

TOWN OF KIRKWOOD WORK SESSION

September 3, 2019

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

Also Present: Robert McKertich, Attorney
Gayle Diffendorf, Town Clerk
John A. Finch Jr., Commissioner of Public Works
Marchie Diffendorf, Planning Bd. Chairman
Duane Travis, ZBA Chairman

1. **Dave Finch.**

Supervisor Kniffen introduced Dave Finch who is going to talk about a company that studies energy bills for businesses for a number of years to find possible overcharges. It doesn't cost us anything up front but if they find anything it's a 50/50 split.

Dave provided handouts, and in regard to his background said I've lived here all my life and with my brother and father we own two supermarkets in Windsor and Deposit. I was approached with this program where they come in and look at your energy, utility and communications bills. You provide them one bill and give them authorization to go back and look at about eight years of your bills with whoever your supplier might be. They look for anything that's billed incorrectly, like line charges. With my stores I saw this as something I could use because if they find an overcharge and they get a refund, they split it with you 50/50. If they don't find anything there is no fee. In the packet I provided there is a one-page contract and a sample Letter of Authorization. For me it's a no-brainer because I have nothing to lose, it's found money. They do not look at changes to equipment, just actual charges on the bill.

In response to Supervisor Kniffen, Dave said if they find an overcharge they'll verify it with the provider who will then fix it so there is no additional overcharge going forward. It's a one-time audit. As an example, for the Town of Bethel they found \$55,000 of overcharges. For the Upstate Medical Hospital in Syracuse, on their AT&T bill alone for over eight years they found \$3 million of overcharges. The SV School District is going to pursue this.

John Finch said we might be able to save some money on the charges for the meter for wells 1 and 3. If we run our well 3 for more than ten minutes at a peak time there is a \$5,000 demand charge and that's pro-rated every day after that. So there may be some discrepancies there where they have over-billed us.

Dave said once they start it takes approximately 6 months. The Town would only have to supply one bill for each meter. There is a minimum required of \$2,000 to \$5,000 for one month of bills.

TOWN OF KIRKWOOD WORK SESSION

September 3, 2019

Mr. McKertich said my only concern is the 36 months going forward. Dave said for one town they reduced their bill from \$3,000 to less than \$900 a month, which is approximately a \$2,100 savings per month. For 36 months they would ask you for one-half of that savings. What they usually do is offer a 15 percent discount if you want to pay that ahead. It would only be for 36 months and hopefully the \$2,100 will go on forever.

Just to be clear, Mr. McKertich said they not only get 50 percent of the savings on past bills, they are also saying for any savings moving forward for 36 months (3 years) they will get 50 percent of those savings. The Town would be writing a check to this company for 36 months as a result of the savings that are found as a result of the audit. Dave said if they found a refund say of \$2,100 a month they're going to find more of a refund for 8 years prior. So you would get that money and you could pay it off by only writing one check. Supervisor Kniffen questioned who's going to determine for the next 36 months how much we save. Dave said they will verify the savings with the provider so going forward it's the same savings each month. In response to Supervisor Kniffen, Dave said he doesn't know if there is a municipality that has already gone through this and could show us their actual savings. In response to Councilman Grubham, Dave said he does not know how the fact that the Town is changing to LED lighting which will result in savings, would play into this. There wouldn't be any bills yet and they are looking at past invoices.

Mr. McKertich said that Computel does something similar but I've only heard it for past audits. If they find you \$10,000 they keep \$5,000 and the town gets \$5,000. The only thing that seems strange to me is the 36 months going forward; how that could even be calculated. It's the first time I've seen something like that. In regard to John's example, if they were charging us a higher rate during the peak hours that they shouldn't have been charging, and they find that, then NYSEG will owe you a refund and you would get half of that. Then I take it that TRI will say if we didn't find that then they would still have been charging that for the next 36 months and view it if that had been charged, they would pay that mistake out for 36 months. It was noted that could have been just a one-time mistake that would not repeat itself.

Councilman Diffendorf said we've already had this done twice before with NYSEG and the first time they found us some money but the second time they didn't. To me the 36 months is a deal breaker. In response to Supervisor Kniffen he said they fixed it then and then we had a second audit and they didn't find anything so I don't know how they'll find anything now. Supervisor Kniffen said we could make the assumption that we don't have any problems because we've already done it. Councilman Weingartner said you could make the assumption that everything's OK but I think if we can negotiate with them to get the 36 months off then do it because 50 percent of something is better than 50 percent of nothing. Mr. McKertich said if they'll do away with that 36 month provision then I don't see any downside. Dave will look into it and provide contact information.

