

SEPTEMBER 25, 2017

The eighteenth regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Monday, September 25, 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, Department of Public Works Supervisor Thomas R. Pilling and Fire Chief Kurt W. Hallberg. Absent was Building Inspector Jeffrey A. Swanson.

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 11, 2017 and the minutes of the special meeting of the Board of Trustees held, Wednesday, September 20, 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 September 25, 2017, be approved and that the Clerk shall execute said abstracts (#15 & #16) and direct payment by the Treasurer. Trust & Agency Fund: \$ 60,376.02, (Checks #4216 thru #4224), General Fund: \$ 55,477.79, (Checks #14138 thru #14170)

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

REPORTS

Mayor Birrittieri indicated the Events & Marketing Committee recently met and plans are underway for this year's "Christmas in the Village". A concern facing the committee this year is locating vendor space. Mayor Birrittieri said there are thoughts of centrally locating a large tent with heaters as the main vendor space. She said with fewer locations for vendors, there will likely be fewer vendors this year. Mayor Birrittieri said she and members of the committee will be looking to area businesses to sponsor certain elements of the event. Mayor Birrittieri said although there might be fewer vendors, the other "Christmas in the Village" activities such as Mr. & Mrs. Claus, horse drawn trolley rides, reindeer, Christmas carolers, Christmas decoration contests and of course the tree lighting ceremony will continue. Mayor Birrittieri said "Christmas in the Village" is scheduled for Saturday, December 9th, from 10:00 AM - 4:00 PM, adding the committee is always looking for more volunteers.

Department of Public Works Supervisor Thomas R. Pilling reported that the east side of the Mall Blvd. drainage project has been completed, however crews are awaiting to have National Fuel relocate a natural gas main before the east side of the project can be completed.

Mr. Pilling then reported that Town of Busti Supervisor Jesse Robbins, has decided to request sealed bids for the 10-wheeled Dump truck, that the Village of Lakewood was planning on purchasing for approximately \$ 20,000.00.

Mayor Birrittieri asked Mr. Pilling what is the status of the grant

application the Village of Lakewood went in on with Southwestern Central School regarding a shared refueling station.

Mr. Pilling indicated to Mayor Birrittieri and members of the Board of Trustees that the joint grant application has been submitted and we should hear something by the end of the year.

Trustee Drago asked Mr. Pilling, now that the DPW has removed some of the trees and bushes from the north side of recognition park, what else is the DPW expected to do as in-kind services in connection with the redevelopment of the property at 103 Chautauqua Ave.

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Mr. Pilling said he talked with Ms. Lori Galster, Project Manager and she is waiting for plans from the project engineer. Mr. Pilling said without knowing exactly what their plans are, he intends to excavate along the southerly wall and remove the stumps of the trees that have been cut down. Mr. Pilling said he plans on meeting with the developers on site later this week to discuss what needs to be done next. Mr. Pilling said he disagrees with the idea they need a wall between their building and the park property, when some #2 stone and a stormwater drainage system might serve the same purpose.

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has handled seven thousand two hundred forty-one incidents year-to-date, three hundred twenty-five of which occurred during the past two weeks. He also reported that the K-9 Unit recently assisted the Jamestown Police Department in locating a firearm.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has responded to six hundred twenty-nine alarms year-to-date. Chief Hallberg also reported that the LFD responded to a major structure fire on Lakeside Drive back on September 12th. It was determined that the cause of the fire was a carelessly discarded cigarette.

RECESS

Motion by Trustee Holcomb, seconded by Trustee Drago, to recess the regular meeting of the Board of Trustees at 6:40 PM so as to conduct a previously scheduled public hearing.

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

PUBLIC HEARING: 6:40 PM
SPECIAL USE PERMIT APPLICATION
PROPOSED HYUNDAI DEALERSHIP
SHULTS REAL ESTATE, LLC.
181 EAST FAIRMOUNT AVE.

Shults Real Estate, LLC, 181 East Fairmount Ave. has submitted an application for a Special Use Permit regarding a proposal to convert/remodel the existing commercial building at the above address into a new 4,000 sq. ft. Hyundai Auto/Truck dealership. In accordance with Section #25-14, (C 10), [Highway Business (B-2.1) District], of the Village of Lakewood Zoning Law, the establishment of a new/used auto sales lot in this district requires a special use permit

Mayor Birrittieri opened the public hearing at 6:40 PM and asked if there was anyone present that could briefly explain this proposal.

Mr. Paul Somers, Chief Financial Officer for both Shults Real Estate, LLC and Shults Auto Group, introduced himself to Mayor Birrittieri and members of the Board of Trustees and said he would be pleased to explain plans to establish a new Hyundai dealership in Lakewood.

