

- Regular The Regular Meeting of the Harmony Township Committee was called to order by the Mayor. The Mayor made the following announcement: “Adequate notice of this meeting was given in accordance with the Open Public Meetings Act by providing a notice of the meeting to the Express-Times and Star Ledger posting a copy thereof on the Township bulletin board and filing a copy thereof in the office of the Municipal Clerk.” The Pledge of Allegiance to the American Flag was led by the Mayor.
- Roll Call Tipton, Yamrock, Cornely
- Budget Mr. Mooney gave a summary of the budget. There is a reduction in the tax rate this year. It is a small reduction and almost flat. The County is almost flat also. Waiting to see where the school comes in at.
- Motion by Yamrock, seconded by Cornely and carried unanimously by roll call to introduce the 2022 budget as appended to these minutes.
Roll Call: Ayes: Tipton, Cornely, Yamrock Nays: none
- HS&G Permit Renewal Mr. Wilhelm and Mr. Panicucci were present representing Harmony Sand and Gravel. Mr. Wilhelm indicated they were presenting the 2022 mining application, proof of service was provided. They had received a letter from the Township Engineer Mr. Finelli which was responded to. He indicated most of the questions should have been answered in a satisfactory manner. Mr. Finelli reviewed the report of February 25, 2022. He said there has been good progress made in the restoration of pit 2. He said there was a few issues that need discussion. There are a few areas that they pointed out to HS&G that were in excess of the 3:1 slope. Finelli engineering asked for additional survey work and verification. Finelli engineering did it with a smart level. He explained how that works and indicated they were in excess of the 3:1 in a few areas. Some are vegetated areas primarily at the north end of the pit. Mr. Panicucci responded to that with information received April 4th. There is clearly still some reclamation that remains. Primarily that is topsoil, fertilizing and seeding and landscaping. The reclamation is not done but getting close. Mr. Finelli stated there was a letter received from Attorney Gruenberg on behalf of Star D Farm which raises some other issues. The concerns are the 3:1 slope areas, the material received and used as fill material at the quarry, as it is known HS&G has been in a contractual relationship with Earth Efficient for a couple of years. They were responsible for the importation of material and the depositing of that material. He said when it first started a lot of concern was raised by Star D and their office relative to some of the material being imported. Provisions made by the field crew on site to facilitate the cleanup which has been on going over time. Finelli’s office sent the township committee documentation or all the information they have received from Earth Efficient which certifies all the material as clean fill. Mr. Finelli said that could be a long discussion, but Mr. Gruenberg on behalf of Star D has taken exception to some of that material and has provided some pictures, and the other main issue is the consideration of a bond reduction. Mr. Finelli stated they have been conducting intermittent inspections. Most of the material now is being deposited in the “active pit” that is being reclaimed. He said the issue of qualification as clean fill is again an interesting and debatable topic. There is a lot of information provided by Earth Efficient certifying that it is clean and qualifies as such, also, there is clearly some extraneous material that is in the said clean fill. Mr. Gruenberg has requested a Phase

