

**TOWN OF KIRKWOOD  
SPECIAL TOWN BOARD MEETING**

**May 13, 2019**

A special meeting of the Kirkwood Town Board was held on May 13, 2019 at 2:00 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: Oliver Blaise III, Attorney  
Robert McKertich, Attorney  
Gayle Diffendorf, Town Clerk  
John A. Finch Jr., Commissioner of Public Works  
Marchie Diffendorf, Planning Bd. Chairman

**PLEDGE OF ALLEGIANCE:**

**OLD BUSINESS;**

**Discussion – Five Mile Point Speedway.**

Supervisor Kniffen said one of the main reasons this special meeting is being held is because of the race track. There was a lengthy discussion at the last Town Board meeting and the biggest issue was the roadway which needed to be addressed before the next regular meeting. Something has to be done and right now nobody is doing anything, neither the Town nor the race track. On a rainy night there is mud and dirt that comes onto Francis Street so I thought it was important that the Town Board discuss this. I think we have a couple of options. It has been discussed in the past that the race track take care of it. Liability is a concern on the Town's part with a private citizen going on Town roads. The other option would be for us to do it like we did in the past. Also, at one time the weekly permit was \$25, we changed it to \$50 and the Town would take care of the road, but with today's economy and costs, that wouldn't even come close to covering it. I think the Town Board leans towards the Town doing it and if we were to do that we'd have to raise the permit fee and that's up for discussion. We do know that to bring someone in on Sunday for 2 ½ hours call-in time, the cost would be \$87.50 for the labor.

Councilman Weingartner questioned if any other business in the Town had an issue with the road, who would be responsible to clean it up. Also, who would be responsible for cleaning the road if a person was building a home and made a mess, the homeowner or the contractor? Mr. Finch said basically whoever makes the mess. In the past we've had people drop debris off in the road and we've asked them to clean it up. Also, if say, Five Star Equipment brings debris onto the state road, they clean it up. Councilwoman Yonchuk said so that would be a private business coming onto a town or state road, with the liability concern it would be the same for them as it is for the race track. That either is the issue or has to be a non-issue for everyone. We have to be consistent with it. Mr. Blaise said there is a difference of degree with certain situations. If it's a building project that would be a one-time thing that would have to be cleaned up once or twice, that would be different than this situation where it looks like it could be a regular event. To my mind it's just a matter of what's going to ensure compliance. If you raise the permit fee such that it would cover the cost to the Town to have someone go out and clean up the road, and that cost is covered to the Town, that's one thing versus you telling the race track to do it, then we've got to have a way of enforcing that to make sure the race track does it. There would have to be some type of effective enforcement if this were to happen on a recurring basis.

Councilman Diffendorf said it's already in the Code Book. We passed it when we were talking about putting gas wells in. If you track something on the roads it has to be cleaned. In regard to whether a ticket would be issued, Councilman Diffendorf said I don't think we've ever issued a ticket to anyone for that. The Code Officer would make the determination if a road needs to be cleaned. There is not dirt on that road every Sunday morning, but occasionally there could be, and occasionally there could be dirt on any road

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from a farmer or logger, or anything. There isn't dirt on the road every Sunday morning and that's why we got out of doing it to begin with.

Mr. Andrew Harpell said, as the property owner, I would like to give you an overview. We went through this roughly 15 years ago and it was decided that the Town would sweep on a weekly basis, which just wasn't necessary. It wasn't cost effective and it was more of a problem to the neighbors because sweeping was being done to the shoulder and there wasn't even any mud, so it was unnecessary. During that time I had offered to wash the road with the water truck, which I did during the floods to help the Town out. We did that a couple of times and there was no problem for us to do it but someone complained about me having an unlicensed vehicle on the road that was an issue, so that was the next problem. I don't want it to be an issue where the track's not a willing participant because we always have been. We put stone in by the entranceway which helps the situation. We've had three practices and three races this year and that particular night there was mud on the road. There was a huge amount of rain but we're talking one out of six already this year. So it's not a weekly occurrence. The boys that are leasing the track from me have raked the stone up and do that primarily on a rainy day so they are not creating dust. If you re-freshen that stone and rake it with a stone rake, it cleans it and keeps the mud off. Prior to the last race I called John on Saturday and said since it's another rainy day there may be mud on the road tomorrow. When Ray was in charge of the garage he was actually at the race track working on race cars so he could see a common sense approach, here's a mud night so tomorrow morning we'll do it. So it was no longer a weekly occurrence, only as needed. If we're open to some reasonable solutions on it, my opinion is I prefer to see the Town do it for your own liability and for ours. In the past two years you've not had to sweep the road once. Mr. Finch said we've done it on Monday if we came in and it was still dirty. It's probably been less than two or three times in two years. Mr. Harpell continued by saying we are the only business in Kirkwood that pays a weekly permit to operate and that was designed to take care of the expense of street sweeping. So if you average 20 events over just the last two years, that's \$2,000 in permit fees. If it's been swept three times and the cost is \$87, that's less than \$400, so Mr. Harpell questioned where the \$1,600 is being allocated. There should already be a buffer just from the last two years in permit fees. I'm not in favor of raising the permit fee, but I have something I think will make sense. If the Town wants to bill on a per case situation for sweeping the road, let's have a weekly permit as far as paperwork, get rid of the weekly \$50 fee and bill the race track for the occurrence as it takes place. Then there is documentation of each time it's done, the revenue to take care of it and everybody's satisfied. I'm looking at this as a win-win.