Mr. Somers indicated to Mayor Birrittieri and the Board of Trustees that the Zoning Board of Appeals has already approved a sign variance and that at last week's Planning Board meeting a favorable recommendation was rendered for the Board of Trustees to approve/grant the Special Use Permit application before them this evening.

Mr. Somers then provided a brief history of the Hyundai dealership which was purchased from Mr. William McFadden in 2005 and was located on Washington Street in Jamestown, along with Shults Auto Group's Ford franchise. When Ford Motor Company forced a move of the Hyundai dealership across the street, a decision had to be made whether to upgrade that site or to look elsewhere.

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Mr. Somers said from an economical and business standpoint it made sense to look for an alternate site. What better place than our own property where Shults' Express Lube & Tire has been successful for the past fifteen years. Plus we would near a Toyota dealership, which has been in business since 2007, and a brand new Honda dealership. Mr. Somers indicated the location on East Fairmount Ave. will take advantage of the wonderful retail traffic along that particular section of Rt. 394, plus it is a good market to do business in.

Mr. Somers said he is proud of the fact that Shults Auto Group uses only local contractors and sub-contractor on their projects.

Trustee Drago asked Mr. Somers if the Shults Express Lube & Tire business will remain.

Mr. Somers said yes and that Shults Express Lube & Tire will be part of an expanded Hyundai service center.

Mayor Birrittieri indicated to Mr. Somers according to the minutes of last week's Planning Board meeting there were a couple of questions dealing with lighting, landscaping and stormwater management. She then asked him if he would care to address those specific questions.

Mr. Somers indicated that all on site lighting will comply with "dark sky" requirements, and that there is some "green space" along the westerly edge of front parking lot within which some trees could be considered for planting. He said we at Shults Auto Group welcome any suggestions. He then indicated that since the New York State Department of Transportation upgraded the culvert under Rt. 394, flooding of the creek adjacent to the property, which had previously plagued the site, has become a thing of the past.

Mr. Somers also said there has been some discussion about a rental arrangement with Mr. Bernard C. Wooschlager, who owns the property immediately to the west, about the possibility of expanding the business.

Trustee McCague indicated he sat-in on last week's Planning Board meeting noting that the special use permit application submitted by Shults Real Estate, LLC was in order and complete. As previously noted by Mr. Somers, the Zoning Board of Appeals also has granted a variance regarding the signage package for the new Hyundai dealership and therefore he would be in favor of granting the special use permit application this evening.

Mr. Somers wanted to let Mayor Birrittieri and members of the Board of Trustees know it is a privilege to work for the Shults Auto Group and on behalf of its nearly three hundred fifty employees, thanked them for their service to the community.

With no one else to be heard, Mayor Birrittieri closed the public hearing at 6:52 PM and proceeded to reopen the regular meeting.

RESOLUTION #148-2017 - APPROVE SPECIAL USE PERMIT APPLICATION - VEHICLE SALES

Motion by Trustee McCague, seconded by Trustee Holcomb, that per the recommendation of the Planning Board to approve/grant the special use permit application as submitted by Shults Real Estate, LLC, whereby they will be allowed to utilize the property and building at 181 East Fairmount Ave. as a new and used auto sales lot, in accordance with Section #25-43, [Vehicle Sales, New & Used], of the Village of Lakewood Zoning Law.
Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

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PUBLIC HEARING: 6:50 PM
PROPOSED LOCAL LAW #2 TO AMEND LOCAL LAW #7-2016
ENTITLED: APPOINTMENT OF THREE ALTERNATE MEMBERS OF
THE ZONING BOARD OF APPEALS

Mayor Birrittieri opened the public hearing at 6:53 PM and indicated that she would like to propose an amendment to increase the number of alternates of the Zoning Board of Appeals from one to three.

Trustee Drago asked Mayor Birrittieri how would alternates be selected and due to the fact that it has taken months to appoint one alternate, she would be in favor of just two alternates.

Mayor Birrittieri said names and resumes of prospective alternates would be submitted to the Chairman of the Zoning Board of Appeals for his review and comment.

Trustee Barnes said she agrees with Trustee Drago to limit the number of alternates on the Zoning Board of Appeals to two.

Trustee McCague indicated he would be satisfied with two alternates.

Trustee Barnes said she is concerned about having a small pool of candidates and the potential for "burnout".

Mayor Birrittieri said alternates would be appointed to a five (5) year term, same as current members, and they would need to be interested and involved in getting acquainted and comfortable with the local zoning law. She and other

members of the Board of Trustees will be called upon to reach out to residents who might be interested in serving their community in this capacity.

