

JULY 10, 2017

The thirteenth regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Monday, July 10, 2017, 6:30 PM, with Mayor Cara Birrittieri presiding. Trustees present were Ellen E. Barnes, Susan F. Drago, Randall G. Holcomb and Edward J. McCague. Also present were Village Clerk Joseph M. Johnson, Village Treasurer Andrea J. Windoft, Police Chief John R. Bentley, and Department of Public Works Supervisor Thomas R. Pilling. Absent were Village Attorney John I. LaMancuso, Fire Chief Kurt W. Hallberg and Building Inspector Jeffrey A. Swanson.

Following Mayor Birrittieri's opening statement welcoming everyone to the Board of Trustees' meeting, Trustee Holcomb indicated to Mayor Birrittieri and fellow members of the Board of Trustees that he would like to introduce a motion on a resolution to limit the public comment period to five minutes per person.

Mayor Birrittieri and Trustee McCague indicated to Trustee Holcomb that particular subject is already on the agenda for tonight's meeting.

Trustee Holcomb insisted he would like the Board of Trustees action on his motion at this time.

Mayor Birrittieri indicated that she believes the action by Trustee Holcomb is out of order and suggested a resolution on this subject requires some discussion between members of the Board of Trustees. Mayor Birrittieri asked Trustee Holcomb if limiting individuals five minutes to speak is limited to only the Anyone to be Heard portion of the meeting. Mayor Birrittieri indicated limiting someone to speak for only five minutes is very arbitrary especially when there may be questions and follow up comments.

Trustee Holcomb said the five minute timeframe is what has been recommended by the New York State Conference of Mayors.

Mayor Birrittieri said she finds Trustee Holcomb's actions by interrupting the meeting very disrespectful and in tossing out a motion for a resolution, with an immediate second, without any discussion.

Mayor Birrittieri indicated the matter is on the agenda for discussion later in the regular meeting.

Trustee Barnes said a policy to reduce excessive comment needs to be in place. She said those wishing to be heard are not going to be timed however individuals shouldn't be allowed to speak forty-five minutes to an hour. Meetings need to move along and it would be smart for the Board of Trustees to adopt some rules or order.

Mayor Birrittieri agrees that some discussions have gone on too long, however the subject requires some discussion and should be gauged on a case by case basis. She then questioned limiting individuals on how long he or she is allowed to speak on a particular subject during a public meeting. Whether a policy is recommended or not she disagrees with the idea to limit individuals from speaking in a public forum.

Trustee Holcomb indicated adopting such a policy is a typical municipal procedure.

Trustee McCague said he doesn't disagree with the idea of setting up some rules of order when it comes to the public comment period of the meeting, however believes it was out of order to discuss this subject prior to when it was to be discussed as an agenda item. Trustee McCague indicated he had a conversation with Village Attorney LaMancuso on the subject recently, who strongly cautioned him as a member of the Board of Trustees not to "chill" public comment. Trustee McCague said he believes the action by Trustee Holcomb is a bit hasty and out of order. The matter needs to be discussed by members of the Board of Trustees with the Village Attorney present.

Trustee Holcomb said he believes now is the time to set specific rules and regulations for proper conduct at Board of Trustee meetings.

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Trustee Barnes agreed, saying it is a very reasonable request to set a five minute timeframe per person during the public comment period of the meeting until a complete set of rules of order are put into practice.

Mayor Birrittieri said as Mayor she has followed codes of conduct and rules of order during meetings, however it is not unusual to have some discord. It's called democracy. People come before the Board of Trustees with complaints and it is our job to make some difficult decisions. Mayor Birrittieri said there are proper rules in place however she believes limiting individuals to five minutes to speak is short sighted.

Trustee Drago said recent meetings have become very lax, wherein individuals don't properly identify themselves and telling members of the Board of Trustees where they live. When people do speak, they need to be treated with respect and dignity. If people do get out of order, they need to be asked to behave or to leave.

Trustee McCague said we are all in agreement that there is the need for rules of procedure, however to proceed without referring the matter to the Village Attorney for his comment seems a bit too hasty.

