

BOARD OF TRUSTEES MEETING
VILLAGE OF LAKEWOOD
February 26, 2024

The regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held, Monday, February 26, 2024.

Present:	Ben Troché	Deputy Mayor
	Ellen E. Barnes	Trustee
	R. Richard Fischer	Trustee
	Nancy W. Jones	Trustee
Also Present:	Apryl L. Troutman	Village Clerk/Treasurer
	Krysten Sisson	Village Deputy Clerk
	Christopher A. DePonceau	Police Chief
	Kurt Hallberg	Fire Chief
	Jeff Swanson	Building Inspector
	Marilyn Fiore-Lehman	Village Attorney
Absent:	Randall G. Holcomb	Mayor
	Thomas R. Pilling	DPW Supervisor

A work session was held with no action taken.

APPROVAL OF MINUTES

Motion by Trustee Fischer, seconded by Trustee Barnes, to approve the minutes of the last meeting of the Board of Trustees held on February 12, 2024.

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

AUDIT OF CLAIMS

Motion by Trustee Fischer, seconded by Trustee Jones, that the claims as audited by the Auditing Committee of the abstract dated February 26, 2024, be approved and that the Clerk shall execute said abstracts and direct payment by the Deputy Treasurer.

- Abstracts (#40) Trust & Agency Fund: \$67,198.54 (checks #20527 thru #20548)
- Abstracts (#40) General Fund: \$158,438.33, (checks #8215 thru #8249)
- VOIDED CHECKS #20538 & #20539 (M&T Bank Credit Card)

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

Trustee Barnes asked about a charge that there was taxes paid on. She stated that the DPW purchased running boards, that were \$399.00 and the tax was \$32.00. She stated that there was a minus on it of the \$32.00 but it still showed that we paid the \$431 instead on the amount without the tax.

- Mrs. Troutman stated that when the purchase was initially made, we were charged for the tax and then they were called to get a refund issued. So that is just showing the amount that we were refunded.

Deputy Mayor Troché asked that we all observe a moment of silence for Ron Brown, who passed away last Wednesday. Mr. Brown was a member of the Celoron Fire Department and Lakewood works very closely with them. He stated that he wanted to read a quick section of the press release and then we would observe a moment of silence. The press release stated that “A dedicated member in our department for over half a century, Ron was a crucial member to our organization. His knowledge and stories of the fire service will continue to resonate in our members for years to come. Ron has been a member with Celoron for 59 years, joining in November of 1964 and attaining life membership in 1984. Ron served as

- Fire Chief from 1978-1982
- 1st Asst. Chief from 1973-1977

- Captain from 1971-1972
- Trustee from 1986-2024, for a total of 38 years
- And Secretary 1969-1970

Deputy Mayor Troché thanked everyone for the moment of silence.

REPORTS

Deputy Mayor Troché:

- The Gazette just changed ownership and they decided in their first edition under the new ownership to do a spotlight of the village. They interviewed the small businesses on Chautauqua Ave and the edition came out today. This edition has a lot of great information about the Village and some great historical facts too. Deputy Mayor Troché suggested that everyone takes a look at the paper.

DPW Supervisor Thomas Pilling: ABSENT

Police Chief Chris DePonceau:

- Between the dates of 2/12/2024 and 2/26/2024 the police department handled 412 alarms, some of these incidences include the following:
 - o 7 alarms, 1 animal complaint, 136 area/door/business checks, 6 check the wellbeing, 9 MVAs, 82 property checks, 19 special details, 2 suspicious situations, 6 suspicious persons, 3 VT parking complaints, 30 VT stops, 19 warrants (checked & served).
- LBPD did receive one of their new cars last week, and are just waiting to get it changed over.

Fire Chief Kurt Hallberg:

- 158 total alarms for the year so far. The fire department is currently on a car accident for Celoron Fire due to them being out of service for Ron's wake.
- Chief Hallberg asked to be excused to attend the wake.

Village Attorney Marilyn Fiore-Lehman:

- No report

Clerk/Treasurer Troutman:

- There has been a computer installed in the conference room off of the Mayor's Office. There is also a printer down there. All the board members have access to the computer with usernames and passwords. Mrs. Troutman stated that the board members now have their own work space.
 - o Deputy Mayor Troché thanked Mrs. Troutman and Mr. Hafner for setting that up.

