

TOWN OF KENT
Town Board Workshop/Meeting
January 29, 2013/7:00 PM

Public Hearing

- Floodplain Regulations
- Cell Towers

Meeting

1. Salute to the Flag
2. Roll Call
3. Approval of Vouchers and Claims
4. Floodplain Regulations
5. Cell Towers
6. Formation of Kent Sewer District
7. Phone Service – Town Complex
8. Lake Tibet Maintenance Contract for the Control of Water Lilies and Eurasian Milfoil
9. Release Erosion Control Bond – Hodson, TM# 33.5-1-14
10. Release Erosion Control Bond – Craig Russell Property, TM#21.18-1-5
11. Foreclosed Property Maintenance
12. Multi-Modal Grant
13. Appoint Crew Chief
14. Update Sanitation and Highway Sub List
15. Renew Alarm Contract
16. Correspondence

Public Hearing – Floodplain Regulations

Town Clerk Cappelli read the notice as it appeared in the legal notice. Town Counsel Curtiss explained after Sandy the Federal Government redrew the Flood Plain Maps. If municipalities want to apply for FEMA relief they must pass the new maps which are being drawn greater, it mostly affects Manhattan and shore communities but would affect some parcels in Kent. He said there is a current statute in effect. Supervisor Doherty asked for comments from the board and the public, there were none. She stated written comments will be accepted and submitted to DEC along with the Resolution on or before February 3rd.

Resolution #78 - Close Public Hearing on Floodplain Regulations

On a motion by Supervisor Doherty

Seconded by Councilwoman Osborn

Resolved: The public hearing on Floodplain Regulations was closed.

Motion carried unanimously

Public Hearing – Cell Towers

Supervisor Doherty explained this hearing is a continuation of Cell Towers, the location at the Town Garage, Smokey Hollow Court will be adjourned. Robert Gaudio, Attorney for Homeland said comments were received from the DEP that they would like to investigate and respond to.

Resolution #79 - Adjourn Public Hearing Town Garage, Smokey Hollow Court

On a motion by Supervisor Doherty

Seconded by Councilwoman Osborn

Resolved: The Public Hearing on Cell Towers for Town Highway Garage, 21 Smokey Hollow Court is adjourned until February 26, 2012 at 7:00 p.m.

Motion carried unanimously

Public Hearing – Cell Towers – Kent Landfill and Sybil's Crossing

Robert Gaudio of Schneider and Schneider on behalf of Homeland Towers stated in November this matter was opened to the public hearing thereafter the Town Board declared its intent to be lead agency and circulated to different involved interested agencies. Since that time DEP has responded that they have no objection to the Town acting as lead agency. He indicated they responded to some minor comments they had and has no objections to doing a full erosion control plan as part of the construction drawings. He does not believe there are any other open issues on either application. Supervisor Doherty asked if Ms. Garcia's statement on DEP that this is a Main Street designation because it isn't. Robert stated that if it has been designated Main Street area that would trigger their requirement to do a stormwater pollution prevention plan prior to construction and would not affect the situation tonight they have not researched and will respond to that. What they would not want to do is to start construction and not be in compliance. They will make sure they get it in writing.

Supervisor Doherty asked for questions and comments. There were none.

Resolution #80 – Close Public Hearing

On a motion by Supervisor Doherty

Seconded by Councilwoman Osborn

Resolved: The Public Hearing on Cells Towers for the Kent Landfill and Sybil's Crossing Site is closed.

Motion carried unanimously

Salute to the Flag- At 7:09 p.m. Supervisor Doherty opened the meeting with the Salute to the Flag.

Roll Call

Supervisor Katherine Doherty – present

Councilwoman Penny Osborn – present

Councilman Lou Tartaro – present

Councilman Mike Tierney – present

Councilman John Greene – present

Also Present: Town Counsel Curtiss, Police Chief DiVernieri, Town Planner Wilson.

Resolution #81 - Approval of Vouchers and Claims

On a motion by Supervisor Doherty

Seconded by Councilman Tierney

Resolved: All Vouchers #200122853- #200123000 and Claims submitted by:

- | | | |
|-----------------------------|-------------|-------------------------|
| 1. Almost Home Kennels, LLC | \$19,000.00 | Dog Shelter Services |
| 2. Brady Stannard | \$2,221.07 | Auto Parts |
| 3. Clearwater Excavating | \$69,825.00 | Ryan's Park Retrofits |
| 4. GenServe, Inc. | \$3,140.00 | Maintenance: Generators |

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

TOWN OF KENT

LOCAL LAW NO. 1 OF 2013

A Local Law of the Town of Kent, Putnam County, New York
to AMEND Chapter 39 of the Kent Code entitled "Flood Damage Prevention."

BE IT ENACTED by the Town Board of the Town of Kent that the Town Code is amended to read as follows:

A local law for Flood Damage Prevention as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law, Article 36

CHAPTER 39

SECTION 1.0

STATUTORY AUTHORIZATION AND PURPOSE

1.1 FINDINGS

The Town Board of the Town of Kent finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Kent and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this local law is adopted.

1.2 STATEMENT OF PURPOSE

It is the purpose of this local law to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;
- (6) qualify and maintain for participation in the National Flood Insurance Program.

1.3 OBJECTIVES

The objectives of this local law are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;

- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to provide that developers are notified that property is in an area of special flood hazard; and,
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

SECTION 2.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this local law shall be interpreted so as to give them the meaning they have in common usage and to give this local law its most reasonable application.

"Appeal" means a request for a review of the Local Administrator's interpretation of any provision of this Local Law or a request for a variance.

"Area of shallow flooding" means a designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the base floodplain or 100-year floodplain. For purposes of this Local Law, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Basement" means that portion of a building having its floor subgrade (below ground level) on all sides.

"Building" see "Structure"

"Cellar" has the same meaning as "Basement".

"Crawl Space" means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

"Elevated building" means a non-basement building (i) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

"Federal Emergency Management Agency" means the Federal agency that administers the National Flood Insurance Program.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters;
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

"Flood Boundary and Floodway Map (FBFM)" means an official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a Regulatory Floodway along water courses studied in detail in the Flood Insurance Study.

"Flood Elevation Study" means an examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

"Flood Insurance Study" see "flood elevation study".

"Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Floodway" - has the same meaning as "Regulatory Floodway".

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

"Historic structure" means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) by an approved state program as determined by the Secretary of the Interior or
 - (ii) directly by the Secretary of the Interior in states without approved programs.

"Local Administrator" is the person appointed by the community to administer and implement this local law by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an engineering department.

"Lowest floor" means lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Local Law.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "Recreational vehicle"

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"Mobile home" - has the same meaning as "Manufactured home".

"New construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

"One hundred year flood" or "100-year flood" has the same meaning as "Base Flood".

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, excluding land value, is above ground.

"Recreational vehicle" means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in Section 4.4-2 of this Law.

"Start of construction" means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

"Variance" means a grant of relief from the requirements of this local law which permits construction or use in a manner that would otherwise be prohibited by this local law.

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations.

**SECTION 3.0
GENERAL PROVISIONS**

3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES

This local law shall apply to all areas of special flood hazard within the jurisdiction of the Town of Kent, Putnam County, New York.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard for the Town of Kent, Community Number 360671, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(1) Flood Insurance Rate Map Panel Numbers:

36079C0015E, 36079C0020E, 36079C0040E, 36079C0043E, 36079C0044E, 36079C0105E, 36079C0110E, 36079C0116E, 36079C0117E, 36079C0130E, 36079C0131E, 36079C0132E, 36079C0133E, 36079C0134E, 36079C0140E, 36079C0141E

whose effective date is, March 4, 2013, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.

(2) A scientific and engineering report entitled "Flood Insurance Study, Putnam County, New York, All Jurisdictions" dated March 4, 2013.

The above documents are hereby adopted and declared to be a part of this Local Law. The Flood Insurance Study and/or maps are on file at the office of the Town Clerk of the Town of Kent, 25 Sybil's Crossing, Kent Lakes, New York 10512.

3.3 INTERPRETATION AND CONFLICT WITH OTHER LAWS

This Local Law includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention.

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

3.4 SEVERABILITY

The invalidity of any section or provision of this local law shall not invalidate any other section or provision thereof.

3.5 PENALTIES FOR NON-COMPLIANCE

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this local law and any other applicable regulations. Any infraction of the provisions of this local law by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Kent from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this local law for which the developer and/or owner has not applied for and received an approved variance under Section 6.0 will be declared non-compliant and notification sent to the Federal Emergency Management Agency.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this local law is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This local law does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This local law shall not create liability on the part of the Town of Kent, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this local law or any administrative decision lawfully made there under.

