

TOWN OF KENDALL
TOWN BOARD MEETING
Tuesday, April 17, 2012, 7:30 P.M.

Supervisor Gaesser called the meeting to order at 7:30 pm, and led the Pledge of Allegiance.

ROLL CALL

Councilman Pritchard	present
Councilman Joseph	excused
Councilman Schuth	present
Councilwoman Szozda	present
Supervisor Gaesser	present

Also present, Attorney Sansone, Clerk Richardson, Planning Board Chairman Paul Gray, CEO Paul Hennekey, Legislator Rush, Highway Superintendent Warren Kruger, Nadine Hanlon, John Barrett, Dave Barrett, Jeff Conte, Charles D'Agostino, Michelle Werth, Karen Anderson, Blair Bobzin, Vince Visconte, Al and Bev Lofthouse, Mary Ellen Seaman, Joyce Henry, Wendy Young, Jeff Nelson, Tony Cammarata, Ken Longer, Jack Gillman

SUPERVISOR'S REMARKS

Audits – annual and State Comptroller's continue.

Attorneys from Hodgson Russ, LLC (attorneys for Troutburg project) met with Supervisor Gaesser and Chairman Gray.

A meeting with MCWA and school officials regarding water on the school road went well. The school has scheduled test pits to be dug on May 25th.

Bicentennial celebrations begin this month.

Many in attendance are interested in the resolution regarding Monroe County Water Authority. In 2006, a forty year lease was signed with MCWA by the Town Board. This was enacted and operation has been under Parts A and B of their contract. There is a requirement for Part C to be enacted, which amends their statute to operate full retail in the Town. There may be some misunderstanding of what this is about. This DOES NOT change the current lease. The Attorney for the Town has reviewed the lease contract thoroughly. If the Board should decide to break the lease it would take years and many thousands of dollars to try to do so. Last year, a bill was sponsored by Gandt to amend the MCWA (a public benefit corporation) statute. Supervisor Gaesser contacted Senator Maziarz and Assemblyman Hawley, requesting the bill be pulled because it was not due to home rule initiation by Kendall. It was pulled. It will be carried over to this session. It is not well written, and did not come from our representatives. The Town is requesting Senator Maziarz and Assemblyman Hawley to sponsor a well written bill to enact Part C of the contract. This should not affect current service, and it is the feeling of the majority of the Board that this will not diminish in any way the possibility of expansion of water within the Town. Many are without public water. Developing new water districts is a many-step process. It is cost-prohibitive without obtaining grants. Need must be established, income threshold must fall below limits, a grant must be acquired (a step which contains many phases), and after these have been accomplished, MCWA would be notified and the Authority's requirements would come into play. Ductile iron versus plastic pipe has been raised as an issue. There is a provision which allows plastic to be used if a significant cost savings is demonstrated. MCWA could then pay the difference to use ductile iron, or sign a waiver to use the plastic with the understanding that maintenance and repair would be the responsibility of the Town. Water District Six is an example of this. It is the opinion of a majority of the Town Board that this issue will not adversely affect the possibility of expansion of water service.

Town Board Meeting March 20, 2012 minutes were accepted as written at motion of Councilman Pritchard and second by Councilman Schuth; all ayes.

REPORTS OF COMMITTEES, BOARDS AND DEPARTMENT HEADS

Standing Committees

Public Safety/Emergency Services & Occupational Safety –Joseph, Chair

Buildings, & Grounds –Joseph, Chair

Information Services –Joseph, Chair

No reports

Highway –Gaesser, Chair

The bidding process for a used cab and chassis will begin, and the old truck will be taken to municipal auction.

Culture & Recreation –Pritchard, Chair

See Director Flow's report.

Planning, Zoning & Agriculture –Schuth, Chair

Community Relations –Schuth, Chair

Zoning Board did not have business in March.

Planning Board is meeting twice a month.

Bicentennial Opening Ceremony is April 28.

Memorial Day plans are in place. Ceremony will be held in Greenwood Cemetery.

Park gazebo is nearly complete.

