

COMMON COUNCIL PROCEEDINGS
March 15, 2016

The meeting was called to order at 5:31 PM by Councilman-at-large Woloszyn followed by the Pledge of Allegiance.

Present: Councilmen Williams, Bamonto, Gonzalez, Councilwoman Szukala and Councilman-at-large Woloszyn.

Also present: Mayor Rosas, City Attorney Brautigam, City Treasurer Woods, Fiscal Affairs Officer Halas, Public Works Director Bennice, City Engineer Woodbury, Personnel Administrator Heyden, Building Inspector Zurawski, Clerk, Board of Assessors Mleczeko, CDBG Administrator Gawronski, Fire Chief Edwards and Police Chief Ortolano.

Excused: Director of Development Beard

Certification of Tuesday, March 01, 2016 meeting was read by City Clerk Divine.

RESOLVED: That the reading of the minutes of Tuesday, March 1st, 2016 be dispensed with.

Motion by Councilman Gonzalez to accept the minutes as presented. Seconded by Councilman Bamonto.

Carried, all voting aye.

PUBLIC COMMENTS:

Brandon Bunch, 48 Cushing Street, Fredonia, member of the Delta Chi Fraternity, provided the insurance needed for the Easter Egg Hunt to be held at Washington Park, advised that the idea for the new venue came about as many of the children who come to the egg hunt in Fredonia are from Dunkirk and would be better served in a more centralized location and informed of details of the event.

Councilman Gonzalez welcomed the event to his district and hopes that there will be good showing from the community.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Rosas advised that the Grant Agreement for the Farmers Market has been signed, Deputy Director of Development Waite conducted 3 interviews for the Farmers Market Manager position and that the Department of Development is actively soliciting donations for Music on the Pier.

Communication from Mayor Rosas appointing George Condoyannis to the Dunkirk Cable TV and Communications Advisory Board effective March 16, 2016 and will expire March 16, 2018.

Received and filed.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Notice of Petition, Amended Petition, Supporting affidavit and Memorandum of Law from S. St. George Enterprises, Inc.

Councilman Williams made a motion to refer to the Law Department. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Request from Delta Chi Fraternity to use Washington Park on Sunday, April 3rd, at 9:00 AM for an Easter Egg Hunt.

Councilman-at-large Woloszyn advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Bamonto made a motion to approve. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Request from Dunkirk Lakefront 5K Committee to host the annual "Dunkirk Lakefront 5K Road Race" on August 6th beginning at 8:00 AM.

Councilman Bamonto advised this is the only fundraiser for the Dunkirk High School Track team and that it brings in a large number of runners as well as spectators to the area.

Councilman-at-large Woloszyn advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Bamonto made a motion to approve. Seconded by Councilman Williams.

Carried, all voting aye.

Request from Harvest Chapel Church to use Washington Park on July 15th (Rain date July 22nd) from 5:00 PM until 8:30 PM, permission to bring in grills, coolers and use of electric power for their popcorn machine. Also requesting permission to bring in ponies for pony rides.

Councilman-at-large Woloszyn advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Williams made a motion to approve. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Request from the Dunkirk Joint Veterans Council to hold the Annual Memorial Day Services & Parade on Monday, May 30th at 10:00 AM with parade to follow; reviewing stands & chairs at Memorial Park & City Hall and participation by the Mayor and City Officials.

Councilman Gonzalez made a motion to approve. Seconded by Councilman Williams.

Carried, all voting aye.

Request from Iglesia Cristiana Clinica Del Alma to use Washington Park for live Church Services on July 17th, August 15th and September 19th

Councilman-at-large Woloszyn advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Williams made a motion to approve. Seconded by Councilman Bamonto.

Carried, all voting aye.

Request from the Kosciuszko Polish Home Association to close traffic between E. Doughty Street and Courtney Street on July 1st and July 2nd from 5:00 PM until 12:30 AM for their “Annual Street Dance”. Also, requesting the support of the City Parks Department, Police Department, Streets Department and Fire Department.

Councilman-at-large Woloszyn advised a motion was needed to refer to appropriate departments as well as approve subject to appropriate insurances and usual conditions.

Councilman Gonzalez made a motion to approve. Seconded by Councilman Williams.

Carried, all voting aye.

Communication from Fire Chief Edwards requesting to add one member to the City of Dunkirk Volunteer Fire Roll.

