

JANUARY 14, 2013

The twentieth regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Monday, January 14, 2013 at 6:30 PM, with Mayor David T. Wordelmann presiding. Trustees present were Susan F. Drago, John Jablonski and Joseph M. Troche. 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. Absent was Trustee Gale A. Denn.

ANYONE TO BE HEARD

Trustee John Jablonski indicated as Executive Director of the Chautauqua Watershed Conservancy, he recently received a letter from a Village of Lakewood resident that he would like to read and have it part of the public record.

Dear CWC:

In the past we have sent a contribution every year and every year our lakefront has gotten worse. When we bought in 1998 we had a sand bottom and a few weeds. We are now choked in with weeds and because of a storm sewer sluice that empties next to our property our sand is covered with gravel and other debris. We have watched all types of items, even boards, come down during a storm. Between the force of the water digging up the bottom and the "junk" that floats down, we have an ever expanding peninsula in front of our property. The year is coming soon that we will not be able to put up our dock because of this new formation.

All this discussion of what property owners can do will not help as long as this type of drainage is allowed into our lake. As long as the State, County or Village of Lakewood is allowed to dump all the storm water with the garbage that sits along the road not only the people near these sluices but the whole lake will suffer.

This particular sluice is in Lowe Park at the bottom of Green Street in Lakewood. I'm in my 60's, raised on this lake and have never seen it worse. I'm FRUSTRATED with talk, we need action.

Susan Stillwell-Tomczak
230 West Summit Street

Trustee Jablonski indicated that since becoming a member of the Board of Trustees, this is the second time a lakefront property owner has complained of the build-up of gravel and debris at a stormwater drainage outfall into the lake. We are dumping what is coming off the shoulders of the road into streams and other tributaries and is carried into the lake, which in turn degrade the lake conditions. As we go forward it is imperative that local highway departments work together with Chautauqua County to improve water courses and consider establishing sediment traps and other drainage structures upstream in an effort to reduce the amount of sediment and other debris that reaches the lake. Trustee Jablonski said this sedimentation of the lake destroys its value and hurts the tax base.

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 December 26, 2012.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

JANUARY 14, 2013 (CONTINUED)

AUDIT OF CLAIMS

Motion by Trustee Drago, seconded by Trustee Troche, that the claims as audited by the Auditing Committee of the abstracts dated December 28, 2012 and January 14, 2013 be approved and that the Clerk shall execute said abstracts, (#31, #32, #33 & #34) and direct payment by the Treasurer. General Fund: \$ 2,213.08, (Checks #9218 thru #9220), \$ 39,348.85, (Checks #9261 thru #9304), NOTE: Checks #9271 thru #9260 were voided. Trust & Agency Fund: \$ 51,813.40, (Checks #2322 thru #2337), \$ 54,920.94, (Checks #2348 thru #2361)

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

REPORTS

Although Department of Public Works Supervisor Thomas R. Pilling had no report, Trustee Jablonski pointed out to Mr. Pilling that storm water is still flowing through the wooded area next to Mayor Wordelmann's residence on Winding Way. He said there is nothing in place to slow the water down which has creating some erosion problems plus the water carries mud and leaves into the nearby tributary which then flows downstream.

Mr. Pilling said he will be happy to take a look at the situation and will work with Trustee Jablonski to come up with solution to the problem.

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department answered eleven thousand two hundred thirty reportable incidents in 2012 and four hundred nineteen so far in the month of January 2013. Chief Bentley said burglaries out in the township are on the rise again and asked residents if they see something suspicious to be sure to call. Chief Bentley then asked Mayor Wordelmann and the Board of Trustees for permission to request bids for two 2013 (2) police patrol cars. Chief Bentley suggested that sealed bids be received at or before 2:00 PM, Friday, February 8, 2013.

Mayor Wordelmann said he received a nice letter from Kim & Judy Greyber who were victims of a recent burglary of their residence out in the township. In the letter they expressed their thanks for the professionalism exhibited by members of the Lakewood-Busti Police Department during its investigation. Mayor Wordelmann indicated Mr. Greyber noted in the letter that the purpose of it was twofold. With that said, Mayor Wordelmann went on to read the last two sentences of the letter. 1) To commend the Lakewood-Busti Police Department. 2) To remind you that as local officials your first responsibility is also to protect its citizenry. I strongly urge that you do not cut police officers (our first line of defense) and to facilitate them in any manner possible.

