

# TOWN OF KIRKWOOD WORK SESSION

**June 30, 2015**

Present: Supervisor Gordon Kniffen  
Councilman Robert Weingartner  
Councilman Lewis Grubham  
Councilwoman Linda Yonchuk  
Councilman William Diffendorf, Jr.

Also Present: Herbert Kline, Town Attorney  
Gayle Diffendorf, Town Clerk  
Raymond Coolbaugh, Commissioner of Public Works  
John Finch Jr., Chief Water Treatment Plant Operator  
Marchie Diffendorf, Planning Bd. Chairman  
Bill Graves, Assistant to Town Attorney

## 1. Nidus Development – William Batts. (GEK)

Supervisor Kniffen reported that he met with the owner of the Hideout, which is next to the Rocket Plaza, and a potential buyer of the Hideout, William Batts. Marijuana has been approved in New York State for medical purposes and a program has been approved to dispense it and Mr. Batts' organization is involved with this.

Mr. Batts explained that New York State is awarded 5 licenses for medical marijuana. Each license will come with 4 dispensaries and so far 43 applicants have applied for a NYS medical marijuana license. Only 7 of the 43 are from central and western New York, of which his company, Alternative Medicine Associates, is one. This company does have a website. Mr. Batts actually builds urgent care centers but he is also involved with this group which is comprised mainly of 70 doctors. The regulations are very involved and New York is different from other places in that there are 10 different disease pathologies that will be allowed for the use of medical marijuana. No one can walk in off the street and just ask for it. A doctor has to send a recommendation to the State and then the applicant would receive a state approved license. They chose 4 places for dispensaries in their 6,000 page application: Cheektowaga, Webster, DeWitt and Kirkwood. If anyone would like to see the narrative that was written up for the Kirkwood dispensary it is a matter of public record and he would be happy to provide it.

At all times that the dispensaries are open there must be at least one pharmacist on duty and they plan on having 2. The security requirements are such that when open there must be at least 2 security guards. The entire place has to be covered with cameras. The regulations require that the dispensaries must be neat, orderly and well regulated.

Mr. Batts addressed questions and concerns. In NYS medical marijuana will be dispensed as a vial of oil or gel caps. The oil can be vaporized or mixed with food or beverages. This is a very expensive proposition to do within regulations so that might be a reason it is not dispensed by drug stores, and NYS wants more control. There will initially be only 20

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dispensaries. They anticipate about 20,000 visits per year in Kirkwood. The State requires them to be ready to dispense by January 1, 2016. They have not been granted a license at this point, but in order to apply they have to identify where the dispensaries will be located as well as the cultivation facility. They are purchasing the old Tyson meat processing facility in Buffalo and will be employing about 175 people at that cultivation facility. It is against the law to cultivate and dispense at the same site. In regard to future customers, Mr. Batts said they should now be applying for those licenses. It would appear this has not been publicized and Mr. Batts added that physicians need to be educated as well. That is part of what they will be investing in. The proposed dispensaries are not located in cities because they have to be up and running in 3 months from the time they say go and many of the cities have very elaborate requirements. They will be open 6 or 7 days a week from about 9AM or 10AM each day to about 7PM on weekdays and 5PM on weekends. He said the dispensary jobs will be union jobs so maximum hour requirements will be involved.

There are currently about 30 parking spaces at the Hideout and there is an agreement with the adjacent shopping center that the overflow would be allowed to park in that shopping center as well. It was noted that this is in the deed. They are designing the parking at more than ADA minimum since they think there will be a lot of people using wheelchairs, crutches, etc. That involves other aspects of the building as well, such as door widths, etc.

So much security is required because of the cash involved. This is not often covered by insurance and most people pay cash. The cost to the patient for the marijuana is not known at this time. The State has anti-diversion provisions which means the price in the store can't be very far off the price on the streets. They do not expect an unsavory element since there will be cameras, security guards, and no loitering. The security guards must be employees of the company.

It is a requirement that they apply for all 4 locations. Concern was noted that this property is not zoned for this use since it is not a pharmacy, that this is new territory. The Town of Kirkwood Code Office feels it is a permitted use so the next step would be to go to the Planning Board for site plan review. The State is sensitive to what effect this might have on towns or cities where these facilities are located as is noted in the requirements. The interior design was explained. A registered care giver can get the medical marijuana for someone else. A concern was noted that this is right in the center of 3 adult entertainment facilities. Mr. Batts said they will beautify the area with this medical retail facility.

Some of the qualifying conditions for medical marijuana in NYS are Lymphoma, HIV/AIDS, IBS, ALS, Parkinson's Disease, Hodgkin's Disease, seizures and chemo. It is against the law for a patient to use the marijuana on the site. They are not allowed to use it in a vehicle. Everywhere smoking is prohibited, it is prohibited as well. There also is a special strain made for people with seizures which is a strain that people cannot get high from. This will be 1/5 of what they produce.

