

NOVEMBER 12, 2013

The fifteenth regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Tuesday, November 12, 2013 at 6:30 PM, with Mayor David T. Wordelmann presiding. Trustees present were David J. Di Salvo, Susan F. Drago, 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 and Department of Public Works Supervisor Thomas R. Pilling. Absent were Trustee Gale A. Denn, Fire Chief Kurt W. Hallberg and Building Inspector Charles L. Smith.

APPROVAL OF MINUTES

Motion by Trustee Jablonski, seconded by Trustee Drago, to approve the minutes of the last regular meeting of the Board of Trustees, held October 28, 2013.

Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

AUDIT OF CLAIMS

Motion by Trustee Drago, seconded by Trustee Di Salvo, that the claims as audited by the Auditing Committee of the abstracts dated October 31, 2013 and November 12, 2013 be approved with the exception of voucher #443 in the amount of \$ 99.95, payable to Police Chief John R. Bentley. The Clerk shall execute said abstracts (#22, #23 & #24), and direct payment by the Treasurer. Trust & Agency: \$ 53,090.17, (Checks #2701 thru #2714), General Fund: \$ 16,542.64, (Checks #10156 thru #10157), General Fund: \$ 43,602.34, (Checks #10158 thru #10203)

Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

REPORTS

Department of Public Works Supervisor Thomas R. Pilling reported that the wetland mitigation plan associated with the proposal to construct a baseball field off Linwood Ave. has been submitted to the New York State Department of Environmental Conservation for their review. Mr. Pilling indicated this wetland management project will likely be carried out in the spring of 2014. Mr. Pilling also reported that the annual leaf pick-up is continuing and the crew is beginning its third trip through the neighborhoods.

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has responded to nine thousand one hundred thirty-one reportable incidents year-to-date. Chief Bentley then asked for the Board of Trustees' permission to send an officer to range training school in Virginia, through a grant from the National Rifle Association. The tuition for the school, which will be paid by the National Rifle Association is \$ 700.00. Additional expenses to be incurred by the Village of Lakewood would be three (3) days pay for the officer in training and lodging totaling \$ 748.56. Chief Bentley also informed Mayor Wordelmann and the Board of Trustees that the U.S. Coast Guard will be conducting a mass casualty drill on Lake Chautauqua in front of the Chautauqua Lake Yacht Club, beginning at 10:00 AM, February 22, 2014. Chief Bentley anticipates hundreds of people participating in the drill including local volunteer fire departments, local law enforcement agencies, U.S. Coast Guard personnel and dive teams from the Chautauqua County Sheriff's Department and the New York State Police.

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Village Attorney Wright reported that since the last Board of Trustees meeting, two litigations involving the Village of Lakewood have concluded. One being Ellie L. Hagberg, Falconer, N.Y., versus the Village of Lakewood, the Lakewood-Busti Police Department and an officer of the Lakewood-Busti Police Department individually. The case revolved around a claim by Ms. Hagberg of being misidentified. The second case concluded was Thomas A. & Michelle M. Turner, 33 East Lake St., Lakewood, N.Y., versus the Village of Lakewood regarding a claim that their First and Fourteenth Amendment rights (due process & equal rights) were violated. Mr. Wright indicated that the Village of Lakewood's insurance carrier incurred the defense costs on this particular case.

Village Treasurer Andrea J. Windoft reported that the third quarter sales tax revenue received by the Village of Lakewood was about 3% or approximately \$ 5,000.00 lower than what was received for the corresponding quarter last year.

Mrs. Windoft said she is happy to report that the fencing for the new dog park has been installed and is hopeful the parks' final touches such as signs and waste receptacles will be in place very soon.

Mayor Wordelmann said the Village of Lakewood owes a debt of gratitude to Mrs. Windoft for taking this project on and overseeing it to its fruition.

Village Treasurer Windoft indicated since the Village of Lakewood first expressed ideas of establishing a dog park, the Village of Mayville is now looking into the possibility of creating one.

Mayor Wordelmann reported that he recently received a letter from the New York State Department of Transportation denying a request to install a traffic control device at the intersection of Shadyside Ave. and East Fairmount Ave. (Rt. 394), stating that the current traffic count does not meet the threshold for a traffic light.

Speaking for Building Inspector Charles L. Smith, Mayor Wordelmann said with lingering questions concerning how Mr. Larry Spacc has developed the property at the intersection of East Fairmount Ave. and Fairdale Ave., it is his recommendation to turn it over to the matter to members of the planning & zoning sub-committee which is comprised of Trustee Jablonski and Trustee Di Salvo. Mayor Wordelmann suggested that they meet with Mr. Spacc to review site plan specifics, any site plan shortcomings and report back to the Board of Trustees.

Trustee Di Salvo indicated that he would have to defer to Trustee Jablonski and said it would be necessary to look at details of the original site plan as a starting point and then decide what has been done versus what was promised by the developer.

