

# TOWN OF KIRKWOOD WORK SESSION

**August 4, 2015**

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

Also Present: Herbert Kline, Town Attorney  
Gayle Diffendorf, Town Clerk  
Raymond Coolbaugh, Commissioner of Public Works  
Scott Russell, Code Enforcement Officer  
John Finch Jr., Chief Water Treatment Plant Operator  
Marchie Diffendorf, Planning Board Chairman  
Duane Travis, ZBA Chairman

Jamie Youngs, one of the Coaches of the 10U Kirkwood Kryptonight Softball Team, said the team would like to express gratitude to the Town and ask a favor as well. He explained last year was their first year playing tournament ball and only four of the girls on the team had previously played fast pitch softball. They struggled early in the season but continued to get better through hard work. This season they were put in the 10U A division and they completely exceeded his expectations by making the championship game in every tournament. Due to weather complications they were denied a couple of championships and they won the Binghamton and Windsor tournaments. They are currently on a nine game win streak. Each player identified themselves and thanked the Town for allowing them to play softball. Lilly Devine spoke on behalf of her team. She recognized her coaches and explained they have all worked hard to become a better team. They will continue to work hard and hope to be in the last championship game of the season. She presented a trophy and picture of the 10U team to be displayed at the Town Hall. Supervisor Kniffen said this was a surprise and he was glad they came and shared this. A resolution will be added to the meeting agenda following the work session honoring of the team.

## 1. Discussion – Generator Permit. (S. Russell)

Scott Russell explained there is currently a court hearing scheduled for a person who will not move a generator. There currently is no requirement for a generator permit, but according to the Dept. of State guidelines it should be on the permit schedule since it is an electrical change. The current issue is that the generator is right in front of the electric meter and according to the code it should have a 30 inch width, 36 inches deep by 78 inches – basically the size of a refrigerator around the meter. Supervisor Kniffen said his understanding is the state requirements are very strict so the Town shouldn't have to worry about a permit. Marchie Diffendorf said that he put a generator in two years ago and he was required to get a permit from the NYS Underwriters and it had to meet all the regulations and pass inspection or it would have had to be moved. Scott said that these people purchased it themselves and installed it themselves and had an electrician do the electrical work. The generator and the liquid propane tank are within three feet of a basement window which is illegal as well as illegal piping. Scott said he is asking for it to be

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added to the fee schedule. He added that legally he can take care of this through the Uniform Code but he does not have anything to go by as far as what fee to set for the permit. Scott said the electrical inspection has been done and approved. Mr. Kline said that Scott can enforce everything under the State Code but a permit is needed and the question is how much, if anything, to charge for Scott's work to enforce it. Scott said a permit to alter someone's property is \$25, so he suggested this be a \$25 fee as well. He added that normally it is not such an involved process if it is installed correctly. Resolution.

## 2. Discussion – Kirkwood Mobile Home Park. (S. Russell)

Mr. Kline reported he and Councilman Diffendorf spoke to Joan Long and he suggested she come to the Board with an issue she is having with what is going on with the Code Department.

Joan supplied numerous documents and pictures to the Board. She presented a very detailed history of Code activity in regard to her mobile home beginning in 2011 with her original application, at which time she verified she was doing her own work. She was told by Mr. Borruso at that time that within the State of NY an owner may do one home of blocking and setup only. She did not have an installer. John Rudy, the CEO, approved it on 4/11/11 and she received a Certificate of Occupancy (CO) 1/5/12. Two years later her occupancy was suspended. By trying to do the right thing, a disconnect 100 amp service was put in next to the mobile home with an inspection by Midland Atlantic and approval 4/29/14. She was lacking on getting things done that Scott had asked for but she feels it was already state approved. Mr. Borruso approved the compacted stone about November 5<sup>th</sup> but there is no paperwork in the file as to that. There is a yearly approval on the park and there were no problems. She feels it is automatically grandfathered in once it is approved. Mr. Bassler did the drawing for the installation of Joan's and Amy Millard's gravel pad, and he stated that the steps and landing are up to code and the gravel is very substantial. There was no shifting of the home or anything like that. She added it was solid compacted gravel that it was blocked on and most of the homes don't even have that since it is an older park. By the fact that she called for a disconnect, it came to the attention of Mr. Russell, but it was inspected by him on 9/28 and also CEO John Rudy as far as approval goes. It is a great hardship for her to get concrete pads or piers put in. If she cannot get this resolved, eventually she will have to move the home out of the park. She is looking for help from the Town Board. Although a little slow, she has tried to make things right. She cited other issues, such as vinyl mesh under the stone, a 6 mil plastic requirement, tie-downs, etc. and made comparisons to another mobile home, including pictures. She provided a picture of another mobile home in another area that was going in and she said her pad was just as good as the one in the picture, but it is not in Kirkwood. She said Amy Millard put one in within a month of hers.

