

OCTOBER 22, 2012

The fifteenth regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Monday, October 22, 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

Fire Chief Kurt W. Hallberg indicated to Mayor David T. Wordelmann and the Board of Trustees, acting as the Board of Fire Commissioners that a new diesel engine is expected to be installed into the 2006 Ford ambulance at a cost of approximately \$ 20,000.00. Chief Hallberg said the problems with the engine have been looked into by the dealer and others and it has been determined that replacing the engine is the only option at this time.

Mayor Wordelmann said the question he and members of the Board of Trustees have is how is the Village of Lakewood going to pay for the new engine. Mayor Wordelmann noted that there is \$ 19,000.00 in the fire department's equipment maintenance account.

Village Treasurer Andrea J. Windoft noted that the \$ 19,000.00 is what remains in the fire department equipment account and that there is just over \$ 22,000.00 in the equipment maintenance account.

Chief Hallberg said he would rather see money taken from the equipment account versus exhausting the equipment maintenance account.

Trustee John Jablonski asked Chief Hallberg if there are any guarantees that the replacement engine won't have similar problems.

Chief Hallberg said unfortunately there are no guarantees.

Trustee Gale A. Denn asked Chief Hallberg if he received any other quotes to replace the engine.

Chief Hallberg said he hasn't, but Mr. Ed Osborne of E & H Auto Repair, Niobe, N.Y., has been working closely with the two Ford dealerships that were involved in troubleshooting the engine problems.

Trustee Denn said that is a lot of money to spend without receiving additional quotes.

Chief Hallberg said it is a moot point, in that the engine is expected to be delivered tomorrow, (Tuesday, October 23, 2012).

Chief Hallberg said in past years there was always some money available when emergencies arose.

Mayor Wordelmann noted that there is \$ 10,000.00 set aside in the contingency account for certain emergencies. Another source of funding could result from budget transfers at the end of the fiscal year when budgeted monies in certain accounts goes unspent.

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Mr. Todd Hanson, Councilman from the Town of Busti, and Chairman of the Comprehensive Plan Committee appeared before Mayor Wordelmann and the Board of Trustees to update them on the plan's progress. Councilman Hanson then distributed copies of the Town of Busti's Community Profile which was compiled by Small Town Business Services, Westfield, N.Y. He asked Mayor Wordelmann and the Board of Trustees to kindly look through the document and provide any input on its varied subjects. Mr. Hanson said the next step in the development of the comprehensive plan is to set the framework for certain goals and plans for the entire Town of Busti.

Mr. Hanson said he hoped by working together some long term goals and plans can be implemented that will help each municipality. The next meeting of the steering committee has been scheduled for 7:00 pm, Wednesday, November 7TH at the town office. Councilman Hanson said any input concerning the comprehensive plan may be e-mailed to him or to the attention of Town Clerk Diane M. VanDerwark.

Lakewood Fire Department Lieutenant Jackson Knowlton wished to remind Mayor Wordelmann and members of the Board of Trustees of the Halloween costume parade being sponsored by the Lakewood Volunteer Fire Department starting at 6:00 PM, Wednesday, October 31st. Southwestern Central School District students will parade down Chautauqua Ave. to the fire station where their costumes will be judged by members of the Board of Trustees. Refreshments and candy will be provided to all those attending.

Mayor Wordelmann thanked Fire Lt. Knowlton for organizing this event and for everything the fire department does for the community throughout the year.

Mr. Thomas Brown, 227 Locust Street, wished to thank Mayor Wordelmann, the Board of Trustees, and Department of Public Works Supervisor Thomas R. Pilling and his crew for the wonderful work they did to slow down the stormwater thereby reducing the amount of erosion that occurs in the creek tributary between Elizabeth St. and Locust St. and within the "paper street" between Grandview Ave. and Mapleview Ave.

APPROVAL OF MINUTES

Motion by Trustee Denn, seconded by Trustee Troche, to approve the minutes of the last regular meeting of the Board of Trustees, held October 8, 2012.

