

**REGULAR MEETING OF THE TOWN BOARD
JANUARY 19, 2021**

PRESENT:

Supervisor Richard A. Purol
Councilman Juan Pagan
Councilman Jay Bishop (via zoom)

ABSENT:

Councilman Henry Walldorff
Councilman Robert Penharlow

OTHERS PRESENT: Deputy Town Clerk, Kyle Coughlin, Attorney Jeffrey Passafaro, and Deputy Clerk, Rebecca Yacklon.

Supervisor Purol opened the regular meeting at 6:31 p.m.

APPOINT CHRIS PENFOLD TO TOWN JUSTICE

Councilman Pagan made a motion to appoint Chris Penfold to Town Justice. The motion was seconded by Councilman Bishop and carried.

REGULAR MEETING MINUTES

Councilman Pagan motioned to approve the Regular meeting minutes of December 15, 2020. The motion was seconded by Councilman Bishop and carried.

APPROVAL OF PUBLIC HEARING MEETING MINUTES

Councilman Pagan motioned to approve the public hearing meeting minutes of November 17, 2020. The motion was seconded by Councilman Bishop and carried.

ABSTRACT OF AUDITED VOUCHERS

Councilman Pagan motioned to approve the payment of bills as presented by the Town Clerk on the December 31, 2020 Abstract. The motion was seconded by Councilman Bishop and carried.

General Fund	\$11,829.51
Highway Fund	\$1,067.73
Justice Fund	\$14,931.00
Vineyard Light	\$256.30
ELRS District	\$9.50
East Industrial	\$1,668.05
Bennett Improvement	\$900,841.88
Water Service #1	\$11,338.00

ABSTRACT OF AUDITED VOUCHERS

Councilman Pagan motioned to approve the payment of bills as presented by the Town Clerk on the January 19, 2021 Abstract. The motion was seconded by Councilman Bishop and carried.

General Fund	\$7,921.10
Highway Fund	\$2,101.60

Vineyard Light	\$230.67
Plaza 59	\$1,198.33
Bennett Improvement	\$293,348.25

OPEN COMMENTS

There was no public attendance.

TOWN CLERK REPORT (December)

Clerk Fees	\$1,130.00
Zoning Fees	\$600.00
Dog Licenses	\$132.00

TOTAL SUBMITTED TO TOWN SUPERVISOR \$1,862.00

JUSTICE REPORT (December)

Total number of cases 225

TOTAL FINES and surcharges submitted to the Town Supervisor \$21,160.00.

2020 JUSTICE YEARLY REPORT:

Total number of cases 2352.

TOTAL FINES and surcharges submitted to the Town Supervisor \$240,210.00.

DOG CONTROL OFFICER REPORT (December)

- There were 5 calls for service during the month of December regarding animal complaints.
- There was a total of 1 impound during December.
- Was able to trap 1 yr old Shitzu named Meeko that had been on the run for 7 nights during the winter storm. We were able to trap Meeko with a scent and trap trail. He was trapped at 7:30 am just outside of the City of Dunkirk on East Lake Rd.

EAST LAKE ROAD SEWER DISTRICT (Richard Purol)

No service calls for the month of December.

STEGELSKE (Richard Purol)

Supervisor Purol informed Board members that the pump house had been down since December 2nd. After going back and forth with the insurance company and the City of Dunkirk, it seemed that the insurance was not going to cover the total cost of the damage. They would roughly cover \$31,000.00 of the \$80,000.00 repair bill. Supervisor Purol stated that he was working closely with the City of Dunkirk to find a solution to the problem. They were also hoping to find funds through the county IDA to help assist with this cost difference. In discussion with the City, it was understood that once the repair work was completed, the City would take over the maintenance of the pumphouse. Supervisor Purol expressed concern for the businesses that had been operating and absorbing the cost of a fire brigade. These businesses want to be refunded for the cost to have these fire brigades, and the insurance company for the City of Dunkirk had stated they would not absorb these costs. Attorney Passafaro stated if any claims were made, it would be something the Town insurance may have to absorb.

HIGHWAY REPORT

Highway Superintendent Jeff Feinen was unable to attend, but Supervisor Purol had a few items he wanted to discuss regarding the Highway Department. First Supervisor Purol wanted to let the board know that all the equipment that was for sale on Auctions International sold for a total of \$6,365.00. The second item Supervisor Purol discussed was that the air compressor in the shop broke. He informed the board that he gave the highway superintendent permission to buy a new air compressor from Harbor Freight for \$435.00.

ZONING/CODE ENFORCEMENT OFFICER

- Zambotti project is near completion. Still waiting on DOT approval.
- Credit Union: Still working towards a submittal, hoping for a February meeting.
- Solar projects on Williams street and Brigham Rd. Both have incomplete paperwork.

