

# DRAFT SUBJECT TO CHANGE

**TOWN OF KENDALL  
PUBLIC HEARING – ZONING CHANGE  
Thursday, October 8, 2009 7:30 P.M.  
TOWN BOARD MEETING  
Immediately following**

Supervisor Gillman called the Public Hearing to session at 7:35 p.m.

## ROLL CALL

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

Also present: Al and Bev Lofthouse, Planning Chair Gray, Sandra Shaw, Donald Pritchard, Bob Brenna, Jr., David Balka, Wendy Balka, Tony Cammarata, O.C. Legislator Rush, Blaine Young, Rich Miller, Charles Scroger, Mary Ellen Seaman, Stephen Seaman, R. McNally, Bruce Newell, Daniel Schuth, Larry Gursslin, O.C. Legislator Kent

## CALL TO BEGIN PUBLIC HEARING – Proposed Zoning Change

Councilman Schuth gave a summary of the course of action to this point on the proposed change in zoning requested by DMD Machining on 5.1 acres of property – parcel number 32.2-1-28 - from residential-hamlet and residential-agriculture to light industrial.

Planning Board Chairman Gray said the County Planning Board approved this request, with three stipulations, which were 1) Part One SEQR shall be provided to County Planning Board prior to final action; 2) Zoning map amendment shall be in accordance with the Town of Kendall Comprehensive Plan; and 3) The Kendall Town Board shall be satisfied that access to the property through the Morton Fire Company parcel will not conflict with any current use, or long-term planning use of the Fire District parcel.

Mr. Hofer, owner/operator of DMD Machining –

- To put a structure on this property will require a sizable investment. In the current zoning, a special use permit will be required, which is subject to periodic review and renewal. From a business standpoint, this would be a deterrent to any potential buyers. There is much more comfort with a permanent zoning change.
- Currently, the business manufactures machine parts to custom orders. There is a need for more and dedicated floorspace. DMD would like to remain in the Kendall area.
- Mr. Hofer would eventually like to build an 8000 square structure.

Chairman Gray – commented that this type of business could fall under “general business”, but is a better fit to “light industrial”. The light industrial zoning is more excluding. For instance, single-family residences would not be allowed in this district.

Councilman Gaesser asked if this would interfere with any residential area.

Chairman Gray responded it would not. This step would only change the approximately 5 acres being discussed.

Supervisor Gillman asked how many employees might be employed.

Mr. Hofer responded that there would be a potential for 10 to 20 employees.

Councilman Schuth commented that the SEQR has been obtained, and a property use agreement has been signed in reference to access and egress to and from this property. These should comply with the County’s recommendations.

Charles Scroger asked if this is accessible to emergency vehicles.

Councilman Joseph said it is, and right of way issues are addressed in the agreement.

Rich Miller asked if there are other light industrial zones in Kendall.

Councilman Schuth replied that there are not.

Mr. Miller asked if the original cold storage operating on this property would have been an industrial or an agricultural application.

Chairman Gray responded that since it pre-dates any zoning regulations, that would be speculation, but most probably would be under general business.

Mr. Miller asked if the SEQR required was a long or short form.

Chairman Gray responded that re-zoning requires a long-form SEQR.

Mr. Miller asked if there was danger of any contamination from the previous use of this property.

Councilman Schuth responded that this is not considered for the re-zoning process.

Mr. Miller asked about the long-range plan for the old storage building.

Mr. Hofer responded that he has no plans for the building. It is not suitable to his purposes.

Mr. Miller asked if it is safe and secure, and requests that be addressed in considering this change.

CEO Gurslin will help Mr. Hofer address this.

Supervisor Gillman closed the Public Hearing at 7:58 p.m.

Supervisor Gillman called the meeting to order at 8:00 p.m.

