

# TOWN OF KIRKWOOD WORK SESSION

**June 30, 2020**

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

Also Present: Robert McKertich, Attorney  
Kelley Diffendorf, Town Clerk  
John A. Finch Jr., Commissioner of Public Works  
Chad Moran, Code Enforcement Officer  
Marchie Diffendorf, Planning Board Chairman  
Duane Travis, ZBA Chairman (via Zoom)

## **PLEDGE OF ALLEGIANCE:**

**1. Award Sealed Bid for the Highway Garage Drainage Improvements. (JAF)**  
John Finch said we had sealed bids opened for the drainage project at the garage and after the Engineer looked over the contract and made sure everything was acceptable for us to recommend Byler Excavating at a price of \$88,802.00 to do the drainage over at the highway garage, so we'd like to start that process with a resolution at the meeting so we can start proceeding with that. Councilman Weingartner mentioned that it is on the agenda. John Finch said we also have quotes for the paving. The paving came in a little higher than expected so we are looking at what we can do to cut costs to get that number down to what we were allotted by DEC. John recalled the original price of \$182,000 and with everything that came in, Broome Bituminous was the low quote at \$124,931 which brought us up to \$228,813 so we are obviously over the \$182,000 and need to cut back some costs and the best way we can do that is to trim off or reduce some of the paving. The Town is purchasing the trench drainage and pipes needed for the job. Once all that is completed and we get closer to the paving we'll see how much we can trim off of that. I've got it down about \$38,000 right now off that price which brings us down to \$189,882 so we are about \$7,800 away from the \$182,000 which is what we originally budgeted for. Supervisor Kniffen added that 50% of that money was grant money that we applied for and received. That was some time ago when we got the grant and you don't get the money up front, it's progress payments but there was a time element of when we actually got the grant and got the bids together, and by that time prices had escalated and we went back to the grant people and they said that it is what it is, you don't get any more money. So unfortunately we have to make up and that is one of the things you are doing, cutting back on the blacktop. John Finch said we can't cut back any of the drainage, obviously, but one area we can is the pavement. Resolution

**2. Amended Sluice Pipe Policy. (JAF/RHM)**  
John Finch said Mr. McKertich came to me a couple weeks ago about a change he had in the Sluice Pipe Policy. Mr. McKertich explained that this was the policy that was approved at the

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last meeting, we just added another sentence that states that the work is to be performed in the highway right away and that it only be in the public interest for purposes of highway maintenance and storm water management not for private benefit. That is kind of implied in all municipal projects that we do, but I wanted to have it explicit in the policy so that it's clear.  
Resolution

### 3. Discussion – Tire Collection. (JAF)

John Finch said he's been contemplating a tire collection at the Town and charging residents. I've been in contact with other towns; Windsor charges \$3 per tire, they try to do it during their municipal cleanup which we do in the spring. But people don't always pay attention to when it happens so they do it during the course of the whole year and then they have to bring cash in the office and what happens with that and where it goes from there. Right now to take a load of tires to the landfill in one of our ten-wheelers it's almost \$300. People drop them off and if they see one tire there then they think it's free game we can drop as many tires as we want. We had one guy drop a truck load of tires off, luckily I found him on the camera and we found out who it was and had him come get them. It may also help prevent people from dropping them on the side of the roads, which happens everywhere in the Town and every town. I know Conklin doesn't do it and Windsor does. I'm trying to decide if it's going to be more of a headache than it's worth, how do we monitor it? They would have to drop them off while we're there and show I.D. from the Town, is it worth the \$3 each? We don't allow tire drop off but it still happens whether we allow it or not. We have another truck load out there of tires of people we can't catch on camera. Councilman Grubham commented that it costs \$5 to drop off a tire at a tire place, so if we charge \$3 it will cost us \$2 per tire to do that. John Finch said it goes by tonnage when we take it to the landfill. Chad Moran said he thinks the landfill charges \$3 per tire also, just the local guys charge \$5. Supervisor Kniffen asked for an approximate number of tires per load. John Finch responded approximately 70 tires per load and usually 2 truckloads per year, about 140 tires or possibly a little more. We don't want to allow people to drop off tires here because then we will be overwhelmed with it. Councilman Grubham questioned why would people bring them here and pay \$3 when they can throw them on the side of the road and the Town has to pick them up anyway. John Finch responded that is the problem I'm having, do I want to try and alleviate that issue or do I keep posting no tires and keep picking them up on the side of the road? Councilman Grubham said you are going to be doing that anyway. Supervisor Kniffen said we want to limit that, we don't want tires all over the road, we should still take tires here. John Finch said we can try it during the next municipal cleanup. Councilman Grubham said if we start charging they are not going to bring them here, they are going to throw them on the side of the road even though it's less than what you pay other places. Wouldn't it be cheaper for us to accept the tires here even if we don't charge, than us having to go out and get the tires and bring them back? John Finch said we would have to up our budget line for tire removal. Councilman Grubham said it's still cheaper than sending people out with a truck to pick them up. John Finch agreed. He said we now have \$700 in that budget line, if we want to accept tires we'll have to advertise and we will get an abundance of tires. Councilman Grubham said I don't know that we need to advertise but they can bring them

