

OCTOBER 22, 2018

The twentieth regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Monday, October 22, 2018, 6:30 PM, with Deputy Mayor Edward J. McCague presiding. Trustees present were Ellen E. Barnes, Randall G. Holcomb, and Douglas L. Schutte. Also present were Village Clerk Joseph M. Johnson, Village Treasurer Andrea J. Windoft, Village Attorney John I. LaMancuso, Department of Public Works Supervisor Thomas R. Pilling, and Building Inspector Jeffrey A. Swanson. Absent were Police Chief John R. Bentley and Fire Chief Steve Smouse.

#### APPROVAL OF MINUTES

Motion by Trustee Barnes, seconded by Trustee Schutte, to approve the minutes of the last regular meeting of the Board of Trustees, held October 9, 2018.

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

#### AUDIT OF CLAIMS

Motion by Trustee Schutte, seconded by Trustee Barnes, that the claims as audited by the Auditing Committee of the abstracts dated October 22, 2018, be approved and that the Clerk shall execute said abstracts (#20 & #21) and direct payment by the Treasurer. Trust & Agency Fund: \$ 57,508.45 (Checks #4549 thru #4557), General Fund: \$ 67,331.80 (Checks #15261 thru #15305)

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

#### REPORTS

Department of Public Works Supervisor Thomas R. Pilling reported that the joint Village-SWCS District refueling station project on Packard Ave. is ninety percent complete. He said they are waiting for the facility's computer system to be installed and permit approval from the New York State Department of Environmental Conservation. Mr. Pilling said he is hopeful the refueling facility will be operational within the next thirty days.

Village Treasurer Andrea J. Windoft reported that the Village of Lakewood has invoiced three local commercial establishments a total of \$ 350.00 in connection with the first wave of fire inspections performed by the Town of Busti/Village of Lakewood Fire Inspector Mr. Michael Gleason.

Village Treasurer Windoft indicated there wasn't a resolution authorizing Deputy Mayor McCague to attend the recent New York Upstate Chapter of the American Planning Association's 2018 awards ceremony. The event was held in Ithaca, N.Y., Thursday, October 4, 2018. She then asked if this matter could be added to this evening's agenda, authorizing the Deputy Mayor's attendance and to approve payment for his mileage reimbursement cost.

Building Inspector and Code Enforcement Officer Jeff Swanson reported that he has been working with the newly hired Fire Inspector Mr. Michael Gleason and they together have already conducted several fire inspections. Mr. Swanson noted the initial fire inspections will focus on places of assembly, such as the movie theaters and larger commercial businesses. Mr. Swanson then publically thanked Deputy Clerk Mary Currie for her assistance in developing a revamped building permit application and check sheet forms that he hopes will be universally used by neighboring municipalities.

#### COMMITTEE REPORTS

Ms. Ruth Wahl, as Chairperson of the Parks & Recreation Committee thanked residents who have taken the time to fill out the Parks & Rec. survey and for their insightful comments.

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Deputy Mayor McCague encouraged those in attendance to take a minute or two to complete the Parks & Recreation Survey developed by Ms. Wahl and her committee members. Getting as much feedback as possible via the survey is a critical starting point in improving and redeveloping Lakewood's park system.

Ms. Bernadette van der Vliet, a member of Lakewood's Farmers' Market committee wished to report that the dates and times for next year's Farmers' & Artisans' Market have been established. She said that a new set of market rules and regulations along with new vendor application forms have been drafted. She noted that next year's market has already sparked an interest from eight vendors, a food truck and ice cream vendor. Ms. van der Vliet indicated the market will continue to be held on Thursdays, July 11<sup>th</sup> thru September 26<sup>th</sup>, however the times will change from 2:00 – 6:00 PM, to 10:00 AM – 2:00 PM. She said although the market's location on West Terrace Ave., adjacent to the park, was adequate, the committee is looking for a different location that may provide more exposure and thus more traffic. Ms. van der Vliet concluded her report, saying extra volunteers are always needed and welcome.

Deputy Mayor McCague said running a seasonal community market is a lot of work for a relatively small group of committee members. He then asked residents to consider volunteering to work on the Farmers' Market, even if it were only once or occasionally, because any help would be greatly appreciated by the committee.

Village of Lakewood Tree Committee Chairman Richard Rose said the Tree Committee is also looking for more volunteers. He said if anyone is interested to please contact him. Thanks.

#### RESOLUTION #130-2018—AUTHORIZE AWARDS CEREMONY ATTENDANCE & MILEAGE PAYMENT

Motion by Trustee Holcomb, seconded by Trustee Schutte, authorizing Trustee McCague to have attended the New York Upstate Chapter of the American Planning Association's 2018 awards ceremony, held in Ithaca, New York, Thursday, October 4, 2018, and to be reimbursed for expenses incurred, i.e. mileage. Trustee McCague, along with a representative from the planning consultant firm peter j. smith & co., inc. & LaBella Associates, on behalf of the Village of Lakewood, accepted the 2018 American Planning Association's award for Comprehensive Planning.

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

#### RESOLUTION #131-2018 – AUTHORIZE FUND TRANSFER

Motion by Trustee Barnes, seconded by Trustee Schutte, authorizing Village Treasurer Andrea J. Windoft to transfer \$ 375.20 from Trust & Agency Account T1093.00, [DPW Sale of Equipment], into Account A5110.40, [DPW Contractual], to pay for some new tools.

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

#### RESOLUTION #132-2018 – AUTHORIZE FUND TRANSFER

Motion by Trustee Holcomb, seconded by Trustee Barnes, authorizing Village Treasurer Andrea J. Windoft to transfer \$ 150.27, from Trust & Agency Account T1093.45, [Sheldon Foundation Discretionary Grant], into Account A7140.20, [Parks Equipment], to purchase a new dog waste station, to be located near Firemen's Field off Linwood Ave.

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

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RESOLUTION #133-2018 – RESCHEDULE NEXT REGULAR BOARD OF TRUSTEES MEETING

Motion by Trustee Barnes, seconded by Trustee Schutte, that due to the upcoming Veterans' Day Holiday, (Sunday, November 11<sup>th</sup>), the next regular meeting of the Board of Trustees will be rescheduled for 6:30 PM, Tuesday, November 13, 2018. The meeting, as always, will be held in the Board Room of the Anthony C. Caprino Municipal Building, 20 West Summit Street, Lakewood, N.Y., preceded by a 6:00 PM work session.

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

RESOLUTION #134-2018 – AUTHORIZE FALL PLANNING & ZONING SEMINAR ATTENDANCE

Motion by Trustee Barnes, seconded by Trustee Holcomb, authorizing members of the Board of Trustees, Planning Board, Zoning Board of Appeals and other officials to attend the Annual Fall Planning & Zoning Training seminar. The annual seminar which is sponsored by Southern Tier West, will be held Thursday, November 8<sup>th</sup> at Jamestown Community College, Jamestown, N.Y.

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

DISCUSSION: APPOINTING AN "ACTING MAYOR"

Deputy Mayor McCague indicated this portion of the meeting would be handled as follows. Firstly, he will ask Village Attorney LaMancuso to give a general briefing to members of the Board of Trustees and those in attendance this evening regarding statutes and the NYS Attorney General's opinions in connection with the process of appointing an "Acting Mayor". Members of the Board of Trustees will then have an opportunity to ask Village Attorney LaMancuso any questions they may have on the subject, followed by input or comments from the general public.

Village Attorney LaMancuso indicated it is the Board of Trustees' obligation, upon the resignation of a sitting Mayor, to fill that office by appointing an "Acting Mayor" and do so in a timely manner. He said because of the timing of former Mayor Birrittieri's resignation, there wasn't enough time to include this matter on this November's election slate. The appointment of an "Acting Mayor" in this case is broken into two phases, the first phase being the time of appointment until the end of the Village of Lakewood's official year, which ends on December 3, 2018. The second phase of the appointment of an "Acting Mayor" would run from December 3, 2018 thru December 2, 2019. He noted, in the interim there will be a Village General Election in November 2019 and on the ballot will be the Office of Mayor. Whoever is elected at that time will begin a four year term as Mayor of the Village of Lakewood commencing January 1, 2020.

Village Attorney LaMancuso indicated there isn't a lot of guidance given to Villages and members of its Board of Trustees in dealing with this particular situation other than a few advisory opinions from the NYS Attorney General's Office, which in his opinion are not binding. Mr. LaMancuso said one question that did surface however, was, is there a specific timeline for appointing an "Acting Mayor". He said one of the advisory opinions stated that the appointment of someone as "Acting Mayor", filling the void caused by a resignation, should be carried out at the next regular meeting of the Board of Trustees, following the resignation of a Mayor. Mr. LaMancuso added that the powers of a Deputy Mayor, in the absence of a Mayor, ceases at the meeting of the Board of Trustees, following a Mayor's resignation. He noted that although this opinion isn't binding, it is the only guidance he was able to research regarding this specific issue.

Mr. LaMancuso said the appointment of someone as "Acting Mayor" should not be taken lightly.

