

MAY 13, 2013

The third regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Monday, May 13, 2013 at 6:30 PM, with Mayor David T. Wordelmann presiding. Trustees present were Gale A. Denn, 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, Department of Public Works Supervisor Thomas R. Pilling, Fire Chief Kurt W. Hallberg and Building Inspector Charles L. Smith.

#### ANYONE TO BE HEARD

Mr. Gene Johnson, 319 East Terrace Ave., appeared before Mayor Wordelmann and the Board of Trustees to ask if there is anything to report regarding the addition and remodeling project the owner of the single family residence at 321.5 East Terrace Ave. has been working on the past few years.

Building Inspector Charles L. Smith indicated to Mayor Wordelmann and the Board of Trustees that he issued a Certificate of Occupancy to Mr. Jon Rowe in February 2013 in connection with the remodel and addition at 321.5 East Terrace Ave.

Mayor Wordelmann asked Mr. Smith if he would kindly review what has transpired with respect to Mr. Rowe's project and its impact on the immediate neighbors.

Mr. Smith indicated the original complaint regarding Mr. Rowe's addition came from Mr. Randy Ridgeway, owner of the property at 323.5 East Terrace Ave., in particular the use of the second floor as an exterior deck which overlooks his property next door. Building Inspector Smith indicated he thought Mr. Ridgeway's complaint stemmed from having his sight line up the lake interfered with when in reality he was more concerned with a privacy issue.

Mr. Johnson indicated that the house at 321.5 East Terrace Ave. didn't have a porch then all of a sudden there was a porch on the lakeside end of the house. Mr. Johnson said Mr. Ridgeway is out of town and Mr. Mark Bargar, his legal counsel, is ill this evening, so they asked me if I would attend tonight's meeting to find out if anything has come of his appeal.

Trustee Di Salvo asked Building Inspector Smith a few questions with respect to the timetable of the construction and subsequent issuance of the Certificate of Occupancy and what work was covered under the building permit that was issued to Mr. Rowe.

Building Inspector Smith indicated because work on this particular project was somewhat drawn out he tries to work with the property owner.

Village Attorney Edward P. "Tad" Wright indicated that Mr. Ridgeway's legal counsel, Mark L. Bargar, Esq., brought a Notice of Appeal before the Zoning Board of Appeals asking them to consider nullifying the Certificate of Occupancy that was issued to Mr. Rowe relative to his addition to and remodel of his residence at 321.5 East Terrace Ave. Mr. Wright indicated that because a Certificate of Occupancy is issued via requirements of the New York State Fire Prevention and Building Code and not the local zoning law, the Zoning Board of Appeals does not have the authority or jurisdiction to nullify, void, withdraw or terminate a Certificate of Occupancy issued by the building inspector. Bringing this action before the Zoning Board of Appeals was asking something they couldn't hear.

## MAY 13, 2013 (CONTINUED)

Mr. Wright indicated where does one go from this point forward. Mr. Johnson, Mr. Ridgeway or anyone else may bring a private cause of action against their neighbor alleging specific zoning code violations.

Trustee Di Salvo asked what can the Village of Lakewood do to ensure that this doesn't happen again in the future. Trustee Di Salvo suggested that the issuance of Certificates of Occupancy be a formal process.

If for example a Certificate of Occupancy is not issued within a year, then the onus must be on the property owner to request an extension and to show good reasons for that extension. Trustee Di Salvo said he understands there is a lot going on and things happen, but would like to "tighten things up" if they are being done informally.

Building Inspector Smith indicated that the local zoning law needs to be rewritten to allow its enforcement to be improved upon.

Trustee Di Salvo suggested in the mean time the Building Inspector should enforce the local zoning law as is which will help in the interim.

## APPROVAL OF MINUTES

Motion by Trustee Denn, seconded by Trustee Jablonski, to approve the minutes of the last regular meeting of the Board of Trustees held April 22, 2013.