Supervisor Kniffen asked Mr. Harpell if you were to do it, would you have the equipment. Mr. Harpell said yes, but it's not licensed for street use. When we swept the roads for the Town during the floods, that was a State of Emergency situation, so that wasn't going to be a big hang-up for anyone. We could make something work. In regard to the liability issue, my belief is if the Town is doing it on a Town road it takes 9 out of 10 possible scenarios of it going bad. If you can do it, I don't think I'd want to get into where the Town does it and then have to bill you. If you simply can do it, my feeling is that you should do it.

Councilwoman Yonchuk said in terms of the race track doing it with an unlicensed vehicle for road use, people have complained about that in the past, so if someone comes in and objects, we can't be doing this every time an issue comes up with the race track. We can't be tailoring what we do every time there is a complaint. Mr. Harpell said I think you do have another option. The Highway Department could hire someone from the track for \$1 a year, making them employment status and they could use the Town's sweeper. Councilman Weingartner said I like Andrew's solution of the Town doing it and billing the race track. It makes more sense to me if it's someone employed by the Town. It's not an every-day thing and more likely to happen this time of year because it's so wet.

Mr. Finch said I have no issue with the billing other than who makes the determination if it needs to be swept or not for every event since I'm not going to be there late Saturday night or early Sunday morning then have to call in someone to sweep. The correct way would be to have a truck with the water tank loaded Friday so we can water it first and then sweep it on Sunday morning. We would have to know on Friday who's going to be working

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Sunday. Mr. Harpell said I could give you a heads up on Friday like I have done in the past.

Mr. Daniel Harpell said I think it's overcomplicating everything. This is probably the wettest spring on record. This happens once or twice a year, at this time of year there's mud. When the permit was \$25 the purpose of raising it to \$50 was to sweep the streets and it never was done once when I was running the race track, even though we paid double the permit fee. Supervisor Kniffen said I agree that it's becoming complicated and doesn't happen that often but if you live in that area you're concerned the one time it does happen as to who is going to clean it up. Mr. Harpell said since it wasn't swept in all those years, I have a concern with adding an additional fee every week. To Mr. Finch, Mr. Andrew Harpell said someone could call you on Friday if it looks like there's a potential of rain or thunderstorms. Then you could have somebody available if the need arose. If it's a 90 degree day with no chance of rain there would be no need to have someone prepared to do it. We don't want this issue either. Supervisor Kniffen said the bottom line is it's the race track's responsibility to find a solution. Specific options about how to co-ordinate this between the Town and race track were discussed by Mr. Andrew Harpell and Mr. Finch.

If it's a question of not having a licensed vehicle, Lois Whittemore asked Mr. Harpell why couldn't you get plates for it, and then water everything down. Mr. Harpell said I bought it at an auction and it doesn't have a title.

Mr. Finch said if the Board wants to do this when it needs it, they can send me a text Saturday night. We could have the truck filled up on Friday to have it ready and then we would bill them accordingly. Mr. Daniel Harpell said another thing to keep in mind is that we don't want to, and are not going to race on a rainy day, it's not worth it. The one time it occurred this year was a perfect storm. Basically it rained hard Friday, didn't rain here, but it rained everywhere else and all the other tracks in the state didn't run and there was a huge amount of cars and people. This was one time out of six, so it's not a weekly occurrence.

