

AGENDA - COMMON COUNCIL MEETING – January 20, 2015 - 5:30 PM
REGULAR MEETING

1. Call to order, Roll Call and Pledge of Allegiance to the flag.
2. Certification of prior meetings. Resolution dispensing with reading of minutes.
3. Reading of Privilege of the Floor Regulations.
4. Privilege of the Floor:
5. Communications from the Mayor including disapproval messages.
6. Communications from the public and petitions:
 1. Request from Scott Mekus on behalf of Dunkirk Senior High School's Class of 1989 to host the first annual "Marauder Trotter 5K Run/Walk" on City Streets located near Dunkirk High School Saturday, July 4th, 2015 starting at 9:00 AM.
 2. Request from Lake Shore Street Rod Association for partial use of the Point Gratiot parking lot, permission for vendors, bandstands, extra trash barrels and trash pick-up on Sunday July 12th for their 14th Annual Harbor Cruise.
 3. Loudspeaker application from Lake Shore Street Rod Association for a live band and DJ at the large pavilion at Point Gratiot on July 12th from 12:00 PM until 4:00 PM.
 4. Notice of Claim from:
 - a) David Newcomb for alleged property damages due to a storm drain located in front of his driveway.
 - b) John LaMattina for alleged injuries sustained from a fall on a city sidewalk located in front of Pizza, Wings, and Things.
 5. Notice of Petition from Level 3 Communications LLC.
7. Reports of Standing Committees, Boards and Commissions.
8. Unfinished Business:
 1. Resolution introducing Local Law #1-2015 amending Chapter 31, of the Dunkirk City Code entitled " Recreation Services Fee Schedule."
9. Pre-filed Resolutions:
 2. Resolution Authorizing Agreement for Independent Contractor (N. Waite) (Community Development Block Grant Program).
 3. Resolution Authorizing Agreement for Independent Contractor (L. Gawronski) (Community Development Block Grant Program).
10. New Business:
11. Adjournment.

Nicole Joiner
City Clerk



Scott Mekus, Certified Event Planner
 80 Metcalf Avenue, Jamestown, NY 14701
 (716) 720-0564
 smekus@eventzbyscott.com

January 5, 2015

Dear City of Dunkirk Mayor Anthony Dolce and Common Council:

Happy 2015! This letter is in regard to the Dunkirk Senior High School's Class of 1989 interest in hosting our first Marauder Trotter 5K Run/Walk on Saturday, July 4, 2015 to raise funds for our annual DHS Class of 1989 Memorial Scholarship. I am Scott Mekus, owner of Eventz by Scott, which is a local event planning company based out of Jamestown. Besides being born in Dunkirk and a resident for over 22 years, I was also our DHS class president and current reunion chairman.

In addition to the attached preliminary information about the event, I have also been in touch with fellow meet director, classmate and avid runner D.J. Wilson, City Clerk Nicole Joiner, Police Chief David Ortolano and the Dunkirk High School facilities staff. Two of our classmates, Mike Pakulski and Terry Gibbons, are also on the police force.

I realize that the Fourth of July is a very busy day for the city officials overall but we plan to run an organized event starting at 9:00 a.m. with several volunteers to assist with event and route management along the race which would start and end at Dunkirk High School. We believe that this event would be a great addition to the Dunkirk Fourth of July events scheduled at Memorial Park. I also know that there will be at least five DHS reunions being celebrated during the Fourth of July weekend which would draw some race interest.

Being that the race is hosted by DHS alumni in hopes to be held at Dunkirk Senior High School, I am asking that your normal 5K race route guidelines along the waterfront are waived for this special event. I realize that traffic and holiday activities will be busier in this location that day.

I hope that you will consider approving this event for the Dunkirk community and as a memorial to our DHS Class of 1989 deceased classmates and their families. Please feel free to contact me if you have any additional questions since we plan to start preparing for this as soon as possible.

Thanks,

Scott Mekus
 DHS Class of 1989 President
 DHS Class of 1989 Reunion Chairman
 Owner, Eventz by Scott

D.J. Wilson
 DHS Class of 1989 Graduate
 DHS Cross Country & Track Team (1986-1989)
 Avid Race Participant

2015 JA -5 PM 3:11
 RECEIVED
 CITY CLERK'S OFFICE
 DUNKIRK, N.Y.

MARAUDER TROTTER

5K RUN/5K WALK/1 MILE FUN RUN

HOMETOWN PRIDE

(Event logo, registration/waiver forms and posters will be produced if approved)

Date: Saturday, July 4, 2015

Time: Registration – 7:00 – 8:30 a.m.

Race Start Time – 9:00 a.m.