Adopted: 4 ayes, no nays (Denn, 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 May 13, 2013 be approved and that the Clerk shall execute said abstracts (#49, #50 & #51) and direct payment by the Treasurer. General Fund – End of Month: \$7,374.84, (Checks #9591 thru #9593), General Fund: \$ 32,154.51, (Checks #9594 thru #9640), Trust & Agency Fund: \$ 55,035.54, (Checks #2455 thru # 2466)

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

## REPORTS

Department of Public Works Supervisor Thomas R. Pilling reported that the annual brush pick-up was completed in three and one half days, while collecting and disposing of fifty-one 10-wheeler dump truck loads of brush, limbs and other material. Mr. Pilling wished to publically thank the Town of Busti, Town of Harmony and Town of North Harmony for providing manpower and equipment to assist with this annual project. Mr. Pilling also reported that the Department of Public Works has taken delivery of the used 1998 Case 850G bulldozer from the Jamestown Board of Public Utilities and the new snow blower for the Trackless sidewalk plow. Mr. Pilling asked permission from the Board of Trustees to request sealed bids for the 1958 Caterpillar (D-6) bulldozer. The minimum bid should be set at \$ 2,800.00. If no bids are received the equipment can be "scraped" for that dollar amount.

MAY 13, 2013 (CONTINUED)

Trustee Di Salvo wished to thank Mr. Pilling for taking time out from his busy schedule to give him a tour of the village and share with him some of the responsibilities of the Department of Public Works. Mr. Di Salvo also said he had the pleasure of meeting members of the D.P.W. crew. Trustee Di Salvo went on to commend Mr. Pilling and his small staff for all they do for the village.

Trustee Di Salvo indicated the tour included a visit to some village owned property off Rt. 394 in the Vukote area. He asked if the Village of Lakewood has any intended use for the property. If not is it property that is marketable.

Mr. Pilling indicated that that area was the former well field for the Village of Lakewood's water distribution system and there is still a large water main that traverses the property between Rt. 394 and Rt. 474.

Trustee Jablonski asked Mr. Pilling if a paving schedule has been set-up with respect to the resurfacing of Spruce Street.

Mr. Pilling indicated to Trustee Jablonski that Spruce Street will be milled down and paved sometime this summer however the exact timetable for this project will be dictated by the contractor's work schedule.

#### RECESS

Motion by Trustee Denn, seconded by Trustee Drago to recess the regular meeting of the Board of Trustees so as to conduct a previously scheduled public hearing.  
Adopted: 4 ayes, no nays (Denn, Di Salvo, Drago, Jablonski)

#### PUBLIC HEARING – 6:45 PM ZONING LAW AMENDMENT PROPOSED LOCAL LAW #3-2013

Mayor Wordelmann opened the public hearing at 6:45 pm and asked the Clerk to read the notice of public hearing as it appeared in the Village of Lakewood's official newspaper.

Mayor Wordelmann indicated the reason for placing a moratorium on the issuance of zoning permits for the use adult novelty stores is because the current zoning law in no way addresses this particular use or in which specific districts this use is permitted. Some communities had banned this particular use up until the United States Supreme Court ruled this particular use was a first amendment right. Although communities could not ban this use outright, they could designate a particular zoning district in which adult novelty stores could be located. To prevent the establishment of an adult novelty store within the Village of Lakewood, the Board of Trustees is considering a local law placing a moratorium on the issuance of any zoning permits for this use until such a time the local zoning law can be amended accordingly.

Trustee Di Salvo indicated communities typically try to restrict this particular use towards industrial districts. The light industrial districts within the Village of Lakewood are closer to being highway business as opposed to heavy industry. One of the problems the Board of Trustees will need to address is to come up with an appropriate district and location where an adult novelty store would be permitted.

