

**TOWN OF KIRKWOOD
WORK SESSION**

August 4, 2009

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

Also Present: Herbert Kline, Town Attorney
Gayle Diffendorf, Town Clerk
Richard Jones, DPW Commissioner

1. Sealed Bids – Hillside Drive Sewer Line Replacement – Opened July 31, 2009 at 10 AM.

Supervisor Kniffen explained that the original sewer lines go back to the mid 1960s and the Town is now on a 5-year plan to telescope the lines and look for infiltration. He noted that in the first phase they found significant infiltration on Hillside Drive and the project to remediate same went out to bid.

Mr. Jones reported that the bids were opened on Friday and G. DeVincentis was the lowest bidder at \$94,000. He added that the remaining bids ranged up to \$168,000. Mr. Kline said that he reviewed the bid documents and everything is in order. Resolution.

2. Discussion – Meadows Trailer Park Zoning. (GEK)

Supervisor Kniffen explained that it is his understanding that the trailer park property off Main Street is going back to the County for taxes and since it is zoned for a mobile home park, a change in zoning should be addressed. He did note that it would be very difficult for the placement of another mobile home park due to regulations following the 2006 flood. Councilman Grubham said that this is floodplain property and 8 to 10 feet of fill would be required to build on the property and that wouldn't work for the surrounding properties. He added that there are probably numerous flooded pieces of land along the river that now require so much work for development that they almost become unusable and possibly zoning to return these properties to wild could be considered. Mr. Kline said that possibly the Planning Board could address this but the problem is that when a property is zoned for a particular use now and the use is changed, an amortization period must be given so that the property owner is not deprived financially of the present use. He did note that this is an unusual situation because the County will own this and he feels the Town should work with the County on the matter. Councilman Weingartner added that a resident suggested to him the possibility of making the property a dog park. He inquired if this would be a possibility. Councilman Grubham noted that these all are pretty much residential areas and people are not going to want anything loud there. It was noted that agricultural or a new kind of district seemed the most logical. Supervisor Kniffen will contact Broome County about this.

**TOWN OF KIRKWOOD
WORK SESSION**

August 4, 2009

3. Revisions to Intermunicipal Agreement for Sewer Coalition. (GEK)
Supervisor Kniffen explained that Kirkwood joined with all the outside users to hire an outside law firm who has expertise in this area because of a concern that they are being overcharged. He said that in the original agreement each municipality would pay equal shares but that changed and as a result Vestal has withdrawn. Due to the change, a revision to the agreement is needed. Resolution.

4. Discussion – Resolution to Support Bill S.4080-A by Senator Schneiderman and A.7504 by Assemblyman Weinstein. (GEK)
Mr. Kline explained that there has been a bill before the state legislature for a long time called Collateral Source Bill. He said that if a person were injured and they were suing a private individual and the matter went before a judge, the judge would subtract from the award given to the injured party the amount of money they were getting from a collateral source, such as disability benefits, workers comp, etc. He said that is not the rule for municipalities so the hope is that they will pass this law so that in the future if a municipality is sued the judge would subtract from the award as specified above. He noted that this has been going on for five years and the Town did send a letter in 2005 supporting this. He said that the Town has again received letters from municipal legal organizations for additional support. Resolution.

5. Request from Richard J. Jones, Sr. to attend the 2009 Town Highway Conference in cooperation with NYS Association of Towns Superintendents of Highways to be held September 22-25, 2009 at the Crowne Plaza Hotel in Lake Placid, NY, at a cost of \$714.00, with all reasonable expenses paid. (RJJ)
Resolution.

6. Discussion – Empire Zone Funding. (GEK)
Supervisor Kniffen explained the funding problems. He said that all that is required is that the Town acknowledge in writing that the course of action being taken is acceptable.

7. John McDonald's Proposal regarding Inland Paperboard and UPS Appraisals. (HAK)
Mr. Kline explained that for the past three years two property owners have protested their assessment – Inland Paperboard, part of Kaicam Development, and UPS Overnight Freight in the Industrial Park. He said that Inland Paperboard is presently assessed at \$180,000 and are asking for a reduction to \$30,000. UPS is assessed at \$775,000 and are asking for a reduction to \$70,000. He noted that the BAR has rejected their request each year. Since this is the 3rd year, Mr. Kline said that they've got to do something to prevent the original case from being dismissed. He said that he is suggesting that an appraiser be

