

OCTOBER 10, 2017

The nineteenth regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Tuesday, October 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, Village Attorney John I. LaMancuso and Building Inspector Jeffrey A. Swanson. Absent were Department of Public Works Supervisor Thomas R. Pilling and Fire Chief Kurt W. Hallberg.

APPROVAL OF MINUTES

Motion by Trustee Drago, seconded by Trustee Holcomb, to approve the minutes of the last regular meeting of the Board of Trustees, held September 25, 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 October 10, 2017, be approved and that the Clerk shall execute said abstracts (#17 & #18) and direct payment by the Treasurer. Trust & Agency Fund: \$ 58,457.59, (Checks #4225 thru #4236), General Fund: \$ 33,898.67, (Checks #14171 thru #14203) Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

REPORTS

Mayor Birrittieri wished to remind residents that the Jamestown Board of Public Utilities Water Division will be conducting their semi-annual daytime flushing of the water mains in the Lakewood area beginning Wednesday, October 11th and running through Friday, October 13th. Mayor Birrittieri then reported that the Village of Lakewood's annual leaf pick-up will commence Monday, October 30th and that the next meeting of the Events & Marketing Committee is scheduled for 6:30 PM, Tuesday, October 17th. Mayor Birrittieri said the Events & Marketing Committee is always looking for more volunteers.

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has handled seven thousand five hundred sixty-nine incidents year-to-date, three hundred forty of which occurred within the past two weeks. He also reported three L-BPD officers are participating in a Forensic Investigation Team school, as part of the Chautauqua County Sheriff's Forensic Investigation Team.

Trustee McCague asked Chief Bentley if he has heard anything as the result of the traffic count and study recently done at the intersection of Shadyside Ave. and East Fairmount Ave. (Rt. 394).

Chief Bentley indicated he hasn't heard anything yet, but as soon as he does he will appraise the Mayor and the Board of Trustees of any decisions made in connection with that intersection.

Mayor Birrittieri indicated her last discussion with a New York State Department of Transportation official revealed that they would likely revisit

the matter in the Spring of 2018.

Village Treasurer Andrea J. Windoft indicated she was remiss in adding a resolution to tonight's agenda asking for the Board of Trustees to approve the forwarding of unpaid 2017-2018 Village Taxes, totaling \$59,616.96, bills to the Chautauqua County Division of Taxation for collection or levying onto the 2018 Town of Busti/Chautauqua County tax bills.

OCTOBER 10, 2017 (CONTINUED)

RESOLUTION #153-2017 - APPROVE COLLECTION/LEVYING OF UNPAID VILLAGE TAXES

Motion by Trustee Holcomb, seconded by Trustee Barnes, authorizing Village Treasurer Andrea J. Windoft to forward any and all unpaid 2017-2018 Village Tax Bills to the Chautauqua County Division of Taxation for collection or to levy onto the 2018 Town of Busti/Chautauqua County tax bills. The amount to be collected or levied totals \$ 59,616.96.

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

Although Village Clerk Joseph M. Johnson had no report, he was asked by Trustee McCague if he had received a reply from Benderson Capital, Buffalo, N.Y., to a letter he had sent to them regarding the possibility of utilizing the building and property at 67 Chautauqua Ave., as a stage for this year's Christmas in the Village.

Village Clerk Johnson said he hadn't heard from Benderson Capital, so he called them earlier in the day and was told they should have an answer to the question sometime soon.

Building Inspector Jeff Swanson indicated that he is very busy and that projects keep rolling in. Mr. Swanson said he is working with the developer of the 5 Star Urgent Care/Aspen Dental project and will soon be reviewing the plans for the remodel of 103 Chautauqua Ave., which he received last Friday. Mr. Swanson said the Shults Hyundai project is moving forward as they begin an interior demolition of a portion of the building at 181 Fairmount Ave.

Mr. Swanson said it was good seeing members of the Village of Lakewood's review boards at the recent Planning & Zoning training session held September 27th at Jamestown Community College.

Mr. Swanson reported that he has been working with the Assessor's Office, when it is discovered property owners and/or contractors have done construction without the benefit of a building permit. Mr. Swanson said he would like to be able to send letters to violators urging them to apply for the proper permits.

