

NOVEMBER 26, 2012

The seventeenth regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Monday, November 26, 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.

#### 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 November 13, 2012, with the exception to correct the language in Resolution #69-2012-2013, from disapproved to vote to disapprove.

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 November 26, 2012 be approved and that the Clerk shall execute said abstracts (#25 & #26) and direct payment by the Treasurer. General Fund: \$ 35,826.32, (Checks #9094 thru #9115), Trust & Agency Fund: \$ 54,059.39, (Checks #2238 thru #2252)

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

#### REPORTS

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has answered ten thousand two hundred seventeen reportable incidents year-to-date. Chief Bentley also reported one person was arrested during "Black Friday" sales at Wal-Mart. Chief Bentley then asked Mayor Wordelmann and the Board of Trustees for permission to consider upgrading the police department's cell phones due to the fact that some of them are not functioning as they should.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has answered six hundred ninety one alarms year-to-date.

#### COMMITTEE REPORTS

Trustee Susan F. Drago wished to thank the Village of Lakewood for the opportunity to attend the recent planning & zoning conference conducted at Southern Tier West, Salamanca, N.Y. Mrs. Drago said as a new Village Trustee the seminar proved to be helpful and was very informative.

#### OLD BUSINESS

Mayor Wordelmann asked if anyone present wished to add anything with respect to the Special Use Permit application as submitted by Mr. Lawrence Spacciapoli regarding his proposal to establish a used car lot at 373 East Fairmount Ave., corner of Fairdale Ave.

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John P. Gullo, Jr, Esq., legal counsel for Mr. Spacciapoli, indicated to Mayor Wordelmann and the Board of Trustees that he provided Village Attorney Wright with a list of restrictions as conditions of Mr. Spacciapoli's special use permit application. Mr. Gullo said by no means is this list exclusive. If there might be some other reasonable restrictions the Board of Trustees would like to add, we'd be willing to consider them.

Mayor Wordelmann indicated to Mr. Gullo, that Village Attorney Wright did indeed provide him with the list of restrictions, which he proceeded to read as follows. 1. The applicant must possess a New York State Motor Vehicles Official Business Certificate and all required New York State licensing for the operation of a used car operation. 2. Hours of operation shall be 8:00 am to 8:00 pm Monday, Tuesday, Thursday, 8:00 am to 6:00 pm Wednesday and Friday and 8:00 am to 5:00 pm on Saturday. 3. The property must be kept in orderly arrangement and well maintained. 4. Total number of vehicles for sale shall not exceed 50. 5. The area used for the sale of vehicles shall be asphalt paved. 6. All vehicles for sale must be in good condition. 7. The applicant may not use or display any banners, streamers, temporary signs, pennants, flags, other than a U.S. flag, strings of lights, strobe lights or elevated vehicle displays. 8. No vehicles shall be parked on the public right-of-way. 9. The applicant shall be in compliance with all existing zoning regulations pertaining to this zone. 10. If requested by the Board, within a reasonable time after opening this location, my client will close-off the street entrance nearest to the intersection. We ask that we be given some reasonable amount of time to complete this work because of weather and any roadway permissions that might be necessary. In the alternative, we are agreeable to having this condition imposed by the Village after the Special Use Permit is granted and the actual affect of this business is experienced. 11. If requested by the Board, within a reasonable time after opening this location, my client will open a street entrance on the back side of the property. We ask that we be given some reasonable amount of time to complete this work because of weather and any roadway permissions that might be necessary. In the alternative, we are agreeable to having this condition imposed by the Village after the Special Use Permit is granted and the actual affect of this business is experienced.

Mr. Kirk Kelly, 116 West Terrace Ave. asked how densely will fifty cars be parked on the proposed sales lot.

Mr. Spacciapoli indicated that the fifty cars will be parked around the perimeter of the lot plus a double row of cars in the middle of the sales lot.

Trustee Jablonski asked what is the size of the parking spaces depicted on the proposed site plan.

Mr. Spacciapoli indicated the size of the parking spaces for the cars displayed on the sales lot measure 10 ft. x 20 ft.

Mrs. Mary Jane Proctor, 120 Sunset Ave., had a couple of questions regarding the entrance off East Fairmount Ave. (Rt. 394) that was going to be closed off by the developer and a proposed new entrance off Nicholas Ave.