Trustee Jablonski indicated he has no interest in meeting with Mr. Spacc, because he was originally asked to provide a detailed landscaping plan prior to removing any vegetation (i.e. hedge), which he didn't do and still hasn't done. Trustee Jablonski then suggested that Mr. Spacc be sent a letter notifying him of that.

Mayor Wordelmann indicated that this board needs to be a working board and to work with area business owners, adding sometimes it is easier to work with people as a means to an end rather than force an issue.

Trustee Di Salvo said his biggest concern is that everyone should receive fair and equal treatment in the enforcement of the local zoning law and it must be done with consistency.

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If it is the opinion of Village Attorney Wright and the rest of the Board of Trustees that Mr. Spacc isn't in compliance with the conditions agreed upon when the Special Use Permit was granted, then it is a simple matter of enforcement.

Village Attorney Wright indicated he isn't sure if Mr. Spacc is in compliance or not but what needs to be done is for someone to sit down with Mr. Spacc and review the conditions he agreed upon so as to determine if in fact he has complied with those conditions.

Trustee Di Salvo said he would be happy to sit down with Building Inspector Smith to review the file and to find out if indeed there are any gaps between what was asked of Mr. Spacc and what conditions he has already met. Trustee Jablonski said he is agreeable to joining Trustee Di Salvo in meeting with Mr. Smith to review and discuss the matter.

ANYONE TO BE HEARD

Mr. Randy Ridgeway, 323.5 East Terrace Ave., appeared before Mayor Wordelmann and the Board of Trustees saying he recently received a call from Village Attorney Wright stating on behalf of the Board of Trustees the Village of Lakewood denied his formal request made on May 28, 2013, for corrections to be made to his neighbor's residential property at 321.5 East Terrace Ave. Mr. Ridgeway asked if the Board of Trustees voted on this decision and if so was it a unanimous.

Mayor Wordelmann indicated that this matter was referred to Village Attorney Wright for his opinion.

Mr. Wright told Mr. Ridgeway as he stated in a phone conversation with him, because of the facts associated with this matter the action he asked the Board of Trustees to take wasn't an action the Village of Lakewood would prevail on, adding it would not have been a very good use of the taxpayers' money.

Mr. Ridgeway said it seems as if the Village of Lakewood doesn't wish to enforce its own zoning codes. He then asked if the Village of Lakewood is denying his request to have his neighbor remove his second floor balcony.

Mayor Wordelmann indicated to Mr. Ridgeway that per the advice of Village Attorney Wright, the Village of Lakewood will not be taking any action against his neighbor in connection with renovations and structural additions to the single family residence at 321.5 East Terrace Ave.

Mr. Ridgeway then asked Mayor Wordelmann and the Board of Trustees to reconsider their position on this matter for the following reasons. Mr. Ridgeway said he has a \$ 5,000.00 retainer for legal services of which have been estimated at \$ 12,000.00. Secondly, did Mr. Wright explain that Mr. Rowe can and plans on constructing a roof over his second story balcony without the benefit of a current building permit? Continuing to work off a building permit that expired in 2005 begs the question where does it end.

Mr. Ridgeway went on to say Building Inspector Smith indicated that Mr. Rowe can enclose the upper balcony structure.

Both Mayor Wordelmann and Village Attorney indicated to Mr. Ridgeway that Mr. Rowe would need to file a building permit application in order to proceed with any plans to enclose his upper balcony.

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Village Attorney Wright indicated if work proposed by Mr. Rowe is permissible and within code his building permit application could be granted, if not, it would be denied.

Mr. Ridgeway indicated that the plantings (arborvitae & sea grass) on Mr. Rowe's property were originally found to be in violation of the code and wondered if anything is going to be done about it.

Village Attorney Wright indicated to Mr. Ridgeway that his advice to the Board of Trustees was not to pursue the plantings in question, given what other residents in similar situations have planted on their properties.

Mr. Ridgeway thought that he was originally told by Mr. Wright that the plantings were a violation of the local zoning law.

Mr. Wright indicated to Mr. Ridgeway that the Board of Trustees in essence is a steward of the taxpayers' money. For the same reason Mr. Ridgeway has concerns about his legal costs, and given the facts of the matter, it is the same hurdle that the Village of Lakewood faces. Therefore it is not a good use of taxpayers' money to undertake an action that they would lose 99% of the time.

Trustee Di Salvo indicated back in May of this year he had questions about this matter and proceeded to ask for a paper trail of applications, permits, inspections, certificates of occupancy, etc., but said he has yet to see it. Trustee Di Salvo understands what Mr. Wright is saying and must defer to him regarding his legal advice.

Trustee Di Salvo said he understands errors are made and there are administrative mistakes but it disturbs him that we are telling property owners that are on their own, nothing against Mr. Wright or the Board of Trustees. Again, he requested this information back in May and hasn't seen anything yet. Although it likely wouldn't change anything, he would have liked to have known the details of what had transpired in regards to Mr. Rowe's ongoing construction project. How did we get to this point and why are we having this discussion.