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here, otherwise we don't know where the tires are coming from, they could be from Conklin. Councilwoman Legg asked how much of the budget was used last year. John Finch responded all of it was used. Councilman Weingartner asked if the big issue with the tires is the mess, water, bugs, and mosquitos. John Finch agreed and said the tires can't be left out to sit for too long when we do get them. Supervisor Kniffen said that we have lived with this budget for a long time and I agree with Councilman Grubham that we just do it and we'll find a way to live without that budget line item. John Finch questioned without it, or add to it? Supervisor Kniffen explained whatever it is, it's not that much and we should take the tires and not charge just like we have been right along. John Finch said ok.

#### **4. Discussion – Part Time Park Employee. (JAF)**

John Finch said this year we removed all of our summer help for the parks and I'm looking to hire one part time person 16 hours a week to help cut the grass. I've been helping out, Austin Haskell's been helping out, and it's getting to point where I can't do it all the time, Austin can't do it all the time, he has other responsibilities so we are looking to hire someone. We had it written on there about the softball tournament but that was canceled so we are looking at \$2,051.20 for July and August to cover those two months. I'm thinking we can pay for it by transferring money out of the equipment line to the part time summer help and leave the remaining balance in the parks equipment line in case we do need it. Supervisor Kniffen said when we did the virus budget we took that out, so you are finding a way to get that money back in. John Finch responded I'm trying to find a way to hire somebody because mowing all three parks is a full time job for at least one, almost two people, there's a lot of mowing to be done. We usually have to mow the fields and Veteran's River Park has to be mowed Thursday and Friday, it takes two days to mow that alone with one person, so that leaves not much time to mow and if it rains that really cuts down on our time to mow and if I'm busy doing something else I can't stop what I'm doing to go mow the park so that's why I'm looking for that one extra person, and that's the minimal amount that we can get by with this year. In response to Councilwoman Legg, John Finch said it would be Julius Tutko, he's been our parks guy before and he said he would be flexible to whatever day or time we needed him. We need a resolution to hire him. Resolution

#### **5. Water Meter Fees Local Law – Resolution scheduling a Public Hearing for August 4, 2020 at 6:00 PM regarding amending the fee for water meters. (JAF)**

John Finch explained we are looking at increasing the permit fee for new water service, raising it from \$160 for ¾ inch to \$250 for ¾ inch to cover the cost of the new meters. We do this every time we have new water meters and they are more expensive, the permit fee just covers the cost of the meters. When I started here it was \$100, then with new meters it went to \$160, now these new meters are \$250. For 1-inch meters it will go from \$250 to \$350 to cover the cost. That's just for new hookups, not for existing customers. Resolution

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## 6. Discussion – Property Maintenance/Lawncare. (JAF)/CM)

John Finch said Chad Moran and I have been having some issues with property maintenance and confusion on property maintenance. We are here to get some clarification and direction on the policy and where we should go with property maintenance and mowing and trimming. We had two circumstances this month where Chad served a 10 day notice to homeowners. We had complaints about people not being able to see pulling out of S. Sunset onto Ostrum Road because of high grass and also at the intersection of 2339 Route 11 and Nina Drive because of bamboo. Neither parcel had complied after getting served the 10 day notice. According to our property maintenance records the Town is authorized to remove the grass and weeds, trim, mow, and spray the property to prevent any further occurrence. There's also a policy in our Zoning Local Law, Article 5 Supplementary Standards Section 501.13 Visibility at Intersections; "on the corner lots clear vision shall be maintained within the triangular area formed by the intersecting street lines in a street line joining said street lines at points which are 20 feet distance from point of intersection". So 20 feet back in both directions then a line across there makes a triangle. There is not supposed to be anything to obstruct the view coming out of that property, pulling out onto an intersection, and that is any intersection in the Town. Since neither of these were remedied I had the employees from the Highway Department go down and trim the property at 2 South Sunset and 2339 Route 11 and we issued both property owners bills for the property maintenance. I don't think we should keep doing this, it's taking away time when we have a lot more things we need to be doing for the Town then maintaining other people's property.

