

## Agenda

Audit & Control Committee

**January 21, 2021, 8:35 a.m.**

**Virtual Meeting via Zoom**

Gerace Office Building, Mayville, NY

- A. Call to Order
- B. Approval of Minutes (12/10/20)
- C. Privilege of the Floor
  1. Proposed Resolution – Continuation of Interim Funding for North Chautauqua County Water District
  2. Proposed Resolution - Amend Resolution 99-18 – Authorizing Sale and Option Agreements for Redevelopment of Roberts Road Properties in the City of Dunkirk
  3. Proposed Resolution – Denial of Level 3 Applications for Refunds/Credits of Real Property Taxes Form RP 556 for the 2018 Property Tax
  4. Proposed Resolution – Authorize Acceptance of Indigent Legal Services Grant for the Period January 1, 2020 to December 31, 2022
  5. Proposed Resolution – Confirming 2021 Salary of Public Defender
  6. Proposed Resolution – Amend Capital Project H.6010.31003
  7. Proposed Resolution – Accept Grant Funding from the Chautauqua Region Community Foundation to Update the Chautauqua County Agriculture and Farmland Protection Plan
  8. Proposed Resolution – Authorize Chautauqua County State Grant Application and Commitment of Matching Funds for County Complex Green Infrastructure Retrofit Project
  9. Discussion – Debbie Zahn – Compliance Officer
  10. Discussion - Real Property Tax Foreclosure Planning – Kitty Crow and Todd Button
  11. Other



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

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**APPROVED**

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**VETOES (VETO MESSAGE ATTACHED)**

\_\_\_\_\_  
**County Executive**

\_\_\_\_\_  
**Date**

**CHAUTAUQUA COUNTY  
RESOLUTION NO. \_\_\_\_\_**

<b>TMT 1/12/2021 KMD 01/12/21 SMA 01/12/21 KLC 1/12/21 PMW 01/13/21</b>
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**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.

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**APPROVED**  
**VETOES (VETO MESSAGE ATTACHED)**

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**County Executive**

\_\_\_\_\_  
**Date**

**CHAUTAUQUA COUNTY  
RESOLUTION NO. \_\_\_\_\_**

NLB 12/30/2020
KMD 01/04/21
ABC 01/04/21
SMA 01/04/21
KLC 1/5/21
PMW 01/08/21

**TITLE:** Authorize Acceptance of Indigent Legal Services Grant for the Period  
January 1, 2020 to December 31, 2022

**BY:** Public Safety and Audit & Control Committees:

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

WHEREAS, the Chautauqua County Office of the Public Defender has been awarded a grant by the New York State Office of Indigent Legal Services, with a funding level of \$269,919 for the operational period of January 1, 2020 through December 31, 2022; and

WHEREAS, the County of Chautauqua has participated in this program in the past and is desirous of accepting such grant; and

WHEREAS, such project funds will assist the County in providing improved quality of services under Article 18-B of the County Law; and

WHEREAS, revenue from this grant is included in the 2020 and 2021 Adopted Budgets so no budget amendments are necessary; now therefore be it

RESOLVED, That the County of Chautauqua hereby authorizes and approves the funding application and confirms acceptance of the funding of the grant for New York State Indigent Legal Services for the period of January 1, 2020 through December 31, 2022 in the amount of \$269,919, or as amended; and be it further

RESOLVED, That the County Executive be and hereby is authorized to sign any and all contract documents to confirm the application and acceptance and receipt of such grant; and be it further

RESOLVED, That a certified copy of this resolution be forwarded to the New York State Office of Indigent Legal Services.

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**APPROVED**

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**VETOES (VETO MESSAGE ATTACHED)**

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**County Executive**

\_\_\_\_\_  
**Date**

**CHAUTAUQUA COUNTY  
RESOLUTION NO. \_\_\_\_\_**

PEC 1/4/21 KMD 01/04/21 SMA 01/04/21
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**TITLE:** Confirming 2021 Salary of Public Defender

**BY:** Public Safety and Audit & Control Committees:

**AT THE REQUEST OF:** Chairman Pierre E. Chagnon:

WHEREAS, Pursuant to Resolution 4-20, the County Legislature established the 2021 salary of the Public Defender to be an annual base salary of \$83,618.00, with an additional salary supplement subject to confirmation by the County Legislature to the extent of available grant funds received from the New York State Office of Indigent Legal Services (OILS) with no local share; and

WHEREAS, the County Legislature accepted a \$269,919.00 grant from OILS pursuant to Resolution 187-20, which contains \$89,973.00 to be utilized for the additional salary supplement for the Public Defender in 2021; and

WHEREAS, the Budget Director has calculated the appropriate allocation of the \$89,973.00 between salary and benefits expense; therefore be it

RESOLVED, That the County Legislature hereby confirms the amount of \$74,321.00 as the additional 2021 salary supplement for the Public Defender to be funded by the grant from OILS referenced above with no local share.