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

AUDIT OF CLAIMS

Motion by Trustee Drago, seconded by Trustee Jablonski, that the claims as audited by the Auditing Committee of the abstracts dated October 22, 2012 be approved and that the Clerk shall execute said abstracts (#20 & #21) and direct payment by the Treasurer. General Fund: \$ 42,224.39, (Checks #8994 thru #9033) Trust & Agency Fund: \$ 52,246.10, (Checks #2206 thru #2222)

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

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REPORTS

Department of Public Works Supervisor Thomas R. Pilling indicated the only thing he has to report this evening is that the annual leaf pick-up will begin Monday, October 29th.

RECESS

Motion by Trustee Troche, seconded by Trustee Drago, to recess the regular meeting of the Board of Trustees in order to conduct a previously scheduled public hearing.

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

PUBLIC HEARING – 6:45 PM
SITE PLAN REVIEW
TWO STORY MIXED USE BUILDING
140-144 CHAUTAUQUA AVE.

Ms. Betsy Shults, 1 Pine Ave., has submitted an application for Site Plan Review in connection with a proposal to construct an 87 ft. x 117 ft. two story mixed use commercial and residential building at 140-144 Chautauqua Ave. 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 requires site plan review.

Mayor Wordelmann opened the public hearing and asked the Clerk to read the Notice of Public Hearing as it appeared in the Village of Lakewood's official newspaper. He then asked if there was anyone present to briefly explain Ms. Shults' proposal.

Ms. Laurie Shults, of Brick Elephant Design, indicated she is heading up this project for her mother along with local architect Mr. Donald Harrington, of Harrington Architecture, Jamestown, N.Y. She noted that there is the potential of four first floor tenants, with two luxury apartments making up the second floor, with elevator access and two tandem two car garages on the first floor.

Trustee Denn asked Ms. Shults what is the definition of a luxury apartment when compared to a regular apartment.

Ms. Shults said in addition to the two car garages and elevator the luxury apartments, which are geared toward young professionals, will have air conditioning and high end finishes. Ms. Shults said she and Mr. Harrington have done considerable research in determining the needs of young professionals such as a guest room plus an office or den.

Trustee Denn wished to thank the Shults family for investing in the local community, for being wonderful neighbors and for the work done at 6 Alta Way, the remodel of 1 Pine Ave., for the newly proposed car dealership on Mall Blvd. and now this terrific project. You are a credit to the community.

Out of curiosity, Trustee Denn asked Mr. Harrington why he didn't or couldn't comply with the local zoning law when it came to the building height and rear yard set-back requirements.

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Mr. Harrington said what necessitated the request for the rear yard set-back variance was the requirement to provide two off-street parking spaces while at the same time trying to maximize the amount of floor space for the first floor tenants. Mr. Harrington said site plan preparation is a delicate balance of what the developer needs, affordability and the local zoning law requirements. Mr. Harrington said the structure itself complies with the 30 ft. maximum building height requirement. Only the peak of one of the two towers will exceed the 30 ft. maximum building height requirement.

Trustee Drago indicated she attended the Planning Board meeting held October 17, 2012, and it was presented very well that the parking requirements more or less dictated the need for additional floor space which prompted the application for the rear yard set-back variance.

Ms. Shults and Mr. Harrington agreed that in order to maximize the retail space on the first floor tandem parking spaces adjacent to the elevator core was the optimum choice.

Mr. Harrington indicated another way to maximize retail space was to provide the tenants with the possibility of having mezzanine areas at either end of the building. He went on to describe the ceiling height in the two luxury apartments and the low pitched roof which will allow the utilization of solar panels.

Mayor Wordelmann asked about the outdoor dining area and if it needs to be built to certain specifications.

Building Inspector Charles L. Smith said any restaurant wishing to serve alcohol first must apply for a Special Use Permit to do so. The outside dining area and overall floor plan will be a part of that process.