Trustee Barnes said we as a Board of Trustees need to start someplace in order to have an enforcement mechanism in place, in connection with the public comment portion of the meeting.

Mayor Birrittieri respectfully asked members of the Board of Trustees that the resolution introduced by Trustee Holcomb be tabled.

Mr. Richard Rose, 42 Gifford Ave., said it is his opinion that the matter introduced by Trustee Holcomb was should have been open for discussion and that the proposed resolution was not presented in writing. Mr. Rose said he believes it is a legal matter that could become a freedom of speech issue. He asked, who is going to be the time keeper and if the resolution applied to everyone in attendance at a Board of Trustees meeting.

Trustee Holcomb said limiting individuals to speak for five minutes only applies to the Anyone to be Heard portion of the meeting.

Trustee Barnes indicated to Mr. Rose that the resolution as presented is not eliminating an individual's freedom of speech, but only limiting the amount of time that they are allowed to speak freely.

Trustee McCague agreed with Mayor Birrittieri saying the five minute timeframe is arbitrary. What the law states is that a person's right to speak shall not be unreasonably restricted. Therefore the Village Attorney should be asked to comment, and upon review of various court cases, determine what is a reasonable timeframe to allow someone to speak. Trustee McCague said he is not opposed to establishing rules of procedure but is opposed to how the resolution was introduced.

Trustee Holcomb said the five minute timeframe is noted in the New York State Conference of Mayors and Municipal Officials handbook for Village Officials. He said there has been a motion and a second, let's have a roll call.

RESOLUTION #111-2017 - SET FIVE MINUTE TIMEFRAME PER PERSON FOR PUBLIC COMMENT

Motion by Trustee Holcomb, seconded by Trustee Barnes, for the Board of Trustees to set a five minute limit to those wishing to speak during the Anyone to be Heard portion of future meetings of the Board of Trustees.
Adopted: 3 ayes, (Barnes, Drago, Holcomb), 2 nays, (Birrittieri, McCague)

JULY 10, 2017 (CONTINUED)

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 June 26, 2017.
Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

AUDIT OF CLAIMS

Motion by Trustee Barnes, seconded by Trustee McCague, that the claims as audited by the Auditing Committee of the abstract dated July 10, 2017, be approved and that the Clerk shall execute said abstracts (#5 & #6) and direct payment by the Treasurer. Trust & Agency Fund: \$ 59,454.92, (Checks #4141 thru #4154), General Fund: \$ 86,912.00, (Checks #13914 thru #13954)
Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

REPORTS

Mayor Birrittieri indicated the Village of Lakewood lucked out with an absolutely beautiful day for its annual 4th of July Summerfest. It was very well attended, however the Events & Marketing Committee found it necessary to cancel the VIP Area at the Packard Estates due to the exorbitant cost to obtain a liquor license. Mayor Birrittieri said she reached out to all the VIP Area sponsors regarding the event and proceeded to thank the over one hundred fifty residents and area businesses who assisted in sponsoring this year's 4th of July Summerfest. Mayor Birrittieri then thanked the dozens of volunteers along with Village of Lakewood employees, members of the Lakewood-Busti Police Department, Lakewood Fire Department and the Department of Public Works Department for all their hard work in making this annual event a huge success.

Mayor Birrittieri then reminded everyone that the Live on the Lake summer

concert/entertainment series begins this Thursday featuring The Bogarts from 7:00 - 9:00 PM at Richard O. Hartley Park. Also, before each of the summer concert/entertainment events, there will be free exercise classes in the park from 5:30 - 6:15 PM, sponsored by The Fitness Bunker.

Department of Public Works Supervisor Thomas R. Pilling indicated he is hopeful that the Vista Way project can be completed by next week, weather permitting. Mr. Pilling also reported two miles of roadway are scheduled for resurfacing with oil and stone in the very near future and that proposals for concrete work will be accepted at or before 3:00 PM, Tuesday, July 18, 2017.

