

**TOWN OF KIRKWOOD  
TOWN BOARD MEETING**

**June 1, 2021**

A regular meeting of the Kirkwood Town Board was held on June 1, 2021 at 6:00 PM at the Joseph A. Griffin Town Hall with Supervisor Lewis Grubham presiding.

Present: Supervisor Lewis Grubham  
Councilman Robert Weingartner  
Councilman William Diffendorf, Jr.  
Councilwoman Katie Legg  
Councilman Arthur Shafer

Also Present: Robert McKertich, Attorney  
Kelley Diffendorf, Town Clerk  
John A. Finch Jr., Commissioner of Public Works  
Jim Smith, Budget Officer

**PLEDGE OF ALLEGIANCE:**

**APPROVAL OF MINUTES:** May 4, 2021 Town Board Meeting

**PUBLIC PARTICIPATION:** None.

**COMMUNICATIONS:** None

**COMMITTEE REPORTS:**

**Dog Control Report.**

Councilwoman Legg reported numbers from the May Dog Control Report. A copy is filed in the Town Clerk's office.

**DISCUSSION:**

**John Finch's Truck.**

Supervisor Grubham said that John Finch will be staying at Belden Hill this summer. He will be driving his truck back and forth up there so if you get any calls about it you will know why. John Finch replied to Councilwoman Legg saying, I'll be up there during the week sometimes depending on the weather and the weekends.

**Cannabis Law.**

Supervisor Grubham said we need to opt in or opt out of allowing marijuana sales in the Town. If we opt out Kirkwood does not see any sales money. The County gets 4% of whatever the sales are and we would get 3% of that if someone actually sells it in Kirkwood. We could say yes, we are going to allow it, but if no one builds or sells it in Kirkwood we don't get any money at that point either. I had brought this up before but we didn't definitively say whether we wanted to do it or not do it.

Mr. McKertich explained by saying, we really need to decide whether we want to opt out. The law is going to allow retail sale of marijuana as well as on-site consumption sale of marijuana. That is going into effect next year. If we want we can opt out of that by adopting a local law prior to December 31, 2021. We are automatically in unless we opt out. If we opt in then it will be a legal business just like any other business, and they do have to comply with zoning laws just like any other business would. There are two different opt outs: one is the retail sales and the other is on-site consumption. We can opt out of both or one or the other. The best way to think of it is to draw an analogy to alcohol. Retail sales is like a liquor store, they are going to be selling it, selling marijuana retail. On-site consumption is similar to a bar, they are going to be going in, selling it there, and consuming it there and then they leave like you would a bar. We can opt out of one or both of those. There's a 9% total sales tax, 5% is the State tax, and 4% is a local tax. Of the 4% local tax, 1% goes to the County and 3% goes to the Town where the transaction took place. Mr. McKertich replied to Councilman Weingartner saying, if we opt out there would not be retail sales of marijuana in Kirkwood and there would not be on-site consumption of marijuana and you would also not generate the revenue from those. Mr. McKertich replied to Councilwoman Legg saying police will respond to calls there (again using the bar analogy) but it's not as if they are going to be stationed there at the location.

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Councilman Shafer said it should be included in the same sales tax structure we have in the County, where the municipalities share in the revenue of sales tax. They are not doing that, they are splitting it out. Sales tax is a sales tax at least that is the way I look at it. I wonder if this could be challenged. Supervisor Grubham said I don't think they consider this a sales tax. It's a special law with a tax on the marijuana. Councilman Shafer asked if we were in a position that we don't need that revenue. Supervisor Grubham said we still may not get it anyway if someone doesn't open a store here. Any budget that we do will be based on that we are not getting that revenue. Councilman Shafer said we need to look at both sides.

Councilman Diffendorf said, in my opinion I would opt out. I wouldn't get involved in it. Again, as I've mentioned before it's against the federal law. Just because New York passed it there is still a federal law that makes it illegal. We still don't know if the money from these sales can be put in a bank or not, because that is illegal under the federal law. As far as I'm concerned I'd opt out, I don't want any part of it. Councilman Shafer said I don't either, absolutely not. Mr. McKertich replied to Councilman Weingartner saying, you can opt out and opt back in at any time. Even after the end of the year you can still opt back in but you can't opt out after December 31, 2021.

