

**TOWN OF KIRKWOOD  
TOWN BOARD MEETING**

**November 4, 2019**

A regular meeting of the Kirkwood Town Board was held on November 4, 2019 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.

Absent: Councilwoman Linda Yonchuk

Also Present: Robert McKertich, Attorney  
Gayle Diffendorf, Town Clerk  
John A. Finch Jr., Commissioner of Public Works  
Marchie Diffendorf, Planning Bd. Chairman  
Duane Travis, ZBA Chairman

**PLEDGE OF ALLEGIANCE:**

**APPROVAL OF MINUTES:**

October 1, 2019 Town Board Meeting, October 1, 2019 Public Hearing  
October 29, 2019 Public Hearing, October 29, 2019 Special Town Board Meeting

**PUBLIC PARTICIPATION:** None.

**COMMUNICATIONS:** None.

**COMMITTEE REPORTS:**

Marchie Diffendorf reported that a meeting will be held with Canopy Growth on November 6<sup>th</sup> prior to the scheduled Planning Board meeting on November 12<sup>th</sup>.

In regard to Canopy Growth and the proposed tower that they are considering putting in near the race track, Supervisor Kniffen questioned if there isn't some Town expense in getting these processed and if we shouldn't be billing them. In regard to the proposed tower, Councilman Grubham said the building permit is \$1,000 and they are also supposed to deposit with us \$10,000 in escrow to be used for engineering fees, etc. If the expenses amount to more they have to replenish it, and if it's less we refund the difference. Canopy Growth has to get a building permit and for such a large building the fee will be quite substantial. They do pay for advertising. Supervisor Kniffen said we got our engineer involved with Canopy Growth so we should bill them for that. Councilman Grubham said the building permit should cover that. Supervisor Kniffen said we have a local law that people have to pay at least a percentage of the costs when they want to do business in Kirkwood, so why wouldn't we bill them since they want to do business here and make money and yet they need our engineer to get through it. Why should we pay for the engineer? Councilman Grubham said they have their own architect and engineer who supply information to both Chad and the Planning Board. The way it's worked in the past is if we required our engineer to review that then we had to pay for it. Mr. Diffendorf agreed and said with a big project like this with a long EAF we would need the engineer. Supervisor Kniffen asked Mr. McKertich to take a look at that. He said it seems to me if the local law doesn't include some of these things then it should. Councilman Weingartner said I think that the size of the projects in the past haven't been that big and back in the day when we had an engineer on board it was part of what their job was and now it's pay as we go so it's a little different. Councilman Grubham said we would have to let Canopy Growth know why we think our engineer should be involved since they have their own engineer and architect. Mr. Diffendorf said Chad brought our engineer in on this project and I agree 100 percent because of the long EAF and he is in charge of SWPPPS permits. Councilman Grubham questioned what the building permit fee covers, if it doesn't include the cost of our engineer. Mr. McKertich said usually the way it works is the building permit is just for the standard administrative expenses involved in processing a building permit application. I have a sense that when we look at the Professional Fees Local Law

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it's going to be based around the notion of some unusual or extraordinary expense the Town has to undertake and under those occasions we can charge the applicant. The Telecommunications Local Law is different because that's a whole process built right in.

**OLD BUSINESS:**

160-19  
Adopt 2020  
Budget  
GF, Hwy, Fire

Councilman Diffendorf moved to adopt resolution after a Public Hearing, Adopting Annual Budget for 2020, in accordance with the attached resolution. Councilman Grubham seconded.

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

MOTION CARRIED.

161-19  
Sched PH  
2020 W&S  
Budget

Councilman Grubham moved to adopt resolution scheduling a Public Hearing for November 26, 2019 at 6:00 PM on the Year 2020 Water & Sewer Budget. Councilman Weingartner seconded.

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

MOTION CARRIED.

162-19  
Sced PH  
2020 Fire  
Contracts

Councilman Weingartner moved to adopt resolution scheduling a Public Hearing for November 26, 2019 at 6:05 PM on the Year 2020 Fire Contracts. Councilman Diffendorf seconded.

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

MOTION CARRIED.

163-19  
Share Equip  
Agreement  
Br County

Councilman Diffendorf moved to adopt resolution authorizing the Supervisor to enter into an Intermunicipal Agreement with Broome County regarding Sharing Use of Equipment, in accordance with the attached agreement. Councilman Grubham seconded.

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

MOTION CARRIED.