She said Scott and his lawyer did not show up for the 5/19 pre-trial hearing.

As a note of clarification, Mr. Kline said at the time the acting Code Officer was Mr. Borruso and the two engineers that Ms. Long used to say that her present situation was satisfactory were Charles Fenson and Dick Bassler. There is a matter pending now in Town of Kirkwood Court and Mr. Russell has revoked her prior license.

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According to Scott, Ms. Long could appeal the order revoking her CO to a representative in Syracuse. He added that George Morehouse, the NYS Department of State mobile home specialist, crawled underneath the trailer on 10/8/14 and found 22 violations with the way the mobile home was set. According to Title 19 of NYS Law, if for any reason Scott finds that the CO was issued in error, he has the legal right to revoke it. He also noted that in one of the pictures provided by Ms. Long, the pier is illegal the way it was set. He said he does not make the Code, but he is required by NYS to follow the Code and he has had four mobile homes set since the time he has been in this position and two have a CO and two do not and are in court to be fixed. Scott said in one of the pictures that Ms. Long provided, it is illegal the way it was set, adding that the blocks have to be set in a specific way and specific directions. The pier wasn't even put in properly. He said it is not his fault if another Code Enforcement Officer in another town is not trained properly or doesn't enforce the Code properly. There are three specific sets which call for conventional footings, monolithic slab or insulated foundations. He said a gravel pad is none of those three.

Irene Phillips of Kirkwood said Joan doesn't own the park, she rents. She questioned if Joan were to move out in five years, why she would want to give someone a concrete slab. Scott said there is no guarantee the concrete slab would be accepted for the new home. It all depends on the manufacturer and the NYS Dept. of State. Ms. Phillips said she feels Ms. Long got her CO, then because she asked for an electrical inspection for safety reasons, the CO was taken away from her. Mr. Russell said that is incorrect. Ms. Phillips said Ms. Long works on the place constantly. Mr. Russell said NYS requires that a licensed mechanic or licensed installer do the work and she is neither. Ms. Phillips asked when that changed because she put a mobile home in the Town of Conklin and they put it in themselves.

Ms. Long said she owns the mobile home and as far as the pad goes, it was approved since 2011 and that grandfathers the gravel in. She said the gravel is not mandatory right now in NYS, it is being voted on around November 1<sup>st</sup>. It is the Town itself that overrides everything as far as the concrete goes.

Councilman Weingartner questioned if Ms. Long's installation of her pad, coincides with the drawing she had. Scott said he wouldn't know because there were no inspections done. There are no inspections in the file of the gravel being compacted or how deep it was put in.

Ms. Long said it is her understanding that the regulations regarding concrete are only for new homes not necessarily used homes. Scott said it has to be done as to HUD regulation 3285.312. She said apparently it is up to Mr. Russell and if he is saying it has to be concrete that is what has to be done. Councilman Weingartner said it is not up to Scott, it is up to NYS Code, if it is not up to Code it is not safe. Scott added that this was all overseen by the specialist for mobile homes from NYS Dept. of State.

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Supervisor Kniffen said that regardless of what happened in the past, this is a safety problem. This should be looked at as an opportunity to fix a safety problem. Ms. Long said the permit should never have been revoked because there was no imminent threat to public health or safety.

Supervisor Kniffen said that Scott cannot ignore this or he wouldn't be doing his job. He did add that she could appeal it to NYS Code in Syracuse.

Councilman Diffendorf questioned if Ms. Long pled guilty in court. She said that she mistakenly did plead guilty, since she could set up one home only on her own and that was the law in 2011.