Supervisor Kniffen asked Katie Whalen to speak on this issue, she is the landowner at 2 South Sunset. Katie Whalen said she has lived there for 18 years and it's been maintained by the Town. This is not an issue of me not taking care of my property because anyone that knows me knows that is important to me. This is about the safety and the visibility of the hill and we have a problem on Ostrum where there is a severe blind spot. People can't see and it's not necessarily because of the weeds. People have been in accidents on that corner because you can't see. I think the road needs to be dug out, repaved, and leveled because it's a liability. There are no weeds in the winter time and I had two clients get in accidents because you can't see someone coming up the hill. The Town is asking me to weed whack that ditch and I don't own 25 feet from the center of the road to where the fire hydrant and street sign are. It's been maintained for 18 years but since the new Code Enforcement Officer came he's been giving me a hard time about it. Last year they sprayed all kinds of chemicals and it looks awful. That was his way of maintaining it, instead of bringing out the ditch witch. The ditch witch is up and down that road all the time and for some reason they stop at my property instead of continuing to take care of it like they have for 18 years. It's a safety issue for the school bus driver, whom I've had a conversation with about the blind spot on that corner. To me this is a safety issue and a liability for me to weed whack this ditch. I'm 5 foot tall and I'm not willing to put my life on the line when the Town has trucks and I pay property taxes, but they send me a bill for \$153 to maintain something I already pay taxes for. It took them less than 15 minutes. I'm offended about the bill when it has always been taken care, you took care of it last year and spread all

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these chemicals without even notifying me. What if I had an animal or children that crossed that ditch and you are spraying Round-up, the most illegal stuff to be spraying. Now it looks like hay, it looks awful what they did. My suggestion is to cut the road down, come in and level it off, repave it and be done with it before someone gets killed and sues the Town. I don't want to be liable, because the minute I touch it I'm now liable for people to sue me. I don't feel it's my responsibility. When you fix the road, I'll weed whack, but until you fix it I'm not touching it because it's a liability and it belongs to you (Town). I don't want someone to sue me if they get in an accident because I didn't weed whack that day or that month. The Town has the machinery and the manpower to maintain that road properly and they should fix it.

Supervisor Kniffen said there were a couple issues; you talk about the roadway, but also when that grass is not cut when you approach that intersection you can't see the road at all. We're not cutting that road down right now, we don't have the money, that's another issue. But the smaller issue is cutting the weeds down and we need to do that, the other issue is we always tell our people, especially the Highway, do not go on homeowner's property. Katie Whalen said I don't own that. Chad, Mr. Finch and I were measuring it, 25 feet from the center of the road. Supervisor Kniffen explained that we have a right away, we don't own it. To make that clear part of that right of way is your property. I'm giving facts and that's why we need to do that. The previous Highway Superintendent should not have been maintaining that and he made an exception. Now we have a new Highway Superintendent trying to do it the right way. Katie Whalen said the Town employees have protection, a truck and cones when they are working out there, I have no protection. Supervisor Kniffen said I understand and feel bad for you, but we would have to do it in other places if someone asks. I know you think the road needs to be fixed but the issue we are discussing is the weeds. Katie said you know how much of a blind spot that is and nothing has been done. Councilman Weingartner said it was cut back in the late 70's. Katie Whalen said that clearly it wasn't cut back enough. Councilman Weingartner said to cut it back as much as you want will mess up everyone else's property, that's why it was cut back to what it was back in the late 70's. Supervisor Kniffen said once the weed killer is put down then you would never have to mow it. John Finch said they sprayed Weed-B-Gone last year. Katie Whalen said you gave me a bill for \$153 and I pay enough taxes not to be billed. Supervisor Kniffen said putting the bill aside for a minute, what we can do moving forward? John Finch said we mow the shoulders of the road once, maybe twice a year, we do it when we can. If it's not done, it's not our responsibility to maintain it. We can't make a special trip just to mow her bank. Supervisor Kniffen asked if there are any other properties that have visibility issues if the shoulders don't get mowed at a specific time. Could those be put at the top of your list? Chad Moran said I get phone calls about certain instances, those go to the top of the list and we will address it with the property owner. They have up to 5 days to start and 10 days to finish the maintenance, or by then, according to Code, we can ask John to do it or subcontract out to have it done for safety reasons. We don't go looking for these circumstances, but once someone makes a call it becomes a priority. The homeowner is asked to cut back 3 feet. As far as the ditch on South Sunset, it's not really a ditch. It's a small embankment at best. I don't feel it's dangerous and seems pretty benign and very easy to take care of to remedy. We didn't want