ATTORNEY REPORT

Attorney Passafaro reminded the board to remember that they have until April 1, 2021 to adopt an operations plan in the case of a public health emergency. Attorney Passafaro stated it would be a good idea to start looking at drafts of plans in preparation of another crisis.

SUPERVISORS REPORT

Supervisor Purol had nothing to discuss that wasn't on the agenda.

CORRESPONDENCE

No Correspondence.

COURT AUDIT LETTER

A letter was received from the Unified Court System requesting an audit of the justice court for the year 2020. Supervisor Purol discussed the need for the audit and would like to see if there were other companies interested in performing the audit rather than using the companies we had in the past. He would also like to send a request for proposal to R.A Mercer, who had just completed the audit for the Town's Bennett Rd. Water Improvement District. Councilman Bishop made a motion to authorize Request for Proposal letters be sent out for the Justice Court audit. The motion was seconded by Councilman Pagan and carried.

RETIREMENT OF TOWN CLERK

A letter from Town Clerk, Jean Crane was submitted to the Town Board stating that after twenty years of service she had decided to retire from her position as town clerk effective January 22, 2021. A motion to accept Town Clerk, Jean Crane's resignation letter was made by Supervisor Purol. The motion was seconded by Councilman Pagan and carried.

PLANNING BOARD

Councilman Bishop discussed the need to send a letter to the Planning Board and Zoning Board members. In this letter he wanted to address the appropriate length of meetings, the duties of each board, and the importance of remaining a business-friendly town. Councilman Bishop stated that he would be more than willing to help the planning and zoning secretary come up with a draft.

CPL PROPOSAL

Clark Patterson Lee submitted a proposal to assist with the new Town Zoning Book. This proposal covered all the areas of concern Supervisor Purol and Town Board members had. Councilman Bishop expressed his concern that the representative would be communicating with the Planning board and Zoning board rather than the Town Board. He stated that he wanted to move forward with the proposal with a condition that communication needed to be made with the Town Board before being finalized. Attorney Passafaro stated that, that was an acceptable condition, and the board can choose to move forward in that manner. A motion was made by Councilman Bishop to approve the proposal from Clark Patterson Lee not to exceed the amount of \$7,000.00. The motion was seconded by Councilman Pagan and carried.

APPOINT KENNETH TARNOWSKI TO ZONING BOARD

A motion was made by Councilman Pagan to appoint Kenneth Tarnowski for a 5-year term, to fill a vacancy. The motion was seconded by Councilman bishop and carried.

REAPPOINT TOM TARNOWSKI TO ZONING BOARD

A motion was made by Councilman Pagan to reappoint Thomas Tarnowski for another 5-year term, to the Zoning Board of Appeals. The motion was seconded by Councilman Bishop and carried.

APPOINT CARL BRANDT TO PLANNING BOARD

A motion was made to appoint Carl Brandt to the Planning Board for a 5-year term, to fill a vacancy. The motion was made by Councilman Bishop and seconded by Council Pagan. The motion was carried.

SOLAR LAWS

Supervisor Purol Stated that he gave all board members copies of the current Solar Law to review. He The current law did not address setbacks or large scale solar.

Attorney Passafaro stated that many of the neighboring towns were establishing separate setback for solar to be more specific. If the Town was interested that could do so by a local law.

Supervisor Purol said there were currently three different large scale solar projects in the works.

Two on Brigham Road and one on Williams Street. He said that this might be something the board should look into before a complete application was submitted on behalf of these three projects.

BENNETT WATER IMPROVEMENT

Supervisor Purol expressed his dissatisfaction with DJM. They had missed their deadline for finishing the project, and the Town had the option to up to 1,000.00 a day until the project was completed.

Supervisor Purol stated he really did not want to do this but would like to make an agreement with DJM to have them finish paving the road on Williams Street instead. He felt this would be a fair trade since they were 15 days past the project completion date. Councilman Pagan also agreed with Supervisor Purol on this matter. He stated he rather work with DJM rather than against them.

