

JULY 23, 2012

The ninth regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Monday, July 23, 2012 at 6:30 PM, with Mayor David T. Wordelmann presiding. Trustees present were Gale A. Denn, Susan F. Drago, Joseph M. Troche and John Jablonski. Also present were Village Clerk Joseph M. Johnson, Village Treasurer Andrea J. Windoft, Police Chief John R. Bentley, Village Attorney Edward P. Wright, Department of Public Works Supervisor Thomas R. Pilling. Fire Chief Kurt W. Hallberg and Building Inspector Charles L. Smith.

#### ANYONE TO BE HEARD

Mr. S. Walter Andersen, 18 West Terrace Ave., appeared before Mayor David T. Wordelmann and the Board of Trustees, to voice his concerns about what has become an airport within fifty yards of his residence. Mr. Andersen indicated that his neighbor has established a helipad for his small helicopter on Howard Park allotment property between West Lake Street and Chautauqua Lake. To make way for the helicopter to land on that narrow strip of property he went ahead and had two large trees cut down and the stumps removed. Mr. Andersen went on to say the helicopter's rotors are no more than 10 ft. from the edge of West Lake Street. Mr. Andersen also said he contacted various offices of the Federal Aviation Agency whose representatives said they have no jurisdiction over this particular matter, adding it is up to the local zoning law to address this concern. Mr. Andersen said he was a member of a committee a few years back given the task of reviewing the then current zoning law and to recommend amendments. He and the rest of the committee never gave a thought to discuss the idea of an airport within the village limits.

Mr. John Braden, 18 West Terrace Ave., President of the Packard Estate Condominium Association said he and his fellow residents would like the Village of Lakewood consider doing something about the situation next door. Mr. Braden said it is his opinion that a helicopter landing in such tight quarters is a definite safety issue for those living so close to the helicopter's landing zone. Mr. Braden indicated that the helicopter has only one way in when landing and only one way out when taking off. He also said when the helicopter flies over his boat the action of the rotors causes his boat cover to be come unsnapped. If out of town when this occurs and it happens to rain, we return to a boat with water in it. Mr. Braden suggested that members of the Board of Trustees experience first hand the helicopter warming up for around ten minutes early in the morning and taking off. Mr. Braden said the helicopter has really disrupted his life style.

Mayor Wordelmann indicated there is nothing in the local zoning law to enforce relative to this particular use and therefore the Village of Lakewood has no jurisdiction in the matter. If the zoning law were to be amended to address this particular use the continued use of this land as a heliport would be "grandfathered". Mayor Wordelmann went on to say that the property on which the helipad is located is not public property.

Trustee Joseph M. Troche said he would think certain amendments to the Village of Lakewood's zoning law could provide some kind control regarding this particular use.

Village Attorney Edward P. Wright indicated while referring to zoning laws in general, if a particular use is not precluded then it is considered permitted.

Mr. Andersen said it doesn't seem right that a business needs to file a special use permit application to establish a bar, but a use as dangerous and intrusive as a helipad adjacent to a public road and condominium complex would be allowed via the "grandfather" clause.

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Mr. Andersen said it is his opinion that this use of the land as a helipad, which has been going on for about two weeks, would not fall under the “grandfather” clause. Mr. Andersen said this same family constructed a deck over the brick wall located along the westerly boundary line of the Packard Estate property, but were eventually ordered to tear it down. Mr. Andersen suggested for Lakewood to ask them to cease and desist using a portion of the Howard Park allotment as a helipad and to apply for a special use permit.

Village Attorney Wright said he would like to distinguish between enforcing this use versus the deck addition that encroached upon the Packard Estate property. There are certain set-back requirements that are listed in the zoning code which in the case of the deck were subsequently enforced to the letter. Unfortunately there is nothing in the local zoning law prohibiting this particular use.

Mr. Braden asked if there is anything enforceable regarding the noise it generates.

Trustee Gale A. Denn interjected saying he has a hard time reconciling that with all the federal agencies there has to be a danger factor associated with this particular use in a residential neighborhood.

Mrs. Judy Pistrin, 18 West Terrace Ave., said her porch faces the helipad and has serious concerns about the safety and welfare of her family and neighbors. It shouldn't be ok for someone to take-off and land a helicopter so close to residential properties.

Mayor Wordelmann said there is nothing in the local zoning law to enforce concerning this use, however residents could choose to file a civil suit against the operator claiming private nuisance. He said the Village of Lakewood can not legislate something that might happen.