Received and filed.

Loudspeaker application from Scott Mekus on behalf of the Marauder Trotter 5K Run/Walk to use amplifiers, loudspeakers and microphone at Wright Park on Saturday, July 2nd from 8:30 AM until 12:00 PM.

Carried, all voting aye.

Loudspeaker application from Tim Wdowiasz on behalf of the First Ward Falcon Club to use microphones and speakers for a live band at Promenschenkle Stadium on July 16th from 7:00 PM until 11:00 PM.

Councilman Williams made a motion to approve. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Loudspeaker application from Pastor Omar Cosme on behalf of Iglesia Cristiana Clinica Del Alma to use microphones, speakers and band equipment for church services at Washington Park on July 17th, August 15th and September 19th from 5:00 PM until 9:00 PM.

Discussion was held in regards to the time allotted for groups and individuals in the City’s Loudspeaker Policy.

Councilwoman Szukala made a motion to approve. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Loudspeaker application from Harvest Chapel Church for audio equipment, speakers, amplifiers and microphones in Washington Park on July 15th (Rain date July 22nd) from 5:30 PM until 8:30 PM.

Councilman Bamonto made a motion to approve. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Loudspeaker application from Kosciuszko Polish Home Association to use microphones, amplifiers and speakers on July 1st and July 2nd from 7:00 PM until 11:00 PM for their “Annual Street Dance.”

Councilman Gonzalez made a motion to approve. Seconded by Councilman Williams.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Williams advised that he attended the Solar Chautauqua Open House, thinks the City should look into solar options to save money and advised his next Department of Public Works Meeting is scheduled for Wednesday, March 23rd at 3:45 PM in the Mayor’s Conference Room.

Councilman Williams inquired to Police Chief Ortolano for an update on a situation that happened at School 7.

Police Chief Ortolano advised that the officers responded to the situation mentioned, there will be a car assigned to the area daily and that the individual has been contacted and made aware that if the behavior continues charges could be brought forth.

Councilman Bamonto thanked Public Works Director Bennice for his work in getting a light fixed on Taft Place as well as fix potholes on 6th Street, advised that the Floor Hockey Season is almost finished with the Basketball Season in its second week and inquired to Building Inspector Zurawski for an update on the entrance to Specialty Steel.

Building Inspector Zurawski advised he and Captain Katta visited the site as well as did some code research and that an Architect and Engineer will need to review the situation.

Councilman Gonzalez thanked the Parks Department for maintaining Washington Park as it is well used in the spring/summer time and inquired to Mayor Rosas for an update on additional lighting around the playground area.

Mayor Rosas advised that there is currently no update on the new lighting but if a grant that the Department of Development is currently working on goes through then new lighting should be included.

Councilman Gonzalez inquired to Police Chief Ortolano for an update on enforcement of school zone speed limits, especially around School 3.

Police Chief Ortolano advised that his officers rotate around the school zones to monitor and enforce the speed limits but will add that area to the top of his list.

Councilwoman Szukala advised that Council will be on the radio Thursday, March 17th at 8:30 AM, inquired to Mayor Rosas for an update on Union Negotiations, Building Zurawski for an update with Landbank properties and to City Engineer Woodbury for an update on the railroad whistles sounding during the night.

Mayor Rosas advised he has made good positive communication with the Fire Department Union and is hoping to formally present something to the Council shortly.

Building Inspector Zurawski advised it will be a few more months before the Landbank list is complete.

City Engineer Woodbury advised that he will put the “Quiet Zone” paperwork that needs to be submitted on the top of his list and that the City would not run as well as it does without all of the organized folders of documents left by former City Engineer David Manzella.

Councilman-at-large Woloszyn advised that his next Finance Meeting is Thursday, March 24th at 4:00 PM in the Mayor’s Conference Room, thanked Mr. Bunch for attending tonight’s meeting and wished everyone a Happy St. Patrick’s Day as well as a Happy Easter.

PRE-FILED RESOLUTIONS:

RESOLUTION #30-2016
MARCH 15, 2015

BY: ENTIRE COUNCIL

DENIAL OF LEVEL 3 APPLICATIONS FOR REFUNDS/CREDITS OF REAL PROPERTY TAXES FORM RP556 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/towns tax bills

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(120(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 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 RP556 applications are time barred and untimely on the basis that they were filed after the expiration of the tax warrants. See; *Level 3 Communications 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 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
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 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 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.