Deputy Mayor McCague asked if any of the Trustees have a comment or question on this matter.

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Trustee Barnes indicated that in speaking with the New York State Conference of Mayor's General Counsel, their thoughts on this subject differ from the opinions offered by the Attorney General's office. According to NYCOM, the Deputy Mayor may remain as the Deputy Mayor and carry out the duties of Mayor for an extended period of time. It is conceivable that this extended period of time could run through the unexpired term of former Mayor Birrittieri, which would end January 1, 2020. She added, according to NYCOM, there is no set statute as to how to appoint an "Acting Mayor".

Trustee Barnes said although it is not an ideal situation, it is the opinion of NYCOM's counsel that the Board of Trustees could continue to govern as a four (4) member board and that the Deputy Mayor would be empowered to carry out certain Mayoral duties in the interim. Also, the Village of Lakewood wouldn't qualify for a Special Election that could only be called for by the Governor.

Trustee Schutte indicated to Village Attorney LaMancuso it is his understanding that there would be two appointment periods for "Acting Mayor" required to get to the end of the unexpired term of former Mayor Birrittieri. One from the present to December 3, 2018 and the second from December 3, 2018 to December 2, 2019. He then asked Mr. LaMancuso if there is a vote taken to appoint an "Acting Mayor", who may vote.

Village Attorney LaMancuso did note there is an advisory opinion from the Attorney General on that particular question, suggesting that the Trustee being nominated for the office of "Acting Mayor" recuse him or herself from any deliberations on one's own nomination and in all likelihood from voting for him or herself. He then asked if there are four potential voters and one recuses him or herself would a two to one be considered a majority vote.

Village Attorney LaMancuso said the question would be if a majority of the quorum of three constitutes a majority vote that could carry the vote for "Acting Mayor", adding he would like time to research it.

Trustee Holcomb indicated that he has had some extensive discussions with the Board of Elections and the opinions offered by the Attorney General's office are just that, opinions. Holcomb said according to Election Law, it would be permissible for all four (4) members of the Board of Trustees to vote in appointing one of its members as "Acting Mayor".

Deputy Mayor McCague said there are varying opinions and thoughts on this matter and said when communicating with New York State's Department of State, he received a total opposite opinion on this issue to that what Trustee Barnes received from NYCOM.

Trustee Holcomb wished to go on record saying the current four (4) member Board of Trustees should continue to govern until the office of Mayor is decided at the next Village General Election to be held November 2019. Trustee Holcomb said with the "lightning rod" now gone from the Board we as a governing body have a decent rapport with each other and can continue on for the next fourteen months. According to the New York State Board of Elections, Deputy Mayor McCague may remain as Deputy Mayor, and in the case of an emergency, he would automatically become "Acting Mayor" and be empowered to address any problems at hand.

Deputy Mayor McCague indicated the value of precedent is very important and said at the time former Mayor Anthony C. Caprino died, (March 4, 2011) the Board of Trustees acted immediately in appointing an "Acting Mayor". He said it was the similar situation. The Mayor's office was vacated by the unfortunate and unexpected death of Mayor Caprino and the Board of Trustees, made up of Deputy Mayor/Trustee Duane F. Anderson, Trustee P. J. Wendel, Trustee Joe Troche and Trustee David T. Wordelmann, appointed Duane F. Anderson to serve as "Acting Mayor" until the beginning of the next official year which began the following month. NOTE: At the Village General Election in March 2011 Trustee David T. Wordelmann was elected Mayor and served in that capacity thru December 31, 2015.

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Mr. David Bargar, 11 Sunset Ave., asked Deputy Mayor McCague if he recalls how the vote went down back then in appointing Mr. Duane F. Anderson as "Acting Mayor".

Deputy Mayor McCague indicated that while Mr. Anderson abstained from voting, Trustees Wendel, Troche and Wordelmann unanimously voted in favor to appoint Mr. Anderson as "Acting Mayor".

RESOLUTION #135-2018 – AGREE TO MAINTAIN A FOUR PERSON BOARD OF TRUSTEES

Motion by Trustee Holcomb, seconded by Trustee Barnes, for the governing body of the Village of Lakewood to remain as a four person board, headed by Deputy Mayor McCague, until January 1, 2020. NOTE: The offices of Mayor and two (2) Trustee positions will be on the ballot for the November 2019 general election.

