

# TOWN OF KIRKWOOD WORK SESSION

**October 27, 2020**

Present: Supervisor Gordon Kniffen  
Councilman Robert Weingartner  
Councilman Lewis Grubham  
Councilwoman Katie Legg (via Zoom)  
Councilman William Diffendorf, Jr.

Also Present: Robert McKertich, Attorney  
Kelley Diffendorf, Town Clerk  
John A. Finch Jr., Commissioner of Public Works  
John Mastronardi, Engineer  
Duane Travis, ZBA Chairman

**PLEDGE OF ALLEGIANCE:** Done prior to the Public Hearing

## **1. Discussion – Hiner Road. (GEK)**

Supervisor Kniffen began the work session by saying, since the last Town Board meeting I sent out a letter to the people on Krager Road, I received 3 phone calls and 2 emails from them. Along with that, Hiner Road residents submitted 2 petitions. They are the same, but they had 2 people out collecting signatures. In the petition it stated that they received the Shumaker Engineering report from the Town of Kirkwood Supervisor in late August. Just to clear that up, that is when we got the Engineering report from the City of Binghamton. So, we waited all those months as well. In 2019, John Finch and I met with the residents on Hiner Road twice and informed them of what the City of Binghamton was looking at. But then we didn't hear anything from the City of Binghamton until late this summer. In the meantime, from January 2020 until this summer, we tried to contact the Mayor of Binghamton with phone calls and emails, and he never got back to us. We finally received the Shumaker Engineering report in late August.

Supervisor Kniffen continued stating that John Mastronardi looked into the Shumaker report and reported that shutting off Hiner Road and building a new road over to Krager Road is the best bet. Krager Road residents do not want it because of the traffic. Hiner Road residents seemed mostly in favor of Alternative #2, the relocation of Hiner Road with a parallel route. John Mastronardi said that Alternative #2 costs more and still goes through the Chamberlain Creek area and its tributaries, which is the most troublesome area. There was another company that independently studied the area and their recommendation was to remove Hiner Road from the flood plain.

Supervisor Kniffen said we still have so many questions: Kirkwood's involvement and then whose road is it, getting the land when the owner doesn't want to sell, does eminent domain

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come into play and the added costs with that, can the City force us to do it, if we don't do anything and they get flooded again can they sue us, and so much more.

Mr. McKertich said I reached out to the City of Binghamton's attorney to talk through some of these exact issues and I didn't get a call back. Similar to your attempts to reach out to the Mayor. There are a lot of open questions still and it would be very useful for us to sit down with the City to talk through some of these things. There is nothing that can require us to exercise eminent domain over a property owner like this, that's a discretionary act for the Town. It's really a question of whether or not we want to do that or whether we put that on the City to do.

Councilman Grubham said I did some research myself recently and what we consider the road in Kirkwood, I don't think we own any of it. I don't think that was ever deeded over to the Town. Griffiths and iHeart each own a section of the road, which means there's two more pieces of property that are going to need to be addressed if it was decided to go over to Krager Road. I also don't understand how we ended up plowing that road, which is basically someone's driveway. John Finch said I think it was done that way because it's the only way to turn around up there. John Mastronardi said because that road has been maintained by the Town for more than 10 years, it's defined now as highway by use. So the Town has the right to use that and maintain that section of road. Mr. McKertich said it's called Prescriptive Easement in which the Town can acquire private property if they have openly and continuously maintained a road for a period of 10 years or more. Councilman Grubham questioned if the road was the Town's since we have been plowing it for so long. Mr. McKertich said the Town can gain prescriptive rights by openly and continuously maintaining a road within the Town's limits. But I haven't come across this when the road is outside of its corporate limits and then the Town gained a right to it. That may be the case but I would need to research it. John Finch said we have a signed agreement with the City of Binghamton saying we would maintain Hiner Road in the winter and the City would maintain the road in the summer. That agreement doesn't expire until one of us decides to terminate it.