Mr. Thomas Brown, 227 Locust Street, a volunteer for the Lakewood Fire Department, asked if the alleyway behind the proposed building would be widened to handle large fire trucks.

Mayor Wordelmann said the situation wouldn't be any different than the alleyway in the two blocks north of the project site.

Mayor Wordelmann echoed Trustee Denn's earlier sentiments, commending Mr. & Mrs. Timothy Shults for investing and believing in the Village of Lakewood.

With no one else to be heard Mayor Wordelmann closed the public hearing at 7:03 PM.

RESOLUTION #59-2012-2013 – APPROVE PROPOSED SITE PLAN

Motion by Trustee Troche, seconded by Trustee Drago, to approve the proposed site plan as submitted by Ms. Betsy Shults, 1 Pine Ave., whereby she will be allowed to construct an 87 ft. x 117 ft. two story mixed use commercial and residential building at 140-144 Chautauqua Ave. The proposed mixed use building will include retail space on the first floor and two luxury apartments occupying the second floor. Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

OCTOBER 22, 2012 (CONTINUED)

PUBLIC HEARING – 7:00 PM
SPECIAL USE PERMIT - AUTOMOBILE SALES LOT
373 EAST FAIRMOUNT AVE.

Mr. Lawrence G. Spacciapolli, 4586 West Lake Road, Dunkirk, N.Y., has submitted an application for a Special Use Permit in connection with a proposal to establish an automobile sales lot at 373 East Fairmount Ave., corner of Fairdale Ave. In accordance with Section #25-14, (C-10), [Highway Business (B-2) District], of the Village of Lakewood Zoning Law, the establishment of an automobile sales lot in a B-2, Highway Business District requires a Special Use Permit.

Mayor Wordelmann opened the public hearing at 7:05 PM and asked the Clerk to read the Notice of Public Hearing as it appeared in the official newspaper of the Village of Lakewood. He then asked if there was anyone present to briefly explain Mr. Spacciapolli's proposal.

Mr. Spacciapolli introduced himself and proceeded to distribute proposed site plans to Mayor Wordelmann and members of the Board of Trustees. Mr. Spacciapolli indicated that the building on site will be utilized as is, with the exception of a few cosmetic improvements. He indicated that he intends to add eight new light poles to the outside perimeter of the site. Mr. Spacciapolli indicated the lot will be able to accommodate approximately fifty cars. He then explained that the lot is currently in disrepair in that recent excavations on the site caused the water and sewer lines to be broken. To get through the winter he plans on leveling off the excavations and filling any low spots with millings. Although he would have liked to have paved the entire lot before winter it is more practical to let the excavations settle and do the paving in the spring.

Mr. Spacciapolli said the existing pylon sign in front will be converted into a monument sign. He added the building will also include a mini showroom for two cars.

Trustee Denn asked Mr. Spacciapolli if he has purchased the property.

Mr. Spacciapolli said he has purchased the property.

Mayor Wordelmann asked Mr. Spacciapolli if he expects his used car business as proposed to be long term and where does he currently operate used car businesses.

Mr. Spacciapolli indicated to Mayor Wordelmann that he is not a real estate developer and concentrates his efforts on selling used cars, it is what he does. Mr. Spacciapolli said he operates two businesses, one in Dunkirk and one in Westfield.

Trustee Joseph M. Troche told Mr. Spacciapolli he has made it very clear on previous occasions that he doesn't like used car lots. Because there isn't a lot of prime commercial property left in the Village of Lakewood he would like to think the property has a better use than a used car lot, which could be more valuable from assessment standpoint.

Trustee Denn indicated he shared Trustee Troche's concerns. Because it is a very busy corner Trustee Denn said he has some very serious concerns about safety. Trustee Denn said he believes clear sight lines at that particular intersection will be compromised by the display of cars on site.

