

**TOWN OF KIRKWOOD  
TOWN BOARD MEETING**

**June 7, 2016**

A regular meeting of the Kirkwood Town Board was held on June 7, 2016 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  
Councilwoman Yonchuk  
Councilman William Diffendorf, Jr.

Also Present: Brady Begeal, Attorney  
Gayle Diffendorf, Town Clerk  
William Tozer, DPW Deputy Commissioner  
Marchie Diffendorf, Planning Bd. Chairman

**PLEDGE OF ALLEGIANCE:**

**APPROVAL OF MINUTES:**

May 3, 2016 Town Board Meeting  
(2) May 31, 2016 Public Hearings

**PUBLIC PARTICIPATION:** None.

**COMMUNICATIONS:**

Letter from Benjamin Weingartner regarding his resignation as Town Justice.  
Letter from Kirkwood Town Fair, Inc. regarding the parade.

**COMMITTEE REPORTS:**

Councilman Diffendorf reported at the annual PERMA meeting he attended the Town received an award for 20 years of continuous service with PERMA as well as a Timely Claims Filing Certificate since all claims have been submitted within the 10-day limit.

Councilman Grubham said he had some issues to discuss but he will wait until Ray Coolbaugh is in attendance. He noted the issues are in regard to the veterans' memorial, gazebo roof and tennis courts. He said the tennis courts are cracking and should be taken care of since the Town spent money redoing them a few years ago.

Councilman Weingartner reported that according to Christina Radicchi all coaches do have keys to access the defibrillators located in the parks.

Supervisor Kniffen reported that in 2006, after the first catastrophic flood in our area, then Senator Clinton and Senator Schumer sponsored a \$30 million study of the Susquehanna River Basin and now 10 years later nothing has been done. Kirkwood has been staying in touch with Schumer's office, the Army Corps of Engineers, and whoever else would listen. There was a reconnaissance study done for \$100,000, but he does not know what was accomplished. \$3 million has been appropriated for the Army Corps to go ahead with a feasibility study. However, before they could do it, they needed a co-sponsor, and NYSDEC has agreed to that. Probably within the next month there will be an official announcement that this will get started. Although the amount is \$3 million, the initial outlay will be \$600,000. Supervisor Kniffen's understanding is that they have to complete the feasibility study within 3 years. If there is some remediation that can be done then more funding will be needed for that to actually happen, which is years off too. He said it is frustrating and although there may be some light at the end of the tunnel is taking a lot of time and he is very sorry for that.

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**OLD BUSINESS:**

**Discussion – Solar Energy Public Hearings - May 31, 2016.**

Supervisor Kniffen explained that two public hearings were held last week regarding solar energy. The Board has been going to seminars and doing whatever they can to learn more about it. Since they do need to learn more they thought it would be a good idea to have a one year moratorium. Also, unless the Board does something about it, anyone who has solar panels has a tax exemption for 15 years, so a public hearing was held to revoke that exemption in Kirkwood. These issues are on this agenda for a resolution but since last week the Town's law firm noted a concern with the wording of the resolution for the moratorium, being mindful of when Binghamton did that with a natural gas drilling moratorium they were sued and they lost. The legal department feels they should re-hear this and include a 239 review by Broome County. Mr. Begeal said it would give his firm time to do more research and submit to the proper County review so that isn't one of the things that the Town could be challenged on. Councilman Grubham said the Board processes a lot of resolutions and very seldom do they include the County and he questioned why they should be included now. Mr. Begeal said not all local laws need to go for County review but he believes land use moratoriums have to. He added that it's different from a police powers moratorium which is when a moratorium is done because something is imminent as an emergency and something has to immediately be stopped so it doesn't harm people or property. He said they believe the moratorium they are dealing with is for the purpose of updating the zoning before it is allowed to happen in Kirkwood and 239 review is probably required. Councilman Grubham questioned what would happen if someone wants to put a in a solar farm and they go to the Town's Zoning Board of Appeals for a variance. Mr. Begeal said that would take some time and he feels the worst case scenario would be adopting a moratorium at next month's meeting. Mr. Begeal compared this to fracking. At that time they said if it's not a permitted use in the district that they want to do it in, it is more than likely they are not allowed to do it. At this point it is the same issue for solar, if someone wanted to put in a solar farm and it is not listed as a permitted use within the district they probably can't do it anyway. The zoning would need to be updated if the Board wants to allow it as a permitted use in a certain area. More than likely someone is not going to start the process for a solar farm since it is not a permitted use and even if they did they would have to get a variance which would take a while. Councilman Grubham noted a concern that once a variance request is made they can't stop it with new rules. Mr. Begeal said the applicant would probably be grandfathered in with respect to the zoning, but a moratorium would be fine to pass at that point because it is just putting a halt on everything. Councilman Diffendorf questioned what would happen if the County says no. Mr. Begeal said although they could, he doubts that they would. The scope of their review is strictly restricted to whether there is going to be any significant inter-community environmental impacts. By virtue of a moratorium the Board would be saying no one can do anything. So there can't really be an environmental impact based on saying you can't do something. Supervisor Kniffen said the Board would have to wait to see why the County would be negative, because there is no way of knowing at this point. Councilman Diffendorf noted a concern that this wasn't brought to them sooner. He said his take on this is that since the last meeting someone has gotten into someone's ear about this. He added that he is comfortable with passing it now. Councilwoman Yonchuk questioned with submitting it to Broome County if it is likely the Board would be able to act on it next month. Mr. Begeal said technically the Board has to have the 239 results back before the close of the public hearing so the public can see the response from the County before their opportunity to speak. It was noted that due to the summer schedule of combining meetings the next meeting is June 27<sup>th</sup>. Mr. Begeal said the County has a maximum of 30 days to respond but in his experience they usually get it done quicker than that and this sort of review should not take a lot of time. After discussing this with his colleagues, Mr. Begeal said they are just cautioning the Board that they could get challenged on this if they don't get the 239 review. In response to Councilman Grubham, Mr. Begeal said that yes, if they get challenged they could go ahead and get the 239 review and do the whole process over. He said that the problem though would be that if they did it and relied upon it and a developer saw that it was done wrong, they could just go forward with the process and challenge it and then the moratorium would be unenforceable. Councilman Diffendorf said there currently is no zoning for it. He noted that Dryden banned fracking because they didn't have zoning for it. He said Mr. Kline always told the Board they could never ban anything, that there always had to be a place

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for it, but they have found out since with the New York State government things can be banned through zoning. Supervisor Kniffen said he feels by holding it for one month the only exposure they would have is if someone comes in during that time and asks for a variance from the ZBA. He questioned if the ZBA, knowing full well the Town Board wants to have a moratorium but are not to that point yet, could use that in their decision. Mr. Begeal said, yes, he would advise them to hold off on making a decision. Supervisor Kniffen said he feels they should do it the right way and have another hearing in a month. Councilman Diffendorf still noted a concern and said he wants to go ahead with the moratorium. Supervisor Kniffen said he does not feel they should ignore the additional information they have received.

Councilwoman Yonchuk moved to adopt resolution, after a Public Hearing, adopting Local Law No. 4-2016 entitled “A Local Law Opting Out of the Solar, Wind and Farm Energy Real Property Tax Exemption Provided by RPTL § 487”, in accordance with the attached resolution. Councilman Diffendorf seconded.

86A-16  
Adopt LL to  
Opt Out Tax  
Exemption  
for Solar,  
Wind, etc.