Mr. Ward Smith, 18 West Terrace Ave, said he endorses everything that has been said this evening about the use of property next to West Lake Street as a helipad, which has indeed become a public nuisance.

Mrs. Judy Braden, 18 West Terrace Ave., indicated to Mayor Wordelmann and the Board of Trustees that she has video taped the helicopter taking off if anyone wishes to take a look. Mrs. Braden said she has done some research on the internet regarding helipads. For safety reasons they suggest helipads be a minimum 100 ft. x 100 ft. in size. They also suggest that the pilot should have two ways in and two ways out to and from the helipad. She asked for the Village of Lakewood to please look into this matter.

Mayor Wordelmann indicated to Mrs. Braden that the Village of Lakewood is not the F.A.A., and therefore can not enforce F.A.A. rules and regulations.

Trustee Jon Jablonski asked how often does the helicopter take-off and land. He too questioned whether this use would be “grandfathered”. He would ask the Village Attorney to find out what constitutes a “grandfathered” use and if the pilot is not meeting F.A.A. regulations could this use be declared illegal. Trustee Jablonski said he is not convinced it is a legitimate use.

Village Attorney Wright indicated Trustee Jablonski has raised a good point. Has the pilot established an intent for use of the helicopter? Mr. Wright said he believes he has. Mr. Wright also said he suspects the pilot is not violating F.A.A. regulations.

Trustees Denn and Troche reiterated that it is hard for them to believe landing a helicopter in such close quarters that this residential neighborhood presents is legal.

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Village Attorney Wright indicated that the current zoning law does not prevent this practice but that's not to say there isn't a remedy. The residents impacted by the helicopter's operation make a very good argument to consider taking civil action against the helicopter's owner/operator. It could be argued that the helicopter as operated is a detriment to a select number of residents or public whereby definition it is considered a private nuisance.

Mr. Russell Putney, 18 West Terrace Ave., indicated he didn't have a problem with the helicopter when it landed and took off from the raft out in the lake, however is very concerned now that it lands and takes off from the narrow strip of land adjacent to West Lake Street. Mr. Putney suggested that the owner be approached to see if he could establish a helipad elsewhere so as to reduce the chances of an accident happening. Where the helipad is located now, people could accidentally walk right into the rear rotor blades.

Mayor Wordelmann indicated to Mr. Putney the Village of Lakewood can contact the helicopter's owner to see if he will be willing to relocate his helipad.

Trustee Denn then asked if the Lakewood Fire Department has done any training on plane or helicopter crashes.

Building Inspector Smith suggested that a letter be sent to the appropriate agency whether it be the F.A.A. or N.T.S.B. (National Traffic Safety Board), to get an answer to this particular question.

Chautauqua County Legislator P.J. Wendel suggested that the Village of Lakewood check with other local helicopter pilots to get their feedback on this subject. He then asked if anyone knew how much experience the pilot has flying helicopters.

Changing subjects, Mr. Putney asked if the Department of Public Works is planning to stripe the edges of the new pavement on East Terrace Ave. this year.

Department of Public Works Supervisor Thomas R. Pilling indicated Chautauqua County is scheduled to do some striping for the Village of Lakewood and would be glad to check on the timetable for when the work is expected to be done.

Mr. Peter Conley, 7 Winchester Road, asked Mayor Wordelmann if Mr. Pilling has come up with a solution to the tar problem on Shady Lane.

Mr. Pilling indicated to Mr. Conley that he had a representative from Suit-Kote take a look at the surface of Shady Lane and when they are in town the second week in August to micro-seal Chautauqua Ave., they will also seal Shady Lane at that time.

RECESS

Motion by Trustee Denn, seconded by Trustee Troche, to recess the regular meeting at 6:45 PM so as to conduct a previously scheduled public hearing.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

JULY 23, 2012 (CONTINUED)

PUBLIC HEARING – 6:45 PM  
SITE PLAN REVIEW &  
SPECIAL USE PERMIT APPLICATION  
OLIVE GARDEN ITALIAN RESTAURANT  
328 EAST FAIRMOUNT AVE.

