

FEBRUARY 26, 2018

The fourth regular meeting of the Board of Trustees of the Village of Lakewood, N.Y., was held Monday, February 26, 2018, 6:30 PM, with Mayor Cara Birrittieri presiding. Trustees present were Ellen E. Barnes, Edward J. McCague and Douglas L. Schutte. 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 Building Inspector Jeffrey A. Swanson. Absent were Trustee Randall G. Holcomb and Fire Chief Steve Smouse.

#### APPROVAL OF MINUTES

Motion by Trustee Barnes, seconded by Trustee McCague, to approve the minutes of the last regular meeting of the Board of Trustees, held February 12, 2018. Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

#### AUDIT OF CLAIMS

Motion by Trustee Barnes, seconded by Trustee Schutte, that the claims as audited by the Auditing Committee of the abstracts dated February 26, 2018, be approved and that the Clerk shall execute said abstracts (#37 & #38) and direct payment by the Treasurer. Trust & Agency Fund: \$58,871.10, (Checks #4342 thru #4353), General Fund: \$ 95,902.02, (Checks #14559 thru #14593) Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

#### REPORTS

Mayor Birrittieri indicated that the 2018 Chautauqua County Travel Guide is out. She said in addition to the two small ads that the Village of Lakewood has taken out, for the 4<sup>th</sup> of July Summerfest/Live on the Lake summer concerts & entertainment series and visit beautiful Lakewood, the Village of Lakewood is also predominately featured on two other pages. Mayor Birrittieri said the travel guide, which is distributed across the tristate area is a wonderful means of promoting not only the Village of Lakewood, but all of what Chautauqua County has to offer.

#### RECESS

Motion by Trustee Barnes, seconded by Trustee Schutte, to recess the regular meeting at so as to conduct a previously scheduled public hearing. Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

PUBLIC HEARING: 6:35 PM  
PROPOSED LOCAL LAWS #1-2018, #2-2018 & #3-2018  
RE: AMENDMENTS TO THE LOCAL ZONING LAW &  
REVISIONS TO LOCAL LAW #6-2016

Mayor Birrittieri opened the public hearing at 6:35 PM and indicated the Zoning Committee, under the direction of Chairman Trustee McCague, has been working diligently for over a year in drafting the zoning law amendments that are being considered this evening.

Trustee McCague said to initiate the conversation, he and Building Inspector Swanson had a discussion about eighteen months ago about certain sections of the local zoning law that were somewhat antiquated and in need of updating.

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Upon forming a committee that also included Trustee Holcomb and the Chairperson for both the Planning Board and Zoning Board of Appeals we met numerous times the past eighteen months and proceeded to draft some amendments and revisions to sections of the zoning law dealing with fences, property maintenance and brush and yard waste management. Trustee McCague said as a committee we believe these code revisions will assist the Code Enforcement Officer with his day to day duties throughout the Village of Lakewood. Trustee McCague then noted that although Trustee Holcomb is on vacation leave, he lends his full support to the amendments and revisions as proposed.

Building Inspector/Code Enforcement Officer Jeff Swanson indicated one area of the zoning law that he believed needed updating was the process by which a property owner goes about applying for a 6 ft. high privacy fence. If approved and adopted, instead of going through a special use permit process for a 6 ft. privacy fence, the property owner will apply for a variance thereby streamlining the permit process.

D.P.W. Supervisor Thomas R. Pilling, 29 Harlem Ave., asked for an explanation of A 5. of Section #25-50, [Fences], where it says any fence or wall constructed of flammable material shall be prohibited. He asked what is the applicant supposed to make the fence out of if it can't be flammable.

Building Inspector Swanson indicated that fences shall be constructed with approved materials, versus things like pallets, plastic bottles or even old tires.

With no one else to be heard, Mayor Birrittieri closed the public hearing at 6:40 PM and proceeded to reopen the regular meeting of the Board of Trustees.

Village Attorney LaMancuso suggested to Mayor Birrittieri that the Board of Trustees should consider tabling action on the three local laws as proposed and presented until such a time the State Environmental Quality Review (SEQR) Act is complied with.

#### RESOLUTION #30-2018 - TABLE ACTION ON PROPOSED LOCAL LAWS

Motion by Trustee McCague, seconded by Trustee Schutte, per the recommendation of Village Attorney LaMancuso, to table any action on the three local laws as proposed and presented, until the State Environmental Quality Review (SEQR) Act is complied with.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

#### REVIEW BIDS FOR HOUSEHOLD GARBAGE COLLECTION & RECYCLING PROGRAM

Mayor Birrittieri indicated the current contract with Bestway Container Services, Fredonia, N.Y. runs through May 31, 2018. She said upon reviewing the bids as received on February 23, 2018, it appears the low bidder is

Beichner Waste Services, Inc., Sinclairville, N.Y.