Code Enforcement Officer Jeff Swanson:

- He stated that he started to chase down some property maintenance issues. He also stated that it is not going to be as bad as last year because we haven't had much snow.

OLD BUSINESS

Discussion on the Short Term Rental Draft

Trustee Barnes introduced Molly Gaudio from Colliers Engineering who was joining the meeting via Zoom. Trustee Barnes stated that Molly has been with us since the start of the Short Term Rental law. Trustee Barnes also stated that the goal is to discuss the proposed changes, vote on what needs to be voted on, and turn the draft over to Colliers to get the final draft started.

Discussion was made on the following questions and topics:

1. In Chapter 25-35.1 of the draft law, where applications are addressed, Code Enforcement Officer (CEO) Swanson would like to add a part where it states that incomplete applications will not be reviewed. Would this concern be better addressed on the application form (which has yet to be created) or in the actual law?
 - a. Molly stated that there is language for incomplete applications not being reviewed. She stated that

we can add that into the application. She also stated that she would like to avoid using the word “incomplete”, because it can lead to some complications when it comes to the state environmental review process. Molly suggested that the word inadequate be used instead.

- i. Trustee Barnes asked CEO Swanson if this would be beneficial.
 1. CEO Swanson stated yes that he thinks it will be helpful to the people who are taking the application and the ones giving the special use permit.
2. In the draft law, on page 5, section K - Safety standards, CEO Swanson thinks that we need to add that STR's will be inspected annually by a professional certified inspector. Also, under safety standards, CEO Swanson thinks that we need to add that structures that are being converted to be short term rentals, (which puts them in a group with hotels, motels, bed and breakfasts, etc.) and must follow the NYS Building Code for R1 structures, and must have a review stamped by a design professional in order for it to meet requirements of an R1 structure.(change of class in same group- must comply with R1 requirements)
 - a. CEO Swanson stated that he believes that the annual inspections should be a part of the application fee, instead of people paying the application fee and then getting an invoice of the inspection. He would also like it to be stated within the application that fire inspection will be done by the CEO or a third party for cases such as a fire extinguisher.
 - i. Molly stated that the special use permit is only good for a year so when they come into apply for another one that will be the trigger that they need an annual inspection completed. She stated something that could be added is language to clarify the inspection may be completed by the CEO or other duly certified agent. That way it captures that a third party might be needed.
 - b. CEO Swanson stated that New York State is classifying STR's as an R1 structure with hotels and motels. This means that these places have to become compliant with an R1 structure. He stated that he thinks if these places are converting, that a design professional needs to be hired to let us know what it needs to be to become an R1 structure.
 - i. Molly stated that we want to be careful to not regurgitate too much of the state building code, especially with something like this that is continually evolving. She states that she would have in there the reference that these uses have to comply with all applicable building code requirements. That would be an element right on the application or inspection, we can be explicit by adding an element to the application requirements, that you must show proof that you're complying with any changes or additional, structural safety needs, and whatever other requirements relate to Building Code. Which then would hopefully trigger the applicant to understand that there is a requirement. When these people are applying, you're always going to have to make sure that they're following the building code. That would be how this is kind of dealt with, so it may be beneficial to have that as sort of a review trigger. The reason why she wouldn't specifically say you must follow a building code for R1 structures is it's possible that there could be a new code, new designation or something, that comes out in the next few years. She states she would just default to referring to the requirements from New York State Building Code. She stated this way if things are added or removed your regulations are always going to be consistent.
 1. CEO Swanson stated that those things would be pretty easy to amend. He stated that it is important to let people know they are going to be converting the structure. Most people think that they don't have to do anything, that it is all good because they are a single family home. He also added that he doesn't see the Department of State actually coming out and weighing in for quite a few years down the road. He stated that once they switch from an R3 to an R1, everything must follow the R1 rules. Such as wired in smoke and carbon monoxide detectors and making sure there is proper egress. You must bring it to code compliance with the correct section.
 - ii. Trustee Barnes asked if this is something that would need to be added into the requirements.
 1. Molly stated only if you intend to go above and beyond what the New York State Building code would require. Again, she repeated what she said before, just to reference the NYS Building code.

