

**TOWN OF KIRKWOOD
WORK SESSION**

October 27, 2015

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

Also Present: Oliver Blaise III, Deputy Town Attorney
Gayle Diffendorf, Town Clerk
Raymond Coolbaugh, Commissioner of Public Works
Marchie Diffendorf, Planning Bd. Chairman
Duane Travis, ZBA Chairman

1. Bid Opening – New 2016 Dump Truck with Equipment. (RJC)

Councilman Diffendorf opened and read the following bids:

Beam Mack Sales & Service	\$182,091.38
Burr Truck	\$184,487.00
Stadium International – Bid 1	\$175,873.00
Stadium International – Bid 2	\$174,759.00
Tracey Road Equipment	\$180,702.00

The bids will be reviewed and awarded at the November 2, 2015 meeting.

2. Bid Opening – 2016 or Newer 20,544 LB Backhoe Loader. (RJC)

Councilman Diffendorf opened and read the following bids:

	<u>Without Trade</u>	<u>With Trade</u>
Five Star Equipment, Inc.	\$97,452.00	\$65,252.00
Liftech Equipment	\$93,814.00	\$59,314.00
Milton Cat	\$96,435.00	\$82,435.00
Monroe Tractor	\$97,630.00	\$63,630.00

In response to Ed Egan it was noted that these bids will be compared to state bid prices.

3. Discussion – Geiger Lane Meeting. (GEK)

Supervisor Kniffen explained they are looking at putting a boat launch in at Geiger Lane and there have been concerns noted from some of the residents as to how it will be operated and managed. As a committee report, Councilman Diffendorf said he and Councilwoman Yonchuk are still working on this and will get back to the Board on this as soon as possible. There is a lot of funding for boat launches in the NYS budget and although DEC is going to do a lot, hopefully they will commit to more. He is hopeful they can get a launch for handicapped kayaking.

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4. Discussion – Rogers Mountain Way. (GEK)

Supervisor Kniffen explained that most of Rogers Mountain Way is located in the Town of Dickinson in the Hillcrest area but some of it is in Kirkwood. There are 2 railroad crossings that must be used to access the road. There have been problems through the years with one of the crossings being blocked and there is an emergency concern in the case of a fire and if an ambulance needs to get through. At the last Kirkwood Board Meeting, Supervisor Mike Marinachio and the Highway Superintendent from Dickinson came to discuss this and noted that they could not get in touch with the railroad to get the issue resolved so they planned on building a road to be used as ingress and egress without going across the railroad tracks at a cost of \$250,000 which they were planning on borrowing. Because some of the homes are in Kirkwood, Dickinson asked if Kirkwood wanted to be part of this project. Supervisor Kniffen said unfortunately they did not move together on this, Dickinson was moving ahead without Kirkwood's input no matter what. The project has been started and should be completed by the end of November. Kirkwood questioned why Dickinson wouldn't talk to the railroad first requesting they not park the trains there for such a long time. In the meantime Kirkwood pursued the railroad for help and a meeting will be held Thursday morning. Even though the road is going through Supervisor Kniffen still believes something should be done in regard to the crossing since it is another avenue for getting in and out of that area. There always will be times when trains are passing through there but this issue is only for the trains that sit there for an extended length of time.

Supervisor Kniffen said to him this might be considered a type of special district, such as a water or sewer district. These people made the decision to live there knowing the railroad crossings could be a potential problem, so why wouldn't it be a special district to build a road and have those people pay for it. He questioned if it was right to ask all the people in Dickinson and Kirkwood to pay for this project since it is a lot of money.

Supervisor Kniffen said he received a call from a local contractor inquiring why they did not get the opportunity to bid on the project. Supervisor Kniffen was told Dickinson is using self-help, which means they are using town employees to help build the road and the legal opinion is they did not have to go to bid. Mr. Blaise explained that every 2 years Dickinson puts out a bid for contractors to bid for projects that the town cannot handle themselves. This is for someone who is basically on stand-by to provide laborers, machine operators or machinery at prevailing wage rates for road and sewer repair projects. That is what they are using in this case, they did not go to bid specifically for this project.

It was noted that between 1/4 and 1/3 of the population in that area is located in Kirkwood. Initial thoughts at that meeting varied as to whether to help or not.

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Councilman Grubham said he feels they should definitely find out first if they can negotiate with the railroad and they are not in a position yet to make a decision on whether to contribute or not to the project. At this point he is not keen on doing anything.

