

**COUNCIL MEETING
THURSDAY, MARCH 10, 2016
COUNCIL CHAMBERS
www.lackawannany.gov**

Regular session of the Lackawanna City Council met in the Council Chambers, Council President Keith Lewis presiding. The meeting was preceded by the Pledge of Allegiance led by Council President Lewis.

Meeting called to order

NB: Meeting being recorded

**Roll Call: Council: Present: Lewis, Noman, Iafallo, Jerge, DePasquale
Dept. Heads: Present: Comptroller, Development, Public Safety
Public Works, City Attorney
Excused: Recreation**

Approval of Minutes: of regular meeting of February 23, 2016

Moved by DePasquale seconded by Lewis to adopt minutes of regular meeting of February 23, 2016 as written

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Departmental Reports:

1. City Comptroller-A/P Check Listing #30, February 17, 2016
2. City Comptroller-A/P Check Listing #31, February 24, 2016
3. City Comptroller-A/P Check Listing #32, February 29, 2016
4. City Comptroller-A/P Check Listing #33, March 2, 2016
5. City Comptroller-Statement of Condition of Appropriations as of January 31, 2016
6. City Clerk-Monthly Report for February 2016
7. City Treasurer-Receipts deposited into General Fund-February 2016

Moved by Jerge seconded by Lewis to receive and file departmental reports one thru seven

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Communications from the Mayor:

2016 Dyngus Day Parade

8. To: City Council

I am requesting your Honorable Body allow that Ridge Road be closed to traffic on Monday, March 28th immediately following 12:00 PM mass at the basilica to city hall for the annual Dyngus Day Parade. I would like to invite all council members to attend this event if possible. Thank you in advance for your anticipated cooperation on this matter.

MAYOR SZYMANSKI

Moved by Lewis seconded by Iafallo to grant request to close Ridge Road to traffic for the parade on March 28, 2016

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Communications from the Council:

Outside Counsel-Final Payment

9. To: City Council

I requested that the City Comptroller prepare an ordinance for payment to the outside counsel, which would cover the final invoice due to Barclay Damon in the amount of \$6,900.00.

KEITH E LEWIS-COUNCIL PRESIDENT

Moved by Lewis seconded by Noman to receive and file act on ordinance

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Communications from Department/Division Heads:

Level 3 Communications

10. To: City Council

Please put the attached resolution on the agenda for council approval. Thank you.

ANTONIO SAVAGLIO-CITY ATTORNEY

Moved by Lewis seconded by DePasquale to receive and file, act on resolution

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Amend Chapter 194-Streets and Sidewalks

11. To: City Council

Please put the attached ordinance on the agenda for council approval. Thank you.

ANTONIO SAVAGLIO-CITY ATTORNEY

Moved by Jerge seconded by Iafallo to receive and file, act on ordinance

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Police Cars-Emergency Lighting

12. To: City Council

The Lackawanna Police Department has purchased two (2) 2015 Dodge Durango vehicles to replace two older police patrol vehicles which were removed from the current patrol vehicle fleet. The two Dodge Durango vehicles were sent to 10-75 Emergency Lighting, 6300 Seneca Street, Elma, New York 14059, to have the required emergency equipment installed on each of the vehicles.

Attached hereto, is a copy of the two invoices from 10-75 Emergency Lighting Company which detail the cost of equipping each of the two 2015 Dodge Durango vehicles, at a cost of \$6,492.99 each, for a total expense of \$12,985.98.

Currently, the Lackawanna Police Department Patrol Vehicle budget line A3120-250 contains insufficient funds, in the amount of \$2,788.98, to cover the cost of the installation of the required emergency equipment. To cover the shortfall in budget line A3120-250, it is respectfully

requested that a transfer of funds, in the amount of \$2,788.98, from budget line A3120-405, Police Department Supplies, to budget line A3120-250, Police Department Police Vehicles, be authorized to cover the total payment, in the amount of \$12,985.98, to 10-75 Emergency Lighting.

