

JULY 8, 2013

The seventh regular meeting of the Board of Trustees of the Village of Lakewood, NY, was held Monday, July 8, 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, Fire Chief Kurt W. Hallberg and Building Inspector Charles L. Smith. Absent was Department of Public Works Supervisor Thomas R. Pilling.

APPROVAL OF MINUTES

Motion by Trustee Denn, seconded by Trustee Drago, to approve the minutes of the last regular meeting of the Board of Trustees, held June 24, 2013.

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

AUDIT OF CLAIMS

Motion by Trustee Drago, seconded by Trustee Jablonski, that the claims as audited by the Auditing Committee of the abstracts dated July 8, 2013, be approved and that the Clerk shall execute said abstracts (#4 & #5) and direct payment by the Treasurer. Trust & Agency Fund: \$ 62,609.76, (Checks #2508 thru #2532), General Fund: \$ 32,127.11, (Checks #9782 thru #9813)

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

REPORTS

Police Chief John R. Bentley reported that the Lakewood-Busti Police Department has responded to five thousand two hundred sixty-five reportable incidents year-to-date. Chief Bentley was also happy to report that the 4th of July celebration held in the Village of Lakewood was more or less uneventful.

Mayor Wordelmann commended Police Chief Bentley and members of the Lakewood-Busti Police Department for the wonderful police presence that they provided during the 4th of July/Summerfest celebration. Mayor Wordelmann went on to also thank the Department of Public Works, the Lakewood Volunteer Fire Department and members of the Clerk's and Treasurer's office for all they did to make this year's 4th of July/Summerfest a success.

Fire Chief Kurt W. Hallberg reported that the Lakewood Volunteer Fire Department has responded to three hundred ninety-four alarms year-to-date and agreed with Police Chief Bentley that the 4th of July celebration was surprisingly uneventful.

Village Treasurer Andrea J. Windoft reported that the Village of Lakewood has received ninety-four percent of its village tax revenue during the month of June and to ask Mayor Wordelmann and the Board of Trustees to consider entering into executive session later this evening so as to discuss a payroll question.

Building Inspector Charles L. Smith reported that Mr. & Mrs. Ricky T. Elmeer entered into an agreement with the Village of Lakewood so as to allow equipment and manpower onto their property at 215 Elmcrest Ave. to remove and dispose of any and all debris that became a byproduct of a structure fire at that location earlier in the year.

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Mr. Smith indicated that a certified asbestos inspector has visited the site and is awaiting his report. Upon receipt of the asbestos report work to clean-up the property will commence. Mr. Smith also reported that he expects to receive plans for the proposed Men's Warehouse store in the Lakewood Village Center sometime next week.

Trustee Drago asked Mr. Smith what is the status of the case against the adult novelty store (Endless Love), located at 167 East Fairmount Ave.

Mr. Smith deferred Trustee Drago's question to Village Attorney Wright who indicated the defendant's legal counsel had a conflict with a scheduled court date two weeks ago which the Judge Hajdu adjourned until this Thursday, July 11, 2013.

Trustee Jablonski asked Building Inspector Smith a couple of questions concerning the temporary retail outlet permit that was issued to Shults Auto Group for the so called tent sale on Mall Blvd. and indicated it is his opinion that permit to allow automobile sales at that location was illegally granted and that believes the use fell under the moratorium/local law that the Board of Trustees adopted earlier in the year. Trustee Jablonski indicated it is also his opinion that work done on the site should have fallen under the site plan review process.

Building Inspector Smith indicated to Trustee Jablonski that the site in question was previously paved and the Shults Auto Group ended up paving over a good portion of the site and installing storm water retention areas within the site.

Trustee Jablonski indicated that he would like to see the Board of Trustees rescind the special use permit which was granted to the Shults Auto Group.

Building Inspector Smith indicated that the moratorium imposed was for automobile sales not temporary retail outlet permits, adding it is subject to interpretation.

Mayor Wordelmann, switching gears somewhat, indicated that when Mr. Larry Spacc appeared before the Board of Trustees regarding the development of the corner of East Fairmount Ave. and Fairdale Ave. as a used car lot he agreed to maintain the existing "green space" on the site, however when the light fixtures were installed it appeared the paving contractor removed a few feet of "green space" along the perimeter of the parking areas up to the newly installed light fixtures. Mayor Wordelmann indicated to Building Inspector Smith that he had assured him that the paving contractor was only going to pave to where the original pavement was.

Mr. Smith indicated to Mayor Wordelmann that he was assured by the engineer working for Mr. Spacc that was the way the paving was going to be done.

Mayor Wordelmann asked what might be some options to consider in that Mr. Spacc has clearly violated one the conditions of the special use permit that he was granted. Mayor Wordelmann indicated he doesn't wish to be anti development but the Village of Lakewood needs to enforce conditions attached to special use permits.

