

TOWN OF PORTLAND BOARD MEETING  
PORTLAND TOWN HALL  
March 9, 2016 - 7:00 P.M.

**BOARD MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Joel Seachrist	Attorney
Ann Belcher	Reporter
Ron Delcamp	Highway Superintendent
Drew Smith	Water Supervisor
Roxane Sobecki	Town Clerk
Diane Hofner	Solar Chautauqua
7 Residents	

Supervisor Schrantz opened the Board Meeting at 7:00 p.m. with the pledge to the flag.

**MINUTES**

**03-20-16**

On a motion of Councilman Manzella, seconded by Councilwomen Farrell the following resolution was

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

Nays 0

RESOLVED the Portland Town Board approves the Minutes for February 10, 2016 as presented.

**DEPARTMENTAL REPORTS**

**03-21-16**

On a motion of Councilman Boltz, seconded by Councilman Miller the following resolution was

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

Nays 0

RESOLVED the Portland Town Board approved the Departmental Reports as presented.

**TREASURY REPORT**

**03-22-16**

On a motion of Councilman Manzella, seconded by Councilwomen Farrell the following resolution was

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

Nays 0

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

**CORRESPONDENCE**

Supervisor Schrantz read the following correspondence:

- Brocton/Portland Senior Citizens-thanking the Board for budgeted monies from the Town.
- Shared Service Meeting-City of Dunkirk on Wednesday March 23<sup>rd</sup> at 3:45pm.
- STW 23<sup>rd</sup> Annual Local Government Conference-May 11<sup>th</sup> at Houghton College.
- Certificate of Appreciation from STW for Town's membership.
- Zoning- Code Enforcement Officer Signe Rominger will be attending a Storm Conference.

**BROCTON/PORTLAND FESTIVAL EASTER EGG HUNT**

**03-23-16**

On a motion of Councilman Miller, seconded by Councilman Boltz the following resolution was

ADOPTED Ayes 5 Schrantz, Manzella, Farrell, Miller, Boltz  
Nays 0

RESOLVED the Portland Town Board authorizes the Brocton/Portland Festival Committee to hold the annual Easter Egg Hunt at the Community Park on March 26, 2016.

**PUBLIC COMMENT:**

Diane Hofner of Solar Chautauqua invited the Board to the 2016 Solar Chautauqua Campaign Launch at JCC North on March 12<sup>th</sup> from 10am-12. Ms. Hofner gave the Board a list of the Support Team which includes various Villages, Towns etc. Solar Chautauqua campaign is the recipient of a \$2,000.00 grant from Freshwater Future of Michigan. Solar Chautauqua is awaiting Governor Cuomo's announcement about the NYSEDA awards across NY State.

Matt Kelley addressed the Board stating he is opposed to proposed Water District 8 on Ellicott Road saying he has good water and does not need more taxes. Supervisor Schrantz told him the Board will be addressing this further into the meeting.

**OLD BUSINESS**

**VILLAGE/TOWN REPRESENTATIVES:**

Supervisor Schrantz gave Board members a list of who will be attending the Village of Brocton Board meetings for 2016. He stated this will keep the lines of communication open and possibly present new ideas.

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**TOWN HIGHWAY GARAGE:**

A court date of April 12<sup>th</sup> has been scheduled for depositions. Supervisor Schrantz stated he plans on attending.

**CHADWICK BAY:**

A meeting is scheduled in Mayville on March 14<sup>th</sup> at 1:30 to investigate a consortium for County Wide Health Ins. A representative from Tompkins County will be present to give a presentation; Tompkins County currently has County Wide Health Ins.

Chadwick Bay is also investigating a grant for a shared water billing system.

**NORTH COUNTY WATER PROJECT:**

Supervisor Schrantz told the board the following occurred at the Chautauqua County Legislature meeting on February 24<sup>th</sup>:

- A resolution passed to establish the North County Water District.
- A resolution passed to form an administrative body.
- Bonded \$1,750,000 to pay the cost of improvements.
- First order of business is to put RFP's to engineer the project.

**COMPREHENSIVE PLAN**

**03-24-16**

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

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

Nays 0

RESOLVED, that the Town Board of the Town of Portland will hold a public hearing on April 13, 2016 at 7:15 p.m. at the Town of Portland Administration Building, 87 West Main Street, Brocton, NY, to obtain further input and comments from the public in connection with the adoption of a Comprehensive Plan for the Town of Portland, and the Town Clerk is hereby authorized to publish notice thereof.

**AUDITS:**

Councilman Manzella stated the audit committee will conduct an audit of the Tax Collector when she closes out her books at the end of the month. The Supervisor's books will also be audited.