Ms. Long said she has to return to court for sentencing or move the home. In addition to the option of moving the mobile home, Mr. Kline said if she feels that she pled guilty by mistake she can ask the judge for permission to withdraw her guilty plea or she can appeal to NYS Code. He suggested that she consult with a lawyer or a friend, if that is what she wants to do, when making her decision. He said that although they sympathize with her, the Board cannot do anything to overrule Mr. Russell. He has been sworn as the Code Enforcement Officer. Ms. Long said there is a concern with spending the money for the lawyer and she is being run out of town. She added that she has witnesses that saw Mr. Borruso approve it and the paperwork is missing from Amy Millard's file as it is with her file from Mr. Borruso. She said she still feels it is whatever Scott wants.

3. Discussion – Resolution authorizing the commencement of legal proceedings 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. (S. Russell)

Scott Russell explained that this involves Mr. Repp of 54 Susquehanna Lane. This is a summer home. Scott was doing an inspection on a neighboring property and he saw property maintenance issues, the piers underneath the structure were deteriorating. It looks like they were damaged from previous floods. There is no documentation in the file as to any work having been done since either flood. He started with the normal Notice to Remedy for repairs and asked him to come in and get permits. Mr. Repp has refused to get permits or work with Scott. Today Mr. Repp, who has an attorney, pled not guilty in court. Scott is asking the Board for approval for Deputy Attorney Blaise to assist him with the pre-trial and trial. Tentatively this is on the court schedule for August 27<sup>th</sup> at 10:00 AM. Scott added that every year he has to send Mr. Repp a Notice to Remedy to mow his lawn. Resolution.

4. Discussion – A Resolution Adopting a Road Use Preservation Policy.  
(HAK)

Mr. Kline explained this is a resolution to participate in the County's program. The Town will get some money, the amount of which will depend on the number of towns that decide to do this. It only affects County roads. Resolution.

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5. Discussion – Resolution Authorizing Settlement of Pending Assessment Review Proceedings Commenced by Southern Tier Communities, LLC. (HAK)

Mr. Kline explained this was previously held since Southern Tier Communities had code violations that needed to be cleaned up. Those violations have been taken care of so the Town can now proceed for 2013 and 2014. Resolution.

6. Discussion – Resolution authorizing the appointment of the Deputy Town Attorney to represent the Town of Kirkwood in the tax certiorari proceedings filed in Broome County Supreme Court by Penske Truck Leasing as work outside the scope of work contemplated by the retainer agreement with the Town at an hourly rate of \$200.00, with payment requests to be submitted by voucher. (HAK)

Mr. Kline explained that Pensky has a trucking company and they have been fighting their assessment for the past four years. They finally filed a Note of Issue so that they could have a trial. The judge held a pretrial conference over the telephone. They made an offer and Dan Giblin, the Town's Assessor, said he needs more information before he can determine if the offer is good. The judge marked this ahead a couple of weeks for Penske to provide information. If this goes to trial he wants to use Oliver Blaise to try the case because he does more trial work. He added that he will not bill the Town any more for what he has been doing up to now. If there is not going to be a trial Mr. Kline will wrap things up. Resolution.

7. Discussion – Intermunicipal Agreement between Town of Kirkwood and Town of Conklin relative to water sale. (GEK)

Mr. Kline said at the time of the original agreement with Conklin, Kirkwood was billing their users in January and July but since then users are billed three times a year. Conklin has agreed to that. Resolution.

8. Susquehanna Lane Water Project. (J. Finch)

Mark Willis explained he has Mr. Root under contract to punch under the tracks for \$4,700. He is currently working on the application to the railroad for that. When he gets that approval the project will move forward. John Finch said the Town can do work as soon as they are ready. He received two prices to do the work under Route 11 from Root and also from Gary Dyer who can do the job mid to end of September. Mr. Kline explained the Town can't start anything until the other parties have done everything required in the agreement, including putting money in escrow and getting the permit from the railroad. Supervisor Kniffen questioned the escrow requirement, where is the risk if the Town doesn't do anything until their work is completed. Mr. Kline said if the Town does wait the escrow requirement will not be needed. All the parties listed in the agreement were present so it will be signed this evening. Resolution.

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9. Audit of Claims.
10. Executive Session.