SECTION 4.0 ADMINISTRATION

4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR

The Building Inspector is hereby appointed Local Administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

4.2 THE FLOODPLAIN DEVELOPMENT PERMIT

4.2-1 PURPOSE

A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to un-

dertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 3.2, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

4.2-2 FEES

All applications for a floodplain development permit shall be accompanied by an application fee of \$500.00. In addition, the applicant shall be responsible for reimbursing the Town of Kent for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than \$500.00 to cover these additional costs.

4.3 APPLICATION FOR A PERMIT

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

- (1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- (2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved non-residential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- (3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in Section 5.2-3, UTILITIES.
- (4) A certificate from a licensed professional engineer or architect that any non-residential floodproofed structure will meet the floodproofing criteria in Section 5.4, NON-RESIDENTIAL STRUCTURES.
- (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in Section 3.2, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.

- (6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- (7) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or 5 acres.

4.4 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

Duties of the Local Administrator shall include, but not be limited to the following.

4.4-1 PERMIT APPLICATION REVIEW

The Local Administrator shall conduct the following permit application review before issuing a floodplain development permit:

- (1) Review all applications for completeness, particularly with the requirements of sub-section 4.3, APPLICATION FOR A PERMIT, and for compliance with the provisions and standards of this law.
- (2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Section 5.0, CONSTRUCTION STANDARDS and, in particular, sub-section 5.1-1 SUBDIVISION PROPOSALS.
- (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination.

If the proposed development may result in physical damage to any other property or fails to meet the requirements of Section 5.0, CONSTRUCTION STANDARDS, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and re-submit the application.

- (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by State or Federal law.

4.4-2 USE OF OTHER FLOOD DATA

- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Fed-

eral, State or other source, including data developed pursuant to paragraph 4.3(7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this law.

- (2) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this law.

4.4-3 ALTERATION OF WATERCOURSES

- (1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.4-4 CONSTRUCTION STAGE

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

4.4-5 INSPECTIONS

The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

4.4-6 STOP WORK ORDERS

- (1) The Local Administrator shall issue, or cause to be issued, a stop work order for any floodplain development found ongoing without a development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 3.5 of this local law.
- (2) The Local Administrator shall issue, or cause to be issued, a stop work order for any floodplain development found non-compliant with the provisions of this law and/or the conditions of the development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 3.5 of this local law.

4.4-7 CERTIFICATE OF COMPLIANCE

- (1) In areas of special flood hazard, as determined by documents enumerated in Section 3.2, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this local law.
- (2) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Section 4.4-5, INSPECTIONS, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

4.4-8 INFORMATION TO BE RETAINED

The Local Administrator shall retain and make available for inspection, copies of the following:

- (1) Floodplain development permits and certificates of compliance;
- (2) Certifications of as-built lowest floor elevations of structures, required pursuant to sub-sections 4.4-4(1) and 4.4-4(2), and whether or not the structures contain a basement;
- (3) Floodproofing certificates required pursuant to sub-section 4.4-4(1), and whether or not the structures contain a basement;
- (4) Variances issued pursuant to Section 6.0, VARIANCE PROCEDURES; and,
- (5) Notices required under sub-section 4.4-3, ALTERATION OF WATERCOURSES.

SECTION 5.0 CONSTRUCTION STANDARDS

5.1 GENERAL STANDARDS

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 3.2.

5.1-1 SUBDIVISION PROPOSALS

The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

- (1) Proposals shall be consistent with the need to minimize flood damage;
- (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and,
- (3) Adequate drainage shall be provided to reduce exposure to flood damage.

5.1-2 ENCROACHMENTS

- (1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - (i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location, or,
 - (ii) the Town of Kent agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Kent for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Kent for all costs related to the final map revision.
- (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Section 3.2, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
 - (i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,

(ii) the Town of Kent agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Kent for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Kent for all costs related to the final map revisions.

5.2 STANDARDS FOR ALL STRUCTURES

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 3.2.

5.2-1 ANCHORING

New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

5.2-2 CONSTRUCTION MATERIALS AND METHODS

- (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - (ii) the bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.

5.2-3 UTILITIES

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall also be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.3 RESIDENTIAL STRUCTURES

5.3-1 ELEVATION

The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 5.1-1, SUBDIVISION PROPOSALS, and 5.1-2, ENCROACHMENTS, and Section 5.2, STANDARDS FOR ALL STRUCTURES.

- (1) Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- (2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- (3) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in Section 3.2 (at least two feet if no depth number is specified).
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

5.4 NON-RESIDENTIAL STRUCTURES

The following standards apply to new and substantially improved commercial, industrial and other non-residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 5.1-1, SUBDIVISION PROPOSALS, and 5.1-2, ENCROACHMENTS, and Section 5.2, STANDARDS FOR ALL STRUCTURES.

- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure shall either:
 - (i) have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (ii) be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (2) Within Zone AO, new construction and substantial improvements of non-residential structures shall:
 - (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
 - (ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 5.4(1)(ii)
- (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 5.4(1)(ii), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.
- (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

5.5 MANUFACTURED HOMES AND RECREATIONAL VEHICLES

The following standards in addition to the standards in Section 5.1, GENERAL STANDARDS, and Section 5.2, STANDARDS FOR ALL STRUCTURES apply, as indicated, in areas of special

flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (i) be on site fewer than 180 consecutive days,
 - (ii) be fully licensed and ready for highway use, or
 - (iii) meet the requirements for manufactured homes in paragraphs 5.5(2), (3) and (4).

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

- (2) A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
- (4) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as two feet above the depth number specified on the Flood Insurance Rate Map enumerated in Section 3.2 (at least two feet if no depth number is specified).

SECTION 6.0 VARIANCE PROCEDURE

6.1 APPEALS BOARD

- (1) The Zoning Board of Appeals as established by the Town of Kent shall hear and decide appeals and requests for variances from the requirements of this local law.
- (2) The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;

- (ii) the danger to life and property due to flooding or erosion damage;
 - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of Section 6.1(4) and the purposes of this local law, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.
- (6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

6.2 CONDITIONS FOR VARIANCES

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xii) in Section 6.1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- (2) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- (i) the proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure"; and
 - (ii) the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- (i) the criteria of subparagraphs 1, 4, 5, and 6 of this Section are met; and
 - (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances shall only be issued upon receiving written justification of:
- (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
- (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
 - (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions as required in Section 4.4-8 of this Local Law.

Attachment A
MODEL FLOODPLAIN DEVELOPMENT
APPLICATION FORM

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION

This form is to be filled out in duplicate.

SECTION 1: GENERAL PROVISIONS (APPLICANT to read and sign):

1. No work may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Compliance is issued.
5. The permit is invalid if no work is commenced within six months of issuance, and expires 2 years from date of issuance.
6. Applicant is hereby informed that other permits may be required to fulfill local, state and federal regulatory requirements.
7. Applicant hereby gives consent to the Local Administrator or his/her representative to make reasonable inspections required to verify compliance.
8. I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

(APPLICANT'S SIGNATURE) _____ DATE _____

SECTION 2: PROPOSED DEVELOPMENT (To be completed by APPLICANT)

NAME	ADDRESS	TELEPHONE
APPLICANT	_____	_____
BUILDER	_____	_____
ENGINEER	_____	_____

PROJECT LOCATION:

To avoid delay in processing the application, please provide enough information to easily identify the project location. Provide the street address, lot number or legal description (attach) and, outside urban areas, the distance to the nearest intersecting road or well-known landmark. A map attached to this application, and a sketch showing the project layout would be helpful.

APPLICATION # _____

PAGE 2 of 4

DESCRIPTION OF WORK (Check all applicable boxes):

A. STRUCTURAL DEVELOPMENT

<u>ACTIVITY</u>	<u>STRUCTURE TYPE</u>
<input type="checkbox"/> New Structure	<input type="checkbox"/> Residential (1-4 Family)
<input type="checkbox"/> Addition	<input type="checkbox"/> Residential (More than 4 Family)
<input type="checkbox"/> Alteration	<input type="checkbox"/> Non-residential (Floodproofing? <input type="checkbox"/> Yes)
<input type="checkbox"/> Relocation	<input type="checkbox"/> Combined Use (Residential & Commercial)
<input type="checkbox"/> Demolition	<input type="checkbox"/> Manufactured (Mobile) Home
<input type="checkbox"/> Replacement	(In Manufactured Home Park? <input type="checkbox"/> Yes <input type="checkbox"/> No)

ESTIMATED COST OF PROJECT \$ _____

B. OTHER DEVELOPMENT ACTIVITIES:

- ☐ Fill ☐ Mining ☐ Drilling ☐ Grading
☐ Excavation (Except for Structural Development Checked Above)
☐ Watercourse Alteration (Including Dredging and Channel Modifications)
☐ Drainage Improvements (Including Culvert Work), Stormwater Control Structures or Ponds
☐ Road, Street or Bridge Construction
☐ Subdivision (New or Expansion)
☐ Individual Water or Sewer System
☐ Other (Please Specify) _____

After completing SECTION 2, APPLICANT should submit form to Local Administrator for review.

SECTION 3: FLOODPLAIN DETERMINATION (To be completed by LOCAL ADMINISTRATOR)

The proposed development is located on FIRM Panel No. _____, Dated _____.

The Proposed Development:

- ☐ The proposed development is reasonably safe from flooding. Entire property is in Zone B, C or X.
- ☐ The proposed development is in adjacent to a flood prone area.
100-Year flood elevation at the site is:
_____ Ft. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
☐ Unavailable
- ☐ See Section 4 for additional instructions for development that is or may be in a flood prone area.

SIGNED _____ DATE _____

SECTION 4: ADDITIONAL INFORMATION REQUIRED (To be completed by LOCAL ADMINISTRATOR)

The applicant must submit the documents checked below before the application can be processed:

- ☐ A site plan showing the location of all existing structures, water bodies, adjacent roads, lot dimensions and proposed development.
- ☐ Development plans and specifications, drawn to scale, including where applicable: details for anchoring structures, proposed elevation of lowest floor (including basement), types of water resistant materials used below the first floor, details of floodproofing of utilities located below the first floor, details of enclosures below the first floor, openings in foundation for entry and exit of floodwaters.
Other _____
- ☐ Elevation Certificate
- ☐ Subdivision or other development plans (If the subdivision or other development exceeds 50 lots or 5 acres, whichever is the lesser, the applicant must provide 100-year flood elevations if they are not otherwise available).
- ☐ Plans showing the watercourse location, proposed relocations, Floodway location.
- ☐ Topographic information showing existing and proposed grades, location of all proposed fill.
- ☐ Top of new fill elevation _____ Ft. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
- ☐ PE Certification of Soil Compaction
- ☐ Floodproofing protection level (non-residential only) _____ ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
For floodproofed structures, applicant must attach certification from registered engineer or architect.
- ☐ Other: _____

SECTION 5: PERMIT DETERMINATION (To be completed by LOCAL ADMINISTRATOR)

I have determined that the proposed activity: A. ☐ Is
B. ☐ Is not
in conformance with provisions of Local Law # _____, (yr) _____. This permit is hereby issued subject to the conditions attached to and made part of this permit.

SIGNED _____, DATE _____

If BOX A is checked, the Local Administrator may issue a Development Permit upon payment of designated fee.
If BOX B is checked, the Local Administrator will provide a written summary of deficiencies. Applicant may revise and resubmit an application to the Local Administrator or may request a hearing from the Board of Appeals.

Expiration Date: _____

APPLICATION # _____ Page 4 of 4

APPEALS: Appealed to Board of Appeals? ☐ Yes ☐ No
Hearing date: _____
Appeals Board Decision --- Approved? ☐ Yes ☐ No

Conditions: _____

SECTION 6: AS-BUILT ELEVATIONS (To be submitted by APPLICANT before Certificate of Compliance is issued)

The following information must be provided for project structures. This section must be completed by a registered professional engineer or a licensed land surveyor (or attach a certification to this application). Complete 1 or 2 below.

1. Actual (As-Built) Elevation of the top of the lowest floor, including basement (in Coastal High Hazard Areas, bottom of lowest structural member of the lowest floor, excluding piling and columns) is: _____ FT. ☐ NGVD 1929/
☐ NAVD 1988 (MSL).
Attach Elevation Certificate FEMA Form 81-31
2. Actual (As-Built) Elevation of floodproofing protection is _____ FT. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL).
Attach Floodproofing Certificate FEMA Form 81-65

NOTE: Any work performed prior to submittal of the above information is at the risk of the Applicant.

SECTION 7: COMPLIANCE ACTION (To be completed by LOCAL ADMINISTRATOR)

The LOCAL ADMINISTRATOR will complete this section as applicable based on inspection of the project to ensure compliance with the community's local law for flood damage prevention.

INSPECTIONS: DATE _____	BY _____	DEFICIENCIES? <input type="checkbox"/> YES <input type="checkbox"/> NO
DATE _____	BY _____	DEFICIENCIES? <input type="checkbox"/> YES <input type="checkbox"/> NO
DATE _____	BY _____	DEFICIENCIES? <input type="checkbox"/> YES <input type="checkbox"/> NO

SECTION 8: CERTIFICATE OF COMPLIANCE (To be completed by LOCAL ADMINISTRATOR)

Certificate of Compliance issued: DATE: _____

BY: _____

Attachment B

CERTIFICATE OF COMPLIANCE
for Development in a Special Flood Hazard Area

**CERTIFICATE OF COMPLIANCE
FOR DEVELOPMENT IN A SPECIAL FLOOD HAZARD AREA**

(Owner Must Retain This Certificate)

Premises located at: _____

Owner: _____

Owner's Address: _____

Permit No. _____ Permit Date: _____

Check One:

- ☐ New Building
- ☐ Existing Building
- ☐ Fill
- ☐ Other:

The Local Floodplain Administrator is to complete a. or b. below:

a. Compliance is hereby certified with the requirements of Local Law No. ____, (yr) ____.

Signed: _____ Dated: _____

b. Compliance is hereby certified with the requirements of Local Law No. ____, (yr) ____, as modified by variance no. ____, dated _____.

Signed: _____ Dated: _____

5. KVS Information Systems, Inc.	\$5,553.00	Annual Software Support
6. Richard Harris	\$3,150.00	IT Service
7. Somers Sanitation	\$4,723.76	LC Garbage
8. State Comptroller	\$18,760.00	Justice Court: Fines & Fees
9. Town of Kent Municipal Repairs	\$3,397.39	Chargebacks: Police
	\$12,485.84	Chargebacks: Highway

In the amount of \$283,753.54 may be paid.

The Board took a poll vote as follows:

Councilman Greene – aye Councilwoman Osborn – aye

Councilman Tartaro – aye Councilman Tierney – aye

Supervisor Doherty – aye

Motion carried unanimously

Resolution #82 - Local Law No.1 of 2013 - Flood Damage Prevention

On a motion by Councilman Tierney

Seconded by Councilwoman Osborn

WHEREAS, an adoption of an amendment to Chapter 39 of the Kent Code entitled "Flood Damage Prevention" has been introduced before the Town Board of the Town of Kent as Local Law 1 of 2013; and

WHEREAS, a public hearing was held on January 29, 2013 upon notice duly published and posted; and

WHEREAS, public discussion was heard at such hearing concerning the merits of said introductory local law; and

WHEREAS, the Town Board of the Town of Kent wishes to adopt the amendment of Chapter 39 of the Kent Code entitled "Flood Damage Prevention."

THEREFORE BE IT RESOLVED, that the Town Board of the Town of Kent hereby amends Chapter 39 of the Kent Code entitled "Flood Damage Prevention" in the form and manner as provided in the attached;

BE IT FURTHER RESOLVED, that Local Law 1 of 2013 of the Town of Kent is hereby enacted by the Town Board of the Town of Kent as Local Law 1 of 2013 of the Town of Kent; and

BE IT FURTHER RESOLVED, that this local law shall take effect immediately upon filing with this State's Secretary of State. (attached)

The Board took a poll vote as follows:

Councilman Greene – aye Councilwoman Osborn – aye

Councilman Tartaro – aye Councilman Tierney – aye

Supervisor Doherty – aye

Motion carried unanimously

Resolution #83 - Cell Towers –Landfill Site Development Plan Homeland Tower, LLC Wireless Facility

On a motion by Councilwoman Osborn

Seconded by Supervisor Doherty

Whereas, the Town of Kent Town Board has reviewed a site development plan prepared by Homeland Tower, LLC ("Homeland") pursuant to a lease agreement for the construction and operation of a wireless telecommunication facility at the Former Town Landfill, 146 Ressique Street, Kent, New York; and

Whereas, the Town Board has previously declared its intent to act as Lead Agency under the New York State Environmental Quality Review Act and no objection having been received is the designated Lead Agency; and

Whereas, the Town Board convened a public hearing on the site development plan on November 27, 2012 and closed the public hearing on January 29, 2013, and

Whereas, the Town Board has reviewed the Long Form Environmental Assessment Form (EAF), coverage maps, site plan, alternative site analysis, wireless infrastructure plan, radio frequency emissions analysis, structural certification, FAA analysis, visual resource evaluation based on a publically noticed balloon test, other documents and materials prepared by Homeland in regard to the proposed wireless facility; and

Whereas, the Town Board has considered whether development of the proposed wireless facility may be afforded immunity from the Town's zoning and land development regulations pursuant to the 1988 Court of Appeals decision, *In re County of Monroe* which establishes a "balancing of interests" test to be used to make such a determination; and