Location: Dunkirk Senior High School, Dunkirk, NY 14048
Marauder Drive Entrance

Events: 5K Run

5K Walk

1 Mile Fun Run (ages 10 & under) - DHS Track

Race Route: Start on Marauder Drive

Left on Lucas

Left on Eagle

Left on 3rd

Left on Swan

Right on 4th

Left on Brigham

Left on Lucas

Left on Roosevelt

Right on Taft

Right on Woodrow

Left on 6th , Finish

Age Groups: 14 and under

15-19

20-24

25-29

30-34

35-39

40-44

45-49

50-54

55-59

60-64

70+

Timing & Scoring: TBA

Awards: 5K top overall male and female

Run – Top 3 male and female in each 5 year age group

Walk – Top 3 male and female in each 5 year age group

Entry Fee: Pre-registration

Register after 7/1/2015

Adult - \$25

Adult - \$35

Student - \$20

Student - \$25

Kids Fun Run (10 & younger) - \$5

Note: On-line registration will also be available

T-shirts: All pre-registered participants will receive a goodie bag with race t-shirt

Day of registration t-shirts will be available until quantities last

Proceeds Benefit: Dunkirk High School Class of 1989 Memorial Scholarship which is awarded annually to a graduating DHS senior

Volunteers: Responsible for race management, route personnel, post-race party, set/clean up

We will recruit from the following groups:

-DHS Class of 1989 reunion committee, classmates and families

-DHS Class of 1989 deceased classmate families

-Past DHS Class of 1989 memorial scholarship winners

-Eventz by Scott volunteers

-DHS track teams and sports boosters group

Insurance: Provided by Eventz by Scott

Sponsors: We plan to obtain the following events sponsors

-DHS Class of 1989 classmates

-Local Dunkirk businesses

-National running product companies

Post-race Party: DHS Track

Awards, Food, beverages, music, kids' activities



DUNKIRK & FREDONIA, NEW YORK

PO Box 641
Dunkirk, New York 14048

RECEIVED
CITY CLERK'S OFFICE
DUNKIRK, N.Y.
2015 JAN 15 AM 9:56

January 7, 2015

Honorable Mayor Anthony Dolce &
Members of the Common Council
CITY OF DUNKIRK
City Hall
Central Avenue
Dunkirk, NY 14048

Dear Mayor Dolce & Members of the Common Council:

The Lake Shore Street Rod Association of Dunkirk & Fredonia New York would again like to request your permission to hold our 14th Annual Harbor Cruise on Sunday, July 12th, 2015 at Point Gratiot. Last year's event at the Point drew approximately 650 classic cars from all over Western New York, Pennsylvania, Ohio and Canada.

Our event is free to cruisers and the general public. We do accept donations which are given each year to local charities. Last year the Club donated \$7,000 to Chautauqua County Veterans & The Arthritis Foundation of Western NY.

We would like to again request the use of the large and lower pavilions, part of the main parking lot and permission to have food and refreshment vendors on the grounds. We will also need the use of bandstands, extra trash barrels and trash pick-up after the event.

Our club maintains liability insurance coverage for this event and will provide proof of same along with all the necessary documents required by the City.

This event will again showcase beautiful Point Gratiot and the City of Dunkirk to car enthusiasts from all over Western New York, Pennsylvania, Ohio and Canada. Thank you in advance for your anticipated approval.

Sincerely,

Keith G. Ossman
Secretary

APPLICATION FOR LOUDSPEAKER SPECIAL PERMIT NO.

(DCC-47-6-C)

DATE OF APPLICATION (must be 30 days Prior to event): 1-15-15

*No more than 3 days TOTAL per Individual or Group per year **EVENT SPECIFICS EXCLUDES HARBORFRONT AREA**

DATE: July 12, 15 **TIME:** Noon-~~4~~ PM **LOCATION OF EVENT:** Point Gratiot Large Pavilion

SPONSOR: Lake Shore Street Rod Association

NAME: Lake Shore Street Rod Association **PHONE NO.** 716-679-6134

ADDRESS: PO Box 641, Dunkirk, NY 14048

INDIVIDUAL CORPORATE CHARITABLE COMMUNITY

RESPONSIBLE INDIVIDUAL:

NAME: Keith G. Ossman **PHONE:** 716-679-6134

ADDRESS: 206 Lord Street, Dunkirk, NY 14048

REASON: Classic car show & cruise in

AUDIO DEVICE TO BE USED: Live Band & DJ

PUBLIC EVENT PRIVATE EVENT

NOTIFICATION OF AFFECTED PERSONS

YES **IF YES, PROOF:**

NO

I, the undersigned, have read and agree to abide by the provisions set forth in DCC 47-6-C.

Signature: *Keith G. Ossman*

DEPARTMENTAL REVIEW	DATE SENT	REPORT BACK
POLICE DEPT <i>OK 1/15/15</i>		
DEPT OF PUBLIC WORKS		
DEPT OF LAW		
OTHER		

COMMON COUNCIL ACTION

RECEIPT OF REVIEW

APPROVAL

CONDITIONS:

DISAPPROVED

RECEIVED
 CITY CLERK'S OFFICE
 DUNKIRK, N.Y.
 2015 JAN 15 AM 9:56

Notice of Claim
City of Dunkirk, N.Y.

RECEIVED
CITY CLERK'S OFFICE
DUNKIRK, N.Y.

