

TOWN OF KENDALL
PLANNING BOARD
MEETING MINUTES

April 10, 2007 – 7:00 p.m.

CALL TO ORDER: Chairman Nelson called the meeting to order at 7:00 p.m.

ROLL CALL, MEMBERS:

Bob Nelson, chairperson	- present
Tom Cole	- present
Phil D'Agostino	- present
Walter Steffen	- present
Paul Gray	- present

ALSO PRESENT:

Scott Hardenbrook, Code Enforcement Officer
Donn Pritchard, Town Board member
Charles Skip Scroger, Town Board member
Marianne Wilson, secretary

APPROVAL OF MINUTES: Minutes from the March meeting were reviewed. Walt moved to accept the minutes as presented. Paul seconded. All in favor. Motion carried.

MET Towers – Final Draft of the Town Ordinance was distributed and discussed. Bob wants to present it to the Town Board this Thursday. Tom asked if the Board members felt there should be a stipulated minimum time period for MET Towers to be in place before wind turbines are installed. Discussion followed. Tom moved the Final Draft be accepted as written for presentation to the Town Board. Seconded by Paul. No further discussion. Passed by unanimous roll call vote.

Bob feels the Town of Murray's document is too generic. Paul says much is covered in their Site Plan Review. Bob asked if Scott prefers stipulations be presented up front in the Ordinance, or in the Site Plan Review. Scott prefers to have it up front. It was restated that Orleans County Planning Board recommends towns bill the wind energy company for the cost of rewriting the Master Plan. Town of Gaines charged \$10,000 for their rewrite.

Recessed for Public Hearings. All attendees were requested to sign in and state their property address.

PUBLIC HEARINGS – 7:30 p.m. Consideration of application 07SP01 for R Mike Zingler to convert an existing single family residence at 1667 West Kendall Road, tax map no. 31.-2-17, to a farm labor camp, pursuant to Article 7, Section 708 and related sections of the Kendall Town Ordinances. Dave Young, 1608 West Kendall Rd: States he is against this application. He thinks it will devalue his property, while his assessment just went up. He feels the migrant workforce is already taken care of, and with farmers converting to growing corn why would there be a need for a larger workforce.

Mary Fudge, 1652 West Kendall Rd: The public notice didn't give any details, no indication of how the place would be run. Most neighbors didn't receive a notice. They are against this application. These

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people are transients who don't take care of property. It is zoned as a single family home and there is no mention of how many occupants are planned. There have been shootings on the Kendall Rd in the past.

Tom Toal, 1638 West Kendall Rd: In agreement with Mary Fudge.

Katie VanDusen, 16136 Carr Rd: My property butts up directly to this property. I have 2 small children and am pregnant with my third. Dogs in the neighborhood have gotten into the garbage at that house. How many buildings will be going up. I am very against it. I am not comfortable with this proposal. There are usually issues with alcohol at labor camps. What happens to our property values. I am concerned with the safety of my children and my property. There was very little information provided on this.

Matt Kludt - I'm for it. There is no difference between the current population and the workforce Mike plans to bring in. The information about the shootings was false.

Mary Fudge - The shooting incident was in the newspaper.

Mike Zingler – I think I can address your concerns. I don't know if you were aware that I've had 3-4 people in there the last 3 years. We are in the process of remodeling the place right now, inside and out. It's going to look far better. The use of "They" sounds like fear and prejudice. They are people. They pick the food we eat in this country. The people staying in the house will be here only for the fall harvest; they'll be here under the H2-A program, undergoing government screening. They will be working up to 12 hours a day. They're coming here to work. Their main concern is to make a better way. We've never had a fight or any guns. They won't be carrying weapons. I'm putting a lot of money into this house. I don't think you've heard from the people I've had in there the last 3 years. There will be no personal vehicles.

Unknown spokesperson : How many occupants do you plan to have in the house?

Mike: Ten people from mid-August to early November. It will be inspected by the Department of Health (DOH).

Question: *unable to capture from recorder*

Mike: I need an intensive labor force during the harvest season.

Question: Will we have access to the background information on these people.

