

**TOWN OF KENDALL**  
**TOWN BOARD MEETING**  
Thursday, August 13, 2009 7:30 P.M.

Supervisor Gillman called the meeting to order at 7:33 p.m., and Councilman Schuth led the Pledge of Allegiance.

***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, Donna Joe Presutti, Katie Presutti, Mr. and Mrs. Bob Brenna, George Vito, Pat Howell, John Pulver, Joyce Pulver, Tom Minigiello, Roger McNally, Diane McNally, John Kohlmeier, Pat Kohlmeier, Linda Stout, Tony Cammarata, Sharon Cammarata, Jim Pawluk, Jean Pawluk, Pat Condo, Betty Condo, Paul Cocuzzi, Mary Jean Cocuzzi, Stephen Kruger, Cindy Kruger, Timothy Hurley, Jackie Hurley, Greg Hollis, Mary Hollis, Antony Basso, Joan Basso, Harry Butler, Dot Butler, Al Lofthouse, Bev Lofthouse, Ronald Arndt, Steve Hamilton, Cheryl Hamilton, Victor Lapani, Mary Ellen Seaman, Rich Miller, Jim Soanes, Bev Soanes, Andy Borbas, Judy Borbas, Planning Chair Paul Gray, Donna Dangler, Craig Lape, Blaine Young, Wendy Young, Joyce Henry, Joseph Palermo, Dr. George R. Vito, John Ellis, Dr. Paul Jennings

Supervisor Gillman announced that the agenda would be changed, to allow public participation to be first, beginning with a presentation by Mrs. McNally, and the reports of department heads and boards were postponed until the recessed meeting on August 27<sup>th</sup>.

Mrs. McNally thanked the board for the opportunity for several residents of Banner Beach to speak, and asked George Vito to begin.

Mr. Vito, Banner Beach Road, told his own history of living on Banner Beach and working toward having the road dedicated to the Town of Kendall, as well as an explanation of his medical condition. Mr. Vito said it is imperative to have consistent professional road maintenance to facilitate emergency vehicles' and medical personnel's access to each home. Mr. Vito also said the composition of residents, and the number of full-year residents has changed over time and the current needs are greater.

Mr. McNally, Banner Beach Road, thanked the current board for their consideration and willingness to bring a conclusion to this road matter. Mr. McNally said that 80% of Banner Beach Road residents are year-round residents, the tax assessment for that road is 6.9 million dollars, and he wants to be treated as the other taxpayers in Kendall.

Mr. Arndt, Banner Beach Road, expressed his desire to have the road finished, and read a list of his concerns, including emergency vehicle access, school bus service, snowplowing, dust and dirt nuisance, vehicle maintenance issues, and speed limits. Mr. Arndt thanked Highway Superintendent Kruger for his years of help, whether official or not, to the Banner Beach residents by hauling and spreading stone when necessary, and by snowplowing when the private snowplowing contractors could not keep up with snowfall. Mr. Arndt asked the board to add Banner Beach Road to its inventory of roads.

Attorney Leone gave a legal definition of “taking by use”. He stated that the legal standard for that is that the town has been treating the road as a public road for more than ten years, including such things as plowing, grading, and doing road work including hydrants and water pipes. Mr. Leone asked Highway Superintendent to address the board as to what has been done for the past ten years.

Mr. Kruger stated that when he took office twenty years ago, the arrangement of assisting the lakefront communities’ streets was already set-up, and had been for some time. Banner Beach Road has been routinely graded, from time to time the association has paid for stone and the town has hauled and spread it for them, the town includes Banner Beach in its brush cleanup days, drainage issues have been addressed, and private snowplowing contractors have been assisted by the town if necessary.

Mr. Lapani, Banner Beach, expressed that he is not opposed to the road being taken over, but wants a written promise that the town will not “correct” the road to where it originally ran, because that would cut into his land and decrease its value. Mr. Kruger said he had written a letter, which he gave to the McNallys to be delivered by them to Mr. Lapani. Mrs. McNally said she had delivered the letter to Mr. Lapani’s wife. Mr. Lapani apologized, and was provided a copy of that letter, and withdrew his comments.

Councilwoman Szozda stated that under the conditions of taking the road by use, the town could not move the road. It could only be taken as it sits now.

A short discourse between several residents about speed limits and speed bumps took place.

An unidentified woman expressed the opinion that property values and the ability to sell would be enhanced by having a paved road, and asked if the Town of Kendall, which has informally been putting down gravel, could also put down tar if the road cannot be taken over legally.

Attorney Leone stated that the town cannot use public resources to benefit private citizens. It is illegal. If a road is taken by use, the town must show that it has been treating that road as a public road for the statutory time of ten years.

Mr. Lofthouse said that if, as Mr. Leone stated, it has been illegal for public funds to have been benefitting private citizens’ property, he would assume that the years of that having been done with Highway Department equipment and labor would be null and void.

Mr. Leone stated, “It is a quirk in the law, sir. You can’t do it, but IF you do it for a statutory period of ten years, then it becomes a public road.”

Mr. Kruger interjected that when it is considered a public service, rather than a benefit to a private individual, the picture changes.

Dr. George Vito, Junior – expressed his concern for his father’s access to medical care and caregivers, and that all residents need accessibility to emergency services.

Mr. Brenna – introduced himself as a Banner Beach Road resident, and the attorney working with the Banner Beach Association to have the Town of Kendall take Banner Beach Road into its inventory. Mr. Brenna read parts of a letter sent to the Town of Kendall by Robert Schultz in 1999, and alluded to another letter signed by Gil Schultz in 2007. He stated that this right of way is not privately owned like a homeowner’s private ownership. There is a provision in the Highway Law which allows a town to acknowledge ownership by use. More than enough time has passed to enable this. Nearly every Banner Beach resident has signed a deed to the right of way, each of whom is willing to pay for the filing. A survey was funded by the Association to show exactly where the road is. For fifty years, the residents have asked for this, and the right thing to do is to take a vote tonight to resolve this issue. Mr. Brenna then thanked Supervisor Gillman and Attorney Leone for their accessibility, stated he does not feel the request is unfair, and said he does not wish to “pursue other avenues”.