Roadside clean-up, sponsored by Lions' club and Scouts is scheduled for April 28.

Human Resources and Ethics –Szozda, Chair

Employee Benefits –Szozda

No reports

Finance, Taxes & Special Districts –Gaesser, Chair

Audits continue

Orleans County Representative – Ken Rush

State Parks and Recreation will operate the boat launch at Point Breeze; light house brick-laying has begun; there will be concerts at the Marine Park this summer.

Boards

Planning Board – P. Gray, Chair

Troutburg site plans are being reviewed.

SEQR – awaiting responses from various agencies.

A list of concerns is being prepared by the Planning Board.

Supervisor Gaesser and Chairman Gray will meet with the Wegman Group.

Councilman Pritchard suggested the DEC concerns be incorporated into the list of concerns being prepared, so that one, comprehensive list be presented to the Wegman Group.

Zoning Board – K. Banker, Chair – no report

Department Heads

Assessor – G. Massey – no report

Code Enforcement – P. Hennekey

Building permits are increasing and inspections are being done.

The Marina has been making improvements, and the DEC is involved with the work at the shoreline; a permit has been issued for a sign; good progress.

Highway - W. Kruger

Spring work and mowing has begun. Shoulder work is scheduled. Supervisor Gaesser asked about the county roadwork on Kenmor Road. They will be delaying that project until at least next year. The drainage work should still be scheduled, however, with co-operation between the town and county.

Historian – J. Knapp – no report

Recreation – B. Flow - written report submitted

Town Clerk – A. Richardson – written report submitted

Town Justice - C. Lape & V. Maxon – written reports submitted

Supervisor – D. Gaesser – written report submitted

CORRESPONDENCE

Fox and Amato re. post-employment benefits calculations.

PUBLIC COMMENT

Supervisor Gaesser opened the floor to public comment.

Chuck D'Agostino asked what the option to going Monroe County Water Authority is.

Supervisor Gaesser explained that Kendall has been with the MCWA since 2006, and that would not be changed by tonight's resolution.

Councilwoman Szozda stated that she was opposed to enacting section C of the MCWA agreement, which has to do with retail sales. She thinks more local autonomy is maintained if section C is not enacted.

Councilman Pritchard stated that he was in favor of putting section C into place. He explained that under sections A and B alone, if an area was determined to be unwieldy to maintain, the cost of repairs and replacement could be placed on the users. Part C will obligate MCWA to incur those costs of improvements and upgrades.

Councilwoman Szozda said that MCWA could use Kendall's distribution lines to transfer water to other towns.

Supervisor Gaesser said that MCWA has demonstrated willingness to sign waivers when it means additional residents can be serviced. They have done so for Water District Six to be serviced through Murray, and recently with the Transit Road extension from Carlton.

Councilman Pritchard said using Kendall's lines if needed to reach other areas of the county would be beneficial, because mains would have to be run through currently non-serviced areas, at MCWA's expense. The current agreement states that MCWA has the option of taking over existing and new water lines in Kendall. If that were to happen, the affected customers are guaranteed the in-Monroe County rate, which is lower than Water District Six rates, and would be a positive thing.

Councilwoman Szozda requested more discussion on potential rates in different scenarios, and how Water District 5 could be affected by the Troutburg project, and wants the public to have a longer period of time to look over the feasibility study.

Highway Superintendent Kruger said Clarendon has an agreement to buy bulk water from MCWA, and quoted from the previously mentioned tabled legislation, which mentioned Clarendon. Supervisor Gaesser said the new legislation introduced would be specific to Kendall and well written. Highway Superintendent Kruger said the feasibility study had not been made public (clerk's note: the document has been a public record since received, and available for public inspection or copying), and tonight's action seems rushed. Supervisor Gaesser said it is not rushed, that this would be the last opportunity for the Board to act on this until 2013, due to the State Legislature's session schedule. Mr. Kruger said he has been told that the economic development group in the county indicated they might try to co-ordinate a county-wide co-operative effort to fund new water service. He expressed the belief that Orleans County's economic position could be weakened, and thinks a locally run water department is feasible.