Trustee Holcomb, as a former Assessor, said the situation that Building Inspector Swanson described has always been a problem for assessors across New York State.

Mr. Swanson said he must go by the more restrictive code when reviewing certain violations and believes sending letters of violation is a more proactive approach in encouraging code compliance.

Mayor Birrittieri indicated anything proactive is fine with her, especially

if it helps Building Inspectors do their job.

ANYONE TO BE HEARD

Dr. Jonathan P. Blasius, 19 Owana Way, appeared before Mayor Birrittieri and members of the Board of Trustees to speak to the issue concerning the fence he had erected between the property at 15 Owana Way and his property at 19 Owana Way. When asked by Village Attorney LaMancuso to participate in mediation we agreed, however at the time we were about to begin mediation, we were served with a notice of violation regarding the fence by Building Inspector Swanson.

Dr. Blasius asked Mayor Birrittieri, members of the Board of Trustees and Village Attorney LaMancuso if any of them were aware of the action carried out by the Building Inspector.

Mayor Birrittieri indicated the matter was brought up at a previous meeting however said she wasn't aware with any certainty that the Building Inspector was going to serve a notice of violation.

OCTOBER 10, 2017 (CONTINUED)

Trustee Barnes indicated that following a previous meeting of the Board of Trustees, it was her impression the action of Building Inspector was an option.

When Dr. Blasius asked Village Attorney LaMancuso if he was aware of the Building Inspector's actions, Mr. LaMancuso noted it isn't appropriate to discuss this matter in a public forum given it could end up in litigation.

Dr. Blasius said he was hopeful to hear yes, I did know or no, I didn't know. Dr. Blasius said knowing that by serving a notice of violation was going to make the mediation process moot and senseless to proceed with, he questioned the timing when it was served.

Village Attorney LaMancuso said it seems to him the Mayor and members of the Board of Trustees were not aware a notice of violation was going to be served to Dr. Blasius. He then noted it isn't appropriate to answer questions concerning the subject given where we are it in the procedural stage of the matter.

Dr. Blasius said he and his wife, in good faith, agreed to participate in the mediation process and unfortunately the manner in which the notice of violation was served, in his opinion, wasn't done in good faith. He said it puts a very bad view point on the Board of Trustees by allowing things to happen the way they did.

Trustee Barnes indicated that the Code Enforcement Officer and members of the Lakewood-Busti Police Department work independent of the Board of Trustees and therefore don't ask for our approval in doing their jobs. Their jobs are to enforce the laws, and they do so without our approval or disapproval. Ms. Barnes said we as members of the Board of Trustees do not micro-manage the employees.

Dr. Blasius said it is likely that the individuals Chief Bentley and his staff arrest aren't trying to work in good faith with the authorities. He

said the Village of Lakewood was attempting to work with us on this matter which has been a very difficult issue for everyone. He said police officers as well as the Code Enforcement Officer are representatives or agents of the Village of Lakewood and their behavior reflects on those in charge and the community as a whole.

Dr. Blasius then asked Trustee Barnes if she understands their good faith actions when it came to mediation and then being served with a notice of violation.

Village Attorney LaMancuso said it is within the discretion of the Code Enforcement Officer to issue Notices of Violation and the timeframe in which they are issued.

Mayor Birrittieri indicated that when it was agreed that both parties would be participating in mediation, she had hoped that the matter was going to move forward towards some form of resolution.

Village Attorney LaMancuso indicated to Dr. Blasius, although he was served a notice of violation by Building Inspector Swanson, the opportunity is still there to work with the Building Inspector to bring the property into compliance.

Dr. Blasius said from his standpoint the property is certainly in compliance with the local zoning law. The language is clear and upon further review the Code Enforcement Officer should come to the realization that the fence, which was a preexisting condition, and everything that goes along with it, is in compliance.

Building Inspector Swanson said his position on his interpretation of the local zoning law hasn't changed.

Mr. Swanson said the matter first came to his attention when he learned that a police report was filed in connection with the fence that had been erected between 15 & 19 Owana Way. Mr. Swanson said he tries to handle each and every issue similarly, by reaching out and talking to the people involved in an attempt to reach some sort of resolution. When questions surfaced, he decided it would be best to request an interpretation from the Zoning Board of Appeals.

