

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

September 6, 2011

A regular meeting of the Kirkwood Town Board was held on September 6, 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: Herbert Kline, Town Attorney
Gayle Diffendorf, Town Clerk
Raymond Coolbaugh, DPW Commissioner
John Rudy, Code Enforcement
Marchie Diffendorf, BC Legislator & Planning Board Chairman
Duane Travis, ZBA Chairman

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES:

(2) August 2, 2011 Public Hearings
August 2, 2011 Town Board Meeting

PUBLIC PARTICIPATION:

Roy Tondeur of Kirkwood Avenue expressed his thanks for the work session agenda being posted on the Town's website, noting that he feels it is a valuable contribution. He said that it is not possible to print the agenda and asked if that could be looked into.

John Cizauskas of John Street said that in the past couple of years a construction project has been going on and lower Meadow Lane has become a beehive of activity with truck loads of fill being brought in and graded off. This year the project really grew with many tons of concrete blocks building a retaining wall and then huge dirt piles created and it looks like a dam. In that area a pond like depression was created and this past week muddy water was pumped from the area onto Meadow Lane. He is concerned that after the Town spent many thousands of dollars to construct a building and put in equipment to remove the gasoline that was heading towards the Town's drinking water aquifer and maintaining it for many years, there will now be a pond collecting surface water with no place to go but down into the aquifer not 300 feet away. He is questioning what this is and if the Town approved it. Councilman Grubham said that everything that is there does meet code or does not require code supervision. He said the wall is legitimate and the pond area is not intended to be a pond and in the spring dirt will be moved to fill it back in. Mr. Cizauskas said he is concerned with the natural flow of water. Councilman Grubham said that has been filled in for a long time and the property owner put up the wall to try to keep dirt or surface material from going down on those people's property. The wall is made of landscaping blocks and it is within code. Councilman Grubham said that engineers have checked this area because there has been a water problem for years. Mr. Cizauskas also questioned why the property is only assessed for \$1,000. He was directed to contact the Town's assessor for information regarding assessments.

COMMUNICATIONS:

Catherine McAvoy regarding liquor license renewal.
Wendell Worley complimenting management of Town.

COMMITTEE REPORTS:

Councilman Grubham reported in regard to the youth program that a situation came up at the end of the baseball season regarding a number of kids that are playing in the program that do not live in Kirkwood and some people that are taxpayers are complaining that they are paying for the program and the kids from other towns should not be allowed to play. He feels the solution is to place a fee of \$25 for a non-resident child to play in the program and if there is more than one child, the cost will be \$10 for each additional child.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

September 6, 2011

Councilman Diffendorf said that he is concerned that this will destroy the programs. Councilman Grubham said that it does not involve many kids, that there were 6 kids in the little league program. Councilman Diffendorf said that this has been going on for over 50 years and has never been an issue and since it is such a small number he is concerned. He noted that in other towns the residents pay to play. He noted that Kirkwood is unique in that it does not have a school like the other towns do and the Town is broken down between Susquehanna Valley, Windsor, Chenango Valley and Harpursville. He said that to keep the Town's youth programs going things should go on as they have in the past because something like this could cause the programs to fall apart since already there is a movement for these kids to play in SV and CV programs. He also noted that Kirkwood pays coaches and there is not another town in the area that pay their coaches so if they are looking to save money they could stop paying them. Councilman Grubham said that some taxpayers are noting a concern that kids from out of town are playing for free and they are paying taxes. He does not feel this will affect the program and he noted that the only reason Kirkwood lost their football program is because they did not want to go to tackle football. He added that in the past the youth directors have been asked by non-residents how much they have to pay, that they expect it.

Councilman Weingartner said that if someone gets disenfranchised in Windsor they can go to Kirkwood and not have to pay and he does not like that. Fees charged by other towns was discussed.

Supervisor Kniffen explained that this started because years ago West Windsor did not have a youth program and Kirkwood helped them out by allowing them to come into Kirkwood's program and it got out of control. He said now there are kids wanting to come in from Great Bend and the City of Binghamton, which he is not in favor of. He feels this needs to be addressed when parents who are taxpayers are noting concerns that their kids are sitting on the bench while other kids that are not paying taxes and getting a free ride are playing. He said he does not feel this involves enough kids that it will affect the program. He added that Kirkwood has always opened its programs to all kids, regardless of their ability. No kid has ever been turned away.

Councilman Weingartner said that there may be Conklin and Kirkwood friends who might want to play and if they can pay to play in Kirkwood it would be a positive thing. He thinks it is a good solution and not detriment to the program.

Councilwoman Yonchuk said that she feels it is most likely the social reason why the current non-resident kids are playing in Kirkwood. She does not want to see anything that will keep them from playing.

Councilman Grubham questioned where the line would be drawn since there are kids wanting to play from Great Bend and Binghamton. Councilwoman Yonchuk said that she feels only periphery kids should play, not those from Vestal or Pennsylvania.