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to have to spend the time or the money taking care of, but the weed killer is the only course of action we had. Katie Whalen said it is uneven and a ditch and I can't get my tractor through it. My corner is very dangerous and should be a priority for you. John Finch asked if we should stop what we are doing and come mow your bank. Katie Whalen said you are doing it up and down that road why not make it a priority, it's a bus route with kids on the bus. Councilwoman Legg said the area does gather water and goes right down the embankment. Speaking about the road, maybe we need to do a road traffic study on it because even without the grass it is very hard to see a car that comes down and then up. There are times I've been hit. You can ask Dave Zeitz and the three people on the Zoom call about how that intersection is not safe. You have to sit there and watch the traffic coming down that road to make sure someone is not in that swale, because they fly down that road. They do not go the speed limit. Katie Whalen said to Mr. Zeitz, you know all about it because your wife had an accident there and seriously hurt someone because she couldn't see. It wasn't about weeds that day, it was about the visibility of not seeing someone. That is what I'm saying to Mr. Finch, take care of it and be done with it instead of billing me and making me the target. I feel like this is wasting everyone's time. Supervisor Kniffen said, Katie it's not that you are the target, it happens to be the situation. We can't go around picking your property and mow it a couple times a year when we don't do that for anyone else. You have to understand we represent all the people and if we start with your property someone else is going to say to do it to mine. Supervisor Kniffen responded to Katie Whalen that it was wrong of the Town to maintain her property for the past 18 years. Katie Whalen said it was the right thing to do because of the blind spot. If it wasn't a hazard I wouldn't be here, I'd be doing it. I think it was being done because someone saw it as a problem and they made it a priority. Supervisor Kniffen asked John Finch if Katie Whalen would agree to be part of the maintenance, which she is not now, would you pull that bill back if she agreed to do the maintenance? John Finch said he would rescind the bill if she agreed to do all future maintenance. Katie Whalen reiterated that it's not about the \$153, it's a liability. Mr. McKertich said if it is a safety issue, theoretically it could be a liability. I'm not weighing in on that right now because I don't have the facts and I haven't been up to the property. It's a question of whether or not John feels it's required to be maintained for purposes of the safety of the flow of traffic. He has the right to maintain that area if needed but also has the right of the property owner to maintain their own property. Through these laws that John just referenced, there's two different ways we could do this. Supervisor Kniffen said there's one more law that we have because of the properties on the back roads that let their lawn get high and they don't mow it, we subcontract it out and put it on their tax bill. Mr. McKertich said that is the property maintenance law that John was referencing, as long as it's their property. My question here is, whose property is this? Supervisor Kniffen asked, are we saying the right away goes into your yard the 25 feet, that part, we don't have to mow? Councilman Weingartner said the property owner still owns the property, the Town has a right away to go on it. To get on to it to fix the fire hydrant, to clean the ditches or something like that. Mr. McKertich said if that area is needed to maintain safe travel then we have the right to go on to that property and dig out the ditches and allow the flow of water and so forth. If this is just a lawn maintenance issue then the property maintenance law kicks in and says that we can require someone to mow their lawn

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if the grass is getting too high. Councilman Grubham said the issue is if it's a safety issue, then whose responsibility is it, the owners or the Towns? Councilman Weingartner said the way it was read it sounds like it's the property owner. Mr. McKertich said I would say both, if John finds in order to maintain safe travel on that road, he needs to exercise his rights to maintain the right of way to go on to that property and dig a ditch. But if that's not the issue and it's just an issue of high grass then we address that safety issue through the property maintenance code by issuing a ticket for violation of that code and we can mow the lawn and charge the cost just like John did. There's two different ways to enforce that safety issue. Councilman Grubham said it sounds like there are two different situations here, one is the high grass, which is a safety issue and I believe it's your (Katie Whalen) problem to cut the grass. The second problem, is there a problem with the road itself and maybe it needs to be looked at? Dave Zeitz said the road was deemed a dangerous intersection when my wife was in the accident Katie previously mentioned. Speed reduction and warning signs were put in place but it was stated to us at that time that they did not have enough line of sight to change the grade on the road. Whoever was researching it at the time didn't feel there was enough time for people coming down that hill to stop at a stop sign. Councilwoman Legg said I have been hit both ways, coming and going from that intersection. Supervisor Kniffen said to Katie Whalen, I know this isn't what you want to hear, but you should mow, it is what it is. Our lawyer is saying the same thing. Katie Whalen said I disagree. I will weed whack it, but I'm not paying the bill. I think you should reconsider that. John Finch said we were asked by Code Enforcement to mow and we took time out of our schedule, so the bill is going to stand. Supervisor Kniffen said, thanks for coming Katie.

