

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

April 5, 2011

A regular meeting of the Kirkwood Town Board was held on April 5, 2011 at 6:00 PM at the Joseph A. Griffin Town Hall with Supervisor Gordon Kniffen presiding.

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

Also Present: Oliver Blaise III, Deputy Town Attorney
Gayle Diffendorf, Town Clerk
Raymond Coolbaugh, Deputy DPW Commissioner
Kenneth Newberry, Building & Code Inspector
Marchie Diffendorf, BC Legislator & Planning Board Chairman
Duane Travis, Zoning Board of Appeals Chairman

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES:

March 1, 2011 Town Board Meeting
March 15, 2011 Special Town Board Meeting
March 29, 2011 Public Hearing

PUBLIC PARTICIPATION:

David Subik of 31 N. Woodhill Ave. addressed the Board in regard to an accident involving himself and a Town of Kirkwood snowplow driver on March 7, 2011 at 7:30 AM. He is asking for the cost to repair the damages to his vehicle in the amount of \$2,448.09. Since the Board members were unaware of this situation they asked Mr. Subik to explain the circumstances surrounding the accident, which he did in detail. He also supplied a copy of the accident report as well as two witness statements and various insurance documents. He noted that he felt safe in following the dump truck at a distance of about five car lengths, when the snowplow stopped and after speaking to someone in another snowplow and a person on the side of the road, suddenly backed towards Mr. Subik. He said that the driver never saw him and backed into the front of his car, although Mr. Subik laid on the horn three times. The accident occurred near the driveway of Mike Stricek, 49 Victoria Drive, who also was a witness to the accident and tried to get the snowplow driver's attention. Mr. Subik noted that no one was injured but his wife was in the car and was quite upset. He expressed a concern with the snowplow driver's attitude after the accident. Mr. Subik is still able to drive the car. He has been in contact with Mr. Jones, the driver of the snowplow, since the accident as well as the Town's insurance company and the Town's insurance company has admitted that the Town was at fault but it is an emergency vehicle so they are not responsible.

Mr. Blaise added that under the NYS Vehicle and Traffic Law the ordinary negligence standard does not apply to municipal vehicles such as a snowplow operating during snow conditions; it relieves municipalities from liability for ordinary negligence. To recover legally, recklessness or deliberate conduct must be proved. This is basically why the insurance company is denying payment of the claim.

Mr. Coolbaugh explained that there are a lot of blind spots and the trucks are also noisy. He also noted that conditions were very bad, there was a state of emergency. Mr. Subik said that as a federal employee he is exempt.

Mr. Blaise said that normally this is deferred to the insurance company but if the Board wants to consider other options, he suggested that they go into an executive session at the end of this meeting to discuss the matter.

COMMUNICATIONS: None.

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COMMITTEE REPORTS:

Councilman Weingartner reported that all insurance renewals have been taken care of. The main policy went down about \$100, PERMA went down about \$1,000 and flood insurance went up about \$600, all for the same coverage.

Councilman Weingartner presented the dog control report for March.

Supervisor Kniffen reported on the consolidation and or sharing services of Broome County code enforcement offices for which Kirkwood is a co-sponsor with the County. All municipalities supplied department histories. Consolidation was not recommended by the consultant, but possibly sharing of services. When comparing smaller towns of similar size Kirkwood's code office is busier. For the last 3 years the average was 122 building permits with a handful of complaints and no other town of the same size was even close. Dickinson did not issue a lot of permits but had 64 complaints. Supervisor Kniffen felt that it may be because Kirkwood is taking care of business so there are few complaints. Kirkwood's code department has been downsized with a savings of \$30,000 to \$40,000. This will be continued to be looked at. In response to Councilwoman Yonchuk regarding the reasons consolidation was not recommended, Supervisor Kniffen said that the towns didn't want anything to do with it, they showed very little support, but did provide data and the consultant was aware of this. Councilwoman Yonchuk said that on the surface consolidation does not sound like a good idea to her. Broome County Legislator Marchie Diffendorf said that the cost of the study to the County was \$36,900.

OTHER:

Discussion – Riverfront Improvement Funding.