Mr. Dudley R. Ericson, 161 Front Street, indicated that although he spoke at length two weeks ago in opposition of the proposed used car lot he wanted to emphasize a few questions for the members of the Board of Trustees to think about before they make their decision. Will the proposed used car lot add to the assessed value of the property? The answer is no. Is the used car lot going to generate any additional sales tax revenue for the Village of Lakewood? The answer is no. Any sales tax from car sales and/or vehicle registration fees are collected throughout the county and distributed accordingly to the various county-wide municipalities.

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Is the proposed used car going to create jobs? Unlikely. Employees already working for Mr. Spacciapolli will probably be transferred to this location. Will the proposed car lot increase commercial traffic. Probably not. Will the proposed used car lot create traffic problems? More than one person has expressed their concern about the possibility of the proposed used car lot creating a distraction to motorists entering what has been called the busiest intersection in the Village of Lakewood. Is there a need for this type of business? This is a very important question. With all the existing car lots along Rt. 394, we are going to start to look like Washington Street in Jamestown, N.Y. Mr. Ericson suggested that all the car lots along Washington Street are the reason certain businesses vacated their stores on nearby Fluvanna Ave.

He reminded the Board of Trustees, once you grant this special use permit application, you will not be able to change your decision. He asked them to look ahead. In conclusion, Mr. Ericson said any decision to allow this use near the main entrance to the Village of Lakewood would be wrong.

Mr. Gary M. Padak, 159 Front Street, indicated to Mayor Wordelmann and the Board of Trustees that having owned his home on Front Street for eight years now he permanently moved to the area this past year. Mr. Padak said he makes use of that particular intersection at least once per day but some days four or five times. With the property unoccupied for some time now, Mr. Padak wondered why the Village of Lakewood didn't purchase the property and reintroduce in some way some "green space" and use it to promote the small businesses along Chautauqua Ave. that lack visibility. Mr. Padak said he relocated to Lakewood from a small community in Ohio where he lived in a nice neighborhood which was one block from what was called the Kent auto strip. The auto strip was located on the main entrance into Kent which is a university community. Needless to say it wasn't very appealing. Mr. Padak echoed the concerns previously expressed concerning safety at that particular intersection.

Mayor Wordelmann asked members of the Board of Trustees if they had any additional comments before a vote on the matter is taken.

Trustee Drago indicated that she has talked to a number of residents who frankly don't think a used car lot at that location is the right fit. She indicated for the most part it boils down to a safety issue. Trustee Drago indicated any entrance/exit from/onto Rt. 394 could pose a problem considering the line of traffic that backs up in the turning lane into Wal-Mart. Although the developer said he will not use any advertising gimmicks, Trustee Drago said anything that may distract a motorist traveling along Rt. 394, must be considered a hazard.

Trustee Denn indicated he took the opportunity to drive up to Dunkirk to get a first hand look at Mr. Spacciapolli's car dealership stating that his reputation is very well received in the community. Mr. Denn said he is disappointed to have to say no to this special use permit application as submitted by Mr. Spacciapolli, knowing the applicant is a good businessman. What is interesting is the legal definition of a special use permit, if granted, the desired use shall be in harmony with the orderly development of the area. While serving as a town supervisor prior to moving to the Village of Lakewood one of the challenges facing the town board was the idea of "spot zoning" where there was no continuity to a particular zoning district. Trustee Denn said he would love to have Mr. Spacciapolli as a corporate member of our community but do so on a more logical site rather than at this busy intersection. Trustee Denn said his primary concern, as was with Trustee Drago, is safety. Trustee Denn said it is his opinion that this site is just not the right place for a used car lot or car dealership.

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Trustee Troche said he has been very clear on how he feels about used car lots and car dealerships in general. Having witnessed the weekend traffic flow at that intersection his biggest concern is the amount of traffic on East Fairmount Ave. Unlike the locations of the other auto dealerships situated within the Village of Lakewood, this is the busiest intersection in the village. Trustee Troche noted that six or seven cars continually stack-up in the left hand turn lane into Wal-Mart, which is a nightmare. Mr. Troche said he too has done some research and noted that Mr. Spacciapoli and his business are well respected and would like to have him as part of the business community, but at a different location.