## 7. Discussion – Post Office Lease. (GEK)

Supervisor Kniffen said we have a lease right now with the Post Office that expires in 2021 and in the agreement it says anytime the Post Office wants to renew they can, and they've chosen to do that. They want to renew it now for another five years which would take them through 2026. The current lease is \$10,053 and they would increase that by 10% to \$11,058 which means they are staying. In the lease they can give 30 days' written notice if they choose to terminate the lease but for right now they do want to stay. Mr. McKertich said that lease automatically renews when they send a notice for the renewal so it doesn't require a Board action. They triggered an automatic renewal by sending that letter. Supervisor Kniffen questioned what happens if we aren't happy with the increase in price. Do we have the opportunity to challenge that? Mr. McKertich said we could try to reopen that negotiation but in terms of the lease itself, it built in an automatic escalator and an automatic rate to renew. Councilman Diffendorf questioned if in five years they can't automatically renew again. Mr. McKertich said I think there was only the one opportunity for the automatic renewal if I'm remembering right and then we would renegotiate after those five years.

## 8. Discussion – Amending the Rules and Regulations Governing Attendance and Benefits for Town of Kirkwood Employees – Time Off for Voting. (GEK)

Supervisor Kniffen said this was a new law that you had to provide an opportunity for your people to vote that work for you and you had to give them up to 3 hours, and our employees

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would not have that problem because the polls close at 9 PM and that gives them plenty of time to go vote without extending the extra hours. Mr. McKertich explained about a year ago the State changed the law to allow employees 3 hours of time off to go vote regardless of whether they needed the time off to go vote. Just last April they changed the law again, now it says they are entitled to 2 hours of time off to vote only if there is not sufficient time to vote. That phrase “sufficient time” means there has to be 4 consecutive hours between the end of their shift and the closing of the polls. If a shift ends at 3 PM in the afternoon, for example, and the polls close at 9 PM then there is sufficient time for them to vote and they are not entitled to any time off. So the point of this change would be to update our policies to get them in line with the current law. Councilman Weingartner asked if there were any issues with that with the CBA (Collective Bargaining Agreement) and Mr. McKertich responded no because this was set by a policy that was adopted. Resolution

## **9. Discussion – Tennis Courts. (LCG)**

Councilman Grubham said we got a price of \$3500 for the tennis courts repair. There’s some cracks and bubbles out there so I’m proposing we do that to extend the life of those courts. We discussed some time ago that we have put so much money in them before and maybe the day will come when we just don’t do this anymore since they aren’t being used as much as we would like, but if we spend \$3500 we would extend the life another 2, 3, 4 years. Councilman Weingartner asked if the schools still use them. Councilman Grubham said he thinks the Junior High may use them, but beyond that, they just don’t get used all that much for the amount of money we had to put in them before. If we spend this money now it extends the life that much longer, but if we keep waiting they will fall apart and we’ll get back to that \$25,000 amount again. I’m proposing we spend this money and fix them up. We also got pricing for the basketball court down there, which is not in great shape either, that was around \$1500, since we are on this budget I think we just leave that for now and look at it later when money becomes available. Supervisor Kniffen said we will need a resolution for that. Councilman Grubham responded to Mr. McKertich that there was a proposal submitted. John Finch said it was B & G Sealcoating. Resolution

Supervisor Kniffen explained to those that are here tonight and those on Zoom we have referenced the budget a couple times, if you aren’t aware of it when all this started with the Virus we got concerned because people weren’t out shopping, or out to restaurants and because of that we would lose sales tax and sales tax is number one and property tax is number two of our revenue, so we put together a Virus Budget and that cut spending and cut our revenues so that we would be in good shape by cutting costs and actually putting a freeze on spending so we wouldn’t have a dilemma when we got farther down the road. If we didn’t do anything we have lost all this money and have bills to pay, so all the departments and most of the line items were reduced. That’s what we did and we call that the Virus Budget and hopefully it will work out for us.