**TOWN OF KIRKWOOD
WORK SESSION**

September 3, 2019

Supervisor Kniffen noted that someone else came to us from the same firm but they came to see us after Dave did.

2. Discussion – Amending the Park Use Local Law regarding the sale of alcoholic beverages to the Town Fair – Schedule Public Hearing.

(Continued from last meeting.)

Supervisor Kniffen said this change basically says that the Town Board can pass a resolution for someone to sell beer but they have to notify us by April 1st and they would be recommended by the Town Fair Committee. Mr. McKertich added this deletes what's there now and replaces it with the paragraph in the proposed amendment. Right now the Kirkwood Fire Company can apply for a permit to sell beer and this would allow any not-for-profit located in the Town to apply. It imposes the April 1st deadline and the recommendation for approval by the Fair Committee. Councilman Weingartner added that it would be the Fair Committee's responsibility to figure out who they want to recommend. It was noted that this is for the town fair only. Resolution.

3. Discussion – Purchase new 10 wheeler to replace the 2007 10 wheeler
(Continued from last meeting.) (JAF)

Mr. Finch said I got bids from 2 other manufacturers of trucks and had another bid from Burr Truck for the exact truck that they have sitting on their lot. According to Mr. McKertich, and I agree, we can't accept that price because it doesn't meet our bidding requirements. It has to be either a state bid price or through NJPA. This is a bid just for the truck that's on their lot and in order for us to accept that bid we have to go out to bid. I'm recommending that we go out to bid for a new 10 wheeler as per our specs that we already have.

Councilman Diffendorf questioned why that truck doesn't meet the specs. Mr. Finch said it does meet the specs but we can't legally buy it right now because we haven't gone out for bid. It will be advertised and open to whoever wants to bid on it. The specs are not just Volvo specs. Mr. McKertich said we're going to put in a phrase along the lines of, or something reasonably equivalent, so there's some flexibility so that it can be different types of trucks. Resolution.

4. Discussion – Water Meters. (JAF)

Mr. Finch said we have been experiencing some issues with our electronic water meters. In the past we've had good luck with getting them repaired from the manufacturer but unfortunately the manufacturer is now lacking in their efficiency in getting the meters back to us and when we do get them back often they are incorrect. Instead of being calculated in cubic feet they are calculated as pounds or they're just not correct at all. Al has been struggling trying to get them to correct them and it's a real nightmare. They are starting to send their products over to England to be repaired and we're not sure what's happening. We are looking at other avenues

TOWN OF KIRKWOOD WORK SESSION

September 3, 2019

as far as replacing those meters with a different manufacturer and have been meeting with a couple of other representatives of other meter companies.

Supervisor Kniffen said we just went through this a number of years ago (8 years per John Finch), and you just said something about picking someone that meets our specs, but wouldn't you go out to bid since there may be more than one person? Mr. Finch said there are different companies that sell meters and we met with one of them a couple of weeks ago through F.W. Webb, and they're fairly reasonable and eventually we would have to replace all the meters if we want to go that route, and you could space it out over 4 or 5 years to do that process. We are looking at about 1,100 meters that would have to be changed out. Each company unfortunately has their own way of reading their meters and they don't release it to other companies. The ones we have are a cheaper meter. That's how we were able to get them. The software was \$5,000 just to get going and the meters were \$130. Now they are \$200 to \$300. It will be between \$200,000 and \$300,000 to replace our meters. This is just a heads up that we are looking at options for the future. Obviously if we can't read our meters and they're failing we need to replace them in a timely manner. Councilman Grubham asked if we have some kind of recourse from this company. Mr. Finch said I don't know if there's any kind of contract per se. We would have to look at that. There's a 20 year pro-rated warranty on the actual meters but not on the customer service. The software actually works great. There are a lot of things the company is getting very sloppy with, very poor customer service on repairs. Mr. McKertich said if we don't have a contract it would be tough. We could possibly try a strongly worded letter. Councilman Diffendorf said those meters haven't even been in 8 years, and some of them a lot less. The other meters that were working fine were in for 46 years. We changed them so that we could go to these easier reading meters. Mr. Finch said it took 3 ½ weeks to read those meters and it takes 4 days now. Mr. McKertich said these companies don't often want the bad publicity from a municipality not being happy with their work and we could threaten to report them to the Better Business Bureau. There is a general warranty that they should be providing good solid sound products. Councilman Grubham said it doesn't sound like a problem with the product, but a problem with fixing it.

