

**TOWN OF KENDALL
TOWN BOARD MEETING**
Tuesday, November 19, 2013, 7:30 P.M.

Supervisor Gaesser called the meeting to order at 7:30 p.m. and led the Pledge of Allegiance

ROLL CALL

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

Also present, Attorney Sansone, Clerk Richardson, Hwy. Supt. Kruger, Planning Board Chair Gray, Mary Ellen Seaman, Bruce Newell, Al and Bev Lofthouse

SUPERVISOR'S REMARKS

- Shortened agenda to accommodate Hwy. Supt. Kruger
- Updates on Water District 5 expansion
- Assessment Agreement with Carlton
- Final Budget has no changes from Preliminary, has been submitted to State Comptroller for taxcap purposes

ACCEPTANCE OF MINUTES

Councilman Schuth motioned for the minutes to be accepted, as presented; seconded by Councilwoman Szozda;
all ayes:
Town Board Meeting – October 15, 2013
Budget Hearing - October 29, 2013

REPORTS OF COMMITTEES, BOARDS AND DEPARTMENT HEADS

Highway - W. Kruger

Sidewalk work for this season is complete.

West Kendall Cemetery had an incident of trash being dumped within the cemetery. The cameras did provide a description of the perpetrator, the trailer and the vehicle. Police are investigating.

Plows are ready; markers are being placed; salt barn is full.

Brush work continues after recent wind storms.

Roller purchase request is in.

Mr. Kruger attended a FEMA Mitigation Update Summit. It was about updating lakeshore mapping. His concern is that there may be a push to layer additional federal regulations on the local and state regulations already in place.

Drainage Issue: Supervisor Gaesser asked for a brief overview of the history of the drain line which involves the school.

Superintendent Kruger said two years ago, the school approached him about an issue with a drain line which runs between the Smith and gazebo properties. The drain line was there since the mid-eighties, approximately 350 feet, and was installed by RJ Smith, who was both the property owner and the Superintendent of Highways at the time.

Supervisor Gaesser asked if it was installed by the Town or Mr. Smith, as resident, originating at the right of way, through private property.

Mr. Kruger said it was hard to determine. The engineering was not the best, and materials used were five gallon buckets, etc., but things were done differently and as cheaply as possible then.

Supervisor Gaesser said that in the meantime, the school bought the property the gazebo is now on.

Mr. Kruger said the school inherited the prescriptive easement rights with that property. With new demands and landscaping changes, the drainage was a problem, and the school asked Supt. Kruger for help. It was late autumn, and funds were depleted, so the school agreed to pay for material and the Highway Department provided the labor to redesign and replace the drainage system.

Mr. Pieniaszek, an adjoining neighbor, complained to the school that the new system adversely affected his property's drainage. Superintendent Kruger stated that Mr. Pieniaszek has had a history of complaints about drainage, and a litigious nature for many years. Steps have been taken to appease him several times, including the school mowing along the lines to keep them clear.

Supervisor Gaesser read from School Board minutes from October 2011 that the Smith family approached the school to inform them that since the building which was on the gazebo property had been burned and demolished, the drainage issue had worsened and requested a tile drain be installed at material costs being paid by the Park Committee. There was no mention of an existing tile drain. Mr. Kruger said the minutes were not correct, and differentiating between the school and park committees was difficult.

Supervisor Gaesser said Mr. Pieniaszek came to see him after this drain was installed, and was told to handle his complaints through the school. This is a school issue.

Gradient of the drainage was discussed.

Mr. Kruger said Mr. Pieniaszek dozed dirt onto the drainage areas of both his own and Mr. Smith's properties, which caused a blockage. Mr. Kruger then hired a private engineer, at his own expense, to check the system, and found it satisfactory.

Supervisor Gaesser had a letter from Orleans County Soil and Water Conservation, suggesting it was not satisfactory, and suggesting a relocation of the discharge of the drain line.

Mr. Kruger does not agree with their assessment. The school offered nothing to review, and did not include him in any decision. Mr. Kruger went to the head of the State Soil and Water Conservation, who provided a brief suggesting Mr. Kruger protect the town's prescriptive easements. Drainage Law is a "myriad of written law and case law". Mr. Kruger told the school they had no business negotiating with Mr. Pieniaszek regarding the drainage lines without the town's consent.