There was a lengthy discussion about where the Town/City line is on Hiner Road. Councilman Diffendorf said if the line is down the ditch on the Kirkwood side than that is a City road. Councilman Grubham referenced the GIS map, stating the road was in the City of Binghamton. John Mastronardi had a survey map that was looked at and discussed. Everyone seemed to agree that the road was a City of Binghamton road.

Supervisor Kniffen questioned if we have to keep maintaining the road since we have been doing it. Mr. McKertich said if it has become a public road by use through Prescriptive Easement then yes the property owner would have an expectation that it continues to be

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maintained. The property owner can dispute that, it would take a court to decide that or an agreement by both parties.

Councilman Grubham said it's not right the way the City has handled this and we don't have control over a lot of it. Councilman Grubham questioned if the project goes ahead the way the City wants, who administers the money, does FEMA give it to the City or the Town. Supervisor Kniffen said since the City initiated it they would get the money and take care of it.

Supervisor Kniffen said we have more residents up there than the City, so shouldn't we spend that 12.5% to help our people. That's always going to be a discussion if this project starts to go through.

Councilman Diffendorf said, let's clear this up. I'm not in favor of going the Krager Road route and I'm not sure we have enough support on the Board to even discuss this anymore. Supervisor Kniffen said there is nothing in motion and we all are waiting for something to happen. It looks like the City is waiting to find out if we are going to join in or the people want to know if we are going to support them.

Councilman Weingartner suggested that the residents on Hiner Road are not paying the City of Binghamton taxes, they aren't paying for city garbage, water, etc. If the City of Binghamton isn't giving anything to the residents that are using the road, then I don't believe there is any precedent, that because we are the Town, that we have to give any money to the City of Binghamton.

Councilman Grubham said the City just dumped this on us and I think we give it back and let them figure it out and go from there. Councilwoman Legg said there is a lot of questions not answered, it's not really clear. John Finch said I'm not in favor of going over to Krager Road. It's more road and I don't think we should take on that responsibility. I'm definitely not in favor of the parallel road because then we would have a bridge to maintain.

Mr. McKertich said the only options that didn't include Kirkwood are Alternatives 1A and 1B which entailed upgrading the current structures but from an engineering standpoint that may not be the optimum choice.

Supervisor Kniffen said do we go back to the City and say this is your project and we don't favor going over to Krager Road, it's your project and you don't need input from us. Councilman Diffendorf mentioned the residents don't want it.

Eminent domain was brought up again and if the City goes ahead with that option and builds the road, who takes care of that road, whose responsibility is it.

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Supervisor Kniffen said there are still so many questions but since we've decided that we don't want to be involved there's not much to ask. Councilman Grubham said it's been hard getting a response from the City either way. Mr. McKertich said that is something that we should mention in the letter to them. Supervisor Kniffen said, to clarify, the Mayor wasn't responding from January 2020 to late August. All of the sudden his office reached out because they had this study being done by Shumaker. But now that we've made this decision to not be a part of this project and the residents don't want it either I think we should try to meet with the City.

Where does it end, because we really want to protect those people from another disaster, if there ever is one. Mr. McKertich suggested a letter be written to the City of Binghamton stating they haven't provided us with sufficient information to justify the project considering all of these hurdles we have. Councilman Diffendorf said, I don't want them to come back and say we will supply you with this information. My mind is made up and nothing they say will change my mind. I'm not sure how the other Board members feel. The people don't want it. I say redo the road and add bigger structures. Supervisor Kniffen said he will be in contact with Mr. McKertich on how to end this.

## **2. Grange Hall Road Property. (GEK)**

Supervisor Kniffen said there is a property adjacent to Grange Hall Park that we have been mowing and the new owner of the property would like to donate that part of the property to the Town. John Finch said it would be a nice addition to the park. Mr. McKertich confirmed that the property would be acquired for parkland purposes and part of the park. Resolution.

## **3. Resolution scheduling a Public Hearing for November 24, 2020 at 6:00 PM on the Year 2021 Water & Sewer Budget. (GEK)**

Supervisor Kniffen said the Water and Sewer budget hasn't been done yet but we need to have a public hearing by November 24, 2020. John Finch and Jim Smith are working on it. Resolution.

