

Town Council Meeting  
August 31, 2015

TOWN COUNCIL MEETING

Present: Vice-President Carlson, President Shibley, Councilwoman Duxbury, Councilman Laboissonniere, Councilman McGee, Town Manager Thomas Hoover, Town Solicitor Nicholas Gorham.

Pledge of Allegiance  
Review of Emergency Evacuation Plan

PUBLIC COMMENT

John Assalone, 3 Sabina Court, stated that in 2009 problems began with odors around Reservoir Road. DEM has been out to Reservoir Road because people can't breathe. The majority of the homes were there before Miozzi's asphalt plant. In 2009 the Planning Board granted Miozzi the four hot mix silos. There was no permit. There was no zoning permission ever granted. It is clearly an expansion of a non-conforming use and not allowed. The Planning Board cannot grant an additional non-conforming use, it is just not possible.

Donald Skuce, 28 Sandra Circle, stated that although Miozzi may employ 46 people, he is a lousy neighbor, is loud, and creates smells at 7:15 a.m. He is poisoning us and he considers Coventry laws and ordinances nothing more than suggestions.

Tom Miozzi, 66 Steamboat Avenue, owns 75 Airport Road and states that he has worked diligently to be the best neighbor he can. He realizes this is a difficult situation as the asphalt plant is located in a heavy industrial zone there, not buffered by light industrial or a commercial zone, but surrounded by residential.

However, if the Town Council votes against this contract, other businesses along with myself will feel the impact. We have completed contract after contract in this state. I feel that I have the best paving crew in the state. President Shibley acknowledged that a letter was received from Representative Nardolillo, where Mr. Miozzi has reached out for assistance in moving the asphalt facility.

Finance Director Bob Thibeault addressed the extra \$144,000 cost to go with the next bidder, D'Ambra, commenting that the money will come from bond proceeds that are already built into the FY 2016 budget. President Shibley then pointed out that even so, the taxpayers still pay for the work to be done, through taxes. If the money is used for that purpose, then it can't be used for another purpose, it's still taxpayer money.

Attorney John Pagliarini, representing T. Miozzi Inc., submitted an 18 page Consent Judgment from Superior Court, resulting from a nuisance action brought against Mr. Miozzi. This is the actual transcript of the judge's decision and findings, including the fact that Mr. Miozzi is a good corporate citizen. In addition there is a pending application in another municipality to locate an asphalt plant. Once again there is litigation on that matter and interestingly, the attorney for Westwood Estates is the attorney representing the abutter who is stopping us from moving the plant to that community, but we will know shortly if we will have a home in Exeter.

Mr. Assalone wanted to clarify that although he has a new attorney representing Westwood, he has nothing to do with relocation of the plant to Exeter and we have not asked that attorney to oppose Mr. Miozzi.

Gary Cote, 29 Pettine St., feels the bid should go to the lowest possible bidder. Otherwise, the Town Council would be essentially imposing a \$2.5 million fine against Miozzi. He is the lowest qualified bidder.

Kenneth Jackson, 2799 Harkney Hill Road wonders of Miozzi's 46 employees, how many are Coventry residents.

Glen Skurka, 38 Acres of Pine Road, Project Manager and lead Engineer for D'Ambra Construction, the second lowest bidder, advised that if D'Ambra is awarded the project that they will purchase the asphalt from Miozzi and also hire him for the project. This is economics, it makes sense, so please don't make it personal.

Harry Larson, 3 Peach Tree Lane, believes that in many instances the sidewalks in Wood Estates are not in compliance with the American Disabilities Act. He reported irregularities in

measurements of storm drains and a lack of consistency in measurements pertaining to sidewalk width, ramps, etc. throughout several streets in Wood Estates. If the town is supervising the quality of work, how did all these discrepancies appear?

Charlotte Porter, 26 Sandra Circle, stated that Mr. Miozzi doesn't follow the rules, she doesn't trust him and he's been telling us he is going to move for four years.