Councilman Schuth moved the acceptance of the following minutes, seconded by Councilman Gaesser;  
all ayes:

Town Board Meeting – August 13, 2009

Councilman Schuth moved the acceptance of the following minutes, seconded by Councilwoman  
Szozda; all ayes:

Recessed Town Board Meeting – August 27, 2009

Sandra Shaw, Community Free Library – presented an update on the new wing of the Community Free  
Library thanked the Board for its support

### ***REPORTS OF COMMITTEES, BOARDS AND DEPARTMENT HEADS***

#### Standing Committees

Public Safety/Emergency Services & Occupational Safety

Buildings, & Grounds –

Information Services –Joseph, Chair

Councilman Joseph reviewed his written reports

Highway

Culture & Recreation –Gaesser, Chair

Councilman Gaesser has addressed budget plans with highway and recreation

Planning, Zoning & Agriculture

Planning Board is bringing Master Plan up to date; abandoned vehicle regulations  
need updating – rough draft is available for review

Community Relations –Schuth, Chair

Very busy month for community events

Human Resources and Ethics –Szozda, Chair – no report

Employee Benefits –All

Projected increases in benefits costs are projected at approximately 16%

Finance, Taxes & Special Districts –Gillman, Chair – no report

Orleans County Representative – Ken Rush, Gary Kent - county budget work underway; steel plant a possibility in Shelby; O.C. Legislators are in support of the Community Gazebo Park Project

#### Boards

Planning Board – Gray, Chair - Moratorium in review, Code Enforcement issues being addressed; Master Plan being updated

Councilwoman Szozda asked about the need for a further junk vehicle code  
CEO Larry Gursplin expressed a need for alternate compliance procedure

Zoning Board - Rowles, Chair – no report

#### Department Heads

Assessor – G. Massey – no report

Code Enforcement – L. Gursplin – Norway Hts. potential pole barn – Larry has had positive interaction with the owners, and feels there will be co-operation; the Supervisor expressed concern that the failure to return removed topsoil could jeopardize the water lines.

A lengthy discussion concerning plans and options to address this issue ensued between the Board, CEO, and residents.

Highway - W. Kruger – reviewed the information provided in his written report; described an issue with a joint right of way shared with the Town of Murray, and a request for Kendall to post signs

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***

Walter Steffen, Jr. – decision not to seek reappointment after 41 years on the Kendall Planning Board  
Councilman Gaesser suggested that a special acknowledgement of Mr. Steffen's service be made. Planning Board Chair Gray said Mr. Steffen's leaving the Planning Board will certainly be a loss.

Craig Lape – letter of intent to seek reappointment to Board of Assessment Review

#### **PUBLIC PARTICIPATION**

Wendy Balka, Lakeland Beach Road – asked each Town Board member his/her position on having Supervisor Gillman sitting as Supervisor at this meeting, in light of the previous' day's incident. Supervisor Gillman asked Mrs. Balka to elaborate. Mrs. Balka stated that the Supervisor was served with a "Motion to Remove from Office", and will be under litigation. Mrs. Balka asked if the Town

Board is comfortable with allowing decisions to be made by Supervisor Gillman under this circumstance.

Councilman Joseph stated, "This is the first I have heard of it".

All other board members indicated they also were unaware of this situation.

Mrs. Balka asked Supervisor Gillman if he is responsible for informing the council members of this. Supervisor Gillman deferred to the attorney.

The acting attorney for the town said he was unaware of any pending litigation, or pending charges.

Mrs. Balka asked Supervisor Gillman if he was in receipt, from the Orleans County Sheriff's office, a copy of a MOTION TO REMOVE FROM OFFICE.

Supervisor Gillman responded, "I refuse to answer any of your allegations or questions, because I have not had a chance to talk to counsel about it."

Mrs. Balka asked the board members if they are comfortable making decisions, knowing that this will be going further. The attorney said audience cannot question the board, only comment.

Councilman Joseph said he could not comment without further information.

Mrs. Balka commented that part of the Supervisor's responsibilities is to inform the board of such occurrences, and that the Supervisor is also responsible for our financial transactions and the motion is concerning financial records. Mrs. Balka asked for it to be recorded that Supervisor Gillman was served, and failed to inform the other board members.

Rich Miller – commented that the Norwegian tour groups had been visiting recently, and enjoyed Historian Knapp's and Kendall's hospitality.