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Mr. Spacciapolli said he can appreciate the safety concerns expressed by Trustee Denn however the cars on display per the local zoning law will be set-back twenty-five feet from the curb line. Mr. Spacciapolli said he would like to think that most of the traffic to and from the site will utilize the entrance/exit off Fairdale Ave., because it is less traveled and that motorists will be able to make use of the traffic control device.

Trustee Drago indicated the subject of temporary advertising gimmicks came up at the planning board meeting last week and wondered if Mr. Spacciapolli would be using these temporary gimmicks which can be very distracting to motorists traveling along Rt. 394.

Mr. Spacciapolli indicated he typically uses balloons, but only during a major sales event. If advertising gimmicks are used every day, they lose their effectiveness.

Mayor Wordelmann said although the zoning law requires that cars on display must be set-back a minimum of twenty-five feet from the curb line, dealers invariably want to sneak cars closer and closer to the road.

Mr. Spacciapolli indicated to Mayor Wordelmann that he and his staff will comply with whatever the local zoning law requires.

Trustee Denn asked Mr. Spacciapolli to reiterate what the building on site will be used for.

Mr. Spacciapolli indicated that building will be partitioned off into sales offices, there will be a showroom for two cars and at some point we may want to include a bay to detail cars. All car repairs will be done at the facility in Dunkirk.

Trustee John Jablonski asked Building Inspector Charles L. Smith if this particular project is below the threshold for site plan review, and if the Board of Trustees has the last say in the review process.

Building Inspector Smith indicated that this project is below the threshold for site plan review and that the planning board has rendered a recommendation to the Board of Trustees for their consideration.

Mayor Wordelmann asked Building Inspector Smith if he thinks the proposed site lighting will be an issue.

Mr. Smith said he believes the lighting fixtures will be similar to those in use at LUV Toyota and if an issue regarding any spillover light arises we can ask the developer to add shades to those fixtures.

Mr. John Gullo, Esq., an attorney from Fredonia, N.Y., and who has represented the Spacciapolli family for nearly twenty years indicated to Mayor Wordelmann and members of the Board of Trustees that this is the third generation of this family involved in the vehicle sales business. This is not a fly-by-night operation by any means. Because of this big divide between the north and south county, sometimes we don't know the history of businesses just twenty-five miles away. The Spacciapolli family has been doing business in the Dunkirk area since 1956. The business moved to the Vineyard Dr. location around ten years ago. Mr. Gullo said the Lakewood site will be a permanent sales location serving the southern half of the county and noted the high traffic volume is what makes it very valuable.

Mr. Gullo said he wished to correct one bit of information and that is Mr. Spacciapolli is currently leasing the property with its purchase under contract and scheduled to be finalized in January 2013.

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With no one else to be heard, Mayor Wordelmann closed the public hearing at 7:17 PM.

Trustee Troche made a motion not to accept the project.

Trustee Denn seconded the motion introduced by Trustee Troche, saying the Village of Lakewood is not anti business and that he is very concerned from a safety standpoint. Because of the high traffic volume the potential for accidents in front of the business exists and it his reason for voting against this project.

Trustee Drago indicated if the Special Use Permit is not approved she fears that the property will remain vacant and undeveloped which is unappealing. She said if the developer complies with the various guidelines as set forth in the zoning law she would be in favor of the project. Trustee Drago said she would hate to turn away a business that wishes to locate in the Village of Lakewood plus the business has a history and good reputation in the Dunkirk/Fredonia area.

Trustee Jablonski indicated what Mr. Spacciapolli is proposing for the property is positive and would be an improvement. This project has pointed to a flaw in the local zoning law wherein if the consensus is there is a better use for this property than a used car lot then it shouldn't be zoned to allow a used car lot. The zoning law should be changed, but as is, the applicant is complying with the local zoning law.