2015 JA -9 AM 10:07

PLEASE TAKE NOTICE, that the undersigned, pursuant to the applicable NY State statutes, hereby makes claim against the CITY OF DUNKIRK, NEW YORK for injuries and/or damages sustained by me as hereinbelow detailed:

Claimant Name:

DAVID L NEWCOMB

Claimant Address:

854 CENTRAL AVE

DUNKIRK NY 14048

Claimant Telephone Number:

(716) 366-1439

This claim is for (injuries/damages alleged): VOID/HOLE IN DRIVEWAY CAUSED BY EROSION. IT IS BELIEVED TO POSSIBLY BE CAUSED BY THE STORM DRAIN LOCATED AT THE STREET IN FRONT OF SAID DRIVEWAY.

This claim is alleged to have arisen on the 4 day of JANUARY, 2015 at approximately 4 a.m./(p.m.) on that date at 854 CENTRAL AVE.

The injuries and/or damages sustained by the Claimant arose in the following manner:

The amount and type of injuries and/or damages sustained by the Claimant consist of the following: A LARGE VOID UNDER DRIVEWAY CAUSING EXTENSIVE DRIVEWAY AND GROUND DAMAGE.

WHEREFORE, the undersigned respectfully requests that the within claim be allowed and paid to me.

Respectfully yours,

David L Newcomb 1/9/15
Claimant (date)

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

David L Newcomb being duly sworn, deposes and say that he/she is the claimant herein; that he/she has read the foregoing claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to matters therein stated to be alleged upon information and belief, and, as to those matters, he/she believes it to be true.

Mary L. Vercant
Notary

Sworn to before me this
9 day of January, 2015.

MARY L. VERCANT #01VE5078259
Notary Public, State of New York
County of Chautauqua
Commission Expires May 19, 2015

To : To Whom This May Concern

From : John M. LaMattina

Subj. : Personal Injury Report On City Sidewalk - Notification

Please find enclosed photos and a description of injuries sustained on Monday, December 15th, 2014 on a city sidewalk.

At approximately 3:20PM on the aforementioned date I exited the Post Office and proceeded to walk to my vehicle which was parked on the southeast corner of Central Avenue and Fourth Street in the City. While walking, I tripped over an upraised portion of sidewalk (see photo) which borders upon the through driveway of Pizza, Wings and Things. I then fell face-first to the sidewalk injuring my left wrist, elbow and knee with additional bruises elsewhere. I proceeded to get up, collect my glasses from the sidewalk and proceeded to the emergency room at Brooks Hospital. (Please see attached report.)

The injury has hampered my ability to perform my occupational duties as a Computer Education Teacher and will do so for the next several weeks while healing as my left hand and wrist are in a support wrap.

I have not received any billings from Brooks Hospital but upon doing so, will submit them to the City for review and payment. Please send me any information regarding the process involved.

I appreciate your cooperation in this matter.

Sincerely,


John M. LaMattina

418 Robin St.

Dunkirk, New York

14048

(716)-366-4318

Enc.: Photos; Hospital Info.

2015 JUN 12 PM 4:42
RECEIVED
CITY CLERK'S OFFICE
DUNKIRK, N.Y.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CHAUTAUQUA

-----X
In the Matter of the Application of LEVEL 3
COMMUNICATIONS, LLC,

Petitioner,

-against-

CHAUTAUQUA COUNTY, CITY OF DUNKIRK,
VILLAGE OF BROCKTON, VILLAGE OF
WESTFIELD, BROCKTON CENTRAL SCHOOL
DISTRICT, DUNKIRK CITY SCHOOL DISTRICT,
FREDONIA CENTRAL SCHOOL DISTRICT,
RIPLEY CENTRAL SCHOOL DISTRICT,
and WESTFIELD CENTRAL SCHOOL
DISTRICT,

Respondents,

For A Judgment Under Article 78 of the Civil
Practice Law and Rules.
-----X

Index No.: 2014 - 1515

Honorable _____

NOTICE OF PETITION

FILED 12-15-2014

RECEIVED
CITY CLERK'S OFFICE
DUNKIRK, N.Y.
2015 JAN 13 PM 3:06

PLEASE TAKE NOTICE that upon the annexed Petition of Level 3 Communications, LLC ("Level 3"), verified on December 1, 2014, the exhibits annexed thereto, and the accompanying memorandum of law, the undersigned attorneys for Level 3 will move this Court at the Courthouse located at 3 North Erie Street, Mayville, New York 14757, at 9:30 A.M. on February 24, 2015 or at such other date and time as may be set by the court, for judgment, pursuant to Article 78 and section 3001 of the New York State Civil Practice Law and Rules ("CPLR"):

- (a) Declaring that Level 3's fiber optic cables and inclosures therefor ("Fiber Optic Installations") located on private rights of way within Chautauqua County are not taxable as real property under the Real Property Tax Law ("RPTL");

(b) Ordering each respondent to determine and approve Level 3's Applications For Refund And Credit Of Real Property Taxes for the 2010, 2011, and 2012 tax years that were submitted to each of these taxing jurisdictions;

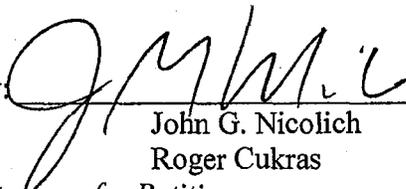
(c) Ordering each respondent to provide for refunds to Level 3 of the real property taxes that each respondent received for the 2010, 2011, and 2012 tax years based on the erroneous assessments of Level 3's Fiber Optic Installations; and

(d) For costs and disbursements of this proceeding, and such other relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 7804(c), answering papers, if any, must be served so as to be received by the undersigned at least five (5) days prior to the return date.

