

The second regular meeting of the Kingsbury Town Board was conducted on Monday, March 25, 2013 at the Kingsbury Town Hall, 210 Main Street, Hudson Falls, NY.

MEMBERS PRESENT: James T. Lindsay, Supervisor
Paul Bromley, Councilman
William Collins, Councilman
Richard Doyle, Councilman
Henry Freebern, Councilman

ALSO PRESENT: Francis P. Cortese, Code Enforcement Officer
Michael Graham, Highway Superintendent
Jeffrey Meyer, Attorney for the Town
Anthony Marro, East Side Auto
Stephanie DiLallo-Bitter, Attorney for East Side

The meeting was called to order by Supervisor Lindsay at 7:00 p.m. and opened for order of business with the Flag Salute led by Councilman Doyle.

Motion by Councilman Bromley, seconded by Councilman Freebern and carried by a vote of 5 ayes to accept the minutes of the meeting held on March 11, 2013 as submitted by the Town Clerk.

At 7:05 p.m. the Town Supervisor instructed the Town Clerk to read the Notice to Bidders for T-shirts for the Recreation Department. Two bids were received. Rosick \$13,042.50 and Hallwear \$8,808.75. Supervisor Lindsay stated both bids were in order and he would have Debbie Battiste compare the bids to be sure they meet the specifications. The Town Board would make an award at their next meeting which will be held on April 8, 2013.

LEGAL UPDATE:

Attorney Meyer stated the only matter he had was East Side, which is two parts. One part is the 2012 matter that is a discussion to be had in Executive Session. The second part is the renewal of the 2013 license that we have received an application for and a waiver request for the bond requirement. The applicant is waiting for an answer by the end of the month when his current license expires.

Supervisor Lindsay stated we would continue on with the regular meeting and discuss the East Side matter at the end. He stated we are still waiting for the Judge's decision on the Dix Avenue Drive In matter. Councilman Doyle stated that he had requested the attorneys to research the Obama Care matter. He asked someone to speak with Mary Ordway as he had asked her to do the full time calculations for employees because if we are under 50 we will be exempt from this. He stated the attorneys should speak with Mary in order to save time and money.

Mr. Patrick Sullivan, an engineer from Highlander Engineering was present to review the proposed plans for the new highway garage building. He has gone through the basic design and development at this time. The building will consist of a 90 x 160 foot main building with a 25 x 55 ft. office area. He reviewed the floor plan with the town board members. We don't have access to municipal water at this site, so a fire separation wall has to be constructed. Councilman Bromley asked if the old style sliding fire doors were still acceptable under the current codes. He stated he is trying his best to keep cost down. The offices will have geothermal wells for heat and cooling. We are about 2 weeks away before we are ready to go out to bid. We will have a primary contract for the building and the foundations, an electrical contract, a mechanical contract and then a plumbing contract. The time frame for a response on the bids would be two weeks. He hopes to have all the contracts back in by the second week of May to determine the total cost. This facility will be about 3,000 feet larger than our current highway building.

REPORTS:

Sole Assessor Colleen Adamec submitted her report in writing. She gave the town board members a sample letter she will be sending out to property owners regarding combining some of their parcels into one parcel in an effort to save some tax dollars. She is working on finalizing the tax roll and conducting her fieldwork.

The Town Clerk reported we had received a report from NYS Agriculture and Markets stating they had reinspected the Animal Shelter and had given them a satisfactory mark. She had completed and certified the paperwork for the upcoming general election and sent it to the Board of Elections. She stated she was selling tickets for a fundraiser for the Community Action Angels. They are sponsoring a basketball game with the Harlem Ambassadors on April 15 at the Hudson Falls High School.

Highway Superintendent Michael Graham reported we had received two bids for the well drilling on the new highway department property. Rosick Well Drilling and Leise Well Drilling were the two companies that submitted bids. The Town Clerk and Highway Superintendent opened the bids on Friday, March 22, 2013. Rosick's bid was \$6,825.00 and Leise's bid was \$8,880.00. Leise's bid did not meet the specification as written so technically the bid could have been rejected. Superintendent Graham requested the town board to award the bid to Rosick's Well Drilling, as they were the lowest, responsive, responsible bidder for this project. **Motion** by Councilman Bromley, seconded by Councilman Freebern and carried by a vote of 5 ayes awarding the well drilling bid to Rosick's Well Drilling. Councilman Bromley and Superintendent Graham will complete the paperwork for the prevailing wage contract.

Supervisor Lindsay reported he had received a letter from Kathy Varney regarding the Complete Streets resolution the town board had passed. Superintendent Graham stated we received \$6,000 from this program and he used the money to purchase signs at the community pool for pedestrian crossings and on Franklin Street white fog lines were installed to keep cars in their lanes and pedestrians on the side of the road. They also purchased a radar sign to be used on various roads in the town.