**Discussion:** Councilwoman Yonchuk said there are people that have put solar panels in their homes and she questioned if they currently are tax exempt. Mr. Begeal said the exemption would just apply to the increased assessment as a result of the solar panels. Supervisor Kniffen questioned how this would work for them. Mr. Begeal said this will have to be looked at. Councilman Diffendorf said people with solar panels had to apply for the exemption, this is not automatic. He said the Assessor said no one in Kirkwood has ever asked for the exemption. Supervisor Kniffen said the Assessor told him they are assessed and told him the formula he used to do it, but said they are tax exempt anyway since the Board has not done anything. Mr. Begeal said his understanding is that people have to file for the exemption. Councilman Weingartner said because of the minimal amount of assessment going up this is geared more towards the big solar farms. That would increase the value of the property and that is his understanding as to the reason for doing this. Councilwoman Yonchuk said for those residents who may have already put solar panels in their homes and would be entitled to the exemption, albeit not on the scale of a solar farm, the Board is taking something away from them unless they are grandfathered and unless they have the exemption, which does not seem clear. Although Supervisor Kniffen suggested rewording the resolution to exclude residential, Mr. Begeal said they cannot do that, it is all or nothing. He said the way to carve out is to not adopt the opt out and put the PILOT in place for the big ones the Board would want to tax. He added if the Board decides not to opt out what would normally happen is for the big solar projects, within 60 days of them signing a contract to put this in place, they would have to give notice to the Town and within that 60-day period the Town would have to decide whether or not they want to put a PILOT in place. Supervisor Kniffen questioned why they would want a PILOT if they are tax exempt. Mr. Begeal said the Board would have the ability to put a PILOT in place and the company would be forced to do it. This is the case only when they are tax exempt. If the opt out is adopted then there is no PILOT option and they would be fully taxable. Councilman Grubham said all this tells him is this is exactly why they need a moratorium because there are so many unanswered questions. If there is a moratorium this could wait because no one will be doing it anyway. There would then be time to determine if there is a better way to do this. Councilman Weingartner suggested they hold this resolution and proceed with the resolution dealing with the moratorium. He said although it is not a huge amount of money they would save on their taxes, if there is an exemption, the Board can't just carve out who they want to exempt. **Resolution Held.** (Note: Since this proposed Local Law No. 4-2016 was held, the following proposed Local Law will assume that number.)

Councilman Diffendorf moved to adopt resolution, after a Public Hearing, adopting Local Law No. 4-2016 entitled “A Local Law to Affect a Moratorium within the Town of Kirkwood on the Placement of Solar and/or Wind Energy Equipment, Materials and Support Activities”, in accordance with the attached resolution. Councilman Grubham seconded.

87-16  
Adopt LL#4  
Moratorium  
Solar/Wind

**Discussion:** To clear up any confusion, Councilwoman Yonchuk and Supervisor Kniffen agreed that voting no would mean they want more information.

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

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Councilman Diffendorf      - yes  
Supervisor Kniffen           - no

MOTION CARRIED.

**Additional discussion:** Supervisor Kniffen questioned if they could still go to the County and request an opinion. Mr. Begeal said it would only be unofficial and would not satisfy the law as required.

88-16  
Appoint  
R. J. Hanafin  
Ins. Broker

Councilman Grubham moved to adopt resolution appointing Robert J. Hanafin, A Division of IOA as the town's Insurance Broker. Councilman Weingartner seconded.

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

MOTION CARRIED.

89-16  
Revised  
Water Permit  
Fee Sched.

Councilman Weingartner moved to adopt resolution approving the revised Water Permit Fee Schedule, in accordance with the attached schedule. Councilwoman Yonchuk seconded.

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

MOTION CARRIED.

90-16  
Appoint  
T. Everett  
Laborer -  
Parks

Councilwoman Yonchuk moved to adopt resolution appointing Terry Everett as Laborer to work in the Parks Department effective May 16, 2016 for 90 days at a rate of pay of \$10.64 per hour. Councilman Diffendorf seconded.

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

MOTION CARRIED.

91-16  
Appoint E.  
Bailey  
Laborer –  
Hwy / W&S

Councilman Diffendorf moved to adopt resolution appointing Eugene Bailey as Laborer to work in the Highway and Water & Sewer Department effective June 1, 2016 for 90 days at a rate of pay of \$10.64 per hour. Councilman Grubham seconded.

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

MOTION CARRIED.

92-16  
Appoint  
N. Geiger  
Laborer –  
Parks

Councilman Grubham moved to adopt resolution appointing Nicholas Geiger as Laborer to work in the Parks Department effective June 21, 2016 for 90 days at a rate of pay of \$10.64 per hour. Councilman Weingartner seconded.