Whereas, for the reasons set forth below the Town Board has determined that the Homeland wireless facility project is not subject to the Town's zoning regulations, specifically:

1. The Town of Kent is a political subdivision of the State of New York and is tax-funded and self-governing with elected officials. The Town provides emergency response for such things as fires, accidents, medical emergencies and natural disasters and so is a governmental entity that provides an essential public service. The Town is the owner of the Property, and pursuant to New York State Town Law Section 64(2), the Town has the power to lease the Property for such purposes as the Town may deem appropriate, which in this case includes a wireless facility which has been designed to support public safety communications antennas and equipment.
2. There is no other governmental entity with a potentially greater interest in the project because the property is owned by the Town and is wholly located within the boundaries of the Town, and pursuant to the Town Law the Town Board is solely vested with the jurisdiction to adopt and amend the town zoning code.
3. The wireless facility is a public utility, and therefore the proposed land use is that of a public utility and emergency services wireless telecommunications facility. The wireless facility will consist of a 180-foot monopole to support federally licensed wireless carriers and emergency service providers. The facility will serve the public interest, in that it will offer the general public a wireless communications alternative particularly well suited for responding to accidents and natural disasters and for reporting medical emergencies and other dangers such as potential criminal activity. The Town Board notes that federally licensed wireless services have been deemed to be essential public services by both New York State and Federal Courts.
4. With respect to telecommunications facilities in general, the courts have routinely recognized them to be a paramount public interest. The Town Board notes several cases in which the courts of this State have held that applications to locate or to co-locate wireless telecommunications facilities are exempt from local zoning regulations because the services being provided by a private carrier benefitted the public. The Town Board also notes that imposing local land use regulations on the project would unnecessarily delay the implementation of a project that will fulfill an essential public need for efficient and effective emergency response, and that the Town's *Wireless Infrastructure Plan*, which was developed after several years of study and public input, specifically designates the Former Town Landfill as an appropriate site for a wireless facility.
5. There are no alternative locations for the facility and the proposed wireless facility is expressly authorized on the Former Town Landfill site as a special permit use. The Town Board has considered the *Alternative Site Analysis*, provided by Homeland, which certifies that there are no other tall structures in the vicinity of the proposed site where antennas could be located to provide the necessary reliable wireless coverage. Additionally, the Town's *Wireless Infrastructure Plan* demonstrates through actual drive test data and signal propagation maps that a wireless facility at the Former Town Landfill is necessary to remedy a significant gap in reliable wireless services and to provide reliable service to locations which are not and cannot be adequately served by existing facilities or structures within and outside of the Town.
6. As noted above the Town Board has determined that there would be no significant adverse environmental impacts associated with development of the facility. Development of the facility would not have a significant adverse visual impact as demonstrated by the *Visual Resource Evaluation reviewed by the Town Board*, and would not adversely affect the public health, safety or the general welfare. The Town Board notes that the facility has been designed in accordance with the applicable structural requirements of the Building Code of New York State, and all other applicable local, state, and federal codes and regulations.
7. The Town Board notes that there are no feasible alternative methods of providing the proposed improvements necessary to close the gap in coverage as set forth in the Town's *Wireless Infrastructure Plan*. The proposed location in the Former Town Landfill is unique since it is ideally located to remedy a significant gap in wireless services for federally licensed carriers and emergency service entities, while causing a minimal intrusion on the community.
8. The Facility will serve a significant public interest and will benefit the entire community by offering a wireless telecommunications alternative essential for protecting public health, safety and welfare, including mobile access to 911 services.
9. Although the project has not been subject to review under the Town's zoning regulations the Town Board has held two public hearings on the Former Town Landfill site development plan where all parties have been given an opportunity to be heard. Additionally, the adoption of the Generic Environmental Impact Statement, the corresponding SEQRA Determination and approval of the Town *Wireless Infrastructure Plan* by the Town Board, and the SEQRA Determination and Lease approval for the Property by the Town Board, were all the subject of publicly noticed public hearings.

Whereas, the Town Board has examined the proposed site development plan and finds as follows:

1. The proposed wireless facility would have a harmonious relationship with the existing and planned development of contiguous lands and adjacent neighborhoods and would have no material adverse effect upon the desirability of adjacent and nearby property for development.

**State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The **TOWN BOARD OF THE TOWN OF KENT**, as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Environmental Impact Statement will not be prepared.

Name of Action: Site Development Plan/Monroe Balancing of Interest Test Approval
 Matter of Homeland Towers
 Former Town Landfill, 146 Renssieu Street, Kent, New York

SEQR Status: Type 1 ☐
 Unlisted ☒

Conditioned Negative Declaration: ☐ Yes
 ☒ No

Description of Action:

The action is the approval by the Town Board of the Town of Kent of a site development plan and Monroe Balancing of Interest Test that would allow Homeland Tower, LLC to construct and operate a wireless telecommunication facility at the former Town Landfill, 146 Renssieu Street, Kent Lakes, New York. The facility would consist of a 75' x 75' fenced compound that would provide security for one or more wireless communication providers and public safety agencies, a 180' monopole, a gravel driveway and parking spaces for up to two service vehicles, emergency power supply, and electrical and telephone connection boxes.

Location:

Former Town Landfill, 146 Renssieu Street, Kent Lakes, Putnam County, New York.

Reasons Supporting This Determination:

I. Surface and Ground Water Quality

The wireless communication facility would be constructed on land that was formerly in use as the Town Landfill. The landfill has been capped in accordance with an agreement with the New York State Department of Environmental Conservation, and the location of the wireless facility would be along the edge of a wooded area of the property that was not part of the landfill operation. No part of the facility would be located on the capped area of the landfill itself. An existing unpaved driveway would be used to access the proposed facility. The proposed development would not involve the removal of a significant number of trees or vegetation, and would not significantly alter existing grades at the site so as to require the installation of storm

water management devices. All necessary erosion control measures shall be installed. The Town's wetland consultant has confirmed based on a site inspection and a review of the plans that there are no wetland or watercourse impacts. The Lead Agency is satisfied that the project would not have any adverse environmental effects on local surface water bodies or ground water supplies.

2. Water Supply/Sewage Disposal

The proposed development involves construction of an unmanned wireless communication facility. As an unmanned facility there is no need to provide a water supply or sewage disposal system. The project would not cause a substantial adverse change in existing ground or surface water quality or quantity, and the health and safety of existing and future area residents would be protected.

3. Traffic

The functioning and operation of the facility will be monitored daily at an off-site location with an on-site visit to monitor the physical plant occurring approximately once each month. Traffic volume generated by the proposed wireless installation is minimal, and no significant effects on local air quality from vehicle exhaust emissions, or the operational characteristics of local roadways associated with the proposed use have been identified.

4. Noise and Odors

Typical of construction projects there will be temporary increases in noise levels due to construction activities on the site during the development of the property. It is not anticipated that construction would result in significant odors from dust related to excavation and the movement of earth. Any noise or odors potentially generated by the project would be short-term in nature and therefore would be an unavoidable adverse impact of limited duration. The use of the facility for wireless communication purposes is not the type of activity which would generate significant noise or odors that might adversely affect area residents. Accordingly, the potential adverse impacts related to noise and odors would not be significant.

5. Flora and Fauna

The wireless communication facility would be constructed along the edge of a wooded area of the site that was not part of the landfill operation. Some minimal additional clearing of vegetation would be required to ensure overhead clearance for the monopole and adequate space for the fenced compound. Approximately 5,625 square feet of land would be disturbed for development of the facility. Construction and operation of the facility would not have a significant adverse impact on any rare, endangered, threatened or special concern species of flora or fauna or their habitat. See letter from the New York State Department of Environmental Conservation dated November 14, 2012 confirming that there are no records of rare or state listed animals or plants, or significant natural communities on or in the immediate vicinity of the site.

6. Cultural Resources

The proposed site is the former Town Landfill. The proposed project would have no adverse impact on historic or pre-historic cultural resources of local, state or federal significance. See letter from IVI Telecom Services, Inc., dated November 26, 2012 with confirmation email from

the New York State Historic Preservation Office dated November 14, 2012 that there are no historic properties within the area of potential effects.

7. Impact on Growth and Character of Community or Neighborhood

The Board has considered the proposed plan of development and has considered its potential effect on the scenic and visual environment of the town. The Board is aware that current wireless communication technology generally requires line-of-sight between the transmission and receiving points for best signal reception. It is therefore infeasible to completely hide the tower from all points of potential visual sensitivity. The Board has determined, however, that the forested and steep topography of the area within which the facility would be located generally acts to limit views of the 180 foot monopole. Additionally, the base station equipment would be located below the height of the existing trees and would not be generally visible to the public. The Board is satisfied that the proposed structure would be located so as to limit its overall visibility from public roads and nearby properties, and its appearance to casual viewers from nearby roads and properties would be minimally intrusive. The Board has determined that the proposed activity would occur in a rural, low density residential area and is not expected to impair the character or quality of important historical, archaeological, architectural, or aesthetic resources or the existing community or neighborhood character. In addition, the Board has determined that the proposed activity is consistent with all current development plans and goals as officially approved and adopted, and would not result in a substantial change in the use, or intensity of use, of land devoted to agricultural, open space, or recreational use.