Carried, all voting aye.

RESOLUTION #31-2016
MARCH 15, 2016

BY: COUNCILWOMAN SZUKALA

AUTHORIZING PARTICIPATION IN BORDER PATROL AUGMENTATION PROGRAM

WHEREAS, the County of Chautauqua has received certain grant funds in order to enhance law enforcement preparedness and operational readiness, along the borders of the United States among federal, State, local and tribal enforcement agencies; and

WHEREAS, the County of Chautauqua, through Resolution No. 137-13, is authorized to enter into an agreement with the City for such border patrol augmentation services for the period September 1, 2015 through September 30, 2016, with payment in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), for overtime wages, and an amount not to exceed Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00), for fringe benefits; and

WHEREAS, the City is ready, willing and able to provide such augmented border patrol services, through overtime details on land and on water, in the form of roving patrols, surveillance of marinas and crewing of Sheriff's Office boats; now, therefore, be it

RESOLVED, that the Mayor, Wilfred J. Rosas, is hereby authorized to execute contracts and agreements with the County of Chautauqua, for the City to provide augmented border patrol services through overtime Police Department details on land and on water, in the form of roving patrols, surveillance of marinas and crewing of Sheriff's Office boats, for the period September 1, 2015 through September 30 2016; and, be it finally

RESOLVED, that the Fiscal Affairs Officer and City Treasurer be directed to create General Ledger to record these funds as follows:

Stone Garden Grant Account No. 001-0001-2288; and, further

Reimburse Police Department appropriation line:

Overtime **Account No. 001-3120-1001,**

As such funds are received from the County of Chautauqua.

Carried, all voting aye.

RESOLUTION #32-2016
MARCH 15, 2016

BY: COUNCILMAN WILLIAMS

**AUTHORIZING PROFESSIONAL SERVICES CONTRACT FOR
THE JULY 4TH FIREWORKS DISPLAY**

WHEREAS, the qualified and licensed professional services company, **Zambelli Fireworks Internationale**, which has supplied quality fireworks to the City of Dunkirk in the recent prior years, proposes a fireworks show of equal quality and length at no increase in cost to that of 2015, and said company has a consecutive multi-year history of good performances with the City of Dunkirk, in the opinion of the Department of Public Works, now, therefore, be it

RESOLVED, that the Mayor be, and hereby is, authorized to execute a contract, on behalf of the City of Dunkirk, with **Zambelli Fireworks Internationale**, PO Box 1463, New Castle PA 16103-1463, in the amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00) for the July 4, 2016 (rain date July 5, 2016) fireworks display, in accordance with the proposal to match last year’s quality and duration of service at the same cost.

Councilwoman Szukala advised she will not be supporting this Resolution as she would like to see some of the funds being used towards aging infrastructure/vehicles.

Councilman Williams advised he sponsored this Resolution, which is authorizing Mayor Rosas to sign the contract and that the amount passed was already approved unanimously by previous Council during last year’s budget process.

Vote on Resolution:

Ayes: Councilman Williams, Councilman Bamonto, Councilman Gonzalez and Councilman-at-large Woloszyn.

No: Councilwoman Szukala.

Carried, 4-1.

RESOLUTION #33-2016
MARCH 15, 2016

BY COUNCILMAN WILLIAMS:

**AUTHORIZING CONSENT OF LEAD AGENCY AND
ENDORSEMENT OF TOWN OF DUNKIRK’S PLAN TO UPGRADE WATERLINES**

WHEREAS, Town of Dunkirk officials met with City of Dunkirk officials about extending and improving its waterlines in several Town areas that are fed by City of Dunkirk water; and

WHEREAS, by notification letter of February 26, 2016, the Town’s design professional for these improvements has requested that the City of Dunkirk execute the State Environmental Quality Review Act (SEQRA) Lead Agency Consent Form; now, therefore be it

RESOLVED, that the City of Dunkirk endorses the Town of Dunkirk’s plan to improve its waterlines and that the Mayor be and hereby is authorized and directed to execute the SEQRA Lead Agency Intent Consent Form and any other necessary documents, naming the Town of Dunkirk as Lead Agency for environmental review of these Town waterline improvements.

Councilwoman Szukala inquired why the City is going to be the Lead Agency.

