

SEPTEMBER 7, 2016

The seventeenth regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Wednesday, September 7, 2016 at 6:30 PM, with Mayor Cara Birrittieri presiding. Trustees present were Ellen E. Barnes, David J. Di Salvo, Susan F. Drago, and Randy Holcomb. Also present were Village Clerk Joseph M. Johnson, Deputy Village Treasurer Mary B. Currie, Police Chief John R. Bentley, Department of Public Works Supervisor Thomas R. Pilling and Building Inspector Jeffrey A. Swanson. Absent were Village Treasurer Andrea J. Windoft and Fire Chief Kurt W. Hallberg.

#### APPROVAL OF MINUTES

Motion by Trustee Drago, seconded by Trustee Barnes, to approve the minutes of the last regular meeting of the Board of Trustees, held August 22, 2016. Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

#### AUDIT OF CLAIMS

Motion by Trustee Barnes, seconded by Trustee Holcomb, that the claims as audited by the Auditing Committee of the abstracts dated August 30, 2016 and September 7, 2016, be approved and that the Clerk shall execute said abstracts (#14, #15 & #16) and direct payment by the Treasurer. General Fund: End-of-Month, \$ 15,339.51, (Check #13045), General Fund: \$ 35,539.26, (Checks #13046 thru #13076), Trust & Agency Fund: \$ 58,155.38, (Checks #3859 thru #3875)

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

#### REPORTS

Mayor Birrittieri indicated in the spirit of Labor Day, she would like to acknowledge those who work on behalf of the Village of Lakewood and that includes anyone who makes the community a better place to live and play. She said there many unsung heroes among us and those who give of their time and energy are very much appreciated.

Mayor Birrittieri then announced plans by the Events & Marketing Committee to bring back Christmas in the Village this year. The shopping and holiday celebration event has been scheduled for Saturday, December 10<sup>th</sup>, between the hours of noon and 8:00 PM.

Mayor Birrittieri said she recently received a letter of resignation from Planning Board member Mr. Herbert Hern who has served the community in this capacity since September 2004. Mayor Birrittieri thanked Mr. Hern for his many years of dedicated service to the community. He will be missed.

Mayor Birrittieri said she has kept in close contact with Richard E. Stanton, Esq., and the matter of Up State Tower Co., LLC v. Village of Lakewood, et al. Mr. Stanton continues to vigorously prepare for this case and said she will keep members of the Board of Trustees apprised of any developments.

Mayor Birrittieri also mentioned that she has been unable to arrive at acceptable contract terms with Edward P. "Tad" Wright, Esq., but assures the Board of Trustees and the public she will continue her efforts to do so.

Mayor Birrittieri said the new baseball field project recently received additional funding from two generous donors which should allow the project to enter its next phase before winter, with the hope that the new field will be playable by next spring.

Mayor Birrittieri then reminded residents that the milling and repaving of Rt. 394 is expected to begin later this month.

SEPTEMBER 7, 2016 (CONTINUED)

Although motorists and businesses will be inconvenienced for a few weeks, we all can look forward to a beautiful new road surface and sidewalk extension west to Shadyside Ave.

Mayor Birrittieri concluded her report saying she spoke with Charlie Smith earlier in the day about his very generous offer to donate a strip of land located between Lakeview Ave. to Shadyside Ave. to the Village of Lakewood, to be used exclusively as a walking & bike path. Mr. Smith said he hopes to provide more details to the Mayor and the Board of Trustees for their review and consideration by the next regular meeting. Mayor Birrittieri indicated one of the recommendations of the newly proposed comprehensive plan is to increase connectivity within the Village of Lakewood, adding the development of this walking/ bike path is a wonderful start in to do so. Thank you Charlie.

Department of Public Works Supervisor Thomas R. Pilling reported that the DPW crew recently chip-sealed two miles of roadway along with the parking lots at the Anthony C. Caprino Municipal Building and the Lakewood Fire Department. Mr. Pilling also reported that Mall Blvd. as well as Grandview Ave., from Oak St. west to the village line were resurfaced this morning.

Mr. Pilling indicated that several concrete pads were recently formed and poured as bases for picnic tables and a new bench at the dog park on East Terrace Ave. A concrete pad was also formed and poured at the gated entrance to the park, eliminating a muddy swale.

In conclusion, Mr. Pilling said the storm water management project in the vicinity of Mall Blvd. and work on the new baseball field are on hold for the time being, until legal counsel can review the respective easement and contract documents.

Trustee Di Salvo asked Mr. Pilling if plans for the installation of a new retention wall along East Terrace Ave., between Lakeview and New York Avenues is in the works for later this fall and proceeded to thank the DPW crew for widening the soft shoulder along East Terrace Ave.