N & D Restaurants, Inc./Darden Restaurants, Orlando, Florida has submitted a Site Plan Review/Special Use Permit application regarding a proposal to construct a 7,735 sq. ft. Olive Garden Italian Restaurant on a 2.49 acre site at 328 East Fairmount Ave., adjacent to the Chautauqua Mall. In accordance with Section #25-14, (C), [Highway Business (B-2) District], of the Village of Lakewood Zoning Law, the establishment of a bar in a B-2, Highway Business District shall require a Special Use Permit. Also, in accordance with Section #25-85, [Site Plan Review], of the Village of Lakewood Zoning Law, the development of 5,000 sq. ft. or more of commercial floor space shall require site plan review.

Mayor Wordelmann opened the public hearing at 6:45 PM and asked the Clerk to read the notice of public hearing as it appeared in the Village of Lakewood's official newspaper.

Mayor Wordelmann wished to welcome Ms. Michele Wright, Program Manager from L.D. Reeves & Associates, Inc., Covington, VA, who will present this project on behalf of the applicants, N & D Restaurants, Inc. and Darden Restaurants, Orlando, Florida. He indicated during his short tenure as Mayor of the Village of Lakewood nothing has excited area residents more than the anticipation of having an Olive Garden Italian Restaurant here in Lakewood. It is wonderful that we've reached a point in the planning process knowing that the restaurant will soon be a reality. Mayor Wordelmann facetiously commented that the line to get in the front door is probably already forming.

Ms. Michele Wright, Program Manager from L.D. Reeves & Associates, Inc., distributed slightly amended site plans to Mayor Wordelmann and members of the Board of Trustees for their reference. She noted that since they have received copies of the minutes of the Planning Board meeting held last Wednesday, she would dispense with reiterating everything that was reviewed then, but encouraged any questions they may have. She said a lot of time and attention to detail has gone into the development of this site plan. The developers believe the new restaurant will be a tremendous improvement to this particular parcel. It is being transformed from an antiquated auto service center into a modern restaurant with all the latest innovations. Ms. Wright indicated that other than the grassy area along the road the site is totally impervious. The existing grassy area will be maintained with additional landscaping to be added around the building and around the perimeter of the parcel.

Mayor Wordelmann indicated it is interesting to point out that, after having read the entire stormwater pollution prevention plan, before construction 62% of the lot or 1.8 acres was considered impervious. After the restaurant is built only 55% or 1.6 acres will be considered impervious which represents an 11% reduction of impervious surface. This increase in green space will help cut down and slow down stormwater run-off from the site.

Trustee Joseph M. Troche indicated that green space has been a hot topic and is pleased to see that the developer has gone to great lengths in providing an adequate amount of green space. It is a beautiful site plan and we are happy you've decided to come to Lakewood.

Mayor Wordelmann indicated the site plan for the Olive Garden will set a fine example for those looking to develop other areas of Rt. 394's commercial corridor in the future.

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Trustee Gale A. Denn asked Ms. Wright what will be the expected timetable for construction and how many individuals are expected to be employed by the restaurant.

Ms. Wright indicated that typically once the building permit is issued and depending on the weather, a project of this scope will take between 160 and 190 days to complete.

In response to Trustee Denn's second question, Ms. Wright said the total number of individuals employed at a particular restaurant varies from site to site, but during a peak shift approximately thirty-four workers will be on staff at this location.

Trustee Troche asked Building Inspector Smith how long will it be before the building permit can be issued.

Mr. Smith indicated because the mechanical room has increased in square footage, he will need to review some new information to be provided by the developer. As soon as that review is complete he will be able to issue the building permit.

Trustee Susan F. Drago said the proposed sidewalk from the public sidewalk along Rt. 394 will provide safe access to the restaurant and pleased to see a couple of benches are included in the site amenities.

Mayor Wordelmann indicated one concern of his, which was also discussed at last week's planning board meeting, is the straight through traffic lane going from the restaurant's easterly entrance to the mall's parking lot behind the project site. Mayor Wordelmann asked if there is anything that could be done to discourage people from driving through the restaurant's parking lot to get to the mall.

Building Inspector Smith indicated that it is important to keep access points to the site open for emergency services, however if the situation becomes a problem, then the subject might have to be revisited. He said when that particular entrance is closed down during the construction phase of the restaurant, those now using it, will be forced to utilize a different entrance to the mall.

Ms. Wright said as Mr. Smith has already expressed, we believe the habit of those mall customers utilizing that particular entrance will be altered. Although closing the access point in the southeast corner of the site would have provided room for a couple more parking spaces and an extra tree or two, it is the developer's desire to maintain an interconnect with the anchor stores within the Chautauqua Mall. If the situation becomes a problem the developer would be willing to introduce a speed bump in that particular traffic lane. Ms. Wright said we want the site as safe as possible as well.

