

**Town of Kent**  
**Town Board Meeting**  
**October 17, 2023**

**Workshop/Meeting**

1. Pledge of Allegiance
2. Roll Call
3. Discussion and/or Vote on the following:
  - a. Planning- release erosion control bond, RFP for Planning and Engineering
  - b. Parks and Recreation-approve guard rail for Ryan's Field
  - c. Budget-set put hearing
  - d. Soil Removal and Excavation- set public hearing
  - e. Grants- TAP, CREST, Energy Benchmarking
4. Vouchers
5. Announcement
6. Public Comment

Added to the Agenda

-Transportation Alternative Program Grant

- Crest Funding

- Grant for Lake Carmel

-Hire PT Mechanic for Municipal Repairs

A Town Board Meeting was held on Tuesday, October 17, 2023 at 7:00 p.m. at the Kent Town Hall, 25 Sybil’s Crossing, Town of Kent, New York. To see the full meeting visit the Town of Kent’s website at [www.townofkentny.gov](http://www.townofkentny.gov) under Video’s on Demand.

At 7:00 p.m. Supervisor McGlasson called the meeting to order with the Pledge of Allegiance.

**Roll Call**

Supervisor McGlasson- present	Councilman Tompuri- present
Councilwoman Campbell- present	Councilman Ruthven- present
Councilman Boyd –present	

Also present: Town Clerk Cappelli, Town Counsel Tagliafiero, Luietenant Flynn, Building Inspector Walters, Recycling Chair Kotzur and several members of general public.

**Resolution #327 – Releasing Erosion Control Surety Bond & Escrow– Sun – 3 Westwood Drive**

On a motion by Councilman Ruthven  
Seconded by Councilman Tompuri

**WHEREAS**, the Planning Board, by Resolution #14 of the Year 2023, dated October 5, 2023, has recommended that the Town Board release: (1) an Erosion Control Bond in the amount of \$19,700; and (2) remaining inspection fees in the amount of \$55.34 to the owner of the property located at 3 Westwood Drive, Kent, New York 10512 as shown on the Town of Kent Tax Map as 19.12-1-20 and 23; and

**WHEREAS**, the Town Board wishes to accept the recommendations as set forth in Planning Board Resolution No. 14; and

**NOW, THEREFORE BE IT RESOLVED**, that the Town Board of the Town of Kent hereby accepts the recommendation of the Planning Board and hereby authorizes the release of the remaining escrow/review account and surety/erosion control bonds to the owner of 3 Westwood Drive.  
Motion carried unanimously

**Resolution #328 – Authorizing Town Clerk to Advertise for Proposals for Planning Board Consultant Planner and Engineer**

On a motion by Councilman Ruthven  
Seconded by Councilman Tompuri

**WHEREAS**, it is the policy of the Town Board of the Town of Kent to periodically seek proposals for professional services; and

**WHEREAS**, the Town Board believes it to be in the best interests of the Town to advertise that it is seeking Proposals for Engineering and Planning for the Town Planning Board;

**NOW THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Kent hereby authorizes its Town Clerk, Yolanda D. Cappelli, to advertise for Requests for Proposals for Engineering and Planning for the Town Planning Board.  
Motion carried unanimously

**Resolution #329 Accepting Quote for Guard Rail at Ryan’s Field**

On a motion by Councilman Boyd  
Seconded by Councilman Ruthven

**WHEREAS**, there is a need for a guard rail at Ryan’s Field; and

**WHEREAS**, the Town’s Procurement Policy exempts from competitive bidding purchase contracts that are made under state contracts pursuant to the General Municipal Law; and

**WHEREAS**, in accordance with the Town’s Procurement Policy and the General Municipal Law, the Town Board wishes to authorize the Recreation and Park’s Department to accept the quote Chemung Supply Corp. to provide and install the guard rail at for a cost of \$7,500.68 pursuant to contract awarded by the State of New York;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Kent hereby authorizes and approves the purchase and installation of a guard rail at Ryan's Field from Chemung Supply Corp. pursuant to the contract awarded by the State of New York at a cost not to exceed \$7,500.68.

Motion carried unanimously

**Resolution #330 – Providing for Public Notice & Hearing for 2024 Budget**

On a motion by Councilman Ruthven

Seconded by Councilman Tompuri

BE IT RESOLVED that pursuant to Town Law §108, the Town Board of the Town of Kent will hold a public hearing on the preliminary budget for the 2024 Calendar year; and

BE IT FURTHER RESOLVED, that copies of the preliminary budget be laid upon the desk of each member of the Board; and

BE IT FURTHER RESOLVED, that the Town Board will hold a public hearing on said preliminary budget at the Town Hall, in the Town of Kent, New York at seven o'clock P.M. on November 8, 2023 and

BE IT FURTHER RESOLVED, that the Town Clerk publish or cause to be published the attached public notice in the official newspaper of the Town of Kent of said public hearing at least five (5) days prior thereto.