I thank you in advance, for your anticipated approval of this request.

JAMES KUNA-DIRECTOR of PUBLIC SAFETY

Moved by Lewis seconded by Jerge to receive and file, act on ordinance

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

South Park Ave. & Ridge Rd.-Designation as NYS Highways

13. To: City Council

Once again New York State Senator Timothy Kennedy has introduced legislation to designate South Park Avenue and Ridge Road within the City of Lackawanna as New York State Highways.

Previously this Honorable Body has recognized the potential savings of this initiative and has approved and requested the enactment of this legislation as being in the best interest of the City of Lackawanna.

Accordingly, it is hereby requested that this Honorable Body approve this item and adopt the corresponding Resolution.

FRED K HEINLE-DIRECTOR of DEVELOPMENT

Moved by Lewis seconded Iafallo to receive and file, act on resolution

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

“Make it Happen Event”-Casey Family Program Report

14. To: City Council

Attached for your perusal please find the report compiled by the Casey Family Programs following the January 26, 2016 “Make it Happen” event. Although, this report represents a wealth of information, I would strongly suggest that it is not something that we were not aware of.

Fundamentally, the focus of the event and information spelled out in the report deals primarily with youth related issues, there appears to be a common thread that too often we work in silo’s and there is an apparent failure to share and/or disburse information.

(Complete report on file with City Clerk)

FRED K HEINLE-DIRECTOR of DEVELOPMENT

Moved by Lewis seconded by Jerge to receive and file

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Power Purchase Agreement-Utility Transfer

15. To: City Council

As you are aware the City of Lackawanna department of Development has negotiated a Power Purchase Agreement with Solar Projects Solutions, Inc. to provide clean energy to the City of Lackawanna which will provide an energy savings to the City of Lackawanna estimated to be \$1.379M over the next twenty (20) years.

The proposed solar installation is to be located on City of Lackawanna property at the end of Willet Road backing up to the New York State Thruway.

Submitted herewith for discussion is the proposed site plan and supporting documentation. Approval for the Power Purchase Agreement together with the First Amendment to the Power Purchase Agreement is hereby requested. Upon such approval the proposed site plan will be submitted to the Planning and Development Board and the Zoning Board of Appeals as appropriate.

FRED K HEINLE-DIRECTOR of DEVELOPMENT

Moved by Jerge seconded by Noman to approve request

Passed: Lewis

Yeas: Noman, Iafallo, Jerge, DePasquale

Yeas: Lewis

Carried 5-0

Business Registration

(1) Richard Richardson- DBA Hi-Mike Hi-Tech-126 Holland Ave.-computer repair

Moved by DePasquale seconded by Jerge to approve business registration

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

(2) Adam A. Hamideh & Joe Yahia A. Darwish- DBA Tire Depot & Auto Tires- 316 Ridge Rd.- Auto Mechanic /tire sale & repair

Moved by Lewis seconded by Noman to approve business registration

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Resolutions:

(1) **Resolution #9, 2016**

Denial of Level 3 Applications for Correction of Multiple-Parcel Errors

WHEREAS, Level 3 Communications, LLC (“Level 3”) has filed Applications for Correction of Multiple-Parcel Errors on Form RP 556-b pursuant to Real Property Tax Law Section 556-b for the 2010, 2011, and 2012 tax years, and

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

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

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

1. The fiber optic cable constitutes taxable property under multiple sections of Section 102 of the real Property Tax Laws 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 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 cable constitutes 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 have no foundation, are not authoritative, were written many years after the New York State Legislature enacted the language continued 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 Erie 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 Erie 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 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 applications fail to contain any information from any engineer, expert, person, or employee with personal knowledge with respect to the cable lines in question.

3. 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 confirmed my analysis that Level 3's allegations do not constitute an "unlawful entry" as that term is defined in Real Property Tax Law Section 550(7). There was no entry of assessed valuation on an assessment roll or tax roll made by an unauthorized person or body.