Nadine Hanlon – asked if the water feasibility study could be published on the website. Mrs. Hanlon would like to see water expanded to all residents of Kendall, and urged the Board to keep water as a top priority. Mrs. Hanlon asked if the Attorney's answers to a list of questions posed by the Town Board are available. Attorney Sansone said they are not, as they fall under attorney-client privilege.

Mrs. Hanlon asked if someone building a new home could get out-of-district user privileges. Supervisor Gaesser said that has been done on occasion in past years. That question has not been broached in several years. Councilman Schuth said he has been in touch with MCWA regarding this, and they are willing to consider this. Regulations involve DEC participation, and that of other agencies, including the Dept. of Ag & Mkts in agricultural districts. A standardized process is being developed. There are currently two property owners looking into this. The Town Clerk does not have any applications filed as of yet.

Mrs. Hanlon asked about the MCWA regulations regarding ductile iron. Councilman Pritchard said the agreement does allow plastic to be used, but the town would then be responsible for maintenance. Supervisor Gaesser added that since most of our current water lines are plastic, and work well and require little maintenance, this is not of major concern.

Charles D'Agostino – asked about maintenance costs. Councilman Pritchard reiterated that an advantage to being under Part C, and its betterments and improvements section, is that the cost of these improvements would fall to MCWA.

Highway Superintendent Kruger – would like to see the resolution regarding Part C tabled until he has personally met with the Attorney for the Town. He would like to see Councilman Schuth abstain from this vote, because he may want to apply to be an out of district user in the future.

Charles D'Agostino – asked if local rule will be lost with the passage of the resolution. Answer: this resolution asks the State Legislature to amend MCWA's charter, specifically in regard to Kendall. The Kendall Town Board cannot amend this charter. This is up to the State Legislature. This resolution does not enact Part C; it requests our legislators to sponsor a bill to amend MCWA's statute, to enact Part C.

Mrs. Hanlon asked if Part C will prevent extension of water to currently unserviced residents. Answer: no

John Barrett – asked if the Part C prevents plastic being used. Board's answer: no

Councilman Pritchard outlined the first steps of the process to develop new water districts:

- 1) Surveys of need and interest must be distributed and completed and returned to town at a 99% return rate
- 2) Income threshold test
- 3) Quality and quantity of water determined to demonstrate need, density of users
- 4) Apply for grants, and award of grants
- 5) Then, at the plan drawing stage, MCWA would become involved

Blair Bobzin – asked if this is the first time this has been discussed. Answer: no, has been well discussed, and diligently examined for years. Most of these issues are not affected by Part C.

Karen Anderson – is concerned that West Kendall Road former dump may affect the safety and quality of the area wells. Also, the former dump in Murray may have chemical contamination concerns. Mrs. Anderson wants water now, and asks for the south end of West Kendall Road to be a top priority for a new district. Mrs. Anderson expressed that she was told that the wells in the area of the dumps were to be routinely tested. Supervisor Gaesser responded that if there are health concerns, the Board will certainly contact the Orleans County Department of Health, and the state agencies involved, to inquire as to what has been done, and the present state of this situation. Supervisor Gaesser said this Board has not been presented with his issue before, and will take this to the county on the residents' behalf.

Mr. Kruger asked why MCWA does not come to a public meeting. Supervisor Gaesser said it may be possible, but it has not been suggested.

Mrs. Hanlon asked if a town hall meeting could be co-ordinated for those on wells who are interested in public water, to help narrow the focus for expansion. The Board agreed this would be a good idea.

An unidentified speaker asked for clarification of the agreement as to creation of water districts. Answer: the creation and installation of water districts is up to the town. The agreement with MCWA addresses only the maintenance and administration of the districts.

Councilman Pritchard - Expanding water to more users is a separate issue from tonight's resolution, and many good ideas have been suggested tonight.