Mr. Vito asked the Town Board to bring this question to a vote tonight, keeping in mind the 30 to 40 letters sent by Banner Beach residents, and asked the Board to review those letters.

Mr. Brenna suggested the Board “follow their hearts” in making the decision.

Supervisor Gillman closed public participation.

Councilman Joseph gave an overview of the work done for the past 62 days. The audience became unruly. Mr. Joseph asked for 14 more days to try to bring about a positive outcome to this situation for the residents of Banner Beach, and the other taxpayers of Kendall. He promised this issue will come to a vote in 14 days, or he will resign as councilman.

Highway Superintendent Kruger explained that Councilmen Joseph and Gaesser have been working on a dedication possibility, which would be better for the town and better for the residents of this road. Mr. Kruger asked for the two weeks to try to finalize the agreement. The audience again became unruly.

Mr. Brenna asked for patience, and assured the audience that he will continue to represent the residents of Banner Beach regardless of this outcome, and stated the 14 days seems reasonable.

Supervisor Gillman said he was “in favor of the road”, but asked for the 14 days for the board to continue to work on a proposed agreement.

Several unidentified spectators expressed their frustration at having to wait two weeks. Mr. Brenna thanked Councilwoman Szozda and Supervisor Gillman for something gestured.

Supervisor Gillman, Mr. Brenna, Mr. Vito, and Dr. Vito spoke in regard to waiting two weeks to vote on the decision to take Banner Beach by use. An unidentified speaker asked for an explanation of any negatives to taking the road by use.

Councilman Gaesser stated that much research has been done as to the legalities involved in this decision. There is a potential for litigation if the Town takes this road “by use”. If the Town takes the road by dedication, it removes that possibility of litigation. Councilmen Gaesser and Joseph are very close to getting the dedication. That dedication would include the property on the curve, which would provide ample room for road maintenance.

Mr. Brenna suggested the town take this road, even it was to be by the method of eminent domain, and threatened litigation if the road is NOT taken by the Town of Kendall.

No resolution regarding Banner Beach was moved.

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

Recessed Town Board Meeting June 25, 2009  
Regular Town Board Meeting July 8, 2009  
Special Town Board Meeting August 3, 2009  
Special Town Board Meeting August 6, 2009

***RESOLUTIONS***

Councilman Gaesser made the following motion, seconded by Councilwoman Szozda:

**RESOLUTION 73-809 RECREATION ACCOUNT TRANSFER**

Whereas there were prepaid winter basketball registration fees in December 2008, which dropped to fund balance at the close out of the year 2008,  
Be it resolved to transfer \$730.00 from Contingent Account A1990.4 to A7310.4 Recreation Contractual from Fees.

A vote resulted in all ayes; motion carried

Councilman Gaesser made the following motion, seconded by Councilwoman Szozda:

**RESOLUTION 74- 809 HIGHWAY BUDGET ADJUSTMENT FOR SIDEWALKS**

Be it resolved to increase DA5031 Interfund Transfers in the amount of \$4,000.00 (four thousand dollars), and increase Account DA5410.4 Sidewalks Contractual, by the amount of \$4,000 (four thousand dollars).

A vote resulted in all ayes; motion carried

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

**RESOLUTION 75- 809 HIGHWAY FUNDS TRANSFER**

Be it hereby resolved to transfer \$9,000.00 (nine thousand dollars) from Account DA5142.4 Snow Contractual to Account DA5130.4 Machinery Contractual.

A vote resulted in all ayes; motion carried

Councilman Schuth moved the claims be paid, as presented, seconded by Councilwoman Szozda. All Ayes.

***PAYMENT OF CLAIMS***

General Fund	Abstract 08	\$20,615.67	Vouchers 515,517-523,525-531, 533,537-544,548-569,594,596
Highway Fund	Abstract 08	\$20,595.28	Vouchers 519,570-593,595,597-604
Library	Abstract 08	\$ 868.10	Voucher 532
Street Lighting 1	Abstract 08	\$ 328.60	Voucher 525
Street Lighting 2	Abstract 08	\$ 195.76	Voucher 525
Street Lighting 3	Abstract 08	\$ 104.76	Voucher 525
Water District 1	Abstract 08	\$ 4,502.32	Voucher 545
Water District 2	Abstract 08	\$ 1,290.45	Voucher 545
Water District 3	Abstract 08	\$ 1,653.45	Voucher 545
Water District 4	Abstract 08	\$ 3,183.45	Voucher 545
Water District 5	Abstract 08	\$ 1,070.46	Voucher 545
Water District 6	Abstract 08	<u>\$ 2,218.70</u>	Vouchers 515,526,534,546,605
		\$56,627.00	

***OLD BUSINESS***

Cemetery Trust Funds – no progress

Hamlin-Kendall Water District unresolved issues – discussions are on-going with Hamlin Supervisor Roach, particularly comparing policies of disposition of property.

***NEW BUSINESS***

Welcome to Kendall signs are completed and placed. Thanks given to Bryan and Chuck Patt.

Councilman Schuth asked if there has been any response on the Restore New York grant. Councilwoman Szozda said no.

With no additional business coming before the Board, Councilman Schuth moved to recess the meeting until August 27<sup>th</sup> at 7:30 pm, seconded by Councilwoman Szozda; all ayes. Meeting recessed at 9:24 pm.