For Further Information:

Hon. Kathy Doherty, Supervisor
Town of Kent
25 Sybil's Crossing
Kent Lakes, New York 10512
Tele: 845-225-3943

THIS NEGATIVE DECLARATION WAS AUTHORIZED AT A MEETING OF THE LEAD AGENCY HELD ON JANUARY 29, 2013.

2. The proposed wireless facility would be properly related to the uses, goals and policies for land development as expressed in the *Kent Comprehensive Plan* and *Wireless Infrastructure Plan*.
3. The layout of the proposed site has been properly planned with regard to the safety of vehicles and pedestrians using the site, as well as those on neighboring properties and streets.
4. The site development plan reflects an awareness of and sensitivity to the views, terrain, soils, plant life and other unique qualities of the site and preserves and protects these assets to the extent practicable.

Therefore Be It Resolved, the Town Board hereby determines that development of the project as proposed would not have a significant adverse effect on the environment and that a draft environmental impact statement will not be required for the reasons set forth in the Determination of Non-Significance which is attached hereto and made part hereof; and

Be It Further Resolved, the Town Board hereby determines that it would be contrary to the public interest to subject the proposed wireless facility to local zoning and land use development regulations; and

Be It Further Resolved, the Town Board hereby approves the site development plan for the proposed Homeland Tower wireless facility as depicted in the plan set prepared by Tectonic Engineering dated November 19, 2012 entitled "*NY 178 Kent Town Landfill, 146 Ressique Street, Kent Lakes, NY 10512*"; and

Be It Further Resolved, that this approval is expressly conditioned on development of the wireless facility in substantial accordance with the approved plan set; and

Be It Further Resolved, that this approval is expressly conditioned on the following:

1. Prior to commencement of site work Homeland shall install all required erosion control measures as shown on the approved site development plans. The erosion control measures may be changed or modified by order of the Town Engineer or the Town Building Inspector based on field conditions. At all times during construction, the applicant shall maintain the on-site erosion control measures in good repair so as to avoid siltation of the on-site stream and wetland, and in compliance with local and state storm water pollution control requirements.
2. Homeland shall obtain and shall keep current all required approvals from any other regional, state, or federal agency. Future collocation by wireless applicants at the facility shall not be subject to local zoning and land use regulations but shall require a building permit from the Town of Kent Building Department, and shall, as may be required, comply with local and state storm water pollution control requirements.
3. At the completion of construction Homeland shall provide a certification to the Town Building Inspector that all construction has been carried out and completed in substantial compliance with the approved site development plan, and shall provide to the Town Building Inspector an "as built" survey of the completed development.
4. Pursuant to Chapter 48 of the Town of Kent Code construction activity within the Town of Kent shall be limited to Monday through Friday from 7:00 AM to 9:00 PM, and Saturday and Sunday from 8:00 AM to 9:00 PM.

The Board took a poll vote as follows:

Councilman Greene – aye Councilwoman Osborn – aye

Councilman Tartaro – aye Councilman Tierney – aye

Supervisor Doherty – aye

Motion carried unanimously

Resolution #84 - Cell Towers Town Center Site Development Plan Homeland Tower, LLC Wireless Facility

Town Planner Wilson, recommended the verbatim reading not be read as the content is the same and the written resolution is before them.

On a motion by Councilwoman Osborn

Seconded by Supervisor Doherty and Councilman Greene

Whereas, the Town of Kent Town Board has reviewed a site development plan prepared by Homeland Tower, LLC ("Homeland") pursuant to a lease agreement for the construction and operation of a wireless telecommunication facility at the Kent Town Center, 25 Sybil's Court, Kent Lakes, New York; and

Whereas, the Town Board has previously declared its intent to act as Lead Agency under the New York State Environmental Quality Review Act and no objection having been received is the designated Lead Agency; and

Whereas, the Town Board has reviewed the Long Form Environmental Assessment Form (EAF), coverage maps, site plan, alternative site analysis, wireless infrastructure plan, radio frequency emissions analysis, structural certification, FAA analysis, visual resource evaluation based on a publically noticed balloon test, other documents and materials prepared by Homeland in regard to the proposed wireless facility; and

Whereas, the Town Board has considered whether development of the proposed wireless facility may be afforded immunity from the Town's zoning and land development regulations

pursuant to the 1988 Court of Appeals decision, *In re County of Monroe* which establishes a "balancing of interests" test to be used to make such a determination; and

Whereas, for the reasons set forth below the Town Board has determined that the Homeland wireless facility project is not subject to the Town's zoning regulations, specifically:

1. The Town of Kent is a political subdivision of the State of New York and is tax-funded and self-governing with elected officials. The Town provides emergency response for such things as fires, accidents, medical emergencies and natural disasters and so is a governmental entity that provides an essential public service. The Town is the owner of the Property, and pursuant to New York State Town Law Section 64(2), the Town has the power to lease the Property for such purposes as the Town may deem appropriate, which in this case includes a wireless facility which has been designed to support public safety communications antennas and equipment.
2. There is no other governmental entity with a potentially greater interest in the project because the property is owned by the Town-and is wholly located within the boundaries of the Town, and pursuant to the Town Law the Town Board is solely vested with the jurisdiction to adopt and amend the town zoning code.
3. The wireless facility is a public utility, therefore the proposed land use is that of a public utility and emergency services wireless telecommunications facility. The wireless facility will consist of a 150-foot monopole to support federally licensed wireless carriers and emergency service providers. The facility will serve the public interest, in that it will offer the general public a wireless communications alternative particularly well suited for responding to accidents and natural disasters and for reporting medical emergencies and other dangers such as potential criminal activity. The Town Board notes that federally licensed wireless services have been deemed to be essential public services by both New York State and Federal Courts.
4. With respect to telecommunications facilities in general, the courts have routinely recognized them to be a paramount public interest. The Town Board notes several cases in which the courts of this State have held that applications to locate or to co-locate wireless telecommunications facilities are exempt from local zoning regulations because the services being provided by a private carrier benefitted the public. The Town Board also notes that imposing local land use regulations on the project would unnecessarily delay the implementation of a project that will fulfill an essential public need for efficient and effective emergency response, and that the Town's *Wireless Infrastructure Plan*, which was developed after several years of study and public input, specifically designates the Town Center as an appropriate site for a wireless facility.
5. There are no alternative locations for the facility and the proposed wireless facility is expressly authorized on the Town Center site as a special permit use. The Town Board has considered the *Alternative Site Analysis*, provided by Homeland, which certifies that there are no other tall structures in the vicinity of the proposed site where antennas could be located to provide the necessary reliable wireless coverage. Additionally, the Town's *Wireless Infrastructure Plan* demonstrates through actual drive test data and signal propagation maps that a wireless facility at the Town Center is necessary to remedy a significant gap in reliable wireless services and to provide reliable service to locations which are not and cannot be adequately served by existing facilities or structures within and outside of the Town.
6. As noted above the Town Board has determined that there would be no significant adverse environmental impacts associated with development of the facility. Development of the facility would not have a significant adverse visual impact as demonstrated by the *Visual Resource Evaluation* reviewed by the Town Board, and would not adversely affect the public health, safety or the general welfare. The Town Board notes that the facility has been designed in accordance with the applicable structural requirements of the Building Code of New York State, and all other applicable local, state, and federal codes and regulations.
7. The Town Board notes that there are no feasible alternative methods of providing the proposed improvements necessary to close the gap in coverage as set forth in the Town's *Wireless Infrastructure Plan*. The proposed location in the Town Center is unique since it is ideally located to remedy a significant gap in wireless services for federally licensed carriers and emergency service entities, while causing a minimal intrusion on the community.
8. The Facility will serve a significant public interest and will benefit the entire community by offering a wireless telecommunications alternative essential for protecting public health, safety and welfare, including mobile access to 911 services.
9. Although the project has not been subject to review under the Town's zoning regulations the Town Board has held two public hearings on the Town Center site development plan where all parties have been given an opportunity to be heard. Additionally, the adoption of the Generic Environmental Impact Statement, the corresponding SEQRA Determination and approval of the Town *Wireless Infrastructure Plan* by the Town Board, and the SEQRA

**State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The TOWN BOARD OF THE TOWN OF KENT, as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Environmental Impact Statement will not be prepared.