Mr. Michael Looker, 15 Owana Way, asked Mayor Birrittieri if the alternate members will be asked to attend the regular meetings of the Zoning Board of Appeals. If so, it is his opinion that they too would likely recuse themselves, if called upon on certain issues.

Trustee Barnes indicated that members or alternates of any review board must be honest with themselves so as to be impartial.

Trustee McCague indicated he believes that it is important to have alternates for a couple of reasons. First and foremost, if there are conflicts of interests with members of the review board, there can still be a quorum present to act on the matter at hand. Secondly, in the case of absences due to illness, vacation leave, personal reasons, etc., alternates can fill in when needed so as not to cause any undue delay for the applicant's project.

Mr. Tom Calzone, 3 East Third Street, asked Mayor Birrittieri how do you go about choosing review board members and alternates.

Mayor Birrittieri said the most important element in choosing someone to serve on a review board or become an alternate on a review board is that they show an interest in serving their community. They should also be willing to become comfortable in acquainting themselves with the local zoning law. Resumes of prospective review board members and/or alternates would then be submitted to the chairperson of the respective review board for their review and consideration.

With no one else to be heard, Mayor Birrittieri closed the public hearing at 7:05 PM, and proceeded to reopen the regular meeting.

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RESOLUTION #149-2017 - APPROVE AMENDMENT TO LOCAL LAW #7-2016

Motion by Trustee Barnes, seconded by Trustee McCague, for the Board of Trustees to approve the proposed amendment to Local Law #7-2016 - [Appointment of an Alternate Member to the Zoning Board of Appeals], increasing the number of alternates from one (1) to two (2), pending review and comment of Local Law #2-2017, as proposed, by the Chautauqua County Department of Planning & Economic Development.
Adopted: 4 ayes, no nays (Barnes, Drago, Holcomb, McCague)

REPORTS (CONTINUED)

Village Treasurer Andrea J. Windoft reported that she recently received a New York State aid check in the amount of \$ 27,144.00 and that the Village of Lakewood received its first draw of funding in the amount of \$ 49,958.00 in connection with the Town of Busti-Village of Lakewood Stormwater Management Engineering Study grant in the amount of \$ 100,000.00. On a related matter Mrs. Windoft indicated she also has received the first invoice, in the amount of \$ 6,604.61, from Burton & Loguidice, D.P.C., Liverpool, N.Y., the engineering firm conducting the study.

COMMITTEE REPORTS

Trustee Holcomb indicated the Village of Lakewood has been awarded the \$ 100,000.00 New York State Research & Development Authority (NYSERDA) grant, which will allow the Village to begin working on one of its four High-Impact Actions, namely converting a percentage of the existing street lighting fixtures into LED (Light Emitting Diode) fixtures. Trustee Holcomb also noted that NYSERDA would like a second contact on the Board of Trustees to be named.

Trustee Barnes indicated the Office of Chautauqua County Emergency Services will be requesting a Certificate of Insurance from the Village of Lakewood in connection with providing Emergency Medical Services (EMS) to local volunteer fire departments via their new county-wide "fly car" system.

ANYONE TO BE HEARD

Mr. & Mrs. Michael Looker, 15 Owana Way, appeared before Mayor Birrittieri and members of the Board of Trustees, and immediately apologized for coming before them again, taking up their valuable time, however Mayor Birrittieri left us no choice. Mr. Looker said he would like to read from a prepared statement.

The Mayor decided to print an editorial in The Post-Journal on September 17, 2017, in which she slandered and insulted my wife and me. If you willingly and knowingly make that choice, then you should expect retaliation, on the record in the minutes and the newspaper.

My wife and I are no longer involved in the fence dispute with Myra Blasius. The case has moved further down the road toward resolution, which the Mayor's article failed to mention.

In our opinion, the Mayor's article was a failed attempt to show that the Village government was not politically biased in our case. However, the whole article strongly favored Myra's position, while insulting my wife and me; which clearly proves that the Mayor is politically biased. Her writing completely disproved her own point.

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As an elected Village civil servant, the Mayor should be impartial, honest, and fair. She should never take sides in a dispute between two equal taxpayers. The Mayor's bias appears to be unethical, immoral, and possibly illegal.

Mayor Birrittieri interjected telling Mr. Looker that his words are insulting and that he is slandering her in a public place. She said she will not allow someone to tell lies about her, and threatened to have Mr. Looker removed from the Board Room.

Mr. Looker asked Mayor Birrittieri what is she afraid of?