Councilman Grubham questioned if we decide to change meters if we have to change them all at the same time. Mr. Finch said we would change them over the course of about 4 years and there would be a time when we would be using two different meters. Neptune is one of the companies we talked to and the ones we are getting prices on are ultrasonic meters, there are no mechanical moving parts in them and there's more risk of failure with moving parts.

Mr. Finch and Mr. McKertich will contact the supplier of the meters currently in use to try to resolve the issues.

**TOWN OF KIRKWOOD
WORK SESSION**

September 3, 2019

5. Discussion – 25 HP VFD for Transfer Pump - \$5,980.70 – J & R Electric and Alarm. (JAF)

Mr. Finch said we discussed at our last meeting the installation of the VFD for the transfer pump at well 3. No resolution was passed for that. In the meantime I talked to Councilman Grubham about getting prices from other electricians but we haven't been able to get anyone else to give us a price. As I mentioned last time, I consider this somewhat of an emergency since it's destroying our coupling between the pump and the motor and it's going to start wearing on our new pump if we don't get the new VFD installed. We spent quite a bit of money on those two together. Resolution.

6. Resolution ratifying a resolution authorizing Chad Moran to attend Post Disaster Damage Assessment & Code Enforcement Workshop on August 29, 2019 from 9 am to noon at the Broome County Public Safety Facility at no cost, with all reasonable expenses paid.

Resolution.

7. Resolution authorizing Chad Moran to attend the 2nd Annual Planning One-Day Conference on September 26, 2019 from 10 AM to 3:10 PM at the Taste of New York in Binghamton, at no cost, with all reasonable expenses paid.

Resolution.

8. Discussion – Resolution scheduling Grievance Day Hearing for Unit Assessments for September 24, 2019 at 6 PM. (RHM)

Mr. McKertich said this is the Grievance Day Hearing for Unit Assessments for the sewer which is done annually. Mr. Smith and I worked on this and I only received one phone call for basically an explanation of why the cost went up for that particular individual. We changed less than ten assessments. Resolution.

9. Discussion – Recommendation from Planning Board – Request for Change in Zoning – Lester Siedel – 50 Francis Street – PUD to B1 – Schedule Public Hearing. (GEK)

Supervisor Kniffen explained that Mr. Siedel came to the Board a couple of times about changing the zoning on Francis Street and we recommended he go to the Planning Board. Marchie Diffendorf said the Planning Board is recommending the change in zoning. I think he will be back in to request a zoning change from PUD to B-1 for approximately a 50 foot strip that separates his property and the dentist office. It wasn't in the original request that he had to purchase the property. This will be a 2-step process and this is the first step.

TOWN OF KIRKWOOD WORK SESSION

September 3, 2019

Duane Travis said I think what he's trying to do up there is a good thing but I think the way he's going about it is completely wrong. He's asked the Town to bend over backwards to rezone for him and he does nothing that he says he wants to do. If we rezone that property right now, it creates another non-conforming use. Now we have a B-1 with a house on it. Many times he said he'd tear the house down and it doesn't seem to be in the cards. He's looking to buy the piece of land next door to combine with this and then he wants to split the property into 2 pieces leaving the one residential and have the second one B-1. I don't think the Town should act on this until Mr. Siedel does 2 things; prove that he has purchased that property and is going to divide it, or tear the house down. He's created this problem for himself. He was supposed to build a garage on it but he built an office so he created a non-conforming use. Now he wants the Town to create another non-conforming use by rezoning it to B-1. He came to the ZBA in October of last year. We told him you can't do it the way you're doing it. You need to either tear down the house or, as he suggested, buy the piece between the dentist office and the house, combining those two and then splitting it in half. He needs that 50 feet to get the right road frontage for residential. So far he's done nothing but beg us to bend over backwards for him. I think this should be tabled until he can prove to us he's done one thing or the other. He owns 50 Francis but the 50 foot parcel is owned by a Mr. Boyer. Mr. Siedel says he's in negotiations with him to buy it. My problem is if you rezone it now, we've created a non-conforming use and he doesn't have to buy that piece of land.

Supervisor Kniffen asked Mr. Diffendorf if this came up during the Planning Board's discussion. Mr. Diffendorf said it did and I was opposed to it but our legal counsel talked us into doing it this way. Councilman Weingartner said I thought this was already taken care of, that he already bought that strip, so should we wait until that property gets purchased?