Dated: New York, New York
December 9, 2014

**INGRAM YUZEK GAINEN CARROLL
& BERTOLOTTI, LLP**

By: 

John G. Nicolich
Roger Cukras

Attorneys for Petitioner
Level 3 Communications, LLC
250 Park Avenue
New York, New York 10177
(212) 907-9600

TO: Chautauqua County
3 North Erie Street
Mayville, NY 14757

City of Dunkirk
City Hall
342 Central Avenue
Dunkirk, NY 14048

Village of Brockton
34 West Street
Brockton, NY 14716

Village of Westfield
23 Elm Street
Westfield, NY 14787

Brockton Central School District
138 West Main Street
Brockton, NY 14716

Dunkirk City School District
620 Maurader Drive
Dunkirk, NY 14048

Fredonia Central School District
425 East Main Street
Fredonia, NY 14063

Ripley Central School District
12 North State Street
Ripley, NY 14775

Westfield Central School District
203 East Main Street
Westfield, NY 14787

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CHAUTAUQUA

-----X
In the Matter of the Application of LEVEL 3 :
COMMUNICATIONS, LLC, :

Petitioner, :

-against- :

CHAUTAUQUA COUNTY, CITY OF DUNKIRK, :
VILLAGE OF BROCKTON, VILLAGE OF :
WESTFIELD, BROCKTON CENTRAL SCHOOL :
DISTRICT, DUNKIRK CITY SCHOOL DISTRICT, :
FREDONIA CENTRAL SCHOOL DISTRICT, :
RIPLEY CENTRAL SCHOOL DISTRICT, :
and WESTFIELD CENTRAL SCHOOL :
DISTRICT, :

Respondents, :

For A Judgment Under Article 78 of the Civil :
Practice Law and Rules. :

Index No.:

2014 - 1515

Honorable _____

VERIFIED PETITION

-----X
Level 3 Communications, LLC ("Level 3"), by its attorneys, Ingram Yuzek Gainen
Carroll & Bertolotti, LLP, for its Verified Petition asserting claims under Article 78 and section
3001 of the New York State Civil Practice Law and Rules ("CPLR"), alleges as follows:

Preliminary Statement

1. Level 3 brings this proceeding pursuant to CPLR Article 78 and CPLR 3001 for relief to address the improper and illegal assessment and collection of real property taxes imposed on Level 3's fiber optic cables and inclosures therefor ("Fiber Optic Installations") at numerous locations on private rights of way in Chautauqua County. As described below, it has been judicially determined that fiber optic cables on private property do not fall within the definition of taxable real property under Section 102(12) of the New York Real Property Tax

Law (“RPTL”). The real property tax assessments of Level 3’s Fiber Optic Installations therefore are based on an “unlawful entry” under RPTL 550(7)(c), and Level 3 is entitled to refunds of taxes under Article 5 of the RPTL.

2. After paying real property taxes levied with respect to the Fiber Optic Installations, Level 3 submitted Applications For Refund And Credit Of Real Property Taxes for the 2010, 2011, and 2012 tax years pursuant to RPTL 556 (the “Refund Applications”) to the Chautauqua County Director of Real Property Tax Services, James E. Caflisch (the “County Director”). Level 3’s Refund Applications requested refunds of taxes for the 2010, 2011, and 2012 tax years with respect to real property taxes levied with respect to Level 3’s Fiber Optic Installations by respondents Chautauqua County, City of Dunkirk, Village of Brockton, Village of Westfield, Brockton Central School District, Dunkirk City School District, Fredonia Central School District, Ripley Central School District, and Westfield Central School District (“Respondents”) on the ground that Respondents’ assessments were based on an “unlawful entry” under RPTL 550(7).

3. As described below, the County Director referred each of Level 3’s Refund Applications to the appropriate Respondents, with a recommendation to deny the Refund Applications. As of the date of this Petition, Level 3 has not yet received determinations of any of the Refund Applications that the County Director referred to Respondents.

4. Level 3 accordingly brings this proceeding for the following relief:

- a. For a declaratory judgment, pursuant to CPLR 3001, declaring that Level 3’s Fiber Optic Installations are not real property taxable under the RPTL;
- b. For judgment, pursuant to CPLR 7806, ordering Respondents to determine and approve Level 3’s Refund Applications and to refund to Level 3 the real property taxes paid

for the 2010, 2011, and 2012 tax years, with interest from the dates of payments made by Level 3; and

c. For costs and disbursements of this proceeding, and such other relief as this Court may deem just and proper.