2 ayes, (Barnes, Holcomb), 2 nays, (McCague, Schutte)

RESOLUTION #136-2018 – APPOINT DEPUTY MAYOR MCCAGUE AS ACTING MAYOR

Motion by Trustee Schutte, seconded by Trustee Holcomb, to appoint Deputy Mayor McCague as "Acting Mayor" for the balance of the current official year, which runs through December 31, 2019.

1 aye, (Schutte), 2 nays, (Barnes, Holcomb)

ANYONE TO BE HEARD

Mr. Jerry Holmes, 10 Holly Drive, said it is unfortunate, but it is very apparent the Board of Trustees is very frustrated and divided and said if they don't know where they are going, you are never going to get there.

Dr. R.G. Witchey, 2 Atlantic Ave., said the Village Attorney indicated there is very little guidance for the Board of Trustees to follow when appointing an "Acting Mayor". Dr. Witchey said it would therefore seem to him that whatever is decided by the Board of Trustees tonight could move forward. Addressing members of the Board of Trustees, Dr. Witchey said with your time commitment and dedication, you have put Lakewood first, otherwise you wouldn't be here tonight. He said if you truly believe in Lakewood and fail to elevate Deputy Mayor McCague to "Acting Mayor", it becomes all political and then your belief in Lakewood falls by the wayside. Dr. Witchey said he understands the fact that people don't always agree, but urged them to find a way to compromise and come to a decision. Let the residents be heard, because if a decision isn't made, nothing gets done. He said as the Board of Trustees, they control the future of the Village of Lakewood and as the joke goes, what's printed in The Post-Journal. Possible headlines in the paper tomorrow: Lakewood Names "Acting Mayor" or Trustees Decide That Not to Decide is to Decide. He said this board, while beating each other up over this, could lose a whole year in moving the community forward. He suggested to please choose the right person and find a way to compromise in lending that person support.

Trustee Barnes indicated that there is one other option out there, by bringing in an "outside" person, we all agree on to fill the vacated office.

Mr. David Menzies, 68 East Terrace Ave., indicated that he knows Mr. McCague had the support in past elections from Republicans, Democrats and Independents and expressed his pleasure he was elected with this bipartisan support. Mr. Menzies said he believes Mr. McCague is therefore the best candidate for Mayor.

Mr. Marcus Turner, 1 Maple Ave., said as President of Career Concepts, two of the key factors we look for when recruiting talent is job knowledge and devotion. Mr. McCague has shown in more ways than one he certainly possesses both of those qualities.

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Mr. Turner then took a minute to note a few of Mr. McCague's recent qualifications and contributions to the Village of Lakewood; Chairman, Comprehensive Planning Steering Committee, 2014-2016, Chairman, Comprehensive Plan Implementation Committee, 2017-present, Planning Board, 2015-2017, Chairman, Planning Board, 2016-2017, Trustee & Deputy Mayor, 2017-present, serves on the following committees; Finance, Comprehensive Plan Implementation, Zoning, Parks & Recreation, Streets & Sidewalks, Public Safety & Grants, Lakewood Volunteer of the Year Award, 2016, Vice President, Lakewood Community Development Corp., (LCDC), 2014-present, and Member of the Board of Directors of the Chautauqua Lake & Watershed Management Alliance, effective May 2018. Mr. Turner said in closing with the amount of time Mr. McCague has given and how deeply he is involved with this community, he wholeheartedly supports him as a candidate for "Acting Mayor".

Ms. Carol Jones, 144 West Summit Street, said if nothing is done it is going to be a long time to be without a Mayor and wondered why was it permissible to conduct a special election following the death of former Mayor Anthony C. Caprino.

Trustee Barnes indicated to Ms. Jones at that time the Village of Lakewood conducted its election in March and the timing was such that a different candidate's name could be placed on the ballot.

Ms. Jones then asked why not appoint a Trustee to fill out Board of Trustees.

Trustee Barnes said that appointment would have to be made by a Mayor or an "Acting Mayor".

Deputy Mayor McCague indicated that he and Trustee Barnes were both appointed and elected at subsequent elections.

Trustee Barnes said the Board of Trustees could continue to function as a four member board, but if the former Mayor had resigned by September 21<sup>st</sup>, then the office of Mayor could have been on the ballot at this November's General Election.

Deputy Mayor McCague wanted to clarify for those in attendance, that there are laws in place that specify the duties of a Mayor and a Trustee and that there are laws in place that address the Village of Lakewood's particular situation.

Mr. Griffith Jones, 144 West Summit Street, urged members of the Board of Trustees to work this situation out and is in favor of having someone appointed as "Acting Mayor". He said it would be shameful to go fourteen months with the possibility of not moving the Village of Lakewood forward.