Mr. Pilling said the necessary materials to install the new retention wall are on hand, we'll just have to find the time to do the work. The project should be completed by the end of the month.

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has responded to seven thousand three hundred two reportable incidents year-to-date. Chief Bentley said extra attention has recently been paid to an area on East Third Street and the alleyway between East Third and East Summit Streets. Chief Bentley reminded residents to be sure to keep their cars and homes locked.

Chief Bentley said he has jointly applied for a K-9 Grant with the Chautauqua and Cattaraugus County Sheriff Departments and that he will be attending a Chautauqua County Traffic Safety Committee meeting tomorrow. He asked if anyone has any traffic related concerns for him to bring up, let him know.

Mayor Birrittieri asked Chief Bentley about the report of a stolen car on Winchester Road.

Chief Bentley said the car has been recovered and an arrest made.

Mayor Birrittieri asked Building Inspector Swanson about the advertising for Happy Hounds Hotel & Day Spa that has been stenciled on village sidewalks. Mayor Birrittieri voiced some concern about this practice catching-on with other businesses.

Building Inspector Swanson said there is nothing in the current zoning law which addresses this particular situation, adding the stencils were done in chalk. Like anything else, it is something the Board of Trustees can look at when the time comes to make changes in the zoning law.

SEPTEMBER 7, 2016 (CONTINUED)

Mayor Birrittieri then asked Mr. Swanson if there is anything new to report on regarding the properties that have been posted on Ohio Ave.

Mr. Swanson said he met the new owner of 27 Ohio Ave., who has begun work to bring that property into compliance. Some minor work has also been done at the former church on Ohio Ave. and the former rectory at 32 Pennsylvania Ave.

Trustee Di Salvo indicated posting the properties with the violation notices/placards has definitely had an impact on getting some positive response from the respective property owners. Trustee Di Salvo then thanked Mr. Swanson for his initiative in doing so.

Trustee Holcomb asked Mr. Swanson if the house at 101 Elizabeth St. has been vacated. Mr. Holcomb also mentioned that he heard the appliance repair shop at 176 W. Fairmount Ave. has outgrown its space and is therefore moving across the street into a storefront at the Save-A-Lot & Dollar General plaza.

Mr. Swanson said he has been in contact with its owner and there is a possibility the property might be up for sale soon. Also up for sale is the Fairmount Motel, 138 W. Fairmount Ave.

RECESS

Motion by Trustee Holcomb, seconded by Trustee Drago, to recess the regular meeting so as to conduct a previously scheduled public hearing.  
Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

PUBLIC HEARING: 6:45 PM  
SPECIAL USE PERMIT/SITE PLAN REVIEW APPLICATION  
RE: PROPOSED JAMESTOWN HONDA DEALERSHIP

207 EAST FAIRMOUNT AVE.

McFadden Real Estate, 215 East Fairmount Ave., has submitted an application for a special use permit and site plan review regarding a proposal to develop a five (5) acre site at 207 East Fairmount Ave. (NYS Rt. 394) as a Honda dealership. The proposed project will include a 22,457 sq. ft. showroom and service center. In accordance with Section #25-14, (C 10), [Highway Business (B-2.1) District], of the Village of Lakewood Zoning Law, the establishment of a new/used auto sales lot in this zoning district requires a special use permit. Also, in accordance with Section #25-89, [Site Plan Review], of the Village of Lakewood Zoning Law, the development of 3,000 sq. ft. or more of commercial floor space requires site plan review.

Mr. Timothy W. Arlington, P.E., of Apex Consulting Survey & Engineering Services, P.C., Lockport, N.Y., appeared before Mayor Birrittieri and the Board of Trustees to briefly explain McFadden Real Estate's proposal. Mr. Arlington began his presentation by introducing Mr. Bud McFadden, part of "Team McFadden" who will be able to answer any questions about the proposed dealership. Mr. Arlington then briefly went over the proposed site plan noting that per an informal comment made by the Chautauqua County Department of Planning & Economic Development, he has added a few Bradford Pear trees to the landscaping package for the site. He went on to reviewing the vehicle display areas in the front and east side of the showroom. Mr. Arlington said another component of the site plan is the management of storm water. The site plan includes a large retention pond and a bio-retention bed. Any and all storm water generated on the site will drain and be directed north. Mr. Arlington said they have applied for and received a State Pollutant Discharge Elimination System (SPDES) General Permit #GP-0-15-002.

Mr. Arlington said there will be two entrances/exits off of Rt. 394 and because there is 13 ft. difference in elevation between the All Makes Lube & Car Wash and the LUV Toyota showroom, it will be necessary to construct two retaining walls on the site of the new dealership.

SEPTEMBER 7, 2016 (CONTINUED)

Also, there is about a 30 ft. difference in elevation between the curb along the road and the base of the railroad embankment which will require a lot of earth to be moved prior to site development.

