

# TOWN OF KIRKWOOD TOWN BOARD MEETING

October 6, 2015

A regular meeting of the Kirkwood Town Board was held on October 6, 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.  
Councilwoman Linda Yonchuk

Also Present: Herbert Kline, Town Attorney  
Gayle Diffendorf, Town Clerk  
Raymond Coolbaugh, DPW Commissioner  
James Smith, Budget Officer  
Duane Travis, ZBA Chairman

## **PLEDGE OF ALLEGIANCE:**

**APPROVAL OF MINUTES:** September 1, 2015 Town Board Meeting

**PUBLIC PARTICIPATION:** None.

**COMMUNICATIONS:** None.

## **COMMITTEE REPORTS:**

Councilman Grubham reported there are park issues that need to be addressed. In Veterans River Park the veterans' memorial needs a lot of work, the gazebo roof needs to be repaired, the tennis courts are cracked and the pavement in pavilion #3 has cracks in it and needs to be repaved. Councilman Diffendorf added that work needs to be done, especially to the baseball field, at Grange Hall Park and there is grass growing in the cracks of the blacktop. Councilman Grubham said they have not put much money in the parks and these are now things that need to be repaired.

Supervisor Kniffen explained there is a youth Christmas party held each year and a Christmas tree lighting ceremony was held for a number of years. Katie Legg is now heading a committee that would like to replace the youth party with an entire day of activities the first week of December which would include the Christmas tree lighting and many other activities. They are talking about a Frosty 5K for teens and adults, a Snowflake Run for small children, a chili contest, making gingerbread houses, wagon rides with Santa, reindeer visit and many other activities to get the whole community involved. The parade would start on Haskins Road and go to the park. They are going to get local businesses involved as well.

## **OLD BUSINESS:**

### **Discussion – Rogers Mountain Way.**

Supervisor Kniffen introduced Town of Dickinson Supervisor Michael Marinaccio and Superintendent of Highways Joel Kie. He explained they were in attendance in regard to a situation concerning Phelps Rstreet and Rogers Mountain Way which are both partially in the towns of Dickinson and Kirkwood, with about 50 homes located there. There are 2 railroad crossings and through the years people that live on Rogers Mountain Way have been blocked by trains stopping on the crossings which is a concern in the case of an emergency. The Town of Dickinson has taken the lead in looking into this.

Mr. Marinaccio explained the situation has been going on for a long time, but in the last 8 years they have really become aware of the issue and over the past 3 years they have received numerous calls from residents noting their concern. About 3 years ago they were told by an engineer that an extension could be built on to Phelps Street. He apologized about the timeliness of coming to the Kirkwood Town Board with this but he has been

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focused on getting this done. The land needed to extend the road was privately owned and after several years it was signed over to the Town of Dickinson at no cost to the town. Mr. Marinaccio provided maps and survey information to the Town Board and reviewed the process they followed through various state and county agencies. He said sometimes the trains block the crossings for 1 ½ hours and on one occasion 2 hours and noted that one resident crawled under a train to get to work on time. They have reached out to the railroad with absolutely no response. They have also contacted the Sheriff and NYSDOT who has a relationship with the railroad. As of today there were 18 recorded incidents over an extended period of time. Mr. Marinaccio noted that a train blocking a thoroughfare more than 10 minutes is against regulations. Although there might have been an option for the town to eliminate that crossing he said there are a lot of large trucks plus town trucks that use it so that would concentrate all the traffic into other areas and that would not be a good idea. Mr. Marinaccio said they have counted 10 parcels on Rogers Mountain Way in Kirkwood that are involved and 6 of those are residential occupied. In Dickinson there are 17 occupied parcels. The new road would all be located in the Town of Dickinson. He said they are not asking for any specific amount from Kirkwood but anything they might get would be a blessing for their town. In 2016 they will start paying approximately \$50,000 a year on a 5-year renewable loan and under 5% interest. If Kirkwood wanted to contribute he is sure they could come up with some sort of an inter-municipal agreement.

Supervisor Kniffen said he received a letter from Mr. Marinaccio and a copy of a letter that Senator Schumer sent to Canadian Pacific railroad. After looking at the area today he said he realized there are 2 sets of tracks and while he was there he spoke to Norfolk Southern employees who happened to be there. As of September 19<sup>th</sup> Norfolk Southern purchased the upper track from Canadian Pacific and the lower track is the NYSW which is the same railroad that goes through Kirkwood. He noted that in Senator Schumer's letter he indicated he thought the railroad should help pay for the road. Supervisor Kniffen said if he were the CEO looking at \$250,000, he would think that all he would have to do is take care of the problems and not stop the trains at the crossings anymore, especially noting the liability that could be involved in the event of an emergency situation. He noted that Kirkwood was able to alleviate a train parking situation with NYSW and before spending money he would want to talk to the railroad.

