Present: Mayor, Lee McNew; Councilmembers Dan Jenaras, Jon Cabot, David Haines, and Chuck Poploskie; Attorney, Dan Christ; Treasurer, Julie Frakes; Road Commissioner, Karl Storrie; Police Chief, Jim Prosser; Building Official, Brian Oppmann; Clerk, Rosalie Lake

Visitors: Kevin Chase, Bill Derocher (Builder), Norman Hyman (Attorney), Randy Marchall (Landscape Architect), Mike Tewell, Dave and Debbie Biggers, Dennis Mitchell, Officer Don McLellan, Jim Howlett

Mayor McNew opened the meeting at 7 P.M. with the Pledge of Allegiance. Councilmember Poploskie moved to open the Zoning Board of Appeals meeting. Councilmember Cabot seconded. Motion carried unanimously.

Several short presentations were made. Norman Hyman, Attorney for Bill Derocher, indicated that a minimal variance was being asked for as a small portion of the stone wall, not visible from the Kresge property, was within the setback. Kevin Chase spoke about the hardships of the property which they had been working on for many years. He felt he had hired the best team of builder and landscape architect to work with the Planning Commission and the City. Landscape architect, Randy Marchall, read a statement regarding the boulder wall on the west side. The Kresges had approved the landscape plan. After 90% of the project was in place, objections were raised. Mr. Hyman reinforced that Mr. Marchall had worked with neighbors regularly. Bill Derocher asked for questions regarding the plan. Dr. Cabot questioned Mr. Oppmann regarding the height of the wall. Mr. Oppmann expected that it would be one boulder high, but it became higher. He also thought it would not originally be considered a structure, but it became one. Most of the wall is in compliance. Mr. Hyman indicated that it was their misunderstanding, as well. Dr. Cabot asked whether a one boulder high wall would have accomplished stabilization in the area. Mr. Derocher felt he had followed the rules and consulted with the Kresges, but agreed that there was some confusion. The Planning Commission did not approve this wall while approving other structures on the property.

The ZBA members reviewed with Mr. Derocher both an original plan and a plan presented with completed walls. The original plan showed no elevations. Mr. Oppmann thought the wall was going to be on grade. The wall now comes to about five feet in height. Mr. Hyman indicated that the landscaped area was being retained by the stone wall and the issue of non-compliance measured 6/1000 of an acre. Mr. Derocher showed the plans to those in attendance explaining what was and was not in compliance.

Dr. Cabot asked, given the size of the lot, why the wall could not have been moved over 10 feet. The wall was built knowing it was not in compliance. Mr. Derocher indicated that the concerns were for erosion and drainage. To control erosion, the seawall would need to be higher to stabilize the area. Mr. Derocher was questioned further about alternatives to the wall for these purposes. He responded that geofabric, other boulders or grasses could be used. Dr. Haines asked what stabilized the area before the wall was built. Mr. Derocher indicated that nothing was preventing erosion from recurring after the approval to remove the berm at the beginning of the project. Mr. Chase felt that erosion was occurring before the removal of the berm.
Mrs. McNew stated that what the ordinance requires is well known and questioned what other alternatives could be proposed. Mr. Derocher responded that lowering the wall to one boulder would involve tapering the grade back toward the house. Mr. Marchall responded that the intent was to stabilize the area with no other home to the west.

Jim Howlett acknowledged Norman Hyman as a real estate lawyer of great repute and indicated that it was an honor to have him attend the City hearing. Mr. Howlett went on to say that people who come to Lake Angelus often feel that, if they come and create something beautiful, all is well. Everyone seems to know that this case is outside of the ordinances. The standard is the ordinances. He reiterated the standards for granting a variance and indicated that he felt that this case did not satisfy those standards.