164-19  
2018 Court  
Records  
Examined

Councilman Grubham moved to adopt resolution acknowledging that the calendar year 2018 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 Weingartner seconded.

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

MOTION CARRIED.

165-19  
Sched PH  
Amend Zoning  
LL, Regs &  
Ordinances

Councilman Weingartner moved to adopt resolution scheduling a Public Hearing for November 26, 2019 at 6:10 PM on A Local Law Amending the Zoning Local Law, Regulations, and Ordinances. Councilman Diffendorf seconded.

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

MOTION CARRIED.

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Councilman Diffendorf moved to adopt resolution scheduling a Public Hearing for November 26, 2019 at 6:15 PM on Amending the Parks Use Law. Councilman Grubham seconded.

166-19  
Sched PH  
Amend Parks  
Use LL

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

MOTION CARRIED.

Councilman Grubham moved to adopt resolution authorizing Chad Moran to attend the STBOA Training/Quarterly Meeting a Tioga Downs Resort on Tuesday, December 3, 2019 and Wednesday, December 4, 2019, at a cost of \$155.00, with all reasonable expenses paid. Councilman Weingartner seconded.

167-19  
C. Moran  
Code Training

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

MOTION CARRIED.

Councilman Weingartner moved to adopt resolution authorizing the Transfer of Funds, in accordance with the attached Budget Adjustment Sheet. Councilman Diffendorf seconded.

168-19  
Transfer Funds

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

MOTION CARRIED.

**Discussion – Cemeteries. (GEK)**

Supervisor Kniffen said we have private cemeteries in Kirkwood, in the Village, Riverside, Upper Court Street and Old State Road. The Water and Sewer Department takes care of the cemeteries on Upper Court Street and Old State Road. The Conklin family, who live in Conklin, have taken care of the Riverside Cemetery for many years. Councilman Diffendorf manages the Kirkwood Cemetery in the Village. They rely on donations and what they get for burials and they are certainly not-for-profit and no one gets paid. The Conklins came to us because there are financial problems with the cemetery, questioning if there is anything we can do. Our legal department looked into that and said we can as long as they meet the law that they are non-profit. Members of the Conklin family are the officers from the President to Trustees (additional Trustee are needed), and they said it was incorporated in 1914 and New York State will be sending them proof of this. They are asking for about \$1,500 a year.

Councilman Diffendorf provided a copy of the Kirkwood Cemetery's Certificate of Incorporation from 1916. He said I've been the President for 46 years, Art Shafer is the Vice-President, my wife, Cathy, is Treasurer and Eli Grubham, Bob Blake, Don Hall, Bev Osterhout and Bobbi Vaseleck are on the Board. We meet every three years or so. We are better off than some cemeteries but I try to manage the money very closely. There's a lot we could do with \$1,500; fencing and stone repair, etc. Riverside uses the prisoners to mow but that's not on a regular basis, only when they have the opportunity. Mr. McKertich said I need to look at the Certificate to see if they are incorporated under the right section of the Non-for-Profit Corporation Law that will allow a municipal donation. I'm sure there's a way to make this work.

Councilman Diffendorf noted there is one more cemetery in Kirkwood on Colesville Road on the Town line. At least some of it is in Kirkwood. I went and checked it out, and it's still an active cemetery. In response to Supervisor Kniffen, Mr. Finch said I would have to check out the cemetery to see how much work it would be for the Water and Sewer Department to take over the maintenance since they are very busy with mowing vacant flooded lots.

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**NEW BUSINESS:**

Councilman Diffendorf moved to adopt resolution scheduling a Public Hearing for November 26, 2019 at 6:20 PM on the 2020 Sewer Rents. Councilman Grubham seconded.

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

MOTION CARRIED.

**Discussion – Proposed Canopy Growth PILOT. (GEK)**

Supervisor Kniffen explained that PILOTs are Payment in Lieu of Tax agreements, and anyone going through The Agency doesn't have to pay taxes so they come up with a PILOT. Most of the time The Agency puts in their own standard PILOT and hold a public hearing and people can speak to it. Sometimes we can get involved ourselves and add to the PILOT. We will go to the public hearing. I'd like to see if they would consider adding jobs to it since we are going to give them a break on their taxes. It was noted that was done in the past with the L-3 building for Modern Marketing with Supervisor Kniffen stating we did that on our own, but it never took off.