## RESOLUTIONS

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

### **RESOLUTION 83-1009 APPROVING DMD PROPERTY ZONING CHANGES**

Whereas the Kendall Town Board has received from DMD Machine a request for property zoning changes of 5.1 acres of property identified as Parcel #32.2-1-28 from Residential/Hamlet (RH) District and Residential/Agricultural (RA) District to Light Industrial (IL) District and,

Whereas, as it is the intent of this Town Board to maintain control of development and business locations in order that the Town of Kendall is a thriving, welcoming community, and

Whereas the Kendall Town Board, Orleans County Planning Board and the Attorney for the Town of Kendall have reviewed and suggested text modifications and such changes have been included in this submission, and

Whereas the applicant, DMD Machine has submitted a use agreement for the use of the right of way from the Morton Fire Company, and

Further, the Town Board held a Public Hearing for public input to the Kendall Town Board for adoption of this proposed change in zoning. On October 8, 2009 at 7:30 p.m. at the Kendall Town Hall, 1873 Kendall Road, Kendall, New York.

Therefore, it is resolved to grant the zoning change from Residential/Hamlet District and Residential Agriculture District to Light Industrial District for the property identified as Parcel #32.2-1-28.

Further that this resolution will give the Kendall Planning Board direction to update zoning maps and master plan to include this change in zoning.

Further, this is an unlisted action under SEQR regulations, and this is a negative declaration. (See Dave for this wording)(May want separate?)

Supervisor Gillman called for a vote, resulting in all ayes. Motion carried.

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

**RESOLUTION 84-1009 TO REAPPOINT CRAIG LAPE TO THE BOARD OF ASSESSMENT REVIEW**

Whereas there is currently a vacancy in the Kendall Board of Assessment Review as a result of Craig Lapes' expired term on September 30, 2009, and,

Where as Craig Lape has tendered a letter of interest in being reappointed to this position.

Further that Craig Lape has done an admirable job during his term,

Therefore be it resolved to appoint Craig Lape, 1191 Norway Road, Kendall, NY 14476 to the position of Board of Assessment Review with this term of office to expire on September 30, 2013.

Supervisor Gillman called for a vote, resulting in all ayes. Motion carried.

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

**RESOLUTION 85-1009 INTRODUCTION OF LOCAL LAW #1 OF 2009 – MORATORIUM on Accessory Structures within Hamlet, WR and WD Zones**

Whereas it has come to the attention that the Town of Kendall Zoning Regulations are lacking detail and causing much consternation among residents and various town officials and

Further that the Planning board is directed to review the existing regulations and recommend improvements to better define and detail property regulations in Hamlet, Waterfront Residential and Waterfront Development

RESOLVED, that Local Law No. 1 of the Year 2009 of the Town of Kendall, Orleans County, New York, being a local law entitled "The Town of Kendall Moratorium on Accessory Structures within the Hamlet, Waterfront Residential and Waterfront Development Zones Law", be and the same is hereby introduced

and placed on the tables and the desks of the members of the Town Board at least seven (7) days prior to final adoption, exclusive of Sundays; and, be it

FURTHER RESOLVED, that the Town Board shall conduct a public hearing to consider adoption of proposed local Law No.1 of the Year 2009 on the 22<sup>th</sup> day of October, 2009 at 7:30 p.m. in the Kendall Town Hall, 1873 Kendall Road, Kendall, New York 14476, at which time all persons wishing to be heard in favor or in opposition thereto shall be heard; and, be it

FURTHER RESOLVED, that the Town Clerk shall cause notice of said public hearing to be posted on the official signboard of the Town of Kendall and published in the Hamlin Herald, the official newspaper of the Town at least five (5) days prior to the date of said public hearing; and, be it

FURTHER RESOLVED, that such action is a Type II action within the provisions of the State Environmental Quality Review Act (SEQR) and no further action is necessary by the Town with respect to this moratorium under SEQR; and, be it

FURTHER RESOLVED, that proposed Local Law No.1 shall be referred to the Orleans County Department of Planning and Development, as otherwise required by law, prior to its adoption.