**ASSOCIATION OF TOWNS MEETING:**

Councilman Manzella and Boltz thanked the Board for attending the Association of Towns Meeting in NYC. They discussed with the Board the many classes they attended.

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**WATER DISTRICT 8:**

Supervisor Schrantz stated surveys were sent to residents regarding the alternate option. The Board scheduled a Special Meeting Wednesday March 16<sup>th</sup> at 7:00 with the engineer present to review Water District 8, Greencrest Drainage, and Water District 2 upgrades. Resident Chuck Kelley asked if the board had any cost on WD8 project. Supervisor Schrantz stated the Board will not know the exact amount unless the board decides to proceed forward with the application to USDA.

**O.A.G. DEMOLITION FUNDS:**

No news to report at this time.

**HIGHLAND AVE. SPEED REDUCTION:**

The Town has received a letter from NYS Department of Transportation stating a traffic engineering investigation has been initiated related to the speed reduction request.

**NEW BUSINESS**

**MOWING BIDS**

**03-25-16**

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

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

Nays 0

RESOLVED that the Town of Portland will accept sealed bids for mowing & trimming of Portland's Community Park, Fuel Depot, Pecor Cemetery, Library and Town Hall. Sealed Bids will be received at the Town Clerk's Office until 4:00p.m. until April 12, 2016 and opened at the Regular Board Meeting on April 13, 2016 at 7:00p.m.

**ROAD MATERIAL**

**03-26-16**

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

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

Nays 0

RESOLVED That the Town of Portland will accept sealed bids for Highway Material. Sealed Bids will be received at the Town Clerk's Office until 4:00 p.m. on April 12, 2016 and opened at the Regular Board Meeting on April 13, 2016 at 7:00 p.m.

**27-16**

**LEVEL 3 FIBER OPTIC**

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

ADOPTED Ayes 5 Schrantz, Miller, Farrell, Boltz, Manzella  
Nays 0

TOWN OF PORTLAND

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;

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- 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 (4<sup>th</sup> 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.

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3d 1255 (3<sup>rd</sup> Dept., 2015); Community Health Plan v. Burkard, 3.D.3d 724, 725 (3<sup>rd</sup> 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 in RP-554.

**WHEREAS**, the Town of Portland 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 bills are hereby denied in their entirety for the reasons set forth above.

**MARMADUKE COMMITTEE:**

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Councilman Boltz told the Board the Marmaduke Committee has risen over \$30,000 with their Kick-Start campaign. The Committee will be selling bricks at \$100.00 a piece to put at the site of the statue. Councilwomen Farrell commended Al Valentin and Patty Thompson for all their hard work. Channel 8 news was also thanked.

**BOARD MEMBERS:**

Supervisor Schrantz told the Board he attended the Lakeview Shock Community Advisory Board Meeting, the prison stated they are looking for projects. Departments would have to put a list together and submit to the prison.

Councilman Manzella stated when he and Councilman Boltz attended the conference in NYC they had to use their own money; the hotel would not accept a voucher. Councilman Manzella suggested the Town possibly getting a credit card for situations like this. Supervisor Schrantz stated he will look into this.

**WATER BILLS**

**03-28-16**

On a motion of Councilman Manzella, seconded by Councilwomen Farrell the following resolution was

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

Nays 0

RESOLVED after reviewing letters for water account numbers 2171 and 5124, the Portland Town Board will waive the late fees and mailing fees.

**WATER BILL**

**03-29-16**

On a motion of Councilman Manzella, seconded by Councilman Miller the following resolution was

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

Nays 0

RESOLVED due to an overcharge the Portland Town Board will credit water account #5077 \$41.58.

**HIGHWAY**

**POST ROADS**

**03-30-16**



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

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

Nays 0

RESOLVED the Town Board authorizes the Highway Superintendent to post Town of Portland Highways with a gross weight of over six or more tons.

Superintendent Delcamp gave the Board a list of roads to be oiled and stoned for their signatures.

**BILLS**

**03-31-16**

On a motion of Councilman Manzella, seconded by Councilwomen Farrell the following resolution was

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

Nays 0

RESOLVED the Portland Town Board approves the Bills for March 2016.

GENERAL FUND	\$40,916.35
TOWN OUTSIDE VILLAE	\$442.41
HIGHWAY TOWNWIDE	\$13,142.19
HIGHWAY OUTSIDE VILLAGE	\$5,305.74
LIGHT	\$683.59
WATER	\$12,031.32

With no further business, on a motion of Councilman Boltz, seconded by Councilwomen Farrell the meeting adjourned at 7:52- p.m. Carried unanimously.

Respectfully Submitted by,

Roxane Sobecki  
Town Clerk

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