

**TOWN BOARD  
TOWN OF KENDALL  
RECESSED TOWN BOARD MEETING  
Thursday, August 28, 2008 7:30 P.M.**

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

**ROLL CALL**

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

Also present: Planning Board members Paul Gray, Tom Cole, and Joyce Henry, Attorney David Mayer in Attorney Leone's stead, Deputy CEO Hennekey, 3 members of the public.

**DEPUTY SUPERVISOR'S REMARKS**

Deputy Supervisor Butler explained that Supervisor Gillman was attending a Supervisors' meeting in Albion, on the subject of shared services for insurances. Councilwoman Szozda spoke briefly about medical insurance, and the projected 15% increase in insurance costs for 2009.

**PUBLIC PARTICIPATION**

No one wished to speak

**RESOLUTIONS**

Councilwoman Szozda moved the following, seconded by Councilman Joseph:

**RESOLUTION 120-808 JUSTICE COURT GRANT APPLICATION**

Be it resolved to authorize the Kendall Justice Department to apply for a Justice Court Assistance Program Grant for \$30,000.

Discussion: Councilman Gaesser commented that this was handled by the Kendall judges, with no professional grant writer.

Councilman Joseph would like to see a keyless entrance system for the Town Hall.

Deputy Supervisor Butler called for a vote, which resulted in all ayes. Motion carried.

Councilman Gaesser moved the following, seconded by Councilman Schuth:

**RESOLUTION 121-808 RECREATION DISADVANTAGE FUND INCREASES**

Whereas the Kendall Lions club has given a donation of \$300.00 to be used for the Recreation Disadvantage Fund,

Be it resolved to increase Revenue Account A2706 Gifts/Donations for Disadvantaged Recreation Account, and to increase Appropriation A7310.42 Contractual Disadvantage.

Deputy Supervisor Butler called for a vote, which resulted in all ayes. Motion carried.

Councilman Gaesser moved the following, seconded by Councilman Schuth:

**RESOLUTION 122-808 RECREATION ACCOUNT TRANSFER**

Whereas there were prepaid winter basketball registration fees in December 2007, which dropped to fund balance at the close out of the year 2007,

Be it resolved to transfer \$645.00 from Contingent Account A1990.4 to A7310.4 Recreation Contractual from Fees.

Deputy Supervisor Butler called for a vote, which resulted in all ayes. Motion carried.

Councilwoman Szozda moved the following, seconded by Councilman Schuth:

**RESOLUTION 123-808 INTERMUNICIPAL AGREEMENT FOR  
COUNTY-WIDE SHARED SERVICES TO REDUCE FLOODING  
CONCERNS**

Resolved, to authorize Supervisor Gillman to sign and enter into the Intermunicipal Agreement Regarding County Wide Shared Services between the Orleans County Soil and Water District and the Town of Kendall, as presented.

Intermunicipal Agreement Regarding County Wide Shared Services

An INTERMUNICIPAL AGREEMENT between ORLEANS COUNTY SOIL AND WATER CONSERVATION DISTRICT, a municipal agency with offices at 446 West Avenue, Albion, New York 14411; and TOWN OF Kendall, a municipal agency with offices located at 1873 Kendall Road, Kendall, New York 14476; hereinafter referred to as "Town".

WHEREAS, the Town recognize the benefits of cooperating to reduce flooding concerns in the County; and

WHEREAS, Orleans County Soil and Water Conservation District is responsible for coordination of scheduling the use of shared services; and

WHEREAS, Orleans County Highway Department will provide an excavator; and

WHEREAS, Orleans County Highway Department is responsible for transportation of the equipment and maintenance of the equipment; and

WHEREAS, The Town's Highway Department is responsible for fuel and manpower when needed while equipment is operating in the Town; and

WHEREAS, Orleans County Soil and Water Conservation District has been rewarded a grant in the amount of \$43,470 from NYS Department of State Shared Municipal Service Incentive Grant Program 2007-2008 to support the purchase of equipment (Slashbuster) for shared services; and

WHEREAS, This equipment will be shared amongst the Orleans County Highway Department, and all of the Orleans County Towns of Albion, Barre, Clarendon, Carlton, Gaines, Murray, Kendall, Ridgeway, Shelby and Yates.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually agree as follows:

1. The term of this agreement shall be from March 1, 2008 through March 1, 2013. At such time, this agreement may be renewed,

amended, or terminated. Any party may terminate this agreement upon 60 day written notice to the other parties.