Dennis O'Dea, the Town of Kirkwood's representative on the riverfront project, presented an update. He explained the background for this inter-municipal project. When Vestal wanted to put in a boat ramp and applied for state grants they were advised that a comprehensive regional study for that region of the river was required, grants are not given for individual projects. Surrounding municipalities would have to be on board since they don't support grants for every municipality. The City of Binghamton did a comprehensive regional study to the requirements for the Chenango and Susquehanna rivers; no other community had done this. Vestal agreed to be the host community and have included all rivers in Broome County; Chenango, Susquehanna and Tioughnioga. The Town of Kirkwood joined and contributed funds. After delays it is finally funded and after competitive bidding the bid was awarded in December to Peter J. Smith & Co. from Buffalo. They will produce a comprehensive report for all of Broome County. The City of Binghamton has since joined and contributed their previous report and it is now integrated with the County GIS system. Public hearings were held in February. Elected official education briefings were held in March. This was basically DEC permitting and discussion of what this comprehensive program does. This is step one and does not obtain any funding for any project. In the future when they are ready environmental permitting, funding, etc. can be proceeded with. The consultant has published and distributed a draft report. Mr. O'Dea has been requested to rank the top three projects and there are three located in Kirkwood. The consultant will look at all of the projects and apply criteria to them for economic development for the region and rank them so when a project goes forward in the future that project will be moved to the top for co-funding.

The projects identified for Kirkwood:

1. Private property near Pennsylvania border across from where Gorman Road intersects with Route 11 on the east bank of the Susquehanna River. There is an existing river access point. The owner has expressed interest in development of the land, potentially as a campground facility and allowing public to access the river. The owner is open to discussing locating a public boat launch at the site. This is the Rychlewski property, which has been a popular site in the past but is currently closed.

2. Pine Camp. State owned riverfront property adjacent to a series of industrial buildings. Site not developed or signed for public access. Improvements would include clear

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directional signage, picnic facilities and accessible fishing platform. This is by Vail Balou.

3. Veterans River Park, improvements unspecified. Mr. O’Dea said that he is going to add that this is a fully developed, highly used town park. It currently has what they describe as a hand carry boat launch.

Mr. O’Dea said that since the Town has a number of flood properties along the river, in the future should the Town want to provide public gardening sites that might require a river irrigation system, he will question if that shouldn’t be included in the report. It was noted that about 7 of the 23 flood properties are currently leased.

The proposals noted above are the result of input at the public hearings. Mr. O’Dea has asked if they would include major tributaries so Valley Park would be included as well. They are going 500 feet from the riverbank and do not know what flood criteria they are going to use. The report will be completed in June of this year.

Discussion – Food in the Parks.

Supervisor Kniffen explained that a number of years ago the Board was approached by someone to sell food in the park and at that time the consensus was not to allow it. He received a request today from Don Diffendorf, Jr. who is now interested in running a mobile food service truck in Valley Park. He said that at a recent little league coaches meeting the Booster Club expressed their interest in running the concession stands at Veterans River and Valley Parks to raise funds for youth activities. In the past they have opened the concession stand at Veterans River Park for the annual little league tournament but now want to expand to the regular season. Councilman Weingartner said that in the past the Board was concerned about trash and that if one person is allowed to sell then they would have to allow others and they did not want that. Councilman Grubham questioned if this would have to be opened up for bidding for exclusive rights to sell food.

Mr. Blaise said Mr. Kline reviewed the history of this with him and in the past bids have been solicited except when a not-for-profit associated with the Youth Commission used the concession at River Park. Even if it is a service to town residents an unconstitutional gift cannot be made by allowing the use of public property by a private entity without receiving reasonable consideration for that use. In the past in awarding such bids the Town has always insisted upon liability insurance and a Broome County Health Dept. permit. Mr. Blaise said that in the past the Youth Commission was the not-for-profit so that is the benefit to the Town because what they raised directly benefited a Town program. The Board was in agreement that if the Booster Club is going to open the concession stands they should have first choice. If they are not, then Councilman Diffendorf feels it should go out to bid since there should be food at the parks during youth sporting events. A question was raised if the ice cream truck that sometimes comes to the park is a concern.