Councilman Doyle reported the department heads have submitted some information for the website and Mr. Darfler has made some corrections. He thanked the Town Clerk for working on this matter with Mr. Darfler.

Supervisor Lindsay stated that the Recreation Director, Debbie Battiste, has written a letter to Mrs. Webster about the softball problem she spoke with the town board about at last meeting. She will be working to alleviate this problem.

WRITTEN REPORTS:

On a **motion** by Councilman Freebern, seconded by Councilman Doyle and carried by a vote of 5 ayes accepting the reports of certain town officers for the month of February as follows:

Code Enforcement Officer: No. Permits 3; Site Plan 1; Total Fees \$468.00.

Dog Control Officer: Complaints/Calls 17; Seizures 3; Unlicensed dogs 12;
Dogs Euthanised 0; Summons issued 0; dog bites
Investigated 1; dangerous dog complaints 0;
Miles 116

Town Clerk: Paid to EnCon \$150.23; Paid to Supervisor \$6327.86;
Paid to NYS Dept. of Health \$45.00; Paid to Village of
Hudson Falls \$44.00; Paid to Ag and Markets for
Population Control \$108.00.

Town Comptroller: Dec. Receipts \$123,340.90 ; Disbursements \$351,789.41
Jan. Receipts \$1,803,552.45; Disbursements \$330,239.16
Feb. Receipts \$64,604.23 ; Disbursements \$382,804.76

Town Justice: Fees Collected \$8,093.50

PUBLIC COMMENTS:

Mr. Dennis Kelly of County Line Road asked about the bond RWS Manufacturing was supposed to post and why were they pouring cement today. Attorney Meyer stated he couldn't tell him much due to the court action, but the voluntary shutdown is related to the shaving process not the site approval. They are doing the construction work at their own risk. He feels this is no different than a work stoppage. Supervisor Lindsay stated the town board would be having a discussion in executive session regarding this matter.

Code Enforcement Officer Cortese had nothing to report.

Supervisor Lindsay stated the next order of business is discussion about East Side Auto. We have two issues to discuss. One issue is regarding the lapse of insurance during 2012 license period and the second issue is the license renewal application for 2013 with a request for a waiver.

Anthony Marro and his attorney Stephanie Bitter were present. The license renewal application was submitted to the town clerk on March 11, 2013. East Side has fallen on some difficult times last year resulting in the letter of credit not being obtained and a lapse in their insurance. East Side has paid a premium on a month-to-month insurance policy and has applied for bonds, but to date, have not been successful. Mr. Marro has agreed to place a limited security interest on his personal residence. There were some title difficulties discovered and corrective measures have been made. East Side has a future here and they are trying to correct their past by moving forward. The downturn in the economy has brought the financial problems East Side is experiencing.

Supervisor Lindsay stated he would like to come to a mutual solution to this problem but the town cannot get involved in owning real estate. The 2013-2014 insurance issue has been solved. A discussion was had.

Motion by Councilman Doyle, seconded by Councilman Freebern and carried by a vote of 5 ayes to enter into Executive Session at 8:07 p.m. to discuss the East Side matter. The Town Clerk and Code Enforcement Officer were invited to attend.

Motion by Councilman Freebern, seconded by Councilman Collins and carried by a vote of 5 ayes to go out of Executive Session at 9:05 p.m.

At this time, the Attorney for the Town and the town board reviewed the short form EAF. **Motion** by Councilman Collins, seconded by Councilman Freebern and carried by a vote of 5 ayes declaring a negative declaration on this project.

**TOWN BOARD OF THE TOWN OF KINGSBURY
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution No. 5 of 2013
Adopted March 25, 2013

Introduced by **Councilman William Collins**
who moved its adoption

Seconded by **Councilman Henry Frebern**

**RESOLUTION APPROVING JUNKYARD LICENSE RENEWAL
APPLICATION
OF
EAST SIDE USED AUTO PARTS**

WHEREAS, pursuant to Chapter 55 of the Code of the Town of Kingsbury, Section 10 of the Municipal Home Rule Law, and Section 136 of the General Municipal Law, the Town Board of the Town of Kingsbury (the “Town”) has the authority to license and regulate junkyard facilities; and

WHEREAS, by materials originally submitted on April 23, 2009 Eastside Used Auto Parts and Equipment Inc. and Eastside Metals and Recycling, Inc. (collectively hereafter “Applicant”) applied for a Junkyard License and a Scrap Processor License for a facility at 2323 NYS Route 149 (the “Site”); and

WHEREAS, on June 4, 2009 the Applicant received a license to operate a Junkyard and Scrap Processing Facility at the Site, which expires annually on March 31; and