## MAY 13, 2013 (CONTINUED)

Once one factors in the distance proximity data to schools, churches, R-1, residential districts, day care, etc., it is going to be a challenge to pinpoint an area where this particular use would be allowed. Trustee Di Salvo indicated that time is of the essence in dealing with this growing list of moratoria and it should be a priority of the Board of Trustees to “clean-up” these issues before addressing the larger issue of completely updating the Village of Lakewood zoning law, which will be very time consuming. Trustee Di Salvo suggested that the Village of Lakewood review some model ordinances, adding the Village of Westfield did a phenomenal job in rewriting their code.

Mayor Wordelmann indicated in defense of the Village of Lakewood, we are a very unique municipality and have issues other similar sized communities don't have. Mayor Wordelmann indicated that things change very quickly when it comes to zoning related issues and keeping any municipality's updated and current with the times is an ongoing process. Mayor Wordelmann indicated the local zoning law was amended just three years ago.

Trustee Di Salvo said the clock is ticking and it is imperative the Village of Lakewood addresses the various moratoria it has imposed in a timely manner.

With no one else to be heard, there was a motion by Trustee Denn, seconded by Trustee Di Salvo, to close the public hearing at 6:55 PM and reopen the regular meeting of the Board of Trustees.  
Adopted: 4 ayes, no nays (Denn, Di Salvo, Drago, Jablonski)

## REPORTS (CONTINUED)

Trustee Denn indicated to Department of Public Works Supervisor Pilling that the caution/stop light at the intersection of West Summit Street and Sunset Ave. is out again.

Mr. Pilling said because West Summit Street is a Chautauqua County highway he is going to check with their engineering department to determine if the light is still warranted. If so, he will get a price on a replacement caution/stop light.

While we are speaking about Summit Street, Mayor Wordelmann asked Mr. Pilling if he could check with Chautauqua County to see they would be willing to install no parking signs along the north side of East Summit Street, just west of Olive Ave.

Police Chief Bentley reported that the Lakewood-Busti Police Department has answered three thousand six hundred sixty reportable incidents year-to-date. Since the last board meeting the Lakewood-Busti Police Department working in concert with the Chautauqua County Drug Task force served search warrants to property owners on the Busti-Sugar Grove Road and in doing so seized five hundred eight-two marijuana plants and a shotgun. Three individuals who were allegedly running the operation were arrested. Chief Bentley wished to remind residents to be vigilant and if they see something suspicious say something.

Mrs. Marian Anderson, 115 West Terrace Ave., asked Police Chief Bentley why aren't there more stories in the local newspaper concerning some of the criminal activity happening in the immediate area. When residents don't hear or read about some of the crimes that go on, there is a tendency to become complacent and think they are safer than they really are.

MAY 13, 2013 (CONTINUED)

Trustee Di Salvo suggested utilizing the Village of Lakewood web site to post useful information for residents to access.

Mayor Wordelmann indicated we are very fortunate to have the police department we have and they do a wonderful job. Criminal activity is taking place in the township where there is police protection 24/7. Just imagine the amount of criminal activity that would be occurring if there wasn't police protection 24/7.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has responded to two hundred sixty-six alarms year-to-date, most of which are emergency medical service calls. Chief Hallberg also reported that the Lakewood Volunteer Fire Department assisted the Busti Fire Department regarding the fatal accident involving a tractor rollover the evening of May 2<sup>nd</sup>.

Village Treasurer Andrea J. Windoft reported that the sales tax revenue received from Chautauqua County for the fourth quarter was about \$9,000.00 less than expected.

Village Treasurer Windoft then asked Trustee Denn if he would be willing to be the lead contact from the Lakewood Kiwanis Club to assist in fund raising efforts for the proposed dog park across from the community boat launch.

Trustee Denn said he and the Lakewood Kiwanis Club would be willing to help in anyway they can.

Village Treasurer Windoft then asked if the Board of Trustees is willing to endorse the concept of the dog park.

Mayor Wordelmann said he believes the Board of Trustees is behind this project and would entertain a motion to approve and carry out the idea of Village Treasurer Windoft to establish a dog park on village owned property across from the community boat launch. (Parcel #386.05-3-49)

Trustee Di Salvo indicated to Building Inspector Smith that he has noticed that LUV Toyota is parking cars in the vacant lot west of their dealership on Rt. 394, and asked if they asked for permission to expand their sales lot.