Chris VanDusen, 16136 Carr Rd: How are you going to fit 10 people in that house. It's only 1000 sf. We've had no problem with the people you've had in there. What about 5 years down the road when you want to put trailers on the lot; it's big enough to do that. Then what happens to my property. What advantage is there to changing the zoning on this house?

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Mike: Mobile homes are not allowed in Kendall. There is no room for another dwelling on the property. There will be many inspections by DOH and DOL. There's criteria for square footage. There are books of regulations and I'm following all the rules. It's all to code.

My labor needs are huge in the fall. I need to be able to

Chris Perrin, 1488 Norway Rd: I work for Mike. I've had a lot to do with this and the next hearing. The DOH determined the number of occupants; that's not a number we chose. There are many, many requirements we have to go through with Scott at the town level, and at the county level. They require 150sf of space per person. Even the window size is dictated.

Mr. VanDusen: Protecting my family and property is important to me. Background checks: Will we be privy to that information?

Mike: No, you will not be privy to that information. There are privacy laws. The H2-A program is a federal government program. They conduct the background checks. They can have no record. It's as good as you can get. You don't know if a sex offender is living next to you right now. It's as good a protection you can get anywhere.

Addressing the property value concern: Contrary to some of the comments made, it could be argued that having orchards nearby is an asset. People often comment how beautiful they look in bloom. One neighbor who is not at this meeting right now cited the farm as a selling point for her property. The orchards provide pleasure to the neighbors. The house is not going to take on a new appearance, nor change physically. The priority will be on bathing, cooking, and sleeping. They're going to have long work days. I met with the town tax assessor today and we reviewed trends on assessed values. Properties have recently increased in value adjacent to labor camps. The Scheik residence, for example, rose a full \$19,000 over its assessed value with 3 labor camps nearby.

In the last 2-3 years my fruit farm has had a shortage of labor. The DOL informed me that up to 80% of the work cards are invalid. There's been a huge loss of workers - some farms locally have lost their entire workforce in one day. There is an instant check system in place that validates social security cards but its very involved. I can't operate without a legal workforce. The only recourse is the federal H2-A program. Transportation and housing must be provided by me. This is an extremely high capital investment for me. The farm is extremely modern and poised for the long term. My farms grossed one million dollars last year. I pay large sums of money in school and local taxes. I provide 50-60 seasonal jobs plus full-time employees. With housing supplied by the farmer (*unable to capture from recorder*). I believe it is in the Master Plan to continue to encourage agriculture in this community. My intention is to house H2-A workers for the harvest season. The other 9 months it will not be occupied. It will be fully maintained as lived in. Due to the sizeable investment involved I have no intention of allowing either property to fall into disrepair.

Unknown spokesperson: This all sounds real good, what he's saying, but reality is I have no (*unable to capture from recorder*). What's it going to cost us? If they're not citizens of this country what's the cost

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to us? They're taking our social security. If you look at what's going on, people start coming here, then they see what's available and suddenly they're on welfare and taking advantage of the benefits. Nobody enforces the laws and regulations. Right now if you've got 4 people in there, our property value goes down just because it's zoned a labor camp. I'd rather see citizens of this country working here. In the future, how do we know what's going to happen. You can see the condition other labor camps are in. That's all I've got to say.

Mike: Social security is irrelevant. These people are coming up here under the H2-A program. If they're collecting social security, then perhaps they've earned it. They're checked at the border where they are provided a bus ticket that I buy them. Nobody is hitching a ride with them. They're coming by bus. I reference the Scheik property again: this was a fairly recent sale.

Mary Fudge: I am a real estate agent. All properties have gone up in value. They may have gone up more in value if the labor camps weren't there. You ask the assessor, all the property has grown in value.

Chairman Nelson closes the open forum and reads section 708 of the ordinance. There is no change in zoning. It is a special use permit for this dwelling. Nothing else is changing. Labor camps may operate only during the growing season except under special circumstances. Labor camps must continually comply with all local and state/county laws and regulations. That is the issue we're talking about tonight. We're getting off on some tangents.

Public Hearing – 7:45 pm for consideration of application 07SP02 by R Mike Zingler to convert an existing single family residence at 1488 Norway Rd, tax map no. 22.-1-18, to a farm labor camp, pursuant to Article 7, Section 708 and related sections of the Kendall Town Ordinances.