To clarify, Councilman Diffendorf asked if he is correct in assuming they are going to get taxed at \$4,638,700 and pay everyone with the exception of the fire tax, which will be based on \$7,543,000. Councilman Grubham said my understanding is the fire tax is constant, it's not subject to a PILOT, and they have to pay on the full amount. Supervisor Kniffen will check on that.

**Discussion – Hiner Road.**

Supervisor Kniffen explained that Kirkwood suffered the most damage of anyone in Broome County in the August 2018 flood with \$2.5 million damage to our infrastructure, especially to Hiner Road. He said Hiner Road is unique because most of it is owned by the City and we get involved with some of it. The road was impassable because it was so badly damaged. There are seven homes in Kirkwood on Hiner Road and the only way those people could get in and out was to take them on a route that went through Windy Hill and in order to do that they had to go through private property. You normally have to wait for FEMA and if you can't wait for FEMA you have to find the money and we're talking about a lot of money. What happened is it got so much Press that a call came from Albany to the local DOT and even though it wasn't DOT's problem, they went in there and cleared the way so people were able to get back and forth right away. What normally happens when there are floods and FEMA is involved is FEMA doesn't want to keep paying over and over so they want to know if they help you out today you're going to take care of things for tomorrow by trying to minimize or eliminate any future flood damage. The City of Binghamton hired Shumaker Engineering to do a study about how to fix this situation and what they came up with was a \$1.5 million project which would pretty much do away with Hiner Road. At the upper part of Hiner Road they suggested putting a road in from Hiner Road to Krager Road, which is all in Kirkwood, so that would be a brand new road. Also they would clear the way for the base of Hiner Road and any peripheral damage that needed to be fixed.

Supervisor Kniffen reviewed that it's a \$1.5 million project that would close off lower Hiner Road and add a new road from Hiner to Krager. If that road goes in it would be Kirkwood's road. At this time we don't know who owns the property, and they might not want to sell it. If the road did go through there, there might be some pluses on taxes because maybe there would be some new homes along the new road. If we look at the \$1.5 million project, the estimated cost to remove lower Hiner Road would be \$150,000. The cost is estimated at \$800,000 to clear the streams and waterways along Hiner Road so that total is \$950,000. FEMA only pays 75 percent which would be \$712,500 and would leave a balance of \$237,500. NYS and the City would each have to pay 12 ½ percent, or \$118,750 each. The estimated cost of the land acquisition for upper Hiner Road is \$500,000. FEMA's share would be \$412,500, and NYS and the City would each pay \$68,750. The question then is does Kirkwood contribute and that's what we have to decide. If we split the \$68,750 with the City 50/50, it would be \$34,375. The total for the

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2020 Sewer  
Rents

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City would be \$153,000. With a new road there will be maintenance but we're only talking about a quarter of a mile road so there will probably be low maintenance in the early years and there will be snow removal.

Supervisor Kniffen said in my mind we have seven residents up there and if there is another catastrophe we're going to have the same problem as we had in 2018, so that's why we should do something. I don't know if the public knows what's going on up there, but I think we should do something and I think our residents would think we should do something to make sure that happens.

In response to Councilman Diffendorf, Supervisor Kniffen said we're sure the State is going to pay the 12 ½ percent and FEMA will pay 75 percent. My feeling is the City would like us to contribute as much as possible and I feel our total payment would be \$34,375. Councilman Weingartner questioned how the City can do this when it's privately owned property. They can fix the bottom of the road which is in the City of Binghamton but how can they build a road where it's not a part of their municipality. Mr. Finch and Supervisor Kniffen both responded that they need our approval to do this. Mr. Finch said it will be our road when it's completed. We haven't addressed who will be involved in acquiring the property. Mr. Finch said John Mastronardi will check on the estimated costs to see if those are correct numbers since he thought \$800,000 to clear the streams was high for what they were talking about doing. Those numbers are pretty much guesstimates right now and it will have to go out to bid.

Councilman Diffendorf questioned if the property owners were polled and they weren't all for it, how it would be handled. He said this would involve residents on Krager Road as well. Supervisor Kniffen said I didn't think we would involve the residents because I think they would like this to be done to make sure they won't be marooned again. Councilman Diffendorf said there might be people who won't want to go a longer route. It may or may not happen again and you can't protect for every incident. There might be a concern with people that they can't get up Krager Road when it's slippery. We don't know what the people up there will think about this. As far as I'm concerned if those people say they want that road to stay open then that would be my opinion too. Supervisor Kniffen said the only way we're involved is with the new road since Hiner Road is in the City of Binghamton and if they say they're going to close that road they can. Councilman Diffendorf said they can't do that unless there's an alternate route and there's not one until we say they can do that. I think the residents should have the voice on this. Supervisor Kniffen said we'll pass that on to the City of Binghamton. I feel like we have to do something.