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NYS is putting a 7% excise tax on top of sales tax for sales. All the excise income Alternative Medicine Associates earns from all the dispensaries will be shared with the counties where the dispensaries and the cultivation center are located. Some towns have allowed the dispensary on the condition they get some of the revenue from their county. They do plan on paying property taxes with no request for a tax break.

Although there are pros and cons, Supervisor Kniffen said they have seen on television where young people have been helped so wherever this facility is located he thinks it is a good thing.

## 2. Discussion – Add generator and playground installation to the list of items on the fee schedule that require building permits. (GEK)

Supervisor Kniffen questioned if there is a need for these permits. Councilman Weingartner said he feels there is a need for one for generators to be on the safe side so that people don't get taken by flight-by-nighters. Marchie Diffendorf, who has a standby generator, said there is currently no permit required from the Town but an electrical permit is required from the Fire Underwriters, at a cost, and NYSEG gets involved since they have to disconnect the electric service and pull the meter. After inspection by the underwriters NYSEG comes back and hooks it back up. He said there is no way anyone can circumvent the process. Since there seems to be no safety issue a permit from the Town will not be required.

In regard to the playground installation it is not clear if they currently have to get a permit at no fee or not. Councilman Weingartner said there are many regulations involved regarding playgrounds by insurance companies for schools and apartment complexes, etc. He noted that the playground equipment at the old Cedarhurst School cannot be moved to the Donnelly school because it was built for that particular school. Councilman Grubham is not in favor of charging a fee for a permit for playgrounds but he is in favor of them getting a permit so that at least they know it is done correctly.

## 3. Discussion – Peddlers permit applications fees. (GEK)

It was noted that there currently is a \$50 fee for a Peddlers License. After reviewing information supplied by the Code Office as to what other municipalities charge, Councilwoman Yonchuk said she feels that \$50 is too low. The Town Clerk noted that the current permit covers an application whether it be for one day or the entire year, and there is no limit to the number of people who can go door-to-door selling for any given company. It would appear that the Code Office feels the fee should be increased. Councilman Grubham said if the fee is raised it should be a set fee no matter what the time frame is and he feels it should be a little higher as well. In response to Councilman Diffendorf, the Town Clerk said the people that sell meat out of their trucks around town or the Schwann's truck do not get a permit. Mr. Kline said a sign should be installed at each main entrance to the Town that a peddler's license is required. Councilman Grubham said he feels it is an enforcement problem and also residents should be informed that permits are required and if someone

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comes to their door they should ask to see a permit. Supervisor Kniffen suggested that the fee be increased to \$100 and the information be published in The Country Courier, put on the website and signs be installed at the main entrances to the town. In response to Marchie Diffendorf, Mr. Kline said there is a penalty written in the local law for selling without a permit.

#### 4. Discussion – A Resolution Adopting a Road Use Preservation Policy. (HAK)

Mr. Kline explained discussions about this have been going on for the past 5 years. Kirkwood has one on the books so that if someone wants to travel town roads more than 100 miles in 5 consecutive days they have to get a road use permit. Debbie Preston wants to have uniformity for all the municipalities in Broome County. She is doing this for County roads and to encourage towns and villages to join in she is going to contribute \$9,000 and \$10,000, depending on how many municipalities join in, if they will participate in what they call the County Road Use Program. The town does not have to adopt their local law, only pass a resolution which says the town will enforce the county program on town roads. Delta is going to do the road coring, they will train, and if the town ever has development the town can use their own engineer or Delta. The county program only governs country roads or new development. This is something Mr. Kline's firm developed and county officials agreed to it. Many municipalities are going along with it. Resolution.

#### 5. Discussion – Agreement for the Expenditure of Highway Moneys. (RJC)

Supervisor Kniffen said by law the Highway Superintendent is supposed to notify the Town Board the previous year of the roads he wants to do the next year and Kirkwood has not done that and it is not because of neglect. Part of it is that a hard winter might cause issues so that more roads need to be done. There have been discussions as to how to better handle this. Ray Coolbaugh said that hopefully in November he will have it set up for next year. The agreement he is submitting now could change at any time and he would have to come back to the Board since he has no idea how much CHIPS funding they will get until April of the following year. If they don't get the CHIPS money they won't do the extra work. Harsh winter weather is also a concern. In this agreement he tried to include the worst roads, explaining that the plan is to put in new cross over pipes before they pave so they don't have to dig it up again. Councilman Diffendorf noted a concern that most of the roads are dead-end roads and questioned if there were not some thru roads in the Town that needed work, specifically Johnson Road. Ray said the cul-de-sac is gone on Bonita which is a problem when they plow it. They plan on putting 3 pipes in on Johnson Road, patch it and then pave it next year. He noted that oil and stone does not seem to be sticking like it used to because they have changed the oil consistency. They will use the oil and stone or slurry it. With the slurry there is a lot less clean up. It has the same consistency as oil and stone but it hardens in a half hour. Ray added they are going to put a cross-over pipe at the Dau Court and Travis Drive intersection since the one there is rotted out. They may get to putting one in at

