

The second regular meeting of the Kingsbury Town Board was conducted at 7 p.m. on September 28, 2015 at 210 Main Street, Hudson Falls, NY.

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

OTHERS PRESENT: Michael Graham, Superintendent of Highways
Todd Humiston, Dog Control Officer
Dana Hogan, Republican Candidate for Supervisor
Chris Boyark, Republican Candidate for 113th Assembly District

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

The minutes of the September 14, 2015 were accepted as submitted by the Town Clerk.

Supervisor Lindsay introduced Chris Boyark, a candidate for the 113th Assembly District. Boyark is from Mechanicville, New York, but grew up in Stillwater, New York. Boyark has been travelling in Washington County and there are common issues that are not being addressed in Albany. Boyark feels that we need a better voice and better representation in the State Assembly.

Supervisor Lindsay requested the Town Clerk read the Notice to Bidders for the supply and application of spray foam insulation for the new Town Hall on 6 Michigan Street. Supervisor Lindsay opened and read the bids as follows:

Eco Spray
Bid Proposal - \$31,665.00
Bid Proposal # 2 - \$24,515.00

North East Spray Foam - \$25,051.22
Alternate - \$6,818.35

Air-Tite Insulation Systems, Inc.
Option One - \$19,000
Option Two - \$14,000
Option Three - \$6,000

Vermont Creative Craftsman
Option 1 - \$44,365.70
Option 2 \$39,217.70

Project Manager, Paul Bromley will review the bids received and an award will be made at the Budget Workshop scheduled on September 29, 2015.

Attorney for the Town, Jeffrey Meyer stated that the resolution adopted for the approval of the junkyard license for East Side had not been included in the minutes. It is as follows:

TOWN BOARD OF THE TOWN OF KINGSBURY

COUNTY OF WASHINGTON, STATE OF NEW YORK

Resolution No. 10 of 2015

Adopted March 9, 2015

Introduced by **Councilman Doyle**

who moved its adoption

Seconded by **Councilman Freebern**

RESOLUTION APPROVING JUNKYARD LICENSE RENEWAL APPLICATION

OF

EAST SIDE USED AUTO PARTS

WHEREAS, pursuant to Chapter 174 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. License shall be effective April 1, 2015
- b. Proof of workman’s compensation insurance shall be submitted by March 31, 2015.
- c. The revised certificate of insurance with the Town being specifically named additionally insured, and therefore notified of any issues, changes, or cancellations to the policy, which shall be submitted by March 31, 2015.
- d. No loaded trucks or product shall be left overnight outside of the fenced storage area.
- e. 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.
- f. Un-drained junk motor vehicles shall not be stored and/or stockpiled on Site.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. This license shall expire on March 31, 2016 pursuant to the Junkyard Regulation and Licensing Law.
- l. The bond or letter of credit required pursuant to section 14 (A) of Junkyard Regulation and Licensing Law shall be in an amount not less than Twenty Thousand Dollars (\$20,000.00).

	<u>AYES</u>	<u>NAYES</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
James T. Lindsay, Supervisor	X			
Paul Bromley, Councilman		X		
William Collins, Councilman	X			
Richard Doyle, Councilman	X			
Henry Freebern, Councilman	X			

{Seal}

Cynthia A. Bardin, Town Clerk

Town of Kingsbury

LEGAL UPDATE from Town Attorney Jeffrey Meyer:

Cumberland Farms Article 7 has been discontinued.

Wheelabrator Hudson Falls, LLC vs. Board of Assessors and Board of Assessment Review of the Town of Kingsbury has been settled, the Judge approved the stipulation of settlement and the document has been sent to the Washington County Clerk for filing.

Baldwin/Hudson Falls LP has an Article 7 involving 2 parcels.

Rite Aid nothing new to report.

Commercial Net Lease up for review and analysis with the Town Assessor.

Supervisor Lindsay reported the work schedule had been finalized for the Upper Hudson River Revitalization Plan. The study will establish long-term sewer needs, a capacity cost and best options for sewer service. At this time there are projects on hold due to sewer issues. The project/study should be complete August 2016.

Supervisor Lindsay reported that Code Enforcement Officer, Ross Cortese may need assistance with Town Planning and Zoning Board Meetings to be held in October. Michelle Radliff, Code Enforcement Secretary has been absent since her surgery with no return to work date at this time. Supervisor Lindsay asked Cortese if Penny Ward, a Village Clerk, could help with the meetings and minutes.

Councilman Bromley spoke to Judge Keenan about the future floor plan of the New Town Court. Judge Keenan approved the original drawings Paul Bromley had provided earlier in the year. After discussion it was decided to eliminate the windows in the back of the Court Room to avoid any possible problems.

Dog Control Officer Todd Humiston reported he had started Phase II of the Dog Enumeration Program. It was decided not to enforce the enumeration fee because some residents had not received the mailer sent out in July. Humiston has enforced a 5-day written notice warning when finding an unlicensed dog. Supervisor Lindsay reported that Humiston is doing a great job getting the job done.

Supervisor Lindsay reported the IDA had issues with Royal Wood in regard to the retention ponds and wanting bigger trees at their site. Supervisor Lindsay reported the retention ponds had hosted two hundred year events without any problem. Also after reviewing the site plans the trees were as indicated in the site plans.

Councilman Doyle reported there will be a meeting to discuss water rates with Water Superintendent James Chase, Councilman Freeborn and himself on October 3, 2015. Lindsay stated the Town of Kingsbury has one of the lowest water rates around and eventually the Town will have repairs on the water system.

Councilman Bromley reported on the renovation of the new Town Hall at 6 Michigan Street. The roof is ready for shingles and when complete, work can continue inside to finish petitions and the wiring can occur. The exterior wiring must be complete before the spray foam insulation can be applied. The spray foam application will take approximately a week.

Councilman Freebern asked about the status of the sale of the former Dix Avenue Drive-In. After discussion it was decided a closing/end date for the purchase of the former Dix Drive-In Theater should be established. Attorney Meyer will reach out to John Lapper, attorney for Rich Schermerhorn who has contracted to purchase the property.

Superintendent of Highways, Michael Graham will start hauling sand next week to prepare for winter. He also reported a pick-up, motor & screen were sold at Auctions International for \$7,500.

Supervisor Lindsay reported the sales tax the Town receives from the County had increased by \$38,000 for the last two quarters of 2015 and the first two quarters of 2016.

There being no further business before the Board a motion by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5 ayes to adjourn the meeting at 7:50 p.m.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk