

TOWN OF KENDALL
PUBLIC HEARING – Junkyard Zoning Ordinance Update
July 6, 2010

Supervisor Gaesser called the first of the two public hearings to order at 7:11 p.m., and led the Pledge of Allegiance.

ROLL CALL

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

Also, Code Enforcement Officer Gurslin and Planning Board Chairman Gray were present to answer questions and consider comments from the public.

Also present: Approximately 70 members of the public.

SUPERVISOR'S REMARKS

- introduced CEO Gurslin and Chairman Gray
- Welcomed the public and thanked those present for their interest
- These actions have been taken to address the concerns expressed and complaints registered regarding the topics of junk containment and proper storage. The Town Board requested the Planning Board revisit the current ordinances to improve and clarify them. These proposed laws are in DRAFT FORMAT. Both have been reviewed and approved by the attorney for the Town and the Orleans County Planning Board. Tonight's purpose is to hear public comment. The Board will gather and review all input from these hearings, personal visits from and conversations with residents, and e-mails. Changes may be made to these proposed laws, with significant changes resulting in further public hearings, they could be adopted as is, or the Board could choose not to adopt any part of these ordinances, so the current ordinances would remain in effect.
- Gave outline of procedures to be followed to keep the hearings orderly.

CEO Gurslin spoke about the current brief regulations in place. The purpose of the regulations is to support and implement the community's values. These regulations will aid Code Enforcement in handling the complaints and concerns of Kendall residents.

Chairman Gray expressed that the Planning Board recognizes that the NYS code is too rigid and limiting in nature; there is a need for local interpretation to balance NYS code

with the needs of Kendall. Without local ordinances in place, the NYS Code is to be followed as is.

Councilman Schuth read the LEGAL NOTICE OF PUBLIC HEARING as it appeared in the Hamlin Herald, at the direction of Supervisor Gaesser.

Supervisor Gaesser opened the floor to public comment.

Adair Korn – Stated that the rules in this ordinance seem too strict. Too much government interference in what is allowed on people’s property is unnecessary, and most problems can be worked out between neighbors. The limit on unregistered cars is too strict.

Donna Robinson – expressed that she feels this ordinance is a waste of time, and the codes are unnecessary.

Supervisor Gaesser reiterated that current State laws are in place, and are to be enforced as given, unless there is a local law in place. Home rule policies dictate that local laws can be less restrictive than State Codes and need to be in place or the CEO is charged with enforcing those NYS Codes. This draft is less restrictive than the current ordinance.

Bob Pieniaszek – expressed that he feels he and others have a lot of equipment which is necessary and not messy. He does not want to have to get rid of any of that. The gross weight of a truck should not be taken into account. If things are out of sight, they should be of no issue. Mr. Pieniaszek said he has heard that Kendall was planning to invest money to spy on residents’ properties with aerial photography.

Supervisor Gaesser assured those present that there has never been aerial photography planned. There has not and will not ever be money spent on any such thing. Mr. Pieniaszek said, “Somebody told me that was in here (referring to the draft ordinance)” Supervisor Gaesser informed him it is not.

An unidentified speaker asked if the Town enters property to take photographs. CEO Gurrslin stated that is not allowed, unless Code Enforcement has been invited to do so by the property owner. Photos can be taken from a public highway only.

Jackie Mosher – expressed that she feels there was not enough public outreach for input to these ordinances, the website has not been updated with minutes quickly enough, and having to wait one half hour to get a copy of these drafts the June evening the Town Board was presented with them was too long. Supervisor Gaesser explained the procedure of updating or creating ordinances, when necessary. The Planning Board is asked for its recommendations first, which are presented to the Town Board. After Board review and possible changes, that draft is then presented to the public, and public hearings are scheduled and held to solicit input. This meeting is the correct step in the proper procedure. Mrs. Mosher said she thinks public input should have been sought before the Planning Board started its work. Mrs. Mosher stated that the way this

ordinance is written, it is not possible to run a junkyard. Supervisor Gaesser acknowledged that there is a calculation error in the law, which will be adjusted.

Mrs. Mosher expressed concern that there may be retaliation by the Code Enforcement Officer levied against those speaking against this. Supervisor Gaesser stated the regulations prohibit that. Mrs. Mosher said she has heard of this happening. Supervisor Gaesser stated that if this has occurred there are procedures to follow to protect a property owner's rights, and they should file a complaint or seek legal counsel.

Robert Mosher – expressed that the “Junkyard Ordinance” is misnamed, and that confusion is caused by its encompassing so much other than “junkyards”. He feels it persecutes some based on pure economics. For many, the need to earn money on the side or the need to keep junk cars for parts is a necessary part of life, and conforming to others' standards is unfair, and unaffordable.

Francine Fantuzzo – said that counting the numbers of various storage units on properties on her way to this meeting points out the need people have for storage, and the rural nature of Kendall is conducive to various storage systems. Farmers can store implements on their properties, and so everyone else should be able to.

She expressed that the premise of the ordinance to keep Kendall attractive is good, but seems punitive in its language, and forces people to conform to what someone else thinks their property should look like. Mrs. Fantuzzo said neighbors do not always get along, and this law may encourage an increase in the number of “vigilantes” who decide to turn in neighbors for every minor infraction.

Mrs. Fantuzzo complained that the proposed ordinances, in full, were not posted on the outside of the Town Hall somewhere. Supervisor Gaesser pointed out that the public hearing notice was run for two weeks in the Hamlin Herald. Clerk Richardson stated that copies were available in the Town Clerk's office, as required, and in addition to that, they were available on-line at the town website.

Warren Kruger - said that areas of these proposed ordinances are not less restrictive than the State Codes, particularly the language regarding cigarette butts, and the weight restrictions on vehicles. Localities can have less restrictive laws. If the strict codes were followed as is, everyone would need junkyard permits. Mr. Kruger suggested there be a “grandfather” clause included in any final draft, and wording to provide safeguards against unwarranted invasion of privacy. The Planning Board should have solicited more public input before offering their recommendations to the Town Board. Mr. Kruger expressed that the term “health, safety, and welfare” can be interpreted too broadly.

James Gaylord – said the definition of a farm is too rigid. He owns land, with no residence, but feels the rules about structures on a property are too restrictive, and because his structures – camper, various animal housing, vehicles and storage are not visible from the road, feels the complaints against him are unfounded.

Ken DeRoller – wants to see a “fair and balanced” ordinance. Different districts should have unique sets of rules, taking into account zoning, acreage owned, and specific

neighborhood characteristics. Mr. DeRoller made the suggestion that a junkyard ordinance be kept separate from a property maintenance ordinance.

Jerry Goodwin – resident of Hilton – bought property in Kendall three years ago; he now has been told that the property is in a flood zone, and cannot be built on. He has been told he cannot camp more than 72 hours on his own land, and feels his land has been rendered useless by over-rigid laws.

Steve Tonas – needs further storage; a new garage is not affordable, but a P.O.D. may be. Mr. Tonas does not support putting a limit on number of storage buildings on a property, if items need to be out of sight. He went through the ordinance; pointing out places he felt the language is ambiguous. Mr. Tonas does not agree that farmers should have more rights than others. Chairman Gray stated that is determined by the NYS Ag and Markets.

Jerry Haibach – Affordable storage needs to be allowed. Asked if old farm equipment made into lawn decorations are exempt. Supervisor Gaesser responded that lawn decorations are exempted, and Chairman Gray added that all farm equipment and implements are exempted from this ordinance, not just those on farms.

Craig Smith – said that the ordinances do not state the intent of these rules, and that confuses people, and he does not understand why these issues are being dealt with. Mr. Smith brought up construction issues with storage. Supervisor Gaesser pointed out that construction issues are addressed and exempted.

Michael Paduchak – said that farmers may only use an implement once a year, but it is a necessity. Each issue needs to be handled by the Boards and the Court on an individual basis.

Heather Stone – expressed that the Junkyard Ordinance is misnamed, and was surprised to learn her very well-kept properties could be labeled junkyards according to these regulations. She suggests sections 3 and 4 be eliminated from the ordinance. She questioned why section 6 is included.

