

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

May 7, 2024

A regular meeting of the Kirkwood Town Board was held on May 7, 2024 at 6 PM at the Joseph A. Griffin Town Hall with Supervisor Lewis Grubham presiding.

Present: Supervisor Lewis Grubham
Councilmember William Diffendorf, Jr.
Councilmember Katie Legg
Councilmember Sandy Wasson
Councilmember Robert Weingartner

Also Present: Mark Spinner, Attorney
Kelley Diffendorf, Town Clerk
John A. Finch Jr., Commissioner of Public Works
Karen Ferguson, Historian

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES: April 3, 2024 Town Board Meeting

SPECIAL STATEMENT:

Supervisor Grubham asked Mark Spinner, the Town Attorney substituting for Robert McKertich, to explain exactly what the Board can and can't do about the John Finch situation at Lowe's. Attorney Spinner first explained that John Finch is an elected official, not a town employee, and that the Town does not have any authority to discipline an elected official directly. There is a mechanism for that in the Public Officers Law, Section 36, which is an application to the Supreme Court that can be made by an individual town resident (not on the Town Board) or the District Attorney asking the court to review a situation and to determine whether an elected official should be removed from office. It is a very high bar to undo the will of the voters. As residents were speaking from their seats, Attorney Spinner clarified that impeachment or a sanction would also be considered discipline, and would not be options for the Town Board in this situation.

PUBLIC PARTICIPATION:

Lois Whittemore of Robert Street spoke directly to John Finch telling him what he did at Lowe's was inexcusable and disgraceful, he should be fired, he doesn't deserve his job, and he cheated the Town no matter what the dollar amount. She noted he was elected by the people and the people trusted him. She questioned if he thought of the residents, the Town Board, his employees, and friends.

Michael Eggleston of Langdon Park Drive questioned if the Town Board could have asked for his resignation after the incident and why they did not. He told John Finch he has nothing against him personally and he has not been a bad Highway Superintendent, but he did not like what he did, it was theft. Councilmember Weingartner responded that he did tell John Finch he should resign. Michael Eggleston also asked if the Town Board had secret conversations among each other to persuade John Finch to pay restitution and complete community service. The board members responded that did not happen.

Attorney Spinner explained when someone is accused of a crime and arrested, they are innocent until proven guilty. In this situation, the District Attorney (DA)'s office and John Finch worked out an agreement called an adjournment in contemplation of dismissal (ACD) where John Finch would pay restitution and complete community service in exchange for the DA's agreement that if those terms were completed, he would not proceed with a trial or pursue the matter any further.

Michael Eggleston questioned how do we know he hasn't done this before. The Board expressed that this is something that can't be answered. He also inquired about the Deputy being appointed to the position, which Attorney Spinner indicated would not be option since John Finch still holds an elected position.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

May 7, 2024

Stephen Antonetti of Route 11 questioned why he found out about this situation from a flyer in his mailbox. Many residents at the meeting responded it was not hidden, and has been public knowledge since day one. It was on the news and published in the Country Courier.

Rory Maginley of Route 11 expressed his anger over the situation, suggesting John Finch should step down from his position. He does not want to pay taxes to pay the salary of a thief, and asked if the voters were John Finch's boss. Supervisor Grubham explained the upcoming election is the voter's opportunity to make a change.

Janice Maginley of Route 11 asked John Finch if he was going to step down from his position. John Finch responded, no, not as of right now.

Bill Teegarden of Don Street commented that John Finch crossed the line of trust with the community and revealed a character flaw. He noted John Finch has done a reasonable job in his position but the supporting deposition proves it was a deliberate action. He questioned if anything could be done since John Finch used town equipment to commit the crime on town time. Attorney Spinner reiterated the Board does not have disciplinary authority over him.

Attorney Spinner was asked to explain how the adjournment in contemplation of dismissal (ACD) was offered in this case and what it means. He explained that when people are arrested or charged with a crime, depending on the nature of the crime, the DA has two options, they can plea bargain a case or move the case to trial. If they offer a plea bargain to a criminal defendant, and the criminal defendant accepts it, its an agreement to plead to a lesser charge. In this case, given the nature of the allegations of a single petit larceny charge, the DA agreed to the ACD. The DA's office has limited resources and they are unable to go to trial on every single petit larceny charge. An ACD is usually only offered to someone who is a first-time offender. Many times, the result is the person accused will pay restitution and complete community service for the damage caused. Adjournment means the DA's case is on hold while the terms of the agreement are being completed by the defendant. Once they are completed, and the DA is satisfied that all the conditions of the agreement have been met, the case is dismissed, and results in no criminal conviction of any kind.

John Finch has been completing his community service at Habitat for Humanity.

Lisa Batzel of William Street expressed her disappointment between the John Finch situation and the race track situation. Kirkwood was once beautiful but going downhill fast. She questioned if a petition sent to the Broome County DA would have any bearing on the situation. It was noted by Attorney Spinner that can be done, but to keep in mind that the incident was already looked at through the DA's office who offered the ACD agreement.