Mr. Marinaccio said that was his logic at the time but to no avail. The Sheriff has been fairly helpful but the front of the train where the engineer is could be a mile down into the city so they have a hard time trying to find the engineer and issue a ticket or tell him to move the train. He added there is an outside possibility that when a train is blocking a road and there is an emergency, somehow they get ahold of the engineer and decouple the car. But after all the years of fighting this his board has decided they cannot gamble with their residents' lives. He feels they have been extremely lucky there has not been any life and death situations, fires or criminal activity that needed emergency service. Supervisor Kniffen said as he was talking to the railroad gentlemen they said they know about the problem and they keep hearing on their phone to make sure not to block the crossing. He said possibly with the new ownership something is happening.

Mr. Kie explained a number of incidents when a train has stopped just past the crossing and they have reverse and something is wrong and they can't go forward and it is 45 minutes for a response for someone to get there to go to the end of the train to radio ahead and say it is clear to back up because they are in the Town of Fenton on another railroad crossing. They have several crossings that are all in close proximity so if something happens here it affects it back further as well. They did try parking the trains in the Town of Fenton but the trains were broken into and merchandise stolen so they won't do that anymore. If a train is extremely long it can be in the yard and go back far enough that it is blocking the crossing. He added that on occasion the railroad has had someone with a stop watch and they time it, but even within the legal limits of what they are doing it's still 23 minutes before the train is clear of that area. They are abiding by the rules but yet they are still blocking things off.

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Supervisor Kniffen questioned who will be building the road. Mr. Marinaccio said it is a self help situation and by doing that they have brought the price down. Self help means the town will be doing work that ordinarily the contractor would do. Mr. Kie said basically they are the primary agency and they rent equipment and laborers. He said they have not figured the town's labor cost into it since they will be working on the regular town payroll. The cost is basically for the raw materials and rental rates for equipment and labor.

Mr. Marinaccio reached out to all federal and state representatives and NYSDOT for funding. The response has been there is no money available. He explained about a press release from Senator Schumer that he was not aware of prior to. He added if Kirkwood decides to pay anything at all and money they happen to receive would be pro-rated.

In response to Councilman Diffendorf, Mr. Marinaccio said the upper tracks get blocked. Councilman Diffendorf also questioned where the trains parked prior to this. Mr. Kie said that he has seen a huge difference in the last 5 years in the frequency and how many trains there are. Councilman Diffendorf said it may have increased in recent years but it is nowhere what it was in the 1950s. It was noted that there are more homes now. Mr. Marinaccio is not sure if the Sheriff has been successful in ticketing the engineer. Councilman Diffendorf said most engineers stop someplace where they can get into a vehicle so someone should be able to issue a ticket and if a ticket is issued it would be turned over to the railroad by the engineer so he thinks they could get some action from that. In response to Councilman Diffendorf who referred to an old map which shows Phelps Street going all the way through, Mr. Marinaccio said where the proposed road extension is there is some sort of dirt track there. Mr. Kie said it was used at some time because there are a few utility poles and there is a beaten path, and that is where the extension is targeted because the cut and fill will be the least amount of disturbance to the whole area. In regard to the train parking issue, Mr. Kie said the railroad really tries very hard not to block the crossing and when it is blocked it is from circumstances beyond their control.

Mr. Marinaccio said that regardless of what the railroad does they are going to build the road. They cannot take the chance any longer with the residents in that area. Mr. Marinaccio thanked the Board for their time and consideration.

### **Additional Discussion – Rogers Mountain Way.**

Supervisor Kniffen said Kirkwood obviously has residents in that area who pay taxes and must be facing the same problem as the residents in Dickinson. He feels it is a serious issue and he feels the Town has some responsibility. He responded to Councilwoman Yonchuk that NYSW owns the lower tracks and is the one Kirkwood dealt with in the past but these are not the tracks at issue.

Councilwoman Yonchuk feels they have some responsibility and possibly Kirkwood could help Dickinson turn up the heat on this, noting that there is a huge liability for the railroad company and some responsibility on Kirkwood. It was noted that Dickinson is putting \$50,000 in their 2016 budget. Supervisor Kniffen said if Kirkwood decides to share in this they would have to do something similar but the 2016 budget has already been put together. He thinks the fair way would be to come up with a percentage of our residents to theirs.

