

TOWN OF KENDALL
TOWN BOARD MEETING
Thursday, July 8, 2009 7:30 P.M.

Supervisor Gillman called the meeting to order at 7:41 p.m.

ROLL CALL

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

Also present, Code Enforcement Officer Gurslin, Highway Superintendent Kruger, Orleans County Representative Rush, Chuck Patt, Clark Lindsay, Mr. and Mrs. Hughson, Zoning Chair Rowles, Al and Bev Lofthouse, Tonya Lustumbo, Roger and Diane McNally, Planning Chair Gray, Donald Pritchard, Rich Miller, John Pulver, Joyce Henry, Stephen Seaman

Councilman Schuth made a motion to accept the minutes, as presented, seconded by Councilman Gaesser; all ayes:

June 11, 2009 Town Board Meeting

REPORTS OF COMMITTEES, BOARDS AND DEPARTMENT HEADS

Standing Committees

Public Safety/Emergency Services & Occupational Safety –Joseph, Chair – has looked into other municipalities’ processes to approve fireworks application permits

Buildings, & Grounds –Joseph, Chair – locks checked, clerk’s locks replaced

Information Services –Joseph, Chair – new calendar on website

Highway –Gaesser, Chair – sidewalk work has begun at the four corners, and is a great improvement; will continue as time and budget allow

Culture & Recreation –Gaesser, Chair – baseball winding down, soccer continuing, tennis camp (a free program offered by the Orleans County Youth Bureau and the U.S. Tennis Association) has started with 16 attendees

Planning, Zoning & Agriculture -Schuth, Chair – General Code contract has been signed, and codification process will begin immediately

Community Relations –Schuth, Chair – Fire Department carnival this week

Human Resources and Ethics –Szozda, Chair – employees have been notified of the changes in their medical insurance premiums

Employee Benefits –Gaesser – cafeteria plan election forms have to be redone to reflect the premium changes

Finance, Taxes & Special Districts –Gillman, Chair – HSBC direct deposit for employees is now in place; BAN due Friday
Orleans County Representatives – Ken Rush, Gary Kent – neither present

Boards

Planning Board – Gray, Chair - Public Hearing about a motor vehicle repair shop on Carr Road, resulted in a withdrawal of the application by Mr. Groves. A resident from Bald Eagle Drive is seeking a use variance to install a residential wind energy system.

Zoning Board - Rowles, Chair – A variance for a six-foot fence by Mr. Kirsch from Lakeland Beach Road, to provide noise control form Eagle Creek Marina, was granted. A variance on Smith Drive is upcoming. The wind energy application will be “breaking new ground”, and Chairwoman Rowles suggested that the Attorney for the Town be present at the meeting. Supervisor Gillman agreed, and offered to provide the attorney’s phone number to Chairwoman Rowles.

Department Heads

Assessor – G. Massey – no report

Code Enforcement – L. Gursslin – busy with many permits being issued and questions being answered

Highway - W. Kruger – sidewalk work begun, engine trouble on loader may need extensive work; call from burned house owner looking for help with clean-up – can town be involved? CEO Gursslin has spoken with owner, who is anxious to have it done, but is having difficulty finding a contractor. Councilman Gaesser asked if this property poses a hazard, considering how many people will be in town for the carnival. CEO Gursslin stated that he is not overly concerned – he has inspected the structure. Attorney Leone stated that public money cannot be used for private gain, so that unless there was an imminent danger, or ongoing abandonment issue, the town is not involved. Councilman Joseph expressed it may be an “attractive danger”.

Historian – J. Knapp – no report

Recreation – B. Flow – written report submitted

Town Clerk – A. Richardson – written report submitted

Town Justice - R. Ernenwein & C. Lape – no report

CORRESPONDENCE

New York State Office of Parks, Recreation and Historic Preservation – grant workshop
New York State Department of Environmental Conservation – grant program

PUBLIC PARTICIPATION

Rodney Hughson – spoke about a new Murray water line being installed. He asked if a water line extension into Kendall from this line could be considered, as it would be cost effective to do so now.