In regard to insurance, Councilman Grubham said the Town has liability insurance for the kids but not medical or accidental insurance and it would be about \$2,000. Mr. Kline said that when the Town joined a recreational association on the recommendation of an insurance consultant they had the insurance for a few years but not since 2003. In regard to releases of liens, Mr. Kline said that a child under 18 cannot give up their liability but the parent can sign a waiver of liability in regard to their cause of action which relates to loss of services and medical bills of the child. He said waivers of liability were used for the ski program in particular. He will look into this. Councilman Weingartner noted that by getting these liability forms emergency phone numbers are available.

According to Mr. Kline this is considered a policy and will have to be approved by the Board. A resolution will be needed.

Councilman Grubham reported that Tim Kane has advised him that he will be leaving as recreation supervisor at the end of the girls basketball season so they will have to address finding a replacement in the next few months.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

September 6, 2011

Councilman Weingartner presented dog control reports for June, July and August.

Marchie Diffendorf reported that a new business is coming to Kirkwood. Steve Clements will be opening a 6-bay garage on the former Country Bob's site.

Marchie Diffendorf reported that Broome County is not likely to give up any more sales tax revenue.

Supervisor Kniffen introduced John Rudy who is now working in the Code Office as a replacement for Fire Inspector Ken Newberry, who recently retired. John is also covering in code enforcement in the absence of another employee. It was also noted that the secretary in the code office has gone from full time to part time. Supervisor Kniffen asked for everyone's understanding and noted that they are trying to prioritize and serve the community in the most efficient way possible. Mr. Rudy was complimented on the quality of his work.

OLD BUSINESS:

Councilwoman Yonchuk moved to adopt resolution, after a Public Hearing, adopting the SEQR Negative Declaration Notice of Determination of Non-Significance regarding Local Law No. 5-2011 entitled "A Local Law Amending the Town of Kirkwood Zoning Local Law" regarding allowing scrap metal processing as a permitted use in an Industrial Development-Recycling (ID-R) District, in accordance with the attached SEQR Determination. Councilman Grubham seconded.

107-11
SEQR
LL 5-2011
Allow Scrap
metal proc.

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

MOTION CARRIED.

Councilman Grubham moved to adopt resolution, after a Public Hearing, adopting Local Law No. 5-2011 entitled "A Local Law Amending the Town of Kirkwood Zoning Local Law" regarding allowing scrap metal processing as a permitted use in an Industrial Development-Recycling (ID-R) District, in accordance with the attached resolution. Councilman Weingartner seconded.

108-11
Adopt
LL 5-2011
Allow scrap
metal proc.

Discussion: Councilman Diffendorf stated that he does not think this is needed and he has been opposed to it from the beginning and is still opposed to it.

Supervisor Kniffen said that he wishes they did not have this operation but as long as they do have it and they are concerned about the whole area of Upper Court Street, the gateway to Kirkwood, he feels based on what they put together and all the restrictions and requirements placed on Metalico, that this is an opportunity for the Board to make that area of the Town more presentable.

Councilwoman Yonchuk said that she feels this is an opportunity to make the Town's Local Law better, a tighter law, regardless of wherever they might ever consider putting scrap metal processing. She has some real concerns about the gateway area and this will make the law tighter regardless with what they do with that particular piece of property.

Councilman Grubham said that this has been reviewed by the Planning Board, which unanimously passed it, and the Town Board and they heard from a number of individuals even though they did not hear from a lot of people against it. In a letter received from Mr. Pope half the people supposedly against it don't even live in the Town of Kirkwood. In the end his decision was based on if they let it go would it continue as a scrap yard and they don't know that and if Mr. Kutz does not sell it to Metalico in this form there is nothing to say that he couldn't sell it to someone else in the form it is now and it stays just like it is. It cannot be know if it is going to disappear or not; it could stay there forever. He is in favor of changing the zoning.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

September 6, 2011

Mr. Kline clarified that this resolution is the Local Law changing the text only of what can be done in an ID-R district. This vote does not require a super majority. The rezoning of the Kutz parcels is addressed in the two resolutions following this resolution and a super majority vote will be required.

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

MOTION CARRIED.

Councilwoman Yonchuk said that she fully understands the requirement that a super majority vote is needed, given the County's recommendation, but she said she has to be honest and has given this a lot of thought and although she is concerned that they did not receive the amount of input she would have liked from neighbors in the area, so she will be making the decision she feels is the best for Kirkwood and she does not think they should use their time to do the full environmental review because she decided to join Councilman Diffendorf and oppose the rezoning of the Barlow Road property.

109-11
SEQR
LL 6-2011
Rezone
Barlow Rd.
(Kutz)

As a result of Councilwoman Yonchuk's decision, the resolution to adopt the SEQR Full Environmental Assessment Form regarding rezoning the three properties on Loughlin and Barlow Roads, was dismissed.

Councilman Weingartner moved to adopt resolution, after a Public Hearing, adopting Local Law No. 6-2001 entitled "A Local Law Amending the Town of Kirkwood Zoning Ordinance" regarding rezoning three properties on Loughlin and Barlow Roads, in accordance with the attached resolution. Councilman Grubham seconded.
(Super Majority vote in favor required to adopt.)

