

Town Council Meeting
December 7, 2015

EXECUTIVE SESSION – 6:00 p.m.

PER RIGL 42-46-5 (a) (1) (2)

1. Telephone Conference with recruitment firm regarding Town Manager Search
2. Discussion Central Coventry Fire District KB 2012-1150

TOWN COUNCIL MEETING – 7:00 PM

Present: President Shibley, Councilwoman Duxbury, Councilman Laboissonniere, Councilman McGee, Vice-President Carlson, Interim Town Manager Rich Kerbel, Town Solicitor Nicholas Gorham.

Pledge of Allegiance

Invocation by Pastor Hart of Christian Hill Community Church

Review of Emergency Evacuation Plan

A motion was made by Councilman McGee seconded by Councilman Laboissonniere to come out of Executive Session. All voted Aye.

A motion was made by Councilman Laboissonniere seconded by Councilwoman Carlson to seal minutes of Executive Session. All voted aye.

President's Comments

- Congratulations to the Parks and Recreation Department for the very successful tree lighting event, with over 600 attendees. Hopefully this begins a great holiday season.
- Windows on the Byron Reed building were recently boarded up, making that a much safer situation.
- Kudos to DPW for the great job they are doing with yard waste and leaf bags.
- There will be a ribbon cutting ceremony on December 11 at 10:30 a.m. for the completion of the Pawtuxet River Bank Restoration and Stabilization project.
- Residents are asked to consider shopping locally this holiday season. There are many businesses in Coventry that would be thankful for your business.

Approval of Town Council minutes of November 23, 2015

Councilwoman Duxbury referred to Page 8, third paragraph from the bottom, where Solicitor Gorham refers to the "consent judgment that the *Pastryak* plant had obtained", and asked if that statement is correct. Solicitor Gorham replied that is correct, that Mr. Pastryak has a consent judgment which was entered in 2013.

She then referred to Page 9, where the minutes state "All voted Aye" on the vote to advertise an ordinance, however, the vote should have been 4 (aye)-1 (nay) vote.

Motion was made by Councilman McGee seconded by Councilwoman Duxbury to approve minutes with corrections. All voted aye.

Recognition of Patricia Picard, Tax Assessor

Manager Kerbel announced the retirement of Tax Assessor Patricia Picard after 37 years of service to the town. President Shibley presented Mrs. Picard with a proclamation; Representative Nardolillo from the House of Representatives and Senator Raptakis from the Senate also presented citations.

COUNCIL DISTRICT UPDATES

District 3 Councilman McGee reported that things are going smoothly in his district and he commented that DPW is working very diligently to pick up leaves and yard waste.

District 5 Councilwoman Duxbury had no news from her district this evening.

District 1 Councilwoman Carlson publicly thanked Ryan DeFranco of Trust Construction, Miller Electric, Russell Crossman, Bill Finnegan, the students at CHS, RT Nunes and George Pesce of Consolidated Concrete for their help in getting the gazebo built at the Town Hall Annex.

With regard to the recycling program and what can and cannot be recycled, she suggested to the

DPW Director that perhaps we could do an update in the Times, send a postcard, or have handouts at DPW as to what can be recycled along with the hours of the transfer station.

She continues to receive e mails and phone calls about the wind turbine ordinance and wanted to clarify that this proposed ordinance will not stop the turbines from being built, but will set guidelines. We will vote on that ordinance at the next council meeting, but may have a work session with Mr. DePasquale before the public hearing.

Mrs. Carlson announced that Dr. Amy Pratt of West Greenwich Animal Hospital was named 2015 Veterinarian of the Year.

District 2 Councilman Laboissonniere has received calls complaining that the trash bins are too small. DPW Director McGee responded that larger cans may be purchased for \$65.00, but first the resident has to agree to a garbage audit.

President Shibley, District 4, commented that DPW has been very cooperative in repairing the potholes on Princeton Avenue. In addition, the spillway work is complete and looks great and a street drain has been repaired on Laurel Avenue.

REPORT - WATERMAN/FISKE FUND

Human Services Director Pat Shurtleff submitted reports from September 2, 2013 through December 1, 2015. In her reports she explained various ways assistance was given via the Waterman-Fiske Assistance Fund during that period. People in the community who meet financial guidelines may receive assistance with rent, mortgage, heat, medications and even health coverage in some instances, camperships with Coventry Parks and Recreation, emergency repairs and this year two emergency guardianships were brought through the Probate Court. During 2013 the fund expended \$12,561; in 2014, \$38,013 and in 2015, \$31,715.

Councilman Laboissonniere asked if the fund is still self-perpetuating and Mrs. Shurtleff replied that it is, however, this fund is a last ditch effort for people. She has received calls from people who request funds and feel that they are in a dire situation, and they just don't qualify. Councilman Laboissonniere asked about camperships and Mrs. Shurtleff explained that all the families who received camperships were in dire situations and did meet the guidelines. When asked about the fund balance, Mr. Thibeault replied that the combined trusts, Waterman and Fiske, equal \$2,515,001. Mr. Fiske willed \$25,000 to the town; Mr. Waterman \$54,200, and that money has self-perpetuated into what we have now. There was discussion between Vice-President Carlson and Mrs. Shurtleff regarding loans, grants and how decisions are made, concluding the report.

PUBLIC COMMENT

Councilwoman Duxbury asked that comments relating to Miozzi issues, References 7 and 8, be held until Council reaches that portion of the agenda. Further explanation can be given at that time.

Robert Lawrence, 26 Darton Street, submitted a copy of Ms. Oneppo's survey, showing the house and shed on her property. She has changed the footprint of the house without DEM or town approval and without a new septic system installed. Mr. Lawrence requested that the encroachment agreement between former Manager Hoover and Ms. Lanoue be rescinded.

Ken Jackson, 2799 Harkney Hill Road, is concerned with an item on the agenda, which will cross into the Miozzi situation, regarding the Charter, Section 3.14, dealing with the preservation of public health, welfare and the protection of people and their property. The Town Council always asks the police to give a clean bill of health before renewing a license. The protection of one's property includes the devaluation of the property because of an establishment. The Town Council should take into account whether a business is a good neighbor and take into consideration the number of times the police have been called to a business and whether the business affects the living conditions of the neighbors. There must be a clean bill of health to get their license renewed every year.

Marc O'Gorman, 31 Elton Street, gave the history of his calls to zoning regarding a right of way on Tiogue Lake. Zoning Officer Peabody has replied to Mr. O'Gorman that the abutter was granted a road opening permit to take down a tree and beautify the right of way. However, there was no permit, only verbal permission. Since then, things have become worse. An encroachment agreement was given to the owner at 83 East Shore Drive by former Town Manager Tom Hoover to maintain a right of way, without town council approval. We have asked many times to place the encroachment agreement on the agenda, to no avail. I want Coventry residents to know that we have spent the last year and a half trying to get this encroachment agreement added to the agenda and continue to be blocked. The Attorney General has spent many hours on the right of way issues, but the Town continues to use your tax dollars to defend one person's encroachments on a public right of way.

Tom Forcier, 30 Lori Lane, spoke of an ongoing situation with a campground for the last three years. There has been expansion of the campground and I have asked to be put on the town council agenda. I would like the council to table the campground license renewals until they can review my information as we

do have some serious problems. He distributed information to council members regarding expansion at Water's Edge Campground.

Stacy O'Gorman, 31 Elton Street, feels the town is wasting taxpayers' dollars, ignoring problems hoping they will go away. These are public rights of way and anyone can use them. Taxpayers need to know that the RI Attorney General has advised that the town resolves the right of way issues with rescission of the abutter's license and to put up a fence.

Dottie Jackvony, 552 Carr's Trail, hopes that the Council gives some thought to the turbine ordinance. She moved from Cranston to live where it is pristine, has character and charm, and doesn't want that taken away.

LICENSES

1. Applications for renewal of Campground licenses for Hickory Ridge, Camp Ayoho and Water's Edge.

Councilwoman Carlson asked that the Town Council votes separately and individually on each license.

Vice-President Carlson made a motion seconded by Councilman McGee to approve a year round license for Hickory Ridge Campground. All voted Aye.

Councilman Laboissonniere made a motion seconded by Councilwoman Duxbury to approve a year round license for Camp Ayoho. All voted Aye.

Water's Edge: Chris Anderson, Esq., 2115 Harkney Hill Road, represents Mr. Bamford (Water's Edge) and has had some discussion with Solicitor Gorham as to what the current application process is, whether there is a need now for two license applications rather than one since the ordinance was changed at the last Town Council meeting. Mr. Anderson stated that his client did file a renewal application, but has the process changed since the ordinance changed? Attorney Anderson also is aware that there is a procedure where various department heads submit reports on Water's Edge before the license is renewed and he would be curious to know what those results were. I believe there have been no objections by any town department. The only issue he is aware of pertains to access issues with Lori Lane due to misrepresentations by a neighbor. Lori Lane is not a private road, is for public use and should be treated as such. There were also some blockage issues on Lori Lane, one having to do with a stone wall effecting ingress and egress and another having to do with individuals placing cars and snow across Lori Lane. However, not a single department is opposed to this application being approved and I don't see why a 5-0 vote wouldn't be upheld this year.

Brian Bamford, 33 Wood Cove Drive, wanted to clarify a few things, one of which was a comment made by Councilwoman Duxbury at a recent Town Council meeting that a tent blew up at one of his campgrounds due to a drug related situation. At the last council meeting Vice-President Carlson made that same statement, referring to drug activity in the campground. Mr. Bamford has both the police and fire marshal reports that conclusively state that there was no drug involvement regarding that incident. Councilwoman Duxbury apologized for making a statement before seeing the police report. Mr. Bamford went on to state that even though there were 42 calls over a three year period, he inherited his tenants from former owner, Mr. Forcier, and it is not fair the way the report was presented.

Mr. Bamford went on to say that Zoning Officer Jake Peabody has probably been out to the campground seven or eight times. I have done everything he requested. I spent \$7,000 on trees, which I didn't have to do; installed new septic that I didn't have to do. I did a lot of things that were not necessary. I have owned businesses in this town, donated land to this town and care about this town. It is unfair what two council people are doing to me and I request that the balance of this council uses good judgment. No department head has noted a problem with the campgrounds and I am just asking that you be fair.

Solicitor Gorham feels that the report from the Zoning Official on all three campground applications is not entirely accurate because it was due to his determination of the status of Water's Edge that it is currently in Superior Court. Attorney Anderson took exception, said the decision was not reversed and that it was remanded back to the Zoning Board for more information. Solicitor Gorham agreed that it was remanded on an issue of alteration. Atty. Anderson said that even if there was a problem, Water's Edge should have time to fix the problem, not have the license taken away. Last year's vote was 5-0 and it should be again tonight.

Councilwoman Duxbury referred to arrests and asked Mr. Bamford if he has a plan in place to cut down on these types of situations. Mr. Bamford said that he will work with the police chief, not because he is unhappy with the situation, but because he wants to respect her concerns. If Mr. Bamford decides to make changes, it is not because he is unhappy with the current situation. Councilman Laboissonniere is in receipt of an e mail stating that the Police Chief does not have an issue with the renewal, the Chief clarified that they did not have a problem with campground operations and there was not an excessive amount of calls for service, over a three year period.

A motion was made by Councilman McGee seconded by Councilman Laboissonniere to grant a year round license and reserve the right to revisit the license pending the outcome of litigation . Vote taken 3 (Aye), 2 (Nay). Motion passes.

RESOLUTIONS

Councilwoman Duxbury asked that appointments be combined and voted on at once.

1. Appointing Paul St. Amand and Travis Bamford to the Historic District Commission
2. Appointing Anna Mae Lapinski and Joyce Peretta to the Coventry Land Trust
3. Appointing Leonard Piette to the Sewer Assessment Board of Review
4. Appointing Clint Shurtleff to the Juvenile Hearing Board

A motion was made by Councilman Laboissonniere seconded by Councilwoman Duxbury to approve appointments noted in Resolutions 1 through 4. All voted aye.

5. Adopting budget schedule for FY 2016/2017

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

6. Affirming Miozzi Consent Decree "Town of Coventry, et als v. T. Miozzi, Inc., et als CA No KC 2010-1574

Solicitor Gorham gave the history of the consent judgment/decree which was signed by the former town solicitor on April 18, 2011. The case began in KC Superior Court in the fall of 2010. Coventry, through its solicitor, and T. Miozzi Inc actually did come to a resolution, which is written as a consent judgment. That judgment was entered. However, the law is such that the town solicitor cannot bind the Town Council on the disposition of a case, unless the Town Council approves the consent judgment, and I think this decree requires the Town Council's approval.

Councilman McGee said that the Town Council at that time did give the solicitor full authority to act on their behalf and move forward in this situation, there was nothing underhanded. Solicitor Gorham said that a vote such as that would have to be announced in public and I am not aware of that. We did an exhaustive search of all of the minutes and discovered nowhere where authority was put in the hands of the solicitor to bind Coventry. There is no record to my knowledge of such a vote.

Vice-President Carlson recalls no vote taken in Executive Session; Councilman McGee believes this was all done in 2011 before Mrs. Carlson became a member of the Council.

Councilwoman Duxbury asked what the impact of this vote will be and Solicitor Gorham replied that if the Town Council rejects the consent judgment, then he would go to court and ask that it be vacated. If the Town Council approves the judgment, he thinks there will be an issue of whether or not the Council has acted in a manner which yields a defacto amendment to the existing ordinance about asphalt plants. After 4/18/2011, when the consent judgment was signed and entered by the parties in the court, I think it was May of 2013 that the Town Council enacted an ordinance that limits the hours when an asphalt plant can operate. Mrs. Duxbury asked if this is approved, can Mr. Miozzi continue to operate 30 days at night. Solicitor Gorham agreed, but if rejected, there will be no overnight operations, but subject to the ordinance. There is a bit of a question as to who has ultimate authority, therefore, he is going to ask to vacate the judgment because there was not assent of the Town Council to that judgment. He believes that inevitably this will end up in Kent County Superior Court.

Gary Cote, 29 Pettine Street, was the Town Council President when this consent agreement was entered into on behalf of the Town and will not disclose what happened in Executive Session. However, his understanding was that Solicitor Tobin was acting on full authority of the Town Council and Town Manager at that time. The case was never discussed in open session, but there should be executive session minutes on this. He was held to the same ordinance as the other plant with the exception of 30 specific days addressed in the consent agreement. Solicitor Gorham asked Mr. Cote if there was a vote taken in Executive Session and Mr. Cote replied that it was discussed.

Patrick Doherty, Esq., John Assalone's attorney for Westwood Development, concurs with what Solicitor Gorham stated regarding the law pertaining to consent judgments in RI. In order to take official action, the Town Council has to take a vote. If a vote is taken in Executive Session, it must be disclosed in open session. You have a situation where clearly the town solicitor did not have authority to enter into this consent agreement. Authority would have been a vote of the Town Council. I urge the Town Council to reject the affirmation of the consent decree. If there was a vote, there would be a record and we do not have that in this situation. You have heard that they were acting under the guidance of the oversight

of the town manager. He is not an authorized municipal agent. Attorney Daugherty urged rejection of the consent judgment.

Nancy Sullivan, 6 White Oak Court, urged the Town Council to reject the consent agreement. This document does not support, defend or have the best interest of the public at heart. The decree allows overnight operations, not providing for safe, healthy enjoyment of property in Coventry.

Charlotte Porter, 26 Sandra Circle, has complained for four years about what we are going through in the neighborhood of Westwood Estate with two asphalt plants within 400 feet from my home. The odors are offensive, I can't sit outside, can't have company, and that is not a way for anyone to live. We have complained to DEM, and when we did Mr. Miozzi or Mr. Pagliarini sent us all threatening letters to keep us quiet. I have seen trucks going into 75 Airport Road at 5:00 in the morning, going in loaded with rocks and gravel. I see Mr. Cote himself drive out at 7:04 with a full load of asphalt.

Bob Gagnon, 11 Sandra Circle, has been diagnosed with a nodule in his right lung. He doesn't know if this is from exposure to asphalt, but the odors and fumes don't help. Please consider all our residents and the problems that we are exposed to daily.

Jerry Sparks, 6 Lisa's Way, has been dealing with this for about six years. His eyes burn when he gets up in the morning. There are people who live there with respiratory problems, yet Miozzi works whenever he wants to work. There was three inches of soot in his gutters when he cleaned them last week.

Mary Croft, 30 Sandra Circle, lives with oxygen now and needs the Town Council to do something about this situation.

Brian LaPlante, Esq. represents T. Miozzi Inc as well as TEM. The plant is fully licensed by the State of RI and has been over 10 years. There has been analysis done as to the impact of the operation on the neighbors, and none of the conclusions reached has led to the fact that this operation has caused any of these problems. There is zero scientific evidence correlating my client's operation to the conditions we are hearing about. There is no sound basis for concluding that my client is the cause of any of this.

Regarding the consent judgment, it is incredibly reckless to expose the town to liability if the town decides to dishonor a consent judgment by Judge Procaccini of the Superior Court. For the last five years my client, T. Miozzi, has adhered to the consent agreement methodically and consistently. The only basis on which the town could even start on this journey would be that Attorney Tobin, a respected member of the RI Board, without any authority, agreed to resolve an important case like this without any consultation with the Town Council. I know, because I participated in the case, that there were several parties who participated in the preparation of the consent judgment and its' approval. If action had been taken in Executive Session, and a vote was taken and not reported to the public, it would be a violation of the open meetings act. My client, T. Miozzi Inc and TEM, have expended significant money, entered contracts, modified business operations and relied upon this consent judgment that has been in place for nearly five years.

Mr. Tobin was the town solicitor. Your charter actually contains language empowering him to represent the interests of the town in litigation. Your charter says nothing about the Town Council having the sole authority to resolve litigation matters. It suggests that the Town Manager has the power to supervise employees and representatives like Mr. Tobin.

John Assalone, 1 A Liena Rose Way, reported that Mrs. Porter from Sandra Circle called him to advise that oil was leaking off her gutter, and she took a photo/video. So don't tell me that this plant is being operated in a clean manner. I want someone to show me where the original permitting operation came from. Mr. Miozzi came into town one day and started operating. Asst. Solicitor Scott Hamer told Mr. Peabody to give Miozzi permission to operate, Mr. Peabody asked him to put his request in writing, Atty. Hamer refused. There was no zoning meeting, no Town Council hearing, no permitting. This is in violation of expansion of a non-conforming use.

Irene Drew, 23 Catalpa Way, stated that a previous environmental report showed the presence of chemicals in the soil, which are found in the production of asphalt and not naturally occurring in the soil. She asked the Council to reject the consent order.

Dr. Doug DeCubelis, 12 Orchid Trail, business owner at 325 South Main St. asked what the cost would be to relocate Mr. Miozzi's asphalt plant.

Thomas Miozzi, 66 Steamboat Ave., Warwick is trying to relocate the plant to a heavy industrial area. The two large silos are filled before 7 pm with asphalt. At 7 am the first truck is on the scale and loaded w/asphalt in about 45 seconds because the asphalt is still hot. We make the asphalt then truck it within the regulations the town has set forth.

Councilwoman Duxbury agrees Mr. Miozzi's asphalt plant is an efficient operation, but not in a good location. The people in that neighborhood never had the opportunity to say they don't want this in their neighborhood. The consent agreement never appeared on a Town Council agenda to be voted on. The Planning Commission dropped the ball as well. Coventry needs community friendly businesses, not

businesses that detract from our quality of life. People have been denied their opportunity to say this is not right and she urges her colleagues to support her in rejecting this consent agreement.

Solicitor Gorham explained that a vote to affirm would mean to ratify the consent judgment; a no vote would mean a vote to reject it.

A motion was made by Councilman McGee seconded by Councilman Laboissonniere to affirm the Miozzi consent agreement. Vote to affirm: (1) Aye, Councilman McGee; (4) four votes were against affirming the consent decree. Motion fails.

Adopting Miozzi Contract Extension

Interim Town Manager Kerbel explained that the Council signed this contract in September, with 60 working days to complete the \$2.5 million contract. Mr. Miozzi has been paid \$242,000. In addition, some roads have been paved but we haven't been billed yet. There have been a series of roads reclaimed and not billed. There are also roads to be overlaid and no work has been performed to date. In the summary DPW Director McGee prepared, there would be 58 days from Oct 5th when he was given the notice to proceed until December 23rd when it's anticipated the asphalt plant will be shut down. Mr. Miozzi has requested a time extension, not a cost increase, because if you started incorporating the rain days and holidays, there will probably be only 41 working days if the weather holds thru December 23rd. So he is asking for a time extension. Given the nature of this contact I felt it was best that the council act on that extension. Mr. McGee encouraged the Council to let Mr. Miozzi come back when the season starts up again. Mr. Thibeault sent a letter out dated the 29th of September. Mr. Miozzi started work based upon doing the dig safe authorizations and advised the council that he started pre-marking all the streets as soon as the notice to proceed was received and scheduled the subcontractors.

Councilwoman Duxbury wants to know how much is owed to Miozzi and how much of the project is remaining. Kevin McGee said the streets listed that have been paved but not billed have only been completed today. Mr. Miozzi has been providing bills within a day or two after the project has been completed. That number is not known until the tonnage is known and verified by Mr. Joyal after inspections. Councilwoman Duxbury asked for an estimate on how much work has been completed out of the whole \$2.5 million contract. Interim Town Manager Kerbel answered if it's a \$2.5 million contract, 20% of that is ½ million dollars. So, you are probably up to 40% or 50% and before the plant is closed you are probably talking about 70% to 80%.

Councilwoman Carlson asked what effect a move of the plant will have on operations, and would the move be soon and what would the impact be with the extension. Mr. Miozzi responded that winter is the best time to move the operation. He asked for an extension to the contract so they don't have to rush the job.

A motion was made by Councilman McGee, seconded by Councilman Laboissonniere to approve the extension. Councilmen McGee, Laboissonniere and Shibley all voted aye. Councilwomen Carlson and Duxbury voted no. Motion passes.

8. Prohibiting delinquent taxpayers from performing Town work

Interim Town Manager Kerbel explained the council's request to pass a resolution that the town will not enter into contracts with people who owe the town taxes, which pertains to those who are one year or greater in arrears.

A motion was made by Councilwoman Carlson, seconded by Councilwoman Duxbury to approve resolution. All voted aye.

9. Accepting and filing actuarial report on closed municipal workers pension fund

Manager Kerbel indicated that we are now up to 36% funding ratio on the closed municipal pension fund. This is one of the plans where you adopted a funding improvement program w/cooperation from the employees with collective bargaining. There should be a report coming on the police pension plan in the near future.

A motion was made by Councilman Laboissonniere, seconded by Councilman McGee to approve resolution. All voted aye.

10. Adopting 2016 Town Council meeting schedule

A motion was made to adopt the Town Council meeting schedule with the following changes: eliminating June 13th, changing October 10th to October 17th and changing December 26th to December 19th.

A motion was made by Councilman Laboissonniere, seconded by Vice-President Carlson, to adopt the Town Council meeting schedule as amended. All voted aye.

11. Authorizing the cancellation of a grant on the "Mill Workers House", Washington Street

The Department of Transportation contacted Manager Kerbel and indicated that if we request cancellation of the grant, they may assist us in securing funding or using the grant funds to demolish the building.

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

12. Authorizing the Town Manager to sign the CCFD Settlement Agreement regarding repayment of Town funds

A motion was made by Councilman McGee, seconded by Councilwoman Carlson to approve resolution. All voted aye.

13. Adopting budget amendments (Police Contract)

Interim Town Manager Kerbel remarked that in the adoption of the contract there were going to be some budget amendments. Most of the payment for the contract is coming from either contingency or within the police budget, but it is from personnel funds that will not be spent. For example, in the Town Manager's office, because you don't have a replacement town manager, funds are being re-appropriated for this contract.

A motion was made by Councilman Laboissonniere, seconded by Councilwoman Carlson to adopt budget amendments. All voted aye.

14. Authorizing purchase of police vehicles via impact fees

These were two vehicles approved for purchase in August of 2015 and we are changing the source of funds from the operating budget to impact fees and that was part of that prior motion.

A motion was made by Councilman Laboissonniere, seconded by Councilwoman Carlson to authorize the purchase of two police vehicles. All voted aye.

A motion was made by Councilman Laboissonniere seconded by Vice-President Carlson to adjourn meeting. All voted aye.

Town Clerk