Trustee Jablonski said he would echo the concerns voiced by his fellow Trustees and indicated in addition to automobile sales, there are several other uses listed by special use permit in that particular zoning district that he would not be in favor of.

RESOLUTION #71-2012-2013 – DISAPPROVE SPECIAL USE PERMIT APPLICATION

Motion by Trustee Troche, seconded by Trustee Denn, to disapprove the Special Use Permit application as submitted by Mr. Lawrence G. Spacciapoli, 4586 West Lake Road, Dunkirk, N.Y., whereby he will not be allowed, per Section #25-44, [Vehicle Sales] of the Village of Lakewood zoning law, to establish a used car lot at 373 East Fairmount Ave., corner of Fairdale Ave.

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

Mayor Wordelmann indicated the second item on the agenda under old business is for the Board of Trustees to review and discuss 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 indicated statements made by Ms. Diana Peterson, Recreation Director of the Busti-Lakewood Recreation Commission, at the last regular meeting of the Town of Busti Board and which were subsequently published in The Post-Journal deserve a response. Mayor Wordelmann said he was appalled to open the newspaper and discover the Recreation Director for the Town of Busti had decided it was her place to call out and admonish the Lakewood Village Board. The Recreation Director is a paid, non-elected employee of the Town of Busti and a non-resident of the Village of Lakewood. Mayor Wordelmann said he personally feels she is out of place in making these comments. Ms. Peterson's comments were inflammatory and in some cases ill-informed and may serve to help drive a wedge between the Village and Town in current and future negotiations on not just the recreation contract but other agreements such as the police services contract. A year ago Ms. Peterson misled a group of recreation center users into coming to a Village Board meeting on the premise that we were going to do away with their programs. The program participants were surprised to find out that wasn't true and the reason we were wavering on giving the Town of Busti more money was we had discovered that the Town had been making money every year on the recreation programs generating an \$ 80,000.00 fund balance. We as partners were trying to find out what the Town was going to do with that money.

Ms. Peterson indicated in her statement that surplus money has gone directly into the fund balance which is earmarked solely for building repairs or replacement.

Mayor Wordelmann said this is not true. After reviewing the recreation contract that was in place from 2004 to 2011, nowhere does it mention any process for handling surplus funds or the establishment of a fund balance or earmarking it for building repairs and maintenance.

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Instead the agreement designates the Town Supervisor, acting as chief fiscal officer of the Township as the custodian of the monies made available for expenditures and as such will make payments in accordance with the annual budget and upon audit from the Town Board and by an appropriate auditing officer of the Village. The agreement goes on to state that the Town Supervisor will place all money given by the Village and the Town into separate accounts, and quoted, "said custodian shall pay there from upon audit as herein provided, all expenditures chargeable to the project and properly included within the budget as prepared by the party of the first part and approved by the respective parties hereto. The custodian of recreation funds shall submit an annual report to each of the parties hereto showing a complete itemization of the receipts and expenditures of the project."

Ms. Peterson went on to say she invited the Village Trustees to visit her to understand how the community/recreation center operates and to see what needs to be done with the building. She said none of the Trustees have even called her to have this discussion furthermore the Trustees have been relentless to the Town of Busti about paying their fair share for police services. They should use their own example and pay their fair share of the recreation budget for 2013. It is difficult to believe that during the village dissolution meetings and subsequent vote that their own Village Board would be the ones to take the lead in closing their beloved recreation program.

Mayor Wordelmann indicated the Recreation Director has no business publicly admonishing the Board of Trustees for not meeting with her and is most certainly not in a position to make comments about the ongoing police services contract talks between the Town and the Village. Her accusation and scare tactic that the Village Board is taking the lead in closing the Community/Recreation Center is preposterous and flat out untrue.

Ms. Peterson said about 60% of those using the recreation center are village residents, the other 40% is made up of residents from Busti and surrounding areas.

Mayor Wordelmann stated loud and clear that every single resident of the Village of Lakewood is also a resident of the Town of Busti. Furthermore every Village taxpayer is a Town taxpayer and is 100% equal in rights to any taxpayer who lives outside the Village. Village residents pay taxes to the Town for which they expect certain services in return. To label the users of the recreation center as mostly Village residents is wrong. They should be properly called Town residents. Also for her to imply that any of this has any connection to the dissolution vote in the Village is totally wrong.