110-11
Adopt
Ll 6-2011
Rezone
Barlow Rd.
(Kutz)
FAILED

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

MOTION FAILED.

Councilman Diffendorf moved to adopt resolution ratifying a resolution authorizing Supervisor to enter into an agreement with Justin Spalik as Independent Contractor, to conduct an Arts & Crafts Program for the Kirkwood Advisory Board, in accordance with the attached agreement. Councilwoman Yonchuk seconded.

111-11
Agreement
J. Spalik
Arts/Crafts

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

MOTION CARRIED.

Councilwoman Yonchuk moved to adopt resolution ratifying a resolution authorizing the Supervisor to enter into an agreement with the Town of Conklin relative to the 2011 Summer Arts & Crafts Program, in accordance with the attached agreement. Councilman Diffendorf seconded.

112-11
Agreement
Town of
Conklin
Summer
Arts/Crafts

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

MOTION CARRIED.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

September 6, 2011

Councilman Grubham moved to adopt resolution amending the Sick Leave Donation Policy, in accordance with the attached policy. Councilman Weingartner seconded.

Roll Call Vote:	Councilman Weingartner	- yes	
	Councilman Grubham	- yes	113-11
	Councilwoman Yonchuk	- yes	Amend
	Councilman Diffendorf	- yes	Sick Leave
	Supervisor Kniffen	- yes	Donation
			Policy

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution ratifying a resolution authorizing Supervisor to execute the attached 2011 Justice Court Assistance Program Grant Application. Councilwoman Yonchuk seconded.

Roll Call Vote:	Councilman Weingartner	- yes	
	Councilman Grubham	- yes	114-11
	Councilwoman Yonchuk	- yes	Justice Ct.
	Councilman Diffendorf	- yes	Grant App.
	Supervisor Kniffen	- yes	

MOTION CARRIED.

Councilwoman Yonchuk moved to adopt resolution authorizing the Transfer of Funds, in accordance with the attached resolution. Councilman Diffendorf seconded.

Roll Call Vote:	Councilman Weingartner	- yes	
	Councilman Grubham	- yes	115-11
	Councilwoman Yonchuk	- yes	Transfer
	Councilman Diffendorf	- yes	Funds
	Supervisor Kniffen	- yes	

MOTION CARRIED.

Councilman Grubham moved to adopt resolution scheduling a Public Hearing on September 27, 2011 at 6:00 PM regarding amending the Outdoor Wood Boiler Local Law. Councilman Weingartner seconded.

Roll Call Vote:	Councilman Weingartner	- yes	
	Councilman Grubham	- yes	116-11
	Councilwoman Yonchuk	- yes	Sched PH
	Councilman Diffendorf	- yes	Outdoor
	Supervisor Kniffen	- yes	Wood Boiler
			LL

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution establishing policy to charge non-resident children participating in any youth recreation program of the Town \$25 for the first child and \$10 for each additional child in the family. Councilman Grubham seconded.

Roll Call Vote:	Councilman Weingartner	- yes	
	Councilman Grubham	- yes	117-11
	Councilwoman Yonchuk	- no	Non-res
	Councilman Diffendorf	- no	youth sports
	Supervisor Kniffen	- yes	fee policy

MOTION CARRIED.

AUDIT AND PAYMENT OF CLAIMS:

Councilman Diffendorf 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. Councilwoman Yonchuk seconded.

Roll Call Vote:	Councilman Weingartner	- yes	
	Councilman Grubham	- yes	118-11
	Councilwoman Yonchuk	- yes	Audit/Pay
	Councilman Diffendorf	- yes	

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

September 6, 2011

Supervisor Kniffen - yes

MOTION CARRIED.

OTHER:

119-11
Exec. Sess.

Councilman Grubham moved to adopt resolution to adjourn this meeting to conduct an Executive Session pursuant to section 105 paragraph f of the Public Officers Law to discuss the medical, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation. Councilman Weingartner seconded.

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

MOTION CARRIED.

Following Executive Session meeting reconvened.

Councilwoman Yonchuk moved to adopt resolution amending the sick leave policy to revise Section II, paragraph c to read as follows:

120-11
Amend Sick
Leave
Donation
Policy

c. A qualifying "extended illness of disability" is one in which a medical doctor has certified that the eligible employee is reasonably expected to remain out of work for thirty (30) or more calendar days within a 90 day period due to the illness or disability. Councilman Weingartner seconded.

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

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution authorizing compromise of grievance regarding personnel matter, a sealed copy of which is on file in the Office of the Town Clerk. Councilwoman Yonchuk seconded.

121-11
Personnel
Matter

Since Supervisor Kniffen and Councilman Diffendorf recused themselves from the portion of the Executive Session pertaining to this resolution, they did not vote.

Roll Call Vote: Councilman Weingartner - yes
 Councilman Grubham - yes
 Councilwoman Yonchuk - yes

MOTION CARRIED.

ADJOURNMENT:

122-11
Adjourn

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

MOTION CARRIED.

Meeting adjourned at 8:40 P.M.

Respectfully submitted,

Gayle M. Diffendorf
Town Clerk