Mr. Hughson also reported Sandy Creek contamination issues, which have been ongoing for several years. Blue-gray suds appear in copious amounts, particularly on Monday mornings, and water from the creek appears to be killing flowers, causing foot lesions on the Hughson’s dog, and there are no longer frogs observed.

Councilman Joseph asked Mr. Hughson for his contact information.

Councilman Gaesser asked CEO Gurslin if this is a Code Enforcement, or DEC issue. CEO Gurslin answered that it is a DEC issue, but that local code enforcement can be instrumental in starting the process.

Mr. Hughson said it has been “investigated” by the DEC, but inadequately. He has talked about his concern for several years, and would appreciate help.

Allen Lofthouse asked how many hours the town loader has, and Hwy. Sup. Kruger answered 11, 700.

Mr. Lofthouse asked if the Eagle Creek Marina is current with its payments to the town. Being public money makes this public record.

Supervisor Gillman answered that there is approximately \$ 23,000 in the fund.

Mr. Lofthouse asked if this is what should be there.

Supervisor Gillman conferred with Attorney Leone, and said a payment was received three weeks earlier. Supervisor Gillman said that because he did not have the record in front of him, he would contact Mr. Lofthouse with the information.

Clark Lindsay – asked if it is true that if Eagle Creek Marina did not repay the loan, could the taxpayers of Kendall be held liable for repayment.

Supervisor Gillman answered that is true.

Mr. Lindsay asked when this happened. Councilman Gaesser replied that it was set up in August 2005.

Mr. Lindsay asked, “How much is at stake”? Councilman Gaesser answered between \$545,000 and \$550,000.

Mr. Lindsay asked for a date of completion for the Marina project. Supervisor Gillman did not know.

Councilman Gaesser answered that the extension on the grant called for a completion date of March 28, 2009. Supervisor Gillman stated he is in the process of compiling a report which has to be turned in by the 15th of July. He has “spoken to Albany, and someone there suggested another three month extension.”

Councilmen Joseph and Gaesser asked how an extension could be applied for on something that is already expired. No answer offered.

CEO Gurslin gave an overview of recent progress on the Marina, in response to a comment by Mr. Lindsay that he tends to hear only negative things about the Marina. CEO Gurslin stressed that the town has been as supportive as possible, but only the owner can answer when it will be completed.

Councilman Gaesser asked if Code Enforcement had the list of requirements from the Planning Board. Planning Chair Gray answered they do, and are in agreement as to what is required by Mr. Freemesser.

Orleans County Legislator Ken Rush stood to speak He does not believe the taxpayers would have to repay the loan if ECM were to default. Attorney Leone said this is a state grant, administered by the town. The town has a secured interest in the property. There is some language where potentially the town could be held liable. This is an economic development grant, meant as a reusable fund. It is unlikely the state would demand repayment, but possible. There are also potential costs in opportunity costs, and in future grant projects eligibility.

RESOLUTIONS

This proposed resolution was pulled by Supervisor Gillman. No motion, no vote.

RESOLUTION 71-709 FOR APPOINTING HARRIS BEACH, LLP AS BOND COUNSEL FOR KENDALL WATER DISTRICT 6

Whereas, the Town Board of the Town of Kendall had appointed Woods, Oviatt, Gilman LLP, Patrick Malgieri, Esq. of counsel as bond counsel for Kendall Water District 6; and

Whereas, Patrick Malgieri, Esq. has now become a member of Harris Beach, LLP; and

Whereas. The Town Board of the Town of Kendall wishes to maintain its relationship with Mr. Malgieri, Esq., as bond counsel; now therefore,

BE IT RESOLVED, that the Town Board of the Town of Kendall hereby appoints Harris Beach LLP, Patrick Malgieri, Esq. as bond counsel for the Town of Kendall Water District 6.