Chief Bentley was pleased to report that those responsible for burglarizing the Greyber residence have been apprehended.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department responded to seven hundred seventy-six alarms in 2012 and twenty-seven so far in the month of January 2013.

Mayor Wordelmann congratulated Mr. Hallberg on being re-elected as Fire Chief.

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Village Attorney Edward P. Wright, indicated to Mayor Wordelmann and the Board of Trustees he is in receipt of a Notice of Claim, regarding a police chase which originated in the Town of Ellicott involving Town of Ellicott police officers and a motorcyclist. The chase continued west on Rt. 394 where the motorcyclist took a left hand turn onto Southwestern Dr. The motorcyclist ended up crashing on the Town of Ellicott side of Southwestern Dr., just south of Hunt Road. The accident resulted in the death of the motorcyclist. Two Officers from the Lakewood-Busti Police Department arrived at the scene after the crash had occurred, but assisted in searching for the victim. It doesn't appear the Village of Lakewood or the Lakewood-Busti Police Department will have any liability. Mr. Wright indicated the Notice of Claim has been turned over to the Village of Lakewood's insurance carrier and the appointed attorney has confirmed that there shouldn't be any liability on our part.

Village Treasurer Andrea J. Windoft reported that the interest rate on the Bond Anticipation Note up for renewal and is on tonight's agenda for authorization has been set at 3.21%. Mrs. Windoft also reported that an invoice from Mobilcom, Meadville, PA, which was determined to be the responsibility of the Lakewood Fire Company, was deleted from the abstract dated January 14, 2013 reducing the abstract's total by \$1,520.00.

Mayor Wordelmann asked Building Inspector Charles L. Smith if there is anything new to report on the Olive Garden Italian Restaurant, currently under construction or the proposed Sakura Buffet in the Chautauqua Mall.

Building Inspector Smith indicated that work continues on the Olive Garden Italian Restaurant, inside and out, and that the general contractor is hopeful to turn over the building to N & D Restaurants, a subsidiary of Darden Restaurants, Orlando, Florida by the end of February. As far as the proposed Sakura Buffet restaurant in the Chautauqua Mall, Mr. Smith said he has approved the plans and the developer is in the process of lining up subcontractors for the project.

DISCUSSION
RE: SPECIAL USE PERMIT APPLICATION - VEHICLE SALES
373 EAST FAIRMOUNT AVE.

Mayor Wordelmann indicated that Mr. Lawrence G. Spacciapolli, appealed the Board of Trustees' decision disapproving his application for a Special Use Permit regarding his desire to establish a used vehicle sales lot at 373 East Fairmount Ave. which was rendered back on November 26, 2012.

Mayor Wordelmann indicated that Mr. Spacciapolli's appeal via an Article 78 proceeding went before the 8th Judicial District Supreme Court Justice James Dillon. Judge Dillon overturned the Board of Trustees' decision and directed them to ultimately approve Mr. Spacciapolli's application for a Special Use Permit, allowing him to establish a vehicle sales lot at 373 East Fairmount Ave., however the Board of Trustees may attach some conditions to the issuance of the Special Use Permit.

Mayor Wordelmann said most of the twelve conditions being proposed deal with safety and aesthetic concerns expressed by members of the Board of Trustees and area residents during the public hearing held October 22, 2012, plus some conditions originally suggested by the applicant.

John P. Gullo, Jr., Esq., legal counsel for Mr. Spacciapolli asked Mayor Wordelmann if he could have some clarification on a couple of the conditions plus comment on some others.

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Mr. Gullo asked for clarification on condition #2 dealing with the size of each parking space and in particular the required space, (20 ft.), to allow adequate access to the property by emergency vehicles. He asked if the 20 ft. is also the required distance between the rows of vehicles situated on the lot.

Mayor Wordelmann agreed, saying there shall be a minimum of 20 ft. between the rows of vehicles on sale to allow adequate access for emergency vehicles.

Mr. Gullo asked if he could comment on condition #3, which limits the number of cars that may be displayed at thirty-nine (39). Mr. Gullo said if one factors in that the green space will remain the same and that the required parking space size shall be established at 10 ft. x 18 ft., plus factor in the 20 ft. wide rows, we believe the lot can support more than thirty-nine parking spaces. As a compromised position, Mr. Gullo suggested that he would be willing to provide Building Inspector Smith with a detailed site plan depicting a maximum number of parking spaces for the lot while complying with the aforementioned dimensional requirements.

