

**TOWN OF KENT
TOWN BOARD MEETING
Tuesday, May 7, 2019**

Executive Session – 6:00 p.m.

to discuss litigation; collective negotiations pursuant to article fourteen of the civil service law; the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation

Public Hearing – 7:00 p.m.

Proposed local law for maintenance of ancient roads

Workshop –

1. Pledge of Allegiance
2. Planning Board – David Schlosser, Schopfer Architects - Discussion of amendment to Article III of Chapter 77 of the Town Code
3. Beautification Committee – Kent Cleanup Day
4. Recreation – hiring of softball coordinator and seasonal workers, advertise for Park Maintenance Worker opening
5. LCPD – hiring of seasonal Park Maintenance Helper
6. Board of Assessment Review – new member
7. ESI Contract
8. Announcements
9. Public Comment

Meeting

1. Roll Call
2. Vote on the following:
 - a. Hiring of softball coordinator
 - b. Hiring of seasonal workers for the Recreation and Parks Department
 - c. Town Clerk to advertise for open Park Maintenance Worker position
 - d. Hiring of LCPD Park Maintenance Helper
 - e. New member to BAR
 - f. Re-appointment of member to BAR
 - g. ESI contract
 - h. Kent PBA and Town of Kent Contract
 - i. Kent Dispatchers and Town of Kent Contract
3. Vouchers and Claims
4. Public comment

TOWN OF KENT
AMENDMENT TO
CHAPTER 14
OF THE KENT TOWN CODE

BE IT ENACTED by the Town Board of the Town of Kent, Putnam County, New York, as follows:

Section 1. A new Article IV entitled "Ancient Subdivisions" shall be added to Chapter 57 regarding "Roads and Roadways" to read as follows:

§57-31. Purpose and Authority.

- A. Municipal Home Rule Law §10(1)(12) authorizes the Town Board to adopt local laws for the protection, order, conduct, safety, health and well-being of persons or property within the Town of Kent. In furtherance of such goals, all roadways in the Town of Kent should be maintained at all times in the best interests of the health, safety and general welfare of its residents and others who travel along the roads within the Town of Kent, including roads which have been dedicated to the Town as well as certain private roads which have not been dedicated because they cannot be accepted by the Town as they do not comply with current minimum road standards.
- B. Town Highway Vehicles regularly traverse private roads, commercial and public connector roads and parking lots in order to expedite plowing efficiency, and this established practice benefits all Town residents.
- C. There are three subdivisions within the Town of Kent that were created prior to the advent of the Town Zoning Board of Appeals, the Town Planning Board and all zoning laws, including the Town zoning ordinance, and were therefore not subject to modern zoning laws and as a result, the roads within these subdivisions were constructed to widths which are below minimum acceptable standards for traffic. Therefore, the Town of Kent cannot accept these roads as "Highway by Use" because of the substandard condition of the existing roads.
- D. Private contractors have been unable or unwilling to maintain these roads so that they are accessible and passable during all times, particularly emergency situations and inclement weather, and the Chief of Police, the Kent Fire Department, the Lake Carmel Fire Department and the Department of Environmental Conservation all require the roads in these three subdivisions; namely White Pond Colony, Sedgewood Club and Hill & Dale County Club (the "Ancient Subdivisions") be accessible at all times for emergency situations.
- E. The Town of Kent adopted an Ancient Roads policy on March 7, 2018, authorizing the Town Highway Department to maintain and repair certain private roads.

§57-32. Agreement.

A. The Town Board is hereby authorized to enter into a written agreement with each of the Ancient Subdivisions to permit the Highway Department to perform the following services:

1. Remove fallen trees from the roadways.
2. Patch potholes on an emergency basis.
3. Plow and sand roads during inclement weather.
4. Perform such other services as necessary to maintain the roads in the ancient subdivisions so that emergency services and school buses have access to those roads at all times, the cost of materials to be reimbursed.

