

TOWN OF KENDALL
RECESSED TOWN BOARD MEETING
Thursday, June 25, 2009 7:30 P.M.

Supervisor Gillman reconvened the meeting at 7:43 p.m.

ROLL CALL

Councilman Gaesser	present
Councilman Joseph	present
Councilman Schuth	present
Councilwoman Szozda	present
Supervisor Gillman	present

Also present, Wendy and David Balka, Tonya and Louie Lustumbo, Al and Bev Lofthouse, Pat Condo, Paul Cocuzzi, Mary Ellen and Stephen Seaman, Donald Pritchard, Rich Miller, Joyce Henry, Linda and Roger Klimek, Sharon and Tony Cammarata, Diane and Roger McNally, Mr. and Mrs. Clark Lindsay, Jim Freemesser

Councilman Schuth made a motion to accept the following, seconded by Councilman Gaesser; all ayes:
Town Board Meeting – May 14, 2009
Recessed Town Board Meeting – May 28, 2009

CORRESPONDENCE

Councilman Joseph thanked resident Wendy Balka for the letter sent listing concerns about fireworks permitting procedures. Councilman Joseph researched the areas of concern, including traffic impact, role of Code Enforcement, proper diagrams and descriptions, qualifications for discharge of fireworks, jurisdictional responsibilities, disposal of fireworks, “fallout” rules, and current regulations. The application and approval process will be updated.

PUBLIC PARTICIPATION

Clark Lindsay, Lakeland Beach – asked if the letter from Mrs. Balka was for or opposed to fireworks. Mrs. Balka stated it was neither for nor against, but simply brought up safety and property concerns. A copy of the letter can be requested through the F.O.I.L. process.

Roger Klimek, Lakeland Beach – asked when the ECM’s fireworks application will be approved or denied. Supervisor Gillman answered, “tonight”.

Wendy Balka, Lakeland Beach – asked if restroom facilities will be available.

Supervisor Gillman stated this would be discussed at the time of the resolution.

Ms. Balka asked who would be ensuring the 500 foot setback on the east side property. Can the town tell a property owner how far he must stay away on his own property?

Councilman Gaesser stated that in Penal Law, the setback is 200 feet; on Kendall's permit, it states a 500 feet setback, and asked Attorney Leone if the town can waive its more stringent setback.

Attorney Leone responded that the town CAN waive the 500 feet.

Councilman Gaesser asked if the town has a right to restrict a private property owner within the setback restriction.

Attorney Leone responded that he believes the town cannot.

Mrs. Balka corrected an error in the date on the proposed resolution, and asked if a rain date had been set.

Councilman Gaesser stated that in the new paperwork, a rain date was set.

Louis Lustumbo, Kendall Road – stated that he has provided parking for approximately 200 cars each year for the fireworks show, and has not had an issue, and has not ever heard of safety issues in the 15 years Eagle Creek Marina has provided the show. He is very supportive of the fireworks display being approved.

Rich Miller, Lakeland Beach – asked if all the discussed measures can be met in time for the show to be approved.

Councilman Joseph responded that all the issues regarding the permit will be bluntly explained, as well as the steps taken to try to assure compliance. This issue has been taken very seriously, keeping the law in mind.

Mr. Miller shared his analogy that this process seems to be “killing a gnat with a sledgehammer.” Although the first concern needs to be safety, the process seems like “overkill”, but commended the Board for its job.

Mr. Lindsay – asked how long the regulations regarding fireworks have been in place.

Councilman Joseph responded that these regulations change over time. 2007 brought new, more restrictive rules. When the Kendall permit system was put into place, it met and exceeded the laws at the time. Compliance to current statutes is necessary.

Code Enforcement Officer Gursslin added that the Codes change at the state level every two to three years.

Mr. Lindsay asked why now is the time to have a more stringent standard.

Councilman Joseph responded that as issues are brought to the Board's attention, it is its responsibility to research and study the laws and policies pertaining to those issues.

Mr. Lindsay asked if all applicants go through the same process.

Councilman Joseph responded that the permit process will change for next year. Being charged with the safety of the Town of Kendall is a responsibility not taken lightly, and the new process will take into account laws, NYS standards and their references. All applicants will follow the same protocol, which will be clear and easy to follow.

Tonya Lustumbo, Kendall Road – recalled that new laws went into effect after “9-11”, and was aware that Mr. Freemesser changed the way he did things because of those law changes. The crowds need only be accommodated for four hours, and she sees the fireworks as a positive event for the community.

RESOLUTIONS

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

RESOLUTION 69-609 EAGLE CREEK MARINA FIREWORKS DISPLAY PERMIT

Whereas the Eagle Creek Marina has submitted an application for a permit for public display of fireworks to the Kendall Town Clerk and Town Board,

Be it resolved that the Kendall Town Board authorizes the Kendall Town Clerk to issue a Public Display of Fireworks Permit pursuant to 405.00(2) of the Penal Law of the State of New York, to the Eagle Creek Marina for Friday, July 3rd at 9:45 p.m.