Mr. Hyman repaid compliments to Mr. Howlett on his esteemed career. He further felt that his supporting statement did satisfy the ordinance and covered the three standards required for a variance referred to by Mr. Howlett. He reviewed the points made in his statement. Erosion being a problem for the Kresges, Randy Marchall has created as much support as possible. The Kresges cannot see it, but their boundary line has been supported which responds to the health and welfare and impact on neighbors standard. Mr. Hyman assured that what has been provided is stability for the neighbor and the Chase property. He felt that the wall is not incidental and that what is being considered is 6/1000 of one acre.

Neighboring resident, Debbie Biggers, asked whether the problem was worse before or after the trees were removed from the berm and whether residents across the Lake were considered ‘neighbors’.

Dr. Haines indicated that the City has been down the path of pushing the envelope. The discussion could have taken place before building started. He wished to maintain objectivity but wished to know what the thinking was when the wall was built into the setback. Mr. Derocher responded that there was some confusion at the time and he was informed later of concerns.

Dr. Jenaras expressed awareness that the lot had issues of grading and may have needed a wall to stabilize, but did not understand how it was not simply a retaining wall. Mr. Marchall responded that the plans may not have been scrutinized well as the wall could not have been conceived as one boulder high.

Mr. Poploskie remarked that the whole side of the property had been reworked. Mr. Derocher has built several houses on the Lake and should know the ordinance restrictions. Misunderstanding is not a criteria for a variance.

Mayor McNew read the criteria for issuing a variance. Councilmember Cabot moved to instruct Attorney Christ to construct a resolution, to be approved at the next meeting, to deny the application as the criteria have not been met. Councilmember Poploskie seconded. Motion carried with Cabot, Poploskie, Jenaras and McNew voting aye and Haines voting nay.

Mr. Marchall asked the Board to give guidelines. Dr. Cabot responded that the wall needed to be moved out of the setback or the criteria needed to be met. Mr. Hyman provided a letter from Phil Robbins, neighbor to the Chase property.

Mayor McNew closed the meeting of the Zoning Board of Appeals at 8:02 PM and reopened the City Council meeting. The Minutes of the meeting of September 10, 2013 were approved as submitted.

Police Chief, Jim Prosser, gave the Department Activity Report for the month of September. There have been two deer hunters on City property. The new well at the Police Station has passed the water quality testing by the County Health Department. Residents walk through the
fire gate in Waterford and would not like to have it locked. The report of a trespasser on the Lane is probably a meter reader, but officers are watching the area. The Lake level is 949.8. The Tactical Training Consortium (Oak-Tac) Resolution was presented. Councilmember Cabot moved to approve the Resolution. Councilmember Jenaras seconded. Motion carried unanimously.

The Barn clean-up was a great success. It is ready for the Halloween party. An enormous amount of material was disposed of from the Barn and the Police Station. Clerk Lake asked the Council to approve the purchase of four new 8’ folding tables to replace the derelict ones that were thrown out in the clean-up. She recommended that they be purchased from the City Hall Restoration Fund. Councilmember Haines approved up to $600 for the purchase of the tables. Councilmember Cabot seconded. Motion carried unanimously.

It was determined that the signatories on the City’s safe deposit box should be the Clerk, Treasurer, and Mayor.

A Lake Angelus real estate notice in a Birmingham household flyer advertised an in-law apartment in a boathouse, which is misleading and against the City’s ordinances. Dr. Haines will contact Lee Embrey about it.

Councilmember Cabot asked for an evaluation of the Council’s performance serving as the Zoning Board of Appeals. Attorney Christ suggested that a short presentation by Building Official, Brian Oppmann, in the way of introduction to begin the meeting would be helpful. Mr. Oppmann felt that the meetings need to be as structured as possible. Mayor McNew felt there was good feedback from all Council members. Dr. Cabot felt the meeting was black and white from the last meeting.

The new Fire Service Contract with Waterford has been duly signed by all parties. Woohoo! Thanks were given to Dr. Haines and the Fire Service Committee for diligent work.

Planning Commission: The PC is continuing to work on ordinance revision. A Public Hearing is planned for January 28th.