OLD BUSINESS:

Councilwoman Yonchuk moved to adopt resolution, after a Public Hearing, adopting the SEQR Determination that Proposed Activity Does Not Require Environmental Review regarding Local Law No. 4-2011 entitled “A Local Law Amending the Zoning Local Law of the Town of Kirkwood” regarding warehouse parking, in accordance with the attached SEQR Determination. Councilman Diffendorf seconded.

Roll Call Vote: Councilman Weingartner - yes
 Councilman Grubham - yes
 Councilwoman Yonchuk - yes
 Councilman Diffendorf - yes
 Supervisor Kniffen - yes

MOTION CARRIED.

49-11
SEQR
LL 4-2011
Amend
Zoning LL
Warehouse
Parking

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Councilman Diffendorf moved to adopt resolution, after a Public Hearing, adopting Local Law No. 4-2011 entitled "A Local Law Amending the Zoning Local Law of the Town of Kirkwood", regarding warehouse parking, in accordance with the attached resolution.

50-11
Adopt
LL 4-2011
Amend
Zoning LL
Warehouse
Parking

Councilman Grubham seconded.

Roll Call Vote:	Councilman Weingartner	- yes
	Councilman Grubham	- yes
	Councilwoman Yonchuk	- yes
	Councilman Diffendorf	- yes
	Supervisor Kniffen	- yes

MOTION CARRIED.

Councilman Grubham moved to adopt resolution scheduling a Public Hearing for April 26, 2011 at 6:00 PM regarding amending the Zoning Local Law relating to scrap metal processors being allowed in the ID-Recycling District. Councilman Weingartner seconded.

51-11
Sched PH
Zoning LL
Scrap Metal
ID-Recycle

Roll Call Vote:	Councilman Weingartner	- yes
	Councilman Grubham	- yes
	Councilwoman Yonchuk	- yes
	Councilman Diffendorf	- no
	Supervisor Kniffen	- yes

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution scheduling a Public Hearing for April 26, 2011 at 6:05 PM regarding the rezoning of tax map # 161.08-1-12, 162.05-1-11, and 162.05-1-12 from ID to ID-R. Councilwoman Yonchuk seconded.

52-11
Sched PH
Change
Zoning
ID to ID-R

Roll Call Vote:	Councilman Weingartner	- yes
	Councilman Grubham	- yes
	Councilwoman Yonchuk	- yes
	Councilman Diffendorf	- no
	Supervisor Kniffen	- yes

MOTION CARRIED.

Councilwoman Yonchuk moved to adopt resolution authorizing John Finch, Jr. to attend the NYRWA's 32nd Annual Technical Conference and Annual Business Meeting at the Saratoga Hilton Hotel and City Center on May 9-12, 2011 at a cost of \$847.00, plus mileage and all reasonable expenses paid. Councilman Diffendorf seconded.

53-11
J. Finch
Attend
Conf.

Discussion: Last week the consensus of the Board was that John would attend this conference every other year and get local training the other year. Supervisor Kniffen questioned if this should be amended to include that so as to keep a handle on it. Discussion determined that circumstances might change and this would lock the Board in. Councilwoman Yonchuk felt if the Board wants to make this a standard policy it should be addressed separately. Councilman Weingartner noted that John had offered to go early Monday which would save \$154.00. Councilwoman Yonchuk **amended** her resolution and Councilman Diffendorf his second to change the cost to \$693.00.

Roll Call Vote:	Councilman Weingartner	- yes
	Councilman Grubham	- yes
	Councilwoman Yonchuk	- yes
	Councilman Diffendorf	- yes
	Supervisor Kniffen	- yes

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution authorizing Supervisor to enter into an agreement with Southern Tier Zoological Society, in accordance with the attached agreement. Councilman Grubham seconded.

54-11
Zoo
Agreement

Roll Call Vote:	Councilman Weingartner	- yes
	Councilman Grubham	- yes
	Councilwoman Yonchuk	- yes
	Councilman Diffendorf	- yes
	Supervisor Kniffen	- yes

MOTION CARRIED.

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Resolution Requesting that the Broome County Legislature Revise the Sales Tax Sharing Formula to the Formula in Effect Prior to 2011, in accordance with the attached resolution.

