

**TOWN OF KIRKWOOD  
TOWN BOARD MEETING**

**February 3, 2015**

A regular meeting of the Kirkwood Town Board was held on February 3, 2015 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.

Absent: Councilwoman Linda Yonchuk

Also Present: Oliver Blaise III, Deputy Town Attorney  
Gayle Diffendorf, Town Clerk  
Marchie Diffendorf, Planning Bd. Chairman  
Duane Travis, ZBA Chairman  
Scott Baker, Broome County Legislator

**PLEDGE OF ALLEGIANCE:**

**APPROVAL OF MINUTES:**

January 6, 2015 Organizational Town Board Meeting  
January 27, 2015 Public Hearing

**PUBLIC PARTICIPATION:** None.

**COMMUNICATIONS:** None.

**COMMITTEE REPORTS:**

Councilman Weingartner read dog control report for November 2014.

Supervisor Kniffen reported that the Town, which buys gas on state contract, is benefiting from the descending gas prices. In September of 2014 gas was \$3.02 under the state contract and it is now \$1.68. In September 2014 diesel was \$2.82 and now it is \$2.23. If this was projected out over 12 months the Town would have saved over \$5,000. This was a question originally asked by Ed Egan.

Supervisor Kniffen reported that the Town will soon be working with Broome County to update the Comprehensive Plan at quite a bit of a savings. They will be invited to the next meeting to discuss. An outside source did lead the committee the last time the Plan was updated. He is looking for a broad spectrum of ideas from a committee which, hopefully, will consist of residents and business people.

**OLD BUSINESS:**

Discussion – Request from Katie Legg, owner of Festivities a Wedding & Event Planner, to hold a Wedding and Social Event Expo at Veterans River Park on Sunday, August 30<sup>th</sup> from 10 am to 3 pm.

Katie Legg explained she would like to host a wedding and bridal party expo at Veterans River Park which would be the first type of an expo of this nature in this area. This will target brides that want to have an outside wedding, which is becoming a new trend. This park has all that they are looking for with the 2 pavilions next to each other, an open field where they could put up tents, adequate parking, the gazebo and it is located in her hometown. The large tent will be decorated so that brides can actually see what can be done for an outside wedding. She said it is not a fundraiser and she is operating as a d/b/a, sole proprietor. There is a fee that the vendors will pay which will cover expenses such as advertising, rental of the park, rental of tents and decorations. Anything they receive over their budget will be used as start-up costs for next year. This year those costs are coming out of her pocket. They are trying to make it affordable for the vendors, many of which are part time vendors, and help them get new business as well. She has reserved the pavilions for one day and realizes there is a fee and possibly an additional

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fee for setting up a tent. If the date is available, Katie is willing to pay an additional fee to reserve the area for the day before since they would most likely want to set up then.

In response to Councilman Grubham, Katie said most likely upwards of 100 people would be attending. Councilman Grubham said that sometimes when they anticipate a large number of people they add some portable toilet units. Katie noted that a company has been invited to attend that has a luxury portable unit so they possibly could use that. She added that it wouldn't be any different than when there are ball games at the park. She said that brides will pre-register so they will have a better idea of attendance closer to the event. Although this is a rain or shine event, the weather can certainly affect attendance. She would understand if there is a charge for additional toilet facilities.

Katie said there will be no direct sales by vendors at the park. If brides are interested in what vendors are offering they can accept business cards or set up appointments to pursue their interest. She does carry liability insurance. Although Katie mentioned that one of the guidelines for the vendors is that they have to take any trash they generate with them, the removal of trash, if it is not out of the ordinary, is included in the permit fee.

Councilman Grubham did note he still has a concern if they allow someone to make a profit using the facilities how they could stop it in the future. Councilman Weingartner added a good thought in this regard would be is the park being used for what she is trying to promote, and it is used for weddings.

Councilman Grubham also noted that this is not a permit for exclusive use of the entire park, there may be other people using it as well. At Katie's request, Councilman Grubham said he will try to work it out that no tournaments are scheduled for the girls softball field that weekend. Councilman Weingartner added that by August 30<sup>th</sup> schools are 2 weeks into the fall season and softball games are less likely.

Katie would like the pavilions for August 30<sup>th</sup> as well as August 29<sup>th</sup>, if available, at a fee of \$200 per day. She will advise about attendance as the dates get closer, at which time it will be determined if additional portable units are needed at an additional cost to her.

**The Friendship Tree.**

Supervisor Kniffen explained that Katie Legg ran The Friendship Tree from 2007 to 2012 and in his mind she was like a celebrity in regard to the goodness she did, which was all geared to help the poor and needy and was a 24/7 job in some cases, including weekends and holidays. Katie explained that The Friendship Tree started after the 2006 flood and a trip to a Guatemalan orphanage to adopt their new son. They originally wanted to help the orphanage in Guatemala but decided to help their own community first. It began with a small group of family and friends and grew to over 970 members. Local non-profits would contact her constantly for help, including many special requests. These were families that truly needed help. This was all volunteer work with many long days but it was very rewarding. At the time her daughter became a senior they decided to spend more time focusing on their family. She is often reminded by people that the community misses them. Supervisor Kniffen said it is an honor that she is a resident of the Town of Kirkwood and they are very proud of her.