Village Attorney Wright indicated to be fair the Board of Trustees could ask Mr. Spacc to attend an upcoming board meeting to explain the work that has been done and yet to be done on the site. At that time the Board of Trustees may decide which route to take.

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Trustee Jablonski asked Building Inspector Smith if Mr. Spacc has submitted a landscaping plan yet? If he hasn't the Village of Lakewood shouldn't issue a certificate of occupancy until such a time the required documents are submitted.

ANYONE TO BE HEARD

Joseph M. Troche, 19 Winchester Road, appearing before Mayor Wordelmann and the Board of Trustees indicated that he is very concerned when developers fail to follow conditions that they agreed to. Mr. Spacc's legal counsel stood in this room and said he and his client can be trusted to follow the special use permit conditions as set forth by the Board of Trustees. Mr. Troche said Mr. Spacc and his attorney can not be trusted and they haven't complied with the conditions of the special use permit that was issued. Mr. Troche said there should be some consequences when developers fail to satisfy specific conditions or instructions.

Mr. Randy Ridgeway, owner of 323.5 East Terrace Ave. appeared before Mayor Wordelmann and the Board of Trustees to discuss the addition that was constructed next door at 321.5 East Terrace Ave. Mr. Ridgeway said he believes that the owner of the property misled Building Inspector Smith into believing the original footprint of the residence at 321.5 East Terrace Ave. was larger than it actually was. Mr. Ridgeway said it is his contention that the owner added onto the structure twice thereby making it appear the original footprint was larger than it actually was. Mr. Ridgeway indicated he believes it is a matter of an individual breaking the law and is looking for someone to enforce the law. Mr. Ridgeway said he has proceeded with this appeal per Mayor Wordelmann's suggestions, however he believes the Board of Appeals would laugh at the idea to appeal work done under a building permit that was never issued.

Building Inspector Smith indicated that he met with both Mr. Ridgeway and Mr. Rowe, with one party contending one thing and the other party contending something else. Mr. Smith said the information he used to determine the size of the building's footprint was the former property card for 321.5 East Terrace Ave.

Mayor Wordelmann then asked Village Attorney Wright for his opinion on this matter.

Mr. Wright said we are back to what he said a month ago, wherein an individual is allowed to build over an existing foundation, which depends on what the evidence shows us and are there any zoning code violations in connection with Mr. Rowe's addition, with respect to required set-backs, etc. The old property card did show a preexisting cottage at that location and the Building Inspector spoke with the contractor and seemed comfortable that the addition was built over the original foundation. The Village of Lakewood's hands are somewhat tied without any known zoning code violation to enforce.

Mr. Wright continued by saying if there are no known zoning code violation or if the Village of Lakewood chooses not to enforce any zoning code violations. Mr. Ridgeway and any neighbors whose property may also be impacted by Mr. Rowe's addition may choose a private cause of action to the Supreme Court of New York.

Mayor Wordelmann asked who decides if the Village of Lakewood is going to act on this matter when it is unknown whether or not there are any zoning code violations.

Trustee Jablonski asked when was the building permit issued.

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Building Inspector Smith indicated the original building permit was issued in 2004 and he had worked with the applicant as progress on the addition and remodel was being made but never reissued any of the paperwork.

Trustee Jablonski indicated not reissuing building permits to the applicant is a violation of the zoning law, Section #25-66.

Building Inspector Smith admitted that he failed to follow-up with the appropriate paperwork.

Village Attorney Wright indicated although it may be a violation of the zoning law, there is not substantial remedy.

Mr. Ridgeway indicated that he isn't asking for the structure to be torn down, however because the upper floor of the addition is "new built" it should comply with the required set-backs. Mr. Ridgeway indicated the upper floor addition at 321.5 East Terrace Ave. negatively impacts his property values at 323.5 and 325.5 East Terrace Ave. He would like the upper floor addition removed because it has become a dog pen, there are plants on the balcony higher than two feet high.

In addition to the balcony issues Mr. Ridgeway indicated that a wildlife camera has been set up three feet from his property, which takes moving pictures of himself and any visitors he might have.

Village Attorney Wright indicated the issue becomes whether or not the porch or balcony was built under the original building permit. Building Inspector Smith has indicated previously that he worked with this particular applicant over the years with respect to this addition and remodel. Should Mr. Smith have issued building permit extensions to Mr. Rowe? Sure, but this isn't the only incident where Mr. Smith worked with a home owner on an extended building project. Looking at this matter practically, assuming the home owner came in and applied for a building permit to build an addition over the original footprint, would it have been granted. Under the zoning code the answer to that question is yes. Mr. Wright said views are not protected under New York State law.