Ms. Jonna Carr, 2 Crystal Ave., asked who voted against the cell tower? She also has heard the Village of Lakewood has spent over \$ 80,000.00 in litigation against the cell tower company.

Trustee Barnes said because the matter is still being litigated, it would be best not to make any comment on the subject.

Deputy Mayor McCague indicated that neither the former Mayor nor any of the Trustees voted on the cell tower matter. He indicated to Ms. Carr that the cell tower company submitted an application to the Zoning Board of Appeals, which was denied by the ZBA, whose decision was subsequently appealed by the applicant.

Ms. Carr also wanted to say that she thinks The Post-Journal reporter has been doing a wonderful job, and although he was "slammed" at the last meeting, he has just been reporting what was happening at the meetings. She believed he deserved an apology, that's all.

Dr. Rudolph Mueller, 7 Sunset Ave., appeared before Deputy Mayor McCague and the Board of Trustees with a question.

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Dr. Mueller asked when the "Acting Mayor" or Mayor appoints a new Trustee, do the remaining members of the Board of Trustees have a vote in the matter.

Deputy Mayor McCague said the "Acting Mayor" or Mayor may appoint a new Trustee to a vacated position without a vote from the Board of Trustees.

Dr. Mueller then asked if the Board of Trustees is only made up of four (4) members, and if it is the Mayor's role to break any ties in a specific vote, what would happen if there was a vote two (2) to one (1). Would that be considered a valid vote?

Trustee Holcomb indicated that although a Mayor will cast a vote to break a tie, he or she may vote whenever they so choose.

Dr. Mueller said in the spirit of compromise, couldn't an "Acting Mayor" be appointed and couldn't each member of the Board of Trustees have a say or "weigh-in" on the eventual appointment of the new Trustee by the "Acting Mayor".

Deputy Mayor McCague wanted to make it clear that if he becomes "Acting Mayor" and someone has a name of a possible Trustee candidate, to please submit his or her name to him. Mr. McCague said he isn't closed to the nomination of a Trustee candidate.

Mr. Michael Looker, 15 Owana Way, said it appears to him the Board of Trustees has two options. One, appoint an "Acting Mayor" or two, continue governing as a four member board. Mr. Looker said it is his opinion that it would be a good idea to appoint an "Acting Mayor".

Deputy Mayor McCague indicated that a NYS Attorney General's opinion states that his role as Deputy Mayor would end this evening.

Trustee Holcomb interjected saying, NYCOM's General Counsel has stated the Attorney General's advisory opinions are just opinions and not statutes.

Mr. David Stein, 37 West Terrace Ave., asked Trustee Holcomb what he meant when he said a Deputy Mayor would be empowered to act as the Mayor when declaring an emergency and what exactly would constitute an emergency.

Trustee Barnes indicated in the case of a natural disaster such as tornado or snow event the Mayor could declare a state of emergency for the Village of Lakewood and then initiate steps to coordinate with first responders, (Police, Fire & the DPW), a measured response to the emergency.

Deputy Mayor McCague wished to note that New York State places the total responsibility for declaring an emergency in a Mayor.....in a Mayor.

Ms. Pricilla Menzies, 68 East Terrace Ave., said she and others would like for the Village of Lakewood to have a Mayor and fully supports Deputy Mayor McCague for Mayor.

Ms. Nancy Jones, 115 Locust Street, said she feels very uncomfortable in not having a vote when it comes to the selection of an "Acting Mayor" and/or Trustee. This is our Village and we should have a choice and a voice in who it is governed by.

Ms. Joyce Rose, 42 Gifford Ave., said we are all here this evening because we all love the Village of Lakewood. She said the current Board of Trustees is the perfect combination of experience & traditions and new faces with new ideas. She urged the Board of Trustees to appoint an "Acting Mayor" and then fill out the board with a new Trustee to make it work. Ms. Rose said we all want what's best for the village.

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Ms. Jill Conley, 7 Winchester Road, said every community, including the Village of Lakewood, needs a leader, who gives its residents hope, advice, a sense of security and community. She said it is nice to hear that members of the Board of Trustees do get along however she would like to know why Trustee Barnes and Trustee Holcomb voted no to the earlier motion to appoint Deputy Mayor McCague as "Acting Mayor".

Trustee Barnes indicated that it was a conscious decision to have voted as she did and has spoken one on one with Mr. McCague on how she feels, in particular what she believes is a major shortcoming of his. She believes it is paramount to be informed and it is antithetical to government not to inform each member of the Board of Trustees what is going on. She said there have been a number of instances of when the whole board wasn't properly informed. Trustee Barnes said she was surprised to learn at one of the Board of Trustee meetings that on the following evening there was going to be the initial meeting of the Parks & Recreation Committee which some board members knew absolutely nothing about and that people were already selected to serve on it.