Mayor Wordelmann said Ms. Peterson implied the following things might happen should the Village Board choose not to support their portion of the Busti-Lakewood Recreation Center. Lakewood residents would see an increase in fees; all users would see an increase in fees; all groups using the community center would have to pay to use it, including Southwestern Central School District sports teams, Lakewood Women's Club, Amy King 5K, etc.; use money in the fund balance that is earmarked for building repairs; end the joint recreation agreement with the Village of Lakewood; the Village of Lakewood will likely lose NYS funding for youth programs; programs for the youth and elderly would be cut; jobs would be cut; the Village of Lakewood would be charged to use the community/recreation center for elections, all of which could lead to the end of programs and ultimately the closing of the recreation/community center.

Mayor Wordelmann noted the possible policy changes mentioned by Ms. Peterson are decisions which are the responsibility of the elected officials of the two municipalities and this type of action serves no purpose in helping the Town and Village find common ground in these agreements.

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Mayor Wordelmann reiterated he doesn't believe that it is proper for a paid employee to make idle threats over what Ms. Peterson believes are future consequences that could happen when she is in no position to act on them.

According to the NYS Comptroller's Office the recreation center's fund balance is \$ 108,340.00, not \$80,000.00. Also, according to the NYS Comptroller's Office the fund balance can not be "earmarked" solely for building repairs and maintenance. A fund balance is the total of all the revenues minus all of the expenses over the course of the conception date of such fund. Furthermore, this fund balance is both village and town tax payer dollars. The Recreation Director is an hourly employee with no authority to make these type of statements.

If and only if the Township and Village choose to designate a specific amount of money to be set aside for building repairs it must be set-up as a reserve account. A reserve account is established when the operating boards by resolution designate the type or specifics of the reserve account, followed by a public referendum to determine if the taxpayers wish to set aside this money for such a fund. The Recreation Director has no say in this matter.

The Village of Lakewood has every right to fund or not fund the Joint Recreation Commission, giving consideration to the amount of the fund balance. The Town of Busti Supervisor, not the Recreation Director is in charge of any and all money and should be making budgetary decisions along with members of the Town Board. The Village of Lakewood's portion of funding received from the State of New York for youth programs has been cut over the years. The current allocation is \$ 860.00. The Town of Busti abolished their own agreement to appropriate \$ 1,000.00 annually to the Village of Lakewood so to gain resident status for daily and seasonal passes at Richard O. Hartley Park/Beach.

Finally, the Town of Busti can not charge the Village of Lakewood for the conduct of General Village Elections at the recreation/community center.

Mayor Wordelmann indicated as mentioned earlier it comes down to the so called fund balance. In reality there was never any authority to establish a fund balance, a subject which surfaced a year ago. Since then this Board has taken steps to reduce the amount of money appropriated for the joint recreation department's budget. The hundred and eight thousand dollars in the Town's account is taxpayer money. Over the past eight years the Town of Busti has over budgeted the amount of money necessary to run the joint recreation department. Revenues/fees received practically pay for the programs and services provided. It is a self sustaining venture. The Recreation Director who has no authority in such matters, is claiming she has the right to make use of monies in the so called fund balance to maintain the building.

The Lakewood Kiwanis Club purchased the property known as 9 West Summit Street years ago and subsequently deeded the property and building to the Town of Busti with the condition that the building and property be forever utilized for recreational purposes only. The deed also noted that the Town of Busti would be responsible for the building's repair and maintenance costs. Mayor Wordelmann said the taxpayers deserve something in return for money paid to the Town of Busti.

In addition to expressing his own opinions on the matter of the recreation center and its annual budget Mayor Wordelmann wanted to share some background information on its operation while at the same time rebut some of the comments made by Recreation Director Diana Peterson.

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Mr. Kirk Kelly, 116 West Terrace Ave., said he saw that the Board of Trustees tabled action on the Town's funding request for the joint recreation department until additional information on how much the Town was appropriating towards it. How did that play out?

Mayor Wordelmann said once the Board of Trustees noted the Town had what they referred to as a fund balance with respect to the recreation budget, the amount of money appropriated by the Village was cut in half last year, from \$ 15,000.00 to \$ 7,500.00/year. Since then the Board of Trustees is hopeful to come to some sort of agreement with respect to the recreation budget and enter into a new contract.

