

RECEIVED

By Kent Town Clerk at 12:02 pm, Jan 07, 2021



Board of Selectmen
Special Meeting

January 4, 2021
10:00 A.M.

Present: Jean Speck, Chris Garrity and Ed Matson.

Also present: Darlene Brady, Dan Casagrande, Donna Hayes, Connie Manes, Dan Rosemark, Jeff Sienkiewicz, Char Wiegel and Lynn Worthington.

Ms. Speck called the meeting to order at 10:02 a.m.

Preparation for the Hearing on January 12, 2021:

Ms. Speck indicated that the following five (5) topics would be discussed at the Public Hearing on January 12, 2021:

1. KVFD Funding – staffing
2. KCS Funding – entryway project
3. Sewer Ordinance
4. Solid Waste and Recycling Ordinance
5. Five-Year Capital

Ms. Speck confirmed a speaker for each item and stated she would contact the speakers. She will advise them they will each have 5-7 minutes to present and questions could be asked after each presentation.

1. KVFD Funding – staffing – KVFD – need to condense presentation
2. KCS Funding – entryway project – Marty Lindenmeyer
3. Sewer Ordinance – Elissa Potts and/or Jeff Sienkiewicz
4. Solid Waste and Recycling Ordinance – Jenn Heaton Jones of HRRA
5. Five-Year Capital – First Selectman and Board of Finance Chairman

There was a brief discussion regarding a Special Meeting of the BOS to discuss the proposed tax abatement change to possibly add to the Town Meeting agenda.

Mrs. Worthington inquired if there would be a moderator for the Town Meeting. Ms. Speck confirmed she is looking for a moderator.

Executive Session – Cell Tower:

Ms. Speck made a motion to go into Executive Session at 10:15 a.m. to discuss the proposed cell tower and invited Dan Casagrande and Dan Rosemark. Mr. Garrity seconded the motion and the motion carried.

Ms. Speck made a motion to come out of Executive Session at 11:33 a.m. Mr. Garrity seconded the motion. No action taken.

Executive Session – Schaghticoke BIA Application:

Ms. Speck made a motion to go into Executive Session at 11:34 a.m. to discuss the Schaghticoke BIA application and invited Jeff Sienkiewicz. Mr. Matson seconded the motion and the motion carried.

Ms. Speck made a motion to come out of Executive Session at 12:15 p.m. Mr. Garrity seconded the motion and the motion carried. No action taken.

Ms. Speck made a motion to adjourn the meeting at 12:15 p.m.

Joyce Kearns
Administrative Assistant

These are draft minutes and the Board of Selectmen at the subsequent meeting may make corrections. Please refer to subsequent meeting minutes for possible corrections and approval of these minutes.



RECEIVED

By Darlene Brady at 10:39 am, Dec 30, 2020

**BOARD OF SELECTMEN
Special Meeting
January 4, 2021 10:00 A.M.**

Access to meeting via Zoom: <https://us02web.zoom.us/j/86196779666>

Meeting ID: 861 9677 9666

One tap mobile: +16465588656,,86196779666# US (New York)

1. Call the meeting to order
2. Preparation for the Hearing on January 12, 2021
 - a. KVFD Funding – staffing
 - b. KCS Funding – entryway project
 - c. Sewer Ordinance
 - d. Solid Waste and Recycling Ordinance
 - e. Five-Year Capital Plan
3. Executive Session – Cell Tower
4. Executive Session – Schaghticoke Indians
5. Adjourn

Melanie Ough
25 Bald Hill Road
South Kent, CT 06785

Board of Selectman

Town of Kent
41 Kent Green Blvd
Kent, CT 06757

December 31, 2020

Dear Members of the Board:

It is my understanding that the Board of Selectmen, on January 4 2021, will consider an appeal of the Connecticut Siting Council's decision to allow construction of a cellular tower facility on Richards Road.

I would like it to be put into record that as a taxpayer, I am writing to express my opposition to the Town's participation in such an appeal.

I respectfully request that the Town not participate in any appeal of Docket No. 488 to the Superior Court due to the cost an appeal etc.

Respectfully submitted,

Melanie Ough

Melanie Ough
25 Bald Hill Road

Anthony F. DiPentima
22 Bald Hill Road
Kent, Connecticut 06757

Board of Selectman
Town of Kent
41 Kent Green Blvd
Kent, CT 06757

VIA ELECTRONIC MAIL

December 31, 2020

Dear Members of the Board:

On January 4, the Board of Selectmen will consider appeal of the Connecticut Siting Council's decision to allow construction of a cellular tower facility on Richards Road. As a taxpayer, I write to express my opposition to the Town's participation in such an appeal.

Despite the solid arguments ably presented by the attorneys in opposition to the tower facility, the Council chose to place a modified tower on the Richards Road site. In so doing, the Council rejected small cells technology as an alternative to the tower.