Trustee Barnes said, by law, any and all committees should be formed and appointed by the Board of Trustees and they must have oversight by the elected body.

Trustee Barnes said in order for her to endorse Deputy Mayor McCague, she needs to see a difference in his pattern of not including each member of the Board of Trustees in what is going on. As an elected official, she represents the whole village just like each member of the Board of Trustees should. Trustee Barnes said she just needs to be informed of what is going on.

Trustee Holcomb indicated he voted no to the motion appointing Deputy Mayor McCague as "Acting Mayor", because he believes the four (4) member board will work just fine. He said having spoken with representatives from the NYS Board of Elections, he was told that this particular situation occurs several times every year. He said the four board members get along and very rarely disagree. Plus, he doesn't think there should be any problems getting along the next fourteen months.

Trustee Schutte said he agrees with Trustee Holcomb in saying there shouldn't be any problems in getting along for the next fourteen months and appealed to Trustee Barnes that much of the absence of information had a lot to do with the previous Mayor. He went on to say that Deputy Mayor McCague has been totally involved with the community for several years now and knows all about the basic operations that make it function and to move the Village of Lakewood forward. He indicated that it is very important to have a leader in place, because it very difficult for the Village of Lakewood to move forward with an even number of members on the Board of Trustees. Trustee Schutte said it is his opinion there is no one more capable than Mr. McCague, to be that leader. Trustee Schutte then proceeded to present the following motion.

**RESOLUTION #137-2018 – NOMINATE DEPUTY MAYOR MCCAGUE AS 'ACTING MAYOR'**

A motion by Trustee Schutte, to nominate Deputy Mayor Edward J. McCague as "Acting Mayor" through the end of the current official year of the Village of Lakewood, so as to allow other pressing matters to be worked out amongst members of the Board of Trustees. Trustee Schutte's motion failed to receive a second.

Trustee Barnes indicated that she has a question for Village Attorney LaMancuso, and is doubtful there is going to be any kind of agreement reached this evening. But it doesn't mean an agreement won't be reached in the future. She said one side of this issue received a mass e-mail to attend tonight's meeting, while there is a whole village that would like to comment also.

Trustee Barnes then asked Village Attorney LaMancuso if action on this matter could be tabled for some time between now and the end of the year.



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Village Attorney LaMancuso indicated the advisory opinions from the Attorney General's office, have encouraged villages across NYS to appoint an "Acting Mayor" in situations like the Village of Lakewood finds itself. Is it a violation of NYS Law not to do so? No. Without any other guidance to refer to Mr. LaMancuso suggested for the Village of Lakewood to follow the Attorney General's recommendations. He said it is a big decision and it is up to your judgement on what is best for the Village of Lakewood and how it is governed.

Deputy Mayor McCague then took a minute to quote NYS Policy, which states it is the duty of a village to avoid vacuums in government and to ensure continuity of village government. As Mr. LaMancuso indicated this policy encourages the Village of Lakewood to act on this matter so your government can continue to function the way it is intended to function. That's the big picture.

Trustee Holcomb suggested that any further action on the appointment of an "Acting Mayor" be postponed until the next regular meeting of the Board of Trustees, November 13<sup>th</sup> allowing for further discussions amongst members of the board.

Mrs. Jane Gesing, 103 Lakeview Ave., indicated that Deputy Mayor McCague has done a great job and therefore should be appointed as "Acting Mayor". She then indicated to Trustee Barnes, in response to her comment about the mass e-mail that was sent out, it was necessary because the four of you, as members of the Board of Trustees, can't agree on "jack". She then urged members of the Board of Trustees to put the interests of the residents first, before their own agendas.

An unknown resident of Lakewood asked Trustee Holcomb what is his rationale in not supporting the motion to appoint Mr. McCague as "Acting Mayor". How does your opinion that Board of Trustees gets along, overrides the opinion of the residents in attendance this evening. He said the majority of the people who have spoken this evening have expressed the need for a leader.

Trustee Holcomb said the matter before the Board of Trustees is a very difficult one, which he believes needs more discussion, although he would prefer to move forward as a four (4) member board.

Mr. Craig Seger, 31 Winchester Road, said just for fun, everyone who would like Mr. McCague to be appointed as the "Acting Mayor" to please raise your hands, while asking The Post-Journal reporter to take note.

Trustee Barnes interjected, saying this action is not a voting situation.

