

TOWN OF KIRKWOOD WORK SESSION

October 29, 2019

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

1. **Robin Laabs, Director of Purchasing – Broome County 2020 Budget Summary.**

On behalf of Broome County Executive Jason Garner, Robin Laabs, Director of Purchasing for Broome County presented a summary of the County's proposed 2020 budget. She said the County Executive continues to work to provide tax relief to the residents of Broome County. For the second year in a row Executive Garner proposed a tax cut and the recommended budget still maintains all critical programs and services. His recommended County budget for 2020 is \$401 million. The budget plan includes a tax cut reducing the county property tax levy by .51 percent. The County Executive also addressed his commitment to continue to work with municipalities in Broome County. He is once again proposing no change to the sales tax formula for 2020. He continues to build a healthy fund balance, which is now at \$6.5 million. We have an A+ bond rating and are no longer on the fiscal stress list. He is making major investments in infrastructure and public safety. There will be an addition of three new deputies for the Sheriff's Office and two new security positions for Broome County. It also includes a new county-wide communications network servicing the fire, police and emergency service agencies. Executive Garner also highlighted the new Workforce Development facility at the Oakdale Mall in Johnson City which will help to get the 3,000 open jobs in our community filled. There will also be the opening of the new Veterans Resource Center at the former Vestal Hills Country Club in the Town of Binghamton. We will be working with the Legislature in the coming week to move forward in adopting this recommended budget.

In response to a question from Supervisor Kniffen regarding the status of the Binghamton Airport, Ms. Laabs said we all know the airport has had some difficulties in the past few years and currently Delta is the only airline with three flights a week. We brought in some subject matter experts and we put out a proposal globally for anyone who would be interested in managing the airport. There are not that many companies that do that but we received one very good in-depth proposal from a company called AvPorts, which runs several other airports in the State. Although their proposal was very good, it was basically to keep the status quo. We already have an excellent staff, and we've already reduced everything that we could. The only

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difference they proposed was to go with a different person within the company that we already have for marketing, to try to find different airlines. We had a very diverse team of twelve on the evaluation committee. The decision was to stay the course at least for the short term. We do now have a new marketing company called Volare and we're very hopeful that we're going to get some interested airlines to come in. There are several new low-cost carriers looking for operations and we're reaching out to those.

Ms. Laabs confirmed that DSS is going into the Oakdale Mall very soon along with Workforce Development.

Councilman Diffendorf said Trim Street is a County road that we've asked about being paved and having some maintenance done because it's in rough shape. It's a main County road which they grader patched, which only gives you rumble strips. I've seen some of the paving the County has done on other roads and it seems to me that this road should have had some care given to it, drainage wise and a new surface. Also, near the underpass at Route 11 and Main Street the State just put in a new culvert that will not restrict any debris or water so this will all end up at the underpass and that pipe cannot begin to take it. Has the State been in contact with the County about this? This is a big change and will cause big problems. Please take both of these issues back to the County. Ms. Laabs will look into this and report back to Supervisor Kniffen.

2. **Hiner Road Project.** (GEK/JAF/JM)
Held.

3. **Bids – Foley Road Creek Stabilization FEMA Project.** (JAF)

Mr. Finch said we had the bid opening for the Foley Road Creek Stabilization Project which is at the gun club and C.R. Weeks School. The low bidder was Byler Excavating at \$51,235. Our Engineer noticed some discrepancies with their bid. They failed to execute and submit a page for the Bid Form Unit Price, the Bid Form Supplements, Appendix A, List of Subcontractors, and their bid bond appears to be a copy and does not contain original signatures or seals from the surety nor the contractor. Therefore he is recommending that we reject their bid and go with the next lowest responsible bidder which is Gorick Construction at a cost of \$74,140. Our Engineer looked over all their documents and everything looks good. The estimate for this job was \$131,000. Councilman Grubham said they had to submit bid bonds and questioned how this works with Bylar, who didn't submit a proper bid bond. Mr. McKertich said that was just one of the reasons justifying the rejection of the bid. Councilman Grubham questioned if they didn't submit it properly if we take the bid bond back. Mr. Finch said the bid bond requirement was 10 percent of the bid. Councilman Grubham said when you submit a bid bond that's a guarantee that you will take the project for the bid submitted. Mr. McKertich said I view it as that would be justification to reject the bid but not to take the bid bond. This isn't a situation where we have to re-bid the project, we can just move right on to the next qualified bidder and

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get the project done without any delay. Councilman Grubham said if that's the case anyone can submit a bid and say later they made a mistake if they want to back out. That's why you have bid bonds. Mr. McKertich said that's right, but what's the harm to the Town. So I would recommend this as a two-stop process, a vote to reject the Bylar bid and a vote to award the bid to Gorick Construction. I can review whether or not we have grounds to take the Bylar bid bond. Councilman Grubham said under most circumstances they would have to forfeit the bond and it is going to cost us \$25,000. Two resolutions are needed.