Paul Lemek, 14 Lear Drive, referred to Mr. Skurka's comment asking not to make this a personal issue; however, Mr. Lemek feels it is a health and environmental issue.

Carmine Oliveri, 1320 Main Street, feels that by awarding this contract, it will automatically expand the non-conforming use that is there now.

Tom Forcier, 30 Lori Lane, spoke regarding the expansion of the Water's Edge Campground, commenting that this has been going on for three years. The owner has clearly expanded the campground and I can't understand why the campground license can't be suspended until the matter is resolved. I believe I have been ignored by this town and its administration.

Anthony Baffoni, 299 Hammet Road is a paving foreman for Miozzi. He read a letter from the Town of South Kingstown thanking T. Miozzi for the recent road overlay and construction work. They were very pleased with the finished product as well as with the crews that worked expeditiously and professionally. The letter is from the Town Engineer of South Kingstown. There is also a letter from the Town of West Greenwich referring to work Mr. Miozzi performed over the past ten years, each time it was very professional and completed in a timely manner. Miozzi provided a good product and always met all specs set forth by the town.

#### ORDINANCE (First reading)

#### Designating an area under and around Picillo Farm as a Residual Zone confirming that use of the drinking water wells and other human use of the groundwater under the affected properties is prohibited

Engineer Peter Nangerone, from the engineering firm representing the principal responsible parties for Picillo Farm, gave a brief explanation of what this ordinance is about. Essentially the ordinance needs to be consistent with a recent DEM designation of "residual" zone in the area surrounding Picillo Farm. This acknowledges the fact that on certain sites where there are ground water quality regulations, it is very difficult to clean up the sites to conditions that are as if this never existed. The proposed ordinance allows concentrations to exceed regular standards per DEM designation. We have done a lot of work there and made a lot of progress, but it is very difficult to clean it up. We still continue to pump and it is a very long and expensive process and technically it doesn't make a lot of sense. In the future there should be no land use there requiring potable water, so we have applied for this designation.

Nothing will look differently at Picillo. We will continue to pump ground water for the foreseeable future and we are required to monitor the residual zone. Manager Hoover asked if there are any benefits to the property owners in creating this zone and Mr. Nangerone replied that specifically it will make the town ordinance consistent with the designation "residual zone" along with environmental land use restrictions. Residential use will be clearly prohibited. This is the first step in designating the area as conservation.

Councilman McGee asked that if someone, for example, has 100 acres, but only four or five acres cut into this "residual zone", would you only designate that portion of his land which is included within the orange outline? Mr. Nangerone responded that is correct, the exhibit (map) that you have has an outline which covers portions of four lots, one owned by the town and three others private property owners. It would only affect the areas within the zone.

Councilwoman Carlson was not aware of tonight's proposed ordinance and has many questions. She questioned whether there is already an ordinance in place and if so, would like to see the original ordinance before it is amended. She has concerns as to whether there could be any potential cost to the homeowners. Obviously, there are restrictions on the land use there and looking at the map, quite a chunk will be taken up by this zone. We need to make sure everybody is in the loop in case they have comments or questions.

Mr. Nangerone advised that we are only here tonight for an overview. We have had a very good relationship with the town over the years and if you wish we will come back on September 28<sup>th</sup> and provide more information.

Solicitor Gorham asked a few questions related to the background of the Picillo property. Mr. Nangerone replied that in 1978 the property was officially discovered as a toxic waste dump. The property on the map that is outlined in orange is clearly beyond suitable for drinking water and in my opinion will never be suitable in the foreseeable future. Technology doesn't exist to clean up some of these types of problems in any reliable way.

Solicitor Gorham advised that property owners within the orange lined area already have some kind of restriction on their land, which notices any potential buyer that this land is profoundly affected and environmentally contaminated. If notice already appears in the land evidence records, he doesn't see why it is necessary to have it included in the zoning ordinance.