B. The costs for materials will be paid to the Highway Superintendent prior to the performance of any repairs in order to ensure compliance with the New York State Constitution's restriction of gifts of public credit to private entities.

C. The costs for the use of Highway Department machinery and labor have already been paid by the residents of the Ancient Subdivisions in taxes which are paid by all Town residents.

Section 2. This local law shall take effect immediately.

Dated: March ____, 2019

BY THE ORDER OF THE TOWN BOARD
TOWN OF KENT

BY THE ORDER OF THE TOWN BOARD OF
THE TOWN OF KENT

From: Dave Schlosser

Date: Friday, April 12, 2019 at 3:19 PM

To: Supervisor

Cc

Subject: Putnam Nursing and Rehabilitation Center, 404 Luddingtonville Rd, Tax Parcels Section 12 Block 3, Lots 40 and 41

Thank you for taking my call today regarding the proposed renovation and expansion of the Putnam Nursing and Rehabilitation Center (PNRC).

We have met with the Planning Board several times and are progressing favorably toward site plan approval. However, they have noted that they cannot go much further as PNRC's current R-80 zoning does not list nursing homes as a permitted use and therefore expansion is restricted. The attached 2015 memorandum from LRC Planning Services seems to indicate that this was an oversight when the zoning of these parcels changed from Heavy Industrial to R-80.

We would like to discuss resolution of this issue with the Town Board and would welcome an opportunity to be on their agenda for the May 7 meeting.

I have attached several drawings that summarize PNRC's project (existing and proposed). I would emphasize that the Owner's of PNRC are under a great deal of pressure to bring this facility more in line with current skilled nursing standards and without expansion there is not the physical space within the existing facility to do so.

Please let me know if we are on the May 7 Agenda and what specific materials the Board would like us to present.

David A. Schlosser
Schopfer Architects
1111 James St
Syracuse, NY 13203
315-474-6501 (W)
315-439-8805 (C)

LRC PLANNING SERVICES, LLC

LAND USE/REAL ESTATE/ENVIRONMENTAL CONSULTING

8 MOREHOUSE ROAD
POUGHKEEPSIE, NEW YORK 12603-4010
TEL: 845-452-3822
FAX: 845-452-3346

MEMORANDUM

TO: Town of Kent Planning Board
From: Neil A. Wilson
Date: February 12, 2015
Re: Proposed Town Zoning Law Amendment
Nursing Homes, Convalescent Homes, and Alternative Care Housing in the R-80 District

As the Board is aware the new owners of the Putnam Nursing Home have submitted a preliminary plan for expansion and rehabilitation of the nursing home. This application was reviewed during the January 23rd consultant review meeting.

During that discussion it was discovered that Nursing Homes, Convalescent Homes and Alternative Care Housing are not listed as permitted uses in the R-80 District. This means that while the Putnam Nursing Home is a legal non-conforming use in the R-80 District and may continue to operate, it cannot be expanded or altered in any way.

Subsequent to the meeting I reviewed my old project notes and drafts of the zoning law that I prepared as part of the November 2008 zoning law revisions, and determined that this was an oversight that appears to have occurred as a result of the change of the zoning for the Putnam Nursing Home site, and large parts of Luddingtonville Road, from Heavy Industrial to R-80 residential. (Keep in mind that the old zoning code allowed nursing homes and single family dwellings in the Heavy Industrial District.)

It is clear from my notes and the drafts that the Town intended to amend the R-80 District regulations so that the nursing home would be a legal conforming use. Unfortunately, that did not happen.

Accordingly, I recommend that the Planning Board review the attached local law amendment, and consider whether to issue a positive recommendation to the Town Board to amend the language of the R-80 District to allow Nursing Homes, Convalescent Homes, and Alternative Care Housing as permitted uses.