Discussion:

Councilmen Gaesser and Joseph outlined the timeframe of events regarding this application.

June 11 – Town Board meeting, at which the resolution was tabled

June 15 – meeting with Mr. Freemesser

June 15 – letter out to Mr. Freemesser, listing concerns:

- Insurance policy stating coverage for fireworks discharge needed
- U.S. Coast Guard letter including July date necessary
- Updated map needed, detailing distances
- Valid, as of requested date, permit to buy, transport, and store fireworks, as well as information about where the fireworks magazines will be stored
- Notifications with acknowledgements to Kendall Fire Department, Orleans County Sheriffs' Department, Orleans County Auxiliary Police, Emergency Management Office, NYS Police, Hamlin Beach State Park and NYS Park police, to address issues of concern
- Address areas of concern with Lakeland Beach residents

June 20 – follow-up call from Board to Mr. Freemesser regarding letter; set date for meeting to review information, and requested all information be provided by June 23rd.

June 24 – call received from Mr. Freemesser to Board, stating that insurance information had been verbally received. Councilmen Gaesser and

Joseph and met with Mr. Freemesser. A phone call to the insurance company by Councilman Joseph led to a reply on the 25th, that they do not consider fireworks a normal part of the insured's business exposure, but they agreed to provide coverage under general liability, and they would endorse a policy to show coverage for bodily injury and property damage. Councilman Joseph spent two hours obtaining this information, which was the responsibility of Mr. Freemesser.

Councilman Gaesser interjected that when there had been no acknowledgement from any law enforcement agency as of the 24th, he asked Mr. Freemesser how many officers would be on site. Mr. Freemesser said he had replied approximately 25 fire police would be present.

June 25 - Councilman Gaesser contacted the Chief Deputy of the Orleans County Sheriffs' Department, who put an appeal in, at Councilman Gaesser's request, for a patrol car, two deputies, and five auxiliary police. This should have been a responsibility of Mr. Freemesser. Councilman Joseph said that an updated map had not been provided, and is not complete. Last minute requests by Councilmen Joseph and Gaesser were the efforts which resulted in necessary information and services being provided.

Mr. Freemesser stated that his application was identical to last year's, which was approved without delay.

Councilman Joseph stated that the application should not have been approved last year. This year, the Board is making its determination based on research of the law. The Board has worked hard to help facilitate compliance, and does not feel that Eagle Creek Marina has taken this situation seriously, or made effort at communicating properly with the board to seek assistance. Nine days have passed since the meeting where compliance issues were noted, and signed by Mr. Freemesser.

Councilman Gaesser expressed disappointment in the lack of detail, lack of documentation, and lack of timeliness in submission of the necessary paperwork. The board gave ample time for the requests to have been addressed. Councilman Gaesser offered to help in obtaining acknowledgments from emergency service departments; no request was made by Mr. Freemesser for help.

Mr. Freemesser stated that he has never received replies from agencies, and that he feels he has provided all the requested information requested.

Councilman Gaesser responded that there were no acknowledgements from emergency services, no proof of adequate insurance coverage, an incorrectly updated map received one day before this meeting, and the efforts made by the council members have been extensive.

Councilman Joseph explained that the application could not be approved at the June 11th meeting, because it was lacking in so many areas. The original application did not include a valid, as of requested date, license to buy, transport and store fireworks; to have approved that application would have been illegal. Councilman Joseph asked each member of the Board if they had been asked for help by Mr. Freemesser – none had.

Supervisor Gillman asked for a list of any current omissions.

Councilman Joseph said the site plan is not in compliance with the Penal Law. It does not show the trees.

Councilman Gaesser stated that the board was not informed in adequate time to be able to assist in this. The Board showed great effort, beyond its responsibility, to bring ECM into compliance in its application; it is not in compliance of the law, and the Board is obligated to uphold the law.

Councilman Joseph stated that he and Councilman Gaesser have invested 30+ hours in this process, trying to help meet the law. An onsite inspection by Councilman Joseph and Code Enforcement Deputy Hennekey was the first indication of the issue with the trees. Had there been communication earlier from Mr. Freemesser problems could have been resolved.

Councilwoman Szozda asked Mr. Hennekey for his findings from the on-site inspection. Mr. Hennekey responded that barricades for spectators complied with the Penal Code; there was a problem with the trees in proximity to the launch site; marking of firelanes, number of outhouses, and issues of safety barricades were not complete, because without a boat being provided, a thorough inspection would require trespass onto private property.

Mr. Freemesser said he did provide an improved map, as requested.

Councilman Joseph stated the submission is in violation of three points of Penal Law 405, and these have been discussed with Mr. Freemesser.

Mr. Freemesser asked if all the violations have to do with trees. Councilman Joseph answered yes, and the law had been provided. The Town Board has worked beyond its duty to help and work with Mr. Freemesser. Mr. Freemesser explained that the trees should not pose an issue, because the fireworks are discharged over the lake, away from the trees. Councilman Joseph said it still violates the law, and asked for legal counsel..