Councilwoman Yonchuk said Dickinson had already built it into their budget and Kirkwood did not so certainly for the next budget year there would be nothing Kirkwood could do but that does not preclude them from budgeting in another year. She added that although those people bought homes there knowing there was a railroad crossing, everyone knows from what has been experienced in this town and other municipalities that although the crossing was there 20 or 30 years ago the whole nature of the traffic and trains stopping might not have been an issue then. The dynamic of that could easily have changed over time. She added that although there are complexities with setting up a special district, they ask all the residents to pay for what only a few will benefit from all the time. She noted that she lives on a county road but when Kirkwood has to budget for repairs, paving, widening, etc. a town road her town taxes are paying for it and she is not going to benefit from it. She added that those who live on town roads are paying county taxes for the same thing. Supervisor Kniffen said that has come up before. He thinks the difference is that everyone travels most of the roads at one time or another so that is the reason why it is taken out of town and county taxes. In this case the people that use the crossing are going there for only one reason, to go to Rogers Mountain Way, which is not the case on most roads in town.

Supervisor Kniffen said he has felt from the onset that Kirkwood should contribute something to this but it gnaws at him that the day after the last Board meeting he was able to get in touch with the railroad and talk with them. He noted that Kirkwood had the same issue a number of years ago with a different railroad, and after contacting the railroad, they don't park the trains in the Five Mile Point area any longer, but back by Frito Lay where there are no homes. He wishes Kirkwood would have been a part of planning and financing this project from the beginning. He is concerned Kirkwood will look like the bad guy if they don't do anything.

Councilman Weingartner said Dickinson was going to build the road whether or not Kirkwood was going to contribute any money. They had everything set before they even came to Kirkwood. He said although they could feel bad about it, Dickinson didn't include Kirkwood in anything from the beginning until they needed the money so he doesn't feel too bad.

Councilman Diffendorf said he agrees with Councilman Weingartner. He was at the project site and ZMK Construction is the contractor. Most of the road is rough graded in. It is

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going to open up a lot of land for Dickinson to build more houses or whatever, which will increase their assessments. He thinks it is a nice thing Dickinson is doing but he also thinks talking to the railroad could solve the issue. He added that he is not sure that it hasn't already been solved because his information is the trains haven't been stopping there since 2012. No one ever came to this Town Board with an issue. He doesn't feel they are obligated to pay anything there. He thinks Supervisor Kniffen is doing a good job in contacting the railroad and if he does make the connection he thinks the problem is solved.

Supervisor Kniffen said he did get an email from a Kirkwood resident in that area that noted what Dickinson was doing and asked what Kirkwood was doing. It was noted the email was received after the press conference was held in this regard.

Supervisor Kniffen said one reason Dickinson might not have been able to reach the railroad is because it was originally Canadian Pacific and as of September 19th of this year it was sold to Norfolk Southern.

Councilwoman Yonchuk said she thinks there are still things that can be found out from the railroad. There is a part of her that still feels they have a responsibility to their taxpayers up there. However, she does not think all the information that should be available and all the contacts that should have been made have been made. She is not ready to make a decision.

Supervisor Kniffen asked the Board members what their decision would be if the railroad says they will not park there anymore. Councilwoman Yonchuk said she would reserve her decision for the future. Councilmen Diffendorf and Weingartner said no to contributing. Councilman Grubham said he wants to know what the railroad says. If they are not going to park there then it is not an issue. The only reason anyone came here is because of a problem with the railroad.

Supervisor Kniffen will meet with the railroad Thursday.

5. Resolution scheduling a Public Hearing for November 24, 2015 at 6:00 PM on the Year 2016 Water and Sewer Rolls. (GEK)

Resolution.

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6. Resolution scheduling a Public Hearing for November 24, 2015 at 6:05 PM on the Year 2016 Fire Contracts. (GEK)

Resolution.

7. 2016 Road Repair Budget. (GEK/RJC)

Supervisor Kniffen explained that the Highway Superintendent every year has to submit to the Board which roads they are going to repair next year. He will be submitting that at the next meeting. This is in the budget.

8. Audit of Claims.

Resolution.

9. Property at 1187 Route 11.

Nick Madugno said he recently bought the property at 1187 Route 11 at auction (former Danceland) and wanted to check in with the Board. He noted there had been a number of violations regarding the property issued by the Code Office. Supervisor Kniffen said most recently that referred to maintenance issues around the building. Councilman Grubham noted it is his understanding Mr. Madugno would have to apply for Site Plan Review with the Planning Board. Mr. Madugno said he is aware of that. He also said he applied today for a permit to make repairs on the building. He said his wife is looking to put in a four seasons shop and they own a masonry company and would like to have a showroom for mantles for fireplaces, fountains, etc.