Ray Hulbert of Main Street recommended John Finch be audited on his truck use, gas use, and time sheets. The residents are paying for that truck and it is not a personal vehicle, he is representing this Town. Supervisor Grubham clarified that John Finch is salary paid and does not punch a time clock, and he drives from job to job, it would be nearly impossible to track his mileage. Ray Hulbert wants more accountability for what John Finch does and doesn't do, he told him he should step down from his position, and asked how he can get on the ballot to run against John Finch.

Attorney Spinner explained that this incident occurred while John Finch was at Lowe's on town business, so there is no record that would reveal anything other than he was at Lowe's on town business.

Janice Maginley told the Board this is a disgrace to our Town and asked them to give their feelings on the situation.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

May 7, 2024

Councilmember Legg explained she does not condone this and feels it's unacceptable, and agrees with Councilmember Weingartner. She noted she has asked all the same questions the residents have asked tonight and looked to the attorney for advice. She appreciated the crowd tonight and expressed her hope that more people would come to the Board meetings to see what goes on, good or bad. She relayed the fact the Town does conduct inventory and she reviews that information, and the Board completes many behind the scene tasks that people don't know about, and she recommended people ask questions to find out more.

Supervisor Grubham explained when he heard about the situation, he spoke with John Finch and found his story to be completely unbelievable. He couldn't go any farther with it because he didn't know what the legalities were at the time, and as it turns out, he couldn't go any farther with it anyway.

Michael Eggleston reported he will be passing all of this information on to Tom DiNapoli the State Comptroller.

Holly Bond of Main Street told the Board that John Finch lacks integrity and is not an ethical person. She claimed this is not the first time, and has taken similar actions in the past. She mentioned returning copper from old water meters and keeping the money, and intentionally adding items to flood waters that were not flooded so newer items could be purchased or more money could be received from FEMA. Ms. Bond also noted his personal vehicle would be used for trips to Belden Hill when transporting lumber to build decks. She suggested someone else be in control of his money, with more checks and balances. She asked if the Town had a morality clause.

Attorney Spinner noted John Finch did take an oath of office. Also, the Board does have oversight over the budget and all things financial with respect to the Town, and that budgets are audited by the State frequently.

Larry Holt of Trim Street explained he understands that people are upset and rightfully so, and John Finch has to live with that, but he has no problem with him at all.

Squatters.

Larry Holt of Trim Street asked the Board to enact a law to protect the residents of Kirkwood from squatters before things get out of hand.

COMMUNICATIONS: None.

ANNOUNCEMENTS:

Historical Marker at School House #2.

Karen Ferguson, Town Historian announced that for the last 3 months she has been working on a grant from the Pomeroy Foundation for a historical marker at School #2. She learned yesterday that she was awarded the grant and that a marker will be placed at the schoolhouse which also serves as the Kirkwood Historical Society. It will be the first marker for the Town of Kirkwood.

COMMITTEE REPORTS:

Kirkwood Cemetery.

Councilmember Diffendorf, president of the Kirkwood cemetery on Main Street for the past 50 years, announced the Pomeroy grant is also going to put a historical marker at the cemetery saying there are three Revolutionary War Veterans buried there. It will be out front and very visible to anyone just driving by, it will be really nice.

Dog Control Report.

Councilmember Legg reported numbers from the April Dog Control Report. A copy is filed in the Town Clerk's office. Supervisor Grubham noted the pit bulls from the trailer park were recently loose on Main Street again. The Dog Control Officer was not able to catch the dogs, but Supervisor Grubham advised people to continue to call the Town or the Dog Control Officer, Rick Murray if these dogs are loose, he is very good about getting over here as soon as possible. Supervisor Grubham expressed his concern that people are

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

May 7, 2024

terrified of these dogs and many people won't walk at the park anymore in fear the dogs may get loose. Supervisor Grubham responded to Bill Teegarden's inquiry about noise control for a barking, stating if a dog is found to be barking longer than five continuous minutes the Dog Control Officer can write the owner a ticket.

Sales Tax.

Supervisor Grubham reported the sales tax check for the third quarter was down 1% from last year.

Water Supply System.

Delaware Engineering is going to come to our next work session to explain their proposal for the Town's water supply system.

Paving.

Supervisor Grubham reported all the paving is completed and a little extra was able to get done while the prices were low.

OLD BUSINESS:

61:24
Summer
Meeting
Schedule
June 24, 2024

Councilmember Diffendorf moved to adopt resolution rescheduling the June 25, 2024 Work Session to Monday, June 24, 2024 due to the Primary Election and combining the June 24, 2024 Work Session and the July 2, 2024 Town Board Meeting into one night to be held Monday, June 24, 2024. Councilmember Wasson seconded.

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

62:24
Summer
Meeting
Schedule
August 6, 2024

Councilmember Wasson moved to adopt resolution combining the July 30, 2024 Work Session and the August 6, 2024 Town Board Meeting into one night to be held August 6, 2024. Councilmember Legg seconded.