Trustee John Jablonski asked Mayor Wordelmann if members of the Board of Trustees could continue to discuss and comment on this project.

Trustee Jablonski indicated that this project is a tremendous improvement to the site and like everyone else he is excited that Olive Garden has decided to come to Lakewood. If the applicant so chooses, there is a tremendous opportunity to improve the water quality of the nearby creek and thus Chautauqua Lake. Trustee Jablonski indicated the proposed landscaping for the site is a nice improvement however he would like the developer to consider adding a few shade trees to the green space in front of the restaurant and possibly shift around a few of the larger trees already proposed for the site. He would also like to see some shade trees considered for the strip of green space that runs along the easterly edge of the property, parallel to the nearby creek.

## JULY 23, 2012 (CONTINUED)

Trustee Jablonski also pointed out that he would like to see swales where the four perimeter stormwater drains are proposed to allow water to infiltrate into the ground rather than being discharged directly into the nearby creek. Swales are common practice nowadays and they would act as a filter cutting down on the amount of pollution that enters the watershed. Trustee Jablonski then asked Mayor Wordelmann and the Board of Trustees to consider requesting the developer to add four swales to this proposal.

Mayor Wordelmann indicated to Trustee Jablonski that Ms. Wright addressed this question when she pointed out at last week's planning board meeting that the landscaping plans call for the planting of 846 various trees, shrubs and plants. Mayor Wordelmann reiterated that this project should be a model for future commercial development in the Village of Lakewood.

He said the developer of this project has gone above and beyond what is required with respect to green space. To ask for more trees at this point is just not right.

Ms. Wright indicated that they have revisited the proposed landscape plan and we are not willing to introduce any additional shade trees within the green space in front of the restaurant. We are however willing to add several large shade trees within the green space located along the easterly boundary of the parcel.

With no one else to be heard, Mayor Wordelmann closed the public hearing at 6:58 PM.

### APPROVAL OF MINUTES

Motion by Trustee Troche, seconded by Trustee Denn, to approve the minutes of the last regular meeting of the Board of Trustees, held July 9, 2012.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

### AUDIT OF CLAIMS

Motion by Trustee Drago, seconded by Trustee Denn, that the claims as audited by the Auditing Committee of the abstracts dated July 23, 2012 be approved and that the Clerk shall execute said abstracts (#7& #8) and direct payment by the Treasurer. General Fund: \$ 130,857.93, (Checks #8716 thru #8763), Trust & Agency Fund: \$ 58,514.62, (Checks #2078 thru #2103)

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

### REPORTS

Department of Public Works Supervisor Thomas R. Pilling reported that Packard Ave. and Laurel Street have been milled and oiled to prepare them for paved in a couple of weeks.

Trustee Denn asked Mr. Pilling if the D.P.W. is planning on doing any work replacing sidewalks this summer.

Mr. Pilling said there are plans to do some sidewalk replacement work this construction season.

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Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has answered six thousand five hundred thirty-seven reportable incidents year-to-date. Chief Bentley said he recently received an inquiry from Hospice asking if Terrace Ave., from Pennsylvania Ave. to Owana Way could be closed off during the second annual Hospice Cup Fun Ride to be held Saturday, September 1, 2012.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has responded to four hundred forty alarms year-to-date. Chief Hallberg also indicated that tomorrow evening he and others from the fire department will be visiting W.C.A. Hospital's new emergency room presently under construction to get acquainted with its ambulance entrance.

Village Treasurer Andrea J. Windoft reported that she has secured a 3.37% interest rate on the three Bond Anticipation Note renewals, which are on tonight's agenda for approval. Mrs. Windoft also reported that she recently filed the Village of Lakewood's Annual Update Document (AUD) with the State Comptroller's Office and suggested that the Auditing Committee comprised of Trustee Drago and Trustee Jablonski, schedule a time in the very near future to conduct an audit of the Village's books. The Village Treasurer also reported that she discovered a large discrepancy in a recent Windstream phone bill.

Apparently one phone line was overlooked when connecting the long distance charges that were subsequently defaulted to AT&T long distance. Windstream has corrected the problem and a credit in the amount of \$ 795.31 has been applied to the Village of Lakewood's account.

## COMMITTEE REPORTS

Mayor Wordelmann indicated he and Trustee Troche met again with Town of Busti officials regarding the negotiation of a new police services contract between the two municipalities and the two sides are very close to an agreement.