A. The Parties

5. Petitioner Level 3 is a limited liability company organized under the laws of the State of Delaware, with headquarters at 1025 Eldorado Boulevard, Bloomfield, Colorado. Level 3 is duly authorized to do business in New York State, and is engaged in providing telecommunications services to customers within New York State and other locations.

6. Level 3 is not a company subject to regulation by the New York State Public Service Commission and, accordingly, is not a “telephone company” as defined in RPTL 102(12)(d).

7. Upon information and belief, respondent County of Chautauqua is a governmental entity created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

8. Upon information and belief, respondent City of Dunkirk is a political subdivision of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

9. Upon information and belief, respondent Village of Brockton is a political subdivision of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

10. Upon information and belief, respondent Village of Westfield is a political subdivision of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

11. Upon information and belief, respondent Brockton Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

12. Upon information and belief, respondent Dunkirk City School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

13. Upon information and belief, respondent Fredonia Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

14. Upon information and belief, respondent Ripley Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

15. Upon information and belief, respondent Westfield Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

B. Level 3's Refund Applications

16. Level 3 is the owner of the Fiber Optic Installations, which are comprised of (a) fiber optic cables used to provide telecommunications services, and (b) conduit within which the fiber optic cables are enclosed. Level 3's Fiber Optic Installations are placed on private rights of way at various locations within Chautauqua County.

17. The fiber optics cables within the Fiber Optic Installations are electrical insulators made of glass or plastic fibers that transmit signals by way of modulated light waves, do not conduct electricity, and are not electrical conductors.

18. The conduits that enclose the fiber optic cables in the Fiber Optic Installations are not inclosures for electrical conductors because the fiber optic cables enclosed by the conduits are not electrical conductors.

19. For the 2010, 2011, and 2012 tax years, Level 3's Fiber Optic Installations were included on the assessment rolls for real property located within Chautauqua County (the "Assessments").

20. From 2010 through 2012, Respondents collectively levied and/or collected in excess of \$498,000 in real property taxes relating to the Fiber Optic Installations as a result of the Assessments.

21. The Assessments were unlawful because the Fiber Optic Installations are personal property that is excluded from real property taxation, and each of the Assessments was based on an "unlawful entry" under RPTL 550(7) because the assessor for each taxing jurisdiction has no authority to assess real property tax against personal property.

22. In particular, the Fiber Optic Installations are excluded from taxation as real property because the Fiber Optic Installations do not constitute "lines, wires, poles, supports [or] inclosures for electrical conductors upon, above [or] underground" under RPTL 102(12)(i).

23. On May 3, 2012, the Appellate Division of the First Department issued an opinion finding that Level 3's "fiber optic cables are electrical insulators which transmit light impulses and do not conduit electricity." The Appellate Division accordingly held that "[s]ince the cables at issue are not 'for electrical conductors' they cannot be assessed under [the RPTL]." *Matters of*

RCN N.Y. Communications, LLC and Level 3 Communications, LLC v. Tax Commission of City of New York, 95 A.D.3d 456 (1st Dep't 2012), *leave to appeal denied*, 20 N.Y.3d 855 (2012).

24. On or about January 20, 2014, Level 3 submitted the Refund Applications to the County Director. The Refund Applications requested refunds and credits of real property taxes paid with respect to the Fiber Optic Installations for the tax years 2010-2012. Copies of the Refund Applications are annexed as Exhibit A hereto.

25. Each of the Refund Applications related to Level 3's Fiber Optic Installations located on private rights of way on tax parcels in Chautauqua County and taxing jurisdictions within Chautauqua County, as detailed in Exhibit B hereto.

26. The stated basis for Level 3's requests for relief in the Refund Applications was that the Fiber Optic Installations constituted non-assessable personal property and, accordingly, the Assessments constituted an "unlawful entry" under RPTL 550(7)(c).

27. As detailed in Exhibit B, and as set forth in the Refund Applications, Level 3 paid more than \$498,000 in real property taxes with respect to the Fiber Optic Installations for the 2010, 2011, and 2012 tax years.

C. Actions In Response To Level 3's Refund Applications

28. On information and belief, on or about August 18, 2014, the County Director transmitted a written report and recommendation to each of the Respondents whereby the County Director recommended denial of each of the Refund Applications filed by Level 3. A copy of the County Director's written report and recommendation dated August 18, 2014 to each of the Respondents is annexed as Exhibit C.

29. To date, Level 3 has not received determinations from any of the Respondents either approving or denying Level 3's Refund Applications.

D. Level 3's Fiber Optic Installations Are Not Taxable Real Property

30. Level 3's Fiber Optic Installations are not real property within the meaning of RPTL 102(12), which defines real property for real property tax purposes.

