

**TOWN OF KIRKWOOD
TOWN BOARD MEETING**

November 5, 2018

A regular meeting of the Kirkwood Town Board was held on November 5, 2018 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.
Councilwoman Linda Yonchuk

Also Present: Oliver Blaise III, Attorney
Gayle Diffendorf, Town Clerk
John A. Finch Jr., Commissioner of Public Works
Marchie Diffendorf, Planning Bd. Chairman

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES:

October 2, 2018 Town Board Meeting and October 30, 2018 Public Hearing

PUBLIC PARTICIPATION: None.

COMMUNICATIONS: None.

COMMITTEE REPORTS: None.

OLD BUSINESS:

Councilwoman Yonchuk moved to adopt resolution, after a Public Hearing, Adopting Annual Budget for 2019, in accordance with the attached resolution. Councilman Diffendorf seconded.

176-18
Adopt 2019
Budget

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

MOTION CARRIED.

Councilman Diffendorf moved to adopt resolution ratifying a resolution authorizing the Supervisor to enter into a Memorandum of Understanding with Teamsters Local 317 regarding requiring contributions for health insurance into retirement, in accordance with the attached MOU. Councilman Grubham seconded.

177-18
MOU
Teamsters
Health Ins.
Contributions

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

MOTION CARRIED.

Councilman Grubham moved to adopt resolution ratifying a resolution authorizing the Supervisor to enter into a Memorandum of Understanding with Broome County Land Bank regarding the demolition of 1080 US Route 11, in accordance with the attached MOU. Councilman Weingartner seconded.

178-18
MOU
Br County
Land Bank
1080 Rt 11

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

MOTION CARRIED.

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179-18
Actuarial
Services
Agreement

Councilman Weingartner moved to adopt resolution ratifying a resolution authorizing the Supervisor to enter into an agreement with Danziger & Markhoff, LLP to perform GASB #45/75 actuarial services for post-employment benefit program, in accordance with the attached agreement. Councilwoman Yonchuk seconded.

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

MOTION CARRIED.

180-18
Sched PH
2019 W&S
Budget

Councilwoman Yonchuk moved to adopt resolution scheduling a Public Hearing for November 27, 2018 at 6:00 PM on the Year 2019 Water & Sewer Budget. Councilman Diffendorf seconded.

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

MOTION CARRIED.

181-18
Sched PH
2019 Fire
Contracts

Councilman Diffendorf moved to adopt resolution scheduling a Public Hearing for November 27, 2018 at 6:05 PM on the Year 2019 Fire Contracts. Councilman Grubham seconded.

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

MOTION CARRIED.

182-18
Hydraulic
Study
Griffiths
Engineering
Fairview Ave

Councilman Grubham moved to adopt resolution authorizing Griffiths Engineering to do a Hydraulic Study of the creek at the intersection of Fairview Avenue, Popes Ravine, and Hiner Road at a cost not to exceed \$2,160. Councilman Weingartner seconded.

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

MOTION CARRIED.

183-18
Sewer Line
Inspection

Councilman Weingartner moved to adopt resolution authorizing Pipe Eye Sewer Services, Inc. to clean and inspect 1.5 miles of sewer lines at a cost of \$2969 per day for 5 days depending on debris, in accordance with the attached quote. Councilwoman Yonchuk seconded.

Discussion: Mr. Finch reported that we haven't received the new paperwork from them yet but they are agreeing to do 1.5 miles of sewer lines. The total amount of lines that have been done was not available but in the past he said we've typically done 3 miles per year but we cut it down to 1.5 miles because of SEMOM. Most of the older areas have been done.

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

MOTION CARRIED.