Councilman Weingartner said he is looking at it the same way he looks at the benefit of water and sewer. The people on the road are the only ones who would benefit from it. In regard to considering it a special district, Mr. Kline said that is not an option even though there are all kinds of districts, such as drainage, sewer and water but highways are another area. They could enter into an inter-municipal agreement and set up a formula in that. Supervisor Kniffen added this is unusual because normally when road work is done the whole town at some point might travel the road and this is not the case here. Normally the work is charged to the whole town. Councilman Weingartner said this is something after

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the fact. When you build a house and see the train tracks, there could be a potential issue there.

Councilman Diffendorf said he doesn't think they should spend any money until they talk to the railroad and find out why the trains stop there blocking the crossing. He added that people have to realize the issues when they buy a house as is the case if there is a race track or auto parts store and/or junk yard. The people had to drive across the tracks to get there although he agrees they should not be blocked in.

Councilman Grubham said he would like to take some time to think about it. He did question how it would be handled since there is not money in the budget to spend on it. Supervisor Kniffen said they would first have to determine if they were going to contribute, and how much it would be. He said if they decided on a total of \$50,000 they could contribute \$10,000 a year and that would be part of the municipal agreement. There would be enough in the budget if they were talking \$10,000. Councilman Weingartner said he feels it should be put off until the next budget since this budget has already been completed. He added that he feels it should have been brought to their attention sooner. This will be discussed at the October 27<sup>th</sup> work session and in the meantime Supervisor Kniffen will try to contact the railroad.

This project is 1,000 feet and in comparison to the Colesville Road project which is 1,100 feet, Councilmen Grubham and Diffendorf responded to Supervisor Kniffen they felt the \$250,000 was not out of line. Councilman Diffendorf added there is a lot of clearing and earth work involved.

## **Discussion – Roofing Permit.**

Supervisor Kniffen explained there is a section in the Town's local law about getting a permit to repair a roof and how the cost is determined. He received a call from Delta Engineering who is re-roofing a portion of the NYSEG building on Corporate Drive and the cost for a permit would be about \$3,000 which they thought was exorbitant and questioned if that was the Town's intention. He said according to Mr. Kline that when they get the permit if they are not happy with the amount they appeal to the Town Board since they are the only ones who can make an adjustment. He relayed the message to Delta that they could come to the Board meeting tonight. During the week they started the work on the roof which is a violation without a permit. It is his understanding the Code Department put a stop work order on it today. That section of the law reads that if someone starts without a permit the fee doubles. He said the permit fee does seem exorbitant to him. He suggested that since the Comprehensive Plan committee is working on updating the plan they could address this as well and make a recommendation. Councilman Grubham said they paid \$2,705 for the permit today after what he feels has been a misunderstanding. It was brought to Councilman Grubham's attention that there is a discrepancy on the website as to the fee since it is listed differently in the Code Book section from the Code Office information page. He agrees the fee is outlandish, noting that Vestal charges \$150 and Endicott charges \$75. He also noted that others have not gotten a permit in the past without notification from the Code Office. It has to be determined which information on the website is correct and if the fee is indeed too much. According to Councilman Grubham warranties on roofing are for 15 to 20 years and the manufacturer of those roofs will not give that warranty unless they have someone on site practically every day watching how it's going down because if the roof comes off or leaks they are responsible for it. He said the Town's enforcement officer doesn't know much about these kinds of roofs and Delta was inspecting for NYSEG at the same time so it's not like there are not inspections going on. So basically the Town is not spending money for anything to be done there and that is why other towns don't charge much. Councilman Grubham questioned the wording in the code book in this regard as well noting that it says additions, repairs and roofs over decks or porches, not even mentioning that kind of a roof, or a roof at all. It is questionable whether a permit is needed or not and there is a lot of confusion in this particular incident which needs to be cleared up. Councilman Weingartner questioned if they will get relief on this. Supervisor Kniffen said the committee established to update the Comprehensive Plan will address this. Councilman Grubham noted this is for

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commercial roofs, but there is a permit fee of \$25 to replace a residential roof by a contractor, due to asbestos concerns.

Supervisor Kniffen thanked Jim Smith for his work on the budget noting that once again they maintained the cap which was very challenging since the cap is 2% or the inflation rate, whichever is lower, and the inflation rate was only .75%. The tax increase is just shy of 4 cents and using \$75,000 as a typical assessment the increase is less than \$3.00 for the year.