Trustee Di Salvo asked why is there the discrepancy relative to the original footprint of the structure at 321.5 East Terrace Ave. If it can be determined where the original footprint is we can decide if the addition is legal or not.

Mayor Wordelmann asked what are Mr. Ridgeway's options.

Village Attorney Wright indicated issue #1 is whether the addition was built over the original footprint of the building. We've been told by Mr. Smith it was. If Mr. Ridgeway or others has evidence to refute that claim, it must be brought to Mr. Smith's attention. Issue #2 regarding the camera is a police or civil issue and will leave that up to the Police Chief to comment on. Issue #3 deals with the plants on the porch don't meet the definition of a fence.

Mr. Ridgeway said he can show Mr. Wright and Mr. Smith evidence of where the addition was not built over the original building's 1948 footprint.

Mr. Smith indicated that what the Village of Lakewood has on record and the measurements of the existing structure match.

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Mayor Wordelmann indicated because the measurements don't agree we need to have a meeting of the minds.

Trustee Di Salvo indicated that this board has the responsibility to protect the residents of the Village of Lakewood. Trustee Di Salvo understands administrative mistakes happen, but if we don't protect someone like Mr. Ridgeway, what are we saying to the residents, you are on your own. That shouldn't be.

Building Inspector Smith contends that if Mr. Rowe came in today with the same project, I would issue him a permit.

Trustee Di Salvo indicated the building permit should follow the rules and regulations in place.

Village Attorney Wright said although there was an administrative lapse but is there a zoning code violation. That's the question.

Trustee Di Salvo agreed saying if the footprint is there and the work was conducted, albeit there was an administrative lapse and the work was done within the zoning law rules there isn't much that can be done. The first step is to determine if the addition was built over the original footprint.

Mr. Ridgeway said for the record a Certificate of Occupancy was issued, which allows his neighbor's structure to overhang his property. The footer is only inches from the property line while the overhangs are fourteen inches long.

Building Inspector Smith said a surveyor would need to be called upon to determine the level of encroachment.

Mr. Johnson, 319.5 East Terrace Ave. indicated that he recalls two separate additions made to the lakeside end of the residence at 321.5 East Terrace Ave. over the years and then the owner added on a second story.

RESOLUTION #50-2013-2014 – APPROVE HIRING OF FULL TIME POLICE OFFICER

Motion by Trustee Denn, seconded by Trustee Drago, to approve the hiring of William A. Cummings, 3178 Rt. 394, Ashville, N.Y., a transfer from the Village of Westfield Police Department, per the recommendation of Police Chief John R. Bentley. Officer Cummings date of hire will be retroactive to July 3, 2013 and he will be compensated at the Step I pay rate of an annual salary of \$ 47,578.00. Adopted: 4 ayes, no nays (Denn, Di Salvo, Drago, Jablonski)

MAYOR'S ZONING LAW REVIEW COMMITTEE APPOINTMENTS

Mayor Wordelmann explained that he would like to appoint the following individuals to a committee which will begin the review of the current Village of Lakewood Zoning Law and consider appropriate amendments plus review zoning moratoria presently in effect relative to electronic signage, automobile sales, certain storage structures and adult novelty stores.

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The committee will include Mayor Wordelmann, Deputy Mayor Susan F. Drago, Village Attorney Edward P. "Tad" Wright, Building Inspector Charles L. Smith, Planning Board Chairman Jon T. Pearson plus a member of the Planning Board chosen by Chairman Pearson, Zoning Board of Appeals Chairman William F. Chandler and a member of the Zoning Board of Appeals chosen by Chairman Chandler and Village Clerk Joseph M. Johnson, Mayor Wordelmann also indicated he would like to appoint a sub-committee comprised of members of the Planning & Zoning Committee namely Trustee David J. Di Salvo and Trustee John Jablonski so they may offer ideas, suggestions, recommendations and opinions to the aforementioned committee. Mayor Wordelmann said eventually the two committees would be able to share their ideas in a public forum.

Trustee Di Salvo asked Mayor Wordelmann if he would be adverse to having these committee meetings in an open forum with public input.

Mayor Wordelmann said he wouldn't care to have all the committee meetings open to the public but obviously he would welcome some open meetings as the committee goes through the process.

Trustee Di Salvo said he appreciates Mayor Wordelmann's respect for the open meetings law but his concern is you may appoint any board member to the committee and being we have two board members who have been paid professionally to advise municipalities on these issues, believes it would be more responsible to appoint either Trustee Jablonski or myself to this committee. Nothing against Trustee/Deputy Mayor Drago, Trustee Di Salvo said he believes Trustee Jablonski or he could offer more to this committee. Trustee Di Salvo indicated he understands what the Mayor is up against but can not be in agreement with the structure of this committee.

Mayor Wordelmann indicated he chose Trustee/Deputy Mayor Drago because she has been on the board longer than some other members and has the knowledge of what zoning issues the Village of Lakewood has dealt with the past few years.

