

NOVEMBER 13, 2012

The sixteenth regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Tuesday, November 13, 2012 at 6:30 PM, with Mayor David T. Wordelmann presiding. Trustees present were 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. Absent was Trustee Gale A. Denn. Following the pledge of allegiance, Mayor Wordelmann asked that everyone remain standing for a moment of silence as a tribute to all our veterans.

#### ANYONE TO BE HEARD

Mr. Dudley R. Ericson, 161 Front Street, appeared before Mayor David T. Wordelmann and the Board of Trustees, to first thank them for recognizing veterans this evening and secondly to voice his concerns regarding the proposal to establish a used car lot at the corner of Fairdale Ave. and East Fairmount Ave. Mr. Ericson wished to emphasize that his comments are not aimed at the developer, Mr. Spacciapolli, but rather at the question of whether or not a used car lot is the best possible use of this property. Mr. Ericson indicated there is little argument that this intersection is the busiest one in Lakewood. Mr. Ericson wondered if a used car lot is an appropriate fit for this location and didn't think a used car lot would enhance the Village of Lakewood. Mr. Ericson said the bigger issue is the traffic at this very busy intersection, which he uses most every day. Because of the traffic generated at Wal-Mart across the street and general traffic flow on Rt. 394, at times only two or three cars approaching the traffic signal from Fairdale Ave. can enter Rt. 394 during one light change. With that said the proposal for an entrance/exit from the project site onto Fairdale Ave. is unreasonable.

Mr. Ericson said he totally disagreed with the position some members of the Planning Board and Board of Trustees took and their opinion that a used car lot is better than seeing the property remain vacant. Mr. Ericson noted that the assessed value of the property in question is \$ 256,000.00, which generates approximately \$ 1,870.00 in Village of Lakewood tax revenue. There is no loss of income to the Village of Lakewood if the lot remains vacant. He said the average bank located along Rt. 394 is assessed between \$ 670,000.00 and \$ 913,000.00. Local restaurants are assessed between \$ 500,000.00 and \$931,000.00. The property owned by William McFadden, including the LUV Toyota new and used car dealerships totals \$ 2,240,000.00. Is it fair to put a used car lot in the busiest commercial area, which would be much better suited for other types of businesses?

Mr. Ericson said once a commitment is made, the Board of Trustees will not be able to change it. After spending his whole life in human resources, the one thing he learned is one doesn't hire the first person applying for a job. Even though there is a vacancy one waits for the right person to apply. This principal also applies to real estate wherein one doesn't sell to the first customer that comes along. Rather one waits to make the sale to the right person. Mr. Ericson said he doesn't think the granting of this Special Use Permit will be the right decision for this village.

Mr. Albert "Skid" Procter, 120 Sunset Ave., said he agrees with Mr. Ericson regarding the proposal to establish a used car lot at the corner of East Fairmount Ave. and Fairdale Ave.

John P. Gullo, II, Esq., 221 Central Ave. Fredonia, N.Y., legal counsel for Mr. Spacciapolli, wished to make three specific points. One, the Village of Lakewood Zoning Law allows used car lots in this zoning district via the issuance of a special use permit.

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The applicant who is fully compliant with the rules and regulations with respect to vehicle sales, as set forth in the local zoning law, has no problems with any fair and reasonable conditions that may be attached to the special use permit. We will be happy to work with the Village of Lakewood in this regard. Two, the value of this proposed car lot to the Village of Lakewood is not something Mr. Gullo can calculate. If interested we can speak to the sales tax revenue that is generated via auto sales, vehicle registration fees, etc. Mr. Gullo said some of this revenue trickles down to the Village of Lakewood adding this used car lot will pay great dividends to the village. Three, we are willing to live with any reasonable conditions/restrictions that may be part of the special use permit. The only thing we ask is that we are treated the same as all the other car dealerships and used car lots located in the same zoning district within the Village of Lakewood. There may be some conditions that may be specific to this particular location and that is fine. Mr. Gullo said if the Board of Trustees requests a particular restriction/condition, we will deliver as long as it is reasonable.

Mr. Larry Spacciapolli indicated a projection or goal of this dealership would be fifty sales per month. The National Auto Dealers Association figures state the average used auto transaction totals \$ 16,700.00. With the NYS sales tax at 7.5 % and taking all these numbers into account this used car lot is expected to generate approximately \$ 25,000.00/month in sales tax revenue which translates into \$ 300,000.00/year. Some of the 3% of the sales tax revenue Chautauqua County collects will trickle down to the Village of Lakewood. Using the same sales numbers, vehicle registration fees will generate approximately \$7,750.00/month or \$ 93,000.00/year. Mr. Spacciapolli noted car dealerships generate more NYS sales tax revenue than any other single business enterprise.