(Ty Whitehair – asked the Board if there is a contract with the Wegman Group, regarding engineering and attorney costs incurred as a result of the potential development of Troutburg. Supervisor Gaesser responded that this contract is a work in progress.)

An unidentified speaker asked if the process is in place to apply as an out-of-district user. The Board responded that the process is being worked on, and applications are available in the Clerk's office. Approval requires many agencies and steps.

Supervisor Gaesser stated that he believes Part C is advantageous to the current users, and will not adversely affect future growth of water service. There are other factors which can affect water expansion. The ability to obtain grants is hindered by the Marina loan default. The focus has been to get this issue resolved.

Jeff Nelson – West Kendall Road, was unaware when he built his home that a potentially hazardous waste site may be there. He is concerned. Supervisor Gaesser suggested getting Code Enforcement involved to contact the Orleans County Health Department to inquire about testing the water from various wells on

West Kendall Road. The residents agreed to this. Councilman Schuth agreed to contact the DEC and county as to the history of testing and register of concerns in the area near these former dumps.

Matt Kludt – asked Attorney Sansone if he has legal experience with creating water districts. Attorney Sansone said he has been a municipal attorney since 2001 for various towns and villages in multiple counties, with wide-ranging issues.

RESOLUTIONS

Councilman Pritchard made the following motion, seconded by Councilman Schuth:

RESOLUTION 51-0412 AUTHORIZING EXECUTION OF AGREEMENT TO EXPEND HIGHWAY MONEYS

WHEREAS, the Kendall Town Board has discussed the improvements and repairs necessary to town roadways in 2012 with the Town of Kendall Highway Superintendent, and,

WHEREAS, pursuant to those discussions, the parties have agreed to set aside the amount of \$292,363 for general repairs and to undertake the specific improvements set forth in the agreement attached; and,

WHEREAS, this agreement was negotiated and is to be executed in furtherance of the provisions of Section 284 of the New York State Highway Law; and,

WHEREAS, the Town Board has determined that it is in the best interest of the Town to authorize the execution of the attached agreement, and,

WHEREAS, based upon the discussions of the Town Board and Highway Superintendent, the execution of the agreement to spend town highway funds for repairs and improvements to Town of Kendall roads is hereby determined not to have a significant effect on the environment, so now,

Therefore, be it RESOLVED, that the Town Supervisor, Town Board members and Highway Superintendent be authorized to execute the attached Agreement to spend Town Highway Funds.

Supervisor Gaesser called for a vote, resulting in all ayes; motion carried.

Councilwoman Szozda made the following motion, seconded by Councilman Pritchard:

RESOLUTION 52-0412 AUTHORIZING SOLICITATION OF BIDS FOR (1) USED HEAVY-DUTY MOTOR TRUCK CAB AND CHASSIS WITH ALUMINUM DUMP BODY

BE IT HEREBY RESOLVED to authorize the Town Board to solicit bids for a heavy duty motor truck cab and chassis with aluminum dump body for the Kendall Highway Department; sealed bids to be accepted until 3:00 PM on the 8th day of May, 2012, at which time all sealed bids received shall be opened and read aloud.

It is further RESOLVED to authorize the Town Clerk to place the following legal “NOTICE TO BIDDERS” in the official newspaper.

NOTICE TO BIDDERS
(1) USED HEAVY DUTY MOTOR TRUCK CAB AND CHASSIS WITH ALUMINUM
DUMP BODY

TOWN OF KENDALL

PLEASE TAKE NOTICE, that the Town Board of the Town of Kendall, Orleans County, New York will receive sealed bids at the Office of the Town Clerk of the Town of Kendall, Kendall Town Hall, 1873 Kendall Road, Kendall, NY 14476, until 3:00 PM on the 8th day of May, 2012, at which time all sealed bids received shall be publicly opened and read aloud, for the purchase of a used heavy duty motor truck cab and chassis with aluminum dump body for use by the Town of Kendall Highway Department, upon the bid specifications prepared and on file with the Town Clerk of the Town of Kendall. All sealed bids shall be addressed to the Town Clerk, Town of Kendall, 1873 Kendall Road, Kendall, New York 14476, or be delivered in person to the Town Clerk during normal business hours, and shall bear the label "Used Cab and Chassis and Dump Body Bid". All bids received must contain a Non-Collusive Bid Certificate as required by the General Municipal Law and shall remain good and open and may not be withdrawn for a period of 45 days after the date of opening thereof. The Town Board of the Town of Kendall reserves the right to reject any and all bids and to waive any informality. A copy of the bid specifications and instructions to bidders is on file and available for inspection in the Office of the Town Clerk at the aforementioned address.

