

WORKSHOP WITH SOLAR LIBERTY – 6:45 P.M.
PORTLAND BOARD MEETING -7:00 P.M.
PORTLAND TOWN HALL
FEBRUARY 10, 2021

BOARD MEMBERS PRESENT:

Daniel Schrantz	Supervisor
Jerry Boltz	Council
Patti Farrell	Council
Rick Manzella	Council
Gary Miller	Council

OTHERS PRESENT:

Roxane Sobecki	Town Clerk
Joel Seachrist	Attorney
Kevin Powell	
Representatives from Solar Liberty	
2 members of the public	

The Town Board reviewed a possible Solar Array with representative of Solar Liberty and Kevin Powell regarding a solar array on Mr. Powell's property off of Route 20 and Church Street in Portland. Solar Liberty has asked the board to amend the zoning law to remove restrictions that currently prohibits solar arrays from being built on prime gravel soils. The board was given a site plan & equipment layout with different view screen options.

On a motion of Council Manzella, seconded by Council Miller the workshop closed at 7:10 p.m. Carried

Supervisor Schrantz opened the Board Meeting at 7:10 with the pledge to the flag.

MINUTES

08-21

On a motion of Council Boltz, seconded by Council Farrell the following resolution was

ADOPTED Ayes 5 Schrantz, Boltz, Farrell, Manzella, Miller

Nays 0

RESOLVED The Portland Town Board approves the Minutes from the previous meeting as presented.

DEPARTMENTAL REPORTS

09-21

On a motion of Council Miller, seconded by Council Farrell the following resolution was

ADOPTED Ayes 5 Schrantz, Boltz, Farrell, Manzella, Miller

Nays 0

RESOLVED the Portland Town Board approves the Departmental Reports as presented:

Monthly reports received and filed:

- Town Clerk

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- Town Justice
- Code Office
- Assessor

TREASURY REPORT

10-21

On a motion of Council Boltz, seconded by Council Manzella the following resolution was

ADOPTED Ayes 5 Schrantz, Boltz, Miller, Farrell, Manzella

Nays 0

RESOLVED the Portland Town Board approves the Treasury Report for January 2021 as presented by the Supervisor.

CORRESPONDENCE:

Read by Supervisor the following:

- Southern Tier West 2021 Spring Training Webinars.
- Village of Brocton- accepting the terms to pay 2/3rd of bills from Southern Tier Health Systems.

OLD BUSINESS:

WIND/SOLAR:

Supervisor Schrantz asked the board if they would like to move forward with the Solar Array presented tonight and amend the zoning law removing the current restrictions regarding prime gravel soils. Board members were not in favor of moving forward, stating Local Laws are put in place for a reason and cannot be changed for one person.

CHADWICK BAY:

Meeting scheduled on Zoom, February 11th.

NORTH COUNTY WATER:

Meeting scheduled for 2-11, 4:00 at Sheridan.

GREENCREST/VBP DRAINAGE:

Supervisor Schrantz told the board the engineer is working on a proposal for the Town. He stated he and the Highway Superintendent have more questions before the Town can act.

Supervisor Schrantz reiterated to the board the creek issue in Greencrest by the Counties Sewer Pump Station. He stated he has contacted everyone at the County level that this could be a flooding problem.

WATER DISTRICT 2 IMPROVEMENT PROJECT:

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The attorney told the board he is working on the easements, do to COVID the County Court House had been closed.

WATER DISTRICT 8:

Supervisor Schrantz stated any remaining restoration work will be finished in the spring.

AUDITS:

Council Manzella told the board the audit committee has audited the Court and will be auditing the Town Clerk after tonight's meeting

COURT AUDIT

11-21

On a motion of Council Boltz, seconded by Council Manzella the following resolution was ADOPTED Ayes 5 Schrantz, Boltz, Farrell, Manzella, Miller

Nays 0

RESOLVED the audit of the Portland Town Court for 2020 was conducted on January 25, 2021 by the Portland Audit Committee, all records were in order.

NEW EMERGENCY PLAN:

Supervisor Schrantz told the board the NYS Public Employer Health Emergency Plan has been sent to the Union for review. This plan is for the protection of public employees during a public health emergency. Plans must be finalized by April 1, 2021.