2. The goals to be accomplished pursuant to this agreement are as follows:
  - a. Strengthen the formation of the County Wide Drainage Program.
  - b. Reduce the amount of flood and poor drainage areas throughout the County
  - c. Towns and County will work as a team for the overall good of the County
  - d. Follow the recommendations of the Flood Mitigation Prioritization Plan Orleans County, New York.
  - e. Work in an environmentally friendly manner, seeding and mulching any bare ground that is caused by construction
  - f. Work cooperatively with the Army Corp. of Engineers and NYS DEC.
3. The working relationship among the participating agencies is to be based on the following principals
  - a. For the purpose of this agreement, the relationship among the County and Towns is cooperative and advisory.
  - b. The County will complete the project in an order identified in the Flood Mitigation Prioritization Plan Orleans County, New York.
  - c. The County will provide an operator for the equipment.
  - d. The Towns will provide any additional manpower if needed to accomplish the project
4. This Agreement may be modified or amended in writing duly executed by all parties, which shall be attached to and become a part of this Agreement.
5. This agreement constitutes the entire agreement among the County and Towns. The Agreement shall be governed by and construed in accordance with the laws of New York State without regard or reference to its conflict of laws and principals.
6. Each party to this agreement will be responsible for its own acts and omissions, and shall not be responsible for the acts or omissions of any other party. Further, each party to this agreement specifically reserves its rights to seek relief in the appropriate forum for any loss or damage incurred as a result of the acts or omission of others, whether or not they are a party to this agreement.

Discussion: Councilman Schuth said this is an extension of a previous agreement, and gave an explanation of the agreement.

Deputy Supervisor Butler called for a vote, which resulted in all ayes. Motion carried.

Councilman Joseph moved the following, seconded by Councilman Gaesser:

**RESOLUTION 124-808 AUTHORIZING SUPERVISOR GILLMAN ON BEHALF OF THE TOWN OF KENDALL TO ENTER INTO AN INTERMUNICIPAL AGREEMENT WITH THE TOWN OF MURRAY FOR THE PURCHASE AND SALE OF WATER FOR KENDALL WATER DISTRICT 6**

WHEREAS, the Town of Kendall has established Kendall Water District #6 for the supplying and delivery of water to the residents of the Town of Kendall within such district, and

WHEREAS, in order to best effectuate the supplying and delivery of water to said district the Town Board of the Town of Kendall has determined that the Town of Murray has the excess water supply and expertise to supply such water to Kendall Water District #6, and

WHEREAS, pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the State Environmental Quality Review Act (SEQR), it has been determined by the Town Board of the Town of Kendall that the adoption of the proposed intermunicipal agreement is an unlisted action for the purposes of .SEQR and upon review the Town Board of the Town of Kendall has determined that the adoption of said proposed Local Law would not have a significant effect upon the environment and makes a negative declaration under SEQR, and

WHEREAS, the Town Board of the Town of Kendall, after due deliberation, finds it in the best interest of the Town of Kendall to enter into agreement with the Town of Murray for the delivery and supply of water to Kendall Water District #6,

NOW, THEREFORE, be it resolved that the Town Board of the Town of Kendall hereby accepts the intermunicipal agreement with the Town of Murray, a copy of which is attached hereto and made a part hereof, and the Town of Kendall Supervisor is hereby empowered and directed to enter into said agreement on behalf of the Town of Kendall.

**INTERMUNICIPAL AGREEMENT**

Made this \_\_\_day of August, 2008, by and between THE TOWN OF MURRAY, a municipal corporation of the State of New York, with offices and a principal place of business at 3840 Fancher Road, Holley, New York 14470 (hereinafter referred to as "Murray"), party of the first part; and THE TOWN OF KENDALL, a municipal corporation of the State of New York, with offices and a principal place of business at 1873 Kendall Road, Kendall, New York 14476 (hereinafter referred to as "Kendall"), acting for

and on behalf of Kendall Water District No. 6 (hereinafter referred to as "District") party of the second part:

WTTNESSETH:

**WHEREAS**, Article 5-G of the General Municipal Law authorizes municipal corporations to enter into agreements for the performance among themselves on a contract or cooperative basis for the provision of joint services, including but not limited to joint water projects or any other municipal service, activity, project or undertaking; and

**WHEREAS**, Murray has extensive experience in the water business, not only with the installation and maintenance of water mains, valves, hydrants, meters and appurtenances, but also with the administrative part of the business including water sampling, testing and monitoring and meter reading and billing; and