10. Property at 1641 Route 11.

Phil Leary, who owns the property at 1641 Route 11 said he is trying to sell the property which is located across from the north end of Main Street. His plan is to sell the main building and keep the smaller building for himself but Code says he can't do that. He just wants to parcel it off. He said there are at least 5 properties on Route 11 south of his property that have the same kind of thing. He said according to Code if the Board agrees he can do it. He said he cares about the town and has been a taxpayer for over 30 years and he is trying to make the place look beautiful. Five Star plans on tearing the building down and increase the size of their building which will make the tax roll go up in this town. They want to create jobs in this town. In his opinion this will be better for the town.

Supervisor Kniffen explained this is the old bar by the underpass that is now vacated and has a detached garage. Five Star would demolish the bar and Phil would like to keep the garage for his personal use. The way the Town's code reads, there cannot be an accessory structure on a property without the main structure. He said if this went to the Zoning

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Board of Appeals and they approved it, which they could, it would be setting a precedent which would mean the law means nothing because if they approve it one time they would have to approve it again to be fair. He noted that this is created by him having a legitimate property which would be broken up and he would be left with a single structure. He said that is the law. Mr. Leary said every other commercial building out there is a single structure. Supervisor Kniffen responded that this is an accessory structure, not a main structure. Mr. Leary asked what could be done to change the classification of that structure. Supervisor Kniffen said everyone in the room would like to see that building gone because it is an eyesore but that isn't the issue. Right now they are looking at updating the Comprehensive Plan and this could be added to their list of things to look at.

Councilman Diffendorf asked Mr. Leary how much frontage he would have left. Mr. Leary said he thinks it would be 80 or 100 feet. Councilman Diffendorf said he is a little confused, noting that the garage could be a manufacturing building or a machine shop, so he questioned what the difference is. Mr. Leary said he runs a welder out of there and he has done some repairs, nothing long term, but he could move some machinery in there.

Mr. Blaise asked if there was an actual variance application pending. Supervisor Kniffen responded that there is not. Mr. Blaise noted the Town Board should be careful about giving too many opinions in this regard because the best option may be to go before the Zoning Board either to get an interpretation or request a variance, although the interpretation would be the best option since this would be a use variance and that would be difficult to obtain. The issue is, which is typical in a lot of codes, when residential uses are permitted there cannot be an accessory structure like a garage as the primary building on the property. A garage can be located there if there is a house there. The idea behind the zoning is not to have a shed or garage where residential use is permitted. This situation is unique because there is an existing structure which would be more appropriate to take before the ZBA. Also the Town could look at changing the Zoning Law but many times they don't want to change an entire law to fit one particular situation. Mr. Leary noted that John Finch sold a property years ago with just a garage on it and he feels this is kind of the same thing.

Councilman Diffendorf said he is confused as to why it is an issue since the building has been there forever and people split property and sell it off all the time.

Mr. Leary said he would like to get some help from his Board members in a town that he has paid taxes in for over 30 years. In response to Councilwoman Yonchuk it was noted the property is zoned B-2. Duane Travis said the rules for B-2 are the same as for residential. There cannot be an accessory building without a primary building. In regard to the sale of

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the Finch property, Mr. Blaise said they don't know the particulars which could make all the difference.

Councilman Diffendorf asked how there could be a storage mall located between houses and not call this the same thing. Mr. Blaise said it would depend on the zoning and the storage mall would be the primary structure. He added if Mr. Leary is going before the ZBA they would have to interpret whether the use of the building makes it an accessory structure or a primary structure and the Town Board should not be pre-judging anything without all the evidence or impinging upon what the ZBA might have to do within its jurisdiction.

Councilman Diffendorf asked Mr. Blaise if Mr. Leary was using the building as a machine shop and with the bar building sitting empty if Mr. Leary could sell the bar because it is an accessory building. Mr. Blaise responded that Mr. Leary should submit an application to the Code Office and ZBA and describe fully and accurately what use the buildings are going to be put to. He said this isn't something the Town Board should get involved with unless they are thinking of actually changing the law as to what type of structures are going to be permitted in that specific zone.

Supervisor Kniffen advised Mr. Leary to go the Code Department and fill out an application to meet with the ZBA and ask for a judgement.

10. Snow Plowing.

Ed Egan questioned if the Town receives any funds from the County for plowing county roads. Ray Coolbaugh said they do not have any county roads.

11. Executive Session.

Councilman Diffendorf moved to adopt resolution to conduct an Executive Session pursuant to Section 105 paragraph e of the Public Officers Law to discuss collective negotiations pursuant to Article 14 of the Civil Service Law. Councilwoman Yonchuk seconded. All voted in favor.

Motion Carried.