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

MOTION CARRIED.

93-16  
Appoint  
R. Green Jr.  
MEO  
Heavy

Councilman Weingartner moved to adopt resolution appointing Robert Green, Jr. as MEO Heavy effective May 25, 2016 at a rate of pay of \$16.00 per hour. Councilwoman Yonchuk seconded.

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

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Councilwoman Yonchuk	- yes
Councilman Diffendorf	- yes
Supervisor Kniffen	- yes

MOTION CARRIED.

Councilwoman Yonchuk moved to adopt resolution authorizing Commissioner of Public Works to put the used 2002 Volvo Dump Truck with used head plow and used wing on Auction International. Councilman Diffendorf seconded.

94-16  
Dump Truck -  
Auction

**Discussion:** Councilman Grubham questioned if a price was decided on to ask for the truck. Bill Tozer said Ray Coolbaugh mentioned a price of \$35,000 to \$45,000. Councilman Grubham said they will approve it but he would like them to double check the price.

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 the Commissioner of Public Works to advertise in the Press and Sun Bulletin, the Country Courier, on the Town's website and on Craig's List Binghamton for the position to replace William Martin. Councilman Grubham seconded.

95-16  
Advertise  
DPW  
Vacancy

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 accepting the resignation of Benjamin F. Weingartner, Justice of the Peace effective June 7, 2016 and appointing Benjamin F. Weingartner as Justice of the Peace effective June 8, 2016 until December 31, 2016 at a pro-rated salary of \$38,519.26. Councilman Weingartner seconded.

96-16  
Resignation  
TJ Ben  
Weingartner

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 pursuant to section 3A(e) of Local Law No. 2-1976 entitled "A Local Law Regulating the Use of Parks of the Town of Kirkwood", authorizing the Town Clerk to issue a permit to the Kirkwood Fire Company for the display of a movie with no admission charge on July 23, 2016 without any permit fee to guarantee proper clean up. Councilwoman Yonchuk seconded.

97-16  
Permit  
Fire Co  
Movie Night

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 pursuant to section 3A(e) of Local Law No. 2-1976 entitled "A Local Law Regulating the Use of Parks of the Town of Kirkwood", authorizing the Town Clerk to issue a permit to the Kirkwood Town Fair, Inc., for the use of the entire Kirkwood Veterans River Park on August 11, 12, and 13, 2016 without any permit fee to guarantee proper clean up after each use. Councilman Diffendorf seconded.

98-16  
Permit  
Town Fair

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

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Councilwoman Yonchuk	- yes
Councilman Diffendorf	- yes
Supervisor Kniffen	- yes

MOTION CARRIED.

99-16  
PAL  
Agreement

Councilman Diffendorf moved to adopt resolution authorizing the Supervisor to enter into an agreement with the Police Athletic Association (PAL) for the 2016 Summer Program, in accordance with the attached agreement. Councilman Grubham seconded.

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

MOTION CARRIED.

100-16  
ACHIEVE  
Agreement

Councilman Grubham moved to adopt resolution authorizing the Supervisor to enter into an agreement with ACHIEVE for the 2016 Summer Camp Program, in accordance with the attached agreement. Councilman Weingartner seconded.

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

MOTION CARRIED.

101-16  
Sign Reserve  
Expenditure  
Purple Heart  
Signs

Councilman Weingartner moved to adopt resolution authorizing Supervisor to expend funds from the Sign Reserve Fund in the amount of \$3,800 to be used for the Purple Heart Signs. Councilwoman Yonchuk seconded.

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

MOTION CARRIED.

102-16  
Award Bid  
Hydraulic  
Grinder -  
Sewer

Councilwoman Yonchuk moved to adopt resolution awarding sealed bid for an Open Channel Hydraulic Grinder to W2Operator Training Group, LLC, being the lowest responsible bidder at \$61,750.00. Councilman Diffendorf seconded.

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

MOTION CARRIED.