Discussion – Keesler. (GEK)

Supervisor Kniffen explained this involves a pipe that runs through their land and it has to be determined what the Town's liability might be. Mr. Blaise's research showed that an easement was put in place in 1973 when the Town installed the line, which confirms there

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is a Town line running through their property and we have the standard 20 feet from the center of the pipeline if we decide to do work there. Mr. Finch stated that Governor Cuomo released \$13 million for residential homeowners and questioned if we shouldn't have them apply for that and if there is any residual then we could take a look at it. They will be eligible because it did happen during the August window when the flooding occurred. Anything they might receive would be in addition to what they received from their insurance company, which left \$4,000 unpaid. Councilman Diffendorf said although it is unfortunate, he doesn't see us paying anything. Probably a lot of people will be applying for the grant money. There have been no issues since then so Councilman Grubham said this can wait until we see what money is available. Councilman Diffendorf said he thinks the decision needs to be made now, that we wouldn't do anything different if something plugged a pipe up and the water flooded another house down the road. Mr. Blaise said generally speaking he agrees with what Councilman Diffendorf is saying, but he thinks we have to look at these things on a case by case basis. In this instance, although he is not saying we would be liable for it, Mr. Blaise said the argument of liability is that this line runs through private property, we put it in and there were some representations to them in the past that we would fix the problem that we allegedly knew existed or was developing. Under those unique set of circumstances, Mr. Blaise said if he were representing the Keeslers, he would go into court and make an argument that the Town would be liable much more so than he could in the scenario that Councilman Diffendorf just gave. On a case by case basis, he can see why the Board might consider doing something here, and when the next person comes in with a flooding issue and in that case the facts are different, we might want to say no. Councilman Diffendorf said we don't know if at the time the pipe was put in the people didn't want a ditch there and asked for a pipe to be put in, and questioned who would be responsible in that case. Mr. Blaise said we don't know 100 percent that the pipe caused this problem, although there is some evidence of it. An argument could be made based on representations that were made that there might be a problem here and we will come back and fix it and then we don't. The analogy in these cases is police protection cases. As an example, he said if I call 911 and the city fire department doesn't get there for a half an hour and in the meantime my house burns down, the city doesn't have any liability. If the city goes out of its way saying we know there is a problem and we will address that problem for you, we know you're being stalked and we promise you protection, and my ex-spouse assaults me, then there could be liability on the part of the city because you know there was a problem and made a firm representation. There are factors here that could be argued in this particular instance but we don't know for 100 percent that the pipe caused the problem. Factors weigh on both sides and if you change any of the factors in any given case that may change what our assessment is.

Discussion – Bob Hamm – Valley Vista.

Mr. Finch reported he talked to Bob Hamm about the Rudball property in Valley Vista. Flooding keeps washing the bank away and her shed is hanging off the bank. Bob Hamm is being paid to push the creek back where it belongs. Since it's not a restricted area there are no restrictions about him getting in there. Supervisor Kniffen noted there are other properties involved as well. Mr. Finch said they can contact Bob if they want to hire him to do their section of the creek, but it's out of our hands. Supervisor Kniffen said he notified them that the grant is available.

Discussion – Sexual Harassment Policy. (ONB)

Supervisor Kniffen said he thinks if someone is harassed it should state in the policy they should go to the Supervisor. Mr. Blaise said there should be more than one reporting place in case the complaint is against the Supervisor. Since the Supervisor speaks for the Town, Councilwoman Yonchuk questioned if that would be a conflict. Mr. Blaise said all of the towns he's been working with have named the Supervisor as one of those to report to. Some towns have named a committee of which the Supervisor is one of three or four people and others have named the department head, Town Clerk or Town Attorney, but they all have two or three points at which you can report so if one of the listed people is the person of concern there is another place to report to. In response to Supervisor Kniffen as to how a committee would be listed in the policy, Mr. Blaise said it would state the Sexual Harassment Committee consisting of the following individuals, listed by position, rather than by individual names. In response to Councilwoman Yonchuk, Mr. Blaise said it

