

**TOWN OF KIRKWOOD
WORK SESSION**

February 22, 2011

Present: Supervisor Gordon Kniffen, presiding
Councilman Robert Weingartner
Councilman Lewis Grubham
Councilwoman Linda Yonchuk
Councilman William Diffendorf, Jr.

Also Present: Herbert Kline, Town Attorney
Reinaldo Valenzuela, Attorney
Gayle Diffendorf, Town Clerk
Richard Jones, DPW Commissioner
Marchie Diffendorf, BC Legislator and Planning Board Chairman
Duane Travis, ZBA Chairman

1. Report – Water Valves. (RJJ)

Mr. Jones reported that the plan is to locate every valve under blacktop and make them accessible so that they can be turned off and on. He is concerned about exercising the valves in the older districts because there will be problems and many will break and cost a lot of money to repair. If they come across a situation where a valve needs to be shut off and it breaks, then they will replace it. The valves on the newer systems should be and will be exercised. There are about 200 valves of various sizes in the older districts. Specific valve discussion. Councilman Grubham said that the plan should be how to replace the valves over a period of time or have materials available and start a process to check the valves out. If there is a broken line the valves should be taken care of at that time as well. Councilman Diffendorf said that he thinks that this should be done in house. Mr. Jones will work on this and report back to the Board.

2. Request from Randy Coolbaugh to attend the PERMA Annual Conference to be held May 26-27, 2011 at the Sagamore Resort in Bolton Landing, NY. The cost is \$481.00 with PERMA paying \$305.00 for one night and the Town paying \$176.00. Since it is a 4.5 hour drive Randy is requesting to go up the night before and the cost for the additional night's stay is \$481.00 to be paid for by the Town, plus mileage and all reasonable expenses. (RJJ)

Mr. Jones explained that the cost for Randy to stay an additional night at the Sagamore would be a reduced rate of \$400. The rate for another hotel about 10 miles away would be \$99 for the additional night. The starting time for the conference is 8 AM. Supervisor Kniffen said that they certainly want Randy to go and they are pleased he has taken on this position, noting that he does this job in addition to his regular duties and this is required training. Councilman Weingartner noted that it would be much more economical for the Town if Randy stayed at the alternative hotel for \$99 the extra night, plus the cost of a meal. Mr. Jones clarified that Randy could stay at a satellite building at

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the Sagamore for the extra night at \$189 plus \$25. Randy has no problem staying at the hotel for \$99. Resolution for 3-1-11 for \$176, plus \$99, plus mileage.

Warren Scofield questioned why the conferences are always held at these exorbitant places. Supervisor Kniffen said this was questioned before so he contacted New York State Association of Towns and they said that their scheduling is already done but the concern will be taken into consideration for the future. Mr. Jones added that there is no place locally that could hold 900 people, which many times is the number in attendance. Councilwoman Yonchuk said that even Syracuse or Albany makes more sense than a resort.

3. Resolution, on recommendation and approval of the Ordinance Enforcement Officer, pursuant to section 304.3 of the Mobile Home-Trailer Ordinance, authorizing the Town Clerk to issue renewal license of the following mobile home-trailer parks, such license to be effective upon the expiration of the previous permit and to continue in force for a period of one year:

Southern Tier Communities, LLC, 1794 US Route 11, Kirkwood, NY
13795

Owner: Southern Tier Communities, LLC

Quilty Hill Mobile Home Park, 49 Quilty Hill Road, Kirkwood, NY
13795

Owner: C L Tai 40 Properties, LLC

Resolution for 3-1-11.

4. Discussion – General Release and Indemnification Agreement for Dover Corporation. (HAK)

Mr. Kline explained that this came before the Planning Board a couple of months ago, noting that there was an environmental spill on the Universal property which is now owned by Dover Corporation. They have been working with DEC and have a Consent Order to put in a remediation system to clear up what is in the ground. Arcadis has been hired and came before the Planning Board. Warren Scofield suggested that some indemnification to the Town should be required in the event that something goes wrong with the process that this being carried out. Mr. Kline prepared an Indemnification Agreement for Arcadis and Dover to sign. He noted that Dover said they will take on the responsibility of Arcadis. Dover has signed the agreement and it will protect the Town if anything goes wrong. Resolution for 3-1-11.