Manager Hoover wondered how this would be advantageous to the principal responsible parties. Mr. Nangerone feels that by clearly demonstrating that the town believes the land is not suitable for residential use, that will help to negotiate with the EPA. He suggested that the town and state both recognize this area in a more formal way, via the residual zone. Councilwoman Carlson feels this may be redundant.

Mr. Nangerone went on to add that this is a rather difficult explanation. A risk assessment is done and assumptions are made. The EPA made an assumption that this property would be residential in the future. Unfortunately, technology does not exist to clean it up to where it can be used for residential in the future.

Manager Hoover suggested that David Graham, who represents the principal responsible parties, attends the September 28 Town Council meeting along with Mr. Nangerone. We know Mr. Graham not only through working with the town on this problem but also as the attorney for the "prps" for the current landfill on Arnold Road. Although Mr. Graham is in Virginia, it might be advantageous for both of you to be here. .

Vice-President Carlson asked since this is a superfund site, why is it allowed to have two wind turbines disturb the ground if it is contaminated. Mr. Nangerone responded that the turbines are not located in a contaminated area. The groundwater is under a wider area because it flows under the ground. Soil contamination is very limited.

A motion was made by Councilwoman Carlson seconded by Councilwoman Duxbury to advertise for public hearing and send the ordinance to the Planning Commission for recommendation. All voted aye.

## RESOLUTION

1. Discussion and resulting action awarding a contract to T. Miozzi Inc. of Coventry, RI in the amount of \$2,520,744.86 for asphalt pavement improvements within the Town of Coventry to be funded from the November 2014 Infrastructure Bond

Discussion began with Councilman McGee stating that this has been a "hot" topic for a long time. This has been on the agenda of the CASE group for quite a while; however, the town has done everything asked for by CASE with regard to testing to make sure there is no harm to the people. Test results showed no contamination and no hazards to the people who live near the plant.

Additionally, an effort was made by Councilwoman Duxbury to reach out to a wider area in order to get more bid responses by having the town advertise requests for proposals in both the Providence Journal and the Kent County Times. This cost the town hundreds of additional dollars, and now she doesn't want to give the contract to the lowest bidder (T. Miozzi) and would rather pay more in tax money to award a bid to the next lowest bidder. There are five districts in town, not just District 5. Taxpayers do not want to spend more money; Miozzi is the low bidder. There are two asphalt plants on Airport Road, yet it seems all blame is put on Miozzi. We vote for fiscally responsible decisions, not to award an extra \$144,000 to the next lowest bidder on a \$2.5 million contract. This would be carelessly spending money. This is a duly qualified bid and you are not doing the taxpayers any justice by spending extra money that the town does not have.

Councilwoman Duxbury addressed the testing that was performed by Sage Environmental, which was for a black, sticky, oily substance. So to say that there is no contamination and no hazards to people is not actually true. The last testing regarding emissions was in 2008. I looked

through bids all this week and tried to be objective. I looked at the bids that came in for 2015 and also the work that has been done in the past by Miozzi in Coventry. Two things concerned me; one in regard to the 2015 bid where you indicate flaggers at .01 cent and adjusted the cost per ton of your asphalt to include the cost for that. There are actually three unit prices that are .01. bituminous berms, processed gravel and flaggers. Actually D'Ambra bid the same way and had a penny for processed gravel also. I went back to the info that is provided to bidders in the 2015 bid, and Article 19 talks about balanced bidding, specifically stating that bids should be made on each separate item in the bid with reasonable relation to cost of doing the work. Essentially that tells me even though you put in a penny, it shouldn't be that way. In all honesty, that is not transparent or comparable, no matter who does it, D'Ambra, Cardi or Miozzi.

Ms. Duxbury also reviewed the 2011 paving project where Miozzi was awarded \$631,000 for paving that included streets and sidewalks in Wood Estates. I understand that there were issues with Station Street and Hill Street. In my mind though, there are four parties jointly responsible if the job is not done correctly and they are the Town Manager, Town Engineer, DPW Director and the contractor. Here we are talking about the cost of \$144,000 on a bid award. I assert that you have to look at the end cost, not the bid.