Mr. Andrew Harpell said I want to emphasize one last point. It's not a matter of not wanting to do it, we have no issue, as long as it's safe for the Town liability wise and us. It doesn't take long to do. Mr. Blaise said if we go along with you texting John Saturday night, we would want to alter the permit to include the language that the permittee will pay for any cost of the cleanup. Councilman Grubham said if in fact the fee was raised from \$25 to \$50 for cleanup, it seems to me we would figure out what it costs us to do that, keep track of it, and if it exceeds what they are paying now then we would bill them for that, not bill them every time we do it. Councilwoman Yonchuk questioned if someone is always on call. Mr. Finch said during the summer park pavilion rental season we have someone on call. Councilwoman Yonchuk said then if we put someone on call, do we contractually have an obligation to them, since we're saying you have to be available all weekend just in case you're going to get called in because of the race track or an issue at the park, considering the Collective Bargaining Agreement. It was noted there is nothing in the agreement now. Mr. Finch said currently if they get called in they get 2 ½ hours to come in and there is a list they work from. Mr. Blaise said I don't see why we can't handle this the same way. The only issue I see is, are you treating this as built into the fee that they're paying already or if there is a way to keep track of it and do it on a weekly basis or do it at the end of the season. Councilwoman Yonchuk said I think doing it at the end of the season makes common sense for our bookkeeping. Mr. Blaise said so we're saying keep the permit fee where it is and at the end of the year if it goes over what the permit fee was, bill the excess. Councilwoman Yonchuk said I agree, but since we raised the fee for the purpose of road cleaning and this year it hasn't been necessary most of the time, I would be in favor of putting the fee back to \$25. We could still do that same math at the end of the season. Councilman Grubham said I think it's a lot easier to leave everything the way it is and see how it works out. Councilman Diffendorf said I agree.

Councilman Grubham said I suggest you err on the side of caution with this. If there's a question one way or the other, then it should be done. To clarify, Mr. Blaise said we will tweak it to say it will stay the way it is but at the end of the season the race track will pay for any expenses incurred in excess of the annual amount of license fees. Mr. Finch noted

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that \$87.50 is for labor only, not including the cost of equipment. Mr. Blaise and Mr. McKertich will revise the permit accordingly. It was noted that it was announced at the race track that no parking is allowed on Francis Street, and they will continue to announce it each week.

**Discussion: Request from Teamster’s Union Representative to add Brian Kinney and Alan Glover to the Teamsters Union.**

89-19  
Executive  
Session  
Collective  
Negotiations &  
Litigation

Councilwoman Yonchuk moved to adopt resolution to adjourn this meeting to conduct an Executive Session to address matters concerning collective negotiations pursuant to Article 14 of the Civil Service Law, as provided by section 105(1)(e) of the Public Officers Law and proposed, pending or current litigation, as provided for by section 105(1)(d) of the Public Officers Law. Councilman Grubham seconded.

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

MOTION CARRIED.

Special Meeting temporarily adjourned at 2:45 PM to conduct an Executive Session and reconvened at 3:10 PM.

**Discussion:** Mr. Finch explained that a resolution is needed to issue a refund to L3 Communications for a water and sewer overpayment, due to a miscalculation in the amount of water that was used. L3 didn’t realize it was incorrect until after they paid it.

90-19  
Issue W&S  
Reimb

Councilwoman Yonchuk moved to adopt resolution to issue a refund to L3 Communications for overpayment of a water and sewer bill, due to a miscalculation in the amount of \$4,836.00. Councilman Grubham seconded.

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

MOTION CARRIED.

**Discussion:** Mr. Finch explained there are two FEMA projects on Foley Road where culverts need to be replaced. He said I asked to upsize the pipes as part of mitigation and FEMA approved that so I am going out to bid with four contractors to replace two crossovers which are about 300 feet apart. I’ve received two bids so far. I would like to get the Board’s authorization to award it to the lowest responsible bidder once all the bids are in. The low bidder right now can do it as soon we get authorization and I would like to get these started as soon as possible. One pipe is currently 36 inches and we’re going to a 4 foot pipe, and for the 4 foot pipe we’re going to a 5 foot pipe. The engineering price for each project quoted by John Mastronardi was provided to FEMA and they will pay 75 percent of that. In addition, Mr. Finch said I want them to do the 4 foot pipe first and hopefully take it out without damaging it and then use it as the lower pipe where we’re going to a 48 inch pipe. That will come out of our stock so it will be \$3,000 off that price and come back to us.

91-19  
Authorize  
Award Bid  
Foley Rd  
Projects

Councilman Grubham moved to adopt resolution to authorize awarding bid to the lowest responsible bidder for the two pipe replacement projects on Foley Road. Councilman Weingartner seconded.

**Discussion:** Councilman Diffendorf questioned why we are not doing sealed bids on these projects. Mr. Finch said the cost of the projects are under the bidding threshold. Councilman Diffendorf said together they would have been over the threshold. Mr. Finch said FEMA breaks them up that way so we have to do it that way. The projects could be awarded to different contractors, depending on their bids. Councilman Diffendorf said that’s fine as long as someone doesn’t question it. Mr. Blaise said the fact that FEMA wants them broken out that way and the fact that they could be awarded to separate

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contractors, arguably that gives us cover, although normally you would do them as one project.

Roll Call Vote:	Councilman Weingartner	- yes
	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.

Councilwoman Yonchuk seconded. All voted in favor.

MOTION CARRIED.

Meeting adjourned at 3:25 PM.

Respectfully submitted,

Gayle M. Diffendorf  
Town Clerk