Motion carried unanimously

**Resolution #331 – Introducing Local Law /2023 and Providing for Public Notice & Hearing**

On a motion by Councilman Tompuri

Seconded by Councilwoman Campbell

BE IT RESOLVED a local law amending Chapter 63 of the Town Code entitled "Soil Removal & Excavation" is hereby introduced by Jorma Tompuri as Introductory Local Law #\_\_\_ of the year 2023 before the Town Board of the Town of Kent in the County of Putnam and State of New York, and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed local law, which is attached hereto, be laid upon the desk of each member of the Board, and

BE IT FURTHER RESOLVED, that the Town Board will hold a public hearing on said proposed local law at the Town Hall, in the Town of Kent, New York at 7:00 o'clock P.M. on November 8, 2023, and

BE IT FURTHER RESOLVED, that the Town Clerk publish or cause to be published a public notice in the official newspaper of the Town of Kent of said public hearing at least ten (10) days prior thereto.

Motion carried unanimously

Kathy Doherty suggested that on page 5 #3 it states the town board may hold a public hearing on a special use permit for excavation should read will hold. She asked if this replaces special use permit that is in the code or just for excavation. She replied just for excavation. Eileen Civitello asked on page 2 what circumstances would permit this. Town Counsel replied for use on site.

**Grants**

Councilwoman Campbell explained there is NYS DOT Grant opportunity TAP. This will be an opportunity for funding constructing sidewalks and other improvements in the Lake Carmel area.

**Resolution #332 - Transportation Alternative Program Grant**

On a motion by Councilwoman Campbell

Seconded by Councilman Ruthven

Resolved: The Town may pursue and apply for the Transportation Alternative Program Grant through the NYS DOT for fiscal year 2023.

Motion carried unanimously

**Crest Funding**

Councilwoman Campbell explained the board was discussing a second project for Crest Funding. We agreed applying for funding for the Nimham Stature which will be placed at Town Hall she suggested a groundwater study and protection plan which would include digital maps and to take the 30 or so maps from the Natural Resource Inventory which are GIS maps and to integrate them into a user friendly website. She said if bundled together the cost is a little over \$50,000. We have heard that it is an acceptable project. The maps could also be integrated into the Image Mate software currently being used in the Assessor's Office

**Resolution #333 - CREST Funding for 2022**

On a motion by Councilwoman Campbell

Seconded by Councilman Ruthven

Resolved: The Town may pursue a Groundwater Study and Protection Plan including digital maps and mapping tool and ESRI Software license for Crest Funding 2022.

Motion carried unanimously

**Grant for Lake Carmel Park District**

Councilwoman Campbell said there are additional grant opportunities but the timing will be tight. She said the Lakes Committee was made award of them some time ago and just heard back that there is interest. One is to do an engineering analysis of pollutant issues around Lake Carmel. It is part of the Rapid Invasive Species Aquatic Response Program and one that would involve mapping and analysis around the Lake preventing algae blooms and things like that. She thinks the grant is upwards of \$40 - \$50,000, there is a 25% match that Lake Carmel would need to contribute to. The deadline is November 1<sup>st</sup>. She said the other is an Invasive Species Lake Management and Implementation Program explaining Bruce Barber did not have a specific amount of funding that project would take but thought it something to pursue. Councilman Ruthven explained the LCPD has hired a Lake Manager who should be involved with everything we are proposing for the Lake.

**Resolution #334 - Grant Applications for Lake Carmel**

On a motion by Councilwoman Campbell

Seconded by Councilman Ruthven

Resolved: The Town may proceed on the two grant opportunities for Lake Carmel.

Motion carried unanimously

**Energy Benchmarking Resolution**

Councilwoman Campbell said this is very involved and if passed and we engage in a benchmarking program on the energy uses of our buildings usage that will get us a \$5,000 grant from NYSERDA as it will be our 4<sup>th</sup> high level action and we will need a responsible department that would oversee this benchmarking process.

**Resolution #335 - Add to the Agenda**

On a motion by Supervisor McGlasson

Seconded by Councilman Ruthven

Resolved: An item for Highway Department was added to the agenda.

Motion carried unanimously

**Resolution #336 - Hire a PT Mechanic for Municipal Repairs**

On a motion by Supervisor McGlasson

Seconded by Councilman Ruthven

Resolved: Christopher Carrol was hired as a Temporary PT Mechanic's Helper for Municipal Repairs pending a background check start date of October 23, 2023.

Motion carried unanimously

**Resolution #337 - Vouchers and Claims**

#### **DISTURBANCE**

All land preparation activities involving the movement, placement, removal, transfer or shifting of soil, rock and/or vegetation, including but not limited to, clearing draining, filling, grading, regrading or the building of structures or the placement of improvements on land, including the construction of individual sidewalks, paths, roads, or driveways. The condition of land disturbance shall be deemed to continue until the area of disturbance is returned to its original state or to a state complying with a permit for such disturbance granted in accordance with this chapter.