TOWN OF KENT, NEW YORK SITE PLAN SUBMISSION #2
ADDITION & RENOVATIONS
PUTNAM NURSING AND REHABILITATION
CENTER (PFI 0754)

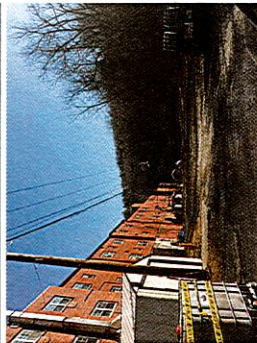
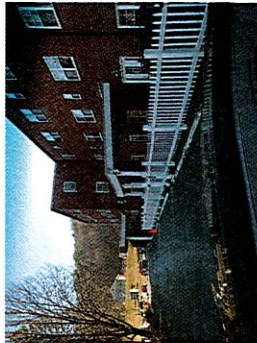
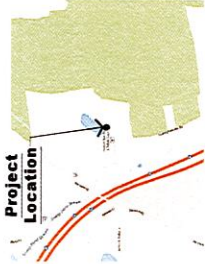
404 LUDINGTONVILLE ROAD
HOLMES, NEW YORK 12531 PUTNAM COUNTY



Drawing Schedule

(NOTE: ANY SUBMISSION 1 DRAWINGS UNCHANGED ARE NOT RESUBMITTED AS PART OF SUBMISSION 2)

- A. T1.0 TITLE SHEET, REVISED 2-28-19
- B. SITE SURVEY, REVISED 2-13-19 TO INCLUDE LOT 41 ACCESS EASEMENT
- C. LEHMAN AND GETZ P.C., REVISED 2-19-19
 - LAYOUT PLAN
 - UTILITIES PLAN
 - EROSION AND SEDIMENT CONTROL PLAN
 - REMOVALS PLAN
 - PROFILES AND DETAILS, SHEET 11.4
 - PROJECT WATERSHED MAP/AREA OF DISTURBANCE
 - EXISTING CONDITIONS SLOPE MAP



Summary of Zoning Requirements

Town of Kent, New York, Section 12, Block 3, Lot 41				
Item	Required	Existing	Proposed	
1. Zoning District	R-80 Residential	R-80 Residential	No Change	
2. Permitted Principal Use	Residential	Residential	Residential	
3. Min. Lot Area	5 Acres	7.0193 Acres	No Change	
4. Min. Lot Width	250'	180'	No Change	
5. Min. Highway Frontage	250'	274'	No Change	
6. Lot Coverage (Buildings)	Max. 10%	8.4%	8.74%	
7. Max. Impervious Surface	30%	13.4%	22.7%	
8. Min. Front Setback	40'	114'-4" (114'-0" + 4'-0")	No Change	
9. Min. Side Setback	30'	38'-0" (38'-0" + 0'-0")	No Change	
10. Min. Rear Setback	30'	38'-0" (38'-0" + 0'-0")	No Change	
11. Minimum Parking Setback	150'	112'-0" (112'-0" + 0'-0")	No Change	
12. Max. Height	2 1/2 Stories	2 1/2 Stories	No Change	
13. On-Site Parking	-	43	34 + 2 Imp Off + 1 Stacking	

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4. Min. Lot Width	250'	180'	No Change	
5. Min. Highway Frontage	250'	274'	No Change	
6. Lot Coverage (Buildings)	Max. 10%	8.4%	8.74%	
7. Max. Impervious Surface	30%	13.4%	22.7%	
8. Min. Front Setback	40'	114'-4" (114'-0" + 4'-0")	No Change	
9. Min. Side Setback	30'	38'-0" (38'-0" + 0'-0")	No Change	
10. Min. Rear Setback	30'	38'-0" (38'-0" + 0'-0")	No Change	
11. Minimum Parking Setback	150'	112'-0" (112'-0" + 0'-0")	No Change	
12. Max. Height	2 1/2 Stories	2 1/2 Stories	No Change	
13. On-Site Parking	-	43	34 + 2 Imp Off + 1 Stacking	