Mr. McKertich said if we opt out we have to adopt a local law with a public hearing and it's subject to a permissive referendum. Supervisor Grubham said I will have Mr. McKertich go ahead and write up the law to opt out. Councilman Diffendorf said that is going to take a few months to process all of this. Councilman Weingartner said I'm okay with opting out. All were in agreement to opt out of both the retail sales and the on-site consumption sales. Supervisor Grubham asked Mr. McKertich to go ahead and start that process so we have time to do it before the end of the year. Mr. McKertich said he would get started on that.

**OLD BUSINESS:**

80:21  
Kirkwood  
Town Fair, Inc.  
Park Use

Councilman Diffendorf moved to adopt resolution pursuant to Section 3A(e) of Local Law No. 2-1976 entitled "A Local Law Regulating the Use of Parks of the Town of Kirkwood", authorizing the Town Clerk to issue a permit to Kirkwood Town Fair, Inc., for the use of the entire Kirkwood Veterans River Park on August 8, 2021 without any permit fee to guarantee proper clean up after each use. Councilman Shafer seconded.

Roll Call Vote:	Councilman Diffendorf	- yes
	Councilman Shafer	- yes
	Councilwoman Legg	- yes
	Councilman Weingartner	- yes
	Supervisor Grubham	- yes

MOTION CARRIED.

81:21  
Agreement with  
ACHIEVE

Councilman Shafer moved to adopt resolution authorizing the Supervisor to enter into an agreement with ACHIEVE for the 2021 Summer Camp Program, in accordance with the attached agreement. Councilwoman Legg seconded.

Roll Call Vote:	Councilman Diffendorf	- yes
	Councilman Shafer	- yes
	Councilwoman Legg	- yes
	Councilman Weingartner	- yes
	Supervisor Grubham	- yes

MOTION CARRIED.

82:21  
Agreement  
with Jones  
Repair of  
Air Stripping  
System

Councilwoman Legg moved to adopt resolution ratifying a resolution authorizing the Supervisor to sign an agreement with Jones Specialty Services Group for the Air Stripping System Rehabilitation at a cost not to exceed \$174,000.00, in accordance with the attached agreement. Councilman Weingartner seconded.

Roll Call Vote:	Councilman Diffendorf	- yes
	Councilman Shafer	- yes
	Councilwoman Legg	- yes
	Councilman Weingartner	- yes
	Supervisor Grubham	- yes

MOTION CARRIED.

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Councilman Weingartner moved to adopt resolution appointing Todd Grubham as Member of Board of Assessment Review for a term to expire September 30, 2025. Councilman Diffendorf seconded.

83:21  
Appoint  
T.Grubham  
BAR Member

Roll Call Vote:        Councilman Diffendorf        - yes  
                         Councilman Shafer                - yes  
                         Councilwoman Legg               - yes  
                         Councilman Weingartner        - yes  
                         Supervisor Grubham             - abstain

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution authorizing advertising for Sealed Bids for the Concrete Foundation for the Salt Barn, with bids returnable to the Town Clerk's Office on June 24, 2021 at 12 noon, and to be publicly opened and read at that time.

84:21  
Bids for  
Concrete for  
Salt Barn

Councilman Shafer seconded.

Roll Call Vote:        Councilman Diffendorf        - yes  
                         Councilman Shafer               - yes  
                         Councilwoman Legg               - yes  
                         Councilman Weingartner        - yes  
                         Supervisor Grubham             - yes

MOTION CARRIED.

**NEW BUSINESS:**

**Discussion.** John Finch said we had weather damage to the well roof at the treatment plant. The insurance company came out and wrote up a claim and noted we have a \$5,000 deductible. The total was about \$6,700 in cost from the insurance company to repair it. It left us to pay around \$1,700. We had a quote from Weathermaster Roofing. Al Glover reached out to a couple different companies and he never got a response. John Finch replied to Councilman Diffendorf saying Binghamton Slag didn't respond. Weathermaster is doing the work now. They ripped the rubber roof and part of the membrane right off the side and flipped it up on top of the gutter. Supervisor Grubham said I told John Finch to go ahead because the roof was visibly off the building. John Finch replied to Councilman Diffendorf saying it was a Thursday thunderstorm about 2 weeks ago. Supervisor Grubham said we needed to get it done quickly and if you take out what we are getting from the insurance company it was close to being able to do it without approval anyway.