In regard to Wood Estates sidewalk paving, Councilwoman Duxbury questioned ADA compliance where, specifically, mailboxes are in the center of the sidewalks and there is no way a wheelchair, walker, or visually impaired person can walk down the sidewalk in some instances. I spent countless hours looking at bid specs and the contract signed in 2011 by Miozzi. The specs say that this has to be ADA compliant. I am concerned with costs, and understand that the town can make changes or bid items can be modified. I know the town did the loam and seed, I asked why and the DPW Director said there was an agreement in exchange for additional paving, but I don't know where this additional paving happened and there is nothing in writing of an agreement. Anytime you modify an agreement, there should be a memo..

Finally, the scope of the work in 2011 included a portion of Wood Cove Drive between Apple Blossom and Plum Tree. However, there is no new paving on Wood Cove between Apple Blossom and Plum Tree. I assert that I don't want to spend an extra \$144,000, but how much more money will we have to spend to fix the sidewalks if they are not ADA compliant.

Vice-President Carlson has received e mails regarding the quality of Mr. Miozzi's work, and has also received an e mail from a Station Street resident who indicated there were no problems on Station Street before the 2010 flooding, but a year or so later after Mr. Miozzi did some paving, there were problems, berms had been moved and eventually DPW had to step in, provide sandbags and fix the issue. This is a \$2.5 million dollar contract. I don't want to spend the extra \$144,000 for the next lowest bidder, but will there be change orders? Will DPW have to fix problems? I also don't believe that sidewalks in Wood Estates are ADA compliant. We have to look for quality work and that is why I have concerns about giving this bid to Mr. Miozzi.

President Shibley understands there are differing opinions. He has seen the video containing profanity that was directed at the photographer and I have spoken to Mr. Miozzi about that; it is wrong and only throws gas on the fire. I understand that an asphalt company within a neighborhood is not a good thing and I know there are problems with soot and odors. I know that we went out to bid, five companies bid on the project with Mr. Miozzi being the low bidder. I know the DPW director has reviewed and qualified the bids as well as our town engineer. The town hires a town engineer to be the expert and the town hires a DPW director, who is also a professional. The Town Manager is hired to be a professional administrator and oversee all of the directors. Not only has our town manager made the recommendation to award to Miozzi, but our DPW director and town engineer as well.

Mr. Miozzi is going to have asphalt jobs whether he gets this contract or not, he is going to keep working, and I do encourage him to move the asphalt plant to another location. Representative Nardolillo has received a communication from Mr. Miozzi requesting help in moving the plant. I am personally going with the recommendation of awarding to the lowest bidder, but if I had a real good reason, I would go to the next bidder.

Councilman Laboissonniere would like to hear the town manager and engineer address the ADA compliance concerns of Mr. Larson and Ms. Duxbury. Manager Hoover has seen the pictures and has observed the situation. There are some areas that he believes are not ADA compliant. However, the specs ask the contractor to replace only what was in place, which means no movement on the mailboxes. When it comes to federal law, the question is where does that federal law come in to play and where does the responsibility lie in upholding that law. Does the contractor have to follow federal law, or is that the responsibility of the town? I think a proper punch list has to be performed on the project to make sure any corrections are made and that would be the

responsibility of the Town Engineer and DPW director. Councilman McGee added that when there was an issue on Hill Street, Mr. Miozzi went right out there and fixed it.

Town Engineer Bob Joyal said the first punch list has been started and should be done in a week or so. Mr. Joyal further advised that the list of sidewalks had been changed in the 2011 contract and Wood Cove Drive was removed. Ms. Duxbury, who has been reviewing documents all week and up to the morning of the meeting, did not see any document from anywhere, Town Engineer or DPW, showing that change. She is concerned that she was given incomplete files and there may be files she never saw. Manager Hoover advised that sidewalk locations were in fact changed and Mr. Joyal advised that he has a letter from RIDOT indicating the change and will send it to Councilwoman Duxbury.