Mrs. Mary Jane Proctor, 120 Sunset Ave., indicated she uses the intersection of Fairdale Ave. and East Fairmount Ave. quite often and it is not an easy intersection to get through. Adding a used car lot to the corner will likely make it even worse. She asked, why do we need another used car lot, adding she is not in favor of it.

Mr. Ericson asked Police Chief John R. Bentley if he would comment on the number of car accidents that occur at that intersection.

Chief Bentley indicated that car accidents don't occur any more frequently at this signaled intersection than at other signaled intersections along Rt. 394.

Trustee John Jablonski asked Department of Public Works Supervisor Thomas R. Pilling if there are any perceived problems regarding surface water runoff from the proposed used car lot. It doesn't appear it is the best situation in that surface water just runs along the edge of Fairdale Ave. towards the railroad overpass.

Mr. Pilling indicated that most of the water which runs down the east side of Fairdale Ave. drains behind the homes on Muto Street into a swale along the south side of the railroad tracks.

## APPROVAL OF MINUTES

Motion by Trustee Troche, seconded by Trustee Drago, to approve the minutes of the last regular meeting of the Board of Trustees, held October 22, 2012, with the exception to correct the language in Resolution #60-2012-2013 from adopted to disapproved.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

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### 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 31, 2012 and November 13, 2012, be approved and that the Clerk shall execute said abstracts (#22, #23 & #24) and direct payment by the Treasurer. General Fund: \$ 5,288.55 (Checks #9034 thru #9036) & \$ 43,992.05, (Checks #9037 thru #9093), Trust & Agency Fund: \$ 51,110.15 (Checks #2223 thru #2237)  
Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

### REPORTS

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has responded to six hundred sixty-five calls year-to-date. Chief Hallberg added the new diesel engine in the ambulance, (A-371) is working fine and is going to be checked out later this week by the mechanic to make sure there are no leaks in any of the connections.

Department of Public Works Supervisor Thomas R. Pilling reported that the annual leaf pick-up will be completed later this week and that snow fighting equipment will be readied for winter.

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has answered nine thousand eight hundred forty-nine reportable incidents year-to-date, which is a 12% increase in the number of incidents over the same period last year. Chief Bentley indicated the Lakewood-Busti Police Department assisted the Town of Busti with the Veterans' Day ceremony held at the five corners out in the hamlet by closing off the Busti-Stillwater Road to traffic. Chief Bentley also reported that the department has assisted CNET (Community Narcotics Enforcement Team) with a couple marijuana arrests that occurred at 7 East First Street and 1239 Big Tree Road. During the raid 12 pounds of dried marijuana, 170 marijuana plants and thirty-seven long guns were confiscated from the two residences.

Chief Bentley also reported that last Friday evening, while off duty, Lakewood-Busti Police Officer Douglas P. Goodwin took the initiative to assist members of Sears' security personnel in chasing down and apprehending an individual suspected of stealing a flat screen television from the department store. While wrestling with the suspect Officer Goodwin injured his right hand. In conclusion Chief Bentley said he has recently received three minor grants totaling a little over \$ 2,000.00 from the Governor's Traffic Safety Committee.

Village Treasurer Andrea J. Windoft reported that this quarter's sales tax revenue was up 11% over last quarter and up 18% over the corresponding quarter last year. Treasurer Windoft asked Trustee Troche if he has made any progress in drafting a vehicle policy for Village of Lakewood employees.

Village Attorney Wright indicated he thought it was in Trustee Denn's court because Trustee Troche put his hands on the IRS vehicle policy through his work place. Interpretation of the policy was approved and it was passed on to Trustee Denn.

Building Inspector Charles L. Smith indicated he has been working with the design team for the Chinese Buffet regarding plans to locate a fairly good size restaurant within the Chautauqua Mall. He is just waiting to receive the construction drawings which are expected within the next week or two.

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Staying on the Chautauqua Mall, Mr. Smith said a new shoe store is expected to open very soon and that a Bounce-a-lot and accompanying pizza place is being planned in undeveloped space near the food court, across from Old Navy. Mr. Smith also reported some floors of the proposed Olive Garden Italian Restaurant were poured earlier in the week and one should expect to see some walls going up pretty soon.