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the intersection of Travis and Victoria as well. He would like to do Bonita and Dau this year and do Travis and maybe half of Victoria next year and the rest of Victoria the following year. Other roads in Highland Heights have been paved within the last 7 years. Ray said it used to be 7 years that you couldn't turn it in on CHIPS but now they have dropped it to 5 years. In response to Councilman Diffendorf Ray said that all the piping on William Street was paid for by the residents, including the Credit Union and the apartments. The Town installed them. Councilman Diffendorf noted a concern that when piping is put in yards there has to be a storm drainage district.

6. Discussion – Time Warner Franchise Agreement Renewal. (HAK)  
Mr. Kline explained that the Town's franchise agreement with Time Warner expired in 2012. He has been calling, writing and emailing Time Warner with no response. They were negotiating with Comcast and now they are negotiating with someone else to buy them out. The Public Service Commission in Albany offers help to municipalities in getting these agreements worked on. He feels 3 years is enough. Mr. Kline will prepare a letter from the Supervisor stating how unhappy Kirkwood is that the agreement has not been updated, there are a number of new things that have been put into the agreement which they agreed to verbally, but it has not been signed.

Supervisor Kniffen added there is now money in the State budget for broadband. This is encouraging since there are areas of Kirkwood that are not serviced by cable. His understanding is the first phase will bring it to the Corporate Park, but the long term is to cover all of Kirkwood. This is coming through an economic group and The Agency (formerly IDA) is keeping him up to date on this.

7. Resolution, on recommendation and approval of the Code Enforcement Officer, pursuant to section 304.3 of the Mobile Home – Trailer Ordinance, authorizing the Town Clerk to issue license for the following mobile home – trailer park, such license is for years 2013 and 2014:  
Southern Tier Communities: 1794 US Route 11, Kirkwood, NY 13904  
Owner: Southern Tier Communities

Mr. Kline explained that the issues for 2013 and 2014 have been taken care of but not for the current year. He added that the Town would not settle the litigation with them until they took care of the issues at the trailer park for 2013 and 2014. Resolution.

8. Discussion – Town of Conklin Water Agreement Modifications.  
(HAK)

Mr. Kline explained Kirkwood collects from the Town of Conklin for their use of water twice a year in January and July and collections from Kirkwood residents are 3 times a year. According to Jim Smith, Budget Officer, it would be better to collect from Conklin 3 times a

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year as well. There is a problem with the first year when changing collection dates. He will discuss this with Conklin's Town attorney and put this on hold for now.

9. Discussion – Water District Amendment for Outside Users. (HAK)  
See item 10.

10. Discussion – Extension of Water Services Agreement Between Town of Kirkwood, New York and Property Owners Residing on Susquehanna Lane, Kirkwood, New York. (HAK)

Mr. Graves explained that the agreement is made up of 18 items, some of which are preconditions to the installation of the water meter pit and the extension of water services. The property owners must obtain an engineering estimate indicating all costs relating to the design and installation of all the pipes and devices necessary for the project. This does not include the extension of the water main from the north to the south side or the east to the west side of Route 11. The Town of Kirkwood has agreed to install the water meter pit. Once the engineering estimate is obtained sufficient money has to be placed in an escrow account to cover all costs of this project, for which proof will be needed. According to the Broome County GIS Survey, the property on which the pit will be installed is owned by Craig T. Roe and Kyra D. Roe. The property owners will have to enter into an agreement with the Roes allowing installation and access to the water meter pit as well as permission to run any piping or fixtures underneath the property. All permits and agreements must be obtained from Norfolk Southern Railroad to allow boring under the railroad. If necessary the property owner's engineer will inquire of the NYS Dept. of Health and DEC regarding this project. The property owners will need an agreement as to how the costs of the project are going to be divided and paid as well as the cost of the water to be consumed in the future since there will only be one meter. That agreement would need to be filed with the Town Clerk and County Clerk. The property owners agree to any other future matter the Town Board deems necessary regarding the project. After having obtained all the permissions and agreements mentioned, the property owners will have to enter into agreements with a contract to install the water lines and the laterals. At that point Kirkwood agrees to extend the water main under Route 11 to the water meter pit and will maintain and keep the main in good repair. The Town requests access for the purpose of inspection, testing, reading and repairing. The property owners will pay the regular water rates as paid by other owners of property. Regular bills will be received. Any dispute will go to arbitration.