- a. CEO Swanson stated that maybe we can say that the structures must comply with an R1 structure of the New York State Building code.
 2. Trustee Barnes asked if we should add the wording R1 or just leave it to say NYS Building Code.
 - a. Again, Molly stated that it really should just be a reference just in case changes are made to the code and then you don't have to update the local law.
 - i. Village Attorney Lehman stated that she agrees with Molly and the use of specific language. She thinks that making it a reference is a good idea.
3. On page 6 - #4 - members of the Complaint Review Board. The Village combined our zoning and planning boards, the chairperson is the same person. Add a person from zoning or planning even though they are not the chair? Or, leave it just the chair of zoning and planning?
 - a. Deputy Mayor Troche stated that it would make sense to combine them because then it makes it an odd number of people, and with there being six that could result in a tie.
4. Amend zoning code (FYI - rewrite of the entire zoning code is the next phase of this project) that allows businesses in R2 districts because in the new law, STR's are allowed in R2 and in the draft law, they are considered businesses and in the current zoning law, no businesses are allowed in R2.
 - a. Molly stated that at face value just because the Village is going to allow for short term rentals in the R2 districts, and STRs are classified as a business that we need to open up for all other businesses to be allowed in the R2 district.
5. Sunset clause – CEO Swanson believes that since STR's are considered businesses, and that the Sunset Clause should not be allowed, since STR's are considered businesses and businesses cannot operate in R1 the district.
 - a. Trustee Barnes stated that the need for the sunset clause is basically for people to decide what they are going to be doing with their properties and how they are going to recoup their potential losses.
 - b. Molly stated the most common reason for a sunset clause is because some places might be rented out of the next 6 months or so and this allows them to get through what they already have rented out. Most communities are understanding in the fact that this might be rented out and they will let the owners see out the obligations that they have to their renters. She stated that you do not have to have one, however it is helpful. It is completely up the Village.
 - c. Attorney Lehman stated that in some aspects it is already built into the draft due to the special use permit. The special use permit is good for a year so people will be able to rent their places until they have to come into renew the use permit.
 - i. CEO Swanson stated the he understands that there has been talk about a sunset for a year or two, however what happens if these places haven't been inspected, or they don't meet the standards of the R1 structure.
 - d. Trustee Barnes asked if it is in the best interest of the Village to have a sunset clause.
 - i. Attorney Lehman stated that it is up to the board.
 - ii. Molly stated that as the law is written it allows people up to a year to complete the use for the STR.
6. Carrie's suggestion is to strengthen and tighten the definition of Short Term Rental throughout the village code. Suggests that a stronger definition would be:
 - a. Short term rental is commercial transient rental activity - which we need to state that it is transient rental activity.
 - b. A dwelling unit and/or its surrounding land area of the lot on which it is located that is rented in whole, or in part or occupant of the dwelling to a person(s) for a period of less than 30 consecutive nights.
 - c. A Short Term Rental is considered a commercial enterprise of a transient nature. (Carrie requests the NYS definition be used here)
 - d. STR is defined as a business and non-residential entity for all of the following: land and attached building use classification, assessments, occupancy tax and utility billing purposes.
 - i. Molly stated that this isn't very necessary and that there is no NYS definition of a Short Term Rental. She also stated that this is all kind of addressed within the law already.

7. Should STR's be allowed in R2 district at all?
 - a. Discussed above.

8. Ban renting out yards to park camper tent (larger than one that sleeps 2 people). Also, converting and using accessory structures for overnight/STR accommodations.
 - a. Do we need to add - no renting out of dock spaces?
 - i. Molly stated that this is stated within the law. The law states "it's the dwelling unit and or its surrounding land area of the law on which you live that is rented in whole or in part." So this would be any part of your land or any part of the structure whether it is everything you're allowing access to or just the one part.