Village Clerk Johnson indicated to Mayor Birrittieri that Mr. John Beichner of Beichner Waste Services, Inc. is in attendance and would be happy to answer any questions you or any member of the Board of Trustees may have regarding the bid or how he and his staff intend to carry out the task of collecting and disposing of household garbage and conducting a recycling program for the residents of Lakewood.

Mr. Beichner indicated he has worked on and off as a contractor for the Village of Lakewood for the past forty years and has followed in his father's footsteps who was the garbage contractor for the Village of Lakewood going back to the 1960's. Mr. Beichner said he re-opened Beichner Waste Services, Inc. six years ago after having worked for all the major companies that handle household waste throughout Chautauqua County. Mr. Beichner said from an experience standpoint no one has more experience in this business than he does.

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Mr. Beichner indicated that due to the number of residential customers in Lakewood he plans doing the weekly household garbage pick-up and recycling program on Tuesday and Wednesday, using the railroad tracks to divide the Village of Lakewood into a northerly half and southerly half. Mr. Beichner then said the recycling portion of the contract is a huge issue. He said recycling can be done two ways, single-stream or sorted each of which was included in their bid. Mr. Beichner said the difference in the two methods of recycling is that single stream is much most costly to process because it must be trucked outside Chautauqua County and then sorted. If residents sort their recyclables they can be managed and processed within Chautauqua County at a much lower cost. Mr. Beichner said residents would again be asked to sort their recyclables, with one of the four recyclable materials picked-up each week of the given month. The end product of each of the recyclable material is much better and more efficient in the long run. Mr. Beichner said it would be up to Mayor Birrittieri and the Board of Trustees to ultimately decide what type of recycling program they would like to include in awarding the bid, however having residents sort their recyclables would result in a savings of just over \$ 30,000.00 over the course of a three (3) year contract.

Mayor Birrittieri asked Mr. Beichner, has it been his experience, if and when residents are asked to sort their recyclables, do they have a tendency of recycling less.

Mr. Beichner said he believes people are becoming more passionate about the environment and the "going green" movement. People are therefore more committed than ever about recycling. Also, when the recyclables are sorted by the residents there is a better quality of recyclable materials, when compared to single-stream recycling. A good share of residents end up tossing things that are not considered recyclables in their single-stream bin.

Mayor Birrittieri thanked Mr. Beichner for attending this evening's Board of Trustees meeting and indicated before a decision is made on the bids as received she would like an opportunity to speak with a representative from one of the other companies that submitted a bid.

Mr. Tom Marlinski, 36 Ohio Ave., suggested as a way to save some money, how

about considering placing large dumpsters on Packard Ave., in which residents could deposit their recyclables. This way residents could get rid of their recyclables on a regular basis rather than having some recyclables building-up over a month's time.

Mayor Birrittieri said the decision for members of the Board of Trustees is whether to have residents sort their recyclables, which saves approximately \$ 30,000.00 over three (3) years, or continue with single-stream recycling.

Trustee Barnes said she believes people are very adaptable and it is her opinion asking residents to sort their recyclables it is a small price to pay in order to save the Village of Lakewood some money. Trustee Barnes said she would be agreeable to award Beichner Waste Services, Inc. the three year contract, so as not to have to go through the bid process again next year.

Trustee McCague indicated in principle he likes what is being said and what Beichner Waste Services, Inc. is offering to do, but we would certainly want to see and review the actual contract agreement.

Mr. Beichner said once the Village of Lakewood makes a decision on the particulars, we will be able to put together the three (3) year contract agreement.

Trustee Schutte said the bid as submitted by Beichner Waste Services, Inc., is actually less than the current contract price and therefore would be agreeable to the Board of Trustees accepting their bid.

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RESOLUTION #31-2018 - ACCEPT BID FOR GARBAGE COLLECTION & RECYCLING PROGRAM

Motion by Trustee McCague, seconded by Trustee Barnes, for the Board of Trustees to accept the low bid for weekly residential garbage collection and recycling program in the amount of \$ 368,700.00 as submitted by Beichner Waste Services, Inc., Sinclairville, N.Y. The three (3) year Contract/Agreement, which will run from June 1, 2018 thru May 31, 2021, will require residents to sort their recyclables.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

REPORTS

Department of Public Works Supervisor Thomas R. Pilling indicated that the D.P.W. crew is finishing up with winter maintenance on the equipment and reported the project to remodel the bathroom and break room at the D.P.W. garage is about 75% complete.