Mr. Arlington then briefly reviewed the proposed floor plan for the building most of which is pre-engineered steel however the building front will consist of a lot of glass and stucco type finish.

Mr. Arlington indicated that last week the developer received a comment from Honda asking if it would be possible to move the building sixty addition feet back from the road, making way for more vehicle display spaces out in front of the building. It would be a matter of taking two rows of vehicle display space from behind the building and moving the vehicle display spaces to the front of the building. Mr. Arlington said nothing else on the proposed site plan would change. Mr. Arlington said he did discuss this change last week with Building Inspector Swanson and Planning Board Chairman Edward J. "Ted" McCague.

Mayor Birrittieri told Mr. Arlington it is a little late in the game to make such a significant change in the site plan and asked what if the Board of Trustees says no to the change.

Mr. Arlington said the obvious move would be to go back to the original site plan as submitted.

Trustee Barnes asked Mr. Arlington if moving the building back sixty feet will have any impact on how the storm water is managed.

Mr. Arlington said the overall site will be exactly the same except for the building being sixty feet further back and moving two rows of vehicle display space from behind the building to in front of the building. He said obviously the various utilities would have to be extended accordingly. Not only does the developer's proposed site plan need this board's approval, the site plan must also meet the approval of Honda. Mr. Arlington said ideally Mr. McFadden would like to break ground on this project this fall.

Building Inspector Swanson indicated the total square footage of the impervious areas on the site will remain the same.

Mayor Birrittieri asked Mr. Arlington what are the reasons for changing the site plan.

Mr. Arlington said Honda is desirous of increasing the vehicle display area in front thereby increasing the exposure of the vehicles for sale.

Mr. William Chandler, 207 West Summit St. and Chairman of the Zoning Board of Appeals, asked Mr. Arlington if the landscaping in front of the dealership will match that of the landscaping in front of the LUV Toyota dealership.

Trustee Barnes asked Mr. Arlington in addition to the pear trees which were added to the landscaping plan, will there be grassy areas in front of the vehicle display areas.

Mr. Arlington indicated that although the proposed landscaping scheme will likely not match the landscaping in front of LUV Toyota, the vehicle set-back from the curb will have some grassy areas and plantings, including landscaped islands on each side of the vehicle display area in front.

Trustee Di Salvo indicated to Mr. Arlington it appears the proposed site plan has met all the requirements, noting the Planning Board did a commendable job reviewing this project. Trustee Di Salvo then asked Planning Board Chairman Ted McCague if moving the building back sixty feet changes in any way the opinion/recommendation of the Planning Board as presented to the Board of Trustees.

SEPTEMBER 7, 2016 (CONTINUED)

Mr. McCague indicated that technically the Planning Board recommended the original site plan. Although a change has been made to it the Board of Trustees has approval or denial authority, and therefore has the option to either consider the amended plan as presented or send to back to the Planning Board for their review and comment. If the matter were to be referred back to the Planning Board it could be reviewed September 21<sup>st</sup> and the Board of Trustees could set a time for a public hearing at their next regular meeting scheduled for Monday, September 26<sup>th</sup>.

Mr. Arlington said of the two plans both Honda and Mr. McFadden would probably lean towards the one having additional vehicles in the display areas in front of the building. The more inventory visible the better.

Building Inspector Swanson said he is somewhat familiar with Honda and it boils down to brand focusing wherein they would want to match or surpass the number of vehicles in LUV Toyota's front display area. Changing subjects, Building Inspector Swanson indicated to Mr. Arlington that any building over 12,000 sq. ft. is required to be sprinkled.

Mr. Arlington indicated to Mr. Swanson that there are fire separations between the showroom/office and the service area. Each separated area is less than 12,000 sq. ft. Because the building is not within 400 ft. from an existing fire hydrant, a new private hydrant will be established on the site.

Mr. Chandler asked Mr. Arlington if the display vehicles will be meeting the 25 ft. set-back requirement per the local zoning law.

Mr. Arlington assured Mr. Chandler that any and all cars on display would be a minimum of 25 ft. back from the edge of the road.

Mr. Chandler then indicated that the residents of Lakewood are very proud of their community and wondered why the sign being proposed for the front of the building refers to it as Jamestown Honda.

Mr. Bud McFadden indicated the signage on dealerships is driven by the internet and they generally reference a region rather than a specific location. Mr. McFadden said the regional sign for the new dealership was already determined before we got involved.

A number of people in attendance, including Mayor Birrittieri, asked if the sign could be changed, to have it include Lakewood. Mr. Arlington said we can ask.

Trustee Di Salvo said because Honda is asking for some relief from the Board of Trustees, maybe there is a quid pro quo here, whereby they might offer some relief on the name.