Mr. Seger said it is obvious that Mr. McCague has the overwhelming support of the people in this room. The point is, everyone is here this evening because we all believe in Lakewood. He said it is insane to pass over the opportunity to appoint Mr. McCague as "Acting Mayor". He is incredibly over qualified and one won't find a more dedicated or harder working public servant. Mr. Seger said he cannot believe the Village of Lakewood can't have a Mayor right now. Mr. Seger said we are all behind you Ted and that he is sorry and disappointed that this group can't get you there.

Ms. Carol Jones, 144 West Summit Street, said the number of people here this evening, tells her that this matter is very important and is one that people are very passionate about. Without questioning anyone's qualifications, she is amazed there isn't procedural law in place to guide a municipality through this particular situation. She suggested that instead of certain members of the community being notified of an important meeting, shouldn't everyone be made aware of its importance. Ms. Jones said it has been made very clear that we aren't going to get a chance to vote for an "Acting Mayor", however the input from the public on the subject should be used for the Board of Trustees to make an informed decision.

She continued by saying, if the Board of Trustees wants honest feedback, it is clear that the majority here this evening are in support of Mr. McCague of being appointed "Acting Mayor", and the work he has done, which is certainly meritorious.

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Ms. Jones suggested however that there may be other opinions out there, not against what Mr. McCague has done, but with each meeting residents are learning more about what has transpired over time, leading to some of the decisions which have been made by the Board of Trustees. Instead of defending certain decisions, the Board of Trustees should be making decisions that are representative of the majority. She said unfortunately, on more than one occasion, certain topics crop-up the night of the meeting, without any advance notice to the general public.

Deputy Mayor McCague indicated that it is no secret that Mayor Birrittieri resigned, adding Board of Trustees meetings are held the second and fourth Mondays of the month at 6:30 PM. Every resident should know when and where meetings of their local elected officials are held. Mr. McCague said if folks have an opinion and wish to be heard, they should attend the meetings, like they've done this evening.

Mr. David G. Bargar, 11 Sunset Ave., said he disagrees with the notion that the Board of Trustees has the best interest Village of Lakewood residents in mind when making certain decisions. He believes residents have been handcuffed since the last election and is disturbed by all the political posturing that is taking place. Mr. Bargar said business is not getting done and the Village of Lakewood is in the need of a leader.

Mr. Bargar said Mr. McCague has committed himself to the Village of Lakewood, unlike the past Mayor who quite frankly publically embarrassed the Village of Lakewood and its residents. The Village of Lakewood has become a laughing stock. He said the Board of Trustees has to focus on the needs of the Village of Lakewood and do the people's business.

Mr. Bargar pointed out that there is a good possibility that the Village Clerk, Village Treasurer and Police Chief will be stepping down from their respective positions soon. Someone needs to start paying attention to these very important personnel matters. With the current makeup of the Board of Trustees, two on one side and two on the other side, we aren't getting things done. He said now is the time "we" should be talking about next fiscal year's budget. If "we" wait to talk about the budget when "they" want to talk about it, it is going to be the same stuff, a different day. Mr. Bargar said it is his opinion that there are changes in the budget that must be made, in order for this village to survive financially.

In conclusion, Mr. Bargar stressed that "we" need to hold our elected officials accountable, "we" need action and to do that, "we" need a leader.

Dr. Rudy Mueller, 7 Sunset Ave., said he would like to offer the following suggestion. As a nice compromise, if the Board of Trustees were to appoint Mr. McCague as "Acting Mayor", he could then promise that the Trustee appointed to take his Trustee seat would be someone each member of the Board of Trustees would be agreeable to. This way, the Board of Trustees and the Village of Lakewood will be able to move forward, adding it is worth a try. Dr. Mueller said if the appointee cannot be agreed upon, then the Board of Trustees is right where it is now and this matter will go before the voters next November.

Trustee Holcomb asked Deputy Mayor McCague if he would be agreeable to that idea. Trustee Holcomb said the appointment of a new Trustee is his biggest concern because, the Mayor is empowered to appoint a person not voted on by the Board of Trustees.

Deputy Mayor McCague indicated to Trustee Holcomb he has essentially said that in his one-on-one meetings with the Trustees. Mr. McCague said he doesn't have a problem with that if the Village Attorney doesn't have a problem with it.

Village Attorney LaMancuso said he doesn't have a problem with that.

Trustee Barnes said she would like to table action on this matter to allow for more discussion.