Mayor Birrittieri asked Mr. Pilling how does the snow removal and ice control budget look as winter draws to a close.

Mr. Pilling said if March is more lamb like than lion like, then the amount of money remaining in the account should be enough, but it will be close.

Police Chief John R. Bentley reported that the Lakewood-Busti Police

Department has handled one thousand four hundred incidents year-to-date, three hundred sixty-four of which occurred in the past two weeks.

Police Chief Bentley also reported that K-9 Officer Casey Casselman recently responded to an Emergency Medical Service call on Southland Ave. where an individual, a suspected drug user, accidentally lacerated his thigh with a large knife. Chief Bentley said with the possibility that the femoral artery was cut, Officer Casselman applied a tourniquet stopping the blood loss and possibly saving the individual's leg.

In the wake of the tragic school shooting in south Florida, Chief Bentley wanted to make it known that the L-BPD and other local law enforcement agencies regularly conduct active shooter drills. Active shooter drills have been held at area schools, the Chautauqua Mall and at the Cummins Engine Plant. Next week the Chautauqua County Special Weapons & Tactics (SWAT) unit will be conducting a seminar at Jamestown Community College specifically geared towards active shooters at schools. Chief Bentley said area law enforcement agencies are also expected to start training for potential shootings at places of worship.

Building Inspector Jeff Swanson reported that both buildings at 386 & 390 East Fairmount Ave., have been razed and site work on the 5 Star Urgent Care and Aspen Dental construction project has begun.

#### ANYONE TO BE HEARD

Mr. John Jablonski, 213 Spruce Street, indicated to Mayor Birrittieri and members of the Board of Trustees, it is unfortunate that representatives from the Chautauqua Lake Partnership, (CLP) have put you and other lakeside communities in very uncomfortable positions, while trying to push their agenda by rushing you to agree to a resolution to serve as a Co-Lead Agency in connection with the State Environmental Quality Review Act (SEQRA) process in the completion of a Supplemental Environmental Impact Statement (SEIS) regarding the application of herbicides in targeted areas of Chautauqua Lake, including those areas bordering the Village of Lakewood. He said the way the process should work is, the permit applicant should review the SEQRA environmental impact statement to determine what mitigations are proposed before the permit is submitted.

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Unfortunately the proposal that has been presented does not adequately address the scoping requests that were submitted by the public.

Mr. Jablonski said Chautauqua County had a seven year process to develop an aquatic vegetation management plan, which identified a few areas of Chautauqua Lake with sensitive resources. Unfortunately the CLP and the Town of Ellery have chosen to ignore those areas in their proposal. Ideally he would like this Board, and would have liked the Town of Busti to review the comments and decide what mitigation measures should be considered before submitting a NYS Department of Environmental Conservation permit application. Mr. Jablonski said if too many native plants are removed from the environment, there is the potential for the harmful algae plants to take the place of the native plants, tipping the balance toward having more algae plants. Mr. Jablonski said it is his opinion the application of herbicides to

areas of the Chautauqua Lake could potentially result in worse water quality conditions than in previous years. He said harvesting the nuisance plants from the lake removes phosphorus from the lake, which adversely promotes additional weed growth. If some native plant growth in the lake is eliminated, there isn't going to be anything there to "take up" the phosphorus, nitrogen and nutrients other than the harmful algae blooms and other harmful plants not impacted by the herbicide.

Again, it is unfortunate the CLP has rushed the environmental review process and put the Mayor and the Board of Trustees in this position requesting quick action on this sensitive matter.

Mayor Birrittieri thanked Mr. Jablonski for his comments and said quite frankly wished she had more time to review the matter, however given what the CLP has presented it appears the Board of Trustees can act on their request for a resolution, and make a determination on the SEQRA and SEIS process at a later time, based on the input from the experts in the field. Once those determinations are made the Village of Lakewood can then invite residents to voice their comments one way or another on the application of herbicides, if it comes to that.

Mr. James Wehrfritz, Vice President of the CLP, indicated that Mr. Jablonski has some concerns about some of the things that are in the Draft Supplemental Environmental Impact Statement (DSEIS). He wanted to let folks know that there is a public comment period that runs through March 12<sup>th</sup> and that there is a public meeting this Thursday, March 1<sup>st</sup> at the Fluvanna Fire Hall, during and at which individuals are welcome to voice or submit their individual comments regarding the DSEIS. Mr. Wehrfritz said each and every comment upon review will be addressed in the final SEIS, which is a regulatory requirement.

