

TOK DRAFT JUNKYARD Zoning Ordinance Update
Work Document for Planning Board Recommendation #2
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Section 210 Definitions

ANTIQUÉ MOTOR VEHICLE: A motor vehicle, but not a reproduction thereof, manufactured more than 25 years prior to the current year, which has been maintained in or restored to, or will be maintained in or restored to, a condition which is substantially in conformance with the manufacturer's specifications.

CLASSIC MOTOR VEHICLE: A motor vehicle, but not a reproduction thereof, manufactured more than ten years prior to the current year and which because of discontinued production and limited availability, is considered to be a model or make of significant value and which has been maintained in or restored to a condition which is substantially in conformity with the manufacturer's specifications and appearance.

COMMERCIAL GARAGE: Any business whose primary function is repairing motor vehicles or any part thereof, and has obtained a valid Special Use Permit to operate a business in the Town of Kendall.

DEBRIS, RUBBISH, CLUTTER, LITTER: Ordinary household or commercial trash such as paper and paper products, ashes, barrels, cartons, boxes, cardboard, cans, glass, metals, machinery, plastics, rubber, crates, furniture, rugs, clothing, rags, mattresses, blankets, cigarettes, tires, lumber, brick, stone and other building materials no longer intended or in condition for ordinary use; and any and all tangible personal property no longer intended or in condition for ordinary and customary use.

CODE ENFORCEMENT OFFICER: The Building Inspector of the town, unless the Kendall Town Board, by resolution, designates some other town officer as enforcement officer or, by resolution, establishes the position of enforcement officer for the town and appoints some qualified person thereto who is compensated as specified in such resolutions.

GARBAGE: All prescribed animal and vegetable waste resulting from growing, processing, marketing and preparation of food items, including containers in which packaged.

JUNK: Worn out or discarded material of little or no value including, but not limited to, appliances, furniture, mobile homes, uninspected, unregistered, capable of being inspected motor vehicles or garbage, rubbish and debris.

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JUNK APPLIANCE: Any household appliance, including but not limited to, a stove, furnace, washing machine, dryer, dishwasher, freezer refrigerator, air conditioner, water heater, computers, televisions and accessory equipment, which is stored outside of any residence or structure.

JUNK FURNITURE: Abandoned, discarded furniture including, but not limited to, sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs, and chests of drawers.

JUNK MOBILE HOME: Any manufactured housing unit designed with a chassis, and constructed to be towed or otherwise transported whole or in part to a site, and which is designed to permit occupancy for dwelling, sleeping, or storage purposes and which meets all of the following conditions:

- (1) It is unoccupied and in its present condition does not meet the requirements of the New York State Uniform Fire Prevention and Building Code for residential occupancy.
- (2) It is stored, abandoned, wrecked, discarded, dismantled, or partially dismantled.

JUNK STORAGE AREA: The areas of any real property used or intended to be used for the placement, storage or deposit of one or more of the following: junk appliances, junk furniture, junk mobile homes, and junk motor vehicles.

JUNK MOTOR VEHICLE: Any motor vehicle that is unlicensed or unregistered, wrecked, stored, discarded, abandoned or dismantled, or partial dismantled, which is no longer in condition for legal use upon the public highway.

JUNKYARD: Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, is substantially equivalent to two or more such vehicles

LEGAL OCCUPANT: Any person who, singularly or together with other persons, is in possession of real property pursuant to an expressed or implied agreement with the owner thereof. The term shall include tenants, contract vendees and license.

MOTOR VEHICLE: Every vehicle originally designed and intended to be operated,

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drawn or driven upon or capable of being operated, drawn or driven upon a public highway by any power other than muscular power.

OUTDOOR STORAGE: The placing, maintaining or keeping of junk, rubbish, clutter, litter or debris in a place other than in a structure with a roof and fully enclosed on all sides.

OWNER OF PRIVATE PROPERTY: A person owning real property in the town. A parcel or real property owned by more than one (1) person shall be considered as having each such person be an "owner."

OWNER OF VEHICLE: A person, other than a lien holder, having possession or title to a motor vehicle. The term includes a person entitled to the use and possession of a motor vehicle subject to a security interest in another entity and also includes any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

PARCEL OF PROPERTY: Real property, appearing on the tax rolls of the town as one (1) unit, whether occupied or vacant, irrespective of size or topography.

PERSON: Includes natural persons, corporations, co-partnerships, unincorporated associations or any other organization of two (2) or more persons.

TOWN: The Town of Kendall and its officers and agents; also public and private areas within the town.

