

**WESTFIELD ACADEMY AND CENTRAL SCHOOL  
Board of Education**

**Supplemental Business Meeting**

**PROPOSED AGENDA  
Monday, November 23, 2020  
7:00 p.m.**

**ADDENDUM**

3.0 Information and Discussion Items

3.2 Discussion Items

d. Letter Advocating for School Funding

6.0 Action Items

6.1 New Business

- c. Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_, that the Westfield Academy and Central School District Board of Education, upon the recommendation of the Superintendent, hereby approve the following resolution:

SCHOOL DISTRICT: Westfield Academy and Central  
Name of Entity

Re: Denial of Level 3 Applications for Refunds/Credits of  
Real Property Taxes Form RP 556 for the 2017-2018 School Tax

WHEREAS, Level3 Communications, LLC ("Level 3") has filed applications for a refund or credit pursuant to Real Property Tax Law Section 556 for the 2017-2018 tax year, and

WHEREAS, the Chautauqua County Real Property Tax Director has investigated the circumstances of the claims of Level3 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. All of the applications are untimely, as none of them were filed within three years of the annexation of the warrant for the collection of such school taxes.

2. 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)(1) 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 Level13's fiber optic installations located in Chautauqua County.

Level 3  
Communications v. Chautauqua County, 174 A.D.3d 1502 (4th Dept 2019); see also Level 3  
Communications v. Erie County, 174 A.D.3d 1497 (4th Dept 2019).

3. 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 Level13'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);

4. 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 Level13. The applications improperly seek retroactive tax refunds under inapplicable sections of the Real Property Tax Law.

WHEREAS, School District 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 2017-2018 tax years are hereby rejected and denied in their entirety for the reasons set forth above.

#### CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Westfield Academy and Central School District, at its meeting held on November 23, 2020.

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District Clerk

Dated: November \_\_\_\_, 2020

f. Personnel Items:

3. Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_, that the Westfield Academy and Central School District Board of Education, upon the recommendation of the Superintendent, hereby approves the appointment of Michael Alexander as a substitute cleaner for the remainder of the 2020-21 school year, effective November 20, 2020.