

TOWN OF KENDALL
PUBLIC HEARING – Local Law 1 of 2012
Tuesday, July 10, 2012, 7:30 P.M.

Supervisor Gaesser called the hearing to order at 7:30 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 present, Attorney Charles W. Malcomb, Special Counsel from HodgsonRuss Attorneys, Clerk Richardson, Planning Chair Gray, Planning Members Newell and Henry, John and Ishbel Lennon, Randy Fries, Brenda Gainer, Maureen Harrigan, Bev Newsome, John Sober, Art and Sandy Peragine, Jon Gainer, Donald Beers, Dick Bauman, Rick Oakden, Jo Root, Kevin Halligan, Margaret and Sean Harnett, Dan Pixley, Mary Ellen Seaman, Vlad and Glen Sochor, Melanie and Ty Whitehair, Fran Sweeney, Jack Gillman, Barbara and Keith Germano, Rich Miller, Jim Ferries, Jane McLean, Wendy Bradburn, Missy Prater, Alan Fantuzzo, Jim Sweeney

SUPERVISOR’S REMARKS

Introduction of Attorney Malcomb, member of the special counsel engaged for this potential development project.

The proposed local law is the result of an application being received regarding the development of property on Countyline Road known as the Salvation Army Camp. The application alerted the Town that the current land use controls are inadequate to properly implement the Comprehensive Plan and the Local Waterfront Revitalization Plan. After a joint Planning and Town Board workshop, and with the senior county planner, Jim Bensley, it was determined necessary to engage the outside counsel from HodgsonRuss, to recommend changes to the land use controls so that the Comprehensive Plan and LWRP policies and goals could be implemented and achieved. In the Comprehensive Plan, under clustered development policies, number three, “the Town of Kendall shall encourage developers to design innovative housing developments, using methods such as clusters and planned unit development”. It goes on to say, “where it is determined that controls are lacking altogether and are needed, the Town of Kendall shall develop and enact suitable regulating provisions.” After thorough research, it was the recommendation of the special counsel that the Town should consider a planned unit development approach. It was the determination of the Board, after research, to pursue this local law, to provide a mechanism for development of mixed uses, while protecting natural and environmental and scenic features of our waterfront throughout the Town of Kendall. This draft version of the local law was presented to the county planning Board for its review and comment. That Board gave unanimous approval with no conditions.

Tonight’s Public Hearing is to gather input from those present on the Local Law. If questions are raised, the Board will try to answer where possible.

Supervisor Gaesser opened the Public Hearing at 7:36 p.m.

**PUBLIC HEARING –LOCAL LAW 1 OF 2012 – A Local Law Authorizing the Creation of Waterfront
Planned Developments Districts in the Town of Kendall**

Ishbel Lennon - questioned the protection of current property owners’ and residents’ effects in the case of a planned development.

Attorney Malcomb responded that the stated goals and the requirement of a rezoning process do address this concern, and any development would be thoroughly evaluated in all aspects under the State Environmental Quality Review Act to ensure protection of surrounding property owners. Councilman Schuth pointed out (2) in section F, which states that the existing character of the surrounding neighborhoods and waterfront uses would be considered.

Margaret Harnett – asked if the law provides for public input on any specific project.

Attorney Malcomb pointed out that any project would be applying for rezoning, which requires Public Notice and Hearings, the application for the project would also require Public Hearings, the Planning Board and Town Board meetings are noticed and public, and there is on-going opportunity to give input in person to any Town Official, or by phone or e-mail or letters, and all documents are available for inspection.

Supervisor Gaesser added that all Town Board Meetings include a time for public comment, and the Planning Board has recently added a public comment portion to its meeting agendas. All meetings are open to the public.

Kevin Halligan – questioned “single ownership” in the law.

Attorney Malcomb explained that single ownership means one entity owns the property. An entity may mean a person or a corporation.

Mr. Halligan asked what is different in this law from current regulations, and why this is necessary.

Supervisor Gaesser said the current regulations do not address the scope of a planned unit development, or the unique characteristics of a large development.

Attorney Malcomb said the benefits to the town of having this planned unit development approach in place are the encouragement of proper development, which is a stated goal in the Comprehensive Master Plan and the LWRP, it can ensure any potential development adhere to “greener” infrastructure planning, more organized growth, and a step-by-step plan of review and action.

Alan Fantuzzo – asked if NYS provides any guidelines for these types of developments, and expressed that the word “flexibility”, as used in this law, makes him nervous that too much flexibility could be somehow used to hide something from interested members of the public.

Attorney Malcomb stated there are guidelines from NYS, resulting from the rise of cluster developments in the 1950’s and 1960’s, followed by planned unit developments which include multiple uses. Under the provisions of the zoning enabling statutes, Home Rule law and Town Law 261c, local governments can enact regulations to encourage area-specific zones. This type of law imposes requirements for the Town Board to follow. A Town Board is a legislative body, and one of its functions is legislative determinations, made on reasonable and rational basis. The flexibility in the law is specified to the Town, not a development applicant. Supervisor Gaesser added that the law requires several steps of review, as safeguards, including Planning Board review and County Planning Board review before the Town Board can act. Public Hearings are required. Flexibility is built into the law because each potential development would have unique characteristics to be addressed.