- A. The term "shall" is always mandatory. Words used in the singular shall include the plural and vice versa.
- B. The reference to other sections of the Town of Kendall Code as "ordinances" shall include, but not be limited to, those sections of the code adopted as "local laws."

SECTION 711 JUNK YARDS

A.) PURPOSE

A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town of Kendall, and such an environment is essential to the town and the general welfare of its citizens. The unrestricted accumulation of clutter, litter, debris, garbage and motor vehicles not in operating condition, is a hazard to such

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health, safety and welfare of the citizens of the Town, necessitating the regulation and restraint thereof.

B.) AUTHORITY

The Town Board of the Town of Kendall adopts this Section under the authority granted by:

- 1) New York Municipal Home Rule Law, New York State building codes and the Town of Kendall Zoning ordinance.

C.) STANDARDS

- 1) As used in this section, a junkyard shall mean the outdoor storage or deposit of any of the following, whether in connection with another business or not:
 - (1) Two or more junk motor vehicles.
 - (2) One or more junk mobile homes.
 - (3) All junk appliances, pieces of junk furniture, or garbage, rubbish and debris.
 - (4) Worn out or discarded material of little or no value.
- 2) As used in this section, “junked motor vehicle” shall mean:
 - a) With respect to any motor vehicle not required to be licensed or any motor vehicle that does not require a New York State inspection certificate, the fact that such motor vehicle has remained unused and is not in condition to be moved under its own power shall be presumptive evidence that such motor vehicle is a junked motor vehicle.
 - b) The fact that a motor vehicle which may be licensed or registered with the State of New York and does not display a current license plate shall be presumptive evidence of the fact that such motor vehicle is unlicensed.
 - c) For the purpose of this section, “stored” or “located” shall mean any locations where junk is visible from a public highway or from a dwelling unit on a neighboring property.
- 3) It shall be unlawful for any person to use a bus, uninhabited mobile home, truck, truck trailer, horse trailer, semi-trailer, tank truck, or similar vehicles or units for the storage of junk on any premises. Exceptions shall be made for the temporary use of such vehicles or units for construction purposes or when used in connection with farming or agricultural operations.
- 4) It shall be unlawful for any person, firm or corporation, either as occupant, lessee,

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agent tenant, or otherwise of property within the Town of Kendall to store or deposit or cause to suffer or permit to be stored or deposited any junk, junk motor vehicles or part or piece thereof, on any private property within the Town of Kendall unless:

- a) Such junk is stored in a completely enclosed building.
- b) A motor vehicle, if in open storage, must be:
 1. Under repair, reconstruction or refurbishing.
 2. An antique or classic car undergoing restoration.
 3. Owned by the owner(s) of the property thereof, and who must actually be residing upon the premises.
 4. Limited to no more than one (1) such unlicensed, uninspected motor vehicle permitted at any one time on any premises.
 5. So maintained and protected as to not create any safety or environmental hazard or nuisance to surrounding property owners.
- 5) Any owner or legal occupant of a parcel of property in the town who shall abandon, store, locate, leave or allow or permit any other person to abandon, store, locate or leave junk upon a parcel of property owned or occupied by him within said town, contrary to the provisions hereof, shall be guilty of a violation hereof. Any person, whether as owner or driver of a vehicle or an operator of a towing vehicle or carrier who shall abandon, store, locate or leave a licensed or junk vehicle upon a parcel of property in the town of which he is not either the owner or legal occupant shall be guilty of a violation hereof.
- 6) The use of vacant lots (a lot of record that does not have a primary residence) will not be permitted for the use of outdoor storage and/or sales of vehicles, campers, trailers and boats.
- 7) Parking of trucks and other commercial vehicles with a GVW (Gross Vehicle Weight) of over five (5) tons shall be prohibited in all districts except when on said premises for permitted business or agricultural purposes.
- 8) Each residential property will be allowed to display one (1) motor vehicle for sale for up to ninety (90) days. Each residential property will be allowed two (2) private display sales per calendar year.