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5. Discussion – Recommendation from Kirkwood Planning Board – Metalico Aluminum Recovery, Inc. – Rezone 3 Parcels on Barlow from Industrial Development (I-D) to Industrial Development – Recycling (ID-R) – Condition of Special Use Permit. (HAK)

Supervisor Kniffen explained that this is not a public hearing and the public will not be allowed to speak. The Planning Board referred this back to the Town Board for consideration of amending the Zoning Local Law and proposed stipulations that might go into the parcel.

Sarah Campbell, attorney for the applicant, explained that they have spent three months before the Planning Board and it was a unanimous decision of the members present to approve the request. Metalico is a publicly traded recycling facility. They own several facilities in NYS and other states as well. They are seeking approval for a zone change from Industrial Development to Industrial Development Recycling. The proposal is to use the site as a buying center, a very small facility, to feed other NYS locations. They will not accept cars at the site and they believe the use will be consistent with the property's industrial classification as well as the B-2 zoning and uses. Metalico has no objection to the multi-layered process involved.. There has been active opposition to the application which includes some professional reports, one of which she cited being a traffic analysis that was flawed in her judgment since the site that was used for comparison was markedly different than the site proposed for Kirkwood. In regard to environmental concerns, she noted that it has been a junk yard for a very long time and they have provided a base line analysis and the Town Engineer appears to concur with their conclusion that there is nothing indicated in Phase 1 that would raise any alarm bells, but they will also be conducting a Phase 2 review prior to purchasing the property. She added that the site as well as all the properties up the road are all zoned industrial and everything around is zoned B-2. She said it is certainly not a residential location; there is no residential zoning touching it. She cannot imagine any developer choosing that commercial area right on the highway for future residential development, which would also require a zone change. Metalico does not accept anything that has free flowing liquids, they do not clean and there is a full inspection process at the entrance of the facility by an employee. There will be a written plan that is part of their normal procedure. They do accept things like catalytic converters, aluminum wheels, drained radiators and non-leaking batteries. She provided a picture of sign at another facility indicating what is acceptable and what is not. Metalico is looking forward to the opportunity to be a part of the business community of Kirkwood and see this as an opportunity for Kirkwood to clean up a site that doesn't look great and have a facility that is run by a professional organization that will be well run. Ms. Campbell asked that the Board continue the process by scheduling a public hearing in this regard.

Alan Pope, attorney for Alfred VonWolfersdorf, stated that the existing Kutz property is a legally non-conforming use so as the use goes away then there will no longer be the worry about a scrap business there. He said that if someone were to buy it and do what is

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currently being done, the use can't be expanded. This is recognized by the applicant since they are asking for the rezoning with the specific definition to allow their specific use to go into that property. Mr. Pope said that if the application is presented he is asking the Board to deny it, which they have the right to do; a public hearing is not required. He said that Metalico asked for an application to rezone the two parcels, one of which is a residential parcel, and they want to change the definition to allow their use. The Planning Board did not approve that. He said the Planning Board unanimously said they want certain conditions on the property if the Town Board is going to move ahead. He doesn't feel they approved the application for rezoning, but are asking that if the Town Board proceeds to put some serious conditions on them. He noted that he is going to look into the Town's Comprehensive Plan to see whether this zoning with the specific definition for the use that Metalico wants for this little piece will meet legal muster. He said that he feels this could be considered spot zoning, which is illegal. He cited a recent spot zoning case where spot zoning was defined as "the singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of that property to the detriment of the other owners." He said that there is not another business on the street that is doing scrap. He noted that his clients live next door, there is a residence as part of what they are asking to have rezoned and there is an apartment complex, houses and a trailer park in the immediate area and he is asking that the Town Board do not forget the residents. Although the traffic study may have to be tweaked, there will be more truck traffic. There will have to be environmental concerns and there will have to be a Phase 2 done. This area was in a flood zone and that whole flood mapping area is being changed and Kirkwood's regulations would have to be applied to this particular area since in the event of a flood the piles of scrap could be taken down river. He was informed by Binghamton University that this is an archeological sensitive area. He provided a letter in that regard. Mr. Pope said that the storm water runoff issues, the collection issues for whatever is on the scrap even with the best of inspection is going to be key for this. There has to be a way that any hazardous material on the scrap is collected. He said that there are a host of issues that the Town Board should consider and he is requesting that the Board does not schedule a public hearing but let this die out and let a use more palatable to the area come in.

Supervisor Kniffen questioned Mr. Pope as to his thinking about whether or not Kutz will be going out of business. Mr. Pope responded that he's been told that over the years the use by the Kutz brothers has gone down and that the use there now is significantly decreased. He said in looking at the property it does not appear to be running full scale.

In regard to an archeological study, Mr. Kline said that Nina only gets called in when state permitting is required and the state makes that a condition of funding or a state permit and Kirkwood has never been involved in archeological concerns of this type before on local projects but he will explore it if necessary.

Supervisor Kniffen said that obviously this is a very environmentally sensitive project for which the Town would need to be protected and if approved, it would be a lot of work

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for the Code Department and ZBA which would be beyond their expertise and background. He noted concerns in making the decision, putting the requirements on them, determining who needs to be involved and the management of it in the future in regard to compliance. Kirkwood is a small town and he is concerned about the costs.

Mr. Kline noted that some of the conditions included in the proposed amendment were added after the Planning Board's decision, following a conversation with Mr. Pope. It was also noted that any additional conditions would be added before a public hearing was held. Landscaping and beautification would be addressed during site plan review by the Planning Board instead of the local law.

Supervisor Kniffen raised some questions regarding specifics in the local law. In regard to monitoring, sampling and analysis plan, he questioned what pre-production means. Mr. Kline said that this is before they start operation. Supervisor Kniffen said this is an instance where professionals would have to be involved that are not town employees. Questioning if this would fall under the professional fees local law, Mr. Kline said that deals more with the enactment and the application process so that if it is a concern it should be added to the local law that the fees will be paid by the applicant. He noted that this would not just be specific to Metalico, it would apply to anyone who ever wanted to establish a scrap metal processing yard in Kirkwood. In regard to monitoring during production, it has not been determined by the Planning Board who would be in charge of monitoring but he presumed that it would be the Public Works Commissioner, Supervisor, Town Engineer, or Code Inspector who would have the right to on the property as noted in paragraph E. of the proposed amendment. Mr. Kline explained that the maximum time material can be stored on site is six months. If violations are suspected monitoring and testing would be required by the Town with the cost to the applicant. Per Ms. Campbell there are other agencies that regulate these activities. She also noted that Metalico will be paving the entire location and also the facility will require a stormwater pollution prevention plan, which will provide another layer of environmental protection.

In regard to violations, Supervisor Kniffen questioned if there was a way to ensure a short timeline for the violation to be remedied. Mr. Kline said that there is a two week cure period and it would depend on the nature of the violation. In regard to a fee for a Special Use Permit Mr. Kline said that no fee has been set.

Councilman Diffendorf said that he is not in favor or going to a public hearing. He said he did not vote for it to go to the Planning Board and he is not in favor of the project. He said that he has a concern that if Metalico gets in there they will want to expand since it is a very small parcel. He said that Kirkwood already has two large metal recyclers and he hopes that someday Kutz will be gone. There are a lot of residents there and he would like it left alone.

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Councilwoman Yonchuk said that she is not inclined to approve the project. She said that she has seen what the Kutz facility has been over the past 45-50 years and it definitely is much smaller today than in the past, and although Metalico may be an improvement she would like to hope that it would die a natural death and not be there at all.

Councilman Weingartner said that he feels it would be beneficial compared to what is located there now.

Councilman Grubham said that he has not had enough time to review the information provided to make a decision at this time.

Sarah Campbell said that she has a binder of photos available showing pre-Matalico purchase of facilities and post photos which show the improvements as well as various other materials. She said that they have spent in excess of three months with the Planning Board and since they made the recommendation to move on she requested permission to at least extend the conversation in regard to this application after the Board reviews all the information made available to the Planning Board.