31. As relevant to this proceeding, RPTL 102(12)(i) defines "real property" to include "all lines, wires, poles, supports and inclosures for electrical conductors upon, above and underground used in connection with the transmission or switching of electromagnetic voice, video and data signals between different entities separated by air, street, or other public domain"

32. The fiber optic cables and conduits that comprise the Fiber Optic Installations are not "lines, wires, poles, supports [or] inclosures for electrical conductors" that constitute real property under RPTL 102(12)(i).

33. The Fiber Optic Installations do not fall within any other definitions of real property under RPTL 102(12).

34. The Fiber Optic Installations accordingly are non-taxable personal property and are not taxable real property under RPTL 102(12).

FIRST CAUSE OF ACTION

(Declaration That Level 3's Fiber Optic Installations Are Not Real Property)

35. Level 3 repeats and realleges the preceding paragraphs of this Petition as if fully set forth here.

36. The Fiber Optic Installations were entered on the tax rolls for real property located within the Chautauqua County in 2010, 2011, and 2012.

37. Respondents have collectively received from Level 3 more than \$498,000 in real property taxes levied with respect to the Fiber Optic Installations in 2010, 2011, and 2012.

38. The Fiber Optic Installations do not constitute real property under RPTL 102(12). The Fiber Optic Installations are therefore excluded from taxation as real property under New York law, and the Assessments of the Fiber Optic Installations were based on an unlawful entry under RPTL 550(7).

39. A justiciable controversy exists between the parties as to whether or not the Fiber Optic Installations are taxable as real property under New York law.

40. Level 3 is entitled to a declaration that the Fiber Optic Installations do not constitute property that is taxable as real property under the RPTL.

SECOND CAUSE OF ACTION

(Writ Of Mandamus Compelling Respondents To Determine And Approve Refund Applications, And To Refund Taxes)

41. Level 3 repeats and realleges the preceding paragraphs of this Petition as if fully set forth here.

42. The Fiber Optic Installations do not constitute real property within the meaning of RPTL 102(12), and the Fiber Optic Installations are therefore excluded from taxation as real property under New York law.

43. Upon information and belief, Respondents have not yet issued any determinations either approving or rejecting the Refund Applications that the County Director referred to Respondents.

44. Under RPTL 556, following receipt of a written report and recommendation from the County Director concerning Level 3's Refund Applications, Respondents were required to take action thereon by (a) either approving or rejecting the Refund Applications, (b) mailing

Level 3 the Refund Applications that had either been rejected or approved by Respondents; and (c) providing for refunds or credits of real property taxes to Level 3 with respect to approved Refund Applications.

45. Respondents failed to comply with duties enjoined upon them by RPTL 556 because Respondents (a) have not taken action to either approve or reject the Refund Applications; (b) have not approved the Refund Applications by correctly applying the definition of real property provided in RPTL 102(12); and (c) have failed to provide refunds to Level 3 for the real property taxes assessed against Level 3's Fiber Optics Installations for the 2010, 2011, and 2012 tax years.

46. Accordingly, Level 3 is entitled to a writ of mandamus compelling Respondents (a) to determine and approve the Refund Applications, and (b) to provide refunds to Level 3 of the real property taxes assessed against Level 3's Fiber Optic Installations for the 2010, 2011, and 2012 tax years.

WHEREFORE, Level 3 respectfully requests that this Court award judgment as follows:

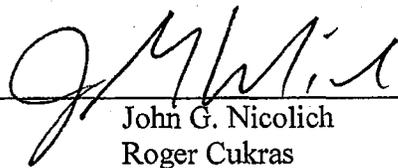
(a) Declaring that Level 3's Fiber Optic Installations do not constitute real property that is taxable under the RPTL;

(b) Ordering Respondents to determine and approve Level 3's Refund Applications and to provide refunds to Level 3 of the real property taxes that each Respondent received for the 2010, 2011, and 2012 tax years based on the erroneous assessments of Level 3's Fiber Optic Installations, with interest from the dates of payments made by Level 3;

(c) For costs and disbursements of this proceeding, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 1, 2014

**INGRAM YUZEK GAINEN CARROLL
& BERTOLOTTI, LLP**

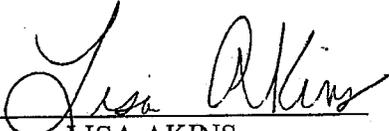
By: 
John G. Nicolich
Roger Cukras

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Level 3 Communications, LLC
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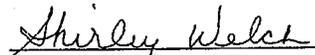
VERIFICATION

STATE OF COLORADO)
)ss.:
COUNTY OF BROOMFIELD)

The undersigned, Lisa Akins, being duly sworn, states that she is the Director, Tax for the Petitioner in the above-entitled proceeding; that she has read the foregoing Petition; and that the contents are true to her own knowledge, except as to those matters which are alleged upon information and belief, which she believes to be true.