Councilman Shafer moved to adopt resolution authorizing Weathermaster Roofing Co., Inc. to replace the Water Well Roof at a cost not to exceed \$4,380.00, in accordance with the attached quote. Councilwoman Legg seconded.

85:21  
Repair of  
Water Well  
Roof

Roll Call Vote:        Councilman Diffendorf        - yes  
                         Councilman Shafer               - yes  
                         Councilwoman Legg               - yes  
                         Councilman Weingartner        - yes  
                         Supervisor Grubham             - yes

MOTION CARRIED.

Councilwoman Legg moved to adopt resolution approving the Standard Work Day and Reporting Resolution for Elected and Appointed Officials for Cynthia French as Dog Control Officer and Member of Zoning Board of Appeals, in accordance with the attached resolution. Councilman Weingartner seconded.

86:21  
Retirement  
C.French  
Dog CO and  
ZBA

Roll Call Vote:        Councilman Diffendorf        - yes  
                         Councilman Shafer               - yes  
                         Councilwoman Legg               - yes  
                         Councilman Weingartner        - yes  
                         Supervisor Grubham             - yes

MOTION CARRIED.

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87:21  
Justice Court  
Records Audit

Councilman Weingartner moved to adopt resolution acknowledging that the calendar year 2020 examination of the Justice Court records and dockets were examined and the fines collected, per the two justices, have been turned over to the proper officials of the Town as required by law, pursuant to section 2019-a of the Uniform Justice Court Act. Councilman Diffendorf seconded.

**Discussion.** Supervisor Grubham asked Jim Smith if he'd like to comment about it. Jim Smith said this a requirement from Albany. We have the examination adopted by the Board and we have a resolution saying we received copies of the report. That copy goes to Albany along with the resolution.

Roll Call Vote:	Councilman Diffendorf	- yes
	Councilman Shafer	- yes
	Councilwoman Legg	- yes
	Councilman Weingartner	- yes
	Supervisor Grubham	- yes

MOTION CARRIED.

**Discussion.**

**Lease of FEMA Buyout Properties.** Councilman Weingartner explained the next three resolutions are authorizing the Supervisor to execute a lease for three different properties near the river. They include: 39 Bridge Street to Michelle M. Goff, 15 Kirkwood Gardens Drive and 17 Kirkwood Gardens Drive to Sixto Martinez, Jr. Councilman Weingartner said all these properties are for people that are adjacent property owners. These are under the hazardous mitigation program and are FEMA funded buyouts from the 2011 flood. I want to send out these three leases to the State. The State approves it and then the State sends it to FEMA and then FEMA sends it back to us.

Councilman Diffendorf said I have some questions about 39 Bridge Street to Michelle Goff. As you go down the road in there does she own the property to the right, where the motorcycles and that are run, Councilman Weingartner answered yes. Councilman Weingartner replied to Councilman Diffendorf by saying she wants to lease the property to the left. Councilman Diffendorf said there is another property beyond that where the chimney is located. Supervisor Grubham said Linda Spear called me and she is selling that property, but the right away to get to that property goes through this piece of property (39 Bridge) to get to the road the County owns. We had blocked that off some time ago because people were going down there and dumping garbage and junk. I had John Finch go down and take those blocks out the other day because they need to use that road because that is the right of way to the other piece of property. Councilman Weingartner replied to Councilman Diffendorf saying, by leasing this it does not stop the right of way. Councilman Diffendorf said I ask because about a month ago a gate was put across that road way. Supervisor Grubham said the gate is gone because I called the County and they said they were sending security to take the gate down. It is government property and you can't just gate off government property. There should be more traffic down there so maybe it will be a better situation by having more people around.

