

TOWN BOARD MEETING
Town of Westfield
April 6st, 2016

The regular meeting of the Town Board of the Town of Westfield was called to order at 7:30pm in Eason Hall, 23 Elm Street, Westfield, NY, with the following members and guests present:

Supervisor:	Martha R. Bills	David Babcock	Joel Seachrist	Dennis Hanes
Deputy Sup:	David Brown	Jack Gulvin	Janet Nass	Bonnie Rae Strickland
Councilmen:	Raymond Schuster	William Bauer	Harold Nass	Marybelle Beigh
	David Spann	Tom Tarpley	Rachel Hanes	
	James Herbert	Randy McNeal	Jake Seaburg	

Councilman David Spann moved and Deputy Supervisor David Brown 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.

The Town Clerk’s report together with a check in the amount of \$2734.00 representing fees for the month of March 2016 was turned over to the Supervisor. State and County agencies received checks totaling \$64.00.

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	\$421,609.52	\$190,428.01	\$16,118.41	\$988,637.07
Gen B	68,269.00	17,566.67	75.18	111,511.72
Hwy DA	310,474.00	134,959.81	515.84	576,230.23
Hwy DB	39,032.00	17,015.66	37.64	211,837.89
Sewer HO1	23,622.00	85.02	-0-	27,821.92
Water HO2	15,560.00	-0-	-0-	114,148.97
T Funds	-	-0-	-0-	-0-
Wfd. Fire	54,000.00	-0-	-0-	54,598.91
Sherm. Fire	9,854.00	-0-	-0-	9,962.24
Totals:	\$942,420.52	\$360,055.17	\$16,747.07	\$2,094,748.95

The Dog Warden’s report for March 2016 was received and placed on file.

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

The Historian’s report for March 2016 was received and placed on file.

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

The Police Report for February 2016 and March 2016 was received and placed on file.

Highway:

- The Town Highway Superintendent David Babcock submitted a written report on activities for March 2016 and highlighted fuel usage, plowing, sanding, parking lot at entrance of Moose beach and parking lot at the end of North Gale, broom roads, and work at the shop.
- Councilman James Herbert made a motion to authorize the Highway Superintendent David Babcock to request bids for the highway materials to be returned to the Town of Westfield by April 25th at 11:55am. The motion was seconded by Councilman David Spann and carried unanimously.
- Town Highway Superintendent David Babcock requested permission to purchase a new 10 wheeler.
- A discussion took place.
- Deputy Supervisor David Brown made a motion to authorize the current 10 wheeler to be put on the internet for auction. The motion was seconded by Councilman Raymond Schuster and carried unanimously.

Code Enforcement:

- 7 Permits were issued in the Town of Westfield.
- The offices of the Assessor, Code Enforcement and Building Inspector were combined and moved to the second floor of Eason Hall.
- Looking into a universal Building Permit for both the Town and Village use and will make it available on the website in the near future.
- A Welcome letter is being sent out by the Assessor's office for new property owners. Included is a phone list of Town and Village Department and important phone numbers, as well as the Town, Village and official Westfield Community web-addressed.

Barcelona Harbor: The Pier remains closed (opening for the 2016 season is weather dependent)

Public Comment:

Announcements:

- Spring Clean-up (Saturday, May 7th, 9:00am-1:00pm @ Transfer Station)
- Rabies Clinic (Saturday, May 14th, 11:00am-2:00pm @ Town Barn)

- Arranging eWaste Turn-in scheduled (Saturday, May 21st, 9:00am-1:00pm @ Town Barn)

Old Business:

- Supervisor Martha Bills noted that last payment and project work for the Barcelona Water Project (BWP) will be closed.
- In addition, she stated that USDA-RD has accepted the list of items to be procured with unexpended BWP funds.
- Department of State Hamlet Grant granted extension until October.
- The D.E.C is contributing to the parking lot project on Peacock Drive, Moose Beach in Barcelona. They are providing signage, and rocks to shore up creek bank and improve creek access.

New Business:

Councilman Raymond Schuster moved the following:

- Approval of Clerks Training April 17-20th Saratoga Springs with a reasonable cost to the Town.
This was seconded by Deputy Supervisor David Brown. Carried Unanimously.

Supervisor Martha Bills moved the following:

- Approval of HWY Supervisor- HWY School Cornell University June 6-8th with a reasonable cost to the Town.
This was seconded by Councilman Raymond Schuster. Carried Unanimously.

Supervisor Martha Bills moved the following:

- Appointment of Carlton Hamann to the Board of Assessment Review 5year term April 6, 2016 to December 31, 2020.
This was seconded by Councilman David Spann. Carried Unanimously.