PAYMENT OF CLAIMS

Councilman Gaesser added four claims to the list, all for Water District 6:

- Voucher 511 to LaBella Associates in the amount of \$9,000.00
- Voucher 512 to M.W. Control Services in the amount of \$17,811.00
- Voucher 513 to Blair Supply in the amount of \$726.29
- Voucher 514 to First Niagara Bank in the amount of \$5795.00

New Water District 6 total is \$33,445.61

New total is \$91,245.49

General Fund	Abstract 07	\$ 14,737.11	Vouchers 438-440, 442-444, 446, 466,473-496,498-510
Highway Fund	Abstract 07	\$ 42,468.12	Vouchers 444,447-465,467-471,
Street Lighting 1	Abstract 07	\$ 310.47	Voucher 445
Street Lighting 2	Abstract 07	\$ 185.81	Voucher 445
Street Lighting 3	Abstract 07	\$ 98.37	Voucher 445
Water District 6	Abstract 07	<u>\$ 113.32</u>	Vouchers 441,446,497
		\$ 57,913.20	

Councilman Gaesser moved to accept the payment of claims as amended, seconded by Councilman Joseph; all ayes.

OLD BUSINESS

Banner Beach Road Dedication – a potential resolution from Attorney Leone was presented to the Board for examination and consideration, which would resolve to take Banner Beach “by use” according to section 189 of NYS Highway Law.

Councilman Joseph wants to see more information regarding costs, property values, survey maps, and a letter from Superintendent Kruger stating his requirements.

There was discussion with Superintendent Kruger about road width, and right of ways, which are not addressed in the resolution.

Councilman Schuth asked if the survey map envelopes the widening of the right of way at Kendall Road.

Attorney Leone stated that the resolution is written as taking only the road as is. Courts have said width is limited to its present width when a road is acquired by use, even if that width is less than the statutorily prescribed width of a standard road. If deemed a public road by use, it includes only the road, as is. A decision made later to widen the road, eminent domain law would come into play. The law will not require widening.

John Pulver, of Banner Beach Road asked to speak. He explained the change in area of the “road” through the years, and why it is funnel-shaped at the Kendall Road end.

Councilman Joseph wants a comprehensive packet of information, and wants to assure that a forum is provided for all interested people to be heard, both in favor and opposed.

Joyce Henry – asked if a Public Hearing is necessary.

Attorney Leone answered that if this process were to be done by dedication or by eminent domain, a Public Hearing would be legally required. “Theoretically”, this is already a “public road”. This resolution would be acknowledging that, and no Public Hearing is necessary, but certainly it would be proper to hold one if the board desires.

Mrs. McNally offered to provide any information necessary to the Board. She and Mr. McNally have provided all quit claim deeds, surveys, etc. to Attorney Leone.

Planning Chair Gray asked if this road will meet standards, or will it be something less.

Attorney Leone stated it would be less. Mr. Gray informed the board that the planning board will need to know the dimensions for any further development.

Attorney Leone reiterated that the proposed resolution would take the road and shoulders only; nothing beyond that. Councilman Gaesser asked if ditches would be included. Attorney Leone said it would not. Superintendent Kruger said he believes that it would include culverts, ditches, water lines and anything considered a structure of the road. Attorney Leone said if it is part of the road structure, it would be included.

Cemetery Trust Funds –

Councilman Gaesser asked Attorney Leone about a petition to be filed with the Supreme Court.

Attorney Leone answered that the previous attorney for the town had prepared a petition which was reviewed by Judge Punch. It is being prepared for resubmission to Judge Punch as County Supreme Court Judge.

Hamlin-Kendall Water District unresolved issues –

Councilman Joseph has spoken with Dennis Roach. Mr. Roach will gather pertinent information, and contact Kendall. The schedule for ad valorem charges will be discussed, and the goal is to have an agreement by year-end.

NEW BUSINESS

Per Diem reimbursement rates policy review –

Councilman Joseph has provided a draft of a policy update, and asked all Board members to review it for the August meeting.

There being no further business coming before the Board, Councilman Gaesser motioned for adjournment, seconded by Councilman Schuth; all ayes; meeting adjourned at 9:38 pm.

Respectfully Submitted,

Amy K. Richardson
Kendall Town Clerk