Building Inspector Smith said LUV Toyota doesn't have permission to park cars at that location and will advise them accordingly.

Trustee Di Salvo then asked Mr. Smith if as Building Inspector and Code Enforcement Officer does he maintain an electronic data base listing permits, certificates of occupancy, inspection reports, etc.

Building Inspector Smith indicated to Trustee Di Salvo he doesn't currently maintain an electronic data base for the simple fact the software is somewhat expensive.

Trustee Di Salvo said if new software isn't the answer then how about creating an excel spreadsheet containing the desired data. Trustee Di Salvo said he would like to see Mr. Smith create a monthly report of everything going on in the building department so he and the other board members may track the progress of different projects and be up to speed on code compliance matters. Once the data base is set-up it is easy to generate reports and is an important step in going forward.

MAY 13, 2013 (CONTINUED)

Trustee Drago asked Mr. Smith if he has any information on when Mr. Larry Spacc is going to start working on his parking lot and landscaping plan, at his used car lot on the corner of East Fairmount Ave. and Fairdale Ave.

Building Inspector Smith said he hasn't had any communication with Mr. Spacc but will get in touch with him to find out what his timetable for improvements to the property is.

Mayor Wordelmann asked Mr. Smith about any progress at the Sakura Buffet at the Chautauqua Mall and the Fugi Grill at the Lakewood Village Center.

Mr. Smith said things are moving forward on both projects and that the Fugi Grill is about a month away from opening. Commercial projects on the horizon include a dental office, another restaurant and a couple of retail stores.

#### COMMITTEE REPORTS

Trustee Jablonski, Chairman of the Recreation Committee said one idea that has surfaced is the possibility of establishing a concession stand at Richard O. Hartley Park/Beach this summer.

Mayor Wordelmann agreed with Trustee Jablonski's concession stand idea, but asked if vendors would be allowed to set-up in the park as well.

Trustee Di Salvo suggested the seasonal lifeguard staff could be asked to manage the concession stand by starting very simply offering hot dogs, hamburgers, soda pop, potato chips, candy and ice cream for sale, and see how it goes. Trustee Di Salvo then asked what do we need to do to get something in place for this summer. An alternate plan would be to contract out the food service to a reputable vendor.

Mayor Wordelmann suggested that the Recreation Committee, comprised of Trustee Jablonski and Trustee Di Salvo, develop a formal plan and present it to the Board of Trustees for their review and comment.

Trustee Jablonski asked what is the timetable for when the public dock will be installed at Richard O. Hartley Park/Beach. He also asked if the public dock could be moved a little bit to the west to make it easier for a neighbor to navigate in and out from his private dock.

Trustee Jablonski also wished to note there is a dead tree in Richard O. Hartley Park/Beach.

D.P.W. Supervisor Pilling indicated that he is aware of the dead tree at the park and that he recently met with Tree Committee member Mr. Richard Rose and advised him that there are plans to plant two new trees at the park and three new trees at LaGrega Field this summer.

Trustee Jablonski asked if there is a cell phone policy in place for the lifeguards.

Mayor Wordelmann agrees there should be a policy in place but from his own experience it would be difficult to enforce.

MAY 13, 2013 (CONTINUED)

Trustee Di Salvo, Chairman of the newly formed Planning & Zoning Committee indicated that he and Trustees Jablonski have met a few times and discussed the matter of updating the comprehensive plan and the master plan for the Village of Lakewood. The last master plan that he is aware of was completed in 1970 and is unaware of any updates to it. Trustee Di Salvo said it is imperative that the comprehensive plan and master plan be updated. When talking planning it is most important to engage all segments of the community for their input. Although the Town of Busti is currently completing their own comprehensive plan, Trustee Di Salvo fears the Village of Lakewood, although part of the township is going to be short changed on the project.