Chuck Smith, General Foreman DPW, agrees that if a job isn't done correctly, the contractor will do it over again until it is done properly; final payment is withheld until it is done correctly. Tom Miozzi has worked well with us in the past to make corrections. Asphalt paving can be challenging.

Councilman Laboissonniere thanked his colleagues for all that they have done in order to make sure that we are doing the best thing for the town in this case. It is an emotional issue and I'm sure the vote will be in the best interest of the town.

A motion was made by Councilman McGee seconded by Councilman Laboissonniere to award the bid to T Miozzi. Vote taken: (3) Aye; Councilwomen Duxbury and Carlson vote No. Motion passes.

#### PUBLIC DISCUSSION: Amending the Town of Coventry Sewer Ordinance

Solicitor Gorham explained that the Kent County Times made an error in advertisement by omitting one page of the sewer ad. We will need to readvertise and hold the public hearing at another time but will continue with a public discussion tonight.

A motion was made by Vice-President Carlson seconded by Councilwoman Duxbury to readvertise the zoning ordinance and hold a public hearing at 7:30 p.m. on September 10. All voted aye.

John Assalone, 3 Sabina Ct., commented that if the town had taken the opportunity 40 years ago, when there was government funding for sewers, Coventry would have a sewer system today. How did we get all the sewers that we have without a referendum/approval? Solicitor Gorham thinks it was done by a legislative act. Mr. Assalone feels that what this community is looking at with regard to sewers is phenomenal and the public should be aware. People just can't afford sewers. Maybe as a bond issue it could be absorbed without a great impact, but you are going to have a real job convincing the rest of the community to come into this.

Manager Hoover agreed that in the 70's the USEPA put out an enormous amount of money, in the millions, for towns and cities to put in sewers at a very low cost and that was a golden opportunity missed.

Crystal D'Agostino, 1553 Main Street spoke about the issuance of a credit to her if she ties in to the sewer system before October 27. She has been receiving conflicting information and doesn't know whether to tie in or not. She was told there is a \$5,000 credit for a pump if she ties in before October 27, which would bring the cost down from \$20,000 to \$15,000. She doesn't want to miss out on the credit, but needs to line up a contractor and also figure her budget. Councilman McGee indicated that if she has access to tie in to the sewers, it would be in her best interest to tie in rather than put in a new septic system. It would be much more economical in the long run. Sewer Subcommittee Chairman Glen Skurka advised that DEM will deny an application anyway if sewers are available at that location. Until the sewer ordinance is changed, she can tie in within the current ordinance and fees, and would be subject to the current assessment.

Manager Hoover clarified that the sewer which is being talked about is actually the sewer that was put in primarily for industrial use along Industrial Drive where we have some major industries. Some of the funding for that project is supported by US EDA with the rest of the funding from the Clean Water Agency with a low cost loan. The project went to the Sewer Subcommittee and the resulting agreement was that industrial users of that sewer have to immediately tap into the sewer and pay the assessment at commercial and industrial rates. The opportunity has been given to residents who abut and might want to tie in. However, residences will not be assessed until they tie in. He further explained the process with the installation of the pump and how the town will credit the resident for the pump.

Brian Grace, 1600 Flat River Road, questioned how the town came up with the assessment fee. Finance Director Bob Thibeault explained that the new ordinance is based on design flow and

the flow of his building is 200 gallons a day, per DEM guidelines. Mr. Skurka added that DEM has published guidelines for design flow, which is what the septic system is based off of with the piping, and the design for it. It doesn't reflect your actual flow. You can hook up one year from the date of assessment at 6% interest and spread it out over 20 years.

(a) Resolution regarding the recommendation of the Coventry Sewer Subcommittee on use charges and assessments for Contract 7 and 7A based upon a unit rate per gallon of daily design flow

A motion was made by Councilman Laboissonniere seconded by Councilwoman Carlson to table resolution. All voted aye.

A motion was made by Councilman Labiossonniere seconded by Councilwoman Carlson to adjourn meeting. All voted aye.

---

Town Clerk