

TOWN OF KENDALL  
PLANNING BOARD  
MEETING MINUTES

Tuesday, April 27, 2010 – 7:00 p.m.

CALL TO ORDER: Chairperson Paul Gray called the meeting to order at 7:05 p.m.

ROLL CALL:            Paul Gray, chair                    - present  
                         Tom Cole                                - present  
                         Jeff Conte                               - present  
                         Phil D'Agostino                       - present  
                         Joyce Henry                             - present

ALSO PRESENT:    Paul Hennekey, Deputy Code Enforcement Officer  
                         David Schuth, Town Board Representative  
                         Joyel Miesner, Recording Secretary  
                         Ellen Robinson, 2398 Norway Road  
                         Kevin Johnson, 23 Brookdale Road, Brockport  
                         Marne Johnson, 23 Brookdale Road, Brockport  
                         Charles Akey, 16176 Carr Road  
                         Kahtleen Akey, 16176 Carr Road  
                         Glenn Steed of Wind Tamer Turbines, 156 Court Street, Geneseo

APPROVAL OF MINUTES

Minutes from March 23, 2010 were reviewed. Phil moved to accept with corrections.  
Seconded by Tom.

PUBLIC HEARING FOR ELLEN ROBINSON

Paul Gray stated that a public hearing notice was put in the paper with out the knowledge and approval of the Planning Board. Paul Gray described the Robinson's farm and what activities took place on the farm. He said that the property was in the residential agricultural district. Ellen Robinson described what has happened on the farm since they purchased it in 1978. She said that in 1978 they raised and sold beef cows. They also breed and raised horses. She mentioned that they have continued to breed and raise horse. She said that in the 80's they boarded horses. In the early 90's she said they gave horse riding lessons and boarded horses sometimes. Paul Gray asked if they were advertising. Ellen responded, no we are not advertising. She said they do have a sign with the name of the farm on it and that the name is Lone Oak Stables. Ellen discussed giving horse riding lessons and the fire that burned down their barn. Ellen mentioned that two horses she owned and a horse that was being boarded died in the fire. Paul Gray described the process the Robinsons went through to rebuild their barn. He mentioned a Zoning Board hearing where the Zoning Board approved a zero variance for the Robinsons barn. Paul Gray said that he sent the minutes of the zoning hearing to the members of the Planning Board to review. Paul Gray discussed a letter sent to the Robinsons from Larry. This letter was regarding Larry's decision to allow housing of animals closer than 50 feet to a neighboring property line. Larry's decision was to allow animals to be housed in the Robinson's barn. Paul mentioned a conversation Ellen had with Larry about the need for a special use permit to provided trail rides, riding lessons and horse boarding on the

property. Ellen said she did not feel that she needed a special use permit, but that if Larry thought she did then she would comply. Paul Gray asked Larry if he thought that the Robinsons needed a special use permit at that time. Larry responded yes. Paul asked Larry to elaborate. Larry said that after the variance was given, with his understanding of the activities that took place on the Robinson's farm and seeing a sign that normally constitutes a business; he came of the conclusion that there was a business. He then concluded that Ellen should apply for an all-inclusive special use permit to be on the safe side. Paul said that Ellen completed a special use permit application on the 12<sup>th</sup> of April. Paul Gray described the procedure that should occur after a special use permit application is handed in while reading aloud the ordinance. He said that the Planning Board is to conduct a site plan review. He also said the Planning Board is to review, grant or deny special use permits. Paul Gray then described the procedure of the code enforcer. Paul Gray said that the code enforcer should refer the completed special use permit to the town Planning Board within 10 days after receiving a completed application. Paul Gray asked Larry if there was a completed application at this time. Larry said correct. Paul Gray then continued to describe the procedures to be performed by the panning board. He said that at the next regular or special meeting of the town Planning Board a public hearing date should be designated with a reasonable period of time not to exceed 62 days from the date the application was made or within 90 days if the application must go before the County Planning Board. Paul Gray said that the meeting this night was the next regular meeting since Ellen submitted the application for the special use permit. He said that it was not until this meeting that a public hearing could be scheduled. Paul Gray then described the process of notifying the applicant and the public of a hearing. He continued to describe the hearing procedures to be followed by the Planning Board and the procedures of site review conducted by the Planning Board. Paul Gray said that a pre-application conference might be held to review the basic site design and to determine the information needed to be submitted with the site plan. Paul Gray said that this was where they would start with Ellen that night. Tom asked that the public hearing be canceled. Tom said that there was some procedures missed and said that the application should have come to the Planning Board before a public hearing was scheduled. He made a motion to cancel the public hearing of the Robinson application for a special use permit and in place of the hearing have a meeting to determine if a special use permit is needed. Joyce seconded the motion. Paul Gray called for a roll call vote, with the following results:

Joyce Henry – Aye

Tom Cole – Aye

Paul Gray – Aye

Phil D'Agostino – Aye

Jeff Conte – Aye

Tom asked Larry what type of business the Robinson's were running that needed a special use permit. Larry said he was initially focused on the boarding horses and the collecting of monies. He said those concerns were followed by concerns about the training and the rides. Tom asked Larry if he could find anything in the ordinance that the Robinson's complied with. Larry said not at the time. Larry followed this by saying that since his decision he has worked with the applicant and that now his position was that the Robinson's would not need to apply for special use permit for any of the activities they wish to perform. Tom then asked if the Robinson's qualified as rural agricultural. Larry said yes. Larry said that Kevin Johnson the Robinson's attorney had brought to his

attention that the definition of riding stables in the Kendall code also covered some animal housing. Larry stated that he had to concur that the procedure was not followed and took full responsibility for the handling of the situation. Tom stated that Larry had done what was previously done in the past to try to move things along as quickly as possible for applicants and that it was not done intentionally. Paul Gray then described what was permitted in the residential agricultural district. He mentioned agro and agricultural businesses, one and two family dwellings, home occupations, riding stables, and daycares. Paul Gray said that in the existing ordinance, agricultural business and riding stables were permitted uses in the town of Kendall. Paul Gray gave the ordinance's definition of riding stable as any uses housing animal, livestock, such as horses and providing such livestock to the public for riding on a pay per use or fixed fee base. Paul stated that trail riding falls into the definition of riding stables. Ellen asked if that covered the boarding. Paul Gray said yes. Paul Gray asked Larry if he had any further concerns. Larry said no and that for documentation purposes he would send a letter from his office documenting all of the uses allowed for the property. Kevin Johnson requested that the minutes show that the riding and boarding of horses on RA land is permitted under the riding stable definition. Tom Cole made a motion stating that the Robinson's residence is in a RA district and that they qualify under three permitted uses in section 509, agricultural businesses, agro businesses and riding stables. He stated that section 509 should cover the boarding of horses for hire, riding classes for hire, growing of hay and selling of hay. The motion was seconded by Phil.

Paul Gray called for a roll call vote, with the following results:

Joyce Henry – Aye

Tom Cole – Aye

Paul Gray – Aye

Phil D'Agostino – Aye

Jeff Conte – Aye

Paul Gray gave the option for Ellen to rescind the application for the special use permit. Ellen said she did not want to go further with the application. Tom asked if she paid a fee. Ellen said yes I did. Larry said the fee would be returned.

## RESIDENTIAL WIND ENERGY SYSTEM

Glenn passed out updated engineered drawings of the windmill that was being proposed for the Akey's property. Tom distributed a worksheet used by Paul Gray and Larry to identify the potential need for windmill variances. Paul Gray stated that he and Larry walked the potential site for the Akey's windmill on the April 6, 2010. He said that he and Larry meet with Glenn and the Akey's on April 8, 2010 and discussed concerns about the project. Paul Gray said that Glenn offered a modification to the existing system that changed the calculations slightly on the sheet used. He also said that the number of requirements needed for the site was not really affected by the modification. Paul Gray began reading through the items that must be met for a resident of Kendall to install a wind energy system. Paul Gray stated that the Akey's property was located in the rural agricultural district. He stated that the Akey's own 1.55 acres. He said that a minimum of two acres was required and that the Akey's did not meet the land requirements of the ordinance. Paul Gray said that the zoning required a height of less than 65 feet. He said that with the revised system height of 30 feet 8 inches the system met the requirements. Paul Gray said the ground clearance of the rotary blade was 26 feet 8 inches and did not meet the minimum requirement of 35 feet. Glenn mentioned that the blades were