#### **DETRIMENTAL:**

Any action which is harmful or damaging.

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#### **EXCAVATION**

The disturbance or removal of material including soil, rock and/or minerals from land for the purposes of site preparation for land development and construction projects, regardless of whether those materials are retained on the site or removed from the site.

#### **EXCAVATION AND PHASED DEVELOPMENT PLAN**

A drawing, or set of drawings, with detailed information as set forth herein, to fully demonstrate the existing conditions of the site and the proposed excavation and phased development. The information and plans shall include data on existing land characteristics (topography, wetlands, rock outcroppings and ledge areas, etc.), available utilities, and the proposed general layout, timing, and phasing of development, including buildings, parking, driveways, pedestrian ways, generalized landscaped areas and other improvements, limits of disturbance, and corresponding grading, drainage, erosion and sedimentation control and other measures to be demonstrated on phased development plans.

#### **MINERAL**

All naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of this chapter, peat and topsoil shall be considered minerals.

#### **MINING**

The extraction of soils, rock (overburden) and minerals from the earth, and the removal of such materials from the site through sale or exchange or for commercial, industrial, or municipal use. Mining shall not include the creation of water bodies or excavations in aid of agriculture. Activities associated with the processing of such materials, if permitted, must comply with the conditions of any permit granted in accordance with this chapter.

#### **PROCESSING:**

Any mechanical manipulation of material including crushing, screening, blending, washing, and any procedure which changes the size of the particles or the particle size distribution or gradation from in-situ characteristics. Processing also includes any

mechanical and/or thermal combining or blending of materials from one or more sources in order to manufacture a product with certain specification requirements.

Processing shall not mean simply excavating and loading earth material directly into a transport vehicle.

#### RESTORATION

The act of bringing back to a former condition and function.

#### TOPSOIL

Topsoil shall consist of friable surface soil reasonably free of grass, weeds, sticks, stones, or other foreign materials.

#### C. Applicability

1. Mining as defined under this code is prohibited in the Town of Kent.
2. The amount of material to be removed from the subject site shall not exceed 1,000 tons or 72550 cubic yards, whichever is less, during twelve (12) successive calendar months.
3. Excavation as defined under this code shall be permitted in accordance with the following:
  2. Any individual or entity proposing to excavate a total, collective area of 80,000 square feet or more of the surface area of a site which will result in a change in the average existing, natural grade (topography) of 4 (four) feet or more in any area defined by a rectangle of 10,000 square feet, minimum dimension of 100 feet per side and involving the displacement of 1,500 cubic yards or more of material within the Town of Kent shall prepare an application as delineated herein below for an excavation permit.
5. Excavation is permitted under the following conditions:
  - a. A special use permit for excavation has been issued by the Town Board according to the procedures outlined below.
  - b. The approved plan shall be for the phased development of the site for uses which are principal permitted uses or permitted special uses in the underlying zoning district.
  - c. For excavation projects, the approval specifically includes a phased implementation plan which balances phases of excavation and phases of land development so as to avoid excavation of the entire site prior to establishment of the approved use. The phasing plan shall be backed by a performance bond.
  - d. The excavated material shall be the minimum necessary to construct the project, and the material that is removed from the property shall only be in excess of that which can be reused or redistributed on the site provided that this amount is specified in the grading permit for such improvement and is less than 1,000 tons or 72550 cubic yards, whichever is lower, within 12 successive calendar months.
  - e. The Town Board at its discretion may permit onsite processing of excavated materials subject to such additional conditions as they deem necessary provided that all processed materials are used on site in the proposed phased development and that no processed materials are removed from the property.
  - f. Any regrading, removal or excavation shall be completed within one year of the date of issuance of said permit.

~~g.~~ The excavation permit shall be void if construction is not started within one year of the date of Town Board approval and completed within two years of the date of ~~f~~

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such approval. Prior to its expiration, the excavation permit approval may be renewed by written request of the applicant for up to two additional ninety-day periods.

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#### **D. Exemptions**

Excavation in the following cases is not subject to the limitations of this section, and no special use permit approval from the Town Board is required:

1. Land disturbance operations in which topsoil is removed from one part of the property and deposited on another part of the same property, provided that it is replaced with a cover of earth in which the vegetable matter may take root and grow and is seeded with grass, permanent pasture mixture or other fast-growing vegetation, repeatedly as necessary until the growth is established.
2. Excavation within the limits of the right-of-way of any Town, county, or state highway or for the sole purpose of building roads and slopes incidental thereto which lie within the area of a subdivision approved by the Planning Board of the Town of Kent are on file in the County Clerk's office in Putnam County, New York.
3. Excavation in connection with agricultural activity, including farm ponds and soil conservation measures, provided that such improvement conforms to the following standards and conditions:
  - a. Final slopes shall be finished at a grade no greater than the natural angle of repose, except where supported by a retaining wall or foundation.
  - b. Any lakes or ponds that are created shall have a sufficient depth and inflow of water to prevent eutrophication and to prevent their becoming stagnant in dry periods.
  - c. Topsoil may be disturbed and relocated in connection with any permitted excavation but shall be replaced with earth in which vegetable matter may take root and grow and shall be seeded with grass, permanent pasture mixture or other fast-growing vegetation, repeatedly as necessary until the growth is established.
  - d. In the event that the construction of improvements for which preparatory excavation is performed does not commence within six months of the commencement of such excavation, the permittee shall be required to immediately begin reclamation operations to restore the land to a condition that will minimize erosion and any unsightly conditions.
4. Excavation required to construct single-family home foundations and basements.
- 4.5. Excavation required to maintain waterbodies and watercourses.

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#### **E. Application Procedure.**

The application procedure for approval of a special use permit for excavation shall involve a three-stage process:

1. The applicant shall submit an application supported by a conceptual excavation and phased development plan to the Planning Board. The Planning Board shall review the plan and determine if excavation and land disturbance thresholds under this code will be met or exceeded requiring referral to the Town Board. The Town Board shall receive the referral from the Planning Board and evaluate the plan relative to the conformity of

the proposal with the Town Comprehensive Plan and this chapter. The Town Board shall:

- a. provide feedback to the Applicant regarding additional information that must be submitted as part of the conceptual excavation and phased development plan for reconsideration by the Town Board; or
  - b. upon acceptance of the conceptual excavation and phased development plan, the Town Board may direct the applicant to submit a full and complete excavation and phased development plan application as set forth herein; or
  - c. deny the conceptual excavation and phased development plan.
2. Upon direction of the Town Board, the applicant shall submit a full and complete excavation and phased development plan application to the Town Board, which shall be referred to the Planning Board for a detailed review and report. The Planning Board shall serve as Lead Agency and conduct the New York State Environmental Quality Review Act (SEQRA) review unless otherwise superseded by another involved agency. The Planning Board shall as part of the SEQRA review conduct a public hearing on the matter. Upon the conclusion of the SEQRA review, the Planning Board will issue a determination of environmental significance, and all associated approvals and permits. The Planning Board shall refer the entire application package back to the Town Board.
3. Upon receipt of the entire application package from the Planning Board, the Town Board shall accept the SEQRA determination of the Planning Board and review all comments and recommendations provided by the Planning Board. consider the comments of the Planning Board and their SEQRA determination. Within 62 days of receipt of the application from the Planning Board, the Town Board shall give due notice and may hold a public hearing on the special use permit for excavation.

#### F. Town Board Action

Within 60 days of the close of the public hearing, the Town Board shall act either to approve, approve with conditions or disapprove the special use permit for excavation.

1. With respect to the excavation permit and phasing, the Town Board shall make the following findings:
  - a. That the location, character and scope of the excavation activity, and the access and any temporary buildings, structures, facilities, or processing equipment, will reasonably safeguard the character of the neighborhood and surrounding property values, will not hinder, or discourage the appropriate development and use of adjacent property and, when completed, will conform to the appropriate and orderly development of the Town and neighborhood.
  - b. That the lot on which the excavation activity is to be conducted is of sufficient size and adequate dimension to permit the excavation activity in a manner that will not be detrimental to the neighborhood or adjacent property.
  - c. That reasonable provision will be made for screening the excavation activity including processing from view from adjacent streets and property, and that buffer transition areas will be provided to protect adjacent properties.
  - d. That the streets serving the proposed excavation activity are adequate to carry

prospective traffic, that provision will be made for entering and leaving the lot in

such a manner that no undue hazard to traffic or undue traffic congestion is created and that adequate off-street parking and loading facilities will be provided for conduct of the excavation activity.

- e. That the proposed excavation activity when completed, will not result in creation of soil erosion, sedimentation or fertility problems or drainage, sewerage or groundwater problems, or pollution which would impair the reasonable reuse and development of the lot and/or be detrimental to the neighborhood or adjacent property and that the excavation and phased development plan is consistent with the Town of Kent Comprehensive Plan.
  - f. That the proposed excavation activity, any buildings, structures, facilities or processing equipment and hours of operation will make provision for control of dust and lighting and otherwise will not be detrimental to the public health, safety and general welfare of the neighborhood and the community.
2. Such conditions and safeguards shall be attached to the special permit as the Town Board deems necessary and appropriate to assure continuous conformance to all applicable standards and requirements.