26-15  
Honor Katie  
Legg

Councilman Diffendorf moved to adopt Resolution Honoring Katie Legg, in accordance with the attached resolution. Councilmen Grubham and Weingartner seconded.

The resolution was adopted unanimously by the Town Board.

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution accepting the Recertification of the Records of Activities for Marchie Diffendorf, Member Planning board, in accordance with the attached recertification. Councilman Grubham seconded.

27-15  
Recertify  
M Diffendorf  
Retirement  
Hours

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

MOTION CARRIED.

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Councilman Grubham moved to adopt resolution Authorizing Awarding of Emergency Contract for Replacement Pump on Well 1, in accordance with the attached resolution. Councilman Weingartner seconded.

28-15  
Emergency  
Contract  
Replace Well  
#1 Pump

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

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution Authorizing Awarding of Emergency Contract for Installation of Electrical Switch for Well 1, in accordance with the attached resolution. Councilman Diffendorf seconded

29-15  
Emergency  
Contract  
Elec Switch  
Well #1

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

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution authorizing the commencement of legal proceedings (Joan Long) and the appointment of the Deputy Town Attorney to handle said proceedings as outside the scope of work contemplated by the retainer agreement with the town, in accordance with the attached resolution. Councilman Grubham seconded.

30-15  
Dep. Tn Atty  
Legal  
Proceedings  
J. Long  
Mobile Park

**Discussion:** Councilman Diffendorf questioned why an attorney is needed for this. He wants to know what is so pressing. Supervisor Kniffen said he spoke about this with Scott Russell, who is one of the most active code officers the Town has had. Scott attempts to resolve things without going to court. According to Judge Coe the few times that Scott has gone to court if the person does not plead guilty but gets an attorney, everything stops because if they are going to have an attorney the Town has to have an attorney. When a lawyer has been there for the Town things are resolved in a timely fashion. Prior to Scott, there were not many court cases since the prior code officers may not have been as active. He said sometimes the courts assess court fees to whomever the Town is having a problem with. Mr. Blaise added that most of these cases are resolved after one hearing. There is usually a nominal fine imposed or the sentence is suspended. By the time it gets to the point where Scott wants to involve the Town's attorney it is because he has gone back to people a number of times and not gotten compliance. Councilman Diffendorf felt Scott should be at this meeting to explain this. He questioned what the charge of improper ventilation referred to, as well as ingress/egress and the storage of combustible waste or materials. Mr. Blaise explained that the complaint was a summary of violations. He said that this involves a trailer owned by Ms. Long and Scott and a representative from the State code enforcement office observed that there was improper ventilation which has to do with a tarp over a roof that is allowing exposure to the elements into the trailer which can cause rot and decay of the structure of the trailer. This is under a section of the code that deals with improper ventilation. Mr. Blaise said the ingress/egress complaint is in regard to the steps leading up to the back door of the trailer that were in a dangerous condition for anyone needing to get out the second exit in case of a fire. Ms. Long has been asked multiple times to get the back steps fixed to no avail. The combustible materials are stored underneath the trailer and are a fire hazard. Mr. Blaise said for future cases he could ask Scott to attach the actual complaints of violations that he wants to file, which would provide more detail. Mr. Blaise revises the complaints into a brief summary and presents them in a format which is ready to be filed with the court. Councilman Weingartner questioned if there is a state law or mandate that requires prosecution by an attorney and not a code officer. Mr. Blaise responded that he checked, and there is not. Recently the State has updated its regulations about how the code cases are handled. He referenced a case last year down state where a code department was prosecuting someone for violating a condition under the State code and the defendant opposed it on the grounds that under the State code the State had not defined how long he had to fix the violation and the local code official said he had 10 days, which is a common time requirement imposed by code offices. The court said that under the State law it says the State shall set the time frame for which a code violation

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must be remedied and the State never did that. Local code officers have not had the authority to say for the State how long someone has to fix a violation. All the code officers across the State couldn't tell someone the deadline by which they had to fix something which effectively meant they couldn't write any tickets. So the Dept. of State put together a regulation stating that someone now has 30 days to resolve any code violations that are written under the State Property Maintenance Code, which is over 75% of the tickets that are written. According to Mr. Blaise there are two issues. The first issue is that Scott is concerned if he gets to court and the defendant shows up with an attorney, he is over-matched. If there is a question about procedure or negotiating anything about fines or a suspended sentence comes up, he does not feel comfortable making decisions like that on behalf of the Town. The second issue is that care must be taken that a code officer, in handling these code matters, doesn't stray into the unauthorized practice of law, which is a misdemeanor. Normally a code officer shows up as a witness to testify about the fact of observations. If there are any other presentations of witnesses or evidence, that is practicing law and the code officer cannot do that.

Councilman Grubham said his understanding is that the biggest problem is these people absolutely ignore Scott and it has been going on for months. Mr. Blaise said by the time it gets to this stage there have been many attempts made to get compliance by Scott and this is really the last resort. Councilman Grubham said he feels it's at the point where they have to put their foot down and stop it. Councilman Diffendorf said they want everyone to respect the code, and does not see anything unreasonable with the requests. His point is he does not want to spend the money for an attorney. This doesn't mean this will result in a fine. Mr. Blaise cited an instance last year where there were several trailers in the park that Scott had tried to deal with and the residents weren't paying attention. Mr. Blaise had one hearing with them and they were given a month to fix the issues and the sentence would be suspended. They did fix the issues and none of them were fined in that instance. The Town did not get any money back but the issues were taken care of because they knew if they didn't there would be a problem. In the bigger cases where someone is a flagrant violator or when a case drags on, Mr. Blaise asks the court for a fine to cover costs. He said the minor cases normally happen about six times a year at a cost of about \$1,500 for the year.

Councilman Grubham questioned what the incentive would be for these people to do anything if the Board does not back Scott up on this. Councilman Diffendorf said the judge should make the incentive. Mr. Blaise said a concern is if a defendant has a lawyer, as in a recent case, a technical deficiency is brought up and the case is dismissed. Councilman Diffendorf said that Scott most likely learned from that mistake. In that regard, Mr. Blaise said Scott now sends the paperwork to him. He added that he represents a number of other towns and the majority of them have him handle their code matters or in one case, dog matters. He added that he is in the Town of Dickinson court monthly on code matters and since he is the primary attorney there the fee is built into his retainer, with the exception of appeals or Supreme Court cases.

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

MOTION CARRIED.

Councilman Grubham moved to adopt resolution authorizing the commencement of legal proceedings (Charlie Tai) and the appointment of the Deputy Town Attorney to handle said proceedings as outside the scope of work contemplated by the retainer agreement with the town, in accordance with the attached resolution. Councilman Diffendorf seconded.

**Discussion:** In response to Councilman Diffendorf, Mr. Blaise said the improper ventilation charge in this case is another roofing problem. In regard to the charge of improper placement of support piers, Mr. Blaise explained this deals with a trailer that was moved and was not set up correctly. Upon inspection, Scott found the support piers, anchors, tie-downs, stabilizing pans, vapor barriers, sewer line hangers, gravel pad and support skirting are all things in dealing with the foundation that were not done to code.

31-15  
Dep. Tn Atty  
Legal  
Proceedings  
C. Tai Mobile  
Park

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Scott has been working with Mr. Tai for quite a while. Supervisor Kniffen said that he has gotten involved with trying to get Mr. Tai to comply and it is a horrible situation with Mr. Tai going away for weeks at a time leaving things hanging. This is a chronic situation. According to records on file in the Town Clerk's Office, Mr. Tai has not been in compliance since at least 2012. (The last license issued to him was for 2011.)

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

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution authorizing the commencement of legal proceedings (Joshua Hunt) and the appointment of the Deputy Town Attorney to handle said proceedings as outside the scope of work contemplated by the retainer agreement with the town, in accordance with the attached resolution. Councilman Diffendorf seconded.

32-15  
Dep. Tn Atty  
Legal  
Proceedings  
J. Hunt  
Mobile Park

**Discussion:** Mr. Blaise explained this is a small mobile home park on Johnson Road that recently came onto the radar. There is a problem with the roofing, drainage and placement of the support piers. Someone from the State who specializes in mobile homes looked at it and told Scott it is not mounted properly and they've gotten no compliance to fix those things. Councilman Weingartner said he believes the drainage involves raw sewage going into the creek since when he drives by he notices an odor. Mr. Blaise added that to his knowledge no one has ever looked around this park like Scott has and he has been talking with Mr. Hunt for a while now.

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

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution authorizing Supervisor to expend funds from the Personal Computer Reserve Fund of the Town of Kirkwood, subject to permissive referendum, in accordance with the attached resolution. Councilman Grubham seconded.

33-15  
Spend  
Computer Res  
Funds

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

MOTION CARRIED.

Councilman Grubham moved to adopt resolution authorizing approval to purchase the final round of water meters from Network Oriented Solution, Inc., for \$28,375, being the lowest responsible bidder as per the attached proposal, in accordance with the attached resolution. Councilman Weingartner seconded.

34-15  
Purchase  
Water Meters

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

MOTION CARRIED.

**AUDIT AND PAYMENT OF CLAIMS:**

Councilman Weingartner 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 6, 2015, all in accordance with the abstract of claims on file in the Town Clerk's Office. Councilman Diffendorf seconded.

35-15  
Audit/Pay

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

MOTION CARRIED.

**ADJOURNMENT:**

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

MOTION CARRIED.

Meeting adjourned at 6:59 P.M.

Respectfully submitted,

Gayle M. Diffendorf  
Town Clerk