Building Area Summary

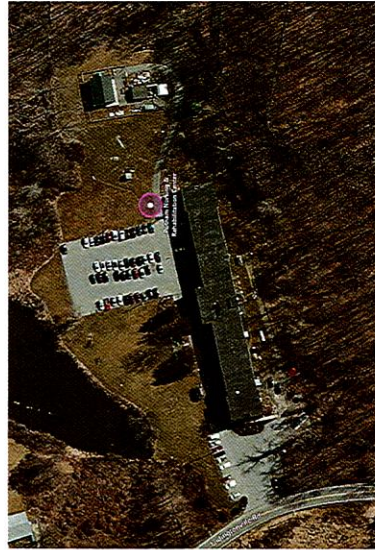
Floor	Existing	Additions	Total
First	10,400 sf	8,500 sf	18,900 sf
Second	10,400 sf	10,200 sf	20,600 sf
Third	10,400 sf	10,200 sf	20,600 sf
Total	31,200 sf	28,900 sf	60,100 sf

Bed Summary (Existing)

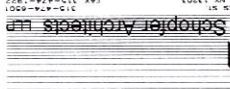
Floor	Private	Double	Total
First	4	40	44
Second	4	36	40
Third	4	36	40
Total	12	112	124

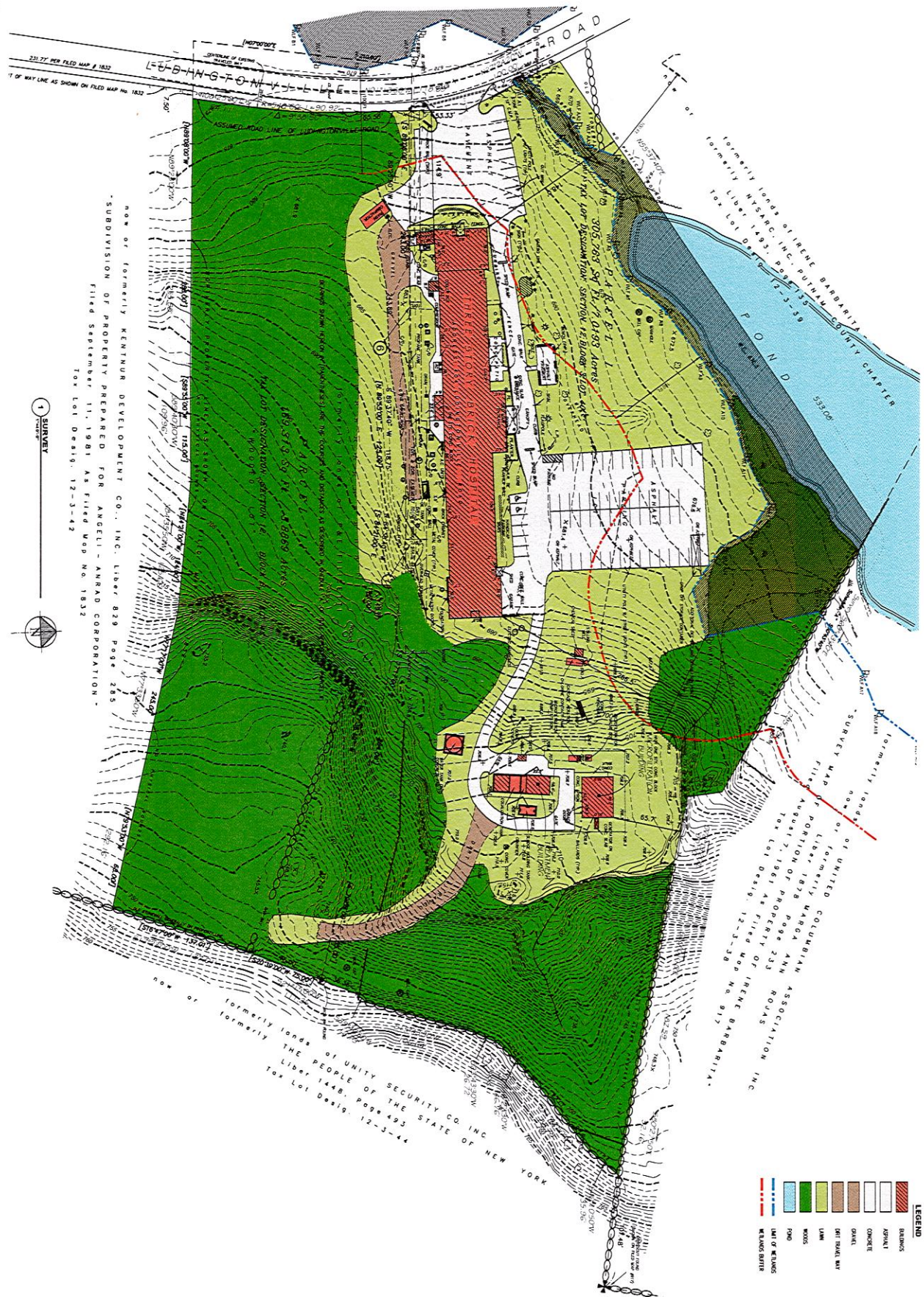
Bed Summary (Proposed)

