BOARD MEETING
Town of Westfield
March 2nd, 2016

The regular meeting of the Town Board of the Town of Westfield was called to order at 7:31pm in Eason Hall, 23 Elm Street, Westfield, NY, with the following members and guests present:

Supervisor:	Martha R. Bills	David Babcock	Janet Nass
Councilmen:	David Brown	Marybelle Beigh	Harold Nass
	Raymond Schuster	Jill Santi	William Bauer
	David Spann	Jack Gulvin	Randy McNeal
	James Herbert	Jim Pacanowski	

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

The Town Clerk's report together with a check in the amount of $2788.50 representing fees for the month of February 2016 was turned over to the Supervisor. State and County agencies received checks totaling $56.50.

The Supervisor's report is as follows:

Fund Balance	Revenues 02/29/2016	Expenditures 02/29/2016	Checking Balance 02/29/2016	Community Bank MM 02/29/2016
Gen. A	$408,060.21	$115,994.22	$16,118.41	$1,042,130.12
Gen B	67,875.00	14,941.93	75.18	113,728.98
Hwy DA	310,474.00	74,601.18	515.84	638,735.55
Hwy DB	39,032.00	6,393.65	37.64	220,153.89
Sewer HO1	23,622.00	53.53	-0-	27,849.66
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:	$928,477.21	$211,984.51	$16,747.07	$2,221,308.32

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

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

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

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

The Westfield Police Report for February 2016 has yet to be filed with the Town Clerk.

Highway:

- The Town Highway Superintendent submitted a written report on activities for February 2016 and highlighted sanding / plowing, fuel usage, and some pier improvements.
- Cub Cadet Lawn mower to be purchased from Laporte Farm $5149.99-4 year-400 hour warranty.
- David Brown moved and David Spann seconded a motion to authorize the Posting of Town Roads. Unanimously carried.

Code Enforcement:

- The Code Enforcement Officer submitted a written report for February 2016 highlighting that 1 residential permit, electrical. 3 Construction Inspections were conducted in the Town. Received Plans for a residential Addition on Harrington Road.

Barcelona Harbor: (Pier is closed for the season)

Public Comment:

Discussion took place regarding a letter of conditions regarding Shorehaven water project.

Discussion took place regarding the Train Derailment in Ripley NY

Announcements:

- 3/15/2016 is the Village Election.

Old Business:

- Supervisor Bills noted that a USDA-Rural Development bond for the Barcelona Water Project to provide permanent financing was obtained in the amount of $331,000 at 1.875% interest. The pre-closing took place on February 22, 2016 and funds were deposited on the 24th. Also, items i.e. valves, road repair materials, and fire hydrants were identified to obtain with unexpended project funding.

New Business:

- US Army Corps phone conference will be held on 3/3/2016 to discuss the break wall.
- Appoint Aaron Resnick to the Recreation Commission (1year).

David Brown moved the appointment this was seconded by Raymond Schuster. Voting was as follows: David Brown, aye; Raymond Schuster, aye; David Spann, aye; Martha Bills, aye; JamesHerbert, aye.

- Appoint Chris Reese, Tom Tarpley to the Planning Board and Philip Riedesel as Chairman for 1 year. David Spann moved the appointment. This was seconded by James Herbert. All in favor aye. Voting was as follows: David Spann, aye; James Herbert, aye; David Brown , aye; Martha Bills, aye; Raymond Schuster, aye.

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

TOWN OF WESTFIELD

RESOLUTION # 16

BARCELONA WATER BENEFIT DISTRICT IMPROVEMENT PROJECT PROJECT BUDGET MODIFICATIONS

WHEREAS, the Town of Westfield has received a Loan and Grant from Rural Development for their Barcelona Water Benefit District Improvement Project ("Project"); and

WHEREAS, the Town Board wishes to adjust project budget items to more accurately reflect final costs and;

WHEREAS, Rural Development requires the Town Board to authorize all changes to the Administrative Budget as shown on the Form E; NOW, therefore be it

RESOLVED, that the Town Board of the Town of Westfield authorizes the following Administrative Budget modifications for the Project:

Legal	Decrease of	$2,626.00
Preliminary Design	Decrease of	320.00
Final Design	Decrease of	480.00
Net Interest	Decrease of	158.45
Miscellaneous	Decrease of	199.28
Wish List Items (Valves)	Increase of	14,132.00
Contingency	Decrease of	10,348.27

I, Andrea L. Babcock, Town Clerk of the Town of Westfield, do hereby certify that the aforementioned resolution was adopted by the Town Board of Trustees of the Town of Westfield on March 2, 2016, by the following vote:

	AYE	NAY
Martha R. Bills, Supervisor	✓	
Raymond Schuster, Deputy Supervisor	✓	
Dr. David S. Brown, Trustee	✓	
James Herbert, Trustee	✓	
David Spann, Trustee	✓	

Andrea L. Babcock

Andrea L. Babcock
Town Clerk – Town of Westfield

Dated: 3-2-2016

Raymond Schuster seconded the motion. Voting was as follow; David Brown, aye; Raymond Schuster, aye; Martha Bills, aye; David Spann, aye; James Herbert, aye;

Raymond Schuster offered the following resolution and moved its adoption:

RESOLUTION 17

CITY/TOWN/VILLAGE/SCHOOL DISTRICT: Town of Westfield
Name of Entity

Re: 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 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 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 Judicial 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 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 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 applications fail 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 City/Town/Village/School District Town of Westfield has carefully considered and fully agrees with the investigation and recommendations of the Chautauqua County 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.