To clarify, Mr. McKertich said, so he wants to rezone this parcel, then purchase the 50 feet and rezone the new 50 foot area. Mr. Travis said it's currently residential, and if he buys that 50 foot piece and combines it into what he currently has, it's all residential then. Then he's going to split it all into two properties. Then one can remain residential and where he wants to put the storage mall rezoned B-1. Councilman Grubham said when Mr. Siedel was here he said it was all going to be a business district. Councilwoman Yonchuk said it's more confusing now than when he came in. Mr. Diffendorf said he wants 50 Francis Street rezoned to B-1, but there is a residence on it. It's in a PUD now and a residence is allowed. He wants to make it a B-1 with a residence. In regard to the 50 foot strip, we've been told by counsel we can rezone 50 Francis and not have spot zoning because there's B-1, a PUD strip and a B-1. We were told that is OK. Mr. Travis said when you rezone this, 50 Francis Street has to be rezoned as a whole parcel the way it is right now. This means you're putting a house in a B-1 zone. Councilman Weingartner said but if he does what he says he's going to do, buy the strip, split the property into two parcel. I thought that's what was going on. To me we should wait until he buys the property and then comes to us for legislation. The rest of the Board members agreed.

**TOWN OF KIRKWOOD
WORK SESSION**

September 3, 2019

Following discussion as to whether or not to act on this request and Supervisor Kniffen's note that the Planning Board did recommend the rezoning, Mr. McKertich said a motion to table it would be the appropriate action. Resolution.

10. Resolution reappointing Peter M. Maciak as Member, Board of Assessment Review for a term to expire September 30, 2024.

Resolution.

11. Discussion – Parks. (LCG)

In regard to parks, Councilman Grubham said I did some budget checking under the contractual and this is way over our budget line this year. Beyond that we may have to start making some decisions on how we're spending money in these parks. At some point in the near future we're going to have to look at replacing the tennis court fencing since it's well past its age. The question there would be do we really want to do that. There is very little activity on the tennis courts. SV uses it in the spring for their program but we hardly ever see anyone on the courts. We spent about \$25,000 to \$30,000 resurfacing the courts a couple of years ago and eventually it's going to need that again. I'm thinking the cost of replacing the fencing will be about \$15,000 to \$20,000. At some point we're going to have to make a decision if we want to continue to have those courts and spend that kind of money for the little bit of use they get.

The next thing is we're maintaining a lot of fields and we don't use them. There were 10 little league games last year and we have 3 little league fields. Do we need all 3 and the maintenance costs of those fields? I don't think so and I don't think we're going to ever use them more than that.

I don't think we have to make a decision about this right now but I wanted to bring it to the Board's attention and we should at least be thinking about it and try to figure out how to lower some of our costs.

Also, we're charging \$25 for the use of our pavilions. We got a letter from Taylor recently that the cost of hauling the garbage is going to go up. They're increasing their cost almost 50 percent. For next year I think we need to think about raising what we charge for using the pavilions to get it to a more reasonable number. The County charges \$75 for their pavilions at Cole Park and they're not as big as ours and ours are much better located. I think we need to think about those kinds of things so we can get things under control.

Mr. Finch said Conklin does it differently with how they rent their pavilions. They give people bags and they're supposed to take the garbage with them. We pay our guys 2 ½ hours on Sunday to do what the residents in Conklin are supposed to do with the garbage.

**TOWN OF KIRKWOOD
WORK SESSION**

September 3, 2019

Councilman Grubham said we have to try to figure out how to get our costs down because we are running way over our budget lines now and we still have 4 months to go and there's less than \$5,000 left in the budget line. I checked last year's and we spent between \$10,000 and \$15,000 in the last 4 months. There are 2 items for paving that total \$9,000. One was to pave the dugouts and one for putting in another piece of road for the town fair. The only question I would have about those kind of items is should they have come to the Town Board for approval before they actually got done. Neither one of them were a repair item but actually a capital improvement.

Supervisor Kniffen, referring to the little league diamonds and tennis courts, said I wouldn't wait on this. I would be on a committee with you and Councilman Weingartner to look into this and get back to the Board so we can act on it. Things like this are discussed and then get lost along the way because other things come up. In 2003 when I took over this position, one of the first things I did was to put out a memo to every department head saying a budget is a budget. We don't exceed the budget without approval. The Town Board has a public hearing on an annual budget, people have a right to speak up and we say this is what we're going to spend. We don't exceed that; that's what we spend and that's what department heads have to do. Today I drafted another memo out to them saying just exactly that is what it is and that we won't accept this anymore. We do have situations where there are overruns from time to time for things like emergencies, such as equipment failure, but those still need Board approval. Although sometimes we get a consensus in those situations what we really should be doing is in 24 hours have a special board meeting to address it. Each department should be checking their budget from time to time during the year to see where they stand. This is important and we all have to be more conscious of it, just like we are with our own finances.