Floor	Private	Double	Total
First	4	40	44
Second	4	36	40
Third	4	36	40
Total	12	112	124



PUTNAM NURSING AND ADDITIONS
REHABILITATION CENTER
404 LUDINGTONVILLE ROAD
HOLMES, NEW YORK 12531





1612

L1.0

EXISTING SURVEY
w/ TOPOGRAPHY

DATE	BY	REVISION
10-08-18	AS NOTED	

Schopfer Architects LLP

1111 JAMES ST.
 SYRACUSE, NY 13203

315-474-6501
 FAX 315-474-1622

DISCLAIMER

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From: Erika Nitz
Sent: Saturday, May 04, 2019 8:18 AM
To: Erika Nitz
Subject: 2019 Kent Clean Up Day Results & Thank You

One week ago, today in the humble Town of Kent New York, neighbors gathered to make a difference in our environment...

- **302 volunteers mobilized to pick up garbage...**
- **500+ bags in total which resulted in...**
- **12,000 pounds of trash collected!!!**

It would not have happened without YOU – Thank You!!!

Volunteers

Thank you to all of the volunteers who showed up! You turned out in droves, worked incredibly hard, and had an enormous positive impact on our environment!

Community & Group Leaders

Thank you to the Community & Group Leaders! You stepped forward and organized this enormous task to make it possible.

Kent Police Department

Thank you to the Kent Police Department! You patrolled, lit flares and guided traffic, keeping all of our volunteers safe so they were able to focus on cleaning up. We had ZERO injuries! A very special thank you to Chief Owens for coordinating Kent PD & the cadets and for donating our orange and clear garbage bags.

Kent Highway & Sanitation Departments

Thank you to the Kent Highway & Sanitation Departments, as well as Putnam County – you were like a machine grabbing every last bag out there. A comment from a community leader, "I looked behind me to count the bags and they were gone! They were amazing!"

Participating Businesses

Thank you to our many local businesses who supported our community by offering up fun promotions for our volunteers. We love having these unique and wonderful shops in our beautiful town!

Town Board

Many thanks to our Town Board, especially Bill Heustis & Maureen Fleming for giving us the ability to make things happen.

Beautification Committee

Last but not least, to the Beautification Committee who made everything happen. You stayed focused and came up with brilliant ideas to keep us organized and get the job done!

What a stellar turn out for 2019 - I look forward to seeing you all again next year!

Warmest Regards,
 Erika Nitz
 Chair, Town of Kent Beautification Committee

Tamara Harrison

From: Recreation
Sent: Thursday, May 02, 2019 11:58 AM
To: Tamara Harrison
Subject: Hiring of Men's Softball Coordinator
Attachments: Steven Savod Application.pdf

Tamara,

As per our discussion and my previous discussion with Supervisor Fleming, I would like to, for the 2019 season, hire a Men's Softball Coordinator. We have not had anyone in this position for the past few years, but as our department continues to grow its program enrollment and offerings, I believe filling this spot will be an important step towards continuing to offer quality activities to our community. The coordinator would work in conjunction with the Recreation & Parks Department to oversee and administrate our upcoming Spring and Fall Men's Softball programs and would be paid a stipend of \$100 per team in the league per season.