Police Chief John R. Bentley reported the Lakewood-Busti Police Department has handled five thousand three hundred fifty-five incidents year-to-date. Chief Bentley also reported that the new marked police patrol car has arrived and will be in service soon upon the transfer of radios and equipment. Chief Bentley said he recently sent Officer Currie to interview school and that the date of hire for the new part-time Police Officer Jose A. Moya will be July 12, 2017.

Village Treasurer Andrea J. Windoft said she is awaiting some invoices related to the 4th of July Summerfest and should have some final figures together by the next meeting. She also reported some minor amendments have been made to the Policies and Procedures Manual for the non-union employees due to some recent personnel changes.

Village Clerk Joseph M. Johnson indicated although he didn't have a report, wished to report per a phone conversation with Fire Chief Kurt W. Hallberg earlier in the day, that the Lakewood Volunteer Fire Department has responded to four hundred forty alarms year-to-date and any future questions or comments about the current use of the fire siren must be referred to Dale C. Robbins, Esq., legal counsel for the Lakewood Fire Company, Inc.

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COMMITTEE REPORTS

Trustee McCague wished to report that Mr. Randall H. Perry, Project Manager for the joint Lakewood/Busti Stormwater Management Engineering Study, has indicated things are moving forward and that he is hopeful to be able to present an Agreement between the Village of Lakewood and the Contractor (Barton & Loguidice D.P.C., Rochester, N.Y.), to the Board of Trustees for approval by July 24, 2017. Trustee McCague said engineers should be on site to begin the study shortly thereafter.

Trustee Barnes, Chairperson for the Public Safety Committee and Buildings Committee, indicated she would like to contact an engineer to assess the current situation at the Anthony C. Caprino Municipal Building with respect to security and protection for the police department and the protection of those working in the Clerk's & Treasurer's offices.

ANYONE TO BE HEARD

Mayor Birrittieri reminded everyone of the newly instituted five minute timeframe in which to speak and to speak in a respectful tone. Anyone being disrespectful will be asked to leave.

Mr. Scott Bell, 222 Laurel Street, respectfully asked if the Building

Inspector/Code Enforcement Officer could inspect the vacant residence at 3 Mapleview Ave. for property maintenance violations. Mr. Bell said the property has not been properly maintained for some time and has become a blight to the neighborhood. Mr. Bell said he would like to see something done to initiate a process to correct the situation.

Mayor Birrittieri suggested to Mr. Bell that he fill out and file a complaint form with the Village Clerk's Office.

Mr. Thomas Brown, 227 Locust Street, said he too would like to see something done about the property at 3 Mapleview Ave. He said the residence has been empty for nearly two years and has become a home for all kinds of animals. Something needs to be done.

Changing subjects, Mr. Brown, who is a member of the Southern Tier Classic Chevy Club wished to thank Police Chief Bentley and his staff for their assistance on their recent cruise around Chautauqua Lake. He also thanked DPW Supervisor Pilling and his crew for all the work they do for the Village of Lakewood throughout the year.

Mr. Rich Fischer, 43 West Fairmount Ave., indicated the road surface along West Fairmount Ave. had been deteriorating for some time and recently the New York State Department of Transportation milled and resurfaced a good portion of Rt. 394. Unfortunately the milling and paving project ended right in front of his house. Mr. Fischer was told by a NYS DOT Supervisor that the contract for the milling and paving project was to extend west to Rt. 474, however was cut short because the NYS DOT put in a sidewalk from Shadyside Ave. east to LUV Toyota.

Mr. Fischer said although the section of Rt. 394 in front of his house was patched, tractor trailers make tremendous banging noises when traveling over the uneven road surface. He asked who was responsible for asking the NYS DOT for a new sidewalk.

Trustee McCague indicated to Mr. Fischer that when he and Mayor Birrittieri met with NYS DOT officials in Buffalo, it was their understanding that where the Rt. 394 milling and paving project started and stopped had already been determined. Trustee McCague said the new sidewalk on the north side of Rt. 394 from Shadyside Ave. east, was an add on and it was his understanding the milling and paving of Rt. 394 was going to be done in phases.