D.) EXCLUSIONS

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The following shall not apply to the storage or placement on the premises of the following material:

- 1) Unlicensed vehicles in operating condition stored by or for the owner while the owner is:
 - (a) A full time student of the immediate family attending a school, college, or university.
 - (b) An immediate family member serving in the United States Armed Forces.
- 2) Seasonal vehicles or machinery during their off-season if kept in a location not visible from any road, street or highway. Said vehicles must possess previous year's registration and current New York State motor vehicle inspection sticker if applicable.
- 3) Operable farm, garden and yard machinery and implements and apparatus used on the premises. Farm machinery kept for parts shall be kept in a location not visible from any road, street or highway.
- 4) Wood intended for consumption in a wood burning stove, furnace or fireplace.
- 5) Lawn or yard or garden ornaments and implements.
- 6) Lawn and patio furniture.
- 7) Fences.
- 8) Hoses and sprinklers used for watering lawns or gardens.
- 9) The storage, placement and accumulation of unlicensed motor vehicles in connection with a commercial operation duly conducted on the premises where such storage, placement and/or accumulation is pursuant to a valid use approved by the Town of Kendall or the State of New York.
- 10) Construction materials and equipment used for the construction or renovation of a building on the premises for which a building permit has been issued.

E.) Junkyard Permitting Process

- 1) No person shall establish or maintain a junkyard or permit the storage of junk unless a Special Use Permit has first been issued by the Planning Board for operation of a junkyard pursuant to this law. No person shall license, lease or knowingly allow the use

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of real property for a junkyard unless a Special Use Permit has been issued for such a junkyard as pursuant to section 711 of this law.

2) Compliance with regulatory agencies:

The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the establishment and operation of a junkyard.

3) The annual license fee shall be set at the annual organizational meeting of the governing board and paid at the time of the application and annually thereafter in the event of renewal. The applicant shall pay all costs associated with the Town of Kendall's review and processing of each application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town Board may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing all applications.

4) Junkyard Application

- a. Applicants shall request, through the Code Enforcement Officer, a pre-application meeting(s) with the Planning Board and such meeting may require consultants retained by the Planning Board for preliminary application review.
- b. Upon submittal of an application the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
- c. An application for a Junk Yard permit shall include the following:
 1. Name, Address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation. The application shall include a certified list of individual and corporate officers of the applicant and their responsibilities to this project.
 2. Name, Address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
 - 1) The property owner is familiar with the proposed application
 - 2) The property owner authorizes the submission of the application
 3. Proof of ownership of involved properties or long-term leases, legally executed and filed with the Orleans County Clerk.
 4. A plot plan prepared by a Professional Engineer or surveyor licensed in the State of New York stamped and dated to include:

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- (a) Address and real property tax number
- (b) North arrow and bar scale of the site where the junkyard is proposed.
- (c) A scale of not more than one (1) inch equals four hundred (400) feet.
- (d) Property lines including the names of owners of adjacent property.
- (e) Streams, lakes, wetlands, flood plains, and other water bodies, including those available for fire protection purposes.
- (f) The topography of the site and any plans for grading the property to be shown at a contour interval of not more than five feet.
- (g) The location of all wells and sanitary facilities on the property or within 100 feet of the boundary of the property.
- (h) Drainage patterns on the site.
- (I) All existing and proposed structures, including fences.
- (j) Roads and easements adjacent to, on or through said property.
- (k) Existing and proposed junk storage areas, indicating the type of junk or material which will be stored in each area.
- (l) Existing and proposed access ways, aisles, parking and loading areas.
- (m) The name, residence, address and telephone number of each individual owner, partner, or if a corporation or other organization, each officer and director.
- (n) The trade name, address and telephone number of the business.
- (o) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, or any violation of Article 6 of the General Business Law.
- (p) The name and address of the owner of the real property and the nature of the right under which the applicant possess the property.
- (q) Whether the applicant has obtained a valid junk dealer's license under Article 6 of the New York State General Business Law.

5) Decommissioning Plan

- A. The applicant shall submit a decommissioning plan, which shall include:
 - 1) The anticipated life of the Junk Yard.
 - 2) The estimated decommissioning costs in current dollars.
 - 3) How said estimate was determined.
 - 4) The method of ensuring that funds will be available for decommissioning and restoration.
 - 5) The method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current.
 - 6) The manner in which the Junk Yard will be decommissioned and the Site restored. The Plan shall include:
 - a. Removal of all junk, structures and debris. After decommissioning, the soil

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shall meet the guidelines of all Federal, State, County and Local agencies.