Name of Action: Site Development Plan/Monroe Balancing of Interest Test Approval
 Matter of Homeland Towers
 Kent Town Center, 25 Sybil's Crossing, Kent Lakes, New York

SEQR Status: Type 1 ☐
 Unlisted ☒

Conditioned Negative Declaration: ☐ Yes
 ☒ No

Description of Action:

The action is the approval by the Town Board of the Town of Kent of a site development plan and Monroe Balancing of Interest Test that would allow Homeland Tower, LLC to construct and operate a wireless telecommunication facility at the Kent Town Center, 25 Sybil's Court, Kent Lakes, New York under a lease agreement with the Town. The facility would consist of a 75' x 75' fenced compound that would provide security for one or more wireless communication providers and public safety agencies, a 150' "monopine" that would use specialized "stealth" construction that would allow the monopole to better blend into the forested area on the hillside surrounding the facility, a gravel driveway and parking spaces for up to two service vehicles, emergency power supply, and electrical and telephone connection boxes.

Location:

Kent Town Center, 25 Sybil's Crossing, Kent Lakes, Putnam County, New York.

Reasons Supporting This Determination:

1. Surface and Ground Water Quality

The wireless communication facility would be constructed on an unused area to the rear of the Town Hall and away from the nearby Kent Recycling Facility. The proposed development would not involve the removal of a significant number of trees or vegetation, and would not significantly alter existing grades at the site so as to require the installation of storm water management devices. All necessary erosion control measures shall be installed. The Town's wetland consultant has confirmed based on a site inspection and a review of the plans that there

are no wetland or watercourse impacts. The Lead Agency is satisfied that the project would not have any adverse environmental effects on local surface water bodies or ground water supplies.

2. Water Supply/Sewage Disposal

The proposed development involves construction of an unmanned wireless communication facility. As an unmanned facility there is no need to provide a water supply or sewage disposal system. The project would not cause a substantial adverse change in existing ground or surface water quality or quantity, and the health and safety of existing and future area residents would be protected.

3. Traffic

The functioning and operation of the facility will be monitored daily at an off-site location with an on-site visit to monitor the physical plant occurring approximately once each month. Traffic volume generated by the proposed wireless installation is minimal, and no significant effects on local air quality from vehicle exhaust emissions, or the operational characteristics of local roadways associated with the proposed use have been identified.

4. Noise and Odors

Typical of construction projects there will be temporary increases in noise levels due to construction activities on the site during the development of the property. It is not anticipated that construction would result in significant odors from dust related to excavation and the movement of earth. Any noise or odors potentially generated by the project would be short-term in nature and therefore would be an unavoidable adverse impact of limited duration. The use of the facility for wireless communication purposes is not the type of activity which would generate significant noise or odors that might adversely affect area residents. Accordingly, the potential adverse impacts related to noise and odors would not be significant.

5. Flora and Fauna

The wireless communication facility would be constructed on a portion of the Kent Town Center that was disturbed during development of the Kent Library and Kent Town Hall. Some minimal additional clearing of vegetation would be required to ensure overhead clearance for the monopole and adequate space for the fenced compound and access driveway. Approximately 5,625 square feet of land would be disturbed for development of the facility compound. Construction and operation of the facility would not have a significant adverse impact on any rare, endangered, threatened or special concern species of flora or fauna or their habitat. See letter from the New York State Department of Environmental Conservation dated November 14, 2012 confirming that there are no records of rare or state listed animals or plants, or significant natural communities on or in the immediate vicinity of the site.

6. Cultural Resources

The wireless communication facility would be constructed on a portion of the Kent Town Center that was disturbed during development of the Kent Library and Kent Town Hall. The proposed project would have no adverse impact on historic or pre-historic cultural resources of local, state or federal significance. See letter from IVI Telecom Services, Inc., dated November 26, 2012 with confirmation email from the New York State Historic Preservation Office dated November 14, 2012 that there are no historic properties within the area of potential effects.

7. Impact on Growth and Character of Community or Neighborhood

The wireless communication facility would be constructed on a portion of the Kent Town Center that was disturbed during development of the Kent Library and Kent Town Hall. The Board has considered the proposed plan of development and has considered its potential effect on the scenic and visual environment of the town. The Board is aware that current wireless communication technology generally requires line-of-sight between the transmission and receiving points for best signal reception. It is therefore infeasible to completely hide the tower from all points of potential visual sensitivity. The Board has determined, however, that given the importance of the Town Center as a focal point for public business that the use of a camouflage design for the tower would minimize views of the new tower and would be protective of the scenic beauty of the town. Additionally, the base station equipment would be located below the height of the existing trees and would not be generally visible to the public. No FAA lighting or marking is required. The Board is satisfied that the proposed structure would be located so as to limit its overall visibility from public roads and nearby properties, and its appearance to casual viewers from nearby roads and properties would be minimally intrusive. The Board has determined that the proposed activity would occur in a rural, low density residential area and is not expected to impair the character or quality of important historical, archaeological, architectural, or aesthetic resources or the existing community or neighborhood character. In addition, the Board has determined that the proposed activity is consistent with all current development plans and goals as officially approved and adopted, and would not result in a substantial change in the use, or intensity of use, of land devoted to agricultural, open space, or recreational use.

For Further Information:

Hon. Kathy Doherty, Supervisor
Town of Kent
25 Sybil's Crossing
Kent Lakes, New York 10512
Tele: 845-225-3943

THIS NEGATIVE DECLARATION WAS AUTHORIZED AT A MEETING OF THE LEAD AGENCY HELD ON JANUARY 29, 2013.

Determination and Lease approval for the Property by the Town Board, were all the subject of publicly noticed public hearings.

Whereas, the Town Board has examined the proposed site development plan and finds as follows:

1. The proposed wireless facility would have a harmonious relationship with the existing and planned development of contiguous lands and adjacent neighborhoods and would have no material adverse effect upon the desirability of adjacent and nearby property for development.
2. The proposed wireless facility would be properly related to the uses, goals and policies for land development as expressed in the *Kent Comprehensive Plan* and *Wireless Infrastructure Plan*.
3. The layout of the proposed site has been properly planned with regard to the safety of vehicles and pedestrians using the site, as well as those on neighboring properties and streets.
4. The site development plan reflects an awareness of and sensitivity to the views, terrain, soils, plant life and other unique qualities of the site and preserves and protects these assets to the extent practicable.

Therefore Be It Resolved, the Town Board hereby determines that development of the project as proposed would not have a significant adverse effect on the environment and that a draft environmental impact statement will not be required for the reasons set forth in the Determination of Non-Significance which is attached hereto and made part hereof; and

Be It Further Resolved, the Town Board hereby determines that it would be contrary to the public interest to subject the proposed wireless facility to local zoning and land use development regulations; and

Be It Further Resolved, the Town Board hereby approves the site development plan for the proposed Homeland Tower wireless facility as depicted in the plan set prepared by Tectonic Engineering dated November 29, 2012 entitled "NY 179 Kent Town Hall, 25 Sybil's Crossing Kent Lakes, NY 10512"; and

Be It Further Resolved, that this approval is expressly conditioned on development of the wireless facility in substantial accordance with the approved plan set; and

Be It Further Resolved, that this approval is expressly conditioned on the following:

1. Prior to commencement of site work Homeland shall install all required erosion control measures as shown on the approved site development plans. The erosion control measures may be changed or modified by order of the Town Engineer or the Town Building Inspector based on field conditions. At all times during construction, the applicant shall maintain the on-site erosion control measures in good repair so as to avoid siltation of the on-site stream and wetland, and in compliance with local and state storm water pollution control requirements.
2. Homeland shall obtain and shall keep current all required approvals from any other regional, state, or federal agency. Future collocation by wireless applicants at the facility shall not be subject to local zoning and land use regulations but shall require a building permit from the Town of Kent Building Department, and shall, as may be required, comply with local and state storm water pollution control requirements.
3. At the completion of construction Homeland shall provide a certification to the Town Building Inspector that all construction has been carried out and completed in substantial compliance with the approved site development plan, and shall provide to the Town Building Inspector an "as built" survey of the completed development.
4. Pursuant to Chapter 48 of the Town of Kent Code construction activity within the Town of Kent shall be limited to Monday through Friday from 7:00 AM to 9:00 PM, and Saturday and Sunday from 8:00 AM to 9:00 PM.