Joe Amica – is opposed to the proposed ordinance.

Don Litolff – complained about drainage issues and does not think the time spent on junk laws is the best use of time. He asked if CEO Gurrslin has had training. CEO Gurrslin gave an overview of required training, and his background, and will provide his certification after this meeting to Mr. Litolff.

Richard Robb – owns land he bought for camping, hunting, fishing and recreational vehicle use. Mr. Robb has now had to answer multiple compliance complaints, due to one complaining neighbor who repeatedly complains to CEO Gurrslin. Mr. Robb accused the CEO of trespassing on his property uninvited, at night, several times. He feels targeted.

John Motzer – questioned the procedure which is followed upon the receipt of a complaint.

CEO Gurrslin explained that when a formal complaint is received, he is bound by his oath of office and the law to look into the situation brought to him to see if it is legitimate. He does not seek out “violators”. The process can vary from case to case.

An unidentified speaker asked about unregistered vehicles. Chairman Gray responded that under State Code, there can be one per property. This proposed ordinance is more lenient.

John Ostrander – expressed that if this ordinance were to pass, as is, he would be in violation, and he does not have a junkyard or a “junky yard”.

John Defendorf – said the wording of this ordinance seems vague. He was ticketed in the past, and wondered if the rules have changed. Supervisor Gaesser reviewed the process to follow if a property owner does not agree with an issued Order to Remedy.

Tom Munzer – asked about multiple family dwellings...one property...can each family have its own stuff? Supervisor Gaesser said that issue had not been addressed, and will be looked into.

Jackie Mosher – quoted part of the ordinance, and expressed that it is not always possible to hide vehicles, etc., depending on the lot location.

Dan Porter - suggested that Section 3 be removed.

Gary Beehler – Runs a motor vehicle repair shop, and has been cited for a camper which is registered, and has been cited for unregistered vehicles, and has been trying for months to contact CEO Gurrslin about the renewal of his Special Use permit. Supervisor Gaesser asked Mr. Beehler to stay after the meeting to meet with code enforcement to settle his issues.

Donna Robinson – asked for the public to be informed as changes are made to this ordinance and asked if there will be additional public hearings. Supervisor Gaesser responded that discussion of the ordinance and this public hearing will be on the agenda of the August work session. Councilman Pritchard explained that all work sessions are open to the public, and that no decisions are made at these sessions.

An unidentified person said the meeting schedules are not clear. Another speaker asked that the public be kept better informed. Councilman Pritchard explained that the process to obtain public input was followed in order. The Town Board received the proposal in June, and set the Public Hearing date immediately. This meeting is the correct forum and timing to receive public input. Another speaker asked how they can be informed about meetings. Councilman Pritchard stated the notices are in the official town newspaper, the Hamlin Herald. Some voices proclaimed they do not receive the Hamlin Herald. Clerk

Richardson said she has been informed that the paper is delivered to every Kendall resident, and asked anyone who does not receive it to report it to her, and she will notify and question the publisher.

Warren Kruger – feels the scope of this ordinance and the misnomer has confused residents. The rights of “complainers” need to be balanced with the rights of the “complainees”. Real problems exist, but to blanket everyone is careless. Laws tend to stay, while official personnel do not. He suggested that issues be dealt with piecemeal, rather than so many issues addressed in one document.

CEO Gurslin said he takes these issues very seriously, and tries to be fair with the information he is given through formal complaints.

Tom Mrzywka – asked if the cited person has the right to know the identity of the complainer. CEO Gurslin said a F.O.I.L. request can be presented, and that information is public.

An unidentified person asked if the written reports referred to in the minutes can be obtained. Clerk Richardson answered yes, free of charge, through her office. They are not available in electronic format.

Steve Tonas asked for the vehicle storage regulations to be clarified.

An unidentified speaker suggested rules be set according to zoning districts.

Supervisor Gaesser thanked the public for its input, and declared the Public Hearing closed at 8:56 p.m.