RESOLUTION #60-2012-2013 – DISAPPROVE SPECIAL USE PERMIT APPLICATION

Motion by Trustee Troche, seconded by Trustee Denn, to disapprove the issuance of a Special Use Permit to Mr. Lawrence G. Spacciapolli, 4586 West Lake Road, Dunkirk, N.Y., which would have allowed him to establish a used automobile sales lot at 373 East Fairmount Ave., corner of Fairdale Ave., in accordance with Section # 25-44, [Vehicle Sales] of the Village of Lakewood Zoning Law.

To Disapprove: 2 ayes, (Troche, Denn), 3 nays (Wordelmann, Drago, Jablonski)

Mayor Wordelmann said because there are some differences of opinion as to what direction the Board of Trustees should take regarding Mr. Spacciapolli's application for a Special Use Permit, he would entertain a motion to table any additional action this evening regarding his proposal, until members of the Board of Trustees had a chance to discuss the matter in more detail and consider placing certain conditions on the issuance of a special use permit if approved.

RESOLUTION #61-2012-2013 – TABLE ANY FURTHER ACTION ON SPECIAL USE PERMIT

Motion by Trustee Troche, seconded by Trustee Denn, to table any further action on the application for a Special Use Permit as submitted by Mr. Spacciapolli regarding his proposal to establish a used car lot at 373 East Fairmount Ave. until the Board of Trustees has had the opportunity to discuss the matter in more detail and to consider placing certain conditions on the special use permit if approved.

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

REPORTS (CONTINUED)

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has answered nine thousand two hundred nine reportable incidents year-to-date.

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He also reported that Officers C.A. DePonceau and S.A. Bentley recently completed license plate reader training, which has proven to be a very successful tool in apprehending individuals. Chief Bentley said the purchase of the new portable radios is moving forward and that the Lakewood-Busti Police Department recently received a grant in the amount of \$ 750.00 from Governor Cuomo's Traffic Safety Committee.

Chief Bentley indicated that thanks to some diligent work by Sgt./Investigator Paul A. Gustafson, one of the individuals involved with some recent burglaries out in the township, was apprehended and taken to jail. He reminded everyone to keep their doors locked and to be vigilant.

Chief Bentley reported this morning Officers N.M. Guttman and J.G. Spencer responded to a call at the corner of Big Tree Road and Kortwright Road regarding a man threatening suicide. A chase ensued to the Watts Flats Road where Officers N.M. Guttman and J.G. Spencer, with assistance from Chautauqua County Sheriff Deputies, subdued the individual and removed the gun from his possession, possibly saving the man's life. Chief Bentley wished to publically commend Officers N.M. Guttman and J.G. Spencer for their actions. After the subject was taken into custody he was scheduled for a mental health evaluation.

Chief Bentley concluded his report by stating there is a meeting scheduled with the Verizon Wireless sales representative at 10:00 AM, Wednesday, October 31, 2012 to discuss the possibility of free cell phone upgrades.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has responded to six hundred eleven alarms year-to-date. He also indicated the Lakewood Volunteer Fire Department has been involved with five major incidents the past couple of weeks including a structure fire at 130 West Fairmount Ave. involving a room and contents which was very near to "flashing over" when they arrived on the scene, a natural gas explosion which destroyed a single family house at 111 Baxter Ave., and mutual aid calls involving a house fire on Butts Road in Ashville, a structure fire at T & T's Tavern in Sugargrove, PA, and a factory fire at Precision Precut Material in Bear Lake, PA. Chief Hallberg said needless to say we've been very busy.

Mayor Wordelmann thanked Fire Chief Hallberg and members of the Lakewood Volunteer Fire Department and its auxiliary for hosting the wonderful open house held at the fire station Saturday, October 13, 2012.

Village Treasurer Andrea J. Windoft reported that there was a significant shortfall in the estimated revenue generated at this year's public auction and that she will soon cancel the Time Warner Cable internet service to the Anthony C. Caprino Municipal Building in conjunction with the installation with the new fiber optic internet service through Chautauqua County.