LISA AKINS

Sworn to before me this
1ST day of December, 2014


Notary Public

SHIRLEY WELCH
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 07/10/16

UNFINISHED BUSINESS:

RESOLUTION #1-2015
JANUARY 6, 2015

BY: THE ENTIRE COUNCIL

INTRO NO. 1 TO LOCAL LAW #1-2015
CITY OF DUNKIRK, NEW YORK

A LOCAL LAW TO AMEND CHAPTER 31, ARTICLE I, SECTION 31-2
OF THE DUNKIRK CITY CODE
ENTITLED "RECREATION SERVICES FEE SCHEDULE"

BE IT ENACTED by the Common Council of the City of Dunkirk, New York, as follows:

Section 1 **Intent**

It is the intent of this Local Law to amend Dunkirk City Code, Chapter 31, Article I, Section 31-2, to modify and to update various recreation services fees.

Section 2 **Amendment of City Code**

Chapter 31, Article I, Section 31-2 of the Dunkirk City Code, is hereby amended as follows:

DELETE:

§31-2. Fee Schedule.

Effective December 1, 2005, the following fees are hereby established.

<u>Type</u>	<u>Fee</u>
<u>Facility Rentals</u>	
City softball fields:	
Single game	\$ 50.00
Single day	\$ 75.00
Tournament (multiple days)	\$150.00
 Picnic table, per day	 \$ 2.50
[Added 5-21-1992 by L.L. #4-1992]	
(Rental of tables is limited to Churches, Clubs and Schools)	
 Bandstand, per 8x8 section, per day	 \$ 5.00
[Added 5-21-1992 by L.L. #4-1992]	
 <u>Youth Program</u>	
Sports clinics, except for swimming, sailing and tennis	\$ 10.00
Dance program	\$ 10.00
Floor hockey	\$ 10.00

Swim clinic	\$ 25.00
Sailing program	\$ 25.00
Tennis program	\$ 25.00

Adult Program

League fees (basketball, football, softball, floor hockey, soccer)	
City Residents	\$ 15.00
Non-Dunkirk City Residents	\$ 20.00
Player disqualification fees	\$ 30.00
Volleyball	\$150.00
Walking	\$ 1.00
Soccer	\$ 2.00
Golf	\$ 30.00
Hockey (daily admission)	\$ 1.00

Recreation Center:

Rollerskating Program

Youth admissions	\$ 1.00
Adult admissions	\$ 2.00

Birthday Parties

1 1/2 hours (maximum of 10 children)	\$ 40.00
Each additional child	\$ 4.00

Group Rentals (Church, scouts, family)

25 people and under	
Per hour	\$ 30.00
For 1 1/2 hours	\$ 40.00
26 - 50 people	
Per hour	\$ 35.00
For 1 1/2 hours	\$ 45.00
51 people or over	
Per hour	\$ 40.00
For 1 1/2 hours	\$ 50.00

Team Rentals (Little League, Babe Ruth, Hockey, etc.)

Teams of less than 25 people	
Per hour	\$ 15.00

Ice-Skating Program

Youth admissions	\$ 1.00
Adult admissions	\$ 2.00

Summer Camp Program

[Added 4-29-1992 as L.L. #3-1992; Amended by L.L. #8 (Intro No. 12) 1993]

City Residents

First child, per session	\$ 30.00
Each additional child, per session	\$ 20.00

Non-Dunkirk City Residents

First child, per session	\$ 40.00
Each additional child, per session	\$ 25.00

Rental of Pavilions at Point Gratiot [Amended 03-01-11 as L.L. #4-2011]

Effective April 4, 2011, the following fees are hereby established:

Large Pavilion

Entire Pavilion (capacity 216)	
City Residents	\$ 75.00
Non-Dunkirk City Residents	\$ 150.00

Lower Pavilion

Entire Pavilion (Capacity 96)	
City Residents	\$ 50.00
Non-Dunkirk City Residents	\$ 100.00

Koch's Pavilion

Entire Pavilion (Capacity 96)	
City Residents	\$ 50.00
Non-Dunkirk City Residents	\$ 100.00

NOTE: There will be no fee charged to groups of handicapped individuals or to groups of Senior Citizens who reserve the pavilions

AMEND TO:

§31-2. Fee Schedule. [Amended 10-4-2005 as L.L. #2-2005; Amended 5-21-1992 by L.L. #4-1992; Amended 4-29-1992 as L.L. #2-1992, and by L.L. #8 (Intro No.12) 1993]

Effective February 1, 2015, the following fees are hereby established.

<u>Type</u>	<u>Fee</u>
<u>Facility Rentals</u>	
City softball fields:	
Single game	\$ 50.00
Single day	\$ 50.00
Tournament (multiple days) (per event day)	\$ 50.00

Picnic table, per day \$ 2.50
[Added 5-21-1992 by L.L. #4-1992]
(Rental of tables is limited to Churches, Clubs and Schools)

Bandstand, per 8x8 section, per day \$ 5.00
[Added 5-21-1992 by L.L. #4-1992]

Youth Program

Sports clinics/activities (per person, per session)
City resident \$ 3.00
Non-City resident \$ 4.00

Adult Program

League fees (per team)
Basketball \$150.00
Flag Football \$150.00
Softball (slo- and fast-pirch) \$150.00
Floor Hockey \$150.00
Game Protest Fee \$ 50.00
Player Ejection Fee (per player, per incident) \$ 30.00

