

FEBRUARY 12, 2018

The third regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Monday, February 12, 2018, 6:30 PM, with Deputy Mayor Edward J. McCague presiding. Trustees present were Ellen E. Barnes, Randall G. Holcomb and Douglas L. Schutte. Also present were Village Clerk Joseph M. Johnson, Village Treasurer Andrea J. Windoft, Police Chief John R. Bentley, Village Attorney John I. LaMancuso, Department of Public Works Supervisor Thomas R. Pilling and Fire Chief Steve Smouse. Absent were Mayor Cara Birrittieri and Building Inspector Jeffrey A. Swanson.

#### MOMENT OF SILENCE

Deputy Mayor McCague asked everyone in attendance to join him and members of the Board of Trustees for a moment of silence, in memory and honor of Mayor Birrittieri's mother-in-law Mrs. Helen Mae Smith, who died February 3, 2018. Mr. McCague said Mrs. Smith was a long time Village of Lakewood resident and although he didn't know her very long, it was clear she was all about Lakewood.

#### APPROVAL OF MINUTES

Motion by Trustee Barnes seconded by Trustee Schutte, to approve the minutes of the last regular meeting of the Board of Trustees, held January 22, 2018. Adopted: 4 ayes, no nays (Barnes, Holcomb, McCague, Schutte)

#### AUDIT OF CLAIMS

Motion by Trustee Schutte, seconded by Trustee Barnes, that the claims as audited by the Auditing Committee of the abstracts dated February 12, 2018 be approved and that the Clerk shall execute said abstracts (#35 & #36) and direct payment by the Treasurer. Trust & Agency Fund: \$ 58,388.11, (Checks #4333 thru #4341), General Fund: \$ 89,380.19, (Checks #14504 thru #14558) Adopted: 4 ayes, no nays (Barnes, Holcomb, McCague, Schutte)

#### ANYONE TO BE HEARD

Mr. Rich Fischer, 43 West Fairmount Ave., said it was unfortunate during the public hearing two weeks ago the representative from Charter Communications, failed to mention that it is now going to cost customers \$ 8.50 per television set to allow a digital signal to be received, unless their televisions have digital capabilities already. Mr. Fischer said with two televisions, his monthly TV cable bill will increase from \$ 33.00 to \$ 50.00. Mr. Fischer indicated there was also an increase in monthly electric and water bills. All these slight increases in utility and cable television costs add up quickly and definitely impact those living on fixed incomes.

Changing subjects, Mr. Fischer said he had an issue with a recent newspaper article which stated the cell tower litigation has been settled when in reality it is his understanding there is other litigation regarding the proposed cell tower that is ongoing. Mr. Fischer then asked Village Treasurer Windoft if she could share how much money the Village of Lakewood has spent on legal fees in connection with litigation regarding the proposed cell tower.

Mrs. Windoft said over the past two fiscal years the Village of Lakewood has expended approximately \$50,000.00 of unbudgeted funds on legal fees in connection with the cell tower litigation.

Mr. Fischer then asked how long is the cell tower litigation, currently tied-up in federal court, expected to last.

FEBRUARY 12, 2018 (CONTINUED)

Village Attorney John I. LaMancuso indicated to Mr. Fischer it is hard to say how long the litigation will last.

Mr. Thomas Marlinski, 36 Ohio Ave., said he is here this evening to again ask the Board of Trustees to come up with resolution or amended permit to deal the loud amplified music emanating from the outside deck at Craft Burgers & Brews, 60 Chautauqua Ave. Mr. Marlinski said with another bar opening soon at the former Yesterdays location they will want to be able to have live music like Craft Burgers & Brews does. He then asked what would prevent other businesses along Chautauqua Ave. from also having music of some sort. Mr. Marlinski said something needs to be done soon that addresses this issue, and suggested that if a business wants to provide amplified music, then they should be asked to move it inside.

Deputy Mayor McCague indicated to Mr. Marlinski that there is a noise ordinance currently in place that states there shall be no music after 10:00 PM.

Mr. Marlinski said the current noise ordinance doesn't adequately address loud amplified music that happens before 10:00 PM. When I'm sitting in my house I can easily hear the music from the outside deck at Craft Burgers & Brews. It can only get worse in the summer time when my windows will be open.

Deputy Mayor McCague said because we've had this conversation previously, this Board will have to go back and look into the matter, and told Mr. Marlinski they wouldn't be able to provide him with any answers this evening.

Mr. Marlinski indicated that the Board of Trustees and the Zoning Officer should review the permit that was issued to Craft Burgers & Brews, to serve food and alcoholic beverages, but doubts the permit included allowing music on the outside deck. He then asked what kind of permit was issued to Group Ther-Happy. It was probably the same, allowing them to serve food and alcoholic beverages, but nothing about having outside music. He added the Board of Trustees should be able to amend the original permits as needed.