## **4. Resolution scheduling a Public Hearing for November 24, 2020 at 6:05 PM on the Year 2021 Fire Contracts. (GEK)**

Resolution.

## **5. Discussion – 5G Design Guidelines. (LCG)**

Councilman Grubham said this is the final paperwork for the 5G standards. We'd like to get this put in our code book as soon as possible. The fees are listed on the last page of the packet. Mr. McKertich said a resolution is needed.

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**6. Discussion – Mini Excavator. (JAF)**

John Finch said at the beginning of the year I came to the Board to try and trade-in or sell our Case Mini Excavator. We were about \$1500 shy of my goal of selling it so we held on to it. I have a new idea, typically in the past the Water and Sewer department has purchased the backhoe and the entire Public Works department uses it. Since we've purchased the mini excavator that now does all the digging for the Water and Sewer department, the backhoe isn't used. I'm proposing for next year's Water and Sewer budget that we upgrade our mini excavator. I have 4 different quotes. I'd like to go with the Case quote that is located here in Kirkwood. I'd like to keep the 2016 backhoe that we have for the Highway department and have Water and Sewer buy the new mini excavator. Then keep trading it in every 2 to 3 years to keep the value up on it. The 42 inch tilting bucket listed on the Monroe Case would be used for the Highway department and that would come out of the Highway Equipment budget (\$5,910). So the cost of the machine would be just under \$26,000 and would come out of the Water and Sewer budget for next year. Our current excavator has a trade-in value of \$40,000 and I'd like to put it up for auction to see if I can get more. We would lease out this machine for the last two remaining months of the year, and that lease money would go towards the purchase of the new mini excavator, basically rent to own. The mini excavator has about 1,600 hours on it and will need a new set of tracks. The backhoe has over 2,000 hours on it, the numbers didn't work out right for a trade-in. John Finch said he will be talking with Jim Smith this week. They are all state bid pricing. Resolution needed for lease agreement.

**7. Resolution acknowledging that the calendar year 2019 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.**

Supervisor Kniffen said that this is something we do every year. When they did the audit and spoke with the judges they had no problems with it. We will send this report to Albany. Councilman Diffendorf asked if we had a report on this examination. Supervisor Kniffen said he would get it to him. Resolution.

**8. Resolution approving the Standard Work Day and Reporting Resolution for Elected and Appointed Officials for Kelley Diffendorf, Town Clerk and Registrant of Vital Statistics, in accordance with the attached resolution.**

Resolution.

**9. Transfer of Funds.**

Resolution.

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**10. Discussion – Water & Sewer Late Fee Adjustments of \$467.03 due to a credit card issue of not getting payment report.**

Supervisor Kniffen said there was an error and a late fee was assigned to people that paid their water and sewer bills by credit card, but it was cleared up. John Finch said people were charged a late fee even though they didn't pay late. So it has to be in the books and on record to clear it up. It was a combination of late fees from different accounts. There was a glitch in the system and anyone who paid online got a late fee because it didn't acknowledge their payment. The late fee that we charge, I believe it's 3% of their bill. No one paid the late fee, the system just says that much is owed. So it will be cleared up through interoffice sources.  
Resolution.

**11. Discussion – Request from Tyler Harpell to attend W2O Confined Space & Competent Person Training on October 30, 2020 at a cost of \$100 and DSNY Certified Excavator Initial Training & Renewal on November 2, 2020 at a cost of \$35.00, in all reasonable expenses paid.**

Resolution.

**Discussion.** Councilman Weingartner asked, with all the training that Brian Kinney completed and the specific regulations that we have in our laws, is he past the amount of time necessary before he would have to repay any of those courses he took? Supervisor Kniffen responded that we checked that out and it doesn't relate to what he is doing now and we had Mr. McKertich look at it, we are all set with that.

**12. Audit of Claims.**

Resolution.