**Local Law #1 of the year 2009 – Town of Kendall Moratorium on accessory structures in Hamlet, Waterfront Residential and Waterfront Development.**

ARTICLE I: ENACTMENT, AUTHORIZATION, TITLE, PURPOSE

Section 101: Enactment and Authorization

The Town Board of the Town of Kendall does hereby ordain and enact the Town of Kendall Moratorium on structures in Waterfront Residential and Waterfront Development pursuant to authority and provisions of Section 10 of the Municipal Home Rule Law.

Section 102: Title

This local law shall be known as the Town of Kendall Moratorium on accessory structures in Hamlet, Waterfront Residential and Waterfront Development.

Section 103: Purpose

a) It is the purpose of this local law to prevent and avoid serious detrimental health, environmental and planning conditions which threaten the Town of Kendall by allowing degradation of its significant environmental and agricultural resources and in order not to undermine the conscious and continuous determination by the Town to resolve and lessen such treats to the health, safety and welfare of the citizens of the Town.

b) It is the further purpose of this local law to enable the Town of Kendall to prevent the affecting of more than 900 square feet of accessory structures for a reasonable period of time pending the Town Board's revision of zoning regulations as they pertain to the Waterfront Residential and Waterfront Development zones in the Town of Kendall.

ARTICLE II: IMPOSITION OF MORATORIUM

Section 201: Imposition of Moratorium

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For a period of one year after the date of filing this local law with the Department of State, no application affecting of more than 900 square feet of accessory structures maybe filed, nor will any such application be accepted or processed. For the purpose of this local law, an “application” shall be deemed to mean any request for official action by the Town Board, Planning Board, Code Enforcement Officer, or Building Inspector which would in any way commence or continue the process affecting more than 900 square feet of accessory structures.

ARTICLE III: VALIDITY

Section 301: Validity

If any section, sentence, clause or phrase of this local law is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this local law.

ARTICLE IV: EXPIRATION

Section 401: Expiration

This one year moratorium, unless otherwise extended by the Town Board, shall expire upon (a) revision of Zoning Ordinance regulations as they pertain to the Hamlet, Waterfront Residential and Waterfront Development zones in the Town of Kendall, (b) the elapse of one year from the effective date of this local law, whichever shall first occur.

ARTICLE V: EFFECTIVE DATE

Section 501: Effective Date

This local law shall take effect immediately upon filing with the Department of State.

Supervisor Gillman called for a vote, resulting in all ayes. Motion carried.

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

**RESOLUTION 86-1009 TO REVISE THE PER DIEM RATE FOR TOWN BUSINESS**

Whereas the Per Diem Rate for Town Business Policy has been created by Town Board Resolution 28-109 and...

Whereas after review of this Policy by the Town Board, the following changes are recommended and designed to ensure consistency and fair treatment for employees of the Town of Kendall whose travel will be reimbursed or paid for by the Town. The following changes are proposed.

Town of Kendall Reference: 28-109 Per Diem Rate for Town Business Policies and Procedures Per Diem Rate for Town Business Page 1 of 1 10.03.09 Proposed revisions Page 1 of 1 10.03.09 Proposed revision

**TOWN OF KENDALL  
PER DIEM RATE FOR TOWN BUSINESS EXPENSES**



**Purpose:** To establish standards and procedures in order to reduce travel costs while complying with Federal regulations regarding reimbursement for business expense. The guidelines are designed to ensure consistency and fair treatment for employees of the Town of Kendall whose travel will be reimbursed or paid for by the Town. This policy applies to all travel that has been approved by the Department Supervisor regardless of the source of the funds.

A per diem rate for meals and incidental expenses based on guidelines published by the United States Internal Revenue Service for those town officials authorized to attend functions on Town business.

Officials and employees are authorized for reimbursement of actual expenses up to the established per diem rate. Reimbursement requests must be made by voucher, with receipts and a detail of expenses. Expense reimbursement forms should be attached to vouchers for multiple entries.