shrouded and that in their opinion the shrouded blades made the unit safer. He said that he hoped it would be taken into consideration that the blades are encased in steel and aluminum. Paul Gray said that the ordinance required the maximum rated output capacity of a generator be 30 kW. He stated that the proposed design had a maximum output of 3.5 kW and met the requirements. Paul Gray said the required fall zone radius of the unit was 58 feet 6 inches. He then discussed the distance the fall zone was from the side and rear property lines. Paul said that the original map showed a distance of 40 feet from the north and west property lines. Glenn said correct. Paul Gray said that neither of those distances met the ordinance. Glenn stated that at the meeting on April 8<sup>th</sup> a discussion took place about the willingness to move the unit further in to get a 100% fall zone radius. Glenn said it could not go much farther in on the property without having to remove a tree. Glenn said he thought 60 feet would give a 100% fall zone radius. Paul Gray stated that the minimum distance required for a tower to be placed from a property line was to be the fall zone radius plus a 50-foot setback. Paul Gray calculated the distance to be 108 and ½ feet. Paul Gray explained that the fall zone requirement would still not be met by the changes proposed. Glenn said that the unit was a soundly engineered and a shrouded structure that would not discharge a blade and he hoped there could be some considerations made. Tom asked if there was data to support the safety claim. Glenn said that there has not been any destructive testing on the unit. Glenn said that in theory if the unit was to topple that the shroud would crush the blades preventing them from ejecting. Paul Gray continued reading through the ordinance requirements. Paul Gray said the tower must be 500 feet away from the nearest residence and that the nearest residence was estimated to be 265 feet away from the unit. Paul Gray passed around a Bing map of the Akey's property displaying the distance from the neighboring property. Paul discussed the map. Paul Gray said that requirement concerning the lowest part of the rotor tip above the surrounding trees or structures was conditional on a manufacturer statement. If the manufacture could say the system could meet something lower structurally the Planning Board would take that into consideration. Glenn stated that it was inherent in unit's design. Paul Gray said the board would need something in writing stating that the unit would still hold up in high wind conditions despite turbulence created by surrounding trees. Glenn asked if the engineering test data was sufficient. Paul said yes but the data would need to be reviewed. Glenn said he was a little confused about where the town was going and that he wanted to make sure that the town was not saying the unit could not be too tall or too short. He stated that Wind Tamer was trying to bring in a wind energy system that would be beneficial for the resident, take pressure off of the grid, and not be an eyesore for the neighbors. Glenn discussed examples of where the units were not visible by surrounding neighbors. Glenn said he wanted it to be understood what the product was and why it was designed at a lower height. Paul said it needed to be determined if the fall zone was free from obstructions. Tom asked Glenn if he knew if the area was free from obstructions. Glenn said that at 60 feet from the line branch removal and pruning of a tree on the property would need to be done. Tom asked if there were any structures in the way. Glenn said that at that point the unit would still be clear of any structures. Larry asked about a barn on the property. Glenn said he would have to verify the measurement from the barn, but believed tower would be clear of it. Paul Gray said that the sound pressure level in dBA measured 25 dBA and was in compliance with the ordinance requirement of less than 45 dBA. Joyce asked if there would be a public zoning hearing for the required variance so that neighbors could be heard from. Tom responded and said the Akey's would need seven variances and each