Supervisor Gaesser said Mr. Kruger asked him to request Attorney Sansone write a letter to Mr. Pieniaszek's attorney, asking for the blockage to be removed. Neither the Board nor Attorney Sansone was aware the drain line was pre-existing. It is still not known whether the old system was privately installed. The school requested installation, not replacement.

Mr. Kruger said the school board minutes are not reliable, and the school board members may not be well-informed.

Supervisor Gaesser said Attorney Sansone drafted a letter to Mr. Pieniaszek's attorney asking for remedy of the blockage situation. Mr. Kruger asked for stronger language including prescriptive rights. It was discussed, and the Board decided to use a soft approach, and shared that with Mr. Kruger. Meanwhile, the school received a letter from Mr. Kruger with an unsigned, draft-only attachment from Attorney Sansone, not intended to be sent, and sent without Mr. Sansone's or the Board's knowledge or consent. Supervisor Gaesser felt this was used to provide credence to Mr. Kruger's position. Only the blockage was to be addressed, not the drain line itself.

Attorney Sansone said the letter was meant to be from him to the other attorney directly and only.

Mr. Kruger said he got information that the school wanted to move the existing line, without consulting him. He said in 1995, he was appointed lead in all drainage matters, and sidewalks. Supervisor Gaesser asked if that extends to county roads. Mr. Kruger's response was not clear.

Supervisor Gaesser stated that Superintendent Kruger's actions have placed the town in a legal position it was not in before. The pending settlement between Kendall Central School and Mr. Pieniaszek regarding the drainage issue was not known by any member of the Town Board. It was also not known that Mr. Kruger had requested an executive session held during a school board meeting. Mr. Kruger stated he has several issues with the school, including no written intermunicipal agreements about snow removal.

Mr. Kruger stated again that the minutes from the school board meetings must be incorrect regarding his being the one to request an executive session. He said that if pipes are to be moved, the school has to clear it with him. Prescriptive rights to that easement have been established by the town long before the school.

Supervisor Gaesser does not know if that can be proved, because it is not known if the line was private, and there does not seem to be any documentation. Mr. Kruger said there are several similar situations throughout the town. Existing tile was in place.

Supervisor Gaesser quoted Mr. Kruger's letter to the school regarding the school's right to address the drainage issues by the gazebo by an alternate means, which would not interfere with the town-owned drain line. Supervisor Gaesser said there is no recorded easement, and the line runs through the school's property. The school believes the lines are school-owned. For two years, the discussion was that of creating a drain line, not replacement. The last paragraph of Mr. Kruger's letter to the school, stating that the matter is in the hands of the Town Attorney, to protect the Town's drainage rights, is inaccurate. The attorney has not been engaged by the Board on this issue. The blockage issue was the only one to be addressed, not any replacement options. These are separate issues. The Town Board was not aware of Mr. Kruger's actions as to the letter to the school, or his requesting an executive session with the School Board. These actions have resulted in the town, instead of the school, now having a legal issue with Mr. Pieniaszek. Supervisor Gaesser said Mr. Kruger's behavior has been unbecoming to an elected official of Kendall.

Mr. Kruger said he thinks the town should have the issue. The line is town-owned, through prescriptive rights. Supervisor Gaesser said that is not clear. Mr. Kruger did apologize for using Attorney Sansone's draft letter without permission, but maintained that the school should not be making decisions on drainage without his consent.

Supervisor Gaesser reminded Mr. Kruger that two years ago, they discussed the issue concerning Mr. Pieniaszek, and the Supervisor's position was to have him address the school. No mention was made of replacing drain lines, or town involvement. If the school diverts the line, using the recommendation of the O.C. Soil and Water Conservation, and discharges onto their own property, according to the map provided to Supervisor Gaesser, it is not a town concern.

Attorney Sansone expressed concern that the future result of this could well be an expensive legal problem for the town. The attorney for Mr. Pieniaszek contacted Attorney Sansone to say the pending agreement reached

between his client and the school would be halted due to the receipt of Mr. Kruger's letter. There are seven elements necessary to prove a prescriptive easement right to obtain standing in court. If that can be done, then litigation begins. A litigation attorney would be necessary. If this happens, the costs would be substantial.

Mr. Kruger restated that the school should not make agreements concerning drainage without his oversight. He said he thinks the case would be straight forward. If this agreement is completed, Mr. Pieniaszek would still have complaints.