Mayor Wordelmann asked Trustee Di Salvo what will a new comprehensive plan do for the Village of Lakewood. The comprehensive plan completed in 1970 has just sat on the shelf.

Trustee Di Salvo indicated the comprehensive plan wasn't properly utilized. Good planning and good zoning starts with good planning. The Village of Lakewood shouldn't update its zoning law until it knows where it wants to be twenty years from now.

Mayor Wordelmann said we will update the local zoning law with or without the benefit of a new comprehensive plan. He went on to say his book shelf is full of plans. Everyone in government wants to plan but few people actually do anything. Mayor Wordelmann said it is his opinion that it is a waste of taxpayer's money to compile all these plans if indeed nothing is accomplished. He said various levels of government have comprehensive plans to qualify for grant money, so some out of town consulting company can tell you how things should be done.

Trustee Di Salvo said although he respects Mayor Wordelmann's opinion on comprehensive plans he couldn't disagree more however. Again, good planning pays. The Village of Bemus Point recently applied for and received a \$ 375,000.00 grant in 2012 to improve sidewalks and its overall streetscape. Why, because they hired a consultant to develop an action plan. It pays if municipalities are prepared. Another example occurred in the Village of Hamburg where the local community, with a plan in place worked in concert with the New York State Department of Transportation on a simple paving project to include other streetscape amenities. Trustee Di Salvo said based on his experience, a good plan starts with the residents of the community and a good steering committee.

Trustee Jablonski added along those same lines the Village of Lakewood needs to deal with the moratoria issues immediately, plus consider implementing the new site plan review and erosion control measures. Trustee Jablonski said he would like to have Chautauqua County Senior Planner Don McCord and Dave Wilson, of the Chautauqua County Soil & Water Conservation District speak to those matters at a future work session. Because the Village of Lakewood didn't have a vision with respect to used car lots it became embroiled in litigation with the developer.

#### RESOLUTION #18-2013-2014 – ENDORSE PROPOSED DOG PARK

Motion by Trustee Drago, seconded by Trustee Denn, per the recommendation of Mayor Wordelmann, for the Board of Trustees to endorse the idea by Village Treasurer Andrea J. Windoft, for the Village of Lakewood to establish a dog park on village owned property across from the community boat launch on East Terrace Ave. The property to be developed as the dog park is known as parcel #386.05-3-49.  
Adopted: 4 ayes, no nays (Denn, Di Salvo, Drago, Jablonski)

MAY 13, 2013 (CONTINUED)

RESOLUTION #19-2013-2014 – ADOPT LOCAL LAW #3-2013 – AMEND LOCAL ZONING LAW

Motion by Trustee Denn, seconded by Trustee Drago, to adopt Local Law #3-2013, amending the local zoning law whereby no zoning permits shall be issued authorizing the establishment of an adult novelty store in any zoning district within the Village of Lakewood.

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

RESOLUTION #20-2013-2014 – APPROVE PERSONNEL RULES & REGULATIONS

Motion by Trustee Drago, seconded by Trustee Denn, to approve the updated Personnel Rules & Regulations as drafted and revised by Village Treasurer Andrea J. Windoft and Trustee Susan F. Drago.

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

RESOLUTION #21-2013-2014 – AUTHORIZE N.Y.S. HIGHWAY SUPERINTENDENTS SCHOOL ATTENDANCE

Motion by Trustee Denn, seconded by Trustee Drago, authorizing Department of Public Works Supervisor Thomas R. Pilling to the New York State Highway Superintendents School to be held in Ithaca, New York, June 2<sup>nd</sup> thru June 5<sup>th</sup>. D.P.W. Supervisor Pilling will be reimbursed for any and all legal expenses incurred.

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

RESOLUTION #22-2013-2014 – APPROVE 2013 DOCK PERMIT APPLICATIONS

Motion by Trustee Drago, seconded by Trustee Di Salvo, to approve the 2013 Dock Permit applications as submitted by David Doane, 127 Erie Street, for the Lowe Ave. right-of-way, William F. Chandler, 207 West Summit Street, for the Division Street right-of-way, John Hickey, 147 West Summit Street, for the Gifford Ave. right-of-way, and Steven Johnson, 26 Harlem Ave., for the Harlem Ave. right-of-way.