BENNETT PROJECT BUDGET MODIFICATION

TOWN OF DUNKIRK

**BENNETT ROAD
PROJECT BUDGET MODIFICATIONS**

WHEREAS, the Town of Dunkirk has received funding from Rural Development for their Bennett Road Water Project (“Project”); and

WHEREAS the Town Board wishes to adjust project budget items to more accurately reflect the costs and;

WHEREAS Rural Development requires the Town Board to authorize all changes to the Administrative Budget as shown on the Form E; therefore be it

RESOLVED, that the Town Board of the Town of Dunkirk authorizes the following budget modifications for the project:

Net Interest	Decrease of \$3,369.00
Miscellaneous	Decrease of \$1,500.00
RD Application	Decrease of \$4,500.00

I, Jean M. Crane, Town Clerk of the Town of Dunkirk, do hereby certify that the aforementioned resolution was adopted by the Town Board of the Town of Dunkirk on January 19,2021, by the following vote:

	AYE	NAY
Richard A. Purol, Supervisor	X	
Dr. G. Jay Bishop, Councilman	X	
Robert Penharlow, Councilman (absent)		
Juan Pagan, Councilman	X	
Henry Walldorff, Councilman (absent)		

A motion was made by Councilman Pagan to adopt the resolution. The motion was seconded by Councilman Bishop and carried.

AUDIT REPORT R.A. MERCER

Supervisor Purol received the audit report draft from R.A Mercer. He stated he was very happy with the draft and felt it was the most thorough audit review that had been done. He discussed the amount of time that the report took for Mercer and how much he worked with the Town Clerk on this. Supervisor Purol told Board members that he would send anyone copies to review it, if they are interested in doing so.

LEVEL 3 COMMUNICATIONS**RESOLUTION****Denial of Level 3 applications for Refunds/Credits of
Real Property Taxes Form RP 556 for the 2018 Tax**

WHEREAS, Level 3 communications, LLC (“Level 3”) has filed applications for a refund or credit pursuant to Real Property Tax Law Section 556 for the 2018 tax year, and

WHEREAS, the Chautauqua County Real Property Tax Director has investigated the circumstances of the claims of Level 3 in the applications, and

WHEREAS, the Chautauqua County Real Property Tax Director has transmitted a written report of such investigation and his recommendations for action thereon, and

WHEREAS, the Chautauqua County Real Property Tax Director has determined that the applications are without merit and recommends that the applications be denied for multiple reasons, and

WHEREAS, the Chautauqua County Real Property Tax Director has recommended that the applications be denied for the following specific reasons:

1. The fiber optic cables constitute taxable real property under multiple sections of Section 102 of the Real Property Tax Law as follows:

A. Fiber optic cable has been interpreted and taxed as real property for more than thirty years, and should continue to be taxed as real property;

B. The New York Court of Appeals has ruled that the fiber optic cables meet the definition of real property and constitute lines and wires pursuant to the Real Property Tax Law Section 102(12)(i) and are taxable under that section. *T-Mobile v. DeBellis and City of Mount Vernon*, 32 N.Y. 3d 594 (2018);

C. The fiber optic cables constitute fixtures and are taxable real property pursuant to Section 102(12)(b) of the Real Property Tax Law;

D. The Appellate Division, Fourth Department has specifically upheld the taxability of Level 3’s fiber optic installations located in Chautauqua County. *Level 3 communications v. Chautauqua County*, 174 A.D.3d 1502 (4th Dep’t 2019): see also *Level 3 Communications v. Erie County*, 174 A.D.3d 1497 (4th Dep’t 2019).

2. The applications are procedurally improper because the applications fail to establish a clerical error, unlawful entry, or an error in essential fact as those terms are defined by Section 550 of the Real Property tax Law. Numerous City and Town tax assessors have also analyzed Level 3’s claims and concluded that its allegations do not constitute an “unlawful entry: as that term is defined in Real Property Tax Law Section 550(7);

3. The applicant’s proper remedy is to bring tax certiorari proceeding under Article 7 of the

Real Property Tax Law challenging the assessments prospectively. No tax grievances or Article 7 proceedings have been filed by Level 3. The applications improperly seek retroactive tax refunds under inapplicable sections of the Real Property Tax Law.

WHEREAS, the Town of Dunkirk has carefully considered and fully agrees with the investigations and recommendations of the Chautauqua County Real Property Tax Director, it is hereby

RESOLVED, that all the Applications for Refunds/Credits of Real Property Taxes Form 556 for the 2018 tax year are hereby rejected and denied in their entirety for the reasons set forth above.

A motion was made by Councilman Pagan to adopt the letter of Denial for Level 3 communications. The Motion was seconded by Councilman Bishop and carried.

LOCAL LAWS FOR ATV'S

No action taken.

EMPLOYEE HANDBOOK

No action taken.

ATHENEX UPDATE FROM REPRESENTATIVE

No action taken.

CONTACT WITH COUNTY EXECUTIVE

No action taken.

ADJOURNMENT

With no further business, a motion was made by Councilman Pagan to adjourn the meeting. The motion was seconded by Councilman Bishop and carried unanimously. The meeting adjourned at 7:31 p.m.

Respectfully submitted,

Rebecca Yacklon
Deputy Town Clerk