9. Parking of RV's and trailers.
 - a. Trustee Barnes stated that this is covered within the zoning code.

10. Does this section need to be added? If STR is advertised on a platform (i.e., VRBO, Air BnB, etc) and the owner/operator has not obtained a Special Use Permit, the penalty will be \$2500 (up for discussion), in addition to the cost of obtaining a Special Use Permit. Should the Special Use Permit fees and the penalty be put into the law?
 - a. Molly stated that there's two parts that I would kind of address in any situation, if you find someone is operating and they do not have a permit that is a violation. So, you can issue that penalty. She stated that she would defer to the attorney on the case of having a penalty for advertising, if you want to exclude legal issues just because they're advertising that's not proof that someone is staying and they are truly actively operating. Molly suggested that the law references a penalty and fee schedule so that if changes are wanting to be made to it, it can be handled via a resolution.
 - b. Attorney Lehman stated that she agrees with Molly that you cannot charge someone with a violation fee for advertising. She stated that someone might be just advertising the place to see if they have interest in the property before going through with the application process. But if you go on the website, and you see oh, well, this week is already booked, and they don't have a permit that's something that Jeff could probably write up a violation and bring that to the review board and then the individual would come in and make their argument. The individual would have an opportunity to present their case and Jeff to present his case.
 - i. CEO Swanson stated that some of these are going to be hard to prove, as there is so many different platforms out there to rent these places.

11. Fees and penalties. Do these need to be built into the final law? When exactly does the board vote on them and where are they placed?
 - a. Trustee Barnes asked if these would be passed the same time as the law would be passed.
 - i. Molly suggested that they just write subject to the penalties as established and approved by the Board subject to the application fee as established and approved by the board. That way, it's a separate piece, by resolution and it can be easily changed if needed.

Village resident stated that he had to question that he would like to present.

1. Has it been taken into consideration to consider a minimum lot size for the houses in the R2 district?

- Molly stated that a minimum lot size could be implemented.

2. How is the Sunset clause going to work, generally with nonconforming uses under zoning people have maybe three to five year amortization period to recoup their investment. He asked Village Attorney Lehman on her experiences on amortization on a zoning change.

- Attorney Lehman stated that she would have to do some research to see what other communities have done in respect to that. She stated that this is a relatively new area for everyone around, not just the Village of Lakewood. She stated that like she indicated before someone might come in and say they spent \$100,000

on this house and they were under the impression that they were going to be able to run a short term rental out of it and there were not rules and restrictions at the time they bought it and the people state they are going to suffer a significant loss, she stated that the board always has the right to make a decision to extend that period.

Deputy Mayor Troche asked Attorney Lehman if we have to vote on these changes because we have not started the law process yet and it is just a draft.

- Attorney Lehman stated that they do not need to be voted on because it is not a law yet.

NEW BUSINESS

RESOLUTION #33-2024-APPROVE THE 2024 LICENSE AGREEMENT BETWEEN THE VILLAGE OF LAKEWOOD AND THE CHAUTAUQUA LAKE COMMUNITY SAILING FOUNDATION, INC.

Motion by Trustee Barnes, seconded by Trustee Fischer, to approve the 2024 License Agreement between the Village of Lakewood and the Chautauqua Lake Community Sailing Foundation, Inc. for the period of March 1, 2024 thru October 31, 2024.

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

- Trustee Jones asked if they are being billed for the utilities.
 - o Mrs. Troutman stated that all the bills are kept track of and around November they are billed for the utilities.

RESOLUTION #34-2024-APPROVE ZABELLI FIREWORKS TO COMPLETE THE 2024, 4TH OF JULY FIREWORK SHOW

Motion by Trustee Barnes, seconded by Trustee Fischer, to approve Zambelli fireworks to complete the 2024, 4th of July firework show for a total of \$21,000.

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

- Deputy Mayor Troche stated that Mayor Holcomb and himself had a couple discussions with the LCDC and they are willing to fundraise to help offset the cost of the fireworks again this year. Deputy Mayor Troche stated that there were two quotes that were received, one from Gibson firework and the other from Zambelli Fireworks. He stated that the Village has had a good long standing relationship with Zambelli's over the past few years and last year Gibson fireworks was used. He also mentioned that he reached out to many residents, and they would all like to go back to Zambelli's Fireworks.
 - o Trustee Barnes asked where we stand right now with money for the fireworks.
 - Mrs. Troutman stated that we have a total of \$7,000 right now for a down payment, we will also have money from LCDC fundraising as well as the vendors from the 4th.
 - o Trustee Barnes also stated that Zambelli Fireworks have been spectacular and that she would like to go back to using them. She stated that people have always had good things to say about them and they comment about them for weeks and weeks after.
 - o Deputy Mayor Troche stated that they have a higher liability insurance as well.
 - o Trustee Fischer asked if we had any problems last year.
 - Mrs. Troutman stated yes there were some issues but they were taken care of in a quick manor.