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Ms. Laurie Shults, 6 Alta Way, appearing before Mayor Birrittieri and the Board of Trustees, wished to apologize for any frustrations she may have exhibited at previous meetings, saying her frustrations come from a lack of respect from members of the Board of Trustees. Ms. Shults said she is a big believer in due process and democracy.

When her concerns about the continued use of the fire siren surfaced she approached the Board of Trustees and was told to circulate a petition regarding the siren and submit it so the issue could be discussed in more detail in the hope that a compromise could be reached. Ms. Shults said a total of one hundred thirty-five signatures from area residents and business owners were obtained.

At the Board of Trustees meeting held May 22, 2017 she was told by Trustee Holcomb that her concerns regarding the siren should be presented directly to the Lakewood Fire Department. She said apparently members of the Lakewood Fire Company had already met and voted unanimously to keep the siren use as is. Unfortunately that vote was taken without considering all the facts that were collected. In her opinion it was a tactic to discourage anyone from discussing the issue any further. Ms. Shults believes the obvious division amongst members of the Board of Trustees is problematic when looking out for the common good and putting personal interests aside.

Ms. Shults said in an e-mail from Trustee Holcomb he stated a separate independent committee should look into her issue about the fire siren issue and that there may be a solution for all parties involved. Unfortunately the Board of Trustees went ahead and approved a resolution to endorse continued use of the existing fire siren at the very next meeting. Ms. Shults said therefore she doesn't accept Resolution #92-2017 which was adopted June 12, 2017.

In the end Ms. Shults said she felt she was misled and misguided and has lost any faith in the Board of Trustees in giving residents of the Village of Lakewood a fair platform.

Mayor Birrittieri indicated she did reach out to Chief Hallberg to have a casual meeting and discussion about the siren to determine if a compromise on its use would be possible, but unfortunately that meeting did not take place. She then mentioned that the public must feel free to come before the Board of Trustees with any problems and concerns.

Trustee Holcomb said he reached out to Ms. Shults and suggested that she attend a meeting of the Lakewood Fire Company to get their input on the matter, however she flatly refused to do so. The Board of Trustees approved the resolution adopted on June 12, 2017 based on the recommendations from members of the Lakewood Fire Company.

Ms. Shults said she has been told for years that this is the forum where this type of decision is made.

Mayor Birrittieri indicated to Ms. Shults she is always welcome to meet with one or two Trustees individually to discuss anything that concerns her and that there may be other procedures yet to consider in an effort to reach some sort of compromise regarding the siren.

Trustee Holcomb interjected, saying this matter about the fire siren is not going to be reopened. The siren question has been voted on. The matter is complete.

Mayor Birrittieri indicated there are still some questions relating to the Fire Department, Fire Chief, Board of Trustees acting as the Board of Fire Commissioners and Fire Company that need answers.

Trustee Barnes wished to add, the matter has been voted on by the Board of Fire Commissioners and was done so on behalf of members of the community who are in need of help that the LFD provides.

RESOLUTION #112-2017 - APPROVE RIGHT-OF-WAY/EASEMENT AGREEMENT

Motion by Trustee Drago, seconded by Trustee McCague, for the Board of Trustees to approve a Right-of-way/Easement Agreement between the Village of Lakewood and National Fuel Gas and authorize Mayor Birrittieri to execute same. NOTE: The Easement Agreement will allow National Fuel Gas to upgrade the natural gas supply line on Fairwood Drive.

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

RESOLUTION #113-2017 - SET TIME & DATE FOR PUBLIC HEARING

Motion by Trustee Holcomb, seconded by Trustee McCague, for the Board of Trustees to set 6:40 PM, Monday, July 24, 2017, as the time and date to conduct a public hearing to hear any public comments on the current Community Development Block Grant Program, in the amount of \$ 492,500.00, through the Chautauqua Home Rehabilitation & Improvement Corporation (CHRIC).