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10. **Resolution appointing Maureen Walsh as Bookkeeper PT effective July 1, 2020 at a rate of pay of \$18.00 per hour. (LCG)**

Councilman Grubham said I think most of you are aware that Jean Smith is retiring at the end of July so we need to hire a person to fill her position. Jim Smith, Jean Smith, and I interviewed people who applied. We only had two people but we decided on Maureen Walsh to take the job. I think many of you here might know her, she does some of the photographic work for The Country Courier, but she also is pretty well versed in what needs to be done over there. My recommendation is to hire her for the job.

11. **Discussion – 5G Cell Towers. (LCG)**

Councilman Grubham started by handing out a photo and said I don't know if you know this but a month or two ago what appears to be a 5G Cell appeared on a telephone pole on Route 11. Now 5G is the new system that is going to be going in throughout the country and we had talked about it when we were doing the Comprehensive Plan but didn't seem to think it was going to get to Kirkwood any time soon, if ever. But apparently it is, so we want to try and put some kind of plan together so that Kirkwood can have some control over it. I'll let Mr. McKertich talk about it because he knows more about it but the way the laws are being written they are not going to let us have much say in how it gets done in our town and charges and so forth. It's still a cell tower although a very tiny one, they put a lot of them in and you might have 5 to 10 in a small area and in several areas throughout the town, nothing like the big tower that will big going up here. It's something I think we need to address. Mr. McKertich said that is the summary of it. There are federal laws governing this kind of technology and it prevents municipalities from prohibiting or inhibiting these kinds of devices. It's not something we can stop here in the Town, not that we would necessarily want to, but it is the kind of thing that we can impose some regulations to deal with aesthetics and the safety of the pole structure itself and we can collect certain fees for reviewing that kind of thing. We can put a permitting process in place almost like a building permit process. That would be the kind of thing that if you want me to, or Lew and I or a committee, we could start work on a local law with regard to this. It's very much in flux so I wouldn't be surprised if we get something in place and the federal government says they've preempted the whole thing. Councilman Diffendorf questioned how we tax this thing, how do we assess it. Mr. McKertich said that was a good question, we looked into the fees, there are certain fees that can be charged but I have not looked into the taxation issue, something I will do. Councilman Grubham said he has some information from other areas and what they've done and how they've attacked it. He said I'll make copies and get it to everyone, you can at least read about it and see where we are going with this. Councilman Grubham said I would suggest a committee, maybe Marchie again, we were kind of talking about this when we were doing the Comprehensive Plan. Councilman Grubham responded to Councilwoman Legg that it was located right at the bottom of Ostrum Road, right along the railroad tracks. Supervisor Kniffen recommended Chad Moran be included in the committee along with Marchie Diffendorf. Councilman Grubham said sometime in the near future we will set up a meeting.

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12. **Record of Activities/Standard Work Day and Reporting Resolution for Elected and Appointed Officials – James Smith, Budget Officer.**

Supervisor Kniffen said this is a resolution regarding Jim Smith who had to report some activity data in regard to his NYS pension. We have to do that time to time with some of our employees.

13. **Discussion – Property Drainage. (KML)**

Councilwoman Legg said it was brought to my attention about things on my street again, South Sunset, which made me start thinking and looking into things. The problem is our residents digging drainage ditches and Dave Zeitz, who is here and is the landowner who is affected by both of these situations. Right now we have three landowners that were doing excavating of some sort, and my first question was did they have a permit to dig, because if they had a permit we wouldn't have the issues we are having right now because they would know what they can and can't do. Come to find out, we don't have a permit for digging but then when I mentioned digging tonight, I was asked if they had a permit to excavate and there's no permit. I did a lot of research and asked questions of John and Chad and reading things from the Cornell Cooperative Road Program regarding drainage and other towns that do have permits in place for types of drainage and land excavation at different levels. Dave Zeitz was an innocent landowner who has one landowner next to him doing a ditch of a swale nature and another landowner on the other side who is digging new drainage and wants to be in a Town easement and it may affect his property but we won't know. It could be any landowner that has someone who is digging on their property to put in landscaping or whatever because right now everyone is the do-it-yourselfer and a lot of them are renting their own excavators and doing their own digging and I just feel we need to have a discussion about some kind of permit or protocol when people are digging or excavating large projects. There's one I can see from my backyard and there is a lot of ground moved and a lot of it is moved into my neighbor's yard, who he gave permission, but that's a big excavator they have back there and there's rock on the road and who knows what they are doing because Chad couldn't talk to them yet. Councilman Weingartner asked where this all was happening, as your coming down the bottom of the hill there, someone is trying to get rid of that swale? Dave Zeitz said that was another issue I thought was solved and up until recently I thought it was very well handled. Dave Zeitz introduced himself and said he lives at 17 South Sunset Drive for almost 28 years. In the past 4 to 5 weeks two separate drainage issues have arisen. The first one I talked to Chad Moran of Code about, and the second one I spoke to John Finch. The second one if I had not been there at that time it would have resulted in my property line being breached without my approval to tie into a drainage swale that is now buried in the pipe that I gave the Town an easement for. The other property owner was going to come on to my property and tie into that without my permission, and he was not given permission to do that by the way. Both Mr. Finch and Mr. Moran were asked if permitting was required for drainage work, both responded no. I stated that based on the issues that happened in the Town, would it be a good idea to require permitting for drainage. Both didn't have a definitive answer and I stated, after all, we need to get a permit supposedly for everything we do. I approached Councilwoman Legg about the