Councilman Pritchard added that there are also several regulatory agencies which give their opinions and concerns, such as the DEC, as the process unfolds, particularly during the SEQR process.

Jo Root – expressed the concern that the Board and Town may lack the expertise to adequately protect all parties involved in a potential project of this scope.

Supervisor Gaesser responded that the Special Counsel was put in place for exactly that reason, and on the advice of the County. This firm is experienced in PUD’s and has an excellent reputation for protecting and representing communities in exactly these situations.

Missy Prater – suggested that emergency services be listed under the issues to be addressed by the Planning Board.

Attorney Malcomb said those specifics would be addressed as part of the review process.

Supervisor Gaesser noted Ms. Prater’s suggestion for consideration.

Sean Harnett – asked what factors determine whether a SEQR – EIS is required.

Attorney Malcomb stated that the “criteria for significance” are listed in Title 6 NYCRR Section 617.7 C-1.

Evaluation of a project is based on this list, and determinations are made as to potential negative impacts on the environment, proposed and whether an Environmental Impact Statement is necessary. Approvals required would depend on what permits were to be applied for.

Mr. Harnett asked who defines “wetlands”.

Attorney Malcomb replied that there are maps depicting wetlands, by legal definition. They are determined by the federal government.

Ty Whitehair asked if the lead agency would ultimately make the determination whether an EIS would be necessary. Attorney Malcomb said, “yes”.

Melanie Whitehair – asked if other Lake Ontario towns have Planned Unit Developments.

Supervisor Gaesser said the cases researched have been in Canandaigua, Naples, and Hamburg; nothing on Lake Ontario. Attorney Malcomb added that these WPDD’s were reviewed, as well as case laws, and guidance materials provided by NYS Department of State, including a model local law.

Mrs. Whitehair asked if Section 6 (f) of the proposed Local Law, regarding Planning Board involvement, could have the phrase “may consider” changed to “must consider”, as these factors are of high importance. Also that emergency services should be strongly considered.

Supervisor Gaesser noted that change for consideration.

Dan Pixley – suggested that public notice take place after 6 (b) of the law, and that an additional Public Hearing be held after the final plan is prepared, before its final approval, and asked who has the responsibility to ensure that the plans are followed.

Supervisor Gaesser noted Mr. Pixley’s suggestions and said the Code Enforcement Officer would be responsible to ensure compliance. The Code Enforcement Officer is at the meetings at every step of the process.

Attorney Malcomb reiterated that the Town Board makes its decisions, as a course of law, under application laws and review laws, in open meetings, with public input. That is a purpose of the Town Board.

Ishbel Lennon – asked if any work can occur before approval of final plans.

Supervisor Gaesser responded that site work could commence under a preliminary plan, if approved.

Ty Whitehair – asked if the SEQR process could be superseded.

Attorney Malcomb responded that SEQR can never be circumvented; compliance in full is mandatory.

Alan Fantuzzo – asked if at any point a public referendum would be required under this law.

Attorney Malcomb responded, “no”. Referendums are disfavored by courts regarding zoning regulations, because zoning regulations are to take into account an entire town and community, not any particular neighborhood.

Mr. Fantuzzo asked if the potential increase in emergency service needs could cause a higher tax burden to the town.

Supervisor Gaesser said both fire departments are consulted in any project consideration, and the hope would be that any project utilizing this law would have the opposite effect on the tax base, and have a positive effect.

An unidentified man suggested that “mixed use” be defined.

Councilman Schuth stated that he has attended Planning Board, Town Board, and County Planning Board meetings regarding this law, and feels strongly that it is a positive way to be able to consider specifics on individual projects. All members of the Town Board are residents of Kendall, have taken oaths to serve to the best of their abilities, and are approachable on a daily basis.

Attorney Malcomb responded to a question about why this is particular to a waterfront area by saying the area found lacking in the current zoning code was regarding waterfront development.

Ty Whitehair - asked if the Town could afford litigation which could result from any decisions.

Supervisor Gaesser responded that everything will be done to avoid that by doing things right and in order. The special counsel will be present when necessary.

Mr. Whitehair asked when this new law would likely be passed.

Supervisor Gaesser responded in one week.

Mrs. Lennon suggested that it may be advantageous if the law were generalized to other areas of the Town.

Mr. Pixley asked if this type of law has aided development in the areas in which it has been implemented.

Attorney Malcomb said yes, in some cases, and offered to research how often this approach has been utilized, and to what result.

Jane McLean asked if re-zoning is transferrable.

Supervisor Gaesser responded that zoning stays with the property, and would transfer to future owners.

There being no one else wishing to be heard, Supervisor Gaesser thanked those in attendance and closed the Public Hearing at 8:55 p.m.

Respectfully Submitted,

Amy K. Richardson
Kendall Town Clerk