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**APPROVED**  
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**VETOES (VETO MESSAGE ATTACHED)**

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**County Executive**

\_\_\_\_\_  
**Date**

**CHAUTAUQUA COUNTY  
RESOLUTION NO. \_\_\_\_\_**

CLS 01/08/21
KMD 01/08/21
ABC 01/08/21
SMA 01/08/21
KLC 01/08/21
PMW 01/11/21

**TITLE:** Amend Capital Project H.6010.31003

**BY:** Human Services and Audit and Control Committees:

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

WHEREAS, Chautauqua County approved Capital Project H.6010.31003 SCOB 1<sup>st</sup> Floor Reno (2021) in the 2021 Capital Budget; and

WHEREAS, the cost of Project H.6010.31003 was established at \$111,500, of which \$44,300 of expenditures were scheduled for 2020 and \$67,200 in expenditures were scheduled for 2021; and

WHEREAS, the 2020 capital plan was finalized before Project H.6010.31003 was approved so the 2020 expenditures were to be proposed as a use of local funds, but implementation of the project was delayed so no funding was requested in 2020; now therefore be it

RESOLVED, That the Reserve for Capital is adjusted as follows:

INCREASE THE USE OF FUND BALANCE:

A.----.----.878.0000	Reserved Fund Balance – Reserve for Capital	\$44,300
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; and be it further

RESOLVED, That the Director of Finance is authorized and directed to make the following amendments to the 2021 Adopted Budget:

INCREASE APPROPRIATION ACCOUNT:

A.9950.----.9	Interfund Transfers – Transfer to Capital	\$44,300
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INCREASE CAPITAL REVENUE ACCOUNT:

H.6010.31003.R503.1000	Interfund Transfers – Interfund Transfer	\$44,300
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INCREASE CAPITAL APPROPRIATION ACCOUNT:

H.6010.31003.4	Contractual—Social Services Admin, SCOB 1 <sup>st</sup> Floor Reno (2021)	\$44,300
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**APPROVED**

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**VETOES (VETO MESSAGE ATTACHED)**

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**County Executive**

\_\_\_\_\_  
**Date**

**CHAUTAUQUA COUNTY  
RESOLUTION NO. \_\_\_\_\_**

MRG 12/29/20
KMD 01/04/21
ABC 01/05/21
SMA 01/05/21
KLC 01/05/21
PMW 01/08/21

**TITLE:** Accept Grant Funding from the Chautauqua Region Community Foundation to Update the Chautauqua County Agriculture and Farmland Protection Plan

**BY:** Planning & Economic Development and Audit & Control Committees:

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

WHEREAS, Chautauqua County's agricultural industry and agricultural markets have changed over the past twenty years, creating new and evolving challenges; and

WHEREAS, the current Chautauqua County Farmland Protection Plan was adopted in 2000 and reflects agricultural and economic information that is outdated; and

WHEREAS, the Chautauqua 20/20 Comprehensive Plan prioritizes strategies to protect and support the County's agricultural resources and economy, and to promote agri-tourism and alternative enterprises that support the viability of farms; and

WHEREAS, an updated Chautauqua County Agriculture and Farmland Protection Plan will provide resources and strategies to protect agricultural lands and support economic viability of agriculture and related businesses; and

WHEREAS, pursuant to Resolution 253-19, the Chautauqua County Legislature accepted a \$50,000 grant from the New York State Department of Agriculture and Markets to update the Chautauqua County Agriculture and Farmland Protection Plan; and

WHEREAS, the Chautauqua Region Community Foundation has pledged \$30,000 towards the required match for this project upon its start; and

WHEREAS, the Cornell Cooperative Extension of Chautauqua County and the Chautauqua County Department of Planning and Development will provide \$20,000 in staff time, contributing to the required match; now therefore be it

RESOLVED, That the County Executive is hereby authorized to officially accept a \$30,000 grant from the Chautauqua Region Community Foundation and execute all agreements necessary to implement said funding.

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**APPROVED**

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**VETOES (VETO MESSAGE ATTACHED)**

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**County Executive**

\_\_\_\_\_  
**Date**





Excellence. Accountability. Impact.™  
This seal confirms compliance with all standards  
and policies for U.S. Community Foundations



*Enriching the Quality of Life in the Chautauqua Region*

December 7, 2020

Ms. Melissa Keller  
Chautauqua County Dept. of  
Planning & Economic Dev.  
214 Central Ave.  
Dunkirk, NY 14048

Dear Melissa:

This letter will serve as confirmation the **Community Service Special Projects Grant** funding awarded July 18, 2018 in the amount of **\$30,000** towards the **Ag as Economic Development - Farmland Protection Plan** is still available. I am happy that monies from the Fund for the Region at Chautauqua Region Community Foundation can assist you in making your project a success.