4. Discussion – Trash Rack – FHWA Project (Popes Ravine). (JAF)

Mr. Finch said we're looking into putting a trash rack in above the pipe that crosses under Fairview that caused all the damage. We have prices from Bothar and ZMK. Gorick said they didn't have time to do the job. The lowest bid was from Bothar for \$4,800. I would like to get approval tonight so we can get that done as soon as possible. Councilman Grubham said I think we should be doing this and still checking that creek every so often because it will help, but it won't eliminate all the flooding. We've checked the pipes and agree that they're plenty big enough. Mr. Finch said we'll be taking out some of the gravel in front of the pipe now but we're going to put the trash rack up far enough where it's not going to be right in front of it. Resolution.

5. Discussion – Update on Sale of 2007 Volvo Truck. (JAF)

Mr. Finch reported that the auction ended last night and the highest the bid was \$29,100. I counter offered at \$65,000 but I'm pretty sure the buyer won't accept that. The Town of Rensselaerville sent us a Commitment Letter last week to purchase the Volvo for \$65,000 so we'd like to sell this truck to them for that price. We actually made an extra \$25,000 on that truck selling it outright. They will be here to pick it up sometime next week. Resolution.

6. Discussion – Replacement of 1985 Army Truck. (JAF)

Mr. Finch said we currently have a 1985 Army truck in service that went through the flood last year and we've had electrical issues with it. I'd like to upgrade that to a newer truck and bid on a 2015 Ford F350 dump truck on the auction site. I'm thinking it's probably going to go for around \$30,000 to \$35,000. The Town of Venice owns the truck and we are going there to look at the truck tomorrow to make sure it's in good shape. It has new brakes and tires and just needs some paint on the dump box. I'm looking for the Board's approval to bid on this truck. We got about \$25,000 more than we thought for the Volvo and we can probably sell the Army truck at auction for about \$4,000 to \$5,000, so with the extra \$30,000 it would just about pay for this truck. We have a plow to put on the truck and will be able to sell the plow that comes with it for about \$1,500. The truck has 46,000 miles on it and painting the box black is the only work that would need to be done. It was noted that a new Ford F350 would cost about \$57,000. Following discussion as to how much Mr. Finch would be authorized to bid, \$32,000 was decided on plus the additional 10 percent buyer's premium. Resolution.

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7. **Resolution scheduling a Public Hearing for November 26, 2019 at 6:00 PM on the Year 2020 Water & Sewer Budget. (GEK)**

Resolution.

8. **Resolution scheduling a Public Hearing for November 26, 2019 at 6:05 PM on the Year 2020 Fire Contracts. (GEK)**

Resolution.

9. **Discussion – Cemeteries. (GEK)**

Supervisor Kniffen explained that in Kirkwood we have the cemetery in the Village, one in Riverside, and two small cemeteries on Old State Rd. and Upper Court Street. The Riverside Cemetery has been maintained by the Conklin family who live in Conklin. In regard to why they are managing that cemetery, I think it goes back in time to possibly when we were Conklin. I think once they started it they just kept on doing it and we appreciate it. Councilman Diffendorf manages the Kirkwood Cemetery in the Village. The Water Department maintains the two smaller cemeteries. The Conklin family said they do not have a lot of contributions and are running out of money to maintain the cemetery and questioned if there is any way the Town could consider that. I also talked to Councilman Diffendorf about that and while it may not be as critical for his cemetery, he still has to work with that all the time. Mr. McKertich said we are pretty sure the Riverside Cemetery is incorporated under the proper section of the not-for-profit corporation law and as long as they are then the municipality can donate money for maintenance. Supervisor Kniffen said the Conklins are trying to find the records in that regard. Mr. McKertich said they would have to be incorporated under the proper section so they will have to find that or maybe they can re-incorporate and that would qualify for donations. Supervisor Kniffen said I think we should support these cemeteries. These are citizens that don't get paid but care enough about the Town to do it. Councilman Grubham asked if there is an estimate of their costs. Supervisor Kniffen said they told him they would need about \$1,500 a year and that's not a lot of money. Councilman Diffendorf said that would be a good amount for the Kirkwood Cemetery as well. We're able to maintain the cemetery in the Village and keep our head above water. In New York State the tough costs are for compensation insurance, bonding insurance to have the Treasurer bonded, which is \$500 or more, and liability insurance. These are all non-producing things that take a lot of money. Most cemeteries now don't have compensation insurance because they can't afford to pay it, they just go without it. In Riverside, they rely mostly on prisoners to mow. We do not do that yet. None of these small cemeteries can afford to pay \$2,000 a year. Councilman Weingartner said I saw something on-line or somewhere dealing with old cemeteries and trying to fund raise. I will look into that. The Democratic Club has helped maintain the Upper Court Street cemetery by Truckstops. Councilman Diffendorf added that we need a new fence but they cost a lot. We spent over \$6,000 for tree removal. That meant we had to slow down what we did for a while, to rebuild some funds. We need to expand and that's not going to be easy unless we do get some real money.