OCTOBER 22, 2018 (CONTINUED)

Dr. Mueller encouraged the Board of Trustees to move forward, by first appointing Mr. McCague as "Acting Mayor", then agreeing on the new Trustee appointment by at least a 3 to 1 margin.

Trustee Schutte also indicated that the Board of Trustees is bound by two appointment periods, one being to the end of the current official year and the other to the end of the official year for 2019.

Village Attorney LaMancuso indicated per Village Law, the official year for villages conducting elections in November begins on the first Monday of the month following the election, or in this case December 3<sup>rd</sup>.

Dr. Christopher Colburn, 30 Winchester Road, wanted to clarify the upcoming appointment periods, the first one being at the end of the official year in December. Speaking to the posture held by Trustees Barnes and Holcomb, if Mr. McCague was indeed appointed as "Acting Mayor" and things didn't work out as planned, the situation could return to where it is now in two months, to start all over again.

Village Attorney LaMancuso indicated the one question he has about that scenario is whether the "Acting Mayor" would be able to return to his former Trustee position if that person isn't appointed further.

Trustee Schutte asked the question, would it be possible for the Village of Lakewood, via Local Law, be able to change the timeframe of its office year, from December 3<sup>rd</sup> to December 31<sup>st</sup>.

Town of Busti Supervisor Jesse Robbins approached Deputy McCague and respectfully asked if Village Attorney LaMancuso could read Village Law excerpt, Article 4-12.

Mr. Robbins said before that happens, he wished to remind everyone about the \$ 853.40 payment that the Village of Lakewood recently made to the Chautauqua Lake Association. Nobody is paying attention to what is going on.

A few residents barked out, asking Mr. Robbins where in the community center money the Town of Busti owes the Village of Lakewood.

Supervisor Robbins said that funding has been set aside for the community center until we can get everyone to agree on what to do.

Deputy Mayor McCague said he would rather not digress in discussing other subjects this evening and instead focus on the subject at hand.

Ms. Susan Lane, 188 East Terrace Ave., asked the question, would Mr. McCague, if he was appointed to Mayor, would he have to relinquish his Trustee position.

Trustee Holcomb said he would like to suggest that the Board of Trustees appoint Deputy Mayor McCague to "Acting Mayor" up until December 2018 and at that point reappoint Mr. McCague and appoint a Trustee that each member of the Board of Trustees agrees on. He added it is paramount that the appointee be someone we all agree on.

Deputy Mayor McCague indicated that it is his understanding that there are no time constraints for filling the open Trustee position.

Trustee Holcomb said he would like to suggest the following motion wherein Deputy Mayor McCague would be appointed as "Acting Mayor" through December 2018 at which time he could then be reappointed to serve as Mayor through December 2019, appoint a Trustee to the vacated office, which each member of the Board of Trustees is agreeable to.

Trustee Schutte said he would ask Trustee Holcomb if the proposed motion could be modified to reflect a 3 to 1 approval vote, as opposed to requiring a unanimous vote.

OCTOBER 22, 2018 (CONTINUED)

Mr. Griffith Jones, 144 West Summit Street, indicated that he is very troubled by all the politicizing by members of the Board of Trustees and others in attendance at this evening's meeting. He then suggested why not wait until the end of the official year in December 2018 to make a fresh start. Appoint someone to finish-out the year, work out your differences during this time and come to some conclusion as to how to move the Village of Lakewood forward. Mr. Jones said, if the matter were up to him, he would table any action at this time.

Ms. Carol Jones, 144 West Summit Street, indicated the one thing those in attendance tonight can agree on is, "we" don't want to lose any member of the current Board of Trustees and warned them not to make any decisions tonight that could jeopardize their positions on the board come December. A delay in making a decision between now and December is insignificant.

RESOLUTION #138-2018 – APPOINT DEPUTY MAYOR MCCAGUE AS MAYOR

Motion by Trustee Schutte, seconded by Trustee Holcomb, for members of the Board of Trustees to appoint Deputy Mayor Edward J. McCague as Mayor of the Village of Lakewood through the conclusion of the current official year which ends December 31<sup>st</sup> and to reappoint him to complete the balance of Mayor Birrittieri's unexpired term which ends December 31<sup>st</sup> 2019, with the condition that the individual appointed as Trustee, filling the vacated Trustee position, receives approval from at least three (3) out of four (4) members of the Board of Trustees.

2 ayes, (Holcomb, Schutte), 1 nay, (Barnes), 1 abstention, (McCague)

Motion by Trustee Holcomb, seconded by Trustee Barnes, and unanimously carried, the Board adjourned at 8:27 PM.

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Joseph M. Johnson  
Village Clerk

