

AGENDA - COMMON COUNCIL MEETING – December 15, 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:
7. Reports of Standing Committees, Boards and Commissions.
8. Unfinished Business:
 88. Resolution authorizing Mayor to execute Chautauqua County Agreement Amendment (Snow Removal and Ice Control).
 89. Resolution introducing Local Law #4-2015 amending Chapter 31, Article III, Water Rate Schedule Section 31-19(B) of the Dunkirk City Code entitled "North County Water District Rate".
9. Pre-filed Resolutions:
 97. Resolution authorizing denial of Level 3 Communications, LLC, applications for corrected tax rolls form rp554 and application for refunds/credits of real property taxes form rp556 for 2013, 2014 and 2015 tax years
 98. Resolution authorizing Agreement to provide drug/alcohol testing (Langford Testing and Consulting).
 99. Resolution authorizing Agreement for Independent Contractor (Housing, Building & Zoning Enforcement Department).
 100. Resolution awarding bid for demolition (5 properties).
 101. Resolution awarding bid – 2016 sludge and grit hauling (Dunkirk Water Pollution Control Facility).
 102. Resolution awarding bids – 2016 treatment chemicals (Water Pollution Control Facility and Water Treatment Plant).
10. New Business:
11. Adjournment.

Nicole Joiner
City Clerk

RESOLUTION #88-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

**AUTHORIZING MAYOR TO EXECUTE CHAUTAUQUA COUNTY AGREEMENT AMENDMENT
(SNOW REMOVAL AND ICE CONTROL)**

WHEREAS, the City is seasonally reimbursed by Chautauqua County for snow removal and ice control on County routes within the City, and

WHEREAS, the current agreement for said services has expired and the County has since requested an extension and payment amendment to the original agreement; now, therefore, be it hereby

RESOLVED, upon the recommendation of Director of Public Works Gugino, that the Mayor be, and hereby is, authorized and directed to execute an agreement amendment on behalf of the City of Dunkirk, with Chautauqua County, for provision of snow removal and ice control services for snow seasons through April 30, 2018 at the following annual reimbursements:

2015/2016 Season	\$3,000.00 per centerline mile
2016/2017 Season	\$3,150.00 per centerline mile
2017/2018 Season	\$3,300.00 per centerline mile.

11/17/15: Councilwoman Szukala made a motion to table this Resolution pending verification of numbers. Seconded by Councilman Gonzalez.

Carried, all voting aye. TABLED.

12-1-15 No action taken by Council Resolution #88-2015 remains tabled.

UNFINISHED BUSINESS:

RESOLUTION #89-2015
DECEMBER 1, 2015

BY: THE ENTIRE COUNCIL

INTRO NO. 1 TO LOCAL LAW #4-2015
CITY OF DUNKIRK, NEW YORK

**A LOCAL LAW TO ADD TO THE DUNKIRK CITY CODE, CHAPTER 31, ARTICLE III,
SECTION 31-19(B) ENTITLED "NORTH COUNTY WATER DISTRICT RATE"**

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

Section 1 Intent.

It is the intent of this Local Law to add to the Dunkirk City Code Chapter 31, Article III, Section 31-19(B) "North County Water District Rate."

Section 2 Addition to the City Code.

Dunkirk City Code Chapter 31, Article III, Section 31-19(B) is hereby added as follows:

ARTICLE III

Water Rate Schedule
[Adopted 6-18-1992 as L.L. #6-1992]

**§ 31-19(B). North County Water District Rate [Added _____ as L.L. #4
(Intro No. 1) 2015]**

Notwithstanding any terms or conditions included herein, water services shall be provided to the North County Water District pursuant to the terms and conditions contained in a certain Water Purchase/Supply Agreement, authorized by the Dunkirk Common Council (Resolution #77-2015 on November 17, 2015), as amended.

Section 3 Effective Date.

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

12-1-15 Councilwoman Szukala motioned to table this Resolution with a Public Hearing to be held on Tuesday, December 15, 2015 at 5:15 PM. Seconded by Councilman Rivera. Carried, all voting aye.

RESOLUTION #97-2015
DECEMBER 15, 2015

BY: ENTIRE COUNCIL

**DENIAL OF LEVEL 3 COMMUNICATIONS, LLC, APPLICATIONS FOR CORRECTED
TAX ROLLS FORM RP554 AND APPLICATION FOR REFUNDS/CREDITS OF REAL
PROPERTY TAXES FORM RP556 FOR 2013, 2014 AND 2015 TAX YEARS**

WHEREAS, Level 3 Communications, LLC ("Level 3") has filed applications for corrected tax rolls pursuant to Real Property Tax Law Section 554 for the 2013, 2014, and 2015 tax years; and