### RESOLUTION #27-2012-2013 – APPROVE SITE PLAN & SPECIAL USE PERMIT APPLICATION

Motion by Trustee Troche, seconded by Trustee Drago, to approve the site plan as submitted by N & D Restaurants, Inc./Darden Restaurants, Orlando, Florida, for the construction of a 7,735 sq. ft. Olive Garden Restaurant at 328 East Fairmount Ave., with the condition that the developer agrees to plant several extra shade trees within the green space along the easterly border of the property and to grant the Special Use Permit application as submitted by N & D Restaurants, Inc./Darden Restaurants, Orlando, Florida, whereby they will be allowed to establish a bar within the Olive Garden Italian Restaurant at the aforementioned address as proposed.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

### RESOLUTION #28-2012-2013 – AUTHORIZE BOND ANTICIPATION NOTE RENEWALS

Motion by Trustee Troche, seconded by Trustee Drago, authorizing Village Treasurer Andrea J. Windoft and Village Attorney Edward P. Wright to prepare a Bond Anticipation Note (5 year renewable – 1 year maturing BAN) in the amount of \$ 10,400.00 to finance the balance owed to refurbish the Lakewood Fire Department's 1990 Simon-Duplex aerial ladder truck (L-371) and a Bond Anticipation Note in the amount of \$ 15,200.00 owed on the Department of Public Works' 2009 John Deere (524K) loader.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

JULY 23, 2012 (CONTINUED)

RESOLUTION #29, 2012-2013 – AUTHORIZE BOND ANTICIPATION NOTE RENEWAL

Motion by Trustee Denn, seconded by Trustee Troche, authorizing Village Treasurer Andrea J. Windoft and Village Attorney Edward P. Wright to prepare a Bond Anticipation Note (5 year renewable – 1 year maturing BAN) in the amount of \$ 11,784.40 owed on the Department of Public Works' 2009 Tandem Vibratory Roller, Model HD 10vv.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

RESOLUTION #30-2012-2013 – AUTHORIZE BOND ANTICIPATION NOTE RENEWAL

Motion by Trustee Troche, seconded by Trustee Drago, authorizing Village Treasurer Andrea J. Windoft and Village Attorney Edward P. Wright to prepare a Bond Anticipation Note (5 year renewable – 1 year maturing BAN) in the amount of \$ 127,448.80 owed on the Department of Public Works' 2011 Case back-hoe and 2012 International dump truck, w/snowplow.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

RESOLUTION #31-2012-2013 – APPROVE GARBAGE COLLECTION/RECYCLING CONTRACT

Motion by Trustee Troche, seconded by Trustee Drago, to approve the three (3) year contract agreement between the Village of Lakewood and Penhollow Disposal Services, Sinclairville, N.Y., for the collection and disposal of household garbage and recyclables for the period of 06/01/12 – 05/31/15, and to authorize Mayor David T. Wordelmann to execute same. Cost of the three (3) year contract agreement totals \$ 413,000.00.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

RESOLUTION #32-2012-2013 – AUTHORIZE TRAINING CONFERENCE ATTENDANCE

Motion by Trustee Denn, seconded by Trustee Troche, authorizing Lakewood-Busti Police Department Officer Jarrett D. Reed to attend a State of New York Police Juvenile Officers Association Training Conference in Lake Placid, N.Y., August 27<sup>th</sup> – August 31<sup>st</sup> per the request of Police Chief John R. Bentley. Cost of the conference is \$ 775.77 plus mileage. Officer Reed will be reimbursed for any and all legal expenses incurred.

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

RESOLUTION #33-2012-2013 – APPROVE EXTRA COVERAGE FOR VOL. FIREMAN

Motion by Trustee Denn, seconded by Trustee Troche, to approve a proposal as prepared and presented by VFIS, York, PA, to provide accident and sickness coverage for members of the Lakewood Volunteer Fire Department and its Auxiliary, which will be in addition to the limited health care coverage now provided through the Chautauqua County Workers' Compensation Plan, contingent upon Mayor Wordelmann's approval of said contract. The annual premium based on the acceptance of a three (3) year contract will total \$2,238.00

Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

JULY 23, 2012 (CONTINUED)

Motion by Trustee Denn, seconded by Trustee Troche, and unanimously carried the Board adjourned at 7:35 PM.

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Joseph M. Johnson  
Village Clerk