OCTOBER 10, 2017 (CONTINUED)

With no one else to be heard, Mayor Birrittieri went into old business, inviting members of the Board of Trustees and the Village Attorney to comment on the fifteen year franchise renewal agreement from Time Warner Cable/Spectrum/Charter Communications that has been presented for approval.

Mayor Birrittieri indicated that there are a couple of points of the agreement that could be looked at, namely the term of the agreement and the percentage of Time Warner Cable's annual gross revenue paid out as the franchise fee. She then asked Village Attorney LaMancuso if he would care to comment.

Village Attorney LaMancuso indicated Time Warner Cable's representative Mr. Mark Meyerhofer, was somewhat receptive to reducing the term of the agreement to ten years. Mr. LaMancuso said right now there is a 3% franchise fee paid to the Village of Lakewood and he believes the maximum amount that could be charged is 5%. The franchise fees paid-out are usually passed onto the customers within the franchise area.

Mayor Birrittieri thought Mr. Meyerhofer implied at the public hearing, held August 14th, that 5% is the standard amount paid out as franchise fees and sees any potential increase in that percentage as additional revenue for the Village of Lakewood.

Trustee McCague indicated that he spoke with representatives at Spectrum about the percentage of the franchise fee and was told it is entirely up to the municipality, whether it is set at 3% or up to 5%. Trustee McCague said the franchise fees collected may be designated or set aside for specific community projects versus going directly into the General Fund. Trustee McCague wanted to make it clear that the franchise fees paid out are based solely on the cable television services for that particular franchise area and don't include charges for internet and phone services.

Trustee Holcomb asked wouldn't the Village of Lakewood want to keep the franchise fee at 3% in order to keep the bills lower.

Trustee McCague said that s one way to look at it, however if the franchise fee was increased from 3% to 5%, it would increase the revenue paid annually to the Village of Lakewood from approximately \$30,000.00 to \$ 50,000.00.

Trustee Drago said if the franchise fee was increased it would just mean higher television cable bills for the residents.

RESOLUTION #154-2017 - TABLE ACTION ON CABLE TELEVISION FRANCHISE AGREEMENT

Motion by Trustee Barnes, seconded by Trustee McCague, for the Board of Trustees to table any action on the Time Warner Cable Franchise Agreement extension, until decisions can be made on the term of the contract/agreement and the percentage of the cable giant's annual gross revenue, (3% - 5%) to be paid out as a franchise fee to the Village of Lakewood.
Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

RESOLUTION #155-2017 - APPROVE TENTATIVE POLICE UNION LABOR AGREEMENT

Motion by Trustee Holcomb, seconded by Trustee Drago, for the Board of Trustees to approve the Tentative (Proposal #5) three (3) year Union Labor Agreement by and between the Village of Lakewood and CSEA Local 1000 AFSCME, AFL-CIO, Village of Lakewood Police Unit #6320, Local #807. NOTE: The labor agreement will be retroactive to June 1, 2017 and run through May 31, 2020.
Adopted: 4 ayes, no nays, 1 Abstention (Birrittieri, Drago, Holcomb, McCague) (Barnes)

OCTOBER 10, 2017 (CONTINUED)

Mayor Birrittieri thanked everyone involved with the labor union negotiation process.

RESOLUTION #156-2017 - AUTHORIZE PLANNING & ZONING SEMINAR ATTENDANCE

Motion by Trustee McCague, seconded by Trustee Barnes, to authorize members of the Board of Trustees, Planning Board, Zoning Board of Appeals and other officials to attend the Fall Planning & Zoning Training sessions scheduled for Wednesday, November 8th or Thursday, November 9th. The training sessions which are being held at the Jamestown and Olean campuses of Jamestown Community College, are sponsored by Southern Tier West, Salamanca, New York. Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

RESOLUTION #157 - SET HALLOWEEN TRICK OR TREAT HOURS

Motion by Trustee Drago, seconded by Trustee McCague, set 5:30 PM - 7:30 PM, as the hours for Trick or Treating within the Village of Lakewood on Halloween, Tuesday, October 31, 2017. Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

Motion by Trustee Holcomb, seconded by Trustee Drago, and unanimously carried, the Board adjourned at 7:17 PM.

Joseph M. Johnson
Village Clerk