After careful consideration and discussion, I'd like to recommend that Steven Savod be hired to fill this position. Steve has been an umpire in our league for well over a decade and comes highly recommended by his peers. Furthermore, in the past he assisted in the administration of the Patterson Men's Softball League and currently continues to be an active member in the local softball community, giving him a good finger on the pulse of men's softball and what it will take to keep our league running soundly. Having worked with Steve since my start here in 2011, he comes with my highest recommendation and my full confidence that he will keep our program running strong while also upholding the values and mission of our Recreation Department and the Town of Kent on a whole.

Thank you and should you have any questions about Steve or the position of Men's Softball Coordinator, please let me know.

Jared Kuczenski
Acting Director of Rec & Parks
Kent Recreation & Parks
 845-531-2100

Tamara Harrison

From: Recreation
Sent: Monday, May 06, 2019 3:15 PM
To: Tamara Harrison
Subject: Hiring of Season Employees

Tamara,

As per our discussion this morning, I would like to bring on the following individuals as seasonal employees for the spring, summer and early fall:

Returning Employees

Austin M. Fikaris

Jose C. Rodriguez (*worked last year with LCPD*)

New Employees

Isabella M. Aguirre

Mario DellaValle

For returning employees I request that their pay rate be set at \$11.50 per hour on weekdays and \$15.00 per hour on Saturdays and Sundays. For non-returning employees I request that their pay rate be set at \$11.10 per hour on weekdays and \$15.00 per hour on Saturday and Sundays. Weekly hours will not exceed 40.

Thank you and please let me know if you require anything further.

Jared Kuczenski

Acting Director of Rec & Parks

Kent Recreation & Parks

845-531-2100

Tamara Harrison

From: Lcpd Clerk
Sent: Monday, May 06, 2019 11:12 AM
To: Maureen Fleming
Cc: Tamara Harrison
Subject: Seasonal Lake Carmel Parks Hire
Attachments: DOC050619-05062019111008.pdf

Bob Nix, Lake Carmel Park District Crew Chief, is requesting that Ryan Edward Ferrara be hired as a returning seasonal Lake Carmel Park District maintenance worker for the 2019 summer season for a maximum of 40 hours per week at a rate of \$11.50 per hour. Mr. Nix requests that this recommendation be added to the May 7th agenda.

Thank you.



Heidi Link
Town of Kent, NY

Lake Carmel Park District Clerk

25 Sybil's Crossing

Kent Lakes, NY 10512

Telephone: (845) 306-5602

Fax: (845) 225-5130

lcpdclerk@townofkentny.gov

www.townofkentny.gov/lcpd_home.htm



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Higher Ed EAP
HealthCare EAP
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IX. Fees and Payment

- A. The total number of employees covered under this Agreement is **96**.
- B. Employer agrees to pay ESI the sum of **\$3,675.00** for **6/1/19-5/31/20**.
- C. The annual fee includes all employees and their household members, as well as children up to age 26 who do not reside with the employee.
- D. Payment of the **Annual** premium is due upon receipt of the invoice.
- E. Flat Rate listed above covers a census of 51 to 100. Contract rate will be modified if census moves outside of this range.
- F. Trauma Responses available at **\$250.00** per hour plus travel time.
- G. DOT required Substance Abuse Evaluations - **\$850.00** each.

X. Entire Agreement

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement, and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement.

EMPLOYEE SERVICES, INC.

Diane Dunbar, President & Chief Operating Officer

4/15/19

Date

Town of Kent, NY

Authorized Signature

Date



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Public Safety EAP
Educators' EAP
Higher Ed EAP
HealthCare EAP
Union AP

Employee Assistance Program (EAP) | RENEWAL AGREEMENT

This Employee Assistance Program (EAP) Agreement ("Agreement") is between **Town of Kent, NY** ("Client") and **EMPLOYEE SERVICES, INC. dba ESI EMPLOYEE ASSISTANCE GROUP**, a New York corporation, 55 Chamberlain Street, Wellsville, New York 14895 ("ESI") for ESI to provide the benefits described herein for employees of Client effective **6/1/19-5/31/20**.