**Discussion:** Councilman Diffendorf said he wants to be sure what they are actually voting on with this resolution regarding health and dental insurance. Supervisor Kniffen said in regard to 4.) Eligibility for Coverage into Retirement, since the 1990s the retirement age to get health insurance was at 2 levels – 15 to 19 years and age 55 that a person would be eligible for just individual coverage and if a person had 20 years or over at 55 years of age they would get whatever they got as an active employee, whether it was a family, 2-person or individual. The change will eliminate the 15 to 19 years and make the retirement age 62, and at 20 years of service a person would be entitled to whatever coverage they had as an active employee. Councilman Weingartner questioned if at age 62 they would be eligible for the coverage they received as an active employee at the same contribution percentage they paid as an active employee. Supervisor Kniffen said the way he reads it he does not believe any retiree contributes once they retire. This only actually gives them 3 years of 100% insurance because at 65 the Town no longer insures them and they go into the Medicare pool which is \$2,400 a year for them and their spouse. Councilman Weingartner said that because of a concern he had with the retirement age for new employees coming in, he verified that it is 62. Supervisor Kniffen added this is retroactive

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back to May 3<sup>rd</sup>. Councilman Diffendorf said he still has a concern with the coverage in this section for Mr. Kline.

Councilwoman Yonchuk moved to adopt resolution amending the Town of Kirkwood Benefit Plan effective May 3, 2016 as follows:

Section 2 – Health and Dental Insurance

4.) Eligibility for Coverage into Retirement

a.) Health Insurance

1.)

Eliminate 15 to 19 years of service and age 55 town pays 100% of individual option.

Increase the retirement age from 55 to 62 with 20 years or more of service will be eligible for coverage which they had as active employees such as family, 2-person, or individual.

Councilman Weingartner seconded.

**Additional Discussion:** Councilman Grubham questioned if there is a way of examining the costs and/or savings involved with these changes. Supervisor Kniffen will get those figures. He added that this is part of the Board being proactive. He said changes were made in the past when in the 1990s an employee could retire with 5 years of service and they went to what they currently have, and he feels this saved the Town over a half million dollars. He said they cannot continue to pay the high medical costs that increase 12% to 15% a year, noting they would go broke at some point.

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

MOTION CARRIED.

**NEW BUSINESS:**

Resolution appointing Chad Moran Building & Code Inspector-OC of the Town of Kirkwood on a probationary status effective June 8, 2016. Supervisor Kniffen questioned the wording of this resolution. **Resolution Held.**

**Discussion: Mowing of Vacant Properties – 114 Ostrum Road, 47 & 23 S. Sunset.**

Supervisor Kniffen explained when the previous Code Officer was with the Town there were properties that were in foreclosure and the Code Officer went out on his own and had someone mow and do other things on the properties with no input from the Board but they received the bill. Chad Moran is now looking for some direction with properties in the same situation, with the grass not being mowed, etc. Supervisor Kniffen added the last time the bill was about \$4,000, it was put on the tax bill and the County has since reimbursed the Town for the total amount. Supervisor Kniffen said it should go to bid. Councilman Weingartner questioned why town employees can't do it and keep track of the hours and charge them back for it. Bill Tozer said currently they are short staffed. Councilman Grubham said it's such a small item he doesn't see the need to go out to bid. Supervisor Kniffen did note that although the County reimbursed the Town the \$4,000, at some point if the County does not get the money back they might ask the Town for reimbursement. In response to Councilman Grubham, Supervisor Kniffen said he is not sure if there have been complaints on the properties or if Chad has just observed them himself. Councilman Grubham said it is in the Code how to handle complaints and if they don't get handled he is questioning how they avoid that situation. Supervisor Kniffen said it's different if someone is actually living on the property than if it is vacant. The Code Office can take them to court. These properties either are tax properties or are in the process of being tax properties. This will be held for more input from Chad.

**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 5, 2016, all in accordance with the abstract of claims on file in the Town Clerk's Office. Councilman Grubham seconded.

103-16  
Amend  
Benefit Plan  
(Health &  
Dental)

104-16  
Appoint  
C. Moran  
Bldg & Code  
Inss. **HELD**

105-16  
Audit/Pay

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	Councilman Grubham	- yes
	Councilwoman Yonchuk	- 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