#### **H. Regulatory Compliance**

Each application for a special use permit shall be in compliance with all pertinent regulations, including:

- 1. All applicable provisions of the Code of the Town of Kent, including but not limited to regulations for flood damage prevention, freshwater wetlands, tree removal, steep slope protection and stormwater management, subdivision of land, watercourses, soil hydrology, environmentally sensitive lands, zoning, and any other pertinent provisions.
- 2. New York City Department of Environmental Protection (NYCDEP), New York State Department of Environmental Conservation (NYSDEC) and all other applicable regulations.

#### **I. Application Requirements**

Each application for a special use permit shall be accompanied by the following:

- 1. A proposed site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives and parking areas, and all streets within 200 feet of the lot. The site plan shall use as a base map a recent, accurate boundary and topographic survey of the property depicting all existing improvements and grades prepared by a New York State licensed land surveyor. The plan shall depict all proposed site alterations and improvements and shall be prepared by a professional engineer, a landscape architect, or an architect licensed by the State of New York and shall include the following information:
  - a. A location map, at a convenient scale, showing the applicant's entire property and all boundaries, easements, and streets within 500 feet thereof.
  - b. Show existing improvements, utilities, wells, and septic systems.

- c. The location and limits of the area of disturbance on the lot to be subject to the excavation activity and any lines delimiting areas not to be disturbed.
- d. Existing topography and proposed grade elevations at a contour interval of not more than two feet, unless waived by the Town Board, with existing topography to be shown on the subject parcel and within 200 feet of the area to be subject to the excavation operation, drawn to a scale of not less than 100 feet equals one inch.
- e. Show existing and proposed drainage within the limits of disturbance and within a distance of 200 feet outside of the limits of disturbance.
- f. Show existing wetlands, watercourses, and waterbodies and associated buffers delineated in compliance with pertinent provisions of the Code of the Town of Kent, including Chapter 39A, within the limits of disturbance and within a distance of 200 feet outside of the limits of disturbance.
- g. Show proposed truck and equipment access to the lot, including roadway and access improvements proposed.
- h. Show the location of wooded areas, existing buildings and structures and the location of any proposed buildings and structures within the limits of disturbance and within a distance of 200 feet outside of the limits of disturbance.
- i. Any proposed temporary or permanent screening of the excavation operation, such as by berms, fences, and landscaping.
- j. The location, size, use and architectural design of all existing buildings and structures.
- k. The location of all property lines and structures within 200 feet of the property boundary.
- l. Existing soil types, wetlands, and watercourses, one-hundred-year floodplains, bedrock outcrops, slopes in excess of 10%, and the location of trees with a diameter of six inches (6") or greater as measured 4.5' from the ground level (Direct Breast Height, or dbh).
- m. The location and capacity or number of all existing and proposed roads, driveways, parking and loading areas, including access and egress drives.
- n. The location of outdoor storage areas.
- o. The location of fire access roads and fire protection features.
- p. The location, description, and design of all existing and proposed site improvements, including building footprints, pavement, walkways, curbsing, drains, culverts, retaining walls, fences, parks, open spaces, and recreation areas.
- q. The location, design and description of water supply and sewage disposal facilities.
- r. The location, design, and description of stormwater management facilities, including proposed grading plan.
- s. The location, height, and species of landscape plantings on a landscape plan.
- t. The character and location of all power distribution and transmission lines.
- u. The location and description of all subsurface site improvements and facilities.
- v. The location of any processing equipment and stockpiles.

- w. The extent and amount of cut and fill for all disturbed areas, including before-and-after profiles of typical development areas, building footprints, walkways, parking lots, driveways, and roads.
  - x. The total amount of cut and fill in cubic yards.
  - y. The average existing grade and the average proposed grade and depth of excavation.
  - z. Adequate provisions for the handling of stormwater runoff, including retention/detention, piping, or channeling to existing or proposed drainage systems during and after construction.
  - aa. Proposed phasing of development.
  - bb. A rock removal or blasting plan as determined to be required.
  - cc. If blasting is found to be required, a baseline potability and pollutant study and monitoring plan during and post-construction of surrounding wells. Test parameters and the location of the wells to be tested will be determined.
  - dd. Restoration or reclamation plans determined to be required.
  - ee. A signature block for Town Board endorsement of approval.
  - ff. The name and address of the owner of the property proposed for development, along with the signature of said owner.
  - gg. The name and address of the applicant, if different, along with the signature of said applicant.
  - hh. At the request of the Town Planning Board, any other pertinent information or material determined to be necessary to assist in the review and evaluation of the proposed special use permit for excavation and provide for the proper enforcement of this chapter.
2. A Full Environmental Assessment Form (Full EAF) together with any supporting documents or other materials intended to expand or clarify information contained in the EAF intended to assist the review of this project.
  3. A complete copy of all application materials submitted to the NYSDEC pursuant to Article 23, Title 27 of the Environmental Conservation Law, if applicable.
  4. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Town or Joint Town Code Chapter 66. The SWPPP shall meet the performance and design criteria and standards in Chapter 66, Article IV. The approved special use permit shall be consistent with the provisions of Chapter 66.
  5. A narrative address of the following and such additional information deemed appropriate by the Town Board:
    - a. An evaluation of the proposed excavation activity relative to surrounding land uses, including an evaluation of potential environmental impacts, including but not limited to noise, dust, and visual impacts on surrounding land uses.
    - b. The duration of the operation through to site restoration, proposed hours and days of operation and the program for staging the site preparation, excavation and restoration in time and geographic sections.
    - c. The program of measures to be undertaken for control of noise, dust, soil erosion and sedimentation, water pollution, and the mitigation of visual impacts,