Supervisor Gaesser made the point that if the school has arranged for a private contractor to divert the line, and has paid for the material, with no mention of replacement of a pre-existing drain, the school believes it is a school drain. No mention of "prescriptive rights" has been made until the letter.

Councilman Joseph asked when the issue was first raised. Supervisor Gaesser said November Of 2011. Councilman Joseph said much of what is being said seems to be nothing more than hearsay. Communication has been poor. Since the money for any potential litigation is a general fund expense, the Town Board should have been made aware of any actions toward that, or any solicitation of the attorney's time. There have been numerous work sessions, meetings, and private opportunities – in person, by e-mail, or by phone, to communicate the situation to any and all members of the Board. The Town Board is charged with such decisions.

Highway Superintendent Kruger apologized for forwarding Attorney Sansone's unsigned draft letter, but stated he wanted the blockage moved, and he will not apologize for standing up for his drainage rights. Supervisor Gaesser pointed out his letter made no mention of the blockage.

Councilman Joseph said anything that could involve litigation and cost the town's taxpayers money is the Town Board's business. Communication was not there.

Mr. Kruger said the school had no right to try to negotiate any settlement using the town drainage rights, and he reacted to the situation as he saw fit.

Supervisor Gaesser said, "This is just a terrible situation. The players involved have conflicts, there's family, and it is a mess".

Mr. Kruger said, "Whether I like the guy or not is irrelevant. I would take this stand with anyone on any drainage line I have."

Discussion continued until Supervisor Gaesser called for a five minute recess at 9:00 p.m. A resolution drafted by the attorney was presented to those in attendance for the Board's consideration at the end of the meeting.

When the recess ended (9:06 p.m.), Supervisor Gaesser opened the floor to Hwy. Supt. Kruger. Mr. Kruger strongly objected to the proposed resolution. He stated he has every right as an elected officer to send letters from his office independently. His charge and responsibility is to protect the drainage rights. He did not act outside his authority. He did have a conversation with Attorney Sansone.

Councilman Joseph disagreed.

Attorney Sansone said that the Board's issue is that in order to involve the town in any litigation, its approval must be obtained. The result of letters sent must be considered.

Discussion about drainage results of different ways of handling this took place.

Attorney Sansone, when asked, offered that due to there being an issue of fact as to the drain pre-existing, just being raised now, the last paragraph of the resolution should not be considered.

Councilman Joseph reiterated the seemingly purposeful communication failure of the Highway Superintendent has caused serious, avoidable problems and has showed a lack of respect to the Town Board.

Mr. Kruger said the school board minutes are erroneous.

Councilman Schuth said he would like to move forward with resolution 80 later in the meeting. There are questions about ownership and private property rights. The action of this resolution effectively removes the town from anything to do with this drain line, which is in the best interest of the residents of the Town of Kendall.

After further discussion, it was determined to present the resolution.

Boards

Planning Board – P. Gray, Chair

A recently approved dog kennel permit has been temporarily rescinded; pending possible issues brought forth possible legal issues. The process will start over with a more complete application.

A cat kennel requiring a variance is in process of being considered.

Mr. Gray announced that he will be retiring from the Planning Board and from the County Planning Board, at year end. He plans extensive travel, and will be unable to continue his role.

Supervisor Gaesser congratulated Mr. Gray for over 27 years of work very well done, and gave special thanks to him for sacrificing his retirement for the past two years, in order to steer the Troutburg Project correctly, among other things, for the betterment of this community.

Zoning Board – K. Banker, Chair – no report

Department Heads

Assessor – G. Massey – no report

Code Enforcement – CEO Hennekey – no report

Historian – K. Corcoran – no report

Recreation – B. Flow –written report submitted

Town Clerk – A. Richardson – written report submitted

Town Justice - S. Cliff – written report submitted

Supervisor – D. Gaesser – written report submitted

PUBLIC COMMENT

Bruce Newell asked for information on the extension of Water District Five within the Troutburg project.

Supervisor Gaesser said the attorneys and engineers have given opinions on best course. That will be a petition from the property owner of the affected parcel, a map, plan and report showing the redrawn district lines, a public hearing, and consideration of the Board. There will be no additional cost to any resident of the current district. There will initially be a potential benefit to each user by the extension, and potential growth would also provide benefit, as debt is shared by benefit unit calculation.