Mr. Wehrfritz said, as representatives of the CLP, we are not here this evening to debate with Mr. Jablonski, although the CLP respectfully disagrees with some of his statements. A Village of Lakewood Board of Trustees meeting is not the place to debate this issue. There is a process in place where the concerns of individuals and/or groups are heard and considered. Ultimately, the NYS DEC will draft their findings based on the comments received.

Mayor Birrittieri said she would like to hear and understand the science side of this issue, and although she would like more time to review the matter, she believes the Village of Lakewood needs to consider moving forward.

Trustee McCague asked Mr. Wehrfritz when will the SEQRA process be completed.

Mr. Wehrfritz said the SEQRA process should be completed by the end of April and per the consultants, the optimum time for herbicide application is in early May. He then provided the Mayor and each member of the Board of Trustees with a copy of the table of contents for the Draft Supplement Environmental Impact Statement regarding the planned treatment of targeted areas of Chautauqua Lake with herbicides.

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Mr. Martin Willow, 97 East Terrace Ave., indicated to Mayor Birrittieri and members of the Board of Trustees, he has been a lakefront property owner for the past twenty-one years and stressed that his tax dollars should not be

used to put chemicals in the lake. As a homeowner on the lake Mr. Willow said he fishes Chautauqua Lake a lot and therefore has a unique view of the lake. Mr. Willow said he trolls for muskellunge in the south and north basins of the lake. Mr. Willow said when he is home and isn't travelling for business, he spends a lot of time on the lake, day and night.

Mr. Willow said the reward for bad behavior by lakefront homeowners is to allow the use of chemicals in our lake. If those same lakefront homeowners use fertilizers or weed killers on their lawns, or don't maintain a berm along the water's edge, please don't complain about the lake weeds. It's disingenuous on their part.

Mr. Willow said as an experienced fisherman, he believes the weed growth was actually down the past two summers, when compared with previous years. Where there used to be weed beds there weren't any this past summer. He said any word with -cide as a suffix means kill. Mr. Willow said although he is the owner of record for the lakefront property at 97 East Terrace Ave., the actual owners of the property are the trees, which have been there longer than any of its previous owners. Those trees will invariably draw the poisonous chemicals into their root system and be part of the systemic poisoning of our local plants, fish and wildlife. He said Chautauqua Lake is an incredible resource where prestigious fishing tournaments are held. Weeds are part of the lake and provide habitats for fish. He reiterated an earlier statement saying if people aren't controlling their own behavior, then don't try to correct it by killing things, which is what happens when certain are added to the lake.

Mayor Birrittieri encouraged Mr. Willow to make his concerns known by putting them in writing and submitting them to the Town of Ellery, Lead Agency with respect to the Draft Supplemental Environmental Impact Statement (DSEIS), for the application of herbicides to targeted areas of Chautauqua Lake.

Mayor Birrittieri then read the following resolution, which was presented earlier in the evening to the Board of Trustees for their consideration, by the Chautauqua Lake Partnership.

The Village of Lakewood (Village Board) resolves as follows:

WHEREAS, on October 23, 2017, the Village Board resolved to send a letter of intent to serve as a Co-Lead Agency in the State Environmental Quality Review Act (SEQRA) process and in the completion of a Supplemental Environmental Impact Statement (SEIS) regarding the application of herbicides to target areas of Chautauqua Lake, including areas of the lake bordering the Village's jurisdiction; and

WHEREAS, on November 30, 2017, the Mayor of the Village notified the Town of Ellery that the Village did not object to the Town of Ellery serving as the Lead Agency in the SEQRA process and in the completion of the SEIS; and

WHEREAS, on February 8, 2018, the Town Board of the Town of Ellery, serving as Lead Agency in the SEQRA process, issued a draft SEIS regarding the application of herbicides to target areas of Chautauqua Lake; and

WHEREAS, pursuant to Article 15 of the New York State Environmental Conservation Law and Part 327 of the Official Compilation of Codes, Rules and Regulations of the State of New York, the NYSDEC must issue a permit prior to the application of herbicides to waters within the State of New York; and

WHEREAS, the Village is a riparian owner; and

WHEREAS, the Village is located wholly within the Town of Busti; and

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WHEREAS, the Village understands that the Town of Busti intends to apply for Aquatic Pesticide Permits for the Control or Elimination of Aquatic Vegetation; and

WHEREAS, the Village understands that the Town of Busti intends to notify riparian owners and vested riparian users of the application and water use restrictions and their right to object; and

WHEREAS, the Village Board is reserving a decision on whether to undertake the application of herbicides in any or all areas included in any permit applications until the conclusion of the SEQRA process.