WHEREAS, Level 3 has also filed applications for refund/credit of real property taxes pursuant to Real Property Tax Law Section 556 for the 2013, 2014 and 2015 tax years; 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 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 (30) years, and should continue to be taxed as real property;
 - B. 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;
 - C. The fiber optic cable constitutes property for the distribution of light and is taxable real property pursuant to Real Property Tax Law 102(12)(f);
 - D. The fiber optic cables constitute fixtures and are taxable real property pursuant to Section 102(12)(b) of the Real Property Tax Law;
 - 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 Department.
- 2. The applications are procedurally improper. 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 RP554 applications are time barred and untimely on the basis that they were filed after the expiration of the tax warrants. See RPTL Section 554; *Level 3 Communications v. Essex County*, Supreme Court, Essex County, Hon. T. Buchanan, decided May 29, 2014.

5. The RP556 applications are also 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.
6. 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.
7. 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).
8. 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).
9. 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 application fails to contain any information from any engineer, expert, person, or employee with personal knowledge with respect to the cable lines in question, and

WHEREAS, the City of Dunkirk has carefully considered and fully agrees with the investigation and recommendations of the Chautauqua County Tax Director; now, therefore, it is

RESOLVED, that all of the Applications for Corrected Tax Rolls Form 554 and the Applications For Refunds/Credits of Real Property Taxes Form 556 for the 2013, 2014, and 2015 tax years 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 of Dunkirk Common Council at its meeting held on December 15 __, 2015.

_____ Clerk

Dated: December _____, 2015

RESOLUTION #98-2015
DECEMBER 15, 2015

BY: ENTIRE COUNCIL

**AUTHORIZING AGREEMENT TO PROVIDE DRUG/ALCOHOL TESTING
(LANGFORD TESTING AND CONSULTING)**

WHEREAS, the Department of Transportation (DOT) requires standard random selection drug testing for employees possessing a CDL license; and

WHEREAS, the City utilizes a pre-employment screening protocol for various employees; and

WHEREAS, the DOT requires written reports regarding the City's compliance with such drug testing requirements; and

WHEREAS, the City has undertaken a vendor comparison which provides that Langford Testing and Consulting can provide the required services in a good and workmanlike manner; now, therefore, be it

RESOLVED, the Mayor is authorized and directed to enter into an agreement with **Langford Testing and Consulting**, 52 Berry Road, Fredonia, New York 14063, for the administration of the required drug/alcohol testing program for 2016, including providing compliance with Department of Transportation requirements.

RESOLUTION #99-2015
DECEMBER 15, 2015

BY: COUNCILMAN RIVERA

AUTHORIZE AGREEMENT FOR INDEPENDENT CONTRACTOR
(Housing, Building & Zoning Enforcement Department)

WHEREAS, the City of Dunkirk, through its Housing, Building and Zoning Enforcement Department (the "Department") has a need for assistance with various projects; and

WHEREAS, the City has issued a Request for Proposals for such assistance and has received one (1) response for such assistance; and

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

WHEREAS, Wendy Spinuzza, 10092 Patterson Lane, Fredonia, NY 14063, 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 **WENDY SPINUZZA, 10092 Patterson Lane, Fredonia, NY 14063**, as an independent contractor to provide independent contracting services and assistance with various projects commencing January 1, 2016, and extending through December 31, 2016, with payment of Thirty-Two Thousand Six Hundred Forty Dollars and Zero Cents (\$32,640.00) for the contract year, contingent upon such being made available, with such funds drawn from Account No. 001-3620-4036.

RESOLUTION #100-2015
DECEMBER 15, 2015

BY: THE ENTIRE COUNCIL

AWARDING BID FOR DEMOLITION

60 E. Seventh Street – Section 79.19, Block 7, Lot 22
208 Antelope Street – Section 79.11, Block 6, Lot 25
707 Main Street – Section 79.19, Block 6, Lot 36 (Garage to remain)
215 Leopard Street – Section 79.57, Block 1, Lot 31
630-632 Grant Avenue – Section 79.19, Block 5, Lot 24

WHEREAS, the City of Dunkirk in 2014, entered into a Contract with the Chautauqua County Land Bank to demolish structures in the City; and

WHEREAS, an asbestos survey and appropriate remediation is being conducted for properties located at: 60 E. Seventh Street – Section 79.19, Block 7, Lot 22; 208 Antelope Street – Section 79.11, Block 6, Lot 25; 707 Main Street – Section 79.19, Block 6, Lot 36 (Garage to remain); 215 Leopard Street – Section 79.57, Block 1, Lot 31; and 630-632 Grant Avenue – Section 79.19, Block 5, Lot 24, which are listed for demolition; and

WHEREAS, following published Legal Notice, sealed bids for the demolition of five (5) structures were opened and read aloud in the Dunkirk City Clerk's Office at 10:00 A.M. on December 9, 2015, with (5) five bids being received for demolition; now, therefore, be it