Building Inspector Charles L. Smith reported that the foundation walls to the new Olive Garden Italian Restaurant were poured earlier today. Mr. Smith also reported that the plan is to install a wireless stub off the fiber optic system at the Anthony C. Caprino Municipal Building as a means to provide internet service to the Lakewood Fire Station.

Building Inspector Smith indicated that the natural gas leak and subsequent explosion earlier this afternoon at 111 Baxter Ave. blew the foundation out from under the house rendering it unsafe which necessitated the complete razing of the structure.

OCTOBER 22, 2012 (CONTINUED)

COMMITTEE REPORTS

Trustee Drago, Chairperson of the Auditing Committee reported that she and Trustee Jablonski put together a policy regarding use of a Village of Lakewood credit card and is hopeful the Board of Trustees will approve the application for an M&T Bank credit card later this evening.

RESOLUTION #62-2012-2013 – AUTHORIZE CREDIT CARD APPLICATION

Motion by Trustee Denn, seconded by Trustee Troche, authorizing Village Treasurer Andrea J. Windoft to submit an application to M&T Bank, Jamestown, N.Y., for a block of Visa Corporate credit cards for use by selected officials and employees of the Village of Lakewood. The policy enforcing the proper use of the credit cards shall include the following: Any misuse of the credit card will lead to disciplinary action and could lead to suspension and/or termination of employment in accordance with the Village Policies and Procedures.

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

RESOLUTION #63-2012-2013 – RESCHEDULE NEXT REGULAR BOARD MEETING

Motion by Trustee Troche, seconded by Trustee Drago, that due to the upcoming Veterans' Day Holiday, to reschedule the first regular Village Board of Trustees meeting in November from Monday, November 12th to Tuesday, November 13th. The Village Board meeting will be held at its regular time, 6:30 PM, preceded by a 6:00 PM work session.

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

RESOLUTION #64-2012-2013 – AUTHORIZE PLANNING & ZONING CONFERENCE ATTENDANCE

Motion by Trustee Troche, seconded by Trustee Denn, authorizing members of the Board of Trustees, Planning Board and Zoning Board of Appeals to attend the annual Fall Planning & Zoning Conference to be held Wednesday, November 14th at Southern Tier West, Salamanca, N.Y., or Thursday, November 15th at Chautauqua Suites Hotel & Expo Center, Mayville, N.Y. The conference is being sponsored by Southern Tier West. Cost of the conference is \$ 30.00/registrant.

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

RESOLUTION #65-2012-2013 – TABLE ACTION ON FUNDING REQUEST FOR THE B-LRC

Motion by Trustee Denn, seconded by Trustee Troche, per the recommendation of Mayor Wordelmann to table any action on the funding request of \$ 7,500.00 as received from the Town of Busti for the 2013 operating expenses of the Busti-Lakewood Recreation Commission. Mayor Wordelmann suggested it wouldn't be wise to enter into any other plans to fund joint programs until questions regarding the funding of the police services contract agreement between the Village of Lakewood and the Town of Busti are resolved.

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

OCTOBER 22, 2012 (CONTINUED)

RECESS

Motion by Trustee Denn, seconded by Trustee Troche, to recess the regular meeting of the Board of Trustees at 7:41 PM, so as to enter into executive session to discuss the new police services contract/agreement between the Village of Lakewood and the Town of Busti.
Adopted: 4 ayes, no nays (Denn, Drago, Jablonski, Troche)

EXECUTIVE SESSION

Present at the executive session were Mayor David T. Wordelmann, Trustee Gale A. Denn, Trustee Susan F. Drago, Trustee John Jablonski, Trustee Joseph M. Troche and Village Attorney Edward P. Wright.
Motion by Trustee Troche, seconded by Trustee Jablonski, to adjourn the executive session and to reopen the regular meeting at 8:13 PM.

Motion by Trustee Denn, seconded by Trustee Troche, and unanimously carried the Board adjourned at 8:14 PM.

Joseph M. Johnson
Village Clerk