Open Play (per person, per session)
Dodgeball, Soccer, Hockey, Basketball, etc. \$ 4.00

Recreation Center:

Roller-Skating Program (per person, per session) \$ 1.00
Walking (per person, per session) \$ 1.00
Playday (per person, per session) \$ 1.00

Group/Birthday Rentals
City resident (one hour) \$ 30.00
Non-city resident (one hour) \$ 40.00

Youth Team Rentals (one hour) \$ 15.00

Summer Camp Program

[Added 4-29-1992 as L.L. #3-1992; Amended by L.L. #8 (Intro No. 12) 1993]

City Residents

First child (per session) \$ 40.00
Each additional child (per session) \$ 30.00
Junior counselor (per session) \$ 15.00

Non-City Residents

First child (per session) \$ 50.00
Each additional child (per session) \$ 40.00

Rental of Pavilions at Point Gratiot [Amended 03-01-11 as L.L. #4-2011]

Effective April 4, 2011, the following fees are hereby established:

Large Pavilion - Entire Pavilion (capacity 216)	
City Residents	\$ 75.00
Non-City Residents	\$150.00
Lower Pavilion - Entire Pavilion (Capacity 96)	
City Residents	\$ 50.00
Non-City Residents	\$100.00
Koch's Pavilion - Entire Pavilion (Capacity 96)	
City Residents	\$ 50.00
Non-City Residents	\$100.00

NOTE: No fee will be charged to groups of handicapped individuals or to groups of Senior Citizens who reserve the pavilions

Section 3 Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.

1-6-15 Councilwoman Szukala motioned to table Local Law #1-2015 with a Public Hearing to be held on January 20, 2015 at 5:15 PM. Seconded by Councilman Rivera. Carried, all voting aye. TABLED.

RESOLUTION #2-2015
JANUARY 20, 2015

BY: THE ENTIRE COUNCIL

AUTHORIZE AGREEMENT FOR INDEPENDENT CONTRACTOR (N. Waite)
(Community Development Block Grant Program)

WHEREAS, the City of Dunkirk has a need for independent consulting services to provide assistance in order for the City to administer and to maintain certain requirements for the City's participation with the U.S. Department of Housing & Urban Development ("HUD") Community Development Block Grant ("CDBG") program, including but not necessarily limited to the provision of technical and compliance assistance necessary for the administration of the CDBG program; and

WHEREAS, it would be in the best interest of the City to contract for such services; and

WHEREAS, Nicole M. Waite ("WAITE"), 723 Washington Avenue, Dunkirk, New York 14048, is ready, willing and able to provide such services as an independent contractor for the City, and in a good and workmanlike manner; now, therefore, be it

RESOLVED, that the Mayor is directed and authorized to execute any and all agreements necessary to engage the services of **NICOLE M. WAITE**, 723 Washington Avenue, Dunkirk, New York 14048, as an independent contractor to provide independent contracting services and assistance with various projects, particularly with regard to the administration of the City's Community Development Block Grant program, **commencing January 21, 2015 and extending through December 31, 2015**, with payment of Twenty Dollars and Zero Cents (\$20.00) per hour, as services may be needed by the City, up to fifteen (15) hours per week, with such funds drawn from the Department of Development Contracted Services Account No. 001-8020-4036, with reimbursement drawn from CDBG Administrative funding, contingent upon such funds being made available.

RESOLUTION #3-2015
JANUARY 20, 2015

BY: THE ENTIRE COUNCIL

AUTHORIZE AGREEMENT FOR INDEPENDENT CONTRACTOR (L. Gawronski)
(Community Development Block Grant Program)

WHEREAS, the City of Dunkirk has a need for independent consulting services to provide assistance in order for the City to administer and to maintain certain requirements for the City's participation with the U.S. Department of Housing & Urban Development ("HUD") Community Development Block Grant ("CDBG") program, including but not necessarily limited to the provision of technical and compliance assistance necessary for the administration of the CDBG program; and

WHEREAS, it would be in the best interest of the City to contract for such services; and

WHEREAS, Lauri Gawronski ("Gawronski"), 77 East Seventh Street, Dunkirk, New York 14048, is ready, willing and able to provide such services as an independent contractor for the City, and in a good and workmanlike manner; now, therefore, be it

RESOLVED, that the Mayor is directed and authorized to execute any and all agreements necessary to engage the services of **Lauri Gawronski**, 77 East Seventh Street, Dunkirk, New York 14048, as an independent contractor to provide independent contracting services and assistance with various projects, particularly with regard to the administration of the City's Community Development Block Grant program, **commencing January 26, 2015, and extending through December 31, 2015**, with payment of Twenty Dollars and Zero Cents (\$20.00) per hour for up to twenty-five (25) hours per week, as services may be needed by the City, with such funds drawn from the Department of Development Contracted Services Account No. 001-8020-4036, with reimbursement drawn from CDBG Administrative funding, contingent upon such funds being made available.