1. **Lodging** -Travelers are strongly encouraged to use standard accommodations at reasonably priced mid-market hotels or motels. Requests should be made for government discounts or business traveler's rates. Original itemized hotel receipts are required for reimbursement. The Town of Kendall does not approve accommodations at up market or luxury hotels.

2. **Conference Registration** - Original receipts or proof of payment are required including a copy of the Conference Registration Form accompanied by a voucher for reimbursement. Prepayment registration can be arranged.

3. **Meals and Incidentals:** Original or a copy proof of payment is required for the Town of Kendall to reimburse a traveler for allowable meal and incidental expenses incurred during town related travel. The Town provides actual cost reimbursement. The Town will generally reimburse travelers for three meals a day. On the days of travel to or from the destination, the individual's departure and return times should determine whether a meal was incurred during the period of travel.

i. Meal reimbursement for same day travel is allowed only for meals purchased out-of-town.

4. **Transportation** - The Internal Revenue Service has set mileage reimbursement for the year 2009 at the rate of \$.550 per mile.

Supervisor Gillman called for a vote, resulting in all ayes. Motion carried.

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

#### **RESOLUTION 87-1009 BUDGET ADJUSTMENT**

It is hereby resolved to authorize the bookkeeper to make the following budget adjustment:

Increase of ten thousand dollars (\$10,000.00) Appropriated Fund Balance A0910 and increase of ten thousand dollars (\$10,000.00) Hospital and Medical Insurance A 9060.8.

Supervisor Gillman called for a vote, resulting in all ayes. Motion carried.

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

#### **RESOLUTION 88-1009 BUDGET ADJUSTMENT TO ACCOUNT FOR HEAVY DUTY TRUCK PLOW EQUIPMENT**

Resolved, to increase Highway Appropriated Fund Balance by \$40,762.94 (forty thousand seven hundred sixty two dollars and ninety four cents), and to

Increase Account DA5130.2 machinery Equipment by \$40,762.94 (forty thousand seven hundred sixty two dollars and ninety four cents).

Supervisor Gillman called for a vote, resulting in all ayes. Motion carried.

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

**RESOLUTION 89-1009 TO RESCIND THE PURCHASE OF LAND IN RELATION TO BANNER BEACH ROAD**

WHEREAS, The Kendall Town Board approved resolution 76-809 to purchase property on Banner Beach Road, subject to a permissive referendum, and

WHEREAS, The Kendall Town Clerk is in receipt of petitions with a total of 104 signatures,

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Kendall hereby rescinds RESOLUTION 76-809 FOR THE PURCHASE OF LAND IN RELATION TO BANNER BEACH ROAD.

Discussion:

Supervisor Gillman asked the purpose of this resolution, and asked if someone wanted it rescinded.

Councilman Gaesser replied that as stated, petitions have been received, asking for a permissive referendum.

Councilman Joseph asked where the Town is with the petition process. Will this cost Kendall money? Has time run out to have this on the ballot in the General Election, and will therefore require a special election? Since over one hundred residents have expressed concern, not using this as an excuse to pause and reconsider would be irresponsible, regardless of any judge's decision as to the technical properness of the petitions submitted. The concerned citizens cannot be ignored.

Councilman Gaesser said this would require a special election, and costs to the Town will be incurred. The board and town clerk have waited since the 22<sup>nd</sup> of September for legal counsel as to the next step to take.

Supervisor Gillman said, "In the Clerk's office there is a letter that was filed by me, objecting to the petition. Right now it up to the judge as to whether it is a good petition or a bad petition."

Clerk Richardson stated that she has not authenticated the petition, and has not been contacted by any court or office for copies of the petitions or her authentication of same.

Clerk Richardson said that she is required to verify the signatures as those of registered voters, and certify the petitions. Her phone conversations with the court did not indicate filing.

Supervisor Gillman said, "Without the board approval. I have a right to file because I objected to the petition."

Councilman Gaesser asked, “You as Supervisor Gillman or you as Mr. Gillman?”

Supervisor Gillman responded, “Me, as Mr. Gillman”.

Councilman Gaesser asked, “So you, Mister Gillman, are telling one hundred four people in this town you don’t want to hear from them?”