Councilwoman Yonchuk moved to adopt resolution Approving the Preliminary Budget and Directing a Public Hearing for October 27, 2015 at 6:00 PM. Councilman Diffendorf seconded.

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

116-15  
Approve  
Prelim  
Budget  
Set PH

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution pursuant to Not-For-Profit Corporation Law Section 1402(c)(3) approving the Membership Roster for Kirkwood Fire Company, with the understanding that the members so approved will be assigned for which they have been qualified, in accordance with the attached roster. Councilman Grubham seconded.

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

117-15  
Approve  
Kirkwood  
Fire Co.  
Roster

MOTION CARRIED.

Councilman Grubham moved to adopt resolution, pursuant to section 3 (a)(8) of A Local Law Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code adopted December 26, 2006, as amended, and section 10 of A Local Law Establishing and Setting Forth Rules and Regulations Governing Installation of Water Mains, Together with Specification Therefore and Other Matters in all Water Districts and Within Any Extension Thereof in the Town of Kirkwood, Broome County, New York, adopted April 6, 1965 as amended, establishing fees for connection of Town water hydrants as follows: (1) Hydrant fee for residents for residential uses (e.g., filling swimming pool): \$50.00 for connection, plus \$5.00 processing fee. (2) Hydrant fee for commercial users and uses (e.g., commercial hauler or business filling a tanker truck): \$30.00 per connection/load, plus \$5.00 processing fee. Councilman Weingartner seconded.

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

118-15  
Amend  
Hydrant  
Fees in Bldg  
Code

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution, pursuant to section 3 (a)(8) of a Local Law Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code adopted December 26, 2006, as amended, and section 10 of a Local Law Establishing and Setting Forth Rules and Regulations Governing Installation of Water Mains, Together with Specification Therefore and Other Matters in All Water Districts and Within Any Extension Thereof in the Town of Kirkwood, Broome County, New York, adopted April 6, 1965 as amended, revising the assessment of water and sewer benefit units in accordance with the attached Guide For Unit Assessment in All Water and Sewer Districts. Councilwoman Yonchuk seconded.

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

119-15  
Amend  
Sewer  
Benefit  
Units

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

MOTION CARRIED.

120-15  
Sched  
Sewer  
Grievance  
Day

Councilwoman Yonchuk moved to adopt resolution scheduling Grievance Day for 2016 water and Sewer Benefit Unit Assessments for October 27, 2015 at 6:05 PM, and directing notice thereof be sent by first class mail to all accounts receiving an increase in their assessment. Councilman Diffendorf seconded.

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

MOTION CARRIED.

121-15  
Bids  
Dump  
Truck

Councilman Diffendorf moved to adopt resolution authorizing advertising for Sealed Bids for a new 2016 Dump Truck with Equipment, with bids returnable to the Town Clerk's Office on October 27, 2015 at 4:00 PM, to be publically opened and read at the 6:00 PM Work Session meeting. Councilman Grubham seconded.

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

MOTION CARRIED.

**Discussion – Backhoe Purchase.**

Councilman Grubham questioned how the payments will be worked out for the dump truck and backhoe. Mr. Smith said he received new information on financing from Mr. Kline about the installment purchase with the vendor connected financing of a lease purchase, that it appears right now that has not been renewed when they repealed that from municipal law. So they will have to do conventional bonding with a bank. He doesn't know if that will change things 3 years from now. Mr. Smith said it was repealed in July and there has been somewhat of a pattern on how far will they then re-enact it and extend it. He said they will just try to get the best interest rate when they put them out to bid. He is thinking they will still be able to take advantage of the 3 year deal with the equipment companies. Ray will check into that at his highway meeting. Ray said he would like to put the bid for the backhoe in the paper this week. He said he will be mailing the backhoe bid specs to Tracey's, Five Star, Milton and Monroe. For the truck they will send specs to Tracey's, Burr Truck, Cook Bros., Stadium and one other.

122-15  
Bids  
Backhoe

Councilman Diffendorf moved to adopt resolution authorizing advertising for Sealed Bids for a 2016 or newer 20,544 LB Backhoe Loader with or without trade-in , with bids returnable to the Town Clerk's Office on October 27, 2015 at 4:00 PM, to be publically opened and read at the 6:00 PM Work Session meeting. Councilman Grubham seconded.

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

MOTION CARRIED.

**Discussion – Transfer Funds to Repair Line for Truck Repairs.**

Ray Coolbaugh stated the total amount needed is \$12,121.64. The \$3,391.64 listed is the current price for a complete exhaust system for a truck. Mr. Smith said the permanent improvement line will absorb this cost.