Motion carried unanimously

Resolution #85 – Route 52 Sewer District – Adoption of Map, Plan & Report Establishing Formation of Kent Sewer District

On a motion by Supervisor Doherty

Seconded by Councilman Tartaro

WHEREAS, on October 23, 2012, the Town Board of the Town of Kent accepted the Map, Plan and Report prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. dated October 8, 2012, with regard to the Route 52 Sewer District; and

WHEREAS, a copy of the Map, Plan and Report has been filed with the Town Clerk of the Town of Kent; and

WHEREAS, on November 28, 2012, the Town Board of the Town of Kent duly published a notice of public hearing to determine the feasibility and expense of establishing the Route 52 Sewer District; and

WHEREAS, on December 11, 2012, the Town Board of the Town of Kent held a public hearing to discuss whether the establishment of the Route 52 Sewer District along the Route 52 commercial corridor was in the public interest; and

WHEREAS, the Town Board of the Town of Kent has conducted the public hearing and having taken public comments and written comments concerning the establishment of the Route 52 Sewer District;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Kent makes the following findings of fact:

A. The notice of public hearing was published and posted as required by law and is otherwise sufficient.

B. All of the properties and property owners within the proposed district are benefitted thereby.

C. All of the properties and property owners benefitted are included within the limits of the proposed district.

D. The establishment of such a district is in the public interest.

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby approves the establishment of the Route 52 Sewer District as proposed in the Map, Plan and Report, subject to a permissive referendum; and

BE IT FURTHER RESOLVED, that the Town Clerk of the Town of Kent is directed to publish or cause to be published an abstract of this resolution containing concisely the purpose and effective of this Resolution and that it is subject to a permissive referendum in the official newspaper of the Town of Kent within ten (10) days of the date of adoption of this resolution; and

BE IT FURTHER RESOLVED, that the Town Clerk of the Town of Kent is directed to post a copy of this resolution on the Town Clerk's notice board within ten (10) days of the date of the adoption of this resolution; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Supervisor to execute any and all documents necessary to give effect to this resolution.

The Board took a poll vote as follows:

Councilman Greene – (see statement attached) - aye

Councilwoman Osborn – (see statement attached)- aye

Councilman Tartaro – (see statement attached) - aye

Councilman Tierney – stated he was against Kent Manor. He is directly affected by the Kent Manor Project, he lives on Nichols Street where the Sewage Treatment Plant will be. That decision was taken out of his hands by Justice O'Rourke, he decided that Kent Manor was entitled to build due to deals made with the Town of Kent long ago. We now have an opportunity to improve our town and join with the sewer district, had he been elected to represent a ward which included Palmer Lake, he could do the politically correct thing and vote no, which he thinks is wrong. He is directly impacted, he lives there, he votes - aye

Supervisor Doherty (see statement attached) - aye

Motion carried unanimously

Resolution # 86 -Acceptance of Contract with Windstream Communications

On a motion by Supervisor Doherty

Seconded by Councilman Greene for discussion he asked if the other locations were included.

Supervisor Doherty replied he is looking into that, it will be separate.

WHEREAS, the Town of Kent has solicited for proposals for servicing of the telephone systems within the Kent Town Hall and the Kent Police Station; and

WHEREAS, the Town Board of the Town of Kent has reviewed all proposals submitted in connection with the servicing of the telephone systems within the Kent Town Hall and the Kent Police Station; and

WHEREAS, the Town of Kent has received the attached proposal from Windstream Communications for the servicing of the telephone systems within the Kent Town Hall and the Kent Police Station; and

WHEREAS, Windstream Communications is under State contract for such services; and

WHEREAS, the Town of Kent wishes to accept the proposal from Windstream Communications and enter into a contract for the servicing of the telephone systems within the Kent Town Hall and the Kent Police Station in accordance with the attached proposal;

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Kent hereby accepts the attached proposal from Windstar Communications for the servicing of the telephone systems within the Kent Town Hall and the Kent Police Station commencing on February 1, 2013 in an amount of \$237.51 for Total Usage, \$3,417.60 for Monthly Recurring Charges and \$500.00 for the Non-Recurring Charges; and

BE IT FURTHER RESOLVED, that said contract may be terminated by either party upon thirty (30) days written notice to the other; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Supervisor to execute any and all documents necessary to give effect to this resolution.

Motion carried unanimously

Resolution #87 - Lake Tibet Maintenance Contract-Control of Water Lilies & Eurasian Milfoil

On a motion by Councilman Tartaro

Since February 22, 2010 when the town board adopted a resolution to conduct a feasibility study, there have been a total of 8 workshops and 10 meetings regarding the proposed sewer district that were spread out over the course of the past 2 years. There were also 2 town newsletters sent out to all the residents that explained this project

During these meetings The Town Board voted to commit the town to many different agreements with multiple agencies which I was in support of.

Over the past 2 years of discussion about this project there was never ANY opposition brought to my attention until the Recent Public Hearing held on December 11th 2012 where I was flooded with emails and letters.

The option of a split discharge system was discussed at great length. But we were told that the decision as to which system would be constructed lied solely with the DEC who issues the SPEDES permit.

On December 21st 2012 I wrote a factual letter to the DEC explaining to them the benefits of choosing the split discharge system as well as the opposition and frustrations of the Palmer Lake Community residents. I have not yet received a response from them with any regard to my letter.

With all of this opposition very recently being brought to my attention, I now very much want to oppose the project. However after so many agreements have been accepted and with a possible financial backlash of over 1 million dollars to be paid by the town for breach of contracts, I feel it would be fiscally irresponsible to do so. This is why I am voting YES for this project.

Councilwoman Osborn's Statement

Formation of the Kent Sewer District is possibly the most responsible project for the Town of Kent in 40 years I've lived here. It serves not only the here and now but our future generations. I vote yes to the Sewer District. I think it's a great project and I want to see it move forward.

Sewer District Statement

I'd like to make a statement prior to casting my vote on the formation of the Sewer District.

Prior to the Public hearing held last month there were virtually no concerns nor negative comments regarding the formation of the District. I mention this because the process began more than two years ago. *AND*

During that time period the Sewer District appeared on numerous Town Board agendas and was featured in 2 newsletters that were mailed to every resident in the Town.

Last month for the first time the residents of Hill and Dale came out in force to express their concerns - and the majority of the comments centered on potential negative impacts to Palmer Lake.

I'm not going to evade the issue but I must stress that the vote taken tonight concerns the formation of the Sewer District.

The plant itself - if built - will be owned and operated by Kent Manor Corporation. And all approvals regarding the plant's construction and discharge lies with **NYS DEC**. not the Kent Town Board.

In addition the discharge must meet even higher standards because it lies in the NYC DEP watershed - it must ^{MEET} ~~pass~~ drinking water standards.

Last month several speakers referenced the 20 year struggle between the Town and the Kent Manor project and some indicated that the Town is no longer willing to fight the fight so to speak; - This IMO opinion is not a fair accusation.

Several years ago a Court decision gave Kent Manor the rights to the last subsurface discharge permit allotted to Putnam County. This decision does not have a sunset provision and at some point in time the Kent Manor plant will in fact be built regardless of whether the Sewer District is approved or not

The Kent Manor decision also awarded the Hill and Dale community a stipend of \$200,000 for lake management improvements shortly after the plant is built,

Unfortunately for the taxpayers of Kent, the same decision also awarded Kent Manor 250,000 above the 1 million already paid by the Town's insurance. In addition, the TOK spent over 400,000 to one firm alone over that 20 year time period.

Bottom line the taxpayers of Kent spent well over 650,000 dollars fighting the Kent Manor battle,

Last October The Kent Town Board voted to approve the Sewer Connection contract with Kent Manor Corporation for the sum of 2,400,000 and the second installment of 600,000 is due on Feb 14th, to date the Town has spent in excess of 500,000 on the project. Fortunately, all Town expenses relating to this project will be reimbursed by NYC DEP Watershed money.

However if the Kent Town Board doesn't move the project forward at this point in time we would breach not only the Kent Manor contract but similar contracts already signed with NYS DEC NYC DEP and the County of Putnam.

For this reason alone I would have voted yes on the formation of the district as it will in all probability cost the taxpayers of Kent millions if we backed out now.

Lastly, several studies over the last 30 years identified Sewering as a key component in the revitalization of the Route 52 corridor. I'm not naïve and expect anything to happen immediately but the Town must take this positive step to help our business community,

And it's for this reason that I vote yes to the formation of the Sewer District!!

In the interest of the people of the Town of Kent it is necessary to separate the political ploy driving public perception from the truth, by illuminating the facts surrounding the proposed Route 52 Sewer district.

1. The main focus of this project is water quality improvement as evidenced by NYCDEP variance documents and approval, as well as the broad funding support. The extra benefit is increased revenue through economic development.
2. The Town of Kent did NOT ignore possible impacts to Palmer Lake while advancing the project. The environmental analysis conducted for the project specifically addressed the water quality impacts to Palmer Lake and concluded the project will improve water quality draining to Palmer Lake.
3. The discharge flow to Palmer Lake will not further pollute the lake. The project will increase discharge flow to a stream, which travels three quarter of a mile before it reaches Palmer Lake. It will further reduce the amount of pollutant, which will improve Palmer Lake's water quality.
4. Plant failure was a concern. The possibility of failure exists for all Wastewater Treatment Plants in the country. The possibility of failure is minimized through discharge permitting, monitoring,

reporting inspection, and other protocols overseen by a multiple of regulatory agencies.

