, and

**WHEREAS**, the Town Board has considered all the facts and papers before it, and has heard those wishing to be heard at a public hearing held February 3, 2016 on the application, and finds ample justification to approve the application subject to the qualifications hereinafter set forth

**NOW, THEREFORE, BE IT RESOLVED**, that the application be and hereby is authorized and approved subject to the conditions and requirements hereinafter set out:

1. Section 185-43(I)(8)(f)(4) of the Town of Westfield Zoning Code is hereby waived with regard to this facility.
2. The Applicant shall undertake the project in accordance with the plans submitted to the Town with the application, and agrees to be bound by the terms of the application, the site plan, and the conditions of this permit.
3. This permit shall not be assigned or transferred, in whole or in part, without the prior written consent of the Town.

4. The Applicant shall comply at all times with the current applicable standards and regulations of the FCC and of all other agencies of the federal government with authority to regulate such facilities, if any.
5. If following construction it is determined that the FM translator interferes with the other antennas located on the same property, the Applicant shall take all steps necessary to eliminate the interference, including, but not limited, the installation of the appropriate filter.
6. The terms, conditions, and requirements of this special use permit are cumulative with those employed by any prior special permits for the project site, and bind and obligate the Applicant, its successors, and assigns.
7. The permit shall not be assigned or transferred, in whole or in part, without the prior written consent of the Town of Westfield Town Board.
8. This permit shall expire automatically if the antenna arrays and other site changes are not operational.
9. This permit shall become effective after the Applicant approves each and every provision hereof and agrees to be bound by all of the terms herein contained in consideration of the granting of this special permit.

Dated: February 3, 2016

Vote:	Aye	Nay
Raymond Schuster	_x_	_____
James Herbert	_x_	_____
Martha Bills	_x_	_____
David Brown	_x_	_____
David Spann	_x_	_____

The Applicant agrees to abide by all the terms of this Special Permit.

Dated: February 3rd, 2016

**FAMILY LIFE MINISTRIES, INC.**

By	(Signature on file)	Rick Snavelly	CEO
Name			Title

-----

The Supervisor's report is as follows:

<u>Fund</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Checking Balance</u>	<u>MM Balance</u>
Gen. A	\$397,139.41	\$59,567.32	\$16,118.41	\$1080,521.24
Gen B	1,285.00	1,595.96	75.18	60,484.95
Hwy DA	310,474.00	36,752.10	515.84	627,955.99
Hwy DB	-0-	5,983.65	37.64	220,153.89
Sewer HO1	23,622.00	25.79	-0-	27,875.45
Water HO2	15,560.00	-0-	-0-	114,148.97
Wfd. Fire	54,000.00	-0-	-0-	54,598.91
Sherm. Fire	9,854.00	-0-	-0-	9,962.24
Totals:	\$811,934.41	\$103,924.82	\$16,747.07	\$2,195,701.64

The Town Clerk's report: together with a check in the amount of \$1724.54 representing fees for the month of January 2016 including remaining balance from prior Town Clerks totaling \$15.52 was turned over to the Supervisor. State and County agencies received checks totaling \$48.50.

The Dog Warden's report for January 2016 was received and placed on file.

The Fire Department Report for January 2016 was received and placed on file.

The Historian's report for January 2016 was received and placed on file.

The Town Court report for January 2016 was received and placed on file.

Highway:

- The Town Highway Superintendent submitted a written report on activities for January 2016 and highlighted sanding / plowing, fuel usage, and pier improvements.
- Town Highway Superintendent requested to put Husqvarna, Lawn mower, and Plate Tamper on auction website.

David Brown motioned for the request. This was seconded by Raymond Schuster. Voting as follows: David Brown, aye, Raymond Schuster, aye, David Spann, aye, Martha Bills, aye, Jim Herbert, aye.

Code Enforcement:

- The Code Enforcement Officer submitted a written report highlighting that 0 permits were issued in the Town for January 2016. In addition, 9 construction inspections were conducted and 2 applications for Manufactured Homes are being reviewed.
- Attending a Seminar on Safety and Fire Considerations for Solar Panels will be on Feb. 17<sup>th</sup>, 2016, in Gerry, NY.
- 

Barcelona Harbor: (Pier is closed for the season)

Public Comment: None

Announcements:

- 3/1/2015 is the deadline for submission of tax exemptions.

Old Business:

- Project Update:
- Supervisor Bills discussed that Barcelona Water Project BOND pre-closing on February 22<sup>nd</sup> and closing for 2016 will take place on February 24<sup>th</sup> 2016.

- Supervisor Bills also discussed surplus Grant money that may be used for USDA approved uses such as paving, fire hydrants, or replacement valves. A priority list will be used.

New Business:

- Governor Cuomo announced the municipal restructuring fund.  
(supports local government and schools that will lead to property tax reduction)
- Raymond Schuster offered the following resolution and moved for its adoption:

**Resolution No. 11 of 2016**  
Audit of 2015 Town Financial Records

**RESOLVED**, that on January 21<sup>st</sup>, 2016 the Westfield Town Board met for the purpose of auditing the 2015 Town financial records. All records examined were found to be in order.

**BE IT FURTHER RESOLVED**, that on January 21<sup>st</sup>, 2016 Town Departments submitted their records for examination.

**BE IT FURTHER RESOLVED** Westfield Town Justices submitted for examination of 2015 court dockets and records. All fines and fees that were collected by the Town Court have been turned over to the proper officials. A report has been prepared using the comptroller's suggested "Checklist for Initial Review of Justice Court Records".

This was seconded by James Herbert. Voting was as follows: Raymond Schuster, aye; James Herbert, aye; David Brown, aye; Martha Bills, aye; David Spann, aye.

- David Brown offered the following resolution and moved its adoption:

**Resolution No. 12 of 2016**  
Annual Review of Shared Services Highway Agreement w/County

**RESOLVED**, that the Town Board of Westfield after thorough review of the County's *Shared Highway Services Agreement* agrees to keep the document in place for the next year.

This was seconded by David Spann. Voting was as follows: David Brown, aye; David Spann, aye; James Herbert, aye; Martha Bills, aye; Raymond Schuster, aye.

- David Brown offered the following resolution and moved its adoption:

**Resolution No. 13 of 2016**  
**Re: 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 20103, 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 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 paid without protest. See *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 98 (1985); *City of Rochester v. Chiarella*, 98 A.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 City/Town/Village/School District **TOWN OF WESTFIELD**, 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.

### **CERTIFICATION**

I hereby certify that the foregoing is true and correct copy of a Resolution adopted by the City/Town/Village/School **TOWN OF WESTFIELD**, at its meeting held on FEBRUARY 3<sup>RD</sup>, 2016

ANDREA L. BABCOCK, Clerk

Dated: February 3rd, 2016

This was seconded by David Spann. Voting was as follows: David Brown, aye; David Spann, aye; Martha Bills, aye; Raymond Schuster, aye. James Herbert, aye.

-----

At 8:20pm Supervisor Bills moved and David Spann seconded a motion to move to Audit the Bills. Unanimously carried.

At 8:35pm Supervisor Bills moved and David Spann seconded a motion to adjourn. Unanimously carried.

The next Town Meeting is scheduled for Wednesday, March 2<sup>nd</sup>, 2016 @ 7:30pm.

Respectfully submitted,  
*//original signed//*  
Andrea L. Babcock, Town Clerk