RESOLUTIONS

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

RESOLUTION 72-1113 ADOPTING THE 2014 BUDGET

Be it resolved to adopt the 2014 Town of Kendall Budget, as presented, and to make copies available in the Town Clerk’s office, and posted to the town website, for public inspection.

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

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

Supervisor Gaesser declared the motion carried.

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

RESOLUTION 73-1113 SETTING MEDICAL BENEFITS BENCHMARK PLANS AND COSTS TO BE EFFECTIVE DECEMBER 1, 2013

BE IT RESOLVED, to adopt the following changes effective December 1, 2013 to the Town of Kendall Medical Policy:

Change:

Section 1 – Definitions

Benchmark Medical Plan - is the medical plan(s) and subsequent cost of the medical plan the Town Board selects to offer to eligible elected officials and employees as set forth in this policy.

The Benchmark Plan is MVP's HDHP EPO Preferred-NEHD18S Plan.

Family Plan \$826.26 per month

Two Person Plan \$645.58 per month

Single Plan \$317.79per month

Any employee wishing to select the MVP's EPO Preferred-E0052S Plan may do so at his own expense. Payments are to be made by payroll deduction.

To Now Read:

Section 1 – Definitions

Benchmark Medical Plan - is the medical plan(s) and subsequent cost of the medical plan the Town Board selects to offer to eligible elected officials and employees as set forth in this policy.

The Benchmark Plan is MVP's HDHP EPO Preferred-NEHD18S Plan.

Family Plan \$929.55per month

Two Person Plan \$715.04 per month

Single Plan \$357.52 per month

Any employee wishing to select the MVP's EPO Preferred-E0319S Plan may do so at his or her own expense. Payments are to be made by payroll deduction.

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.

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

RESOLUTION 74-1113 APPROVING PURCHASE OF ROLLER

Whereas, the Highway Superintendent has recommended the purchase of a roller as more cost effective than the frequent renting of such machinery, and has obtained a quote for a used roller which reflects good value; and

Whereas the Highway Superintendent has proposed the purchase of a 2000 Wacker Vibratory Roller Model RD11A 1.5 Ton, for seven thousand seven hundred and ninety dollars (\$7,790) from Altra Rental & Supply, Inc.; now therefore,

BE IT RESOLVED, that Town of Kendall Board approves the purchase of the roller for use by the Town of Kendall Highway Department.

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.

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

RESOLUTION 75-1113 HIGHWAY BUDGET ADJUSTMENTS

Whereas the Town of Kendall entered into an intermunicipal agreement to pave the Kendall Central School parking lot, and the completed work from such agreement has generated seventy seven thousand six hundred twenty dollars and 42 cents (\$77,620.42) of unanticipated budget revenue; and

Whereas the Town Board has approved the purchase of a 2000 Wacker Vibratory Roller Model RD11A 1.5 Ton for seven thousand seven hundred and ninety dollars (\$7,790) from Altra Rental & Supply, Inc.; so now therefore,

Be it resolved to make the following Highway Budget Adjustments:

Increase Revenue Account DA2300 Services for Other Governments by seven thousand seven hundred and ninety dollars (\$7,790), and

Increase Account DA5130.20 Machinery – Equipment by seven thousand seven hundred and ninety dollars (\$7,790).

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.

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

RESOLUTION 76-1113 GENERAL BUDGET ADJUSTMENTS

Be it Resolved to:

Increase General Revenue Account A3005 Mortgage Tax by \$4,111, from \$22,000 to \$26,111, and

Increase Account A9010.80 New York State Retirement by \$4,111, from \$29,000 to \$33,111

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.
Councilman Schuth made the following motion, seconded by Councilwoman Szozda:

RESOLUTION 77-1113 AUTHORIZING TOWN CLERK RICHARDSON TO ENTER INTO CONTRACT WITH DEC AS LICENSED SALES AGENT

Whereas it has been an appreciated convenience and service to our community to offer the sale of sportsman licenses by the Town Clerk, and

Whereas, due to system changes within the Department of Environmental Conservation, it is now necessary to enter into a new agent agreement with the revenue department of the DEC in order to continue selling fishing/hunting/trapping licenses; be it now

RESOLVED, to authorize Town Clerk Richardson to enter into the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION LICENSE ISSUING AGENT AGREEMENT, subject to legal review and acceptance.