including outdoor illumination, and elements of a reclamation plan for the area of the lot to be subject to the excavation activity.

- d. An estimate of the number of vehicles expected to enter and exit the lot on a daily basis and at peak hours, and description of any roadway capacity and safety improvement proposed on the streets giving access to the lot.
- e. Description of the nature and capacity of any processing equipment proposed to be established on the lot.

**J. Waiver of Requirements and Standards**

1. Where the ~~Town Board and/or~~ Planning Board finds that certain application requirements, data and information, set forth in section I, above, and standards as set forth in section K, below, are not required or are unnecessary to review the application for a special use permit and the potential effects of proposed excavation, it may waive specific requirements or standards upon written request of the applicant; provided that such waiver will not have the effect of nullifying the intent and purpose of this chapter or any chapter of the Town Code, or the State Environmental Quality Review Act.
2. ~~Where the Board finds that, due to the special circumstances of a particular application, the provision of certain required improvements or adherence to a certain specific standard is not required to further the interest of the public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the site of the special use permit, it may waive such requirements or standards, subject to appropriate conditions as deemed appropriate by the Town Board and/or Planning Board. The Board shall state on the record the reasons supporting any waiver that may be granted.~~
- 3.2. In granting waiver(s), the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

**K. Performance Standards**

The excavation activities shall conform to the following standards and conditions:

1. There shall not be any vegetation removal, clearing of the land or alteration of the site without first obtaining a special use permit for excavation from the Town Board.
2. There shall not be any vegetation removal, clearing of the land or hydrological alteration of any Town of Kent jurisdictional wetland, watercourse, and/or waterbodies and associated buffers without first obtaining a special use permit for excavation from the Town Board.
3. All excavation activities shall conform to the information, report, maps, plans and conditions approved by the Planning Board and Town Board.
4. The lot will be excavated and graded within the limits shown on the approved plans and in conformity with the proposed contour plan as approved.
5. The measures for noise, visual, soil erosion and sediment control will be installed, maintained, and completed in accordance with all approvals and permits.
6. The slopes will not exceed one foot of rise for two feet of horizontal distance or such lesser slope that the Planning Board may specify as necessary for the public health and

safety, soil stability or for the reasonable use of the property after completion of the operation.

7. There will be no excavation, processing or grading or removal within 50 feet of any property or street line, or a greater or lesser distance if approved by the Town Board.
8. There shall be no sharp declivities, pits or depressions, and proper drainage will be provided to avoid stagnant water, soil erosion and water pollution during and upon completion of operations.
9. The permittee shall maintain and repair all streets and roads affected by the conduct of the excavation operations and by the transport of any and all materials to and from the site and within the site; and such work shall be completed within the time provided for in the permit.
10. The lot will be cleared of all debris within the period for which the excavation permit is granted.
11. Except in the location of wetlands and watercourses and exposed ledge rock, the topsoil for a depth of twelve inches will be set aside and retained on the lot and will be respread over the excavated or graded area as the work progresses, that an approved ground cover will be planted and grown to an erosion-resistant condition upon the completion of the excavation or removal in accordance with the approved contour lines and that such work be completed within the period for which the local excavation permit is granted.
12. If required by the Town Board, the area to be excavated or a portion thereof shall be enclosed within a fence of such type, height, and location as the Board approves.
13. A schedule shall be established setting forth the following:
  - a. Limitations on the day of the week and the hours of the day during which any work, including on rock chipping, drilling, processing, or hammering, or blasting may be performed on the lot, in compliance with Town of Kent noise regulations.
  - b. The place and manner of disposal on the lot of excavated material.
  - c. Requirements as to the control of dust, noise, and lighting.
14. The applicant shall submit weekly reports, prepared by and bearing the seal of an engineer, showing the status and progress of the excavation activity to the Town Building Inspector.

#### **L. Performance Bond and Insurance**

##### **1. Performance bond**

In order to ensure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the Town in its issuance of special use permit for excavation, the owner or applicant shall provide, as a condition of approval, a performance bond, supported by sufficient security in the form of cash bond, surety bond, a cash escrow account, irrevocable letter of credit or certified check drawn upon a national or state bank or other cash equivalent, which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined based on submission of final design plans. The amount of the performance bond shall be based on the submittal of a detailed cost estimate, which shall be reviewed by the Town Engineer, who shall report said recommendations to the Town Board.