Mr. Gillman answered, “No. I am saying I filed a petition saying I feel as though the petition is wrong, and not legal.”

Councilman Gaesser asked if the attorney was advising Supervisor Gillman or Mister Gillman. Mister Gillman tried to read his letter. Councilman Joseph asked Mister Gillman to recuse himself, and address the board from the audience side of the table. Mister Gillman did not.

Councilman Joseph asked the attorney if the resolution were to be rescinded, what would happen to the petition.

The acting Attorney for the Town said it would become moot.

Councilman Gaesser said the board would be back to square one on acquiring the property.

Supervisor Gillman called for a call vote, with the following results:

|                     |     |
|---------------------|-----|
| Councilman Gaesser  | aye |
| Councilman Joseph   | aye |
| Councilman Schuth   | aye |
| Councilwoman Szozda | aye |
| Supervisor Gillman  | aye |

Supervisor Gillman declared the motion carried.

Councilwoman Szozda made motion to approve the claims, as listed, seconded by Councilman Gaesser; all ayes.

#### PAYMENT OF CLAIMS

|                   |             |                     |   |
|-------------------|-------------|---------------------|---|
| General Fund      | Abstract 10 | \$ 14,313.02        | Vouchers 662,663,665-678,680-690, 716-720,722 |
| Highway Fund      | Abstract 10 | \$ 124,924.03       | Vouchers 668,689-693,695-715,                 |
| Street Lighting 1 | Abstract 10 | \$ 360.09           | Voucher 720                                   |
| Street Lighting 2 | Abstract 10 | \$ 213.09           | Voucher 720                                   |
| Street Lighting 3 | Abstract 10 | \$ 115.53           | Voucher 720                                   |
| Water District 6  | Abstract 10 | <u>\$ 10,102.39</u> | Vouchers 664,718,721                          |
|                   |             | \$ 150,028.15       |   |

## OLD BUSINESS

Hamlin-Kendall Water District – a meeting is scheduled on Oct. 15<sup>th</sup>.

Budget – schedule finance committee meetings for recommendations for preparation of preliminary budget - budget workshop set for Oct. 22<sup>nd</sup>

Water District 6 – close-out paperwork is in Albany, Supervisor has meeting with Kathy Dear. Councilman Gaesser asked if close-out will occur by year end. There will be budget impact.

Transit Road water petition status – no other involved towns have responded to residents; Supervisor Gillman will send letter as soon as possible with council input; Superintendent Kruger presented the preliminary research he has done.

Town Newsletter – one more planned for this year

Status of quick claim deeds – not filed. A discussion was held, resulting in the re-commitment to file these and provide an invoice to the Banner Beach Association for payment

## NEW BUSINESS

Cemeteries – Councilman Joseph is comparing prices. Unfortunate increases will be necessary to cover costs and to provide for upkeep. The cemetery advisory committee needs to be engaged, meet and offer its input.

Councilman Schuth asked Supervisor Gillman for an explanation of the papers “served”. Were they served to Supervisor Gillman or Mister Gillman?

Supervisor Gillman believes it was as supervisor, but he would have to look.

Councilman Schuth requested as much information as possible, as soon as possible.

Supervisor Gillman said he will inform the board.

Councilman Gaesser stated the board needs to be consistently informed, and asked why council members were not notified immediately.

Supervisor Gillman responded that he did not share this information because he was busy at two attorneys’ offices, and there is currently no litigation, and that this is not public information. He does not believe the papers are legal, and he has spoken to three attorneys

The acting attorney for the town said there is nothing filed in any court.

Councilman Gaesser asked if there is possibility of expenses being incurred by the town related to this.

Supervisor Gillman said when he finds that out, Councilman Gaesser will be the first to know.

With there being no further proper business coming before the board, Councilwoman Szozda motioned for adjournment, seconded by Councilman Joseph; all ayes. Meeting adjourned at 9:47 p.m.

Respectfully Submitted,

Amy K. Richardson  
Kendall Town Clerk

***DRAFT SUBJECT TO CHANGE***