II environmental study which needs to be discussed. Mr. Finelli state the operation, reclamation and condition of the pit has never been this far along, he was there about a month ago and based upon slopes, the grading that was conducted for the majority of the pit and the pit walls/slopes has come along way and is in pretty good shape not to say that it is done or it is perfect, but it has come along way. Mr. Wilhelm stated they had three things they are prepared to address, the 3:1 slopes, clean fill and the bond. Mayor Tipton asked about the reports on the materials. He stated the materials reports were discussed before and wanted to know why Star D was not getting the reports after all this time. He said he is surprised and he gets them via email. Mayor Tipton said Star D farm should get them on the material that is deposited on their property and should be a non issue. Mr. Wilhelm stated he would concur and he will look into that and ask Earth Efficient to send them to them directly he didn't know why that wasn't happening. Mr. Panicucci said that request was made by Mr. Gruenberg in past years' and it was done immediately after. He stated he copied hm on the bi-monthly reports that were submitted. They hadn't submitted one since mid or late fall since they were done with the filling operation and are waiting for approval on acceptance of the grades before they proceeded with the seeding but subsequent to that meeting he was added to those reports and also subsequent to that meeting arrangements were made for him to have access to the Earth Efficient website to dig down and get the details of the reports because they don't get them all or submit them that is all available through the Earth Efficient portal on the website. Mayor Tipton stated he thought he got the emails from Earth Efficient and Mr. Finelli agreed that he also gets them. Mayor Tipton said he doesn't have to go anywhere it just happens that he gets them on a regular basis and they should get them also. Mr. Finelli stated he looked at his emails and found one just to him and he thought others were receiving so he never inquired about who else was receiving them. Mr. Wilhelm state that would have to be corrected. Mayor Tipton stated time wise, it has come along way, taking longer than the Township wanted it to, what does Mr. Finelli foresee that is remaining being a completion time. Mr. Finelli stated it is certainly doable in 2022. He stated the clean fill aside, there is no reason in his opinion, if there are some slope areas that need to be fixed and improved that can be done as well, but there is no reason why that pit could not be completed this year. Mayor Tipton would like to understand where the photos that Mr. Gruenberg provided are in proximity to the pit area. Mr. Gruenberg stated the first photo that shows the macadam is in the northeast corner of the pit area. The one with the brick and the shells are in the northeast corner, the shelling of a different texture with lots of shells are on the southeast side. The tree area is on the east side that has a lot of debris in that area and the next is in the north that has the problem with the slope along the Roxburg Station Road area. The last photo is the very northeast area next to the Buckhorn Creek near Roxburg Station Road. This is where it was at 300 elevation and now it is at a lower elevation on their map. It is supposed to be at 300 to prevent the creek from overflowing. It was discussed that that is the area that the trucks were coming in from. Mayor Tipton asked if the committee had any question so far. Neither did. Mr. Wilhelm asked Mr. Panicucci about the 3:1 slopes. Mr. Panicucci stated in response to Mr. Finelli's comment in the February 25th report they did have their survey crew out and the took 200 spot elevation across the north end of the slopes and the cross sections that have always been in the application, there are 3 cross sections there at 100 ft apart and they did them at 25 ft apart to show a lot more cross sections and what it comes down to is that there is an area that is the north west corner of the pit that was shown in photographs he submitted and a letter of last Friday, there are trees growing there and he believes it is the same photo provided by Star D with the brush and trees that are in the northwest corner. He stated when they resloped they didn't touch that because it was established growth there and there is a small area where that grade is exceeded. Having to clear the trees and changing the grading