Attorney Leone said that this is the Board's "discretionary decision". If the Board members feel the request is out of compliance with the law, they certainly should consider that. Councilman Joseph asked if they were to approve the application, knowing it is non-compliant with the law, would it open the town to liability in the event of a mishap. Attorney Leone said, "the town is not liable if Mr. Freemaster (sic) violates the law. This town cannot waive New York State law."

Councilman Gaesser asked if issuing the permit, knowing that is in violation of the law, is, in itself, a violation of the law. Attorney Leone replied, "No. If you are asking me if voting yes on this permit is violating New York State Penal Law, the answer is no. However, if you believe this application is out of compliance with the New York State Penal Law, you can vote no, and that is a legitimate reason to vote no. There are two different issues."

Mr. Freemesser offered a new (3rd) map. Councilman Joseph stated it has the same issues. Councilman Gaesser said that it is the responsibility of the applicant to know the law.

Councilwoman Szozda asked if there would be portable toilets on site. Mr. Freemesser said there would be two.

Mr. Freemesser said that he had talked to all the police departments, but then was asked for "letters" (documentation). Mr. Freemesser presented the Board with a copy of the Kendall Fire

Department application, which was approved, which was lacking much of the information being required for Mr. Freemesser's application.

Supervisor Gillman closed discussion, and at the request of Councilman Gaesser, asked for a roll call vote, with the following results:

Councilman Gaesser	no
Councilman Joseph	no
Councilman Schuth	no
Councilwoman Szozda	yes
Supervisor Gillman	abstain

Supervisor Gillman was pressed to vote by Councilmen Joseph and Gaesser, but continued with abstention. The motion was defeated.

An unidentified voice from the audience expressed that he felt this was selective application of the law. There were several people talking at once. Supervisor Gillman halted the commotion.

Councilman Joseph made the following motion, seconded by Councilman Gaesser:

RESOLUTION 70-609 AMENDING RESOLUTION 37-109 TOWN OF KENDALL MEDICAL BENEFITS POLICY

Resolved, to adopt the following proposed changes effective July 1, 2009 to the Town of Kendall Medical Policy.

Change:

Section 1 - Definitions

Benchmark Medical Plan – is the medical plan(s) and subsequent cost of the medical plan the Town Board selects to offer to eligible elected officials and employees as set forth in this policy. The Benchmark Plan is Preferred Care's EPO 2 Plan.

- Family Plan \$782.59 per month
- Two Person Plan \$661.44 per month
- Single \$287.59 per month

Any employee wishing to upgrade their plan to EPO1 may do so at their own expense. Payments are to be made by payroll deduction.

To now read:

Section 1 - Definitions

Benchmark Medical Plan – is the medical plan(s) and subsequent cost of the medical plan the Town Board selects to offer to eligible elected officials and employees as set forth in this policy. The Benchmark Plan is **MVP's** EPO 2 Plan.

- Family Plan **\$824.41** per month
- Two Person Plan **\$696.70** per month
- Single **\$302.92** per month

Any employee wishing to upgrade their plan to EPO1 may do so at their own expense. Payments are to be made by payroll deduction.

Change:

Section 3 – Retirement

C.) Full time employees, full time elected officials hired after January 1, 2009 and their widow/widower: The Town of Kendall will pay medical benefits for retirees and their widow/widower as specified in Table 3.2. Dental coverage is not provided. The balance, if any, is to be paid by the retiree or their widow/widower. To be qualified for healthcare benefits upon retiring from the Town of Kendall full time employees and full time elected officials must fulfill the following requirements:

1. The employee must have served a minimum of twenty (20) years of active full time employment with the Town of Kendall preceding retirement.
2. The member or their widow/widower is not eligible for group medical insurance coverage through another employer.
3. Any retiring employees meeting the above requirements, whether they are current participants in the Town’s medical health plans or are planning to join the Town’s medical health plans, are eligible. Retired employees that are eligible for one of the Medicare Plans such as Preferred Care Gold are required to join that health plan.

To now read:

Section 3 – Retirement

Paragraph – C

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3. Any retiring employees meeting the above requirements, whether they are current participants in the Town’s medical health plans or are planning to join the Town’s medical health plans, are eligible. Retired employees that are eligible for one of the Medicare Plans such as **MVP** Gold are required to join that health plan.

Supervisor Gillman called for a vote, which resulted in all ayes; motion carried.

OLD BUSINESS

Hamlin-Kendall Water District unresolved issues - no update

Cemetery Trusts – no update

Banner Beach Road Dedication – Supervisor Gillman asked for a motion to call an executive session, to discuss possible pending litigation regarding Banner Beach Road. Councilman Gaesser asked how long the session would last, and whether it would behoove the interested Banner Beach residents to remain for the scheduled workshop, and then made motion to move to executive session, seconded by Councilman Schuth. All ayes, and executive session called at 9:07 p.m. The Highway Superintendent and Town Clerk were invited to stay.
Meeting was called back to order at 9:29 p.m.

Councilman Gaesser moved for adjournment, seconded by Councilman Schuth; all ayes. Meeting adjourned at 9:30 p.m.

Respectfully Submitted,

Amy K. Richardson