Supervisor Gaesser called for a vote, resulting in all ayes; motion carried.

Councilman Schuth made the following motion, seconded by Councilwoman Szozda:

**RESOLUTION 53-0412 AUTHORIZING THE HIGHWAY SUPERINTENDENT TO TAKE
THE 1986 MACK CAB AND CHASSIS AND DUMP BODY TO
MUNICIPAL AUCTION**

Be it RESOLVED to authorize the highway superintendent to take the 1986 Mac cab and chassis and dump body to municipal auction.

Councilman Pritchard made the following motion, seconded by Councilman Schuth:

**RESOLUTION 54-0412 REQUESTING THE INTERNATIONAL JOINT COMMISSION
TO REJECT ITS CURRENT PLANS FOR CONTROLLING THE
LEVELS OF LAKE ONTARIO UNDER THEIR PROPOSED BV7
PLAN**

WHEREAS, the International Joint Commission (IJC) has announced consideration of a plan that will replace the current regulation plan (58DD) that controls the water levels of Lake Ontario for their stated purpose of potentially providing more environmental benefits to the surrounding ecosystem; and,

WHEREAS, this new plan, called BV7, will remove the current range of operation that private and public property owners and business have relied on for the last 50 years; and,

WHEREAS, projected lake levels under the proposed plan will result in increased duration and frequency of extremely high and low water, imposing extensive damage to Lake Ontario shorelines; and,

WHEREAS, the IJC working group stated that the proposed lake levels are going to reduce recreational boating/sport fishing benefits by 25%, resulting in a devastating negative impact on those economics in Niagara and Orleans County; and

WHEREAS, this new plan removes all protections that exist in the current plan, replacing them with a plan that transfers prosperity from Niagara and Orleans counties to Hydropower (NYPS) and Commercial Navigation entities; and

WHEREAS, Niagara and Orleans county residents who own property or businesses along the Lake Ontario shore including its bays, ponds and embayments have voiced their concern about a proposed change in the lake levels that would result in significant damage to their properties; and

WHEREAS, removal of the current range of operation by Plan BV7 further hinders boating access when considered with the long-term lack of federal funding for maintenance dredging of our federal shallow draft harbors;

Now, therefore, be it RESOLVED that the Town of Kendall does herewith respectfully request the International Joint Commission reject its current plans for the BV7 Project; and

Be it further RESOLVED, the Town of Kendall recommends that the Commission enact an all-inclusive and thorough analysis on the potential economic damages that any future plans will have on tourism, recreation, business, and homeowners along the south shore of Lake Ontario (including harbors, rivers, and streams), specifically in Niagara and Orleans counties, where projected damage has already been identified as the most extreme; and

Be it further RESOLVED, the Town of Kendall recommends the Commission assess the amount of civil work and financial assistance required to mitigate the damage of any future plans, and identify funding sources available to offset said actions; and

Be it further RESOLVED, the Town of Kendall dutifully requests a formal response to this resolution by the International Joint Commission at their earliest convenience; and

Be it further RESOLVED, that the Town Clerk is instructed to send a copy of this resolution to the International Joint Commission, and that additional copies of this resolution be forwarded to Senator George D. Maziarz, Assemblyman Steve Hawley, the Orleans County Legislature, and all others deemed necessary and proper.

Supervisor Gaesser called for a vote, resulting in all ayes; motion carried.

Councilwoman Szozda motioned to have resolution 55-0412 tabled. There was no second to this motion.