Councilman Grubham said my concern last time was, we're not going to be responsible for the plowing and maintenance of that road forever, so we will have an expenditure if we're going to contribute by doing that. If we're doing that there's no more expense to the City or FEMA, it's all our expense going forward. Supervisor Kniffen said that's a good point, but we're talking about a quarter of a mile and there won't be maintenance for quite a while. Councilman Grubham said I'm not against contributing, I just want everyone to understand that once this is all done we're paying the bill from that point on and maybe that should be put into the equation. Councilman Diffendorf said there will have to be a cul-de-sac on the lower end to do that. Mr. Finch said either that or the new thing is a "T" instead of a cul-de-sac. Our engineer pointed out that some of the towns are going with just a "T" where you pull in, back up, and turn around instead of wasting all that blacktop on a turn. Councilman Kniffen noted a concern about having room enough for that as well as the additional expense.

Mr. McKertich asked if the \$1.5 million includes the land acquisition costs. Supervisor Kniffen said that it does, it was put in as fair market value.

Supervisor Kniffen said a decision does not need to be made tonight. Mr. Finch said I think they just want to know if we're interested in possibly putting in the new road. Supervisor Kniffen said if we say we don't want that road I think it's a dead issue. Councilman Weingartner said I think what the people want is the real issue and it's a huge thing. Supervisor Kniffen said it is, but on the other hand, if you're the City of

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Binghamton and it happens again and FEMA says you didn't do anything, you're going to pay for the whole thing. Councilman Diffendorf said we lost Brink Road in almost every flood and they still gave us the money. It's a dead end road just like Hiner Road. It's the only way in or out. Supervisor Kniffen said maybe there's nothing we can do to change that situation. Councilman Diffendorf said there could be an option for an alternate route, that the end of Brink Road could be extended the way it used to go.

Councilman Grubham asked Mr. Finch if he could give us some idea of what the yearly costs might be for plowing and whatever maintenance we might have to do. It would be good to know because we're taking care of the problem solving for the City. He also questioned if they are going to take Hiner Road out if this is done even though it's still operational. Mr. Finch said in order for FEMA to pay for it they would have to remove everything on lower Hiner. It would be hard to get a number on something like that. What it comes down to is it's a headache for the City. They don't have many roads that are like that in the City and don't know how to deal with it. It would basically be their Highway Superintendents telling the Mayor that we don't want this road; whatever it takes to get rid of it. I think the Mayor will agree with them once they speak to him about how much of a problem it is with the ditches, etc. He noted that the City's Highway Superintendent is frustrated with the number of calls he gets from people up there with driveway issues, etc. When ideas were discussed after the flood about the City buying properties and putting in a road, people were against it then just because of the fact that it would now be a dead end the opposite way and would be more of an inconvenience to go up and around and over to Krager.

Supervisor Kniffen said we will revisit this at the next meeting.

**AUDIT AND PAYMENT OF CLAIMS:**

Councilman Grubham 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 # 19003367 through # 19003555 in the total amount of \$ 667,586.85, which includes prepaid claims as authorized by resolution adopted January 2, 2019. Councilman Weingartner seconded.

**Discussion:** In regard to the voucher for the 2018 Airflow side dump, Councilman Diffendorf asked Mr. Finch what else comes with the box. Mr. Finch said the tarp, live floor with the hydraulics with the side tilt, the spinner and motor. It includes the wing and head plow also. Mr. Finch responded to Councilman Diffendorf that we need the wing and head plow because we sold the wing and the head plow with the other one and we didn't get a 2019 Airflow side dump because that's probably what they had in stock. They stopped making those Airflow boxes, they're going with Tarco boxes from now on. The Airflow is the one we preferred since we've had such good luck with them. Airflow is still in business and we will be able to get parts for it.

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

MOTION CARRIED.

**ADJOURNMENT:**

Councilman Weingartner moved to adopt resolution to adjourn the meeting. Councilman Diffendorf seconded. All vote in favor.

Meeting adjourned at 6:55 P.M.

Respectfully submitted,

Gayle M. Diffendorf  
Town Clerk

170-19  
Audit/Pay