I. Productivity Solutions

With employees losing an average of over 3 weeks of productivity each year, addressing productivity losses is critical. Our entire focus is on providing the most comprehensive benefits to make the largest possible impact on improving employee lives and reducing lost productivity cost. We offer more than twice the benefits of other EAPs. Employees of Client and their household members including children up to age 26 who do not reside with employee are referred to herein as Members.

- **Unlimited Telephonic Counseling:** Members speak directly with our professional staff counselors 24 hours a day via a toll-free number. Every counselor has a Master's or Ph.D. degree. Staff counselors provide direct in-the-moment counseling when a Member calls and act as case managers when referrals are made to local counselors or other work-life or wellness resources, overseeing each case to its ultimate closure – regardless of the amount of time involved in assisting the Member.
- **Face-to-face Counseling Sessions per Issue:** Up to 3
Members are eligible for telephonic counseling and short-term, in-person counseling.
- **Work/life Benefits:** Benefits offered to assist Members with a wide variety of issues including Legal, Financial, Caregiver, Adoption, Special Needs, Personal Assistant, Tools for Tough Times and Pet Help.
- **Lifestyle Benefits:** Menu of value-added wellness services designed to enhance a Member's quality of life – discounts vary by season and location.
- **Wellness Resource Center:** Includes the latest, most reliable articles, videos and self-assessments for dealing with stress, diet, fitness and smoking.

II. Engagement Solutions - Peak Performance Benefits

ESI is the only EAP to offer Peak Performance Benefits - an entire menu of coaching programs, self-help resources and training to stimulate employee engagement. These benefits are designed to improve the performance of not just some but all of your employees. ESI also provides Hiring, Onboarding and Employee Engagement Resource Centers for HR, managers and supervisors. The result: Employees report improved personal and professional performance at work and at home; and overall employee engagement is improved.



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- **Personal and Professional Coaching:** One-on-one telephonic coaching from Certified Coaches combined with structured, online trainings. Coaching is delivered by Masters or Ph.D. level Coaches in scheduled telephonic coaching sessions to review key concepts of the trainings and implementation of skills. Coaches use a solution-focused approach to improve current and future performance. **Information Resource Benefits:** 25,000 Self-Help Resources – Tools, Assessments, Financial Calculators, Video Library, and Articles for thousands of topics.
- **Online Training and Personal Development:** Includes over 200 Personal Finance and Investing courses and over 50 Personal Development courses to help employees balance their work and personal life. The ESI Management Academy is an entire curriculum of online training programs that promote key management skills.
- **Recruiting, Hiring, Interviewing, Onboarding, and Employee Engagement Resource Centers:** Extensive array of articles and Web resources from leading experts.

III. EAP Administration - Orientation and Engagement

An employee assistance program that is not used is not useful. Utilization begins with employee awareness. A well-planned installation and continued awareness campaigns will have a direct impact on the level of engagement. ESI provides comprehensive employee orientation and communications.

- **Automated Digital Communication (ADC):** Proprietary Automated Digital Communications (ADC) system allows ESI EAP to engage in periodic email communications with Members. Utilization is the key to maximizing the effectiveness of your EAP by helping employees to resolve issues and distractions that hinder productivity.
- **EAP Mobile App:** Members have the convenience and privacy of 24/7 access to all EAP benefits and services at their fingertips wherever they go via the EAP smartphone app.
- **EAP Ongoing Communication & Engagement:** ESI provides a wide variety of high-quality video, hardcopy and electronic materials to promote continued awareness and maximize engagement of the program. The continued awareness campaign includes Brochures, Wallet Cards, Posters, Monthly Newsletters, Table Top Displays, Topical Flyers, Video Presentations, and New Benefit Announcements.
- **EAP Member/Employee & Supervisor Orientation:** ESI provides comprehensive employee and supervisor orientations via web conference meetings, online orientation videos, and onsite group meetings.