Mr. Eugene Johnson, 319 East Terrace Ave., said if he understands it right, the Village of Lakewood is telling me if I have a zoning related issue with a neighbor, I'll have to hire my own attorney.

Village Attorney Wright indicated to Mr. Johnson, because of certain facts associated with this situation it was a case that the Village of Lakewood would likely lose, in particular for the fact that a Certificate of Occupancy was issued to Mr. Rowe nearly a year ago. If Mr. Ridgeway or any other neighbor disagrees with the Village of Lakewood position they are welcome to bring a private action against Mr. Rowe.

Mrs. Jill Conley, 7 Winchester Road, indicated she and her neighbors are aware that the zoning law review committee will ne meeting on Monday, November 18th. Mrs. Conley said she is here this evening to ask that her neighborhood remain residential and for the Village of Lakewood not to allow weekly rentals. Mrs. Conley said she is hopeful that the zoning law review committee will take into consideration the letters that have been written and the comments that have been made when reviewing this particular matter.

Mayor Wordelmann indicated to Mrs. Conley that the committee has been focused on four specific moratoria (car dealerships, storage structures, adult novelty stores & signs) that have been enacted however other subjects including weekly rentals is on the agenda for Monday evening's meeting.

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Mrs. Conley said she and her neighbors are fearful that the use of 35 West Lake Street as a weekly rental will be “grandfathered” in and implored the Board of Trustees to preserve the integrity of her neighborhood.

RESOLUTION #95-2013-2014 – ADOPT LOCAL LAW #5-2013 RE: VILLAGE ELECTIONS

Motion by Trustee Drago, seconded by Trustee Di Salvo, to adopt Local Law #5-2013, to move the time General Village Elections will be conducted in the Village of Lakewood from March to November beginning in 2015, per the vote (634 ayes, 58 nays) on the proposition which was presented to eligible voters of the Village of Lakewood on Tuesday, November 5, 2013 and per Resolution #68-2013-2014, dated September 9, 2013.

Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

RESOLUTION #96-2013-2014 – AUTHORIZE WATER QUALITY IMPROVEMENT PROJECT

Motion by Trustee Jablonski, seconded by Trustee Drago, per the recommendation of Department of Public Works Supervisor Thomas R. Pilling, authorizing the Village of Lakewood to become a participating municipality in the 2013 Water Quality Improvement Project – Round #11, and to work in concert with the Chautauqua County Soil & Water Conservation District in efforts to reduce erosion and sedimentation throughout the Chautauqua Lake watershed.

Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

RESOLUTION #97-2013-2014 – APPOINT FULL TIME POLICE OFFICER

Motion by Trustee Drago, seconded by Trustee Jablonski, per the recommendation of Police Chief John R. Bentley, to appoint Timothy M. Riley as a full time police officer for the Lakewood-Busti Police Department effective November 13, 2013, contingent upon Officer Riley executing a letter of acceptance. Officer Riley who has worked as a part-time officer for the Lakewood-Busti Police Department since June 26, 2013, will be compensated at the probationary pay scale of \$ 37,882.00 annually, per the current labor contract.

Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

RESOLUTION #98-2013-2014 – APPROVE NEW FIRE DEPARTMENT MEMBERS

Motion by Trustee Drago, seconded by Trustee Di Salvo, that the Board of Trustees acting as the Board of Fire Commissioners to approve Nicholas Theis, 5 Mari Lane and Brent Johnson, 4809 Steward Ave., Ashville, N.Y., as new members of the Lakewood Volunteer Fire Department.

Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

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RESOLUTION #99-2013-2014 – AUTHORIZE FIREARMS TRAINING SCHOOL ATTENDANCE

Motion by Trustee Di Salvo, seconded by Trustee Drago, per the recommendation of Police Chief John R. Bentley, authorizing Officer Noel M. Guttman to attend a firearms training school at the Fairfax County Police Department's Firearms Training Facility in Chantilly, VA, December 3rd, 4th & 5th. NOTE: The National Rifle Association has agreed to incur the \$ 700.00 tuition fee for Officer Guttman while the Village of Lakewood has agreed to incur his wages for three days and lodging costs totaling \$ 748.56. Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

RECESS

Motion by Trustee Drago, seconded by Trustee Di Salvo, to recess the regular meeting of the Board of Trustees at 7:07 PM, so as to enter into executive session. Adopted: 3 ayes, no nays (Di Salvo, Drago, Jablonski)

EXECUTIVE SESSION

Present at the executive session were Mayor David T. Wordelmann, Trustee Susan F. Drago, Trustee David J. Di Salvo, Trustee John Jablonski, Village Attorney Edward P. "Tad" Wright, Police Chief John R. Bentley and Village Treasurer Andrea J. Windoft. Motion by Trustee Jablonski, seconded by Trustee Drago to adjourn the executive session and reopen the regular meeting at 7:22 PM.

Motion by Trustee Di Salvo, seconded by Trustee Jablonski and unanimously carried the Board adjourned at 7:23 PM.

Joseph M. Johnson
Village Clerk