Deputy Supervisor David Brown moved the following:

- Resignation of Amy Gregory with regret from the Planning Board April 6th 2016
This was seconded by Councilman James Herbert. Carried Unanimously

Councilman Raymond Schuster moved the following:

- Appointment of Timothy Smith as an alternate to the Planning Board April 6, 2016 to December 31, 2016.
This was seconded by Councilman David Spann. Carried Unanimously

Councilman David Spann offered the following resolution and moved for its adoption:

Budget Revision #6 for Budget Year 2015

Revision Description	Increase	Decrease
Increase	Expenditures	Expenditures Revenue
A Funds (General)		
A00-42.1110-400	Justice-Contractual 336	
A00-47.1990.400	Contingent Account	<u>336</u>
Total A Fund	336	336

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

Deputy Supervisor David Brown offered the following resolution and moved for its adoption:

Resolution No. 20 of 2016

**TOWN OF WESTFIELD
RESOLUTION # 20 of 2016**

**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:

Fiscal Coord./Project Admin.	Decrease of	\$1,608.05
RD Closing	Increase of	1,626.44

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 April 6, 2016, by the following vote:

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

Andrea L Babcock, _____
Andrea L. Babcock
Town Clerk – Town of Westfield

Dated: April 6th, 2016

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

Councilman James Herbert offered the following resolution and moved for its adoption:

TOWN OF WESTFIELD
Resolution No. 21 of 2016

RESOLVED, that the Town Board of the Town of Westfield hereby authorizes and directs the Supervisor to finalize and accept from the New York State Office of Parks, Recreation, and Historic Preservation a one-year license to use the “Keeper’s Cottage” and nearby grounds at the Barcelona Lighthouse, on the terms described in a document labeled the “Grant of License” dated March 8, 2016.

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

Councilman Raymond Schuster offered the following resolution and moved for its adoption

TOWN OF WESTFIELD
Resolution No. 22 of 2016

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:

The fiber optic cable constitutes taxable real property under multiple sections of Section 102 of the Real Property Tax Law as follows:

as
taxed as real property;

A. Fiber optic cable has been interpreted and taxed real property for more than thirty years, and should continue to be

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 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

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

Councilman Raymond Schuster offered the following resolution and moved for its adoption

Town of Westfield
Resolution No. 23 of 2016

**RESOLUTION AUTHORIZING EXPENDITURE FROM
THE TOWN OF WESTFIELD BUILDING CAPITAL RESERVE FUND**

At a regular meeting of the Town Board of the Town of Westfield, Chautauqua County, New York, held at Eason Hall, 23 Elm Street, Westfield, New York, in said Town, on the 6th day of April, 2016, at 7:30 o'clock P.M., Prevailing Time.

The meeting was called to order by Martha R. Bills, Supervisor, and upon roll being called, there were

PRESENT: Board Members:
Supervisor Martha Bills, Deputy Supervisor David Brown,
Councilman Raymond Schuster, Councilman David Spann,
Councilman James Herbert

Public:
Marybelle Beigh, Tom Tarpley, Janet Nass, Harold Nass, Rachel Hanes, Dennis Hanes, Randy McNeal, Jack Gulvin, Jake Seaburg,
Bonnie Rae, David Babcock, Joel Seachrist, William Bauer.

ABSENT:

The following resolution was offered by Councilman **Raymond Schuster** who moved its adoption, seconded by Deputy Supervisor **David Brown** to-wit:

**RESOLUTION AUTHORIZING THE TOWN FINANCIAL OFFICER TO
EXPEND FUNDS FROM THE BUILDING CAPITAL RESERVE FUND
OF THE TOWN OF WESTFIELD, SUBJECT TO PERMISSIVE
REFERENDUM.**

The Town Board of the Town of Westfield, duly convened in regular session, does hereby resolve pursuant to the provisions of section 6-c of the General Municipal Law of the State of New York that the Financial Officer of the Town of Westfield be and she is hereby authorized to expend an amount not to exceed \$35,000 from the Building Capital Reserve Fund of the Town of Westfield for expenses related to the installation of a new roof on the Highway Department barn located on Chestnut Street in the Village of Westfield.

This resolution shall be subject to permissive referendum, as permitted by law.

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

Councilman Raymond Schuster offered the following resolution and moved for its adoption

Town of Westfield
Resolution #24 of 2016
Bond Counsel Services and Billing Arrangements for Shorehaven Benefit District

Authorizing the Supervisor to sign an agreement with Hodgson Russ Attorneys in accordance with USDA Rural Development Agency (“Rural Development”) requirements which relates to our legal services agreement and engagement letter for our professional services as bond counsel to the Town dated June 8, 2012

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

At 8:25pm Supervisor Martha Bills moved and Deputy Supervisor David Brown seconded a motion to move to Executive Session to discuss a particular personal history. Unanimously carried.

At 8:50pm Supervisor Martha Bills moved and Councilman Raymond Schuster seconded a motion to return to regular session. Unanimously carried.

Supervisor Martha Bills moved that the town board retain Gina Volpe the current safety inspections clerk to work an 8 hour day at a rate of \$15.00 per hour (on Mondays.)

Councilman Raymond Schuster seconded the motion. Unanimously carried.

Warrants dated March 2nd, 2016 (voucher #'s 11753-11863) in the amount of \$107,962.50 drawn on the following funds: General \$36,906.66; General Part-Town \$13.48; Highway \$12,907.73; Highway Part-Town \$2,716.01; Sewer Fund \$31.49; Shorehaven \$4.29; Trust & Agency \$899.32; Welch Building \$13,506.82; and the BWP \$40,976.70 were presented and audited by the Board members. Supervisor Martha Bills moved and Councilman 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: Supervisor Martha Bills, aye; Councilman Raymond

Schuster, aye; Deputy Supervisor David Brown, aye; Councilman James Herbert, aye; Councilman David Spann, aye.

The next Town Meeting is scheduled for Wednesday, May 4th, 2016 @ 7:30pm.

There being no further business, at 9:05pm. Supervisor Martha Bills moved and Councilman Raymond Schuster seconded a motion to adjourn. Unanimously carried.

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