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

RESOLUTION #114-2017 - SET TIME & DATE FOR PUBLIC HEARING

Motion by Trustee McCague, seconded by Trustee Holcomb, for the Board of Trustees to set 6:45, Monday, July 24, 2017, as the time and date to conduct a public hearing on the Village of Lakewood's application for a Community Development Block Grant under the 2017 Competitive Funding Round, through the Chautauqua Home Rehabilitation & Improvement Corporation, (CHRIC).

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

RESOLUTION #115-2017 - SET TIME & DATE FOR PUBLIC HEARING

Motion by Trustee Holcomb, seconded by Trustee Drago, for the Board of Trustees to set 6:45 PM, Monday, August 14, 2017, as the time and date to conduct a public hearing on a proposal by Charter Communications/Time Warner Cable to renew its Cable TV Franchise Agreement with the Village of Lakewood.

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

RESOLUTION #116-2017 - SET TIME & DATE FOR PUBLIC HEARING

Motion by Trustee Barnes, seconded by Trustee McCague, for the Board of Trustees to set 6:50 pm, Monday, July 24, 2017, as the time and date to conduct a public hearing on a Site Plan Review application as submitted by the Holland Trotta Project, Rochester, N.Y., regarding the Aspen Dental-Five Star Urgent Care project at 386-390 East Fairmount Ave.

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

RESOLUTION #117-2017 - SET TIME & DATE FOR PUBLIC HEARING

Motion by Trustee Barnes, seconded by Trustee Holcomb, for the Board of Trustees to set 7:05 PM, Monday, July 24, 2017, as the time and date to conduct a public hearing to review an application for a Special Use Permit - 6 ft. Fence, as submitted by Mr. Ryan Gary Wood & Ms. Penny Lee Luvison, 31 Gerald Ave.

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

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RESOLUTION #118-2017 - SET TIME & DATE FOR PUBLIC HEARING

Motion by Trustee McCague, seconded by Trustee Barnes, for the Board of Trustees to set 7:10 PM, Monday, July 24, 2017, as the time and date to conduct a public hearing to review an application for a Special Use Permit - 6 & 8 ft. Fence, as submitted by Mr. Frank J. Smrekar, III, 6 Cherry Lane. Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

RESOLUTION #119-2017 - APPROVE ALTERNATE PLANNING BOARD MEMBER APPOINTMENT

Motion by Trustee Drago, seconded by Trustee McCague, for the Board of Trustees to approve Mayor Birrittieri's appointment of Ms. Jennifer N. Leister, 13 Brook Street, as an alternate member of the Village of Lakewood Planning Board. NOTE: Planning Board Chairperson, Ms. Kaie Smith indicated Ms. Leister is an Engineer at the Cummins Engine Plant and has been a resident of Lakewood for the past fourteen years. Ms. Smith said Ms. Leister has expressed a desire to get more involved in the community and being an alternate member of the Planning Board is a good place to start. Also, having an alternate in place will be very helpful when it comes to having a quorum present.. Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

RESOLUTION #120-2017 - APPROVE CHANGES IN THE POLICIES & PROCEDURES MANUAL

Motion by Trustee McCague, seconded by Trustee Drago, for the Board of Trustees to approve the minor changes made in the Policies & Procedures Manual for Non-Union Employees as follows: Page #1, Item #1, Remove hi-lighted line regarding the Building Inspector, Page #3, Item #2, Remove hi-lighted line regarding IRS cents per mile reimbursement, Page #4, Item, #3 Office personnel to observe new holiday schedule versus having three (3) floating holidays and to add the day after Thanksgiving as a paid holiday, Page #4, Item #4, Remove hi-lighted line regarding the Building Inspector's vacation time, Page #7, Item #5, Remove retired personnel and add two (2) employees for retirement benefits and Page #8, Item, #6, Remove old fiscal year and replace with the current fiscal year, 2017-2018. Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

Motion by Trustee Drago, seconded by Trustee Holcomb, and unanimously carried the Board adjourned at 7:43 PM.

Joseph M. Johnson
Village Clerk