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the City/Town/Village/School District Town of Westfield, at its meeting held on Wednesday March 3rd, 2016.

Andrea S Balsack
Town of Westfield Clerk

Dated: March 3rd, 2016

000160.01162 Litigation 14019603v1

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

David Brown offered the following resolution and moved its adoption:

Resolution No. 18 of 2016

RESOLUTION # 18
ADOPTING THE
CHAUTAUQUA COUNTY MULTI-JURISDICTIONAL
HAZARD MITIGATION PLAN

WHEREAS, the Town of Westfield with assistance from Ecology and Environment, Inc., has gathered information and prepared the Chautauqua County Multi-jurisdictional Hazard Mitigation Plan; and
WHEREAS, the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan has been prepared in accordance with the Disaster Mitigation Act of 2000; and
WHEREAS, the Town of Westfield is a local unit of government that has afforded the citizens an opportunity to comment and provide input in the Plan and the actions in the Plan; and
WHEREAS, the Town of Westfield has reviewed the Plan and affirms the Plan will be updated no less than every five (5) years;
NOW THEREFORE, BE IT RESOLVED by the Town Board that the Town of Westfield adopts the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plans as this jurisdiction's Natural Hazard Mitigation Plan, and resolves to execute the actions in the Plan.
ADOPTED this 2nd day of March, 2016, at the regular meeting of the Westfield Town Board, following a motion made by Councilman **David Brown** and seconded by Councilman **Raymond Schuster**, and carried with the following Roll-Call vote:

Councilman votes	**David Brown**	Councilman votes	**Raymond Schuster**
Councilman votes	**David Spann**	Councilman votes	**James Herbert**
Supervisor votes	**Martha Bills**		

Supervisor Martha Bills
Town Clerk Andrea L Babcock
State of New York)
County of Chautauqua) SS:

I, Andrea L. Babcock, Clerk of the Town of Westfield in the County of Chautauqua, State of New York, do hereby certify that I have compared the preceding Resolution with the original thereof passed by the Town of Westfield, and filed in my office on March 2nd, 2016 and that the same is a true and correct copy of said original and of the whole thereof so far as the same relates to the subject matters as referred to therein.

Date: **3/2/2016** **ANDREA L. BABCOCK**
(seal) Andrea L. Babcock, Town Clerk

State of New York)
County of Chautauqua) S.S.:

I, Andrea L. Babcock, Clerk of the Town of Westfield in the County of Chautauqua, State of New York, do hereby certify that I have compared the preceding resolution with the original thereof passed by the Board of the Town of Westfield and filed in my office March 2, 2016 and that the same is true and correct copy of said original and is the whole thereof so far as the same related to the subject matters as referred to therein.

Dated: **March 2, 2016** **ANDREA L. BABCOCK**
Andrea L. Babcock, Town Clerk

(seal

James Herbert moved the following **Budget Revision Resolution**:

Budget Resolution #5 for Budget Year 2015

TOWN OF WESTFIELD

2015 BUDGET REVISIONS

To: Town Supervisor & Councilman
From: Jill Fredd
Cc: Andrea Babcock Town Clerk
Date:February 10, 2016

Subject: Budget Revision #5 for Budget Year 2015

Revision Description		Increase Expenditures	Decrease Expenditures	Increase Revenue
A Funds (General)				
A00-95.8160.400	Refuse & Garbage	5270		
A00-47.1990.400	Contigent Account		5270	
A00-98.9030.800	Social Security	300		
A00-98.9035.800	Medicare		289.06	
A00-98.9040.800	Workers Compensation		10.94	
Total A Fund		5570	5570	
B Funds (Outside)				
B00-98.9030.800	Social Security	49		
B00-98.9035.800	Medicare		49	
Total B Fund		49	49	
DB Funds (Hwy Outside)				
DB0-72-5120.400	Bridges-Culvert Exp	6695		
DB0-72.5110.400	General Repairs-Contractual		6695	
Total DB Fund		6695	6695	

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

Warrants dated March 2nd, 2016 (voucher #'s 11664-11752) in the amount of $127,206.02 drawn on the following funds: General $48,619.92; General Part-Town $1000.00; Highway $33,122.29; Highway Part-Town $8316.00; Sewer Fund $27.74; Shorehaven $4.19; Trust & Agency $899.32; Welch Building $8,079.56; and the BWP $27,137.00 were presented and audited by the Board members. James Herbert moved and Raymond Schuster seconded a motion that the Supervisor be directed to draw the necessary checks to cover the warrant as audited. Voting was as follows: Martha Bills, aye; Raymond Schuster, aye; David Brown, aye; James Herbert, aye; David Spann, aye.

At 8:09pm Supervisor Bills moved and David Spann seconded a motion to move to Executive Session to discuss a particular personal history. Unanimously carried. At 8:45pm Supervisor Bills moved and David Brown seconded a motion to return to regular session.

The next Town Meeting is scheduled for Wednesday, April 6th, 2016 @ 7:30pm

There being no further business, at 8:47pm. David Brown moved and David Spann seconded a motion to adjourn. Unanimously carried.

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