RESOLVED, that upon review and recommendation of the Building Inspector, the lowest responsible bid of **J & J Abatement Services, LLC, 145 Fairmount Avenue, Jamestown, NY 14701**, in the amount of **Thirty-Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$35,750.00)**, be and hereby is accepted for demolition of: 60 E. Seventh Street – Section 79.19, Block 7, Lot 22; 208 Antelope Street – Section 79.11, Block 6, Lot 25; 707 Main Street – Section 79.19, Block 6, Lot 36 (Garage to remain); 215 Leopard Street – Section 79.57, Block 1, Lot 31; and 630-632 Grant Avenue – Section 79.19, Block 5, Lot 2; and, be it further

RESOLVED, that – after the contractor provides satisfactory insurance certificates to the City Law Department, and the contractor provides performance bond and payment bonds, which are reviewed and approved, and the contractor shows compliance with the MWBE procedures – the Mayor is hereby authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with the above-named contractor for the demolition of the said structures; and, that the City Clerk is hereby authorized to return the bid deposits of the bidders, after contract execution or non-awarded bid, in accordance with the contract specifications, and that the City Clerk shall return unaccepted and unsealed, any and all bids, received after the date and time of the published bid opening; and, be it finally

RESOLVED, that the following funds are to be utilized for such demolition:

072-8000-4000-0562 - CDBG	\$19,120.00
073-8000-4000-0562 – CDBG	\$ 3,430.00
Landbank	\$13,200.00

RESOLUTION #101-2015
DECEMBER 15, 2015

BY: ENTIRE COUNCIL

**AWARDING BID – 2016 SLUDGE AND GRIT HAULING
(DUNKIRK WATER POLLUTION CONTROL FACILITY)**

WHEREAS, following published legal notice, sealed bids for 2016 hauling of sludge and grit from the City Water Pollution Control Facility were received, opened and read aloud in the Dunkirk City Clerk's Office at 10:30 a.m. on December 9, 2015; now, therefore, be it

RESOLVED, that upon the recommendation of the Director of Public Works, the low bid of **Bestway Container Service, 202 East Main Street, Fredonia, New York 14063**, be and hereby is accepted for 2016 Sludge & Grit Hauling at the following unit costs:

Item 1 – Sludge Hauled to Ellery \$12.64 per ton

Item 2 – Grit Hauled to Ellery \$47.48 per ton

and, be it further

RESOLVED, that the Mayor is authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, for the Year 2016 Sludge and Grit Hauling, and, be it finally

RESOLVED, that the City Clerk is hereby authorized to return the bid deposit of the bidder, following contract execution, in accordance with the contract specifications, and to return bid deposits of unsuccessful bidders.

RESOLUTON #102-2015
DECEMBER 15, 2015

BY: ENTIRE COUNCIL

AWARDING BIDS - 2016 TREATMENT CHEMICALS
(WATER POLLUTION CONTROL FACILITY AND WATER TREATMENT PLANT)

WHEREAS, following published Legal Notice, sealed bids for the furnishing of wastewater treatment plant and water treatment plant chemicals were opened and read aloud in the Dunkirk City Clerk's Office at 10:30 a.m. on December 9, 2015; and

WHEREAS, the bids were reviewed by the Department of Public Works and the Department of Public Works recommends that the lowest responsible bidder(s) be awarded bids for such 2016 wastewater treatment plant and water treatment plant chemicals; now, therefore, be it hereby

RESOLVED, that upon review and recommendation of the Director of Public Works, the following lowest responsible bids be accepted and awarded for furnishing wastewater treatment plant and water treatment plant chemicals for 2016:

<u>Bidder</u>	<u>Item</u>	<u>Cost</u>
Amrex Chemical Co., Inc. 117 East Frederick Street PO Box 642 Binghamton, NY 13902	Aqua Ammonia Solution Phosphoric Acid	\$0.219 per pound NH ₄ OH \$0.555 per pound
Kemira Water Solutions 4321 West Sixth Street Lawrence, KS 66049	Ferric Chloride Poly-Aluminum Chloride	\$419.00 per dry ton \$584.73 per dry ton
JCI Jones Chemicals, Inc. 100 Sunny Sol Blvd. Caledonia, NY 14423	Liquid Chlorine Sulfur Dioxide	\$341.00 per ton \$1.00 per gross pound
Mercer Lime Company 560 Branchton Road Slippery Rock, PA 16057	Hydrated Lime	\$172.23 per dry ton

and, be it further

RESOLVED, that the Mayor is authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with the above-named vendors, for the purchase of such treatment chemicals, and that the City Clerk is hereby authorized to return the bid deposits of the bidders, after contract execution or non-awarded bid, in accordance with the contract specifications, and that the City Clerk shall return unaccepted and unsealed any and all bids received after the date and time of the published bid opening.