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Supervisor Kniffen suggested that between now and next week we all think about if we want to do this and if so how much would we want to appropriate to our cemeteries.

10. Discussion – Broome County Shared Equipment Agreement. (GEK)

For the last few years shared services has been part of the NYS budget but it is not new to us or any of the municipalities in Broome County. We've been doing that a long time. It's nothing formal or in writing, it's just that we work together and there is no money that crosses hands. The County and NYS want something more formal so the latest thing is a shared equipment project spearheaded by the County. They are looking for all the municipalities to join them. We certainly wouldn't want to stay out of it and want to be part of the team so we had our attorney look at it.

Mr. McKertich said the biggest concerns have to do with insurance and indemnification with regard to the equipment. I would want the Town's insurance company to look at this to make sure they can provide the type of insurance that's required under this agreement. Supervisor Kniffen said the insurance company said there would be no problem. Mr. McKertich said there are certain record keeping requirements that have to be abided by. One of the key things is in paragraph 3, the so-called schedule. Right now the Agreement has a blank schedule so I think a big part of this contract is going to be for Mr. Finch or someone to go through and figure out what equipment is to be listed on the schedule that would be available to be shared and whether or not we would charge for the sharing of that equipment. Councilman Grubham questioned if when we share the equipment if our people would be running the equipment or would we just be sharing the equipment. Mr. Finch said if this were to come up they would just borrow the equipment, we wouldn't supply the manpower. We don't usually do much sharing with the County because they want too much. We do most of our sharing with other towns.

Supervisor Kniffen said I doubt we'll be using this very much but it will be nice to have it there so we're part of the team. Resolution.

11. Discussion – DOT – Route 11 and Colesville Road. (GEK)

Supervisor Kniffen said we've talked about this in some length quite a few times. There is a motel at that corner in disrepair and also DOT stores some of their inventory. We met with DOT and asked if they could move some of that out of there so it's not so close to the corner. They are going to do a three-foot berm around there and plant willow trees. It will take a while for those trees to grow but once they do grow we won't see as much and hopefully it will look nice. The motel has been an eyesore for a long time. Finally the County took it over. We are a member of the BMTS group and at a recent meeting I conveyed to them all the effort we have put into getting the motel removed, noting that we received a quote of about \$200,000 to have that done. After that meeting the County Executive contacted me and said the County will be tearing it down. That's now been awarded and it should come down sometime mid-November. Gorick Construction is the low bidder and they said we'll take it down and then can we have

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the land, and came to Kirkwood and said you'll have to work with us. So we said of course, but it floods there so if anything is done commercially it would have to be raised up. I don't see any problem with that.

**12. Discussion – Class Action – National Prescription Opiate Litigation.
(GEK/RHM)**

Mr. McKertich explained that this is a national lawsuit by a group of municipalities against the opioid industries in compensation. The lawsuit is in Ohio. The court created a class action, which means it incorporates all the municipalities that could potentially get compensation out of the lawsuit and creates a class of plaintiffs. The Town of Kirkwood was included in that class although we have an opt-out period which expires November 22nd. If the Town does nothing, then we're included within the class and theoretically we would get a portion of any proceeds from the settlement. If we want to exclude ourselves from the class we can do that which would preserve our right to file a lawsuit individually. Since we are not taking any action there is no need to respond.

**13. Discussion – 2018 Examination of Justice Court Records and Dockets.
(GEK)**

Supervisor Kniffen said every year the Town has to audit the courts for obvious reasons, they handle a lot of money and a lot goes on over there. Up until this last audit, we've been doing it with our Budget Officer, Jim Smith, so we outsourced it because it really wasn't part of his duties and we needed someone with an auditor's background. So they did the audit and provided us with a couple of comments, which I spoke to the court personnel about as well as the lady that conducted the audit. The bottom line is, and most important, nobody is stealing any money but there are some things about which we've asked them to take corrective action on. Resolution.

14. Discussion – TRI Agreement. (GEK/RHM)

Mr. McKertich explained that this is the audit for the utility service agreement. You'll recall that you wanted them to make a couple of changes which would include a shortened period of time in which we would split the refunds from 36 to 18 months and also a 15 percent prepayment discount on those credits. They edited the agreement to include those but also included all fees to be paid within 30 days and if it's not then a late payment of 1.5 percent per month. That can be difficult on municipalities that have Board meetings and require invoices to be approved. There's a provision if they institute any kind of collection activity against us, we're required to pay all of the costs, including their legal counsel. There is also a provision that would make this agreement governed by the laws of the state of Florida rather than New York. I think all of those are problems. Councilman Diffendorf said I think so too, and I want to be out of it. Supervisor Kniffen said I talked to Mr. McKertich about going back to them and have them change it. Councilman Diffendorf said I don't want to deal with it. They came to us as if they were going to save us some money and now they are coming to us with ways to

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get some of our money, under penalties. I think it's too conniving and I'm not into it. Supervisor Kniffen said I think we should stick with it because we still might get something even though we might not get as much as we originally thought. Councilman Weingartner said I kind of feel the same way Councilman Diffendorf does, but if you can get that stuff thrown out I don't have a problem with it. Mr. McKertich said I did send an email last Friday requesting that all those things be removed.

15. Discussion – Up State Tower Co., LLC and Buffalo-Lake Erie Wireless Systems Co., LLC – Balloon Float Notice regarding Proposed Telecommunications Tower.

Supervisor Kniffen said this involves a proposed cell tower. Councilman Grubham said the balloon test is basically a vision test where balloons are put up so people can see what it's going to look like. The balloon is supposedly set at the same height as the top of the proposed tower. They are required to get a permit, which is \$1,000 and they are also required to deposit \$10,000 with us in escrow so if we have costs; engineer, legal, etc., the Town gets covered for them. When we met with the gentleman from the tower company he was complaining about the charges because he said the State says you can't do that. So we should make sure we get the money up front before we get too far down the road. Mr. McKertich added that one of the comments in his letter is that he is expecting the Town to pay for public notice of the balloon test. I would think that would be part of their cost. Councilman Grubham said we should check with Chad on that because my understanding is he got a letter from them saying they would pay those costs, and they should.

16. Discussion – Proposed Local Law 3 of 2019 – A Local Law Amending the Zoning Local Law, Regulations, and Ordinances – Schedule Public Hearing for November 26, 2019 at 6:10 PM.

Supervisor Kniffen explained this is a result of the Comprehensive Plan Committee looking into Kirkwood's zoning. They did a lot of work which resulted in a lot of updates, so a public hearing will be required to process the proposed amendments. Resolution.

17. Discussion – Proposed Local Law 4 of 2019 – Amending the Park Use Law – Scheduling a Public Hearing for November 26, 2019 at 6:15 PM.

Councilman Grubham said there are three changes to the Parks Use Local Law. One is administrative in that it currently refers to the Youth Advisory Board and that needs to be changed to the Town Board. We also changed the fees for pavilion rentals from \$25 to \$50 for groups of up to 100 people, and from \$200 to \$250 for groups from 100 to 200 people. We are putting a limit of 16 feet for the length of leashes for dogs in the parks so that dogs will be under better control. This past summer a person in the park had a 100 foot rope on his dog. Resolution.

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18. Discussion – Recognizing January 26 – February 1, 2020 as School Choice Week in Kirkwood. (GEK)

Supervisor Kniffen explained that we received a request that we issue a proclamation recognizing National School Choice Week. Councilman Weingartner said we shot this down last year. It's not our job as a municipality to sell people on what school they should go to or not go to. The people behind this are affiliated with charter schools who use public funds for non-public schools.

19. Request from Chad Moran to attend STBOA Training/Quarterly Meeting at Tioga Downs Resort on Tuesday, December 3, 2019 and Wednesday, December 4, 2019, at a cost of \$155.00, with all reasonable expenses paid.

Resolution.

20. Transfer of Funds.

Resolution.

21. Audit of Claims.

Resolution.

Councilman Grubham moved to adopt resolution to adjourn this work session to conduct a Special Town Board Meeting. Councilman Weingartner seconded.

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

MOTION CARRIED.