Mr. Richard Rose, 42 Gifford Ave., and a member of the Planning Board indicated that NYS Rt. 394 might someday be widened from two lanes to four lanes. Having some additional room in front of the building makes sense and is in favor of moving it sixty feet back. Mr. Rose said he is also in favor of having as much green space as possible in front of the vehicle display area and if possible, like the name changed from Jamestown to Lakewood Honda.

Mr. Craig Seger, 31 Winchester Road, and volunteer for the Chautauqua Watershed Conservancy, commended Mr. Arlington and Apex Consulting Survey & Engineering Services for their wonderful design of the bio-retention area, retention pond and storm water outfall. Mr. Seger said it appears you have gone "over the top" with its design and it will prove to be an excellent model and example for future projects requiring storm water management. Mr. Seger said the new comprehensive plan stresses the proper management of storm water within the water shed in an effort to mitigate the amount of sediments that reach Chautauqua Lake.

Mr. William A. Evans, III, 34 West Terrace Ave., said it is his opinion that the name must be changed from Jamestown Honda to Lakewood Honda, otherwise the name is misleading.

Mr. Arlington said he would be happy to make a plea to Honda to consider changing the name from Jamestown Honda to Lakewood Honda.

Building Inspector Swanson said Honda looks at the demographics and population of a particular area in their marketing plan. Mr. Swanson said he hopes this 5 million dollar project doesn't hinge on a name. Although he too would like it to be called Lakewood Honda, he understands how dealerships are marketed.

Trustee Di Salvo suggested that the Board of Trustees approve the special use permit and site plan review application, including the last minute change in the location of the building, with the condition that Honda consider an alternate sign proposal. Trustee Di Salvo said Honda is branding their product but we are branding our village.

RESOLUTION #157-2016 - APPROVE SPECIAL USE PERMIT & SITE PLAN REVIEW APPLICATION

Motion by Trustee Di Salvo, seconded by Trustee Holcomb for the Board of Trustees, per the recommendation from the Planning Board to approve the application for a Special Use Permit and Site Plan Review as submitted by McFadden Real Estate, 215 East Fairmount Ave., regarding a proposal to develop a five (5) acre site at 207 East Fairmount Ave., (NYS Rt. 394) as a Honda dealership, including the revised set-back of the 22,457 sq. ft. building, with the condition that Honda submits an alternate sign package to be reviewed by the Planning Board.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

COMMITTEE REPORTS

Trustee Barnes said speaking on behalf of the Personnel Committee comprised of Trustee Drago and Trustee Holcomb, indicated it has been since June 1, 2016 that the Board of Trustees and Mayor Birrittieri have been trying to come to some agreement on the hiring of a Village Attorney. On May 26, 2016, Mayor Birrittieri informed Edward P. "Tad" Wright, Esq., that the Village of Lakewood would no longer require his services as Village Attorney. Mr. Wright's contract with the Village of Lakewood expired five days later, on June 1, 2016. This decision by the Mayor came as surprise to some members of the Board of Trustees, since her intentions were not discussed with all of them. The action by Mayor Birrittieri created a legal conundrum in that the Village of Lakewood had no legal counsel. Each Trustee met with Mayor Birrittieri individually and were informed that she had decided to go in a different direction regarding legal representation for the Village of Lakewood and intended to appoint Richard E. Stanton, Esq., Buffalo, N.Y. as its Village Attorney. Members of the Board of Trustees met with Mr. Stanton June 8th and learned he had extensive experience litigating environmental cases but hadn't ever served as a municipal attorney. A majority of the members of the Board of Trustees came to the conclusion, appointing Mr. Stanton would not be in the best interest of the Village of Lakewood. This has lead to the search for a Village Attorney.

Trustee Holcomb indicated the truth of the matter is that Mr. Wright did not receive an 80% pay increase. The Village of Lakewood contracted with Mr. Wright for legal services and was compensated \$ 10,000.00 per year. An amendment to the current budget increased the annual compensation for the Village Attorney to \$ 15,000.00. This was done after looking into what other comparably sized municipalities were paying for legal services. The annual compensation rate ranged from \$ 10,000.00 to \$ 24,000.00. The increase in the budget for legal services took into consideration the added work load for the Village Attorney, and for the fact that the Mayor and one Trustee just began their initial term of office in January.

SEPTEMBER 7, 2016 (CONTINUED)

Given the fact that Mr. Wright was paid over \$ 13,000.00 during the 2015-2016 contract/fiscal year was more reason for the Board of Trustees to agree to increase the Village Attorney's compensation to \$15,000.00. Trustee Holcomb said there was also some controversy over the number of Board of Trustee meetings Mr. Wright missed during his tenure as Village Attorney. Trustee Holcomb said since June 2011, Mr. Wright missed a total of four (4) meetings, which represents less than 1% of the scheduled meetings.