Mayor Rosas advised the City is only sending a letter of support while City Engineer Woodbury explained where the improvements would take place.

Carried, all voting aye.

RESOLUTION #34-2016
MARCH 15, 2016

BY COUNCILMAN WILLIAMS:

**AUTHORIZING AGREEMENT FOR ENGINEERING SERVICES
WATER TREATMENT FACILITY – Phase 3 – under 2009 Consent Order
(Hill Engineering of New York, P.C.)**

WHEREAS, the City of Dunkirk, in 2009, entered into a Consent Order with the Chautauqua County Department of Health (CCDOH) to address certain inadequacies related to the City's water treatment plant and water distribution system, and the Phase 3 items of the Consent Order are now ready to address according to the schedule dictated by CCDOH; and

WHEREAS, by notification letter of December 17, 2015, the City of Dunkirk's application for Phase 3 funding was granted by Governor Cuomo through the New York State Environmental Facilities Corporation (EFC) in the amount of \$2 million of grant funds and \$7 million in low-interest loan funds for this Phase 3 reconstruction of and construction of improvements to the City's water system pursuant to such Consent Order; and

WHEREAS, the 2016 Phase 3 includes, as listed in the EFC grant application:

- New high lift pump station with clear well modifications and new backwash tank
- Supervisory Control and Data Acquisition system and other electrical upgrades
- Benton tank system improvement completion (Fourth Ward tank and pumps)
- Replacement of coagulant feed system and rapid mixers and flocculators
- Replacement of a sludge pump
- New chlorine system; and

WHEREAS, engineering services are required for the timely completion of such 2016 Phase 3 items, and Hill Engineering of New York, P.C., is ready, willing and able to provide such services for the City in a good and workmanlike manner as determined by the Director of Public Works under his responsibility and authority by the City Code, and with the further consideration that Hill Engineering of New York P.C. is in-place completing Phase 2 of the Consent Order as authorized and directed by Council Resolution 21-2013; now, therefore be it

RESOLVED, that the Mayor be and hereby is, authorized and directed to execute an agreement of services, on behalf of the City of Dunkirk, with HILL ENGINEERING OF NEW YORK, P.C., 8 Gibson Street, North East, PA, for water treatment facility Phase 3 work in regard to the 2009 Consent Order:

- Final design engineering and construction administration and resident inspection services for Phase 3 (including all design components) with a cost not to exceed a total of \$950,000, said cost being as City-submitted for the EFC grant and loan application for Phase 3, which submittal named Hill Engineering of New York P.C. for this Phase 3 Consent Order engineering; and be it further

RESOLVED, that the EFC funds, and EFC fund administration requirements, for Phase 3 be set up by Fiscal Affairs as an income and expense City Fund, and that Phase 3 engineering services be paid from the engineering expense line of said City Fund for Phase 3.

Carried, all voting aye.

RESOLUTION #35-2016
MARCH 15, 2016

BY: COUNCILWOMAN SZUKALA

**AUTHORIZING AMENDMENT TO SHARED SERVICES AGREEMENT
(STATE OF NEW YORK)**

WHEREAS, The State of New York Department of Transportation (NYSDOT) is authorized to provide emergency assistance to municipalities under New York State Highway Law §55 if a Shared Services Agreement (SSA) is in place; and

WHEREAS, Services or Materials valued at less than ten thousand dollars (\$10,000) can be obtained by the City of Dunkirk upon the execution of a SSA,

WHEREAS, it is hereby determined that it will be in the best interest of the City of Dunkirk to be a party to a shared services program with the NYSDOT; now, therefore, be it

RESOLVED, that the Mayor of the City of Dunkirk is hereby authorized to execute an agreement to participate in the NYSDOT Shared Services Agreement.

Carried, all voting aye.

Councilwoman Szukala motioned to go into Executive Session to discuss pending litigation matters and it is expected that no new business will be taken after the Executive Session concludes. Seconded by Councilman Williams.

Carried, all voting aye.

Executive Session called to order at 6:10 PM.

Councilman Williams moved to adjourn the Executive Session at 7:22 PM and reconvene to the regular Council Meeting. Seconded by Councilman Bamonto.

Carried, all voting aye.

ADJOURNMENT:

Councilman Gonzalez moved to adjourn. Seconded by Councilman Williams.

Carried, all voting aye.

Adjourned at 7:24 PM

Lillian Divine, City Clerk