Deputy Mayor McCague said he hasn't seen the actual permit that was issued to Craft Burgers & Brews and Group Ther-Happy, but he and other members of the Board of Trustees would be happy to take a look at them.

Trustee Barnes said it would behoove the Board of Trustees to review the permits that were issued to Craft Burgers & Brews and Group Ther-Happy and have Building Inspector Swanson explain what is actually covered via the permits. She added the Board of Trustees may have to look more closely at how permits are issued for certain uses.

Village Clerk Johnson indicated the original special use permit that was

issued to Craft Burgers & Brews did not take into consideration the use of outside deck which was added onto the north side of the restaurant at a later date.

Deputy Mayor McCague agrees with Trustee Barnes, saying that we as the Board of Trustees, along with Police Chief Bentley, Building Inspector Swanson and Village Attorney need to revisit the process when issuing special use permits and what uses they should or shouldn't include.

Mr. Marlinski indicted if something isn't done soon he might have to take some kind of legal action against Craft Burgers & Brews and the Village of Lakewood, who issued the business a special use permit. He said members of the Board of Trustees aren't impacted by the amplified music because they don't live across the street from the restaurant.

Deputy Mayor McCague said he doesn't want to appear unsympathetic, but he doesn't have an answer other than what has been discussed previously.

FEBRUARY 12, 2018 (CONTINUED)

We will be happy to look into the matter again, however there needs to be a balance between the commercial corridor along Chautauqua Ave. and the adjacent residential neighborhoods. Deputy Mayor McCague added we will need to gather more information and talk to the respective department heads so as to sort it all out.

Trustee Holcomb agreed, saying with another similar establishment opening soon, there is a need to have a policy in place that addresses the noise issue, because there is the potential of another set of neighbors being impacted.

Village Attorney LaMancuso said he hasn't looked at the local zoning in detail to see what extent the regulations that are in place address noise issues, but if there is a violation of the current zoning law, the complainant, (Mr. Marlinski), has the option of filing a written complaint form with the Village Clerk, which would subsequently be investigated by the Building Inspector/Code Enforcement Officer.

Trustee Barnes indicated having spoken with Mr. Marlinski about the noise issue, he is not against all music, only the music that is amplified and can be heard from inside his house.

#### REPORTS

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has handled one thousand thirty-nine incidents year-to-date, five hundred seventy-six of which have occurred in the past three (3) weeks. Chief Bentley said he attended a recent meeting of the Chautauqua County Traffic Safety Committee and the results of a report on the traffic study done at the intersection of East Fairmount Ave. and Shadyside Ave., to determine if a traffic control device is warranted, is expected to be available within a few weeks. Chief Bentley also reported that some of the computers currently in use at the L-BPD have been upgraded.

Trustee Barnes asked Chief Bentley if he had an update regarding the new radios for the L-BPD.

Chief Bentley indicated all the mobile and portable radios are in, however we are still waiting for the repeaters to be delivered for installation by the Chautauqua County Radio Department.

Fire Chief Steve Smouse submitted a detailed Alarm Report for the month of January 2018 and noted that the Lakewood Volunteer Fire Department responded to seventy-one alarms last month.

Village Treasurer Andrea J. Windoft reported that the Village of Lakewood has recently received its share of the quarterly of N.Y.S. sales tax revenue in the amount of \$ 169,207.39, which is approximately 6% more than last year's corresponding quarter. She indicated with one more sales tax check yet to receive, it appears the amount received will be very close to what was budgeted. Mrs. Windoft also reported the Village of Lakewood has received its semi-annual payment from the Town of Busti in connection with the Police Services Agreement between the two municipalities and its third and fourth quarterly STOP-DWI payments from Chautauqua County. Village Treasurer Windoft concluded her report saying officials from both the Village of Lakewood and Town of Busti met recently to discuss the particulars of a new Police Services Agreement and it appears the two municipalities have agreed in principal to the terms of a new agreement.

#### COMMITTEE REPORTS

Trustee Holcomb indicated that the New York State Energy Research & Development Authority grant process is still moving forward and expects to see some progress sometime soon.

FEBRUARY 12, 2018 (CONTINUED)

Trustee Holcomb indicated earlier today he learned that the Town of Busti Supervisor Jesse M. Robbins' father, Mr. Charles Merrill "Mert" Robbins died at home last evening and that he too should be remembered.

#### MOMENT OF SILENCE

Deputy Mayor McCague asked those in attendance to join him and members of the Board of Trustee in a moment of silence in honor and memory of Town of Busti Supervisor Jesse M. Robbins' father, Mr. Charles Merrill "Mert" Robbins, who died yesterday evening (February 11, 2018).