Mayor Birrittieri interjected saying she believes those figures are incorrect.

Trustee Holcomb continued by saying the Village of Lakewood has been without an attorney since June 1<sup>st</sup>, except for a short period of time when Mayor Birrittieri illegally hired Richard E. Stanton, Esq., without going through the audit of claims process which is done prior to each Board of Trustees meeting. This action by the Mayor was not discovered until a subsequent audit of claims. Mr. Holcomb said Mayor Birrittieri violated NYS Village Law which lead to a legal crisis and subsequent letters which three of the four Trustees served upon the Village Clerk relative to the Mayor's action. The letters informed the Mayor of her breach of the law and to protect the Board of Trustees from a criminal prosecution. Mayor Birrittieri's response to the letters was in the form an e-mail to Trustee Holcomb.

Trustee Drago continued the joint statement by saying this brings the Village of Lakewood to where it is now, without an attorney since June 1<sup>st</sup>. Several important matters concerning the Village of Lakewood have had to be tabled due to the lack of legal representation. These matters include the Comprehensive Plan, considering alternates for the Planning Board and the Zoning Board of Appeals, and the proposed local law which addresses brush and yard waste management. Trustee Drago said at the June 25<sup>th</sup> Board of Trustees meeting Mayor Birrittieri moved to approve Edward P. "Tad" Wright, Esq., as the Village Attorney. The appointment of Mr. Wright as Village Attorney was approved by a majority of the Board of Trustees with Mayor Birrittieri and Trustee Di Salvo voting no. Since his appointment the Mayor has attempted to change the terms of Mr. Wright's contract which was approved. Mr. Wright has refused to sign an amended contract. We as the Board of Trustees can not in good conscious let the Village of Lakewood continue moving forward without legal counsel in place. Trustee Drago proceeded to make a motion to appoint Edward P. "Tad" Wright, Esq. as the attorney for the Board of Trustees and to begin immediately at a rate of \$ 15,000.00 per year, prorated accordingly. The motion was seconded by Trustee Barnes.

Mayor Birrittieri said she will continue to refuse to take that appointment into consideration because there are no funds available to pay a Board of

Trustees attorney, without protection for the Village of Lakewood and the Mayor. Mayor Birrittieri questioned the action of the trio of Trustees in their attempt to appoint their own attorney with \$ 15,000.00 from the Village of Lakewood budget, adding they can not use village funds for that purpose.

Trustee Holcomb retorted, absolutely we can. Per Village Law the Board of Trustees may hire an attorney and the Village may hire a separate attorney.

Mayor Birrittieri questioned where the funding will come from and suggested we'll have to let the courts decide. She then said if members of the Board of Trustees wish to discuss the position of a Board of Trustees attorney and/or Village Attorney as a personnel matter, then we will need to enter into an executive session.

Trustee Drago said the public needs to hear what is going on.

Mayor Birrittieri said she has continued to search for a Village Attorney and would like to resolve this issue as much if not more than the Board of Trustees do. She said many of their comments are not factual and is extremely stunned by them, in unison, in bringing a Personnel Committee Report before the Board of Trustees on this issue.

SEPTEMBER 7, 2016 (CONTINUED)

Mayor Birrittieri said she was very disappointed that not one of the Trustees contacted her about their intentions this evening. This type of tactic is uncalled for. Mayor Birrittieri said she would prefer to discuss this issue in a civil and reasonable manner, but not before the public.

Trustee Drago reminded everyone there is a motion on the table.

Trustee Di Salvo said this subject definitely meets all the criteria for an executive session. It deals with personnel performance and names of individuals will be mentioned that were approached for this position and per their request must be kept private. Trustee Di Salvo said he is not comfortable talking about this matter in a public session.

Trustee Holcomb noted there has been a motion made and it has been seconded. It is time for discussion.

Mr. David G. Bargar, 11 Sunset Ave., speaking for the residents, said it is starting to become embarrassing. Everywhere he goes throughout the county people keep asking him, what is going on in Lakewood. Somehow, someday you are going to have to come together because village business is not getting done. Mr. Bargar said this administration has been in place for six months and is in a grid lock. He said things don't stand still. The Village of Lakewood is considering adopting a new comprehensive plan and there are property maintenance issues cropping-up in different parts of the Village. Mr. Bargar said Building Inspector Swanson has been working very hard and doing a great job for the village and the township, but he has no legal counsel. Mr. Bargar said in his world it is the quality of work that is done. Who cares if the Village Attorney misses a couple meetings? Where are the concerns? Mr. Bargar said the Lakewood Family YMCA, which is the busiest Y in the county, could be shopping for a new location. He asked what is the Board of Trustees' position on this matter. Mr. Bargar implored members of the Board of Trustees to get over it, and go into executive session if need be,

because something has to happen. The citizens of Lakewood are just tired of hearing it.