It is my understanding you have the original Grant Agreement on file in your office. The document outlines the terms of your award. Please note the following areas:

**Reports to the Foundation** – Full financial accounting on the use of the funds and final reporting will be required as noted in the Grant Agreement. Failure to complete the Reports will result in the denial of any future funding requests.

At the time you are ready to proceed with the project, sign the area indicated on Page 2 and return Page 1 and Page 2 of the agreement to the Foundation's office, Attention Program Officer. Upon receipt of the signed Grant Agreement, your check will be processed within two weeks.

The Community Foundation finds a great deal of satisfaction in awarding you this grant. Together we can enrich the quality of life in the Chautauqua Region.

Sincerely,

A handwritten signature in blue ink that reads "Tory".

Tory Irgang  
Executive Director

Enclosures

**CHAUTAUQUA COUNTY  
RESOLUTION NO. \_\_\_\_\_**

<b>DLM 12/31/20</b>
<b>KMD 01/04/21</b>
<b>ABC 01/04/21</b>
<b>SMA 01/04/21</b>
<b>KLC 01/05/21</b>
<b>PMW 01/08/21</b>

**TITLE:** Authorize Chautauqua County State Grant Application and Commitment of Matching Funds for County Complex Green Infrastructure Retrofit Project

**BY:** Planning & Economic Development and Audit & Control Committees:

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

WHEREAS, Chautauqua Lake is an invaluable asset to Chautauqua County but has been designated as an impaired water body and its health and usability are threatened; and

WHEREAS, the New York State Consolidated Funding Application (CFA) offers state-wide grant funding programs that provide an opportunity to significantly leverage local resources; however, these grant programs are extremely competitive and require a local match in cash and/or in-kind services; and

WHEREAS, New York State recently announced a CFA opportunity from the New York State Environmental Facilities Corporation Green Innovation Grant Program (GIGP), which offers state grant funding for innovative water quality related projects and requires a local match; and

WHEREAS, the Chautauqua County Department of Planning and Development (CCDPD), the Chautauqua Lake and Watershed Management Alliance (hereinafter called "the Alliance"), the Village of Mayville, and the Town of Chautauqua successfully partnered to procure state funding pursuant to Resolution 194-17, which produced an engineering study identifying stormwater projects located within the Village of Mayville and Town of Chautauqua that can now be pursued for implementation funding and will have a positive impact on the environmental health of Chautauqua Lake; and

WHEREAS, CCDPD, in partnership with the Alliance and the Chautauqua County Department of Public Facilities (DPF), identified the County Complex Green Infrastructure Retrofit Project from the Mayville-Chautauqua Stormwater Engineering Study for application to the GIGP grant program, which provides reimbursement for up to 90% of total project costs as shown in the following table; and

<b>Project Title</b>	<b>Total Project Costs</b>	<b>NYS CFA Funding Requested</b>	<b>Commitment of County Cash Matching Funds*</b> (Chautauqua County DPF Mayville Parking Lot Reconstruct Acct.)	<b>Commitment of County Cash Matching Funds**</b> (reallocated Alliance member water quality projects program funds established under Resolution 131-15)
County Complex Green Infrastructure Retrofit Project	\$1,396,010.00	\$1,256,409.00	<b>\$100,349.00*</b>	<b>\$39,252.00**</b>

\*County Cash Match source from already-approved Chautauqua County DPF *Mayville Parking Lot Reconstruct* Account.

\*\*County Cash Match source from reallocated Alliance member water quality projects program funds established under Resolution 131-15.

**APPROVED**  
**VETOES (VETO MESSAGE ATTACHED)**

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
Date

WHEREAS, pursuant to Resolution 131-15, the County reallocated project program dollars to the Alliance to specifically provide matching funding for grants to undertake the Alliance's member water quality projects to help Chautauqua Lake and its watershed and has \$39,252 still available; and

WHEREAS, based on improvements already needed for the County's complex infrastructure, it is in the best interest of the County to apply for such financial assistance when available; therefore be it

RESOLVED, That the County Executive is authorized to apply for a New York State Environmental Facilities Corporation GIGP grant for funding assistance for the County Complex Green Infrastructure Retrofit Project; and be it further

RESOLVED, That the County shall commit a cash match of \$139,601 in local funding toward the County Complex Green Infrastructure Retrofit Project.

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**APPROVED**

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**VETOES (VETO MESSAGE ATTACHED)**

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**County Executive**

\_\_\_\_\_  
**Date**