Supervisor Kniffen said that this is one of the biggest eyesores coming into Kirkwood through Upper Court Street. He said if he believed it was going away he could not support this because even though this would be more presentable, it still is a recycling center. Ms. Campbell noted that they could sell it to another user who could use it the exact same way as now. She feels it would be fair for the Board to review the site plan provided, the extensive landscaping and fencing.

Mr. Pope added that in reviewing the photos provided by Metalico, the Board should notice that in the pictures of the facilities after they are painted there are no piles of scrap in the pictures. He also noted that blacktop is not impervious and not protection against significant environmental issues.

Councilwoman Yonchuk said that she feels they owe it to the Planning Board to review the materials. Held for additional discussion on March 29, 2011.

**6. Discussion – Recommendation from Kirkwood Planning Board –
Parking Requirements for Warehouse Establishments. (HAK)**

Mr. Valenzuela said that this involves changing the parking requirement for warehouse establishments, which ties in with the gross square footage of the facility and the number of employees during their peak shift. This would result in one parking space for two employees under each shift and also a parking space for every vehicle the company owns. This is the recommendation of the Planning Board which would require an amendment to the Zoning Local Law. Mr. Kline added that the reason for doing this is because too much parking is now required for the size of the industrial structure. Resolution on 3-1-11 to schedule public hearing for 3-29-11.

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7. Discussion – On-Call Pay for Water & Sewer Department. (J. Finch)

John Finch referred to a list indicating on-call pay for other municipalities and he questioned why the Board feels they utilize on-call pay and Kirkwood does not. He said that he feels the water and sewer department should not be compared to the highway department, they are totally different since highway is usually non-emergency over time. Councilman Weingartner said that he assumed that John was highly compensated and feels an emergency is part of the job. Councilman Grubham said that he doesn't think the Board expects this to be a 24-hour per day job. It was determined that in an emergency situation after hours it is the responsibility of the Commissioner of Public Works to respond and he in turn contacts the employees. John Finch said that other towns pay to have at least one person on call in an emergency. Councilwoman Yonchuk noted that she thought the original request was that John and Alan be allowed to take trucks home or receive on-call pay. John said that the Board has already determined that the trucks are to stay at the town facility but he is asking that they reconsider the on-call pay negotiations. Supervisor Kniffen said that at this time the Board is not interested in changing the policy.

8. Update – Flood Maps. (GEK)

Supervisor Kniffen said that originally the new flood maps were to be adopted by April of this year and Councilman Diffendorf and Dan Griffiths, Town Engineer were appointed to study them. A committee, with the Broome County Dept. of Planning in the lead, looked at the flood maps, including special hazard areas that require people to get insurance, etc. and have made some changes. There is now a new timeline and there will be some meetings with FEMA, DEC and community leaders following which there will be a 90-day comment period.

Councilman Diffendorf reported that Bob Kiberd was added to the committee and they met and looked at the concerns in Kirkwood. He said that it is important to get the notice out to the people that are affected and set up a time when they can talk to the Board and review the maps. He noted that Frito Lay is a big concern being that they are such a large employer and they are located in the flood area. If they were to expand they would have to build at a higher elevation. He added that there is a 5 foot increase and the State has mandated 2 feet above that.

9. Audit of Claims.

Resolution for 3-1-11.

Ritter.

Supervisor Kniffen reported that Mr. Ritter has been informed that the white building must be vacated, and in consideration of the tenants the Town gave him until March 1st. Mr. Ritter gave the tenants until the end of March. Mr. Ritter will receive a letter acknowledging that.

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Code Update.

Supervisor Kniffen reported that Mr. Rudy has been hired to fill in at the Code Office in the 6-8 week absence of Mr. Kiberd. Since Mr. Newberry is also out of the office indefinitely fire inspections will have to be covered as well. Mr. Rudy has started training with Bob Kiberd this week. The Code Office will be open every day from 10 AM to 2 PM. Mr. Rudy is certified as a building inspector as well as to do fire inspections.

Copies.

Councilwoman Yonchuk suggested that supporting documents supplied to the Board members for work sessions and meetings be printed double-sided when possible. She also suggested that the purchasing of recycled paper could also be a cost savings. Supervisor Kniffen will check into this.