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

63:24
Summer
Meeting
Schedule
Sept 3, 2024

Councilmember Legg moved to adopt resolution combining the August 27, 2024 Work Session and the September 3, 2024 Town Board Meeting into one night to be held September 3, 2024. Councilmember Weingartner seconded.

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

64:24
Reschedule
Meeting due to
Election Day

Councilmember Weingartner moved to adopt resolution rescheduling the November 5, 2024 Town Board meeting to Monday, November 4, 2024 due to Election Day. Councilmember Diffendorf seconded.

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

May 7, 2024

Councilmember Diffendorf moved to adopt resolution canceling the December 31, 2024 Work Session and rescheduling to Monday, December 30, 2024 and scheduling a Special Town Board Meeting for December 30, 2024, after the Work Session, for the purpose of auditing year end bills and any other business that may come before the Board. Councilmember Wasson seconded.

65:24
End of Year
Meeting Date
Change
Dec. 30, 2024

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

Councilmember Wasson moved to adopt resolution, pursuant to Zoning Code Section 1411.B, to entertain the petition for a zoning change by Robert Evans to rezone Tax Map #211.00-1-17 from Residence R1 to Agricultural/Rural Residence, and refer said application to the Planning Board for a report and recommendation. Councilmember Legg seconded.

66:24
Rezone
Recommendation
to Planning
Board
Gorman Road

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

Councilmember Legg moved to adopt resolution adopting the Bench and Plaque Donation Policy, in accordance with the attached policy. Councilmember Weingartner seconded.

67:24
Adopt Bench
Policy

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

Councilmember Weingartner moved to adopt resolution scheduling a Public Hearing for May 28, 2024 at 6 PM regarding A Local Law Amending the Water Mains Local Law. Councilmember Diffendorf seconded.

68:24
Schedule PH
LL #5
Amending
Water Mains

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

Councilmember Diffendorf moved to adopt resolution appointing Adisen Harden as Member Planning Board, effective May 8, 2024, for a term to expire December 31, 2027, to fill the unexpired term of Jim Bukowski. Councilmember Wasson seconded.

69:24
Appoint
A.Harden
Planning Board
Member

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

Councilmember Wasson moved to adopt resolution approving the Standard Work Day and Reporting Resolution for Elected and Appointed Officials for James Smith, Budget Officer, in accordance with the attached resolution. Councilmember Legg seconded.

70:24
Retirement
Reporting
J.Smith
Budget Officer

Roll Call Vote: Councilmember Diffendorf - yes
 Councilmember Wasson - yes
 Councilmember Legg - yes
 Councilmember Weingartner - yes
 Supervisor Grubham - yes

MOTION CARRIED.

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

May 7, 2024

71:24
Repair to
Truck 38
DPW

Councilmember Legg moved to adopt resolution authorizing the repair of Truck 38 by Burr Truck, at a cost not to exceed \$5,892.35, in accordance with the attached quote. Councilmember Weingartner seconded.

Roll Call Vote:

Councilmember Diffendorf	- yes
Councilmember Wasson	- yes
Councilmember Legg	- yes
Councilmember Weingartner	- yes
Supervisor Grubham	- yes

MOTION CARRIED.

72:24
Hire
B.Diffendorf
MEO Heavy
DPW

Councilmember Weingartner moved to adopt resolution hiring Benjamin Diffendorf as MEO Heavy to work in the Highway Department, effective May 8, 2024, at a rate of pay of \$20.50 per hour. Councilmember Diffendorf seconded.

Roll Call Vote:

Councilmember Diffendorf	- yes
Councilmember Wasson	- yes
Councilmember Legg	- yes
Councilmember Weingartner	- yes
Supervisor Grubham	- yes

MOTION CARRIED.

NEW BUSINESS:

73:24
Education
M.Loftus
W&S

Councilmember Diffendorf moved to adopt resolution authorizing Matt Loftus to attend U-Dig Certified Excavator Training on May 3, 2024 at a cost of \$35 and Confined Space Training on May 24, 2024 at a cost of \$125. Councilmember Wasson seconded.

Roll Call Vote:

Councilmember Diffendorf	- yes
Councilmember Wasson	- yes
Councilmember Legg	- yes
Councilmember Weingartner	- yes
Supervisor Grubham	- yes

MOTION CARRIED.

AUDIT AND PAYMENT OF CLAIMS:

74:24
Audit/Pay

Councilmember 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 #24000383 through #24000559 in the total amount of \$1,274,642.40, which includes prepaid claims as authorized by resolution adopted January 2, 2024. Councilmember Wasson seconded.

Roll Call Vote:

Councilmember Diffendorf	- yes
Councilmember Wasson	- yes
Councilmember Legg	- yes
Councilmember Weingartner	- yes
Supervisor Grubham	- yes

MOTION CARRIED.

ADJOURNMENT:

Councilmember Weingartner moved to adopt resolution to adjourn the meeting. Councilmember Diffendorf seconded. All voted in favor.
MOTION CARRIED.

Meeting adjourned at 7:12 PM

Respectfully submitted,

Kelley M. Diffendorf
Town Clerk