IV. Manager, Supervisor and Human Resources Services

ESI offers an entire menu of management-focused employee assistance services to help deal with important compliance and liability issues.

- **Trauma Response & Resources:** Provides consultation with our counselors and grief and loss resources for managers and Members. Responses include on-scene deployment, telephonic counseling and private counseling as well as group debriefings.



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- **Unlimited Administrative (Mandatory) Referrals:** Formal process to address employee policy violations and unacceptable job performance that could be improved through Coaching and Training.
- **Unlimited HR Consultations w/ SPHR's:** Managers may contact our clinical staff or our certified SPHRs (Senior Professionals in Human Resources) for counsel on human resource and complex employee issues.
- **Supervisor Resource Center:** Forms, policies, articles and other tools designed to help develop people management best practices. Key topics include Recruiting, Hiring, Interviewing, Onboarding, Employee Engagement, FMLA, Workplace Violence and Harassment Prevention.
- **HR Web Café:** Workplace blog about employment issues, people matters and work trends.

V. ESI Accountability

- **Activity Reports:** ESI generates detailed online EAP statistical reports on a monthly basis. Due to confidentiality, clients with less than 25 employees will not have access to an activity report.
- **Quality Assurance Program:** ESI maintains a rigorous Quality Assurance Program. Key elements include Proprietary Network, Provider Review, Member Satisfaction Research, Peer Review, Weekly Clinical Staff Meetings, Clinical Supervision and Immediate Problem Resolution.
- **Confidentiality:** Confidentiality is always maintained except in cases where there is a legal obligation to intervene, such as in the case of child or elder abuse, a serious threat of harm to self or others, or threats of workplace violence.

VI. Optional Services

- **Employee Engagement Program – Best Practice Learning Center, Knowledge Center and Consultant: No**
The ESI Engagement Program is an *optional benefit* designed to meet the needs of organizations focused on improving employee engagement, professional development and productivity. It is an online personal and management development Knowledge Center *powered by Skillsoft*, the world's leading provider of online personal and professional training. In addition, the Best Practice Learning Centers assist managers and supervisors in developing recruiting & interviewing, onboarding & development and employee best practices. The program is supported by a dedicated ESI Consultant, who assists in creating a tailored training curriculum to meet your organization's needs.
- **Wellness Coaching: No**
Members have unlimited coaching assistance from an integrated team of Certified Wellness Coaches and Behavioral Health Clinicians for the mental and emotional challenges each employee must overcome to improve their physical health.
- **GCN Compliance Training: No**
ESI has partnered with Global Compliance Network (GCN) to offer online compliance training to our Member organizations at a **discounted rate**.



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VII. Force Majeure

ESI's inability to perform any of the obligations provided in this Agreement due to (i) an act of God, such as earthquake, hurricane, tornado, flooding or other natural disaster; (ii) unavailability or interruption or delay of transportation, telecommunications, internet, cable, or third-party services; (iii) failure of software; (iv) inability to obtain supplies or power used in or equipment needed for provision of the services; (v) labor strikes, riots, insurrection, war; or (vi) other significant factors that are beyond ESI's reasonable control ("Force Majeure Event(s)") shall not be deemed a breach of this Agreement. In the event of Force Majeure Event(s), ESI shall make every reasonable effort to minimize delay of performance.

VIII. Execution of Documents

This Agreement and all related documents may be executed by the parties in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The exchange of executed copies of this Agreement and related documents and of signature pages by facsimile transmission and/or by electronic mail in Portable Document Format ("PDF") or similar format shall constitute effective execution and delivery and may be used in lieu of the original documents for all purposes. Signatures of the parties transmitted by facsimile and/or by electronic mail in PDF or similar format shall be deemed to be their original signatures for all purposes.