**WHEREAS**, Kendall recognizes the need to provide a safe, reliable and adequate water supply to the residents of Petersmith Road in the Town of Kendall who presently rely on private wells which produce water of poor quality and/or limited quantity, and Kendall has taken the necessary steps to establish a water district known as Water District No. 6 which runs northerly along Petersmith Road from the Murray-Kendall town line to Carr Road; and

**WHEREAS**, Murray Water District No.11 extends northerly along Peter- smith Road, terminating at the Murray-Kendall town line, and Kendall has requested that Murray allow Kendall to connect to Murray's water transmission main on Peter- smith Road in order to supply the residents of Kendall Water District No. 6 with water, and Kendall has also requested assistance from Murray in the construction and administration of the water district and

**WHEREAS**, Murray is willing to supply Kendall with water and to assist Kendall with the construction and administration of Water District 6, and the parties desire to enter into an intermunicipal agreement to define the terms and conditions of this arrangement;

**NOW, THEREFORE**, in consideration of the reciprocal covenants herein contained, the parties hereby agree as follows:

1. Murray will undertake to furnish and sell to Kendall • and Kendall will take and purchase from Murray, such supply of potable water of the quality produced by Murray's sources of supply, as may be needed and required by Kendall from time to time, for Kendall's residential, commercial and agricultural users, upon the terms and conditions herein set forth.

2. Murray does not commit to sell any specific quantity of water to Kendall, nor does Kendall commit to purchase any specific amount of water from Murray; however, if within the physical capabilities of the Town of Murray water distribution system, Murray can transmit and supply surplus water, over and above its own needs, Kendall shall have the right to purchase surplus water from Murray. The term "surplus water" as herein utilized is defined to be water which Murray may lawfully sell to users outside the Town of Murray pursuant to §198 of the Town Law. If the supply of water available to Murray is insufficient

to meet and supply the needs of Murray's own resident consumers, whether residential, agricultural, industrial or commercial, Murray shall have the right to control, regulate and curtail the supply of water to Kendall under this contract. In the event Murray is unable to supply Kendall with a sufficient quantity of water to meet the needs of the residents of Kendall Water District 6, Kendall shall have the right to obtain water from other sources of supply. In the further event that Murray is unable to supply Kendall with a sufficient supply of water for Kendall Water District 6 for a continuous period in excess of thirty (30) days, Kendall shall have the right to terminate this agreement upon five (5) days advance written notice to Murray.

3. Murray shall use its best efforts at all times to furnish the District with an ample supply of water except in cases where emergency interruptions prevent the furnishing of said supply. However, Murray shall not be liable to Kendall or the District or any property owners or tenants within the District by reason of any such emergency interruption. The area to be served by this agreement is specifically set forth in a written description designated Exhibit A. attached hereto and made a part hereof. Exhibit A may be amended from time to time during the term hereof by increasing or decreasing the area to be served by this agreement. Such modification, to be effective, shall be certified in writing by Murray acting through its Supervisor and Kendall acting through its Supervisor. All terms and provision of this agreement shall apply to the area described on Exhibit A as the same now exists or as the same may be amended, supplemented or modified from time to time as herein above set forth.

4. The water being supplied by Murray to Kendall under the terms of this agreement will be transmitted to Kendall via Murray's conventional water distribution system and will be of the quality produced by Murray's suppliers. Murray specifically disclaims any and all warranties, express or implied, as to the quality or quantity of the water to be supplied to Kendall, and Murray makes no guarantee that the supply of water will be sufficient for normal domestic purposes or for fire fighting purposes. While Murray will endeavor to comply with the requirements of the New York State Department of Health with respect to water distribution and testing, the parties acknowledge that the water being

sold by Murray to Kendall comes from the Monroe County Water Authority and/or the Town of Gaines water treatment facility, and Murray shall not be liable for any failure or deficiency in that water supply.

5. Kendall will be responsible for purchasing and installing a master meter at the point of connection between the Kendall and Murray water distribution systems. If possible the meter pit will be located within the highway right-of-way on Peter Smith Road. Any easements required for the installation of the meter pit or appurtenances or for the future maintenance of the meter pit or appurtenances shall be obtained and recorded by Kendall. Murray will supply the customers in the District with a standard water meter and MXIJ (radio transmitter) billed to Kendall at Murray's cost at the time of installation.