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situation and she said we would try to find some answers. From a homeowners perspective I should not have to retain a lawyer and spend money when simple steps could be taken to prevent problems to protect my property. At the time a building permit is issued part of the process should involve questions about drainage. If drainage work is to be completed a list of dos and don'ts should be included as suggestions. It is up to the permit obtainer to do the proper thing. In a 2002 summary of Kirkwood's Comprehensive Plan Zoning Ordinance amendments line 9 deed states; site developments shall be such as to minimize erosion and not produce increase surface runoff on abutting properties, which is what is happening to me. I understand that this was directed towards business development but it seems as though it's a double standard if not applied to residential development. Thank you for your consideration in this matter. I don't think I should have to go to a lawyer because someone is now dumping their water through my property. There has to be some type of rules, I know New York State has laws of things you can and can't do, maybe we should be passing that along to people. Councilman Grubham said there is a rule, a line in the residential part of it, surface water cannot be directed to adjacent properties. Dave Zeitz said by creation of the new swale, not only does it concentrate it but you know where it's going. Councilman Grubham said I would need to get the code book and I'm not stating it perfectly but essentially that's what it states. Dave Zeitz said if we made people aware of what they should or shouldn't do I think it would really alleviate a ton of issues. Unfortunately, it's just me here complaining right now, but I'm sure this happens other places. Councilman Grubham said it's probably put in there so property owners could not dump water on their neighbor's property. Dave Zeitz said this is not water running off of someone's yard. That I have to accept. I have multiple areas in my property because it's downhill that I have soil erosion and I have to live with that, I don't think I should have to live with people focusing their water on my property. Councilman Diffendorf asked didn't you say he wants to go on your property, is he tying into a pipe or just a drain? Dave Zeitz replied a pipe. I'm the low man on the line, when the Bell sewer project went through, instead of putting a pumping station in they asked me if they could put the sewer line through my yard as part of that agreement I said if you bury this present swale on my property in a pipe and maintain it I'll give you the easement you need. So he was going to broach the property line, tie into the easement that was granted to me and not to him, and I refused that. Councilman Diffendorf asked by you refusing it then you aren't going to get this water then. Dave Zeitz said I'm sure I'm going to, because of the contours of the land. Councilman Diffendorf said so you would get it if he didn't have a swale, you'd still get that water I take it. Dave Zeitz replied he has access to the swale on the back of his property if he wanted to tie into it, he doesn't need to use my property. Councilman Diffendorf said I want to understand this, you say you are the low point so you would get water that came off his yard in a normal fashion. Dave Zeitz said I don't think so, there's like a V and if you get enough water that V is going to be overcome onto my property. I have pictures pre-pipe and it was unbelievable the water that goes down my property. Dave Zeitz responded to Councilman Diffendorf that it was a big ditch in there. Councilman Diffendorf said so that was the flow in that area. Dave Zeitz said but you were actively taking water from the other side of the street putting it the under the street down on my property. Councilman Diffendorf said he wants to understand that it was a