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would not be a good idea for a member of the committee to be a member of the public and not a Town employee, because that person has no authority to act and could potentially get into privacy issues with access to personnel or other files, when the Supervisor or department head might be covered in that regard. There also would be no authority over a private person if a problem arose due to their actions. Mr. Blaise verified that the committee could be made up of the Supervisor and two Board members, to be appointed each year. Supervisor Kniffen voiced his concern that there are no guidelines to follow regarding the penalty if someone was found guilty of sexual harassment. In referencing the Highway Department, Mr. Blaise said the CBA is followed but it depends on the offense and if it's not egregious and is the first offense you probably wouldn't terminate them, but if it isn't the first offense and the person has been warned then it might be termination. In every case it would depend on the committee's findings and termination might be appropriate. Mr. Blaise said if there were guidelines as to punishment, that hems you in. As a comparison, Mr. Blaise questioned what the punishment would be for other infractions, there is no policy and you get along without one. He does not think you can have a one size fits all defined guideline. Councilman Weingartner agreed with Supervisor Kniffen that this is ultra-serious but he thinks most people have gone through enough training, or have the ability to get trained, so you know what extreme is and what less extreme is and you know where to draw the line. If you have a distinct policy you are stuck there and this way each instance is its own mandatory sentencing. Councilwoman Yonchuk added that Mr. Blaise advised them in the past in regard to another issue, that as soon as you start to define and try to list all the things that could be considered, in this case sexual harassment, the more specific you try to get the more you hem yourself in and if a situation comes along that's not in our policy now what are we going to do. We would have to reinvent the wheel every time if we leave something out. Mr. Blaise said this policy does have a definition of what sexual harassment is but it's not limited to that because we don't know every instance that could go on when people are interacting with each other. He said the problem with mandatory sentencing is if you find there has been a violation of the policy that's fairly low grade and think it won't happen again and can be fixed so that people can work together, does that person have to be fired. More references were made to scenarios in the Highway Department and how they would be handled with the note that flexibility is important, depending on the severity of the circumstances. Supervisor Kniffen noted that it's simpler with issues in the Highway Department because you don't have to define what they did because it's very clear but questioned how we would assess those situations. Mr. Blaise said we could come up with something that would give the committee guidelines, but those guidelines would be subject to exceptions, which have to be built into it. Councilwoman Yonchuk suggested that the committee have an odd number of people and added it is part of the committee's job to say one offense merits more severe action than another one. She said as a woman sitting on the Town Board she sees there are degrees of sexual harassment and if she was presented with ten things that are considered sexual harassment and told to rate them on a scale from one to five, she wouldn't rate them all the same. She thinks it's part of the job of the committee to come up with a list. She also questioned if there is an appeals process for someone if the committee finds there was no sexual harassment. Mr. Blaise said he would recommend that the committee not consist of two Board members and the Supervisor because the committee's recommendation ultimately comes back to the Town Board for them to act on. Councilman Weingartner said he feels there should be one female and one male on the committee, with Councilwoman Yonchuk agreeing. Supervisor Kniffen verified with Mr. Blaise that the committee doesn't have the authority to impose sanctions, only the Town Board has that authority. Mr. Blaise said false accusations are handled the same way as credible ones, with punishment involved. In regard to the gender of committee members, Mr. Blaise said that it could be put in the policy as the Supervisor and two other individuals, at least one of whom will be male or female, so the Supervisor would designate who will be on the committee with both genders included. Mr. Blaise will draft a revision for consideration at the next meeting.

Discussion – Code Truck. (JAF)

Mr. Finch provided bids for four different vehicles for the Code Office: Frontier (lowest at \$24,235.), Chevy Colorado, Ford XLT (2), all being State bids. The estimate for repairs to the current truck is about \$3,000. The cost for repairs that have been done in the past is \$2,334.83. The price for a new 2019 Silverado - Extended Cab is \$27,220. The Ford