- a. The bond shall be conditioned that any affected land shall be restored in conformity with the approved excavation permit and plans and the standards set forth by this section.
- b. In the event of default in compliance with the excavation permit and plans or the terms of this section, the letter of credit or surety bond shall be forfeited to the Town.
- c. The Town shall return to the operator any bonded amount that is not needed to cover the expenses of restoration, administration and any other expenses reasonably incurred by the Town as a result of the applicant's failure to comply with the terms of the excavation permit and plans of this section.
- d. The security shall remain in full force until the applicant and/or developer is released from liability by the Town, provided that such period shall not be less than two years from the date of final acceptance or such other certification that the work covered under the permit and/or any phased development plan associated therewith and all improvements have been constructed and completed in accordance with all plans, specifications and approvals.
- e. In the event of a proposed transfer of an excavation permit and plans, the Town Board shall require the filing of a certificate from the surety company issuing the bond then in effect certifying the bond as to the new permit holder or certifying that a new bond has been issued. In the absence of such certificate, no transfer of a permit will be allowed.
- f. The required bond amount pursuant to this subsection shall be reviewed on a yearly basis to ensure that a fair and reasonable bond is available to the Town should any default in performance of the requirements of the permit or this section occur.

In its discretion, the Town may accept cash or certified check, negotiable bonds of the United States government, United States Treasury notes, United States Treasury certificates of indebtedness, United States Treasury bills, bonds or notes of the State of New York, bonds of any political subdivision in the agency or of other New York State agencies or authorities, or bonds of public corporations of the State of New York, and irrevocable bank letter of credit, a certificate of deposit, or other forms of financial security acceptable to the Town. Acceptable substitutes, if furnished, shall be kept on deposit with the Town Clerk for the duration of the bond period. Any cash received pursuant to this section shall be maintained in an interest-bearing account, which interest shall accumulate during the life of the account and shall be refunded to the depositor when the cash is refunded.

## 2. Insurance

After approval of the application and before issuance of any permit, the applicant shall present to the Town certificates of insurance evidencing liability insurance coverage. The minimum acceptable liability coverage for any permitted excavation and phased development plan shall be \$2,000,000. The liability coverage shall be maintained throughout the period of permit activity. The certificates of insurance shall provide for a thirty-day minimum notice period to the Town before cancellation of coverage.

**M. Enforcement; penalties for offenses.**

1. Notice of violation. When the Town determines that excavation and/or land disturbance is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
  - a. The name and address of the landowner, developer, or applicant.
  - b. The address, when available, or a description of the building, structure, or land upon which the violation is occurring.
  - c. A statement specifying the nature of the violation.
  - d. A description of the remedial measures necessary to bring the land development activity into compliance with this chapter, and a time schedule for the completion of such remedial action.
  - e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed by the Town.
  - f. A statement that the determination of violation may be appealed to Town Board by filing a written notice of appeal within 15 days of service of notice of violation.
2. Stop-work orders. The Town may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all excavation and/or land disturbance, except those activities that directly remedy the violations leading to the stop-work order. The stop-work order shall be in effect until the Town confirms that the excavation and/or land disturbance is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil penalties or monetary penalties in accordance with the enforcement measures authorized in this chapter.
3. Violations. Any excavation and/or land disturbance that is commenced or is conducted contrary to this chapter shall be restrained by injunction or otherwise abated in a manner prescribed by law.
4. Indemnification. If the Town or the NYSDEC shall serve a notice of violation upon the Town, bring an administrative complaint against the Town, and/or commence a civil suit against the Town due to a violation of State Pollution Discharge Elimination System (SPDES), General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4) GP-22-02, as may be amended from time to time, and such notice of violation, administrative complaint, or civil suit is a result of, due to, a consequence of, or the outcome of the actions of a person who has violated the provisions of this chapter, then said person shall indemnify the Town for any and all fines, damages or penalties imposed by the NYSDEC upon the Town.
5. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine as indicated in the most recent schedule adopted by the Town Board, or imprisonment for a period not to exceed six months, or both.
6. Withholding of certificate of occupancy. If any excavation and/or land disturbance conducted in violation of this chapter, the Town may prevent the occupancy of said building or land.

7. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

N. Term of Special Use Permit termination, expiration, and revocation

1. Special use permits may terminate with any change of use, expansion of use, failure to abide by the conditions of the special use permit or misrepresentation on an application.
2. A special use permit approval shall be void if construction is not started within one year of the date of Town Board approval and completed within two years of the date of such approval. Prior to its expiration, the special use permit approval may be renewed by written request of the applicant for up to two additional ninety-day periods.
3. Other special use permits granted for a particular operation shall terminate at the completion of the operation or upon expiration of the permit. Such limitation shall be specified as a condition of the special use permit.
4. No less than 30 days prior to the expiration of a special use permit, the applicant or permit holder shall make application to the Town Board for a renewal. Where the applicant is in full compliance with the previously approved conditions, including the requirements and standards in this chapter, the permit shall be renewed. Where the Code Enforcement Officer finds that the applicant is not in compliance with those decisions, the application shall be referred to the Town Board for review.
5. Upon notice of violation issued by the Code Enforcement Officer, the holder of a special use permit may remedy the violation within a period of 30 days, request a hearing before the Town Board or forfeit the special use permit which shall be revoked and become null and void.

O. Appeals

Any person or persons jointly or severally aggrieved by any decision of the Town Board may apply to the Supreme Court of the State of New York for relief through a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York. Such proceedings shall be governed by the specific provisions of Article 78 except that the action must be initiated as therein provided within thirty calendar days after the filing of the Board's decision with the Office of the Town Clerk.

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this chapter shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this chapter.



On a motion by Councilman Ruthven

Seconded by Councilman Tompuri

Resolved: All Vouchers #200169437 - #200169552 and claims submitted by:

1. Capital Markets Advisors	\$3,500.00	Bond Anticipation Notes
2. Chemung Supply	\$4,348.68	Panels/Posts Recreation
3. Commissioner of Finance	\$3,191.04	2023 Tax Rolls
4. Custom Bandag	\$4,179.73	Tires
5. Global Montello Group	\$5,498.37	Gas
6. H.O. Penn Leasing	\$11,078.27	Equipment Rentals
7. Hogan, Rossi & Liguori	\$3,993.97	September Out of Retainer
	\$5,416.63	September Legal Services
	\$5,416.63	October Legal Services
8. Magna 5 MS	\$7,388.96	October Network Services
9. Metal Building Restoration	\$14,750.00	Requisition #18
10. NYCOMCO	\$2,972.00	October 2 Way Radios Police
11. NYS Dept. of Civil Service	\$248,283.55	October Health Insurance
12. Peckham Industries	\$60,616.00	Binder
	\$14,796.69	Blacktop
13. Ringsquared	\$3,341.63	October Telephone Services
14. Toshiba Business Solutions	\$2,000.00	Copier Court
15. Town of Kent Municipal Repairs	\$14,777.15	Chargebacks July Highway
	\$19,140.41	Chargebacks; June Highway
16. Win Waste	\$9,724.97	Lake Carmel Garbage
	\$9,020.85	
17. Royal Carting	\$5,041.54	Recycling Garbage

In the amount of \$558,911.03 may be paid.

Motion carried unanimously

#### **Announcements**

- The Lake Carmel Community Center Reports for Complete Demolition of the existing Building and New Construction and rebuild the existing structure will be posted on the website. The amount was \$3,623,750.00 and to rebuild the existing building \$3,001,700.01. The Board feels either number is not remotely realistic and talking about a different direction.
- The Engineers will be performing core borings at the walking bridge in Lake Carmel to design the abutments for the bridge.
- The CAC is hosting a Star Party on Saturday, November 11 Th at 5:00 p.m. at the Kent Centre and alternate date is November 12<sup>th</sup>.
- On 10/23/23 there will be a Pumpkin Glow to the Kent Centre at 6:00 p.m.
- At 10/24/23 there will be the Great Give Back, Spring Planting at the Kent Library.
- On 10/30/23 at 6:00 p.m. information about NASA at the Kent Library.
- There will be a Veteran Appreciation Book Sale 10-2 on November 4<sup>th</sup> you can fill a bag for \$5.00
- 10/27/23 there will be Trunk a Treat at the Kent Town Hall sponsored by the Kent Fire Department and the Kent Library.
- The Kent Countryside Nursery is having a Halloween Bash on 10/21 from 11:00 a.m. to 1:00 p.m.
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#### **Public Comment**

Bill Walters spoke about the heavy rains and the creek that runs along Route 52 that is flooding a home of the residents. He asked if anything can be done on the lake side between Route 52 and the lake as something is slowing up the stream causing the water to back up. Kathy Doherty said Bruce & John investigated and were telling her that upstream it is clogged with wood and sticks but it is private property and would need permission and maybe the DEC to clean it out, they suggested she write the NYSDEC. The board discussed the problem.

#### **Resolution #338 - Adjourn to Executive Session**

On a motion by Councilman Ruthven

Seconded by Councilwoman Campbell

Resolved: At 7:50 p.m. the board adjourned to executive session to discuss litigation.

Motion carried unanimously

**Resolution #339 - Adjournment**

On a motion by Supervisor McGlasson

Seconded by Councilman Tompuri

Resolved: The Town Board meeting of October 17, 2023 adjourned at 8:16 p.m.

Motion carried unanimously

Respectfully submitted,

Yolanda D. Cappelli

Town Clerk