Building Official, Brian Oppmann, indicated that there was no further communication regarding the Gitter and Latshaw properties. The Knysz family on N. Lake Angelus Rd. wishes to demolish and rebuild on the site. The topography is difficult and will present problems with retaining walls.

Treasurer Frakes indicated that bonds have been returned and money is needed in escrow accounts for the Gitter and Chase projects.

City Property: Councilmember Poploskie reported that trimming around City hall has been done. The tennis court area will be done in the spring. The barn has been cleaned out. Bob Bailey is presently working on the Barn roof.

Roads: Road Commissioner, Karl Storrie, reported that supergravel has been applied. It will not be done again next year. Chloriding has also been done. Mr. Storrie discussed the requirement that the City must spend 1% of road improvement funds on non-motorized improvements. This would be about $1500. The project has to be approved by MDOT. Mr. Storrie was asked to explore this issue.
Councilmember Cabot moved to extend the meeting to 9:20. Councilmember Poploskie seconded. Motion carried unanimously.

Treasurer, Julie Frakes, reviewed all Funds. The Local Road Fund is at $1200. It will need to be subsidized next year. The budget is $39,000 ahead of last year. A CD for $166,000 at the Private Bank will shortly need renewal. The Worker’s Comp audit has been submitted. Mrs. Frakes reviewed the audit from Janz and Knight. Net assets decreased 1.6% as the City ran a deficit. Janz & Knight has filed all required reports. There was an improved deficit in the Building Department from $30,000 to $22,000.

Councilmember Cabot moved to approve the financial reports noting those warrants over $500. Councilmember Poploskie seconded. Motion carried unanimously.

#18798 to Robert Bailey for $8950  
#18801 to Billington Services for $1470  
#18818 to Robert Bailey for $4500  
#18820 to Voyager Fleet for $955.01  
#18823 to Hafeli Staran for $2507.67  
#18824 to Cornerstone Remodel for $567.50  
#18826 to Code Enforcement for $722.50  
#18827 to Code Enforcement for $1340  
#18828 to OC Sheriff for $1839  
#18844 to Charles Poploskie for $578  

Information on the Affordable Care Act has been sent to City employees as required. A refund of $186 has been received from the Accident Fund. The Porta-john will be moved to the Barn for the Halloween party. The contract for the Clinton Oakland Sewage Disposal System has had to be revised because of the withdrawal of the City of Rochester. A revised contract will need to be signed. Councilmember Cabot moved to authorize the Mayor to sign the revised COSDS contract when it is received. Councilmember Poploskie seconded. Motion carried unanimously.

Discussion ensued on the Shores Road sewer project. There was concern about the modest enthusiasm of the respondents to the survey that was circulated. Dr. Cabot felt that the Council should support citizen initiative on this, rather than imposing it on residents. Hubble, Roth and Clark did a ‘ballpark’ study. A feasibility study would be more formal and specific. The City should not pay for a feasibility study if it is not a popular issue. Dennis Mitchell recalled that Hubble, Roth and Clark would not do a feasibility study unless there was support for it. It would be a very detailed study and would have to be done at some time if the City were to go forward with the plan. Mrs. McNew felt the issue should be turned over to the Environmental Board to make a decision. 51% of those in the district need to respond positively.

Dr. Jenaras indicated that the harvested weeds from the Lake placed beyond the tennis courts have shrunk greatly and may be good compost. Residents should be encouraged to use it.

Dr. Jenaras attended a meeting on September 24th regarding the Oakland Macomb Interceptor Drain. A lawsuit has slowed down any progress.

Dr. Cabot publically thanked outgoing Mayor McNew for her service to the City. There was generous applause from those in attendance.
There being no further business, Councilmember Cabot moved to adjourn the meeting at 9:25 PM. Councilmember Poploskie seconded. The next regularly scheduled meeting will be held on December 10th. No meeting will be held in November as a quorum cannot be present.

Approved:       Respectfully submitted,

Lee McNew, Mayor     Rosalie Lake, Clerk