In regard to the committee, Councilman Grubham said we should include our new Recreation Supervisor.

12. Discussion – Resolution appointing Coughlin & Gerhart, LLP as Attorneys for the Town of Kirkwood, to represent the Town as legal counsel for a matter outside the retainer defending the town in a tax assessment litigation brought by Olivet University at a rate of \$200.00 per hour with fees and charges to be submitted by voucher. (RHM)

Mr. McKertich said this is a tax case that came in on property owned by Olivet University. They are claiming a tax exemption based on the fact that they're using it for educational and/or religious uses. Supervisor Kniffen said I don't think that's accurate and reviewed the history on this. When they came into town they were going to be a college but they had to get certified by the New York State Board of Education. Time went on and on and there were less and less people there and people were sleeping there. I personally contacted NYS Dept. of Education and they had applied to be certified but they never did get certified. In fact, they ended up someplace in Connecticut and the building just sits there dormant. You don't see cars or

**TOWN OF KIRKWOOD
WORK SESSION**

September 3, 2019

anyone there anymore. So how can they say that they're an educational facility? Mr. McKertich said I will track all of that down and speak with the assessor. Councilman Diffendorf said once a year they might bring people in for a religious service but we don't even know what they do in there. As far as I'm concerned they owe the taxes. Councilwoman Yonchuk said, if I'm not mistaken, years ago when they had applied to the State Education Department for certification and we did find out they didn't get the approval, I remember we discussed it and they said they fully understand that and they intended to pay the taxes because they understood that not being certified as an educational institution they would have to pay them. She also referenced a concern she has with the playground equipment on the property. Supervisor Kniffen said to me this matter should not take more than an hour because all you have to do is write a letter saying you're not certified. Mr. McKertich said it will be more than that because we're going to have to prove to the court that they are not qualified for either the religious or educational exemption. Resolution.

13. Discussion – Resolution appointing Coughlin & Gerhart, LLP as Attorneys for the town of Kirkwood, to represent the Town as legal counsel for a matter outside the retainer defending the Town in a tax Assessment litigation brought by International Paper Company and KAICAM Development, LLC at a rate of \$200.00 per hour with fees and charges to be submitted by voucher. (RHM)

Mr. McKertich said International Paper is leasing some property on Upper Court Street. Councilman Grubham said it's on the other side of the railroad tracks behind the old Behlog building. Mr. McKertich said there was a court conference on this case and apparently there's a deadline coming up and Mr. Blaise had been handling it. The deadline is to exchange appraisals and there's a trial date set. There have been cases stretching back to 2015 on this property when Inland Paper Company had been leasing it. It's now 4 or 5 years into litigation so it's starting to heat up. We don't have an appraisal on this yet. Resolution.

14. Discussion – NYSEG's Fuller Hollow to Langdon Road substation and Transmission Line Project. (GEK)

Supervisor Kniffen said via Bob Pass, NYSEG wants to upgrade some of their grids. They want to start in Vestal, go to the Town of Binghamton, then Conklin and across to Kirkwood. We met with Bob and asked him to come to a board meeting but in lieu of that we asked him for some talking points. He put that together and there may be private property owners that they will have to get a right of way from. Specifically to the grid here, I don't know if it's going to be any bigger. Councilman Grubham said, they are adding power. There is not enough power at the sub-station that's there now. If a big company wanted to move in, or if Willow Run had wanted to do that other building, they wouldn't have had enough power, particularly since it's all refrigeration. This will increase the capacity of that sub-station substantially, which is good for Kirkwood. Supervisor Kniffen said they already talked to

**TOWN OF KIRKWOOD
WORK SESSION**

September 3, 2019

Dennis O’Dea because we have a copy of a letter Dennis wrote back to them with some questions he had. His property connects to that property. Councilman Diffendorf said they will want a right of way from certain property owners to grant permission to this testing. What is the testing? Councilman Grubham said from what I understood, they will be re-upping the easements for the line that’s already there. It’s not like they’re going to put it somewhere else. They are coming across from Conklin so I assume they will come straight across so there’ll be hardly anything for them to get.

15. Transfer of Funds.

Resolution.

16. Audit of Claims.

Resolution.

17. Comprehensive Plan Committee.

Councilman Grubham said we got the information back from the County on the Zoning Local Law changes resulting from the Comprehensive Plan. There are some suggestions, although not a tremendous amount. I would like to reconvene the committee to do that and we could re-present this at the work session to review so we can schedule a public hearing.