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

RESOLUTION #23-2013-2014 – SET DATES FOR ANNUAL YARD/GARAGE SALE & METAL/JUNK PICK-UP

Motion by Trustee Jablonski, seconded by Trustee Drago, to set Friday, June 7<sup>th</sup> and Saturday, June 8<sup>th</sup> as the dates to conduct the annual village wide yard & garage sale and to set Monday, June 10<sup>th</sup> as the date when the annual metal and junk pick-up will commence.

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

MAY 13, 2013 (CONTINUED)

RESOLUTION #24-2013-2014 – MANAGEMENT OF SUMMERFEST EXPENSES & REVENUES

Motion by Trustee Drago, seconded by Trustee Di Salvo, authorizing Village Treasurer Andrea J. Windoft to oversee the revenues and expenses for the 2013 4<sup>th</sup> of July/Summerfest Celebration to be held Thursday, July 4, 2013. NOTE: All expenses shall be paid from the General Fund Account #A-7550.40 and all revenues received shall be deposited into the Trust & Agency Account #T1093.40. Invoices paid from donations will be processed as any other claim and will be subject to approval by the Auditing Committee.

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

RESOLUTION # 25-2013-2014 – POSTPONE NEXT REGULAR BOARD OF TRUSTEES MEETING

Motion by Trustee Denn, seconded by Trustee Drago, that due to the Memorial Day Holiday, to postpone the next regular meeting of the Board of Trustees, previously scheduled for Monday, May 27, 2013 until Tuesday, May 28, 2013.

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

RESOLUTION #26-2013-2014 – AUTHORIZE HIRING OF SEASONAL LABORER

Motion by Trustee Denn, seconded by Trustee Drago, authorizing the hiring of Riley G. Smith as a Seasonal Laborer for the Department of Public Works, per the recommendation of D.P.W. Supervisor Thomas R. Pilling. Mr. Smith who is expected to commence seasonal employment Monday, May 20, 2013 will be compensated at a rate of \$ 7.50/hr.

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

RECESS

Motion by Trustee Denn, seconded by Trustee Drago, to recess the regular meeting of the Board of Trustees at 7:39 PM, so as to enter into executive session to discuss the proposed police services contract agreement between the Village of Lakewood and the Town of Busti.

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

EXECUTIVE SESSION

Present at the executive session were Mayor David T. Wordelmann, Trustee Gale A. Denn, Trustee David J. Di Salvo, Trustee Susan F. Drago, Trustee John Jablonski and Village Attorney Edward P. Wright Motion by Trustee Jablonski, seconded by Trustee Denn, to adjourn the executive session at to reopen the regular meeting of the Board of Trustees at 7:50 PM.

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

MAY 13, 2013 (CONTINUED)

RESOLUTION #27-2013-2014 – APPROVE POLICE SERVICES CONTRACT/AGREEMENT

Motion by Trustee Denn, seconded by Trustee Drago, per the recommendation of Mayor David T. Wordelmann, to approve the Police Services Contract/Agreement between the Village of Lakewood and the Town of Busti as presented and to authorize Mayor David T. Wordelmann to execute said contract/agreement. The term of the contract/agreement is five years and will commence January 1, 2014, when approved by the Town of Busti.

Adopted: 3 ayes, 1 nay (Denn, Di Salvo, Drago) (Jablonski)

Trustee Jablonski wished to commend Mayor Wordelmann and former Trustee Joseph M. Troche for all their hard work in negotiating this contract/agreement, but said he could not vote for the contract/agreement for the simple fact that it doesn't address inflation.

Motion by Trustee Denn, seconded by Trustee Jablonski, and unanimously carried the Board adjourned at 7:52 PM.

---

Joseph M. Johnson  
Village Clerk