6. Murray will be responsible for maintaining and periodically calibrating the master meter. Calibration of the meter shall take place at least once a year. Murray shall be

responsible for maintaining its water distribution system to the point of connection to the master meter, and Kendall shall be responsible for maintaining its water distribution system from the master meter and beyond. Any expense associated with the maintenance and calibration of the master meter will be Kendall's responsibility, if Murray performs any maintenance or repair work on Kendall's water distribution system, whether as a result of an emergency or at Kendall's request, Murray will bill Kendall on a time and materials basis.

7. The parties acknowledge that Murray purchases its *water* from a variety of suppliers *at* specified rates per one thousand gallons, and those rates are subject to change from time to time as negotiated by Murray and its suppliers. Murray's charge to Kendall for all metered water delivered to Kendall shall be Murray's actual cost of purchase, plus an additional ten cents per one thousand gallons. The initial water rate charged by Murray to Kendall under this agreement is \$3.05 per one thousand gallons. In the event that Murray's cost for water is increased by its suppliers, Murray shall have the right, upon thirty (30) days written notice to Kendall, addressed to the Kendall Town Clerk, to increase Murray's charge to Kendall. Such notice shall be accompanied by written documentation from Murray to confirm that Murray's water purchase cost has increased. It is understood that the computation of the above charge is effective only as between Murray and Kendall under this Agreement, and the above method of computation shall not preclude Kendall from using other methods of computation or charges as between the District and the respective affected properties in the District.

8. Murray will bill Kendall on a monthly basis for all water consumed by Kendall, as determined from monthly readings of the master meter at the Murray-Kendall town line.

Billings will be rendered on the first day of each month, and shall be payable by Kendall without penalty within thirty (30) days. Any water bill not paid in full within such 30 day period will be subject to Murray's customary late payment penalty, which will be added to the

bill for the following billing period. In no event will the late payment penalty charged by Murray exceed the maximum penalty authorized by §198 of the Town Law.

9. On a quarterly basis, Murray will read the water meter of every customer in the District and mail a bill to each customer. Meter readings will be made at the same time that Murray reads the meters in Murray's own water districts. Murray will mail bills on the first business day of the following month. The initial billing rate will be \$4.00 per thousand gallons, subject to increase in Kendall's sole discretion. In the event Kendall desires to increase the billing rate to the customers in the District, Kendall shall give Murray at least thirty (30) days advance written notice of such increase, and Murray will bill Kendall's customers at the increased rate beginning with the next quarterly billing. (All bills will be payable to the Town of Kendall, and Kendall will be responsible for collecting and recording all payments. If a water bill remains unpaid beyond 30 or 60 days, Kendall shall notify Murray in writing, and Murray will issue additional bills. The parties acknowledge that Murray's usual practice is to add interest to unpaid water bill~ after 30 days and to send a service termination letter after 60 days, and Murray will follow this same practice when billing Kendall's customers. The decision to terminate service to any customer in the District due to unpaid water charges shall be made by Kendall, and Kendall will be solely

responsible for sending any required termination notices to the customer. If it becomes necessary to terminate service for nonpayment, Kendall will advise Murray accordingly, and Murray will shut off service. In the event a customer whose water service has been shut off for nonpayment: desires to restore water service, all unpaid water charges, interest and penalties must be paid in full, in addition to a \$25.00 service restoration fee.

10. Murray will take monthly water samples, arrange for the testing of same and file the test results with the Orleans County Health Department. If the testing discloses the need for treatment of the water in order to satisfy potability standards, Murray will be responsible for such treatment and the cost thereof. Additionally, Murray will monitor the chlorine residual and flush hydrants from time to time as necessary.

11. Kendall shall indemnify and hold Murray harmless from any and all claims for personal injury or property damage arising out of or as a consequence of Murray's failure to furnish an adequate supply of water to Kendall for domestic or fire flow purposes, as long as such failure was not intentional, or arising out of or as a consequence of Murray's termination of service to a District customer for nonpayment pursuant to a directive from Kendall to terminate such service.

12. No individual except the Highway Superintendents of the Town of Kendall and the Town of Murray or their designees shall manipulate, operate, turn on, turn off, or otherwise interfere in any manner with the valves, pumps, meters, meter pits or equipment connected to or with the respective water distribution systems of Murray and Kendall.

13. Murray agrees that it will not make water service available directly to any individual, corporation or other entity for properties within the District except in accordance with this agreement. Kendall agrees that it will not make water available for resale, or allow the furnishing of water to any person, corporation or other entity beyond the area described in Exhibit A, as presently described or as hereafter modified, without Murray's prior written authorization.