He continued by saying as a practical matter his client is in the business of selling cars which means he has to be able to move cars plus the site has to be visually attractive anyway. We are not at cross purposes with respect to the maximum number of cars that may be displayed. On the other hand if we can fit fifty cars on the lot, we would like to be able to do so.

With respect to condition #6, we have no problem with keeping all the trees and maintaining the existing green space, however we would like permission to get rid of the few ugly bushes that border the green space. Mr. Gullo said there are plans to do some landscaping around the building and other places on the lot where it won't interfere with business. Obviously we want the property to look nice.

Condition #7 deals with paving the parking lot and Mr. Gullo asked for some latitude regarding May 1, 2013 deadline to complete the work, saying the only reason we wouldn't be able to meet that deadline is if the weather didn't cooperate or if the local hot mix macadam plant didn't open in April.

Mayor Wordelmann indicated that he wanted to attach a date by which the parking lot must be leveled and paved but fully understands if the weather is horrible or if the hot mix macadam plant isn't operational in April than he would agree to extend that particular deadline.

Mr. Gullo indicated to Mayor Wordelmann and members of the Board of Trustees that he and his client have no problems with any of the remaining conditions as set forth and that the detailed parking plan will be submitted to Mr. Smith as soon as possible.

Mayor Wordelmann asked if any member of the Board of Trustees has an issue regarding the removal of the bushes.

Village Attorney Wright suggested that the Board of Trustees allow the developer to remove the bushes upon submission of a landscaping plan.

Mr. Gullo and Mr. Spacciapoli said they are agreeable to Mr. Wright's suggestion concerning the bushes and landscaping plan.

Trustee Jablonski indicated that he would like to have the developer plant some low level shrubs within the existing green space. He then asked about the proposed access off Nicholas Ave.

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Mr. Spaciapolli said we introduced the possibility of establishing the additional access onto Nicholas Ave. a couple meetings ago. If it is a benefit from a traffic flow standpoint we'll do it, if you don't want it we won't do it.

Trustee Jablonski said if the proposed access off Nicholas Ave. calls for the removal of any trees he would rather not see the access established.

Mayor Wordelmann said if the access off Nicholas Ave. will not require the removal of any trees then he doesn't see any problems with it.

RESOLUTION #81-2012-2013 – APPROVE SPECIAL USE PERMIT APPLICATION
WITH CONDITIONS

Motion by Trustee Drago, seconded by Trustee Jablonski, for the Board of Trustees to approve the Special Use Permit application as submitted by Mr. Lawrence G. Spacciapolli, 4568 West Lake Road, Dunkirk, N.Y., regarding his desire to establish a used vehicle sales lot at 373 East Fairmount Ave., corner of Fairdale Ave. contingent upon compliance with twelve agreed upon conditions as follows: #1) No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners, balloons or similar moving, fluttering or revolving devices. Said devices, as well as strings of lights, shall not be used for the purposes of advertising or attracting attention. In no event shall an illuminated or lighting devise be so placed or directed so as to permit the beams of light and illuminations there from to be directed or beamed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance. The only signage permitted will be one monument type sign and a sign on the building in accordance with Section #25-50 [Signs] of the Village of Lakewood Zoning Law. 2) Provide a detailed site plan to scale prepared by a licensed architect, engineer or land surveyor depicting the number of individual parking spaces measuring a minimum of 10 ft. x 18 ft. and depicting emergency vehicle accesses a minimum of 20 ft. wide to and from the property and between the rows of cars on display. 3) Limit the number of vehicles to be displayed, taking into consideration the physical space limitations the lot presents as well as the minimum size of each parking space and the minimum width of the emergency vehicle accesses and space between the rows on display as noted in condition #2. 4) Allow at least five (5) parking spaces next to the building/sales office for customers and employees including the number of parking spaces for persons with disabilities as required by New York State Law. 6) Maintain current green space and keep intact the trees bordering the property. NOTE: The applicant has permission to remove the bushes bordering the green space upon submittal of a landscaping plan to and approval by the Board of Trustees. 7) The entire parking area must be leveled and paved or concreted by May 1, 2013. NOTE: It is understood if the local hot mix macadam plant does not open in April or if the weather does not cooperate the applicant shall complete the required work on the parking area as soon as weather permits. 8) No mechanical work is to be performed on the property. All vehicles displayed on the lot shall be "sale ready" or must be removed from the premises. 9) The two (2) entrances and all sidewalks must remain clear to their established width at all times. 10) The Special Use Permit shall be for the sale of automobiles, sport utility vehicles and/or pick-up trucks only. Boats, recreational vehicles and/or trailers will not be permitted to be displayed or stored on the property. 11) The applicant shall comply with all zoning regulations and requirements as set forth in the Village of Lakewood Zoning Law. 12) When applying for a sign permit, the applicant shall submit a detailed site plan, drawn to scale, depicting the size and location of any signs as proposed to the Board of Trustees for their approval prior to the issuance of a permit and subsequent installation.