COMMITTEE REPORTS (CONTINUED)

Deputy Mayor McCague said he is pleased to announce that on January 25, 2018, the Village of Lakewood was awarded a New York Main Street Technical Assistance Grant in the amount of \$20,000.00. Mr. McCague said the Village of Lakewood has received paperwork from the Office of New York State Homes & Community Renewal regarding the grant agreement. The Village of Lakewood is also in receipt of a Professional Services Agreement between itself and LaBella Associates, D.P.C., Buffalo, N.Y., in connection with the development of a Main Street Master Plan Project for Chautauqua Ave. Deputy Mayor McCague indicated the Professional Services Agreement will need to be reviewed and approved by the Board of Trustees and is hopeful the work on the Main Street

Master Plan can go forward on schedule.

Deputy Mayor McCague also indicated that the Public Safety Committee will be meeting this Wednesday to discuss the joint Lakewood-Busti Fire Inspector position.

RESOLUTION #23-2018 - APPROVE CODE ENFORCEMENT OFFICER CONTRACT ADDENDUM

Motion by Trustee Holcomb, seconded by Trustee Barnes, for the Board of Trustees approve an addendum to the Code Enforcement Officer Contract Agreement between the Village of Lakewood and the Town of Busti, stating that the \$ 3,000.00 salary increase will be shared equally (50%/50%) between the two municipalities and that Zoning Officer be added to the position's title. Adopted: 4 ayes, no nays (McCague, Barnes, Holcomb, Schutte)

RESOLUTION #24-2018 - AUTHORIZE NEW BUDGETARY EXPENSE ACCOUNT

Motion by Trustee Barnes, seconded by Trustee Schutte, authorizing Village Treasurer Andrea J. Windoft to create a new budgetary expense account, A8510.42, [Lake Management Association Fees], through which annual membership fees or donations to the Chautauqua Lake Association, Inc., Chautauqua Lake Partnership, Inc. and/or the Chautauqua Lake & Watershed Management Alliance, Inc. will be appropriated to and remitted from. Adopted: 4 ayes, no nays (McCague, Barnes, Holcomb, Schutte)

RESOLUTION #25-2018 - AUTHORIZE REQUEST FOR BIDS - POLICE PATROL CARS

Motion by Trustee Barnes, seconded by Trustee Holcomb, authorizing Police Chief John R. Bentley to request sealed bids for two (2) marked police patrol cars. Bids are to be received at or before 3:00 PM, Wednesday, February 28, 2018. Adopted: 4 ayes, no nays (McCague, Barnes, Holcomb, Schutte)

FEBRUARY 12, 2018 (CONTINUED)

RESOLUTION #26-2018 - AUTHORIZE PARTICIPATION ON CHAUT. CO. RESPONSE TEAMS

Motion by Trustee Holcomb, seconded by Trustee Schutte, authorizing Lakewood Volunteer Fire Department member Alexander R. Hallberg, 3 Delaware Ave., to participate on the Chautauqua County Hazmat & Technical Rescue Teams, with the knowledge that he will be covered under the Village of Lakewood's insurance policies for liability coverage and workers' compensation coverage. Adopted: 4 ayes, no nays (McCague, Barnes, Holcomb, Schutte)

RESOLUTION #27-2018 - APPOINT NEW MEMBER TO THE ZONING BOARD OF APPEALS

Motion by Trustee Barnes, seconded by Trustee Schutte, per the recommendation of Mayor Birrittieri, that the Board of Trustees hereby appoint Mrs. Phyllis Sorensen, 290 East Terrace Ave., as a member of the Zoning Board of Appeals. Mrs. Sorensen will fill the vacancy created by the recent resignation of Mr. Duane F. "Duey" Anderson, and her abbreviated term will end January 2020. Adopted: 4 ayes no nays (McCague, Barnes, Holcomb, Schutte)

RESOLUTION #28-2018 - APPOINT FIRST ALTERNATE TO THE ZONING BAORD OF APPEALS

Motion by Trustee Barnes, seconded by Trustee Holcomb, per the recommendation of Mayor Birrittieri, that the Board of Trustees hereby appoint Mr. Gerald T. "Jerry" Holmes, 10 Holly Drive, as the number one alternate on the Zoning Board of Appeals.

Adopted: 4 ayes, no nays (McCague, Barnes, Holcomb, Schutte)

RESOLUTION #29-2018 - APPROVE NEW YORK MAIN STREET GRANT AGREEMENT

Motion by Trustee Barnes, seconded by Trustee Holcomb, for the Board of Trustees to approve the New York Main Street Technical Assistance Project Grant Agreement between the Village of Lakewood and the Office of New York State Homes & Community Renewal regarding the Main Street Master Plan Project for Chautauqua Ave. and to authorize Mayor Birrittieri to execute same.

Motion by Trustee Barnes, seconded by Trustee Schutte and unanimously carried, the Board adjourned at 7:06 PM.

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Joseph M. Johnson

Village Clerk