RESOLUTION #35-2024-APPROVE TO REMOVE DEPUTY CLERK KRYSTEN SISSON OFF OF HER PROBATION PERIOD, AND INCREASE SALARY TO \$41,600.

Motion by Trustee Barnes, seconded by Trustee Fischer, approve to remove Deputy Clerk Krysten Sisson off her probation period, and increase salary to \$41,600.

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

- Mrs. Troutman stated that Ms. Sisson is doing a fantastic job. She is very willing to learn and take on new tasks. She has been learning very quickly and has been successful in her role as Deputy Clerk. Mrs. Troutman stated that she strongly recommends removing Ms. Sisson from her probation and increasing her salary.

- Trustee Fischer stated that she does such a great job and that she has been a great pleasurer to have in the front office.
- Trustee Barnes stated that she is doing a great job and that her meeting minutes are fantastic.
- Deputy Mayor Troche stated that Mayor Holcomb also agrees that she is doing a great job.

RESOLUTION #36-2024- APPROVE THE FOLLOWING PERSONNEL POLICIES AND PROCEDURES.

Motion by Trustee Fischer, seconded by Trustee Jones, to approve the following Personal Policies and Procedures:

1. Part-Time Police (Chapter 1)
2. Cell Phone Usage and Other Communication Devices (Chapter 10)
3. Sexual Harassment (Chapter 5)
4. Corrective Action (Chapter 8)

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

- Attorney Lehman stated all the policies looked good.
- Deputy Mayor Troché thanked Police Chief DePonceau for updating and correcting the part-time police. He thanked Mr. Pilling for the Cell Phone Usage and Other Communication Devices and Corrective Action policies. Finally he thanked Ms. Sisson for completing the Sexual Harassment policy which echoed the NYS policy.

TABLE THE APPROVAL OF THE SPECIAL MUSIC PERMIT FOR LIVE MUSIC ON JULY 20TH FROM 7PM TO 11PM AT THE LOCATION OF 59 E. TERRACE AVE, LAKEWOOD, NY 14750.

- Trustee Fischer stated his concerns about the neighbors and if they know that this is going to be happening.
- Trustee Barnes stated that this is in a residential area and it could be an issue.
- Deputy Mayor Troche stated that he agrees about having to talk to neighbors, however the lack of information on our permit. He stated that it is something that the board might need to review in the future.
- Trustee Barnes stated that we are given very little information and we could ask them for more,
 - o Deputy Mayor Troché stated not having all the information is all on us. The permit doesn't require any information. He asked CEO Swanson if he would provide us with information on what other municipalities' permits look like.
 - CEO Swanson stated that he will have to do some research but he can get some.
- Trustee Fischer stated that it says reproducing with louder volume than is necessary for entertainment, convenient for persons who are volunteer listeners, and then it says available at a distance of 50 PPM from the property line to the property of premise upon which is being used.
 - o Deputy Mayor Troché stated that with them signing the permit they are expected to follow that and if they don't LBPD can be called at any time.
- Trustee Fischer stated that he thinks it needs to be tabled and that we need to get more information.
 - o Deputy Mayor Troché stated that his only concern is when they applied for the permit it says they have to follow the local law and the zoning code. With them applying they should know the rules that they have to follow.
- Trustee Barnes asked if they were given a copy of the zoning code with the permit.
 - o Miss Sisson stated they were not.
- Mrs. Troutman stated that we can provide them with the extra information to make sure they know the rules and what they are accepting.

ANYONE TO BE HEARD

EXECUTIVE SESSION

REGULAR MEETING (Adjournment)

Motion by Trustee Fischer, seconded by Trustee Jones, and unanimously carried to adjourn the regular meeting of the Board of Trustees at 7:52 PM.

Adopted: 4 ayes, no nays (Barnes, Fischer, Troché, Jones)

Krysten G. Sisson
Village Deputy Clerk