- b. The restoration of vegetation, to be consistent and compatible with surrounding vegetation, less any fencing or residual minor improvements that may requested by the landowner.
 - B. Before final Special Use Permit approval, The Site Plan shall include a Decommissioning Bond required by this Section.
- 6) Decommissioning Bond or Fund.
- The applicant, or successors, shall continuously maintain an irrevocable letter of credit payable to the Town of Kendall for the removal of any and all junk, structures, debris, facilities and land restoration in an amount and frequency of review to be determined by the Town Board for the period of the of the life of the facility. This fund shall consist of an irrevocable letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant, developer, successors, property owner, heirs, or assigns, private or court appointed and of record.
- 7) SEQRA REVIEW and COMPLIANCE
- A. An environmental assessment form (EAF) shall be completed and submitted with all applications. For unlisted actions, the board may require either a short- or long-form EAF. For Type I actions the applicant shall submit a long-form EAF. If the board determines that the proposed activity may have a potentially significant adverse impact on the environment, the board shall prepare or cause to be prepared a draft environmental impact statement. The application shall not be deemed complete for review until the board has either issued a negative declaration or accepted a DEIS as satisfactory with respect to scope, content and adequacy.
- 8) PUBLIC HEARING
- A. The Town of Kendall Planning Board shall conduct a public hearing per SECTIONS 900, 901, 902 and 903 of the Town of Kendall Zoning Ordinance.
 - B. To protect the clean, wholesome, safe and attractive environment of the community, the municipal board shall take the following factors into consideration in granting or denying a permit:
 - (1) The type of road servicing the junkyard or from which the junkyard can be seen.
 - (2) The natural or artificial barriers protecting the junkyard from view.
 - (3) The proximity of the site to established residential or recreational areas or main access routes.

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- (4) The nature and development of surrounding property.
- (5) Whether or not the proposed location will affect the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
- (6) The proximity of flood plains, groundwater supplies, and public water supplies.
- (7) Local drainage patterns.
- (8) The availability of municipal fire protection and the adequacy of the water supply for fire protection purposes.
- (9) The comprehensive plan for the municipality.
- (10) The proximity of the site to established residential or recreational areas.
- (11) The availability of other suitable sites for the junkyard.
- (12) The type of junk to be stored or deposited in the junkyard.
- (13) Any record the applicant has of convictions for larceny or receiving stolen property.

9) ISSUANCE OF PERMIT

- A. Upon approval of the junkyard plan and application, and payment of the fees, bonds and reimbursable costs due the municipality, the Planning Board shall endorse its approval upon a copy of the final junkyard plan and application.

F.) STANDARDS FOR JUNK YARDS

1. Location

- a. Junk Yards are permitted only in the Residential Agricultural (RA) District.
- b. No junk storage area shall be located within 500 feet from the following:
 1. Any adjoining property line.
 2. Any public park, church, educational facility, nursing home, public building or other place of public gathering.
 3. Any stream, lake, pond, wetland or other body of water.

2. Dimensional Requirements

- a. Minimum Lot Size: five (5) acres.
- b. Maximum Lot Size: fifteen (15) acres.
- c. Minimum Lot Width: One thousand three hundred (1300) feet.
- d. Front Setback: Two Hundred (200) feet

3. Fencing and Screening

- a. The applicant shall erect and maintain a fence that is eight (8) feet high, encloses the entire junkyard, contains a locking gate that is adequate to prohibit the entrance of children and others into the area of the activity or business, and

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contains within the fence all junk appliances, junk furniture, junk mobile homes, junk motor vehicles and materials originating from such items.

- b. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence would be made of wood or other materials sufficient to totally screen the junkyard from view of roadways or neighboring properties.

4. Fire Safety

- a. Inside, adjacent to and continuous with the fence or enclosure, one strip of land at least ten feet in width which shall be kept free of all dry grass, junk, plant growth, or other combustible material so as to provide a fire lane or break around the entire area where business activity is conducted.

G.) ENFORCEMENT

1. Authority to inspect

- A. The town's enforcement officer shall have and is hereby given the authority to examine and inspect from public property any collection of junk to determine whether a violation of this chapter has been committed or to determine the condition of any vehicle 'or parts or components thereof. The officer shall notify the property owner, in writing, and receive property owners' permission, prior to entering such property.

2. Enforcement Procedure.

- A. The enforcement officer upon detecting junk, shall serve written notice (order to remedy), either personally or by mail, on the person owning the parcel of property on which the same is located, ordering such person to remove the same or cause the same to be removed there from within 15 days of the date of such service. Such notice shall contain a description of the parcel of property, a statement as to the location thereon of the junk and a reference to this chapter and to the fact that the location of such junk on such parcel of property is in violation of this chapter. If such parcel of property is owned by more than one (1) person, personal service on any one (1) of such owners shall suffice; however, as to any owner not personally served with such notice or if no owner can be located upon whom to make personal service, the enforcement officer shall mail such notice to owners not personally served or to the owner and or all owners if no owner was personally served, by registered or certified mail to their or his last known address as shown on the latest completed assessment roll of the Town. In addition, the enforcement

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officer shall post conspicuously a copy of such notice on the parcel of property upon which said junk vehicle is located.