Dave Young, 1608 West Kendall Rd: *unable to capture from recorder*

Donn Pritchard with respect to both properties, one with 10 occupants and the other with 25 occupants. In the event the septic systems are not able to support the number of occupants, will port-a-johns be available options to Mike.

I understand other issues rise. I think we might open this up to some of the concerns that might be shut down by explaining the H2-A program

Darryl Byers, 1459 Norway Rd: Our property is bounded on two sides by Mike's farm. Chris Perrin's house, 1488 Norway Rd, is across the road from us. I know Mike is going to throw a lot of money into this. I'm sure if Mike could find American workers, he'd hire them. I'd rather see trees and tractors than housing tracts.

Roger McCleary, 1442 Norway Rd: I own the property north of Perrin's. Although I'm not dancing in the street over having a labor camp, we are happy Mike is involved. He keeps the farm in good shape. We've never had any problems with the existing labor force.

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Lindsay Booth, 1517 Norway Rd: I think Mike does an exceptional job of taking care of the farm. I don't have a problem with it.

Adeline Klafehn, 1563 Norway Rd: I'm not against Mike. He's a good farmer. He needs the help. I am concerned. Our assessments have gone sky high. As far as the migrant workforce goes, 25 in that house ... I'm not questioning that, what I am questioning is this camp in amongst our nice houses. I just wish it wouldn't happen.

Ginny Byers, 1459 Norway Rd: I guess these other people here don't know Mike's character. If Mike says he's going to do something, he does it. The workers go in and out. They go in early in the morning and come out late. We've never had a moment's unrest. I can't imagine any problem. I know Mike will keep the house up.

Paul Gray: On either property, Mike, are you using the basement?

Mike: No. We can't.

Tom Cole: Fire codes prohibit using any space without proper ceiling height and multiple exits. Regulations for migrants are more strict than they are for our own families.

Luther Klafehn, 1563 Norway Rd: I don't know why Mike can't build back from the road. My daughter was approached by one of these workers. I wish Mike the best of everything but if he's going to buy that house at over a \$100,000 - look at the plumbing he's got to put in that house for 25 people. I don't understand.

Bob Nelson: Mike, he has addressed something. Why would you rather purchase this house than build.

Mike: If I build, it would still need to be right there. Not getting this house will hopefully not prevent me from putting my labor force in the neighborhood.

Mike: Your neighbors don't have a background check.

Tom: Mike, isn't this a new program?

Mike: It's not new - it just hasn't been widely used by farmers. It has changed. The illegals are being run out if they don't have a valid identification card. We don't have a workforce.

Paul Gray: Do you review who they are yourself and pick and choose your workforce?

Mike: No. I have a connection I hope to initially use in Mexico to get started.

Bob Nelson: Is there any other farmer in Kendall using this program?

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Mike: In the area, there are Browns, Dean Brightly, I believe Kludts are moving toward it.

Bob asks if any board members have further questions.

Matt Kludt asks Mike if he has tried running any ads for local help?

Mike: With H2-A you are required to advertise before you can obtain workers through this program. We haven't advertised yet. I've advertised in the past. There have been no responses.

Bob: Any more questions?

Unknown spokesperson: When do we find out the decision?

Bob: Tonight, hopefully, we can come to some sort of agreement. We have 62 days by regulation to respond. We're going to try to do what we can tonight because Mike needs an answer.

Skip Scroger: I have no opinion really other than to say I probably have more experience with labor camps than anybody who hasn't been a farmer. I've been in law enforcement many years. I now work for homeland security, performing background checks. As such, I have access to the homeland website and I've seen the screening these workers will undergo. I've seen quality workers here. I know a family that grew up near Mike's farm. I hired the youngest of 13 children in that family. Their children have college educations. Probably nobody in this room ever heard of them. They're quality people. I think that's the kind of people Mike is looking for. This is not the labor camps from 40 years ago. I'm surrounded by the Kludt farms. I don't know how you'd know who's operating the equipment.