Trustee Holcomb suggested that Mr. Looker be allowed to continue to read his prepared statement.

Mr. Looker continued by saying the Mayor's writing said he was very vocal and shouted in the meeting. That's true, but she failed to mention that others have also been loud and shouted. I'm the only one who has publicly apologized for the "bad behavior". After one of the meetings, we actually received a phone call from another Village employee, apologizing for the Mayor's rude and unprofessional treatment of us. We would also like to express our appreciation for all the other calls and messages of support we have received.

Therefore, it is clear to us that the Mayor has been very politically biased in our case. This is proven by her slanted article and also by several Village employees who have told us how they were subjected to her bias first-hand.

Again, the time and cost of this fence case, which is being paid by the Village taxpayers, are a direct result of the pressure and delays orchestrated by the Mayor. We can only speak for ourselves, but, in our opinion, since day one the Mayor has attempted to intimidate us into walking away. If treated fairly, this simple case could have been easily resolved four months ago. Thank You.

Mr. Tom Marlinski, 36 Ohio Ave., again appeared before Mayor Birrittieri and the Board of Trustees, to ask if something is going to be done about the loud music that resonates from the outside deck at Craft Burgers & Brews, 60 Chautauqua Ave., on Friday and Saturday evenings. Mr. Marlinski said the band that played this past Saturday was particularly loud and disturbing. Officers from the Lakewood-Busti Police Department responded and was told by Mr. Thayer, the owner, that he had a permit.

Trustee Barnes said she doesn't believe the Board of Trustees was approached about having "live" entertainment on the outside deck at Craft Burgers & Beers.

Mayor Birrittieri indicated that Mr. Thayer is just interested in having some "live" music as entertainment for his restaurant and bar patrons.

Trustee McCague said the Building Inspector will be able to check to see if some sort of permit was issued regarding having "live" music on the deck, however there is a noise ordinance in place, [Section #25-55, Excessive Noise if Prohibited], and it is very clear and specific. The latest any type of music would be allowed is 10:00 PM.

Mr. Marlinski said 10:00 PM, is too late to ask residents to put up with loud music.

Trustee McCague suggested that the Code Enforcement Officer meet with the owner to review the zoning law and see if there can be some discussion and compromise on how loud the music can be.

Mayor Birrittieri said Mr. Marlinski's concern is a fair one. She said Mr. Thayer's intentions to provide "live" music to his patrons are good, however if it is too loud, it is too loud.

RESOLUTION #150-2017 - APPROVE USE OF VILLAGE STREETS

Motion by Trustee Drago, seconded by Trustee Barnes, to approve the use of Village of Lakewood streets for the "Buddy Walk", [Downs Syndrome Awareness], one mile walk to be held 1:00 PM, Saturday, October 7, 2017. The walk will originate and end at the Lakewood Rod & Gun Club.

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

RESOLUTION #151-2017 - RESCHEDULE NEXT REGULAR BOARD MEETING

Motion by Trustee Holcomb, seconded by Trustee Barnes, that due to the Columbus Day Holiday, Monday, October 9th, the next regular meeting of the Board of Trustees shall be rescheduled from Monday, October 9th to Tuesday, October 10th. The 6:30 PM Board of Trustees meeting will be preceded by a 6:00 PM work session in the Board Room of the Anthony C. Caprino Municipal Building.

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

RESOLUTION #152-2017 - PER SEQRA, CONSENT TO LEAD AGENCY DESIGNATION

Motion by Trustee Holcomb, seconded by Trustee Drago, for the Village of Lakewood, as an involved agency and pursuant to SEQRA (State Environmental Quality Review Act) regulations, consent to the designation of the Southwestern Central School District as the Lead Agency, regarding their 2017 Capital Project, in connection with proposed improvements to the SWCS bus garage located on Bentley Ave.

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

RECESS

Motion by Trustee Holcomb, seconded by Trustee Barnes, to recess the regular meeting of the Board of Trustees at 7:32 PM, so as to enter into executive session for the purpose of discussing current litigation and labor contract negotiations.

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

EXECUTIVE SESSION

Present at the executive session were Mayor Cara Birrittieri, Trustee Edward J. McCague, Trustee Susan F. Drago, Trustee Ellen E. Barnes, Trustee Randall G. Holcomb, Village Attorney John I. LaMancuso and Village Clerk Joseph M. Johnson. Motion by Trustee McCague, seconded by Trustee Drago, to adjourn the executive session at 8:35 PM.

Motion by Trustee Holcomb, seconded by Trustee McCague, and unanimously carried, the Board adjourned at 8:36 PM.

Joseph M. Johnson
Village Clerk

