

Agenda

Administrative Services Committee

TUESDAY – January 19, 2021, 5:00 p.m., Virtual Meeting via Zoom

Gerace Office Building, Mayville, NY

- A. Call to Order
- B. Approval of Minutes (12/7/20)
- C. Privilege of the Floor
 - 1. Proposed Resolution – Denial of Level 3 Applications for Refunds/Credits of Real Property Taxes Form RP 556 for the 2018 Property Tax
 - 2. Proposed Resolution - Amend Resolution 99-18 – Authorizing Sale and Option Agreements for Redevelopment of Roberts Road Properties in the City of Dunkirk
 - 3. Discussion - Real Property Tax Foreclosure Planning Proceedings – Kitty Crow & Todd Button
 - 4. Other

**CHAUTAUQUA COUNTY
RESOLUTION NO. _____**

TMT 1/12/2021 KMD 01/12/21 SMA 01/12/21 KLC 1/12/21 PMW 01/13/21

TITLE: Denial of Level 3 Applications for Refunds/Credits of Real Property Taxes Form RP 556 for the 2018 Property Tax

BY: Administrative Services and Audit & Control Committees:

AT THE REQUEST OF: County Executive Paul M. Wendel, Jr. and Chairman Pierre Chagnon:

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 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 a 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 Chautauqua County Legislature has carefully considered and fully agrees with the investigation and recommendations of the Chautauqua County Real Property Tax Director, it is hereby

RESOLVED, That all of 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.

APPROVED
VETOES (VETO MESSAGE ATTACHED)

County Executive

Date

SMA 1/12/21
MRG 1/13/21
KMD 01/13/21
KLC 01/13/21
PMW 01/13/21

**CHAUTAUQUA COUNTY
RESOLUTION NO. _____**

TITLE: Amend Resolution 99-18 Authorizing Sale and Option Agreements for Redevelopment of Roberts Road Properties in the City of Dunkirk

BY: Public Facilities, Administrative Services, and Audit & Control Committees:

AT THE REQUEST OF: County Executive Paul M. Wendel, Jr.:

WHEREAS, pursuant to Resolution 99-18, the County entered into sale and option agreements with Roberts Road Freezer LLC for the redevelopment of the former Edgewood, Roblin, and Alumax properties in the City of Dunkirk; and

WHEREAS, the sale of the Edgewood property was completed, and Roberts Road Freezer LLC demolished the former Edgewood structure and constructed a large refrigerated warehouse on the site; and

WHEREAS, at the request of Roberts Road Freezer LLC, the option for purchase of the Roblin and Alumax properties, as originally authorized in Resolution 99-18, only included the portion of the properties north of Progress Drive; and

WHEREAS, for purposes of future development, Roberts Road Freezer LLC has now advised the County that if it exercised the option, it would be willing to take the remainder of the property south of Progress Drive to enhance the potential opportunities for a project at the site; and

WHEREAS, it would be beneficial for the County to convey the tax foreclosed remainder of the properties south of Progress Drive to remove County responsibility for the vacant land, facilitate future development, and place the properties back on the tax rolls if the option is exercised; therefore be it

RESOLVED, That Paragraph "B" of the last RESOLVED clause of Resolution 99-18 regarding the option for purchase of the Alumax and Roblin properties is hereby amended as follows:

B. Option for Purchase of Alumax and Roblin (~~Part of~~ Tax Parcels 79.16-2-5, 79.12-4-29, 79.12-4-30)

1. Acreage. Approximately ~~9.92~~ 17.5 acres
2. Option Term. 10 years
3. Purchase Price. \$1.00, provided, however, that during years 6 through 10 the Purchaser shall be required to match any other offer received by the County
4. Environmental. To be negotiated upon exercise of option
5. Investment. To be negotiated upon exercise of option
6. Other. As negotiated by the County Executive

APPROVED

VETOES (VETO MESSAGE ATTACHED)

County Executive

Date