Adopted: 3 ayes, (Wordelmann, Drago, Jablonski), 1 nay, (Troche)

JANUARY 14, 2013 (CONTINUED)

RESOLUTION #82-2012-2013 – AUTHORIZE BOND ANTICIPATION NOTE RENEWAL

Motion by Trustee Troche, seconded by Trustee Drago, authorizing Village Treasurer Andrea J. Windoft and Village Attorney Edward P. Wright to renew the Bond Anticipation Note (5 year renewable – 1 year maturing Bond Anticipation Note) in the amount of \$ 48,000.00 for the 2007 Elgin Street Sweeper at an interest rate of 3.21%.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RESOLUTION #83-2012-2013 – SET TIME AND DATE FOR PUBLIC HEARING

Motion by Trustee Troche, seconded by Trustee Drago, per the recommendation of Mayor Wordelmann, to set 6:45 PM, Monday, January 28, 2013 as the time and date to conduct a public hearing to consider amending the Village of Lakewood Zoning Law, in particular establishing moratoria on issuing special use permits for vehicle sales, issuing building permits for storage structures not located on a contiguous lot with the primary residence or main commercial or industrial building and issuing zoning permits for advertising signs containing electronic variable messaging.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RESOLUTION #84-2012-2013 – AUTHORIZE FIRE CONFERENCE ATTENDANCE

Motion by Trustee Troche, seconded by Trustee Drago, that the Board of Trustees, acting as the Board of Fire Commissioners, to authorize Lakewood Fire Captain Paul Taber and Firefighter Christopher Gordon to attend the Technical Rescue Conference to be held in Montour Falls, New York March 8th – 10th per the request of Fire Chief Kurt W. Hallberg. The cost for registration and accommodations will not exceed \$210.00.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RESOLUTION #85-2012-2013 – APPROVE FIRE CHIEF POSITIONS FOR 2013

Motion by Trustee Troche, seconded by Trustee Drago, that the Board of Trustees, acting as the Board of Fire Commissioners, to approve the following fire chief positions for 2013: Fire Chief Kurt W. Hallberg, First Assistant Chief Stephen W. Smouse, Second Assistant Chief Todd Gilbert.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

RESOLUTION #86-2012-2013 – SET & TIME FOR PUBLIC HEARING

Motion by Trustee Jablonski, seconded by Trustee Drago, to set 6:45 PM, Monday, February 11, 2013, as the time and date to conduct a public hearing to consider a Special Use Permit application as submitted by Mr. Daniel R. Johnson, 57 Woodworth Ave., Jamestown, N.Y., regarding a proposal to establish a vehicle sales lot at 266 East Fairmount Ave., corner of Elmerest Ave. In accordance with Section #25-14, (C-10), [Highway Business (B-2) District] of the Village of Lakewood Zoning Law, the establishment of a vehicle sales lot in a B-2, Highway Business District requires a Special Use Permit.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

JANUARY 14, 2013 (CONTINUED)

RESOLUTION #87-2012-2013 – AUTHORIZE REQUEST FOR BIDS

Motion by Trustee Troche, seconded by Trustee Drago, authorizing Lakewood-Busti Police Chief John R. Bentley to request sealed bids for the purchase of two (2) 2013 police vehicles. Bids will be received at the Village Clerk's Office at or before 2:00 PM, (local time), Friday, February 8, 2013, at which time and place they will be publicly opened and read aloud.

Adopted: 3 ayes, no nays (Drago, Jablonski, Troche)

Motion by Trustee Troche, seconded by Trustee Drago, and unanimously carried the Board adjourned at 7:10 PM.

Joseph M. Johnson
Village Clerk