WHEREAS, the Applicant continues to make certain site modifications, which have all been approved by the Planning Board and appear on the site plan drawings submitted by the Applicant, prepared by Jarrett Engineers, PLLC, last revised December 14, 2011; and

WHEREAS, the Applicant has submitted the required renewal application materials found in Section 13 of the Junkyard Regulation and Licensing Law, along with all of the materials submitted by the Applicant for the original license shall be considered in reviewing this matter and hereafter referred to collectively as the “Application”; and

WHEREAS, the Town Board has conducted an uncoordinated review under the State Environmental Quality Review Act (hereafter “SEQRA”), reviewed the potential environmental impact of the renewal application and issued a negative declaration upon concluding their review; and

WHEREAS, upon due consideration, the Town Board is prepared to review the renewal application and make a final determination thereon in accordance with Sections 8, 9, and 13 of the Junkyard Regulation and Licensing Law of the Town of Kingsbury.

NOW THEREFORE BE IT RESOLVED by the Town Board of the Town as follows:

Section 1. Licensing Standards.

- a. Ownership and control: The Applicant shall provide proof of legal ownership or the right to use the property for a junkyard proposed during the license period.

The Applicant has provided a copy of the deed evidencing ownership of the property by a Limited Liability Company owned by the same members as those applying for the license. Additionally, a lease has been provided allowing the Applicant to operate the junkyard facility on Site.

- b. Location: The location must be suitable to the safe operation of the junkyard facility. The following shall be taken into account: the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors, smoke, noise, dust, or other pollution. The following shall also be taken into account: the available site access to the proposed location, whether the transportation infrastructure is sufficient to provide ingress and egress to the proposed site, as well as accommodating for the increase in scope and intensity of the traffic. No license shall be issued without obtaining a certificate of zoning compliance as provided for in this law.

The Applicant has established the proposed Site is in compliance with the Zoning Ordinance for the Town of Kingsbury and has obtained a certificate of zoning compliance. Impacts to such properties will be further minimized by the physical distance separating the proposed operations and by the Planning Board's careful review of the site plan. The location and proposed site shall minimize any potential impact provided the Site is completed as designed and approved by the Planning Board.

The Applicant has affirmed to have completed Phase I of the Site Plan, and submitted as-built construction plans prepared by Jarrett Engineers, PLLC, certifying to the same. The Town Board has required an independent engineer retained at the Applicant's expense to evaluate the site to confirm the commercial development has been completed in accordance with the plans. To date, there remain outstanding issues relative to the stormwater and discharges on site, these details must be resolved by the Town retained engineer and the NYS Department of Environmental Conservation as part of the Applicant's existing Stormwater Pollution Prevention Plan and pending Industrial Discharge Permit.

- c. Aesthetic: A clean, wholesome and attractive environment has been declared to be of vital importance to the general welfare of the town citizens. Consideration shall be made to whether the proposed location can be reasonably protected from having an unfavorable effect thereon. Pursuant thereto, special attention shall be made collectively to the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes to the site, as well as the reasonable availability of other suitable sites for the junkyard.

The Town previously reviewed and approved the aesthetic components of the Application, provided they are completed in accordance with the approved plans as amended and approved, by Town Board resolution on May 24, 2010, which will adequately screen the facility and should minimize any visual impact. The Planning Board previously reviewed the addition revisions to the approved site plan whereby the Applicant received permission to store certain metals behind the Auto Processing Building and around the perimeter of the Metals building as depicted on the approved site plan, as revised.

- d. Compliance history: The Applicant's history of compliance shall be considered with any federal, state or local law or any of the following: Section 136 of the NYS General Municipal Law, Articles 6 or 6-C of the NYS General Business Law, Section 415-a of the NYS Vehicle and Traffic Law, any applicable provision of the NYS Environmental Conservation Law, or any regulations promulgated pursuant to said laws.

The Applicant's compliance history was well documented in the original license, therein the years of violations and non-compliance were all clearly set out. Due to the years of non-compliance the Town Board has previously adopted a zero-tolerance policy towards the Applicant and the Site.

The previous license year the Applicant was issued notices of violations and orders to remedy for failing to comply with the Financial Security requirements contained in Section 14 of the Junkyard Law, which are currently still pending. Specifically, the Applicant failed to maintain pollution liability insurance of at least \$5 million per occurrence and \$5 million in the aggregate for the term of the license period, by allowing the coverage to lapse in October 2012 and failing to notify the Town, as required by the Junkyard Law and their Junkyard License. Furthermore, the Applicant operated without having the financial security in place for the closure and environmental site assessment as required by the Junkyard Law and their Junkyard License. Both of these lapses are inexcusable and individually grounds for the immediate revocation of their Junkyard License. Based on the past history, the Town Board will not permit the operation, acceptance, or processing of scrap or junk at the Site until the requisite financial security has been provided.