- 1. Form RP 556-b is wholly inapplicable to Petitioner's application and claims.
 - (A) Real Property Tax Law Section 556-b is applicable only to four specific types of clerical errors, none of which exist or apply with respect to Level 3's claims.
 - (B) There was no "mistake in the determination or transcription of a special assessment" or "charges based on units of service provided by a special district."
 - (C) There was no mathematical error or real property located entirely outside the boundaries of the assessing unit.
 - (D) The Appellate Division, Third Judicial Department, has previously ruled that Level 3 incorrectly used RPTL Section 556-b to apply for the relief it seeks. *Level 3 Communications, LLC v. Essex County*, 129 A.D. 3d 1255.1257 (3rd Dept., 2015).

2. 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.

3. The RP 556-b 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.

4. The RP 556-b applications are also time-barred and untimely with respect to the 2010 tax year because they were not filed within three years from the annexation of the warrants for such taxes as required by Real Property Tax Law, Section 556(1)(a).

5. The applications are untimely and barred by the four-month statute of limitations because they were file more than four months after the assessment rolls became final and binding. See *Press v. County of Monroe*, 50 N.Y. 2d 695 (1980)

6. 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)

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), and

WHEREAS, the City of Lackawanna has carefully considered and fully agrees with the investigation and recommendations of the Erie county Real Property Tax Director, it is hereby

RESOLVED, that all of the Level 3 Applications for Correction of multiple-Parcel Errors on Form RP 556-b dated May 29, 2013 are hereby denied in their entirety for the reasons set forth above.

Moved by Lewis seconded by Jerge to adopt resolution as written
Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

(2) Resolution #10, 2016
Designating South Park Ave. & Ridge Rd. as NYS Highways

WHEREAS, New York State Senator Timothy Kennedy has introduced legislation to designate South Park Avenue and Ridge road within the City of Lackawanna as New York State highways, a copy of said legislation attached hereto and made part hereof, and

WHEREAS, the City Council deems this to be in the best interest of the City of Lackawanna to support said legislation, and
WHEREAS, the City of Lackawanna does not have the power and or authority to enact such legislation by local law

NOW, THEREFORE, BE IT

RESOLVED, that the Lackawanna City Council hereby approves of and requests the enactment of the aforesaid legislation, and be it further

RESOLVED, that the Mayor is hereby authorized to request that the aforesaid legislation be enacted, and

RESOLVED, that the Mayor is further authorized to submit a request to the New York State Legislature to support and enact the legislations as introduced by Senator Kennedy.

THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY

Moved by Lewis seconded by Noman to adopt resolution as written
Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Ordinances:

(1) Barclay Damon-Final Payment-Outside Counsel

AN ORDINANCE AMENDING THE 2015-2016 BUDGET ORDINANCE ADOPTED JULY 16, 2015

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

SECTION 1. That the 2015-2016 Budget Ordinance adopted July 16, 2015 is hereby amended to increase appropriations for Outside Counsel Fees

SECTION 2. That the 2015-2016 Budget Ordinance is hereby amended to add \$6,900.00 to budget code A.1010.465 City Council, Outside Counsel Fees

SECTION 3. That the 2015-2016 Budget Ordinance is hereby amended to appropriate \$6,900.00 of the City's Fund Balance

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

Moved by Lewis seconded by DePasquale to adopt ordinance as written, making final payment for outside counsel

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

(2) Snow Removal-Streets & Sidewalks

AN ORDINANCE AMENDING CHAPTER 194 STREETS AND SIDEWALKS, OF THE MUNICIPAL CODE

BE IT ENACTED by the City Council of the City of Lackawanna, New York, that City Code 194.26 is hereby amended as follows:

194-26. Depositing snow or ice upon private properties

It shall be unlawful for any person to throw or deposit, or to permit or cause to be thrown or deposited, any snow or ice, which has fallen or accumulated on his or her property, upon the private property of another person.