After discussion it was determined the property owners would bear the cost of the water meter, since according to the Town's ordinance the Town only supplies meters up to 1 inch and this is 2 inches. John Finch said if the Town buys a meter they have to maintain it. He estimated the cost for the meter will be between \$600 and \$700. Supervisor Kniffen said they have to be consistent.

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Mr. Kline reminded everyone that this is a draft agreement subject to review. He did note that the property owners, as outside users, will pay 1 ½ times the rate of the regular users.

Mark Willis questioned if he could dig the pit instead of a contractor and he noted that he will have to talk to the other property owners about the agreement. Supervisor Kniffen noted a concern with looking at new options. The agreement will be reviewed by the property owners and will be addressed again at a later date.

11. Discussion – Standard Work Day and Reporting Resolution for Elected and Appointed Officials – Christina Radicchi, Recreation Supervisor.

Councilman Grubham asked for an explanation regarding this. Mr. Kline said the number of hours worked in a day is set by State law. The minimum number is 6 and the maximum is 8. This is based on a 3-month log. The days in the log are divided by the number of hours and then by 3 months, which results in her getting credit for working 6.72 days a month for retirement purposes. Resolution.

12. Discussion – Request from Kirkwood Fire Company to use Veterans River Park for a “Movie Night” on Saturday, August 1<sup>st</sup> from 7:00 PM – 11:00 PM. (RJC)

Amanda Rick and Mary Pitcher from the Kirkwood Fire Company explained they are renting a 25 foot inflatable screen to hold a movie night at Veterans River Park on August 1<sup>st</sup>. Admission will be free and they will be selling refreshments to help defray the cost of the event. They are looking at setting up on the football field. Events for the evening will start at 7PM with the “G” rated movie “Home” starting at dusk. Everyone is encouraged to bring lawn chairs or blankets to sit on. It is a community event. Ray Coolbaugh noted a concern about hot oil being used to cook french fries. He will meet with them to finalize details, such as electric use, etc. Resolution.

13. Discussion – Summer help for Parks Department: (RJC)  
Colt Hoyt – Beginning July 1, 2015 and ending September 2, 2015 at \$10.64 per hour.

It was noted that Colt is a Town of Kirkwood resident and is a senior at Windsor High School. Resolution.

14. Discussion – Railroad Crossing at Herb Kline Way. (GEK)

Supervisor Kniffen reported the railroad wants to do a rehabilitation of the crossing. The cost of the project is about \$165,000 for which the railroad will pay most of the cost. The Town will do the paving for about \$35,000 and DOT is contributing. It will take 1 to 2 days to do the project and 24-hour security is needed. Willow Run, American Pipe, Felchar and Dorfab were asked to split the \$12,000 cost at \$3,000 each. Initially they all agreed with the

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exception of Felchar, who's manager they have been unable to reach. One of the companies that originally agreed backed out yesterday. If all 4 companies agree then Willow Run is agreeable as well. Supervisor Kniffen contacted Assemblyman Crouch and Senator Libous for financial assistance. Assemblyman Crouch has responded that he does not have it. An alternative would be for the remaining 2 companies to put in \$6,000. He is anticipating that American Pipe will pull out. He is waiting for Willow Run to get back to him. If they won't pay for it the project won't happen. He feels this should be done and will keep the Board posted.

### 15. Summer Fun Agreement – Elliott Campbell – Head Counselor

Supervisor Kniffen explained this is the result of the resignation of Jackie Cooper. Resolution.

### 16. Audit of Claims.

Councilman Diffendorf questioned a claim from F.R. Unlimited for \$2,000, since it was not legible. Ray Coolbaugh explained that it is the result of an insurance claim from an accident last winter at the bottom of the hill on Johnson Road. A car hit the guardrail. This is the company that fixed the guardrail. Councilman Diffendorf also mentioned to Ray that guardrails need to be put up on Brink Road.

### 17. Cemetery – Main St.

Supervisor Kniffen explained when water was extended through Main Street, the cemetery was provided water through the installation of a lawn hydrant. Now the hydrant does not work and there are no longer parts available. The cost of a replacement would be about \$100 plus labor for a total cost of less than \$500. He would like to proceed with that. Councilman Diffendorf, who is in charge of the cemetery, said NYS is encouraging towns to help small cemeteries defray costs to keep them going because if they don't the towns will have to take them over. This is something that would be helpful to the cemetery.

### 18. Discussion of Industrial Development Property – I would like to request advice from the Town Attorney in a closed meeting and in doing so I will assert the attorney-client privilege pursuant to section 108 of the Public Officers Law of the State of New York regarding any matter made confidential by section 4503 of the New York Civil Practice Law and Rules. (GEK)

Held for Board Meeting.