Trustee Drago interjected saying she has lived in the Village of Lakewood for twenty-seven years and that she pays taxes.

Trustee Di Salvo said that's fine, that's great. By no means is this a personal attack so don't take it personally, nor should you imply that because I've only lived in Lakewood for three years I don't have the knowledge.

Mayor Wordelmann said we as a board need to come together on this important issue.

Trustee Jablonski said he appreciates to be included in the process in some way and echoes Trustee Di Salvo's comments and believes the most qualified individual should be included on this committee. With all due respect to Trustee Drago, who is a wonderful legislator for this village he would prefer that Trustee Di Salvo or he were appointed to this committee. Trustee Jablonski also believes each committee meeting should be open to the public whereat as Committee Chairman, Mayor Wordelmann could control the public input.

Mayor Wordelmann said it has been his experience in the work place since being elected to public office that the more people one brings into mix the longer it takes to complete the task. He would like to expedite this process if possible. Mayor Wordelmann said by appointing Trustee Di Salvo and Trustee Jablonski to a sub-committee, he is including them in the process.

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In a recent editorial, The Post-Journal called the Village of Lakewood the shining star when it comes to development, mainly because his predecessor Mayor Anthony C. Caprino and others encouraged development and the biggest mistake one can make is to get in the way and allow development to become cumbersome.

Trustee Di Salvo wished to add one thing saying with his background he is a firm believer that the more citizen participation the better and there is a greater probability the end product is going to be successful because of citizen input. It may take more time but it improves the process.

Mayor Wordelmann said he doesn't disagree with Trustee Di Salvo and that is the reason why he appointed who he did to the zoning law review committee.

Trustee Di Salvo said he would like to have citizen input throughout the process rather than just at the end of the process.

Mayor Wordelmann said he would have no problem with scheduling public hearings throughout the zoning law review process to allow input from the general public.

RESOLUTION #51-2013-2014 – APPOINT OF ZONING LAW REVIEW COMMITTEE

Motion by Trustee Denn, seconded by Trustee Drago, to confirm the appointment of Mayor David T. Wordelmann, Trustee/Deputy Mayor Susan F. Drago, Village Attorney Edward P. "Tad" Wright, Building Inspector Charles L. Smith, Planning Board Chairman Jon T. Pearson, plus a member of the Planning Board chosen by Chairman Pearson, Zoning Board of Appeals Chairman William F. Chandler, plus a member of the Zoning Board of Appeals chosen by Chairman Chandler and Village Clerk Joseph M. Johnson to the Village of Lakewood's zoning law review committee. NOTE: Planning and Zoning Committee members Trustee David J. Di Salvo and Trustee John Jablonski were appointed as a sub-committee to share their expertise with the committee during the zoning law review process.

Adopted: 3 ayes, 2 nays (Wordelmann, Denn, Drago), (Di Salvo, Jablonski)

RESOLUTION #52-2013-2014 – APPOINT NEW POLICE SERGEANT

Motion by Trustee Denn, seconded by Trustee Drago, per the recommendation of Police Chief John R. Bentley, to promote Officer Christopher A. DePonceau to the rank of Police Sergeant effective retroactive to July 3, 2013. Sgt. DePonceau will fill the vacant position created by the recent retirement of Sgt. Stephen P. Fardink. Sgt. DePonceau began his career with the Lakewood-Busti Police Department as a part-time officer July 30, 2003, will be compensated at an annual salary of \$ 64,453.00.

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

RESOLUTION #53-2013-2014 – AUTHORIZE USE OF STREETS

Motion by Trustee Drago, seconded by Trustee Jablonski, authorizing Hospice – Chautauqua County to make use of village streets and Richard O. Hartley Park as the stage for the 3rd Annual Bike Ride for Hospice Saturday, August 31, 2013.

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

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RESOLUTION #54-2013-2014 – AUTHORIZE HIRING OF A PART-TIME POLICE OFFICER

Motion by Trustee Denn, seconded by Trustee Drago, authorizing Police Chief John R. Bentley to interview and hire a part-time police officer to fill a vacant position created by the recent resignation of part-time Police Officer Garrett N. Jackson.

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

RECESS

Motion by Trustee Jablonski, seconded by Trustee Drago, to recess the regular meeting at 7:24 PM, so as to enter into executive session to discuss payroll matters and pending litigation.

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, Village Attorney Edward P. “Tad” Wright and Village Treasurer Andrea J. Windoft. Motion by Trustee Denn, seconded by Trustee Drago to adjourn the executive at 8:09 PM.

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

Motion by Trustee Denn, seconded by Trustee Jablonski, and unanimously carried the Board adjourned at 8:10 PM.

Joseph M. Johnson
Village Clerk