a little bit they figured it was safer to leave the trees since that was an established area, it is not much steeper than 3:1, but it does exceed it and it's a small spot in the corner. Mayor Tipton asked what the approximate size of the area was. Mr. Panicucci stated maybe a 50 ft. diameter. The photos Mr. Panicucci provided were viewed and reviewed by Mr. Panicucci. Mayor Tipton asked what is the slope in this area. Mr. Finelli stated that without having survey shots it is probably 2:5, it's just steeper. Mayor Tipton said in order to do it the area needs to be deforested. He asked Mr. Gruenberg if that is what was wanted because that would create a worse situation. Mr. Gruenberg stated he would call it forested, that the only reason is that there is material there and this has taken so long to fix the area that it hasn't been restored in a timely manner and that is why there are small trees there. Mayor Tipton agreed, he said but now it is what it is, is the preference to have it done per the ordinance at the 3:1 with the understanding you will lose the vegetation. Mr. Gruenberg stated the property owner is worried about the safety of the situation because it is a steeper slope than permitted in the ordinance and it should be restored in the proper way so if it means regrading that area to make it appropriate slope it should be done in accordance with the ordinance and with accordance with the Township Committee's directions over the last several years that he has been a part of. Mayor Tipton asked if there were any question by the committee or professionals on that. None were heard. Mr. Wilhelm introduced Mike Miller of Earth Efficient and MHN management to discuss the material issues. Mr. Wilhelm asked him if he was familiar with the importation of the materials by Harmony Sand and Gravel on the subject property. Mr. Miller indicated yes. Mr. Wilhelm asked how long he was familiar with this project. He stated since its inception. Mr. Miller indicated he has heard the discussion going on today and has heard the complaints and concerns that are being made. Mr. Miller stated he represents that he certified the material is in fact clean fill in accordance with the NJDEP regulations. He addresses some of the concerns primarily as it relates to the macadam. Mr. Miller stated he is part of the team that goes through making sure it meets all the requirements of the NJDEP rules and regulations for importation of clean fill. He does not have any concerns that it is not meeting those regulations. Mayor Tipton asked if he saw the photos presented by Mr. Gruenberg. Mr. Miller stated he has. Mayor Tipton said it appears that there are chunks of macadam, pieces of broken glass, brick, seashells. He asked if there was a certain amount of that material permitted as clean fill or is it permitted in general. Mr. Miller stated when the project started, they had created a material acceptance plan for site specific for mine reclamation at plant 1, pit #2. He said part of that has been submitted and given to, or all or it has been given to, the Engineering firms that represent the Township and Harmony Sand and Gravel. It was made accessible to the Warren County Soil Conservation District and the DEP. Mr. Miller said one of the things is the definition of clean fill and soil material defined by the NJDEP, they classify it as, soils, sands, clay that do not contain concentrations of 1 or more contaminants that exceed the residential direct contact remediation standards that are set for in NJAC 7:26D remediation standards and non-water soluble non-decomposable non-prestrubable(?) such as rock, gravel, brick, block, concrete, glass and or clay or ceramic products or any combination therefore that do not meet the definition of solid waste pursuant to the rules. As the above rules any fill containing wood material, plastic, wire, wallboard, roofing material, insulation, carpet or padding are also deminimis levels and considered solid waste, said debris of 1% or less by any volume should be deemed deminimis. He said any time there is less than 1% by volume of anything that is not considered, soil, sand, clays, brick, block or concrete would be considered solid waste that is allowed to be up to 1% in there. They have devised a plan that any time there is anything large enough that can be removed by hand within reason is done and over time they have taken samples, the amount of material they brought out and taken out of the soils

and disposed of, bagged the material and hauling it away they figured out and calculated the amount of material that was being removed came to a debris minimum of .009% based on the clean up when the material was taken off, weighed and calculated it on June 12, 2020. He said he can get updated numbers for that currently. It is his position that it is less than 1%. Mr. Cornely said his question was answered on the amounts allowed. Mr. Finelli stated that was the battle all along until they were educated on what qualified as clean fill and permitted and hauled in, there loads are certified, Earth Efficient is doing the testing and they do not operate a lab and double check everything on a daily basis. A lot of the material goes below the water into the pit and some material floats so obviously anything that floats they would take boat and a crew to try to maintain it and to try to keep a little bit ahead of it that was border line successful and was not the perfect set up but it was an improvement when it first begun and clearly there was a lot of stuff being dumped that didn't belong there 1% or not. Mr. Finelli stated there has been an improvement in the protocols and the cooperation. They are trying to keep things clean but not with 100% success and some of the stuff that is getting dumped and may qualify as clean fill through the DEP, he doesn't argue that, but it just doesn't look like it belongs there, so he feels it is a very gray area. It's improved, it's better but not perfect. Mayor Tipton stated that the top course has to be able to vegetate. Mr. Finelli said there is still a lot of topsoil that needs to be done yet. The final stabilization at the North and East ends needs a lot of work yet and the south end to some degree. Mr. Panicucci showed the plan for final landscaping that needs to be done. Mr. Finelli said beyond the areas shown on the pictures that are further down the slope closer to the water that have trees grown, it is a stable area. There are also some 3:1 slope violations up closer to the road at the top and is basically behind the evergreen tree row that exists along the road at the top of the slope, he is sure that the argument with that will be to comply with the ordinance especially with the maturity of some of the evergreens. He doesn't know if they can be saved or not so there's also 2 areas at the north end of the pit and some further down the slope and then at the very top of the slope and they are separated. Mr. Gruenberg asked Mr. Miller about when they are calculating the amount that you claim is deminimis, that's based upon dumping out and pulling out what is offensive material and figuring out how much of that offensive material is in relation to the truck load that was dumped, but that doesn't account for the stuff that is missed and dumped on the ground. Mr. Miller stated that was correct. Mr. Gruenberg stated then the .0009% is based solely on what is able to be picked out so there is still other stuff in there actually being dumped on the ground that they might not be able to get to or went into the water, that doesn't account for that .0009% correct. Mr. Miller stated that they are not getting every single piece out and they are not screening it. Mr. Wilhelm stated that they will stipulate to that that they are not getting every piece. Mr. Gruenberg stated so what they are counting as deminimis is only what is being pulled off the load not what might be under 2 or 3 feet under the ground or in the water. Mr. Miller said the material is pushed off with a bulldozer and as it is being pushed they are turning the material and they have people watching and physically pulling anything they can by hand or physically able to pick up as a rule. Mr. Wilhelm addressed the bond request. He stated in accordance with the calculations set by Mr. Panicucci and confirmed by Mr. Finelli they are seeking a reduction in the bond to \$700,000.00. He stated that as Mr. Finelli has said that the last couple of years things have improved and got better and he thinks based on the calculations that \$700,000 is appropriate. Mayor Tipton asked about the timeline of completion in 2022. He asked what they thought about that including the slope adjustments. Mr. Panicucci stated they are ready to start the landscaping and if there are some slope adjustments in a small area that can be done in a very short period of time. He thinks it is reasonable to complete the project in 2022. The committee had no further questions at

this time. Mr. Panicucci commented on the grading along the road in the Northeast corner that was lowered. There were some sections there as high as 300 at some point but the plans have shown it cut down to 296 across that spot as part of the reclamation. That cut was to help with the reclamation and part of the flood hazard permit application so that was intended to lower that grade.

Mr. Gruenberg stated with respect to the slope area his clients feel it needs to be fixed and the vegetation has grown because it hasn't been dealt with. He feels it can be done as their engineer has also indicated so he requests no leniency be given by the committee in that area. With respect to the depositing of the material on site, the owners have continuously voiced their concerns and objections with respect to it and he noted that the resolution from last year required Earth Efficient to provide a certificate of insurance that included the Township of Harmony and Finelli Consulting Engineers as additionally insured, he doesn't understand why it doesn't include the property owner where the property is being deposited as an additional insured. That would seem to be logical and if Earth Efficient is so confident that this material that they are allowing to be deposited onto the property owned by his clients is environmentally acceptable they should be an additionally insured as well as the Township and Finelli Engineers. Mr. Gruenberg stated there are great concerns with respect to the environmental issue that might be caused by the depositing of this material. He stated reducing the bond at this point when his clients has not had the ability to have it investigated if the township is not willing to have a Phase II done, then he would like to have the ability to have it inspected once it is completed in order to ensure themselves that there are no environmental issues and if it meets the de minimis 1% standard then the bond eventually can be reduced, there is no reason to reduce it at this point, especially with the history that has gone on over the years. Mr. Gruenberg stated they were glad that the restoration appears to be nearing an end but it's been a really long torturous fight to get to this point and to reduce the bond doesn't seem to be a reward that should be granted particularly with his clients peril with the environmental issues that might be there that the Townships engineer has struggled with in dealing with the conservations about it. He asked that the Township allows his client to be an additional insured, not reduce the bond, and require the slopes to be corrected the way they should be.

Mr. Wilhelm stated making the property owners an additionally insured should not be a problem and easily accomplished. Mr. Miller will check with the insurance company and does not see a reason why it can't be done. Mr. Wilhelm asked Mr. Gruenberg to provide the email addresses for the Earth Efficient reports so they can be emailed directly. Mr. Wilhelm stated as it relates to the bond, they have made a good faith effort and the calculations are the calculations. It is approximately 640,000 so he thinks 700,000 is reasonable. He said this is nit picking, he understands they have concerns about the material and he would be concerned about what material is dropped on my property however they were asked to get a 3rd party and they did and the third party is producing certified clean fill in accordance with the regulations and you are getting a couple pieces shown to support their argument, but Mr. Gruenberg tried to make a point to say that not all the debris is not getting picked up, that's acknowledged but based upon the calculations it's .009% so in other words in order to be in excess of 1% that would mean that Earth Efficient is only picking up 1 1000th of the non-clean material and he said that is certainly not the case. Mr. Miller agreed. Mr. Wilhelm said if their calculations is 9 1000th of 1% that means they are only picking up 1 out of 1000 pieces of debris that doesn't fit the definition of clean fill. He said you have that and it is what it is. Mr. Wilhelm stated if they want the to do the 3:1 and deforest that area they will do it. They think they have shown good faith in getting the

3rd party in over the years and would ask to have good faith sent back by reducing the bond.

Mayor Tipton asked Mr. Finelli if 700,000 was ok. Mr. Finelli stated yes. He said there is still the issue of final soil testing to be done. He noted Mr. Gruenberg asked for a Phase II, but he thinks there is a number of different ways to look at it. He said to be honest there is probably a reasonable compromise that could be met to have that work done at this point in time and he is assuming the tests results would come back fine, that being the case, he thinks everyone would have a greater degree of satisfaction going into the next step when they are out of the site and Star D can enjoy their pit. He thinks that is worth the question. Mr. Wilhelm stated that Star D has been able to do an environmental any time they want because they have owned the property and they haven't done it in all the years and now this is the first time hearing it. HS&G does not think it is necessary to do anything additional, they think it would be onerous and burdensome, they are doing what they have been asked to do in the past, got the third party, they don't see the need to burden them with having to do further environmental testing. Mr. Gruenberg stated that the Township Engineer is raising concerns from a what happens now when it is all done, what if they're wrong, what if the material is greater than 1%, why is there a fear to test. He is using the term Phase II but why is there a fear to test that material which would be a lot less intrusive means to protect the Township, his client from whatever has been deposited there. Test it before the bond is released and require the applicant to do that if they're so confident that the material is clean fill and under the standards then they shouldn't work about having to test it. He said it should be a "no brainer" for everyone. Mr. Wilhelm stated they are not worried about the result they just don't believe they should have to pay for this when the 3rd party, Earth Efficient, calculations are so far below the 1%. Mayor Tipton asked if the committee or professionals had any more questions. Mr. Cornely said he thinks that they should be allowed to be added as additionally insured, have the slope restored to 3:1 and as far as the bond is concerned he will entertain what the rest of the committee would like. Mayor Tipton said the Mr. Finelli said the 700,000 is more than sufficient so he thinks the committee should stick with that. Mrs. Yamrock said she agrees and she has driven past and is impressed with what has been done from what it was to what it is now there is a big difference and she understands there is more to do. Mayor Tipton asked Mr. Finelli to give more consideration at some point to testing because just saying testing gives a lot of options. Mayor Tipton stated like it's been said since everyone is so confident maybe there should be some limited testing in certain areas would be a proper decision. He said they have compromised during this process for the last 10 years between what the ordinances say, what happened in the past, who's fault was what, he also doesn't want to make some sort of expensive stringent standard that is overkill.

Mayor Tipton moved to approve the 2022 application with the requirement of the slopes in the area recognized by the applicant and Star D Farm to be made 3:1 with the elimination of any trees necessary, make sure the reports are provided to Star D Farm, set the bond amount to \$700,000.00, this will all be accomplished in 2022, the property owner is added as an additional insured, and Mr. Finelli will look into and come up with some sort of testing that he feels is fair and reasonable to the applicant as well as the property owner and for the sake of the Township.

Mr. Finelli said he is fine coming up with the test parameters. He asked if the testing needs to be approved by HS&G or does Star D. Mr. Cornely said they should both get a copy of the results. Mayor Tipton said that he should balance all equities and he thinks it is more of a professional engineering type technical thing that the committee does not have the expertise to make that decision and he should discuss within the parties.

He stated due to what has been seen in the material and they are doing the best they can, and it's DEP approved, he gets what they are doing but at the same time things have been uncovered that are undesirable and even though it might be legit under the DEP regs he thinks it's a reasonable request. Mr. Finelli said there are more specialty type consultants that they have worked with and they might need to reach out to them. They will do what they think is in the best interest of Star D and what is reasonable for HS&G. Mr. Gruenberg stated he appreciates that.

Mrs. Yamrock seconded the motion made. Roll Call: Ayes: Cornely, Tipton, Yamrock. Nays: none.

Motion by Tipton, seconded by Yamrock and carried unanimously by roll call to approve the Harmony Sand & Gravel 2022 Operating Permit Renewal.

Roll Call: Ayes: Cornely, Tipton, Yamrock Nays: none

Consent
Agenda

Motion by Yamrock, seconded by Cornely and carried unanimously by roll call to approve the consent agenda that included the following items:

Roll Call: Ayes: Tipton, Yamrock, Cornely Nays: none

Reports

Attorney, Engineer and Zoning

Minutes

March 22, 2022

Resolution

RESOLUTION FOR MEMBER PARTICIPATION
IN A COOPERATIVE PRICING SYSTEM

A RESOLUTION AUTHORIZING THE TOWNSHIP OF HARMONY
TO ENTER INTO A COOPERATIVE PRICING AGREEMENT
RESOLUTION NUMBER R:22-16

WHEREAS, N.J.S.A. 40A:11-11(5) authorizes contracting units to establish a Cooperative Pricing System and to enter into Cooperative Pricing Agreements for its administration; and

WHEREAS, the Hunterdon County Educational Services Commission, hereinafter referred to as the "Lead Agency " has offered voluntary participation in a Cooperative Pricing System for the purchase of goods and services;

WHEREAS, on April 5, 2022 the governing body of the Township of Harmony, County of Warren, State of New Jersey duly considered participation in a Cooperative Pricing System for the provision and performance of goods and services;

NOW, THEREFORE BE IT RESOLVED as follows:

TITLE

This RESOLUTION shall be known and may be cited as the Cooperative Pricing Resolution of the Township of Harmony, Warren County, New Jersey;

AUTHORITY

Pursuant to the provisions of *N.J.S.A. 40A:11-11(5)*, the Chief Financial Officer is hereby authorized to enter into a Cooperative Pricing Agreement with the Lead Agency.

CONTRACTING UNIT

The Lead Agency shall be responsible for complying with the provisions of the *Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.)* and all

other provisions of the revised statutes of the State of New Jersey.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

CERTIFICATION

I, Kelley D. Smith, Municipal Clerk of the Township of Harmony, do hereby certify the foregoing to be a true copy of a Resolution adopted by the Harmony Township Committee at a meeting held on April 5, 2022.

Kelley D. Smith
Municipal Clerk

BY: Brian R. Tipton, Mayor

(NAME AND TITLE)

ATTEST BY: Kelley D. Smith, Municipal Clerk

(NAME AND TITLE)

New

Business

1. Shandor’s Used Auto Junkyard License Renewal has been carried to May’s Township Committee meeting.
2. The Township Committee tabled the Introduction by Title Only; Ordinance No O:22-1; short term rentals.
3. Motion by Yamrock, seconded by Cornely and carried by all in favor to approve the application for Brian Unangst to join the New Jersey State Fireman’s Association.

Old

Business

1. Motion by Yamrock, seconded by Cornely and carried by all in favor to open the public hearing for consideration of Ordinance O:22-2; CAP Ordinance;

There were no public comments

Motion by Yamrock, seconded by Cornely and carried by all in favor to close public comments.

Motion by Yamrock, seconded by Cornely and carried unanimously by roll call to adopt O:22-2; CAP Ordinance.

Roll Call: Ayes: Tipton, Cornely, Yamrock Nays: none

Public

Comment

Jane Nemeth asked for explanation on Correspondence #1.

Adjourn

Motion by Yamrock, seconded by Cornely to adjourn the meeting at this time. The motion was carried unanimously by all in favor.

Kelley Smith, Municipal Clerk