Mayor Birrittieri indicated the legal counsel, (Richard E. Stanton, Esq.) that was presented before the Board of Trustees for appointment is a fine, solid attorney and the Village of Lakewood has placed a significant case in his hands. For the majority of the Board of Trustees to allow him to litigate this case but not undertake the legal business before the Village of Lakewood isn't consistent and doesn't make any sense. Mayor Birrittieri said she understands the residents' frustration, however the fact of the matter is she did attempt to meet with Mr. Wright long before May but he was out of the country and she didn't even know it. As a new Mayor she was interested in making change and all of a sudden it became a huge issue. Mr. Stanton could have been on staff in June if the Board of Trustees would have approved him.

Trustee Holcomb said frankly, he thinks that a Buffalo, N.Y. based attorney who does not specialize in municipal law is not the right fit for the Village of Lakewood.

Trustee Barnes said the Board of Trustees did approve Mr. Stanton to take on the matter of Up Sate Tower Co., LLC vs. the Village of Lakewood, et al, because the Village of Lakewood was without any legal counsel at the time and under a time constraint.

Trustee Di Salvo said the review and adoption of a comprehensive plan does not need input from legal counsel and to imply its review and adoption is being held up because the Village of Lakewood does not have an attorney on staff is absolutely untrue. Having worked on many comprehensive plans Trustee Di Salvo said it is the job of the consultant, in this case Peter J. Smith & Co., Buffalo, N.Y., who is licensed to prepare such documents, to make sure everything is ready for review and subsequent approval.

Trustee Holcomb again reminded Mayor Birrittieri and members of the Board of Trustees that there has been a motion made and it has been seconded.

SEPTEMBER 7, 2016 (CONTINUED)

Mayor Birrittieri said we need an attorney to represent the Village of Lakewood, not just members of the Board of Trustees.

Trustee Holcomb said the appointment of a Board of Trustees attorney is very much legal.

Mayor Birrittieri said although it may be legal, appointing a Board of Trustees only attorney is a completely different position than a Village Attorney and it wouldn't be in the best interest of the Village of Lakewood to do so. Mayor Birrittieri said she finds it appalling that certain members of the Board of Trustees would allocate the full funding in the budget, just for an attorney that represents only the Board of Trustees.

Mr. Richard Rose, 42 Gifford Ave., asked what are the advantages of having of Board of Trustees attorney versus of having a Village Attorney.

Trustees Barnes indicated the Board of Trustees appointed Mr. Wright as Village Attorney, but the Mayor refuses to sign the contract.

Mayor Birrittieri said nowhere in that resolution is there language mentioning the particulars of Mr. Wright's contract. Mayor Birrittieri said if you wish to continue to wrangle over this issue, we will need to enter into executive session.

Trustee Barnes said she took it upon herself to approach seven local attorneys to see if any one of them would be interested in the Village Attorney position. For one reason or another each one said they would not be able to take on the position. Because Village of Lakewood business is not getting done the appointment of a Board of Trustees attorney is a way to go. Trustee Barnes said she considered hiring her own attorney just to have access to legal counsel. On the other hand Mr. Wright has proven his worth to the Village of Lakewood and urged Mayor Birrittieri to compromise her stand on the language of his contract and agree to execute it.

Mr. Leon Stein, 132 West Summit St., indicated it appears the Mayor and the Board of Trustees are at an impasse and recommended that an arbitrator be brought in to bring this matter to closure.

Mr. Bargar asked Mayor Birrittieri if she would care to share what exactly is the issue between you and the language in Mr. Wright's contract.

Mayor Birrittieri said in most contracts Village Attorneys are expected to attend the meetings of the Board of Trustees, if for one reason or another he or she can not attend a meeting, they must notify the Mayor. Mayor Birrittieri asked Mr. Wright if he would consider changing a few words in the contract, but he declined.

Trustee Di Salvo said the Village Attorney works for us, we don't work for him. The Village Attorney is expected to be in attendance at Board of Trustees meetings and it is beyond him why Mr. Wright wouldn't be agreeable to changing a couple words in the contract. Trustee Di Salvo understands that the language of any contract is important and very specific. The language changes that the Mayor desired did not substantively change much of anything. Trustee Di Salvo said in addition to Board of Trustees meetings there are important meetings of the Planning Board and/or the Zoning Board of Appeals that the Village Attorney's attendance is necessary and essential.

Trustee Drago said although the Buffalo, N.Y. based attorney was agreeable to attend Board of Trustees without charging for mileage, however any other time his attendance was required he could charge the Village of Lakewood for any travel expenses.