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

Moved by Lewis seconded by Jerge to adopt ordinance as written

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

(3) Police Vehicle-Emergency Lighting

AN ORDINANCE AMENDING THE 2015-2016 BUDGET ORDINANCE ADOPTED JULY 16, 2015

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

SECTION 1. That the 2015-2016 Budget Ordinance adopted July 16, 2015 is hereby amended to transfer appropriations to Police Cars from Police Department Supplies

SECTION 2. That the 2015-2016 Budget Ordinance is hereby amended to transfer \$2,788.98 to budget code A.3120.250 Police, Police Cars

SECTION 3. That the 2015-2016 Budget Ordinance is hereby amended to transfer \$2,788.98 from budget code A3120.405 Police, Department Supplies

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

Moved by Jerge seconded by Noman to adopt ordinance as written

Yeas: Lewis, Noman, Iafallo Jerge, DePasquale

Carried 5-0

(4) Sale of Property-1266 Ridge Rd-Kim Krog

AN ORDINANCE AUTHORIZING THE SALE/TRANSFER OF PROPERTY PURSUANT TO MUNICIPAL CODE SECTION 107

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

SECTION 1. That the City Council hereby approves of the transfer of property known as 1266 Ridge Road, a parcel approximately 56x130, to Kim Krog

SECTION 2. That transfer is made for the sum of \$4,000 in cash to the City of Lackawanna

SECTION 3. That the purchaser/transferee shall be responsible for expenses related to the transfer other than those specifically belonging to the City of Lackawanna

SECTION 4. That the Law Department shall prepare documents to be executed for the transfer of the property including a reverter clause for work to be complete within one year

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

Moved by Jerge seconded by Lewis to adopt ordinance as written

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Waive Rules:

Moved by Lewis seconded by Jerge to waive rules regarding business registration

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Order the Cessation of Business and/or Revocation of Business Registration

To: City Council:

In accordance with Chapter 88. Business, Registration of; Section 88-13.B. (a copy of which is attached hereto) request for the immediate cessation of business operations located at 283 Ridge Road is hereby presented. Based upon recent activities entered at said property the Director of Public Safety and I have determined that such action by this Honorable Body would be in the best interest of the residents of the City of Lackawanna.

Attached for your perusal please find a copy of the Wednesday, March 9, 2016 Lackawanna Police Department report that lists the arrest of two (2) individuals and outlines the activities that led to such arrest.

Section 87-13.B. clearly grants the authority for this Honorable Body to undertake such action when it has determined as follows:

“When the conduct of any registrant, agent or employee is so detrimental to the public good, welfare, health, safety or morals so as to constitute an immediate danger...and thus give rise to an emergency, the City Council, on majority vote, shall have the authority to order the cessation of business and/or the revocation of the certificate...”

Accordingly, it is hereby requested that this Honorable Body approve this item and order the immediate cessation of all business activities at the location and schedule a special hearing within five (5) days of this action as required by Section 87-13.B.

FRED K HEINLE-DIRECTOR of DEVELOPMENT

Moved by Lewis seconded by Noman to revoke the business registrations for E&W Bar & Grill and Steel City Productions at 283 Ridge Road

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Executive Session:

Moved by Lewis seconded by Noman to move to executive session regarding litigation at 7:49 PM

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale

Carried 5-0

Meeting reconvened at 8:30 PM

Roll Call: Present: Lewis, Noman, Iafallo, Jerge, DePasquale

Moved by Lewis seconded by Jerge to approve proposed settlement in the case of Pyanowski vs. City of Lackawanna

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale Carried 5-0

Adjournment:

Moved by Lewis seconded by Iafallo, meeting is adjourned

Yeas: Lewis, Noman, Iafallo, Jerge, DePasquale Carried 5-0

Keith E. Lewis, Council President

Jacqueline A Caferro, City Clerk