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flow area and he agrees 100% with Councilman Grubham that people cannot dump water on you unless it's the natural flow. Dave Zeitz said when you change and put drainage in different areas isn't that changing the flow? Councilman Diffendorf replied it could be, sure. Supervisor Kniffen said he did go up there with Chad and was under the impression that your concern was not the property next to you but the property if you come into South Sunset on the left, it would be the second property the people bought and they are refurbishing it, they want to sell or rent it. Did that person remove the lot of foliage and stuff that would have held the water back but now that it's gone, you are getting water from that property? That's a whole other issue. Dave Zeitz said my thing on coming to the meeting tonight is to say you guys have a permitting problem or issue. Supervisor Kniffen said I'm trying to understand your problem because I thought at one time you said you weren't getting anyone's water yet. Dave Zeitz said I get normal water just because of the property lines because I'm downhill a little bit, but the person on the uphill side dug the swale on the uphill side of their property because they didn't like the road water coming into their yard and they directed that road water onto my property and two or three other properties. Supervisor Kniffen said so this clause that said you can't do that, you are saying whatever they did it violated the local law. Councilman Grubham read from the code book; "no surface water should flow to any adjacent properties", so if someone is directing water to someone else's property they are not supposed to be doing that. Dave Zeitz said at the time of the construction of the swale I told the guys doing the job that you can't do this, you are redirecting water onto my property, they said to tell the owner, and I never heard from him so that is why I contacted Chad. My thing here tonight is you guys have to start thinking about requiring permits for drainage. Councilwoman Legg added or some kind of protocol that people have to follow. Chad Moran said it would have to be looked at by our Town Engineer and you'd have to have a Hydrologist, all these things would have be at the cost of the Town. Councilwoman Legg said when I looked at the other ones it doesn't seem like it's that involved. Chad said permits are required for any new construction. Dave Zeitz said Mr. Finch showed up because the other guy was putting in a driveway, well that's not new construction. But he had a permit for that because the contractor got ahold of John's guys because they were up there. They were around my property asking where the sewer was located, where the storm drain was, they wanted to tie into it. No one asked me anything and I'm the property owner. Supervisor Kniffen said it looks like we need another committee to take a look at this. Councilwoman Legg agreed to chair it and Councilman Weingartner offered to be on the committee. Supervisor Kniffen said he would help if needed as well.

#### 14. Discussion – NYS DOT/Fairview Avenue Agreement. (GEK)

Supervisor Kniffen explained this is about the Flood of 2018. At that time Kirkwood was hit the hardest out of anyone in Broome County we had 2.2 million in damage to our infrastructure and a lot of it was on Fairview Ave and Pope's Ravine and that area. When this all happened people couldn't even get through Fairview, they had to go around to get to Binghamton. We found out Fairview was a federal highway and DOT got involved and to get it up and moving Kirkwood had to spend their money to get it done, which we did. We were promised if we finished it in such and such time we would get 100% of our money back and if not we'd only

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get 80%. It turned out we did get it done in time to get 100% but that was 2 years ago and we still don't have our money. With that and other situations involving the DOT and Federal Government it's over \$800,000 that the Town of Kirkwood had to put out. We're a small town and it's hard for us to afford that kind of money. This thing dragged out and dragged out and finally we requested a meeting with the local director of DOT and met on a Wednesday and by Friday we got a call that we are going to get our money. They gave us an agreement, which Mr. McKertich said was a standard agreement, nothing they would negotiate. Supervisor Kniffen continued that the agreement lays out the money that is going to be refunded and it turned out to be that DOT will end up giving us the money and they'll go after the Federal Government to get their money. We wrote letters to Senator Schumer and I got Senator Akshar involved in it and by going to DOT we finally got it moving. Hopefully we'll have a resolution on tonight for us to sign that and pass it on, so we are getting closer to getting that money. Mr. McKertich commented that most of the work is considered emergency work so it's refunded 100%, there is a portion of that work that is considered permanent restoration work and that is only funded 80/20 so the Town will be responsible for that 20% which amounts to less than \$5,000.

**15. Resolution appointing Marc Latini as Recreation Supervisor-OC effective July 1, 2020, with probationary status ending June 30, 2021. (GEK)**

Councilman Grubham asked if Marc Latini was already on probationary status. Councilman Weingartner said this is his second year, he started last summer. Councilman Grubham said this means he'll be on probationary status for another year. Councilman Weingartner said it was never a reoccurring yearly appointment, once a person was appointed it was permanent, I don't know why it's back on. Supervisor Kniffen agreed. Councilman Diffendorf said maybe it was supposed to say June 30, 2020. Councilman Grubham said maybe his probationary status is up July 1<sup>st</sup> this year and this is to make reference to that, he is now off probation. Councilman Weingartner said that makes sense. Supervisor said we are saying we already did a resolution to hire him, and several Board members replied yes. Mr. McKertich said it sounds like we should go back and look at that resolution because I'm not sure if maybe it expired, like a term of office that expired after a year. I'm just guessing but that seems to be the way it's written. Supervisor Kniffen said we will hold on it.

**16. Budget Transfers.**

**17. Audit of Claims.**