Trustee Troche indicated each year as the Village of Lakewood appropriated monies to the Town for the recreation budget the Town would be saving \$ 10,000.00 to \$ 15,000.00 per year. Basically our money was going into their savings account. When it was learned the Town had an \$ 80,000.00 balance in the recreation budget the question arose, why not spend some of the balance and consider reducing the amount of money requested from the Village of Lakewood. The amazing thing that happened this year is the Town again requested \$ 7,500.00 from the Village of Lakewood but opted not to appropriate a like amount themselves.

Mayor Wordelmann said the reason why this Board tabled action on the matter is because we asked for some clarification on the recreation budget.

Trustee Denn said it was unfortunate Ms. Peterson stepped out of her area of responsibility as Recreation Director and spoke of these matters to the press. What is disturbing, there are a number of newly elected and or appointed members of each municipal board and we are trying at great lengths to be in harmony with one another and this is a very unfortunate event where a department head has stepped forward to create this situation. These are matters that could have and should been discussed between the Mayor and Supervisor.

Trustee Drago took offence to Ms. Peterson's comment about not contacting her regarding the recreation budget. We contacted the Town Supervisor as we should have and asked two questions. How much money are you putting into the recreation budget and what is your fund balance in that account. We asked two simple questions of the Town Supervisor and didn't receive an answer to either one.

Trustee Troche indicated taxpayers have approached him with questions concerning the police services agreement with the Town of Busti. For the past twenty-five years the Village of Lakewood has been subsidizing the Town of Busti for police services under the current contract agreement. The Village of Lakewood has been paying for what the Town of Busti doesn't pay, period. The contract agreement has been extended for another year with the Town of Busti responsible for 27% of the total cost to operate the Lakewood-Busti Police Department. Not included in that figure is the 9% increase in health care costs in 2013 and wage and salary increases that take effect in June 2013. Although the court room is located in the Anthony C. Caprino Municipal Building the Town of Busti doesn't share in its maintenance. Why should we be subsidizing the Township. The nerve the Town of Busti has to ask for \$ 7,500.00 when the Village of Lakewood is subsidizing them for police service.

Trustee Denn suggested that the Village Board of Trustees give Town of Busti Supervisor Robbins the benefit of the doubt, being the new town supervisor and all.

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RESOLUTION #72-2012-2013 – DISAPPROVE TOWN OF BUSTI BUDGET REQUEST

Motion by Trustee Troche, seconded by Trustee Drago, per the recommendation of Mayor Wordelmann to disapprove the funding request of \$ 7,500.00 as received from the Town of Busti for the 2013 operating expenses of the joint Busti-Lakewood Recreation Commission.

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

Trustee Jablonski said what is the point we are all Town of Busti residents. The Recreation/Community Center should be funded by the Town and the Village of Lakewood should not even be involved. Again we have two entities involved in something when it could be handled by one. Trustee Jablonski continues to hear from his constituents asking that the two boards consider merging. This kind of stuff is ridiculous and it looks ridiculous to the public, especially the business people in the community.

RESOLUTION #73-2012-2013 – APPROVE HEALTH CARE PLANS, RATES & DEDUCTIBLES

Motion by Trustee Troche, seconded by Trustee Drago, per the recommendation of Mayor Wordelmann to approve the following health care plans to be offered to the employees of the Village of Lakewood, retirees, and their dependents for 2013. (Independent Health: iDirect1 Series & Medicare Passport Plan), (Blue Cross/Blue Shield: Forever Blue Medicare PPO), approve the respective monthly premium rates and to set the 2013 health insurance deductible coverage for Independent Health's iDirect1Series for union and non-union subscribers as follows. The Village of Lakewood agrees to fund \$ 1,250.00 of the \$1,500.00 deductible for single non-union subscribers and to fund the entire \$ 1,500.00 deductible for single union subscribers. The Village of Lakewood also agrees to fund \$ 2,500.00 of the \$ 3,000.00 deductible for two-person and family non-union subscribers and to fund the entire \$ 3,000.00 deductible for two-person and family union subscribers.

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

Motion by Trustee Denn, seconded by Trustee Troche, and unanimously carried the Board adjourned at 7:31 PM.

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Joseph M. Johnson  
Village Clerk