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Supervisor Kniffen moved to adopt resolution to transfer funds for general repairs to highway equipment from line DA-5110-4-040 General Repairs to DA-5130-4-040 Machinery Contractual. Councilman Weingartner seconded.

123-15  
Transfer  
Funds  
Highway  
Equipment

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

MOTION CARRIED.

**Discussion regarding right-of-way issue.**

Councilman Diffendorf explained that at the last meeting he asked Mr. Blaise to confer with Mr. Kline in regard to right-of-way issues on town roads. When the highway department was cleaning a ditch invisible fencing that a property owner had installed was damaged and Councilman Diffendorf asked if the town was responsible for damages. Mr. Kline said it is the same situation as with a mailbox, if a mailbox is in a town right-of-way and gets damaged from snow plowing, the Town is not responsible if it is a deeded road. Councilman Diffendorf said he knows people can use town right-of-ways but the town can't be responsible. Mr. Coolbaugh said he received information at a state sponsored class that a property owner owns the trees and the Town owns the road and the property owners owns underneath the road as well but the Town has the right to maintain the road and pipes. Mr. Kline said there are 2 kinds of roads. He feels that the state person was discussing roads that were dedicated by use for 10 years. With those the Town only gets however wide it is as the road has been used. If it is a deeded road, which is 50 feet by state law, anything within the 50 feet is protected from the Town's point of view. If something gets damaged within the 50 feet the owner is responsible since they chose to put it within the Town's 50 feet. Councilman Diffendorf said the property he was referring to is a deeded road. He added that roads such as Gorman and Sullivan might not be because early on they were trails and then roads.

**Discussion – Road Sand.**

Ray Coolbaugh provided 4 samples of road sand labeled A, B, C and D and asked Board members for an opinion as to the one they would choose to use on town roads. The samples are from Gorick, Colwell, Tri-Cities and Boland with prices starting at \$2.70 a ton for the town to pick up. He noted that this would be mixed with some salt. Councilman Diffendorf said that the C sample was definitely what he would choose but Ray noted it is from Tri-Cities which is located in Brisben and would be a long haul. Councilman Grubham agreed with the choice but noted a concern with the distance as well. Ray quoted prices on all samples for delivery and if the town were to pick it up. It was noted the town used sand from Gorick the past few years and although the quality seemed better at the end of the season they received numerous complaints throughout the season. Supervisor Kniffen said since that is a local business it would be good to try to stay with them. Ray said that no matter which sand you put on the roads it will eventually turn to muck and then dust. He noted that the last 2 winters they have had to put a lot of sand down since there was a lot of snow. Ray said for years the town used Boland's sand which has a different texture to it. Councilman Weingartner said he was told by an engineer that the issue with road sand is that it's sand that can't be used for masonry or building type of things so it's sold for road sand and when it gets run over it breaks down and that is where the muck comes from. Ray referenced where some of the other towns are getting their sand from. Ray did note they still have 1,100 tons of sand so this will be for the beginning of next year. Ray noted that Boland's price is comparable to Gorick's and it is relatively close. Ray said he wanted the Board to see what he has to deal with. Councilman Grubham said they should consider what has been used in the past that worked. It was noted that it appears Boland's sand is the next best to Tri-Cities. It was also noted that if the prices are all competitive it is up to the Highway Superintendent to determine which sand to purchase.

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**Discussion: Lions Club Halloween Parade.**

Ray Coolbaugh reported the Kirkwood Lions Clubs will be having their annual Halloween Parade on Saturday, October 24<sup>th</sup> at 11:00 AM at the highway garage with hotdogs, donuts, cider, etc.

**AUDIT AND PAYMENT OF CLAIMS:**

Councilwoman Yonchuk 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.

124-15  
Audit/Pay

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

MOTION CARRIED.

**Discussion of Industrial Development Agency Property.**

Supervisor Kniffen stated he would like to request advice from the Town Attorney in a closed meeting and in doing so he will assert the attorney-client privilege pursuant to section 108 of the Public Officers Law of the State of New York regarding any matter made confidential by section 4503 of the New York Civil Practice Law and Rules.

**ADJOURNMENT:**

Councilman Weingartner moved to adopt resolution to adjourn the meeting.

Councilwoman Yonchuk seconded. All voted in favor.

MOTION CARRIED.

Meeting adjourned at 7:55 P.M.

Respectfully submitted,

Gayle M. Diffendorf  
Town Clerk