Councilman Diffendorf asked about the run down trailers that are on the piece of land that was the trailer park at one time. Supervisor Grubham said Chad Moran makes them move those trailers out of there during the flood season. We have that in our law regarding what the dates are, and they do move them. Run down or not we can't do much about that. Councilman Diffendorf said I understand, but if they are using them or not is my question, I don't know if they are. Councilman Diffendorf asked if we have the right to make people move those trailers. Supervisor Grubham said we do, because they are in the flood plain. According to FEMA rules technically anywhere you have a trailer that is in the flood plain it has to be moved out for certain dates. Councilman Diffendorf asked when the trailer park land was put in the flood plain. Because the trailer park couldn't have been there if it was in the flood plain. Supervisor Grubham said a portion of it had to be in the flood plain. Councilman Diffendorf said I'm not sure that is the flood plain. There were trailers all along the river edge back then. Councilman Diffendorf said I don't think you can make them move out of there. They have never passed these new rules. Supervisor Grubham said I would have to look at how it is worded in our code book. It's not just there, they do it up in Riverside too. Councilman Weingartner said I think previously it was mobile homes, which are considered different than campers. John Finch said there is something in our

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code book which allows for seasonal camping. Chad Moran said you can camp for six months during the year at a time. You can't have your mobile camper on a lot for more than 6 months out of the year. John Finch replied to Councilman Diffendorf by saying I believe that is how it is stated, I'm not 100% sure. It doesn't have anything to do with the flood plain, it has to do with it being a camper.

John Finch said there was an issue on Riverside Lane in the past. It was one lot and had six or seven campers on it. They had their own little community. So it was determined there could only be one camper for six months of the year on each lot. It was next to Bob Hamm's property. Councilman Diffendorf said I want to get this cleared up in my mind because stuff is going on there. Supervisor Grubham said it's probably a good thing those trailers are not allowed to stay there because if they got caught up in a flood and start floating down the river you will have more problems downstream.

Councilman Shafer said it's a shame because that trailer park property is being wasted. It would make a great KOA campground. You have water and sewer down there. Supervisor Grubham said I don't know what kind of shape those things are in anymore. Supervisor Shafer said I think they could probably be fixed. Supervisor Grubham said a private company would have to do that.

Councilman Weingartner moved to adopt resolution authorizing Supervisor to execute lease of property at 39 Bridge Street to Michelle M. Goff subject to permissive referendum per attached resolution. Councilman Diffendorf seconded.

88:21  
Lease FEMA  
Property  
39 Bridge St

Roll Call Vote:      Councilman Diffendorf      - yes  
                         Councilman Shafer                      - yes  
                         Councilwoman Legg                      - yes  
                         Councilman Weingartner                - yes  
                         Supervisor Grubham                      - yes

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution authorizing Supervisor to execute lease of property at 15 Kirkwood Gardens Drive to Sixto Martinez, Jr. subject to permissive referendum per attached resolution. Councilman Shafer seconded.

89:21  
Lease FEMA  
Property  
15 Kirkwood  
Gardens

Roll Call Vote:      Councilman Diffendorf      - yes  
                         Councilman Shafer                      - yes  
                         Councilwoman Legg                      - yes  
                         Councilman Weingartner                - yes  
                         Supervisor Grubham                      - yes

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution authorizing Supervisor to execute lease of property at 17 Kirkwood Gardens Drive to Sixto Martinez, Jr. subject to permissive referendum per attached resolution. Councilwoman Legg seconded.

90:21  
Lease FEMA  
Property  
17 Kirkwood  
Gardens

Roll Call Vote:      Councilman Diffendorf      - yes  
                         Councilman Shafer                      - yes  
                         Councilwoman Legg                      - yes  
                         Councilman Weingartner                - yes  
                         Supervisor Grubham                      - yes

MOTION CARRIED.

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**AUDIT AND PAYMENT OF CLAIMS:**

91:21  
Audit/Pay

Councilman Weingartner 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 # 21-000614 through # 21-000736 in the total amount of \$ 191,000.54, which includes prepaid claims as authorized by resolution adopted January 5, 2021. Councilwoman Legg seconded.

Roll Call Vote:	Councilman Diffendorf	- yes
	Councilman Shafer	- yes
	Councilwoman Legg	- yes
	Councilman Weingartner	- yes
	Supervisor Grubham	- yes

MOTION CARRIED.

**ADJOURNMENT:**

Councilman Weingartner moved to adopt resolution to adjourn the meeting. Councilman Shafer seconded. All voted in favor.

MOTION CARRIED.

Meeting adjourned at 6:27 PM

Respectfully submitted,

Kelley M. Diffendorf  
Town Clerk