5. Palmer Lake is listed as an impaired waterbody on the NYSDEC 303(d) list with the source of pollution identified as urban stormwater runoff and onsite wastewater treatment systems also known as septic systems. The existing conditions such as small lot size, shallow groundwater, shallow rock, poor soils, steep slopes, etc. in the commercial district prohibit reliable function of onsite wastewater treatment systems. Therefore, a central sewer system is the best water quality solution.

6. Before I vote, I am disclosing that my husband and I own a property in the proposed sewer district (as shown in the maps, plans, and reports^{Fall} that has been published on the Town's website since September 2012), the NYS Association of Towns and the NYS Comptroller's office opined that having a property in the district does not constitute a conflict of interest. The benefit of the Sewer District to my property is not any more or less, than any other property owners in the District. Every commercial property owner in the district, including myself, will pay approximately \$1,100 per year in taxes, plus cost of hook-up, once the project is completed.

7. The public was never “left out in the dark” during the entire process. Since 2010, the Town Board has conducted 8 workshops, 10 meetings, and 1 public hearing about the Sewer District. To increase public awareness, we also sent out 2 newsletters to each household and put 1 infomercial on air for almost two months. We have already gone through several processes: SEQR, Declaration of Lead Agency, Variance Application, Negative Declaration, Map, Plan, and Report, and Negotiation and Approval of Term Sheets. The Town Board has conducted each process openly. All these meetings and workshops were advertised and copies of agenda were even sent out as courtesy. We have already committed half a million dollars to this project and what we are doing tonight is the last step in the process.

8. In this economy, it is not easy to get a 6-million dollar grant to fund a major capital project. If we stop this now, we may never get this opportunity again. If we stop now, we are putting the Town in a liable situation. This project is a win-win situation for the Town of Kent, including Palmer Lake.

All of the facts presented herein are a matter of record. Any citizen willing to read the documentation can check them. Rash statements made up of “Hot Button” and offensive statements appealing to base emotions serve only as a distraction from an intelligent debate and

should have no place in a discussion to determine the value of important projects affecting all citizens of the Town of Kent. Sound thinking and learned conversation, based only on documented facts demonstrate that this water quality improvement project benefits all homeowners in the Town of Kent.

Seconded by Councilwoman Osborn

Resolved: The proposal received for Lake Tibet for a Maintenance Contract from The Pond and Lake Connection in the amount of \$10,350.00 for the control of water lilies and Eurasian milfoil may be signed by the Supervisor.

Motion carried unanimously

Resolution #88 - Release Erosion Control Bond – Hodson, TM#33.5-1-14

On a motion by Councilman Greene

Seconded by Councilman Tartaro

Resolved: On the recommendation of Building Inspector Butler the Erosion Control Bond for Michael Hodson, 74 Deer Hill Court, TM#33.5-1-14 in the amount of \$5,137.50 may be released.

Motion carried unanimously

Resolution #89 - Release Erosion Control Bond – Russell, TM#21.18-1-5

On a motion by Councilman Greene

Seconded by Councilman Tartaro

Resolved: On the recommendation of the Planning Board the Erosion Control Bond for Craig Russell, 22 Friend Lane, TM#21.18-1-5 in the amount of \$3,313.00 may be released.

Motion carried unanimously

Resolution #90 - Supporting Bill of the Assembly of the State of NY Regarding Notification by Lending Institutions for Upkeep and Maintenance of Foreclosed Property

On a motion by Supervisor Doherty

Seconded by Councilman Greene

Whereas, the Town Board of the Town of Kent wishes to submit a resolution to the New York State Legislature conveying its support of the proposed legislation making it mandatory for lending institutions to notify the Town of Kent of the contact information for real property managers or other responsible parties for upkeep and maintenance of vacant and abandoned foreclosed properties; and

Whereas, vacant and abandoned foreclosed real property and structures have proliferated throughout the State of New York and in the Town of Kent over the past five years; and

Whereas, the Town of Kent has been forced to expend municipal funds in order to secure and maintain said vacant and abandoned foreclosed properties within the Town of Kent; and

Whereas, vacant and abandoned foreclosed properties that have not been secured and maintained for months at a time degrade and depreciate the value of the existing neighborhoods throughout the community as well as the vacant and abandoned foreclosed properties themselves; and

Whereas, lending institutions that hold the mortgages on such vacant and abandoned foreclosed properties do not always provide the municipalities with the contact information for the property managers or other parties responsible for the maintenance and upkeep of said vacant and abandoned foreclosed properties; and

Whereas, Assembly Bills A.88 and A.824, currently pending before the New York State Legislature would make it mandatory for lending institutions to provide the contact information for the property managers or other parties responsible for the maintenance and upkeep of vacant and abandoned foreclosed properties and would require good faith in obtaining foreclosure information and in obtaining a property's pending foreclosure; and

Whereas, the Town Board of the Town of Kent supports the passage of said Assembly Bills A.88 and A.824.

Now, Therefore, be it Resolved, that the Town Board of the Town of Kent hereby supports the passage of Assembly Bills A.88 and A.824 and respectfully requests that the State Representatives, who represent the constituents in the Town of Kent, support the passage of said Assembly Bills A.88 and A.824; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the District Office of Assemblyman Michael P. Kearns; and

BE IT FURTHER RESOLVED that the Town Board of the Town of Kent hereby authorizes the Supervisor to execute and all documents necessary to give effect to this resolution.

The Board took a poll vote as follows:

Councilman Greene – aye Councilwoman Osborn – aye

Councilman Tartaro – aye Councilman Tierney – aye

Supervisor Doherty – aye

Resolution #91 - Multi-Modal Grant

On a motion by Supervisor Doherty

Seconded by Councilwoman Osborn

WHEREAS, a Project for the improvement of the intersection at Routes 311 and 52 in the Town of Kent (the "Project") is eligible for funding [under Title 23 U.S. Code, as amended, and] New

York State Multi-Modal Program administered by the NYS Department of Transportation ("NYSDOT"); and

WHEREAS, the Town of Kent desires to advance the Project by making a commitment of advance funding of the non-local share and funding of the full local share of the costs of the Project;

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Kent duly convened does hereby approve the above-subject Project; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Town to pay in the first instance 100% of the federal and non-federal share of the cost of the construction work for the Project or portions thereof; and

BE IT FURTHER RESOLVED, that the sum of \$150,000.00 is hereby appropriated from the General Fund and made available to cover the cost of participation in the above phase of the Project; and

BE IT FURTHER RESOLVED, that in the event the full federal and non-federal share costs of the Project exceed the amount appropriated above, the Town Board of the Town of Kent shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the Project Managers thereof; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Supervisor to execute any and all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or Multi-Modal Program Funding on behalf of the Town of Kent with the NYSDOT in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of the Project costs and permanent funding of the local share of federal-aid and all Project costs that are not so eligible; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary agreements in connection with the Project; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be filed with the Commissioner of Transportation of the State of New York by attaching it to any required and/or appropriate agreements executed in connection with the Project between the Town of Kent and the State of New York; and

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

The Board took a poll vote as follows:

Councilman Greene – aye Councilwoman Osborn – aye

Councilman Tartaro – aye Councilman Tierney – aye

Supervisor Doherty – aye

Motion carried unanimously

Resolution #92 - Appoint Crew Chief

On a motion by Supervisor Doherty

Seconded by Councilman Greene

Resolved: On the recommendation of Highway Superintendent Caravetta , Robert Schaniel Jr. is promoted to position of Crew Chief (Working Foreman) at the 301 garage as of January 30, 2013.

The Board took a poll vote as follows:

Councilman Greene – aye Councilwoman Osborn – aye

Councilman Tartaro – aye Councilman Tierney – aye

Supervisor Doherty – aye

Motion carried unanimously

Resolution #93- Update Sanitation and Highway Sub List

On a motion by Councilwoman Osborn

Seconded by Councilman Tierney

Resolved: The following are added to the Sanitation and Highway Department Sub List:

Christopher Abt, Edward Buehler, Jr. and Michael Bloomer.

Motion carried unanimously

Resolution # 94 - Table Alarm Contract

On a motion by Councilman Tierney

Seconded by Councilman Greene

Resolved: Alarm contract tabled to the workshop

Motion carried unanimously

Correspondence & Agenda Items There were no questions or comments

Resolution #95 - Adjournment

On a motion by Supervisor Doherty

Seconded by Councilman Tartaro

Resolved: This town board meeting of January 29, 2013 adjourned at 8:00 p.m.