- B. At the expiration of 15 days after the service or mailing and posting of such notice, if such junk has not been removed, the enforcement officer is authorized to issue an appearance ticket or tickets for a violation or violations of this Chapter to recover penalties prescribed by Section 701-G.4 (Penalties for Offences) of this Chapter.

3. Alternate Enforcement Procedure.

In addition to any penalty or fine as provided in Section 701-G.4 hereof, or the remedy provided in Section G hereof, any junk may be removed from the premises upon which it is located in the following manner:

- A. The enforcement officer upon detecting junk, shall serve written notice, either personally or by mail, on the person owning the parcel of property on which the same is located, ordering such person to remove the same or cause the same to be removed there from within 15 days of the date of such service.

Such notice shall contain a legal description of the parcel of property, a statement as to the location thereon of all junk and a reference to this Chapter and to the fact that the location of such junk on such parcel of property is in violation of this Chapter.

If such parcel of property is owned by more than one (1) person, personal service on any one (1) of such owners shall suffice; however, as to any owner not personally served with such notice or if no owner can be located upon whom to make personal service, the enforcement officer shall mail such notice to owners not personally served or to the owner and or all owners if no owner was personally served, by registered or certified mail to their or his last known address as shown on the latest completed assessment roll of the Town. In addition, the enforcement officer shall post conspicuously a copy of such notice on the parcel of property upon which said junk vehicle is located.

- B. At the expiration of 15 days after the service or mailing and posting of such notice, if such junk has not been removed, the enforcement officer shall report such fact to the Town Board in writing. Such report shall cite the violation, the notices given as required hereunder and the failure to comply therewith and may include or refer to photographs of such junk and of the parcel of property upon which it is located.

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Such report shall be entered in the official minutes of the Town Board by the Town Clerk, and any such photographs shall be filed in the Town Clerk's Office. The Town Board shall thereafter hold a public hearing on 10 days prior notice published in the official newspaper of the Town and posted on the signboard of the Town. Such notice of hearing is to give the property owner and / or the owner of such junk vehicle an opportunity to be heard, and also for the Town Board to receive proposals for the removal of such junk. Notice of said hearing shall be served upon the owner(s) of such parcel of property by registered mail addressed to the address shown on the latest assessment roll of the Town and to such other address as the enforcement officer may reasonably believe to give appropriate notice.

- C. After the hearing, the Town Board may contract for the removal of such junk. Any expense to the Town in accomplishing the removal of such junk may be assessed by the Town Board on the real property from which said junk was removed, and the actual expense so assessed shall constitute a lien and charge upon the real property on which it is levied until paid or otherwise satisfied or discharged as other town charges.
 - D. Any junk vehicle found to have been abandoned in the town of violation of Section 1224 of the Vehicle and Traffic Law of the State of New York shall be removed and disposed of in the manner as provided in said Section 1224. The enforcement officer is authorized as the proper person to execute all notices and documents required to be given, mailed or filed with the Department of Motor Vehicles or any person.
 - E. Any junk or junk vehicle released to the town by its owner shall be disposed of per Town of Kendall Policy, Reference # 35-107, "Policy for the disposition of Property".
 - F. Any person, firm or corporation who shall resist or obstruct the duly authorized agents, servants, officers and employees of the Town of Kendall in the removal and disposal of junk, as provided in this chapter, shall be in violation of this chapter and subject to the fines and penalties provided herein.
4. Penalties for offenses.
- A. A violation of this chapter or any provision or part thereof is hereby declared to be a violation punishable per section 106 of the Town of Kendall Zoning Ordinance by a fine of up to \$250 for each violation and by imprisonment for up to 6 months, or by both such fine and imprisonment A violation of this chapter shall also subject

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the violator to a civil penalty of \$250 for each violation, less any criminal monetary fine which may have been imposed. Each junk vehicle or accumulation of junk that is abandoned, stored, left or located in violation of this chapter shall constitute a separate violation. Each week's continued violation shall constitute a separate and distinct violation.

5. Injunctive relief.

- A. In addition to the penalties set forth above, the town may commence an action in its own name against any person in any civil court of competent jurisdiction to seek an injunction to enforce compliance with this chapter. Such an action for injunctive relief may be independent of or a part of an action to collect the civil penalties as hereinabove provided.

H.) Construal of provisions.

- A. Nothing herein contained shall be interpreted as amending or abrogating the effect of the Zoning Ordinance or the Junkyard Ordinance of the Town of Kendall or any amendments to such ordinances.