Bob Nelson: The public hearing is now closed. We'd like to have as much privacy as we can have for our deliberations. I can't ask you to go home, but we must deliberate here and we'd like to cut down on the distractions. People are welcome to stay; its still a public meeting. Mike and Chris we need you to stay.

1) 1667 West Kendall Rd. Reference SEC 708 Town of Kendall Ordinance. This has already gone to Orleans County because it is within 500 ft of the Carr Rd. It first went to the Zoning Board for a setback variance and was approved. Paul, a representative to the Orleans County Planning Board summation of county decision: Completed review of and recommended approvable with conditions. Basically the recommendation is applicant shall meet all applicable laws and ordinances. Off-street parking shall be as determined by the Kendall Planning Board. The second condition would be a concern if some workers in the future are housed who are not part of the H2-A program and would need their own transportation.

Bob asks Mike what is the term once signed with H2-A program.

Mike: Application must include start and end dates.

Bob: My question was referring to the Orleans County Planning Board condition, when you initially elected this labor program. How many seasons will this be applicable for?

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Mike: Until they reform border control, or the program, or a better program comes up. I must renew every year unless something changes with the laws.

Paul: Can you mix H2-A and noH2-A workers under this program.

Mike: No, and it's not my intention.

Bob: If we say we approve with conditions, you understand - H2-A is the best controlled of the programs out there - If we so choose, we may restrict you to that program. If you drop that program, you may have to come back before the board for re-application.

Mike: Unless the government adopts new laws in the future, it is my intention to go with the H2-A, unless something better comes along.

Bob: H2-A has been revamped every 5-6 years. We can't predict the future.

Mike: Basically, without the H2-A program we don't have access to a legal workforce. If I wasn't going to apply for the H2-A program, I would not be investing in this.

Paul: What countries will your workers be coming from?

Mike: Several countries are available. Our intentions are to get people from the country of Mexico.

Tom: Scott, how many labor camps do we currently have in Kendall? I know we approved one for Roberts a couple years ago.

Scott: I believe there are 5 that meet the county definition. There are 3-4 with fewer than 5 workers and don't meet that definition. There's a total of about 9 all together. Roberts' camp may become H2-A.

Unknown: Most others are grandfathered in before this ordinance went into effect. This is only the 2nd or 3rd application since the Special Permit process was put in place.

Scott: I used to work for Orleans County DOH in charge of labor camps. I inspected monthly or more often. There is a big difference between H2-A and non. There are 38 H2-A camps in Orleans County. They are mostly quiet, clean, and not disruptive.

Walt: The farmers can't find local laborers.

Unknown: Transportation must be provided by the farmer. A turn-around is needed so you won't be backing out onto the road.

Chris: We plan to buy 3-4 used 15-passenger vans versus buses. We'll be transporting them to the store.

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There will be no families, children, or women.

Scott: The DOH standards differ for families versus all men.

Unknown: What about visitors or visiting?

Mike: They aren't prisoners. I can't stop visitation but contacts will be limited by nature of the long work days and lack of transportation.

Bob: What about personal safety: is anyone required to speak English? Will they have a phone?

Mike: The law requires a telephone for access to 911. Emergency procedures must be posted. There is required training. I have bilingual workers at my farm now.

Scott: Fire codes require carbon monoxide and smoke detectors, extinguishers, proper heating.

Paul: It states that you can only operate during the growing season May 1 to November. What about the remainder of the year?

Mike: I haven't checked to see if I could rent on a temporary basis. I hadn't thought about it so I haven't explored the possibility. It will be set up dormitory style.

Scott: I see no problem with him renting it, though he won't have it set up for that type of living arrangement.

Paul: Would there be issues if we limit use to the growing season?

Mike: I'd rather not due to my investment. I don't intend to change crops so I don't foresee a change in the time period for use. It is a 3 year permit for H2-A program.

Bob: It is less than 2 acres on West Kendall Rd and 50 acres on Norway Rd. All items seem to have been covered. The set back variances have been approved by Zoning Board. There is no change in grading. No plans to change the existing structure. Sewage is existing and operable. Water is on the public system. No change in existing plantings or fences. Outdoor lighting changes?

Mike: Both entrances to the house have lighting, and the driveway. They are not disruptive to neighbors. There is no intention to use the garage at this time.