Trustee Di Salvo asked members of the Board of Trustees if they would be agreeable to appoint a qualified attorney, with municipal experience, who meets the residency requirements, but doesn't happen to be Mr. Wright. In unison, the other members of the Board of Trustees said they would.

SEPTEMBER 7, 2016 (CONTINUED)

Mr. Douglas Schutte, 104 Winchester Road, suggested that the attorney contract language include a statement to the effect that if the Village Attorney is unable to attend a particular meeting, someone else from his law firm or an alternate attorney be counted on to attend in his place.

Mayor Birrittieri said she has been in discussions with potential candidates for the Village Attorney position and is respectfully asking for some additional time to continue those discussions. The current position of the

Board of Trustees is unworkable. Mayor Birrittieri said the responsibility of this job is tremendous and one of her duties as Mayor is to make certain personnel appointments.

Trustee Barnes said there is a legal motion on the floor which has been seconded and awaits a vote by members of the Board of Trustees.

Mayor Birrittieri asked the Board of Trustees to work with her on this matter and to table any action on the motion to appoint a Board of Trustees attorney until its next regular meeting Monday, September 26, 2016. This will allow her to continue the search for a new Village Attorney.

Trustee Holcomb said he would be agreeable to table any action on the aforementioned motion until the next regular meeting of the Board of Trustees, which is scheduled for Monday, September 26, 2016.

Trustee Drago said she is concerned about the three public hearings that are scheduled for Monday, September 26, 2016, dealing with an alternate for both the Planning Board and Zoning Board of Appeals, plus the local law on brush and yard waste management.

Trustee Di Salvo indicated former Village Attorney Wright weighed in on the language of the local law on the brush and yard waste, and public hearings had previously been held on the idea to consider an alternate for both the Planning Board and Zoning Board of Appeals. Trustee Di Salvo said he is confident the Board of Trustees will be prepared to take action on these matters.

RESOLUTION #158-2016 - TABLE MOTION TO APPOINT BOARD OF TRUSTEES ATTORNEY

Motion by Trustee Holcomb, seconded by Trustee Barnes, per the request of Mayor Birrittieri, for the Board of Trustees to table a motion to appoint an attorney for the Board of Trustees until the next regular meeting of the Board of Trustees which is scheduled for Monday, September 26, 2016. Doing so will allow the Mayor some additional time to search for a new Village Attorney, to replace Edward P. "Tad" Wright, Esq.  
Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #159-2016 - AUTHORIZE VEHICLE/TITLE TRANSFER - 1999 DODGE RAM PICK-UP

Motion by Trustee Holcomb, seconded by Trustee Barnes, per the request of Lakewood Vol. Fire Department Chief Kurt W. Hallberg, for the Board of Trustees, acting as the Board of Fire Commissioners, to authorize the transfer of the 1999 Dodge Ram 2500, (M-371), Station Truck, from the Village of Lakewood to the Lakewood Fire Company, Inc.  
Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #159-2016 - DESIGNATE BOARD OF TRUSTEES AS LEAD AGENCY

Motion by Trustee Drago, seconded by Trustee Di Salvo, to approve the designation of the Board of Trustees of the Village of Lakewood to solicit Lead Agency for the Environmental Review per Article 8 of the State Environmental Quality Review (SEQR) Act, in connection with the review of the latest application for a Wireless Telecommunications Facility, as submitted by Up State Tower Company, LLC, Bethesda, Maryland.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #160-2016 - AUTHORIZE REVIEW OF APPLICATION FOR COMPLETENESS

Motion by Trustee Holcomb, seconded by Trustee Di Salvo, authorizing the Board of Trustees of the Village of Lakewood to determine the completeness of the most recent application for a Wireless Telecommunications Facility, as submitted by Up State Tower Company, LLC, Bethesda, Maryland.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #161-2016 - AUTHORIZE FUND TRANSFER

Motion by Trustee Di Salvo, seconded by Trustee Barnes, authorizing Village Treasurer Andrea J. Windoft to transfer \$ 4,358.84, from Account T1093.70 (Escrow), into Account A1420.40, (Law Contractual), in connection with the payment due The Center for Municipal Solutions, Glenmont, N.Y., for cell tower consulting services.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #162-2016 - APPROVE THE REAPPOINTMENT OF REGISTRAR

Motion by Trustee Holcomb, seconded by Trustee Barnes, for the Board of Trustees to reappoint Village Clerk Joseph M. Johnson as the Village of Lakewood's Registrar of Vital Statistics to a term of four (4) years, retroactive to January 1, 2016.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #163-2016 - APPROVE THE REAPPOINTMENT OF DEPUTY REGISTRAR

Motion by Trustee Barnes, seconded by Trustee Di Salvo, for the Board of Trustees to reappoint Village Treasurer Andrea J. Windoft as the Village of Lakewood's Deputy Registrar of Vital Statistics to a term of four (4) years, retroactive to January 1, 2016.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #164-2016 - AUTHORIZE STREET CLOSING

Motion by Trustee Barnes, seconded by Trustee Di Salvo, authorizing residents of Crawford Lane to close their street to traffic Saturday, September 17, 2016, from 3:00 PM - 7:00 PM, for a neighborhood "Block Party".