14. Kendall agrees to consider acceptance and adoption of Murray's water rules and regulations.

15. Murray agrees to give all reasonable assistance in having a member(s) of the Kendall Highway Department certified as a "Class D Operator" for the District water system. However, any and all expenses for such certification shall be the sole responsibility of Kendall.

16. This agreement shall continue in force for a period of five (5) years from the date of execution of this agreement, thereafter automatically renewable for successive five (5) year periods. However, either party may choose not to renew the agreement upon one (1) year written notice to the other party.

17. This document shall be executed in duplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the offices of the Clerks of the Towns of Murray and Kendall, and certified copies of the resolutions of the respective Town Boards approving the execution of this agreement shall be attached to the filed agreements.

18. Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto:

To: Town of Murray

Office of the Supervisor  
3840 Fancher Road  
Holley, New York 14470

To: Town of Kendall

Office of the Supervisor  
1873 Kendall Road  
P.O. Box 474  
Kendall, New York 14476

19. No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

20. This agreement constitutes the complete understanding of the parties. No modifications of any provisions thereof shall be valid unless in writing and signed by both parties.

21. This agreement may be executed in counterparts, each of which shall be deemed an original but all of which, together shall constitute one and the same instrument.

22. This agreement shall be governed under the laws of the State of New York.

23. This agreement shall be binding upon the parties and their legal representatives, successors and assigns.

24. This agreement is executed on behalf of the Town of Kendall by Jonathan L. Gillman, Supervisor, pursuant to a resolution of the Kendall Town Board duly adopted on August 28, 2008, and on behalf of the Town of Murray by Henry H. Lehning, Supervisor, pursuant to a resolution of the Murray Town Board duly adopted on September 9, 2008.

Deputy Supervisor Butler called for a vote, which resulted in all ayes. Motion carried.

Councilman Schuth moved the following, seconded by Councilman Gaesser:

**RESOLUTION 125-808 TO ADOPT LOCAL LAW 1 of 2008 – Amendment to the Town of Kendall Zoning Ordinance Regulating Wind Energy Conversion Systems**

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Kendall calling for public hearings to be held by the Town Board of the

Town of Kendall at the Town Hall, 1873 Kendall Road, Kendall, New York on August 14, 2008 and on August 21, 2008 to hear all interested parties on a proposed Local Law entitled, “ Amendment to the Town of Kendall Zoning Ordinance Regulating Wind Energy Conversion Systems,” and

WHEREAS, notice of said public hearings were duly advertised in the Hamlin Herald Newspaper, the official newspaper of the Town of Kendall, and posted on the Town of Kendall Clerk’s signboard and on the Town of Kendall’s signboard at least ten days prior to the hearings, and

WHEREAS, pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the State Environmental Quality Review Act (SEQR), it has been determined by the Town Board of the Town of Kendall that the adoption of the proposed Local Law is an unlisted action for the purposes of SEQR and upon review, including review of the Environmental Assessment Form, the Town Board of the Town of Kendall has determined that the adoption of said proposed Local Law would not have a significant effect upon the environment and makes a negative declaration under SEQR, and

WHEREAS, the Town Board of the Town of Kendall, after due deliberation, finds it in the best interest of the Town of Kendall to adopt said Local Law 1-2008,

NOW, THEREFORE, be it resolved that the Town Board of the Town of Kendall hereby adopts said Local Law as Local Law No. 1-2008 entitled “Amendment to the Town of Kendall Zoning Ordinance Regulating Wind Energy Conversion Systems”, a copy of which is attached hereto and made a part hereof, and the Town of Kendall Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and to enter said Local Law in the Local Law Book of the Town of Kendall, and to give due notice of the adoption of said Local Law to the New York Secretary of State.

(see attached local law)

Discussion: Councilman Schuth stated that there have been three Public Hearings on this law, that two years of work by the Planning Board have gone into this document, multiple reviews, and joint meetings have been held. Councilman Schuth read the attached letter, dated August 27, 2008 to the Kendall Town Board from the Town of Kendall Planning Board, outlining the changes from the past draft. Councilman Schuth offered Clerk Richardson assistance in filing this local law with New York State.

Deputy Supervisor Butler called for a roll call vote, at the request of Councilman Gaesser with the following results:

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

Deputy Supervisor Butler declared the motion carried, at the request of Councilman Gaesser.

With there being no further business brought before the Board, Councilman Gaesser moved for adjournment, seconded by Councilman Schuth; all in favor. Meeting adjourned at 7:58 p.m.

Respectfully Submitted,

Amy K. Richardson  
Kendall Town Clerk