**TOWN OF KIRKWOOD
WORK SESSION**

August 4, 2009

hired to do a preliminary appraisal to determine if the Town is right and if not, should the Town consider settling. He added that in assessment review cases the Town bears the cost of attorneys fees as well as the appraisers fees even though the school district gets about 70% of the composite tax rate. He said that John McDonald is the assessor for the Town of Union and does appraisals as well, particularly commercial appraisals. He said that Mr. McDonald submitted a proposal to do summary appraisals for \$1,600 per property, which is about half the cost if this goes to court. He noted that Mr. McDonald would give the Town full credit if it ultimately does go to court. Mr. Kline said that he and Joyce Ottens, Town of Kirkwood Assessor, feel that it would be a good investment at this time. Councilman Diffendorf requested that this be held for a month for review.

8. Weight Limit Local Law Status. (LCG)

Councilman Grubham said that according to Town Engineer Dan Griffiths they are waiting for some cores. Mr. Jones said that Kirkwood and Conklin are working with Suit Kote to core the roads. They will then be sent out and evaluated to determine the structure of the roads. Mr. Kline said that according to Broome County Attorney Joe Sluzar, the coring has been completed for the County roads and the roads are very substantial with base and blacktop. He said that Joe Sluzar is seriously considering changing the formula. He reminded the Board that in the past the natural gas industry had a number of objections to the County local law and Joe Sluzar is thinking or rewriting the local law. He said that DEC is supposed to come out with the final EIS by September and then there will be a comment period before it can be adopted or changed, so it would seem that drilling won't start before the end of the year. He noted that Kirkwood adopted a local law and then Tiger Gorick suggested changes and the changes were written so that it would apply to all different kinds of permits that the State DOT issues, but the Town has not enacted it. He added that the Town should get something on the books before drilling starts. He also noted that Mr. Sluzar might include any vehicles of a certain weight or over, which would include cement trucks as well as gas equipment trucks. This will remain on hold.

9. Town Hall Renovation Contracts. (LCG)

Filbin Painting, Inc. - \$ 4920.00

D.E. Nolan Builder - \$ 5304.00

Fedorwich Electric - \$ 4500.00

Kennedy Heating & Air Conditioning - \$ 1400.00

Councilman Grubham explained this will basically take place in 3 phases. Phase 1 is moving the assessors office, which will take place on Thursday. The second phase will be to extend the meeting room into the assessors office in the front of the building and the costs noted above are for this portion of the work. Resolution.

Councilman Grubham noted that \$60,000 will be needed in addition to the \$30,000 grant secured by the court for this project. Supervisor Kniffen explained that enough money can be moved from reserve funds to cover the cost of these two phases.

**TOWN OF KIRKWOOD
WORK SESSION**

August 4, 2009

10. Resolution Authorizing Supervisor to Expend Funds from the Town Hall Reserve Fund of the Town of Kirkwood, subject to Permissive Referendum. (LCG)

Additional discussion of reserve fund transfers. Although originally \$70,000 was to be transferred from the Town Hall Reserve Fund, there is not that much in there and at this point only \$20,000 is needed, so that is the amount that will be transferred at this time. Resolution.

Councilman Grubham will present the costs for the third phase of the project at the next meeting.

11. Highway Garage Security System. (RJJ/HAK)

Mr. Kline explained that two proposals were received for the highway garage security and fire system. He said that he has worked out the language of the contracts as submitted. Mr. Jones said that the question is whether the Town wants to own the system or lease it. He noted that the Town rents the systems for the town hall and code enforcement building. Mr. Kline reviewed the proposals from Time Warner and Sentry. Mr. Kline added that another option would be to go through state contract. Mr. Jones will review this with Town Engineer, Dan Griffiths.

12. Tire Drop Off Days – September 12, 2009 and September 26, 2009. (RJJ)

Mr. Jones explained that the County will waive the tipping fee. Resolution.

13. Request for Change in Zoning – Walter Gardner – 1733 US Route 11 – Tax Map # 211.05-2-40 – Business 2 to Business 3. (GEK)

Supervisor Kniffen explained that this property is located in front of Akreturn on Route 11 and a change of zoning is being requested to sell automobiles. He said that he did inform Mr. Gardner that the Board recently turned down two similar requests and that the Board did not look favorably on this. Although there was some question as to why Mr. Warner across the road from Mr. Gardner's property is allowed to sell vehicles, the Board was in agreement that they were opposed to this and will take no action.