Councilwoman Szozda moved to require Councilman Schuth to recuse himself from the vote on resolution 55-0412, because he has shown interest in applying as an out of district user if he eventually buys land not within a current district. There was no second to this motion.

Councilman Pritchard made motion to move to executive session, seconded by Councilman Schuth, citing discussion of personal information relating to the eligibility to cast vote; all ayes. Moved to executive session at 9:37 p.m. (Town Board members and Attorney Sansone)

At 9:45 p.m., the Board moved out of executive session at motion by Councilman Pritchard, and second by Councilman Schuth; all ayes. Supervisor Gaesser said that no decisions had been made during executive session.

Councilman Schuth said he would not recuse himself from the vote on Resolution 55-0412. There is no benefit to him personally whatsoever by anything contained in the resolution, nor in any part of any agreement with MCWA. He will consider the resolution when presented, and will vote.

Councilman Schuth made the following motion, seconded by Councilman Pritchard:

RESOLUTION 55-0412 REQUESTING AMENDMENT TO MCWA STATUTE

WHEREAS, in 2006 the Town Board of the Town of Kendall entered into a Water Lease Agreement with the Monroe County Water Authority to operate and maintain Kendall's water system for a period of (40) forty years, and,

WHEREAS, it was understood at that time that both the Monroe County Water Authority and the Town of Kendall desired to operate under Part C of the agreement (for retail service), but was constrained from doing so until the Monroe County Water Authority's enabling statute could be amended to include the Town of Kendall within the Authority's retail service area, and,

WHEREAS, the Monroe County Water Authority would operate under Parts A and B of that agreement until such time as the Monroe County Water Authority was successful in amending its enabling statute to include the Town of Kendall within the Authority's retail service area, and,

WHEREAS, the Town Board of the Town of Kendall desires to have the Monroe County Water Authority enabling statute amended to include the Town of Kendall within the Authority's retail service area,

Now, therefore, be it RESOLVED, to authorize Supervisor Gaesser to draft letters, on behalf of the Kendall Town Board to NYS Senator Maziarz and NYS Assemblyman Hawley, requesting that they request the NYS Legislature commence the process of introducing bills allowing an amendment to the Monroe County Water Authority statute, such amendment adding the Town of Kendall to the list of municipalities whose water systems can be leased and maintained by the Monroe County Water Authority.

Be it further RESOLVED to authorize Supervisor Gaesser to complete a resulting Home Rule Request Form to return to the NYS Assembly and NYS Senate offices.

Supervisor Gaesser called for a roll call vote, resulting in the following results:

Councilman Pritchard	aye
Councilman Schuth	aye
Councilwoman Szozda	no
Supervisor Gaesser	aye

Supervisor Gaesser declared the motion carried.

Supervisor Gaesser motioned the following be paid, as presented, seconded by Councilman Schuth; all ayes:

PAYMENT OF CLAIMS

General Fund	Abstract 4	\$12,615.85	Vouchers 178-201,203-208,210,211
Highway Fund	Abstract 4	\$26,402.06	Vouchers 179,189,212-252
Light District One	Abstract 4	\$496.13	Voucher 182
Light District Two	Abstract 4	\$292.39	Voucher 182
Light District Three	Abstract 4	\$161.58	Voucher 182
Water District 6	Abstract 4	<u>\$1,191.63</u>	Vouchers 185,202,209
		\$41,159.64	

OLD BUSINESS

Codification - Councilman Schuth will give his binder to Clerk Richardson to send to General Code.

Beechwood Chapel – Historian Knapp is seeking funding opportunities to restore the building. She has received an okay to dedicate as a veterans’ memorial, which may aid in grant procurement.

Highway Building Energy Upgrade Grant – work must be completed and paperwork submitted by July.

Water concerns – will be discussed at the May 1st workshop

With no further business being brought forth, Councilman Pritchard motioned for adjournment at 9:59 p.m., seconded by Councilman Schuth; all ayes; meeting adjourned.

Respectfully Submitted,

Amy Richardson
Kendall Town Clerk