variance would need a public hearing. Paul Gray said the cases would also need to be heard by the County Planning Board because the Akey' property is on a county road. Tom explained that in order to change the ordinance the Town Board would need to be petitioned. Glenn said that he and the Akey's were open to any suggestions that the town may have about placement and height variations. Tom asked if there was an option of acquiring more land. Mr. Akey said he had considered it. Discussion took place about purchasing neighboring land. Glenn gave different scenarios of placing a windmill on a 300-foot by 300-foot (just over two acres) lot. Glenn then gave different scenarios of placing a windmill on a 400-foot by 400-foot lot. Glenn stated that it was impossible to place a windmill on a two-acre piece of property. He said that the way the law was written that it was excluding wind energy except on very large pieces of property. Discussion continued about the different possibilities of placing a windmill on different lot sizes. Tom asked if Glenn knew other town's guidelines for wind energy. Glenn said the restrictions varied. Discussion took place about other town's guidelines and whether or not Wind Tamers were able to install windmills. Paul Gray stated that the Zoning Board would determine if a variance would be granted and that it was not the Planning Board's responsibility. Paul Gray described the process the Zoning Board would go through when determining whether or not to grant a variance. Mr. Akey asked if the board had heard of any complaints about the project from his neighbors. Paul said no, because we have not had a public hearing. Paul Gray said that if an application for a windmill on the Akey's property was submitted, it would be denied because it does not meet the zoning ordinance requirements. Paul Gray said that the board would at this point refer the Akey's to the code enforcer to begin an application. He said that the Akey's would need to get a site plan if they were to go before the Zoning Board and the county Planning Board. Glenn asked if the next course of action would be to talk with Larry. Paul Gray said yes.

#### TOWN BOARD REMARKS

Dave advised that there should be more communication between the Zoning Board, Planning Board and Code Enforcement Office. Dave said the Town Board had received comments back from the attorney regarding the junk law regulations and storage container regulations. He said Paul Gray and the board should review and discuss the comments from the attorney. Copies of the regulations with the attorney's comments were passed out to the board. Dave discussed an upcoming zoning hearing that is to take place May 11, 2010. Donald Ward would like to construct a garage. Discussion occurred about the location of the property and it's proximity to Sandy Creek.

#### REPORT FROM CODE ENFORCEMENT

Larry thanked Paul Gray for all the time and effort he has put in on working on the Planning Board. Larry agreed with Dave's comments about better communication between the Zoning Board, the Planning Board and the Code Enforcement Office. Paul stated that very few special use permits have been issued in Kendall. He then discussed previous special use permits that were issued. He discussed the process of how a special use permit is obtained. Larry said that people are calling and asking about obtaining permits. Larry discussed how he and Paul Hennekey deal with resident want to apply for a variance.

## CPB REPORT

Phil said that the County Planning Board completed 42 referral actions in 2009, 51 in 2008 and 31 in 2007. He stated that the CPB approved the Town of Gains exemptions for certain minor land use actions. Phil said the CPB discussed the hamlet zoning tax provision for camping unit recreation vehicles in Yates. The law now states that a camper can be on the site for 30 days. The owners of the property would like the law to be changed and state that campers could remain from May 1<sup>st</sup> to September 30<sup>th</sup>. The CPB denied the request. The CPB approved that an 18-acre addition could be to the Intergrow greenhouse on Route 98. The CPB approved that the Gains cold storage on route 104 could place an addition on their larger building and could build a smaller building. The CPB approved the expansion of the Nesbitt drive business. Paul Gray noted that the CPB minutes could be accessed via the Internet using a password. He discussed a commercial property in Medina that wished to refurbish and expand, but could not due to an ordinance change in 2003.

## TOWN ATTORNEY FEEDBACK ON JUNK YARD REGULATIONS

Paul pointed out the attorney's comments and question marks through out the document. Paul Gray stated that at the attorney said the document was very good. Dave said he would contact the attorney to find out if the comments on the papers could be clarified and expanded upon. Dave said the Planning Board should review the document and make comments. Discussion took place about the next step for Planning Board and the Town Board.

## MORATORIUM ON STRUCTURES

Bruce Newell sent Paul Gray a copy of Webster's waterfront zoning code. Paul Gray gave an overview of the information and said he would forward the email to the board members. Paul mentioned documents that Larry had given him and said that he would look them over.

## WORK SESSION

Tuesday May 11, 2010 at 6:00 pm

## NEXT MEETING

Tuesday May 25, 2010 at 7:00 pm

ADJOURNMENT: Phil motioned to adjure. Seconded by Joyce. All in favor. Adjourned at 9:10 pm.

Respectfully submitted,

Joyel Miesner  
Recording Secretary