This resolution was held at the request of Supervisor Kniffen since there is conflicting information from what he presented at the last meeting. He was under the impression that the Council of Governments and the Broome County Association of Towns had reviewed and supported this but he has since found out that is not the case, it is being pursued by only one municipality. **Resolution held.**

55-11
Sales Tax
(Held)

NEW BUSINESS:

Councilman Grubham moved to adopt resolution approving Standard Work Day & Reporting Resolution, in accordance with the attached resolution. Councilman Weingartner seconded.

Discussion: Councilman Weingartner explained that this concerns Cyndi French's work day schedule which will be reported to the NYS Retirement System based on days worked from June through November 2010. For a 7-day work week Cyndi is averaging 3 hours per day. He said that he did a statistical analysis of her hours which include time spent for phone calls as well as dealing directly with dog issues. This a part time job which is commensurate with her salary and is about what he would expect her to work. Mr. Blaise explained that the NYS Retirement System reporting rules changed in June 2010. Anyone who is in the retirement system and does not punch a clock, once they are re-appointed or re-elected after August 2010, is required to keep a 3-month log of their activities and turn it in to the Town Clerk and it is then turned into the Retirement System for calculation of their contribution to their retirement pay. It is required to be posted for 30 days as well. According to Councilman Weingartner Mr. Kline's calculations are correct and amounts to about 21 hours per week. This raised a concern since she is considered part time, which should only be up to 19 ½ hours per week. Councilwoman Yonchuk said if the Board accepts this as her work week she feels it looks like they are blessing 21 hours per week. If there are concerns Mr. Blaise suggested it be held since the Board has 180 days after someone takes office to report this. Since there are questions this **resolution** will be **held**.

56-11
Retirement
Rpt.- DCO
(Held)

AUDIT AND PAYMENT OF CLAIMS:

Councilwoman Yonchuk moved to adopt resolution authorizing the audit and payment of the following claims: General and Highway Funds, Special Districts (Fire, Light, Water and Sewer Districts), Professional Services, Capital Projects and Reserve Funds claims, and ratifying the payment of the prepaid claims as authorized by resolution adopted January 4, 2011, all in accordance with the abstract of claims on file in the Town Clerk's Office. Councilman Grubham seconded.

57-11
Audit/Pay

Discussion: Councilman Diffendorf questioned voucher #11-00520 from Monroe Tractor & Implement Co. in the amount of \$590.00 for 2 screens for a screening plant. He said it is his understanding that the screens are for Poe Williams to replace damaged screens and he could not understand how they could possibly be damaged by sand. Mr. Coolbaugh said that they were damaged by the bucket coming down on them. Councilman Diffendorf wants more information and does not want to pay this bill. He feels it is unfortunate that they rented the plant because for the amount of money spent for the plant and screens the Town could have purchased 30 more loads of sand. Councilman Grubham noted a concern as to who is going to pay for the screens. Since Mr. Jones was unavailable to discuss this Supervisor Kniffen requested that it be held. Councilwoman Yonchuk **amended** her resolution and Councilman Grubham his second to hold payment on voucher #11-00520 in the amount of \$590.00.

Roll Call Vote: Councilman Weingartner - yes
 Councilman Grubham - yes
 Councilwoman Yonchuk - yes
 Councilman Diffendorf - yes
 Supervisor Kniffen - yes

MOTION CARRIED.

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EXECUTIVE SESSION:

58-11
Exec. Sess.
Litigation

Councilwoman Yonchuk moved to adopt resolution to adjourn this meeting to conduct an Executive Session pursuant to section 105 paragraph d of the Public Officers Law to discuss proposed, pending, or current litigation. Councilman Diffendorf seconded.

Roll Call Vote: Councilman Weingartner - yes
 Councilman Grubham - yes
 Councilwoman Yonchuk - yes
 Councilman Diffendorf - yes
 Supervisor Kniffen - yes

MOTION CARRIED.

ADJOURNMENT:

59-11
Adjourn

Councilman Weingartner moved to adopt resolution to adjourn the meeting. Councilwoman Yonchuk seconded. All voted in favor.

MOTION CARRIED.

Meeting adjourned at 7:45 P.M.

Respectfully submitted,

Gayle M. Diffendorf
Town Clerk