14. Letter of Support for High Speed Internet – Steve Herz. (GEK)

Mr. Kline said that the Town of Windsor is not for this and the Village of Deposit will be doing a general resolution, not supporting a specific company. He noted that Sanford has not met. Supervisor Kniffen said that according to Steve, he needs this to be unanimous. Concern was noted over naming only one company to get the grant. Legislator Marchie Diffendorf said that right now there is only one company, Clarity Connect, that is applying for the (federal) grant and if another company comes forward a letter would be needed in support of that grant as well. Resolution.

**TOWN OF KIRKWOOD
WORK SESSION**

August 4, 2009

15. Resolution Honoring the Town of Kirkwood's 150th Birthday.
(GEK)

Supervisor Kniffen explained that the resolution will be read at the fair on Saturday following the parade at 12:30 PM. Cake will be served as well. Resolution.

16. Request for No Parking on the East Side of Woodhill Court. (GEK)

Supervisor Kniffen explained that a request has been received from John Boyd for no parking on the east side of Woodhill Court. Mr. Boyd said that it is a narrow street which now has 7 residences located there. He submitted a petition signed by 6 of the 7 residents in support of the request. It was noted that part of the street already is designated as a no parking zone. Resolution to schedule public hearing.

17. Discussion:

1. Timothy Dundon

Mr. Kline explained that Mr. Dundon was arrested about a week ago for DWI and he was still on probation since February when he entered into a Stipulation Agreement with the Town Board. He is now in violation of that agreement. He said the question is whether the Town Board wishes to commence disciplinary proceedings. Mr. Kline noted that Mr. Dundon does not have his CDL license back yet, since it was taken for one year, and had just recently gotten his regular driving license after completing a mandatory course. Councilwoman Yonchuk noted that he was arrested on July 20, 2009 and has not been convicted yet and questioned if the Board has to address this any differently because of that. Mr. Kline said this arrest violated his Stipulation Agreement that he entered into in February so the Board has to determine if they wish to commence a disciplinary proceeding relating to this most recent arrest. It was noted that his pay was reduced and he has been doing an excellent job working on equipment in the shop as well as flagging and running equipment that is not licensed. It was also noted that he was suspended 30 days without pay in February. In regard to discipline due to this arrest, as well as the February arrest, Mr. Kline said a hearing would be required under Section 75 of the Civil Service Law and the question is whether the Board wishes to prefer charges relating to this and the prior arrest and schedule such a hearing. He added that his regular license will be suspended when he is arraigned. Mr. Kline also noted that this is a felony since this is his second offense in 10 years. Mr. Kline added that the hearing officer would make a recommendation to the Board as to what discipline, if any, should be imposed, taking into account what has happened in the past and what is occurring in the future.

Mr. Kline explained that the Board could wait to see if Mr. Dundon is convicted, and in the meantime he would continue his current work for the highway department in the shop. He said the Board could suspend Mr. Dundon for 30 days pending a hearing. Mr. Kline reviewed the possible outcomes following the hearing, based on the recommendation of the hearing officer. Discussion. Resolutions to advise Mr. Dundon of the suspension and schedule a hearing to determine the appropriate discipline.

**TOWN OF KIRKWOOD
WORK SESSION**

August 4, 2009

2. Phyllis Lake

Mr. Kline explained that this is in regard to the litigation that was commenced by Phyllis Lake against the Town Board. He said that the Supreme Court Judge dismissed her case and the Order of Dismissal was served upon her July 31st and she now has 30 days to appeal to a higher court.

3. Douglas Ritter

Mr. Kline explained that this involves a number of things that Mr. Ritter allegedly did after the 2006 flood with the main thing being that he reconstructed a white structure on his property without getting a permit and elevating it above the flood stage. He noted that in the lawsuit there were a number of causes of action. He said that the judge agreed that Mr. Ritter should have gotten a permit and elevated the structure and he granted a permanent injunction, which means the property cannot be occupied unless and until he gets a proper building permit and raises the structure the way the flood law requires. He said that the judge did not agree with the Town on a number of side issues so therefore it is possible for Mr. Ritter to appeal. He said that we are now in the middle of the 30-day period for which Mr. Ritter can appeal. Hold until the September meeting.

18. Audit of Claims.

Resolution.

19. Court Grant.

Supervisor Kniffen said that there is another opportunity for the court to receive an additional \$30,000 grant for furniture, files, camera system, etc. Although an additional \$60,000 was needed to complete the project in regard to the first grant, he said that they don't think this will go over, but there is no guarantee. This is completely separate from the first grant application. Resolution needed to submit application.