Tom moved the application be approved with these conditions: 1) Is for H2-A use only; 2) adequate parking/turn space be provided for transportation vehicles; 3) copies must be provided to Code Enforcement of all DOH and Orleans County/NYS documents. Motion seconded by Phil. Discussion: Mike would be required to come before the Board if he changes from H2-A program. The motion was read back. Walt states the leach field was inspected by DOH. Scott states there are no foreseeable issues; all seems to have been covered. Bob states that all issues within the Board's power have been

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covered. Paul states that Farm Labor Camps are approved within the town of Kendall. Land behind the house is actively farmed. It is all zoned RA. Passed by unanimous roll call vote. Approved.

1488 Norway Rd – Same conditions apply. The 10 ft setback variance has been approved by the Zoning Board. Majority of public attendees spoke favorably, most notably the immediate neighbors. Opposition seems to be from those residents further removed and who don't know Mike as well. Ron Smith was absent but relayed they hope the orchards are never removed. There is a small creek on the north border of the property: more drainage ditch than creek; a tributary of Bald Eagle Creek, per Scott. It is not controlled because it is not flowing year round. It can't support fish, thus it is not controlled by Orleans County or DEC. Property slopes to the north. There are no drainage issues. No wet spots. No grading changes proposed. No fencing, no culverts.

The height of the house is not stated on the plans presented. It is a 2 story with attic but Scott says is less than 35 ft. Chris says he is removing the pool when he moves out of the house. Leach fields are not shown in the plans. The septic system was redone in 1998 with two 500 gal. Tanks. DOH approved. Copies will be provided to Scott. DOH allows greater occupancy rate for Farm Labor Camps than for residential housing, as the system has off-season of non-use. It is not in use all day when occupants are at work. Water supply is shown on map. Will supply copy of DOH documentation. An old silo is to be torn down. Existing buffer area will remain. Outdoor lighting will be at 2 entrances only. Smith family is the closest neighbor across the road. Safety concerns: Scott says stairs must be fully enclosed – Mike and Chris should check with DOH on that regulation. Mike says there are ample windows upstairs with some opening onto a lower roof for emergency exit. There will also be a rope ladder. Scott says he is not normally involved in the inspection process as it is under Orleans County DOH control. Planning Board may wish to stipulate Scott also inspect and issue Certificate of Occupancy. He is inspecting 1667 West Kendall Rd under the building permit already issued. There is no building permit issued on this property yet. Few changes to be made.

Walt moved the application be approved with these conditions: 1) TOK CEO inspect and address building codes in terms of safety and for H2-A only; 2) Dated drawings be provided to the Planning Board showing location of well and septic. Include silo and pool with statement that both are to be removed. Show driveway and grading to north side, and height at less than 35 ft. Motion seconded by Phil. No further discussion. Passed unanimously by roll call vote. Approved.

Tom Cole states that his wife regularly walks the road and any situations that may arise should be promptly reported to Mike. Paul reiterates Mike's credibility.

EAGLE CREEK MARINA – Some documents received. Permits received. This is the regular, publicized meeting night – well known to Mr. Freemesser. If promises are kept, then this Board can help Mr. Freemesser. Donn says the Town Board firmly states Mr. Freemesser must “have all his ducks in a row”. Town Board wants action ASAP. It is imperative that we know there are no unresolved issues. Paul states the Planning Board needs Site Plans. Bob has communicated with Mr. Freemesser and his engineer, Wendy. Bob gave him one more chance to comply: at the next Planning Board meeting, or he will not be heard.

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TRAINING – Donn says Thursday night there will be a resolution on training requirements for Zoning and Planning Boards. No members of this Board have seen the requirements. Donn states he has not seen the document either. Town Board meeting on Thursday may be recessed to the 4th Thursday and training could be addressed at that time.

SCOTT HARDENBROOK – Nothing else new. Scott says SPDES permits are in for Eagle Creek – have waited since 1996 for the septic drawings. Final site plans to be presented at next meeting.

Phil moved the meeting be adjourned. Walt seconded. All in favor. Meeting adjourned at 9:30 p.m.

Respectfully submitted,

Marianne Wilson
Secretary, Planning Board