However, before undertaking an appeal of the Council's decision to approve a tower on the Richards Road site, I urge the Board of Selectmen to weigh the time, effort, and money required for an appeal against the odds of success.

Appeals of administrative actions of state agencies face challenging standards of review. The scope of review in an administrative appeal, such as this case, is limited. *See Lawrence v. Kozlowski*, 171 Conn. 705 (1976). Courts generally will not substitute their judgment for that of an administrative agency. The judicial review portion of the Uniform Administrative Procedure Act (UAPA), C.G.S.A. § 4-183, states, in part, that:

The court shall affirm the decision of the agency unless the court finds that the substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are : (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Factual determinations of the agency are upheld if there is substantial evidence in the record to support such a finding. *O'Rourke v. Commissioner of Motor Vehicles*, 33 Conn. App. 501 (1994).

Even a Plaintiff's demonstration of error on the part of the agency is insufficient for a court to reverse the agency's decision. Section 4-183 (j) permits the Court to overturn an agency's decision only if "the court finds that the substantial rights of the person appealing have been prejudiced".

While the Council missed an opportunity to embrace improved technology in the form of small cells, the Council nevertheless aimed to foreclose appeal to Superior Court by issuing 214 Findings of Facts to support its decision. These Findings of Fact are geared toward stopping an appeal, and specifically addressed the small cell technology in 18 separate findings of fact. (See Siting Council's Findings of Facts 82-93).

Challenging these findings, particularly on technical matters related to cellular systems that the Court may view as within the expertise of the Council, is an uphill task. The potential benefit of such a costly appeal would be highly speculative, given the chances of a successful appeal.

Furthermore, even assuming another party would fund the appeal, the Town's participation would amount to opening "Pandora's Box". Even in the event of a successful appeal, the Court could still remand the entire matter to the Council, which would in turn reopen consideration of both cell tower sites, as well as the height of the tower. Moreover, re-hearing at the Council would entail yet more time and expense for the Town. The Siting Council voted overwhelmingly that a tower facility was more appropriate than small cells.

The Board is already familiar with the cost to the Town of this almost year-long action with the Siting Council. Furthermore, as Chairman of the Kent Zoning Board of Appeals, I am all too familiar of the cost that the Town had to endure in upholding our decision in an appeal to the Superior Court and the Appellate Court in the Guy Mauri appeal. In this case, the chances of success are too small to justify the expense of appeal.

While I support the small cells alternative, the facts of this case demonstrate to the Council how profoundly inappropriate and destructive placing a cell tower on a 1.99-acre lot, (in violation of no fewer than 6 Kent Zoning regulations) in the middle of our residential neighborhood would have be. BHRN expert R. Bruce Hunter provided a lengthy, detailed report on the wide-ranging environmental detriment to the residences and area surrounding the Bald Hill Road site. Reopening the Council's decision in full would renew the risk that the agency could place the facility on the Bald Hill Road site, creating the myriad of harms highlighted by R. Bruce Hunter, an expert who testified in the case on behalf of the Bald Hill Road Neighbors.

Therefore, I respectfully request that the Town not participate in any appeal of Docket No. 488 to the Superior Court due to the cost of appeal, the likelihood of success, and the chance that a complete remand would make a bad situation much worse.

Respectfully submitted,



Anthony F. DiPentima
22 Bald Hill Road



Joyce Kearns <adminassist@townofkentct.org>

Fwd: FW: Board of Selectmen Special Meeting Agenda

1 message

Jean Conlon Speck <firstselectman@townofkentct.org>

Sun, Jan 3, 2021 at 8:00 AM

To: Joyce Kearns <adminassist@townofkentct.org>

Good morning,

He's completely correct, it's an inappropriate term, and disrespectful. Please update the item to read simply "Schaghticoke BIA application update" ASAP.

Thanks.

Jean

----- Forwarded message -----

From: **Matthew Winter** <mwinter@androncc.com>

Date: Sat, Jan 2, 2021 at 18:35

Subject: FW: Board of Selectmen Special Meeting Agenda

To: First Selectman <firstselectman@townofkentct.org>

CC: Joyce Kearns <adminassist@townofkentct.org>

Happy New Year dedicated Selectmen!

I would like to suggest that we as a community stop referring to Native Americans as "Indians" (recognized or not). Maybe we could use "Tribe"? or "Nation"?

Thank you.

Matthew

From: Kent CT <cmsmailer@civicplus.com>**Sent:** Wednesday, December 30, 2020 10:41 AM**To:** Matthew Winter <mwinter@androncc.com>**Subject:** Board of Selectmen Special Meeting Agenda

Board of Selectmen Special Meeting Agenda[Read more](#)

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1/4/2021

Town of Kent CT Mail - Fwd: FW: Board of Selectmen Special Meeting Agenda

Jean Conlon Speck
First Selectman
Town of Kent