DENIAL OF LEVEL 3 APPLICATION FOR REFUNDS/CREDITS

12-21

On a motion of Council Miller, seconded by Council Manzella the following resolution was ADOPTED Ayes 5 Schrantz, Boltz, Farrell, Manzella, Miller

Nays 0

WHEREAS, Level 3 Communications, LLC ("Level 3") has filed applications for a refund or credit pursuant to Real Property Tax Law Section 556 for the 2018 tax year, 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 cables constitute taxable real property under multiple sections of Section 102 of the Real Property Tax Law as follows:

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- 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 New York Court of Appeals has ruled that the fiber optic cables meet the definition of real property and constitute lines and wires pursuant to Real Property Tax Law Sections 102(12) (i) and are taxable under that section. T-Mobile v. DeBellis and City of Mount Vernon, 32 N. Y. 3d 594 (2018):
 - 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 Appellate Division, fourth Department has specifically upheld the taxability of Level 3's fiber optic installations located in Chautauqua County. Level 3 Communications v. Chautauqua County, 174 A.D.3d 1502 (4th Dep't 2019); see also Level 3 Communications v. Erie County, 174 A.D.3d 1497 (4th Dep't 2019).
2. The applications are procedurally improper, because 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 City and 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. 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. No tax grievances or Article 7 proceedings have been filed by Level 3. The applications improperly seek retroactive tax refunds under inapplicable sections of the Real Property Tax law.

WHEREAS, the Town of Portland 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 Refunds/Credits of Real Property Taxes Form 556 for the 2018 tax year are hereby rejected and 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 Town of Portland, at its meeting held on February 10, 2021.

Roxane Sobecki
Portland Town Clerk

Dated: February 10, 2021

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PETITION EXTENDING WD8:

Supervisor Schrantz told the board the engineer has come up with a survey to see how many residents outside of WD8 would be interested in the Town extending the water line. He stated this has come up because of the petition the town was presented with last year regarding the extension. The survey will be mailed.

WATER EXTENSION 21 BRIX:

Supervisor Schrantz said he has meant with the engineer and owners of 21 Brix regarding extending the water line to their business. This would be at the expense of 21 Brix. Attorney Seachrist stated an outside user agreement would be needed. After some discussion the board gave approval to proceed forward. Attorney Seachrist said he will draft an agreement for the boards review.

WATER LINE EXTENSION WD5:

Supervisor Schrantz told the board the Mr. Patterson would like to have the water line extended to his barn on Onthank Road. He stated this is a dead-end line, there is money in WD5 to cover the expense. Supervisor Schrantz told the board this is where the line was supposed to be originally but there was a tree in the way, the tree is now gone. He said the highway department could install the line and there is pipe left over from this project.

13-21

On a motion of Council Miller, seconded by Council Farrell the following resolution was

ADOPTED Ayes 5 Schrantz, Boltz, Farrell, Manzella, Miller

Nays 0

RESOLVED the Portland Town Board approves the Highway Department to extend the water line 230 feet on Onthank Road.

BOARD MEMBERS:

Council Miller said he would like the Highway Superintendent to obtain quotes for the back part of the roof and soffits on the Museum. He stated he will speak with Mr. Becker.

Council Manzella asked the status of extra meter pits that where ordered by CBI Water. Supervisor Schrantz told the board he is trying to return them; he has been in contact with the salesman for Lock City who is checking with his boss on the return. The Engineer is checking with USDA to see if the WD2 improvement project can purchase some of these. It was also noted by the board that everything needs to run through the Town Board before a purchase like this can be made.

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PAY BILLS

14-21

On a motion of Council Boltz, seconded by Council Manzella the following resolution was ADOPTED Ayes 5 Schrantz, Boltz, Farrell, Manzella, Miller

Nays 0

RESOLVED the Portland Town Board approves all bills for February be paid as presented.

GENERAL FUND	\$10,984.80
TOWN OUTSIDE VILLAGE	\$89.40
HIGHWAY TOWNWIDE	\$12,609.61
HIGHWAY OUTSIDE VILLAGE	\$4,930.90
LIGHT	\$454.05

With no further business, on a motion of Council Farrell, seconded by Council Miller the meeting adjourned at 8:00 p.m. Carried unanimously.

Respectfully Submitted by,

Roxane Sobecki-Town Clerk