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.

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

RESOLUTION 78-1113 AUTHORIZING SUPERVISOR GAESSER TO ENGAGE THE SERVICES OF AMATO & FOX FOR 2013 AUDIT

Supervisor Gaesser is hereby authorized to enter into agreement with Amato, Fox & Company P.C., of 36 Niagara Street, Tonawanda, NY 14150 for audit services, at a cost not to exceed six thousand five hundred dollars (\$6500.00)

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.

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

RESOLUTION 79-1113 SCHEDULE A SPECIAL MEETING MONDAY DECEMBER 30, 2013 TO PAY YEAR-END EXPENSES.

Be it Resolved to schedule a Special Meeting on December 30, 2013, to be held at 4:00 p.m., to conduct any year end business.

Supervisor Gaesser called for a vote, resulting in all ayes, and declared the motion carried.

Councilman Joseph motioned for the claims, as presented on Abstract 11 be paid, seconded by Councilwoman Szozda; all ayes:

PAYMENT OF CLAIMS

General Fund	Abstract 11	\$49,658.53	Vouchers 734-748,750-777,780,781
Highway Fund	Abstract 11	\$59,056.86	Vouchers 736,748,767, 782-816
Light District One	Abstract 11	\$468.63	Voucher 766
Light District Two	Abstract 11	\$273.87	Voucher 766
Light District Three	Abstract 11	\$152.59	Voucher 766

Water District One	Abstract 11	\$4,502.32	Voucher 778
Water District Two	Abstract 11	\$1,290.45	Voucher 778
Water District Three	Abstract 11	\$1,653.45	Voucher 778
Water District Four	Abstract 11	\$3,183.45	Voucher 778
Water District Five	Abstract 11	\$1,070.46	Voucher 778
Water District Six	Abstract 11	\$1,590.55	Vouchers 764,779,781
Library Abstract 11	<u>\$119.40</u>		Voucher 749
		\$123,020.56	

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

RESOLUTION 80-1113 DECLARATION REGARDING DRAINAGE LINE

WHEREAS the Kendall Central School Board and/or Kendall Park Committee addressed the Town of Kendall Highway Superintendent, seeking assistance in the installation of a drain line on school property to respond to drainage issues of school grounds and a neighboring property, and

WHEREAS the Town of Kendall Highway Department installed said drain with material purchased by the Kendall Park Committee funds, and

WHEREAS the Orleans County Soil and Water Conservation District has subsequently recommended diverting the flow of the drainage, to alleviate resulting problems, to a point further from neighboring properties, and

WHEREAS the Kendall Central School Board and its attorneys are nearing settlement of disputes regarding the drainage, and

WHEREAS the Highway Superintendent has not received Town Board consent to engage the Attorney for the Town in regard to School Board action, and

WHEREAS the Town of Kendall Highway Superintendent’s actions have excluded Kendall Town Board involvement, and have resulted in strained relations between Kendall Central School and the Town of Kendall;
Now

THEREFORE BE IT RESOLVED, the Town Board of the Town of Kendall declares that at this point in time the Town has no legal standing or input toward any potential relocation of the drain lines.

Discussion: Councilwoman Szozda wants Superintendent Kruger involved in what the school chooses to do, to avoid future problems. Supervisor Gaesser said that the editing to “at this point in time” in the last paragraph leaves options for the future open.

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

- Councilman Joseph aye
- Councilman Schuth aye
- Councilwoman Szozda no
- Supervisor Gaesser aye

Supervisor Gaesser declared the motion carried.

OLD BUSINESS

Water Expansion- Course of Action Plan – the engineer has this in progress. Water District Five matter should only take a week to be prepared for a public hearing. This meeting will be recessed to December 3rd, to schedule a public hearing.

Codification – proposal for electronic copies and updates has been received.

Copier – decision made, copier will be ordered, should be in place by year end.

Bicentennial Tree/Stone – Councilman Schuth thanked Hwy. Supt. Kruger for the landscaping started. The plaque should be delivered this week.

With no further business coming before the Board, Councilman Joseph motioned for recess until December 3, 2013 at 7:00 p.m., seconded by Councilman Schuth; all in favor. Meeting recessed at 10:27 p.m.

Respectfully Submitted,

Amy K. Richardson,
Kendall Town Clerk