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Rangers are more expensive than the larger Silverado. He said that Mr. Smith is looking at taking the money out of this year's budget. They put about 10,000 to 11,000 miles on the truck each year. Councilman Grubham questioned if we need a new truck, that it seems like a lot of money and suggested maybe we could find a good used truck. He also noted that some towns pay their Code Enforcement Officer mileage to use their own vehicle and the Town of Chenango has a tiny car their guy uses. At 10,000 miles a year there are used trucks available that would last a long time. Mr. Finch said he did provide prices from the auction site for used trucks. Councilman Grubham said trucks are being sold all over and he is thinking maybe we should look in another direction, that he located a truck with 70,000 miles for \$17,000 and that's not a lot of miles anymore. Mr. Blaise said however we proceed we have to follow the Town's Procurement Policy, with \$20,000 being the amount for competitive bids. If we want to purchase a truck for less than \$20,000 we still need three written quotes for similar vehicles. In response to Councilman Diffendorf, Mr. Finch said there are about 120,000 miles on the current truck and the plan is to sell it on the auction site. Mr. Finch said he needs either all wheel or four wheel drive, so if a car is going to be considered it would have to be something like a CUV or smaller mid-size truck. It has not been determined if the Code Officer would want to use his own truck and get reimbursed for mileage. Mr. Blaise noted that at the current mileage rate of about 55 cents per mile that would be about \$5,500 a year and in five years you could have bought a new truck. Mr. Finch noted that the 2004 truck that was purchased new was in the Code Office for 13 years. The truck now is a 2010 but it's had electrical and numerous other issues. Councilman Grubham said this seems like a lot of money and there is no money in the budget for it and a new vehicle is the worst investment you can have. Mr. Finch said there is a 2013 Silverado on the auction right now, which is only three years older than ours, with 117,000 miles and sold for \$11,800 and a 2015 Silverado with 17,000 miles sold for \$26,000 which is \$1,000 less than we could buy a 2019 for. He added that truck prices are ridiculous right now. After reviewing the options, Councilman Weingartner said he thinks it would be easier to look at trucks below \$20,000 with local dealers because you don't have to go out to bid. After additional discussion it was decided that Mr. Finch will look at vehicles, both cars and trucks for under \$20,000, at local dealerships and this will be revisited at the next meeting.

NEW BUSINESS:

Discussion – Repair to Well 1 Generator. (JAF)

Mr. Finch reported there are two generators for Well 1, one is at the Treatment Plant and the other one is down at the well. Mice built a nest in the generator at the well and when they went to start it, it caused a fire and burnt out the windings. We received a price of \$12,000 from J&R Electric to replace the generator and install a new one. The stator had a lot of smoke damage so they don't know how well that will be and they're not sure if there will be any kind of warranty once it's rewound, if they did do that. To replace the whole actual generator part of it would be a better option and it's something that needs to be done relatively soon because it's our only generator we have for suppling our town with water in case we lose power down at the wells. They will provide us with a backup generator on a trailer parked at the Treatment Plant in case of an emergency and there will be no charge for that. It takes about three to four weeks to get the generator in so he is asking for the Board's approval. This is considered an emergency. There never has been an issue before with mice and there are now traps in place. In response to Councilman Grubham, Mr. Finch said this is a new unit, a complete factory replacement. In regard to the time it would take to get it rewound, he was told it would take at least three to four weeks if not longer, depending on how busy the company is. More labor would be involved and there would be no guarantee. He noted that a new generator with motor would most likely cost about \$35,000. He will submit this to the Town's insurance.

Councilwoman Yonchuk moved to adopt resolution authorizing the purchase of Well 1 generator replacement at a cost not to exceed \$12,000. Councilman Diffendorf seconded.

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

MOTION CARRIED.

184-18
Generator
Purchase
Well #1

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Discussion – Acoustic Panels for Board Meeting Room. (JAF)

In regard to the poor acoustics in this room resulting in echoes and an inability to hear well, Mr. Finch said he would like to get something installed to absorb some of the sound. Councilman Grubham said panels may not be the way to do it and he is suggesting we talk to an architect to give us some ideas about what we can or cannot do about the acoustics to make it work. He will look into this and report at the next meeting.

AUDIT AND PAYMENT OF CLAIMS:

Councilwoman Yonchuk 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, and ratifying the payment of the prepaid claims as authorized by resolution adopted January 2, 2018, all in accordance with the abstract of claims on file in the Town Clerk's Office. Councilman Diffendorf seconded.

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

MOTION CARRIED.

ADJOURNMENT:

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

MOTION CARRIED.

Meeting adjourned at 7:11 P.M.

Respectfully submitted,

Gayle M. Diffendorf
Town Clerk

185-18
Audit/Pay