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

SEPTEMBER 7, 2016 (CONTINUED)

RESOLUTION #165-2016 - ACCEPT RESIGNATION OF HERBERT F. HERN

Motion by Trustee Barnes, seconded by Trustee Drago, to accept with regret the resignation of Herbert F. Hern, as a member of the Lakewood Planning Board, and for Mayor Birrittieri to send Mr. Hern a letter thanking him for his many years of community service. Mr. Hern had served on the Planning Board since September 2004. Mayor Birrittieri indicated she would like to appoint someone to fill the vacancy on the Planning Board at the next regular meeting and asked for any recommendations that members of the Board of Trustees may have.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #166-2016 - AUTHORIZE REVIEW OF THE LOCAL ZONING LAW

Motion by Trustee Di Salvo, seconded by Trustee Holcomb, for the Board of Trustees to authorize the Planning & Zoning Committee, comprised of Chairman Trustee Di Salvo, and Trustee Holcomb to begin meeting with Planning Board Chairman Edward J. "Ted" McCague, Zoning Board of Appeals Chairman William F. Chandler, Building Inspector Jeff Swanson and others as needed to prioritize zoning related

issues currently facing the Village of Lakewood.

Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #167-2016 - ACCEPT THE FINAL DRAFT OF THE COMPREHENSIVE PLAN

Trustee Holcomb indicated he would rather table action on this matter until the next regular meeting, September 26<sup>th</sup>. Trustee Drago agreed.

Mayor Birrittieri said this matter is very time sensitive and to her knowledge, it isn't necessary for legal counsel to review a comprehensive plan prior to having the Board of Trustees accept its final draft.

Trustee Di Salvo indicated that professional planners/consultants, such as the staff at Peter J. Smith & Company, Inc. draw upon their expertise and experience when drafting comprehensive plans for municipalities. Trustee Di Salvo said from his experience as a planner, legal counsel was never called upon to review a comprehensive plan for its substance or form. That is what a municipality is paying the professional planner to do. At this point in the process there are no legal issues to contend with. Trustee Di Salvo said work on the development of a new comprehensive plan for the Village of Lakewood began in March 2014. The time has come to move forward with the process. This plan was driven by the residents and the people have spoken. Trustee Di Salvo said in the meantime there grant applications coming on-line where there are millions of dollars available. In order to qualify for this grant money a municipality must have an endorsed plan in place. Trustee Di Salvo urged his fellow Board of Trustee members to accept this evening the final draft of the Village of Lakewood Comprehensive Plan as presented.

Mayor Birrittieri said she is very excited about making this document available to the public which is the community's template for the future. She then encouraged the Board of Trustees to accept the final draft of the comprehensive plan as prepared by Peter J. Smith & Company, Inc.

Planning Board Chairman and Chairman of the Comprehensive Plan Steering Committee Edward J. "Ted" McCague indicated there is no requirement to have legal counsel review a comprehensive plan.

Mayor Birrittieri and Trustee Di Salvo are merely asking the Board of Trustees to accept its final draft so the Village of Lakewood can enter the adoption phase of the review process. This will allow the Chautauqua County Department of Planning & Economic Development to review the document and subsequent review of the document from an environmental standpoint. He said the Village of Lakewood needs to get the process started. Mr. McCague informed everyone that the comprehensive plan is not a binding document.

SEPTEMBER 7, 2016 (CONTINUED)

Motion by Trustee Di Salvo, seconded by Trustee Holcomb, for the Board of Trustees to accept the final draft of the Village of Lakewood's Comprehensive Plan as prepared by Peter J. Smith & Company, Inc., Buffalo, N.Y.  
Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

RESOLUTION #168-2016 - APPROVE AGREEMENT WITH LABELLA ASSOCIATES

Motion by Trustee Di Salvo, seconded by Trustee Holcomb, for the Board of Trustees to hereby begin the formal adoption phase of the Comprehensive Plan and to authorize the Village of Lakewood to enter into an Agreement with LaBella Associates, D.P.C., Buffalo, N.Y., for consulting services pertaining to the State Environmental Quality Review Act (SEQRA) requirements in the review of the Comprehensive Plan.  
Adopted: 4 ayes, no nays (Barnes, Di Salvo, Drago, Holcomb)

Motion by Trustee Holcomb, seconded by Trustee Drago and unanimously carried the Board adjourned at 8:21 PM.

---

Joseph M. Johnson  
Village Clerk