WE RESOLVE THEREFORE:

To authorize the Town of Busti to apply for Aquatic Pesticide Permits for the Control or Elimination of Aquatic Vegetation to areas within the Village's jurisdiction; and

To authorize the Town of Busti to notify riparian owners and vested riparian users potentially affected by the application of herbicides to areas within the Village's jurisdiction of the application and water use restrictions and their right to object; and

Upon completion of the final SEIS and the issuance of the SEQRA findings, to consider the final SEIS and the SEQRA findings to make a determination whether to approve a resolution to authorize the Town of Busti to apply herbicides to Chautauqua Lake.

Mayor Birrittieri asked members of the Board of Trustees for their comments,

Trustee Barnes said as long it is before the Board of Trustees this evening, she would favor acting on it rather than delaying the overall review process. She noted approving the resolution isn't a final commitment to anything, while knowing there is more information on the matter forthcoming.

Trustee Schutte said we as a Board need to gather as much information as possible on the issue, however acting on the resolution presented this evening won't deter the Board of Trustees from doing so.

RESOLUTION #32-2018 - RESOLUTION RE: APPLICATION OF HERBICIDES TO THE CHAUT. LAKE

Motion by Trustee Barnes, seconded by Trustee Schutte, to approve the resolution as noted above and that the Board of Trustees hereby resolve;

To authorize the Town of Busti to apply for Aquatic Pesticide Permits for the Control or



Elimination of Aquatic Vegetation to areas within the Village's jurisdiction; and

To authorize the Town of Busti to notify riparian owners and vested riparian users potentially affected by the application of herbicides to areas within the Village's jurisdiction of the application and water use restrictions and their right to object; and

Upon completion of the final SEIS and the issuance of the SEQRA findings, to consider the final SEIS and the SEQRA findings to make a determination whether to approve a resolution to authorize the Town of Busti to apply herbicides to Chautauqua Lake.

NOTE: The Draft Supplemental Environmental Impact Statement RE: Chautauqua Lake Herbicide

Treatment may be examined at the Office of the Village Clerk, 20 W. Summit Street, Lakewood, N.Y., during regular office hours, 8:00 AM - 5:00 PM, (M-F).

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)  
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#### RESOLUTION #33-2018 - APPROVE PROFESSIONAL SERVICES AGREEMENT

Motion by Trustee Schutte, seconded by Trustee McCague, for the Board of Trustees to approve a Professional Services Agreement between the Village of Lakewood and LaBella Associates, D.P.C., Buffalo, New York, regarding the development of a Main Street Master Plan for Chautauqua Ave., in connection with the Main Street Technical Assistance Grant that the Office of New York State Homes & Community Renewal awarded to the Village of Lakewood January 25, 2018.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

#### RESOLUTION #34-2018 - ACCEPT THE RESIGNATION OF THE PLANNING BOARD CHAIRPERSON

Motion by Trustee McCague, seconded by Trustee Barnes, to accept with much regret the resignation of Ms. Kaie Smith, 24 Park Lane, as the Chairperson of the Planning Board, effective February 26, 2018 and as a member of the Comprehensive Plan Implementation Committee, effective March 1, 2018. Ms. Smith served as Deputy Chairperson and Chairperson of the Planning Board since being appointed in January 2016 and has been a member of the Comprehensive Plan Implementation Committee since its inception. Ms. Smith, thank you for your service to the community.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

#### RECESS

Motion by Trustee McCague, seconded by Trustee Barnes, to recess the regular meeting of the Board of Trustees at 7:42 PM, so as to enter into executive session to discuss a proposed contract agreement.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

EXECUTIVE SESSION

Present at the executive session was Mayor Cara Birrittieri, Trustee Edward J. McCague, Trustee Ellen E. Barnes, Trustee Douglas L. Schutte, Village Attorney John I. LaMancuso and Village Clerk Joseph M. Johnson. Motion by Trustee McCague, seconded by Trustee Barnes, to adjourn the executive session and reopen the regular meeting at 8:20 PM.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

RESOLUTION #35-2018 - APPROVE THE POLICE SERVICES CONTRACT AGREEMENT

Motion by Trustee McCague, seconded by Trustee Barnes, per the recommendation of Mayor Birrittieri, for the Board of Trustees to approve the proposed Police Services Contract Agreement between the Village of Lakewood and the Town of Busti for a term of five (5) years, commencing January 1, 2019, and to authorize Mayor Birrittieri to execute same.

Adopted: 3 ayes, no nays (Barnes, McCague, Schutte)

Motion by Trustee McCague, seconded by Trustee Schutte and unanimously carried, the Board adjourned at 8:25 PM.

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Joseph M. Johnson  
Village Clerk