RESOLUTION #66-2012-2013 – TABLE ACTION ON SPECIAL USE PERMIT APPLICATION

Motion by Trustee Troche, seconded by Trustee Drago, per the recommendation of Mayor Wordelmann to table any action on the application for a Special Use Permit as submitted by Mr. Lawrence G. Spacciapolli regarding his proposal to establish a used car lot at 373 East Fairmount Ave. Trustee Troche said to be fair the whole board should have the opportunity to vote on this matter.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

Mr. Gullo, indicated to Mayor Wordelmann that his client has some construction items that need to be taken care of and after putting everything on hold following the last meeting on October 22, 2012 further delays hurts the business. Mr. Gullo said he realizes that isn't the intention of this board however there is a closing scheduled. We don't mind being patient and reasonable but on the other hand delays harms his client and hurts us financially. Mr. Gullo respectfully asked Mayor Wordelmann and the Board of Trustees to put into place any conditions/restrictions that are fair and reasonable so as to protect the village's interests while recognizing this use is allowed under the current local zoning law. Mr. Gullo stated the current owner has certain rights and we as contract purchasers have certain rights under the constitution. Does this added delay kill us? No, but it does harm us.

Mayor Wordelmann wished to apologize to Mr. Spacciapolli for this added delay, but believes each member of the Board of Trustees should have the opportunity to vote on this matter.

Trustee Jablonski said he believes this use is unique to this district and has some questions about the intent or purpose of the B-2, Highway Business District as stated in the zoning law. He is concerned whether or not this use is what we want to see in this district.

Mayor Wordelmann indicated in light of some of the remarks heard this evening he and other members of the Board of Trustees would like to take some additional time to digest those comments and others.

Mr. Spacciapolli asked Mayor Wordelmann if there are any additional questions members of the Board of Trustees might have that can be answered this evening.

Trustee Jablonski told Mr. Spacciapolli he appreciated the information regarding the NYS sales tax and that his dealerships give people more choices to purchase vehicles locally.

Trustee Drago said tabling the vote on this issue at the previous meeting has given her time to talk with a few people in her neighborhood and other friends. The majority of the people are not in favor of this project. Trustee Drago said she respects their opinion because they are the people she represents.

Mr. Gullo asked Mayor Wordelmann would it help if he and the Village Attorney Wright could work out some fair and reasonable conditions or restrictions which are agreeable to his client that can be presented to the Board of Trustees for their consideration.

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Mr. Wright indicated to Mr. Gullo, as mentioned at the last board meeting, he wouldn't have any problem if Mr. Gullo submitted a list of conditions for the Board of Trustees to consider.

RESOLUTION #67-2012-2013 – TABLE ACTION ON FUNDING REQUEST FOR THE B-LRC

Motion by Trustee Troche, seconded by Trustee Drago, 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, until such a time Town Supervisor Jesse Robbins provides Mayor Wordelmann with information pertaining to the revenue side of the operating budget of the B-LRC for 2013 as requested.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RESOLUTION #68-2012-2013 – APPROVE ASSIGNMENT & ASSUMPTION OF AGREEMENT

Motion by Trustee Drago, seconded by Trustee Troche, to approve the Assignment & Assumption of Agreement between Penhollow Disposal Service, LLC, Sinclairville, N.Y., Casella Waste Services, Dunkirk, N.Y. and the Village of Lakewood and to authorize Mayor Wordelmann to execute same.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RECESS

Motion by Trustee Troche, seconded by Trustee Drago, to recess the regular meeting of the Board of Trustees at 7:18 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, as well as a claim against the Village of Lakewood, et al.

EXECUTIVE SESSION

Present at the executive session were Mayor David T. Wordelmann, Trustee Susan F. Drago, Trustee John Jablonski, Trustee Joseph M. Troche, Village Attorney Edward P. Wright and Police Chief John R. Bentley. Motion by Trustee Troche, seconded by Trustee Drago, to adjourn the executive session at 8:15 PM and to reopen the regular meeting.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RESOLUTION #69-2012-2013 – DISAPPROVE POLICE SERVICES CONTRACT EXTENSION

Motion by Trustee Troche, seconded by Trustee Jablonski, to disapprove the proposed one year police services contract extension between the Village of Lakewood and the Town of Busti for the calendar year 2013 at a cost of \$ 360,000.00 to the Town of Busti.

Disapproved: 2 ayes, (Troche, Jablonski), 2 nays (Wordelmann, Drago)

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RESOLUTION #70-2012-2013 – APPROVE POLICE SERVICES CONTRACT EXTENSION

Motion by Trustee Drago, seconded by Trustee Jablonski, per the recommendation of Mayor Wordelmann to approve the proposed one year police services contract extension between the Village of Lakewood and the Town of Busti for the calendar year 2013 at a cost of \$ 360,000.00 to the Town of Busti, with the understanding that elected officials from the Village of Lakewood and the Town of Busti will actively engage in serious negotiations on a future police services contract agreement beginning early in 2013, that will include input from residents at public hearings on this matter.

Adopted: 3 ayes (Wordelmann, Drago, Jablonski), 1 nay (Troche)

Motion by Trustee Troche, seconded by Trustee Jablonski, and unanimously carried the Board adjourned at 8:18 PM.

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Joseph M. Johnson  
Village Clerk