On May 17, 2012, the NYS Department of Environmental Conservation issued the Applicant a Notice of Violation relative to a spill on the site and noted eleven additional findings of fact and violations. Moreover, the DEC also performed a compliance inspection on December 11, 2012 and five additional non-compliance issues. These are all serious concerns of the Town and speak to the importance of the Financial Security requirements found in section 14 of the Junkyard Law.

Town Board will continue the zero-tolerance policy towards non-compliance at the Site. Due to the foregoing, failure to comply with any State, Federal or Local laws will not be tolerated. The Applicant shall keep the Town Board informed as

to the status of the pending DEC actions relative to the site.

Section 2. Approval.

In consideration of the suitability of the junkyard at the proposed location, the ability to comply with the licensing standards, regulations and requirements of the Junkyard Regulation and Licensing Law, and other reasonable regulations, the Town Board hereby approves the license to operate the facility in accordance with Phase 1, subject to the conditions set forth below.

Section 3. Conditions.

Based on all of the foregoing, and all of the evidence and materials submitted by the Applicant, the License for operating a Junkyard, and to operate as a Scrap Processor are hereby approved with the following conditions:

- a. This license is expressly conditioned upon confirmation that Phase 1 Record Plan, prepared by Jarrett Engineers, PLLC, as last revised on December 14, 2011, is an accurate depiction of the site with Phase I completed and the issuance of the Certificate of Occupancy. The confirmation required shall be in the form of a written approval from a duly licensed engineer. All costs associated with this review and approval shall be borne by the Applicant.
- b. No loaded trucks or product shall be left overnight outside of the fenced storage area.
- c. No product can be stockpiled outside of the fenced open storage, an enclosed structure, or as indicated on the approved revised site plan dated, December 14, 2011.
- d. Un-drained junk motor vehicles shall not be stored and/or stockpiled on Site.
- e. No junk motor vehicles shall be stored or processed on site until the Town Clerk has received copies of all applicable Municipal, State or Federal permits and/or approvals.
- f. No junk motor vehicles shall be stored or processed on site until the Emergency Access Road has been completed to meet the requirements of the Fire Department for emergency access.
- g. The terms of the Applicant's Site Plan approval, original license, subsequent renewals and all conditions attached therein, shall be conditions of this license renewal.

- h. Any changes or amendments to the original site plan approval, as amended by the record document submitted by Jarrett Engineers, PLLC last revised on December 14, 2011, or the addition of any new use at the Site shall require an amendment to this license.
- i. This license shall expire on March 31, 2014 pursuant to the Junkyard Regulation and Licensing Law.
- j. The environmental indemnity insurance shall be renewed with the Town being listed as an additional insured and the Applicant's affirmation that in the event they fail to make a monthly insurance payment, or the policy is changed in any way, or cancelled, to Town shall be provided written notice. The Applicant shall be responsible for having the Insurance Agent or underwriter submit monthly proof that the premium has been paid and the policy remains in effect. The final terms of the policy shall be approved by the Town's Attorney or the Town's insurance agent. Failure to comply with the insurance provision shall result in the immediate and automatic revocation of the licenses.
- k. The bond or letter of credit required pursuant to section 14 (A) of Junkyard Regulation and Licensing Law shall be reinstated in an amount not less than Twenty Thousand Dollars (\$20,000.00). The Applicant shall submit in an amount not less than Ten Thousand Dollars (\$10,000.00) on or before April 1, 2013. If the Applicant fails to submit the financial surety, they shall immediately cease all operations, accepting or processing any junk or scrap at the Site unless and until the financial surety is in place in a form acceptable to the Town. The Applicant shall submit the full Twenty Thousand Dollars (\$20,000.00) on or before May 1, 2013. If the Applicant fails to submit the full financial surety, they shall immediately cease all operations, accepting or processing any junk or scrap at the Site unless and until the financial surety is in place in a form acceptable to the Town. Failure to comply with the financial surety provision shall result in the immediate and automatic revocation of the licenses.

AYES

James T. Lindsay, Supervisor	X
Paul Bromley, Councilman	X, with reservation
William Collins, Councilman	X
Richard Doyle, Councilman	X
Henry Freebern, Councilman	X

Motion by Councilman Freebern, seconded by Councilman Bromley and carried by a vote of 5 ayes to enter into Executive Session at 9:20 p.m. to discuss litigation matter involving Royal Wood Shavings Manufacturing, Inc.

Motion by Councilman Freebern, seconded by Councilman Doyle and carried by a vote of 5 ayes to go out of Executive Session at 9:45 p.m.

There being no further business to come before the Town Board, **motion** by Councilman Bromley, seconded by Councilman Collins and carried by a vote of 5 ayes to adjourn the meeting at 9:46 p.m.

Respectfully submitted,

Holly E. Mabb, RMC/CMC

<http://www.kingsburyny.gov>