

**Hamilton Town Council
March 9, 2009
Hamilton Town Office**

The hearing was called to order at 7:28 PM by Mayor H. Ray Whitbey.

Roll Call

Present: Mayor H. Ray Whitbey, Vice Mayor John Unger, Mr. Greg Wilmoth, Mr. Ralph Baxter, Mr. Tom Rollins, Mr. Ken Wine, Mr. Michael Snyder.

Also Present: Ms. Maureen Gilmore, Attorney, Mr. David Beniamino, Zoning Administrator, Mr. Robert McCann, Planning Commission Chairman, Ms. Lori Jones, Treasurer

Mr. Snyder made a motion to hold discussion about the proposed C-2 ZTA following the Mayor's Report. Mr. Wilmoth made a second on the motion and the vote passed 6-0-0, (Aye: Unger, Wilmoth, Baxter, Snyder, Rollins, Wine. Nay: none, Absent: none.)

Minutes

Mr. Wine made a motion to adopt the amended February 9, 2009 minutes into record. Mr. Snyder made a second on the motion and the vote passed 6-0-0, (Aye: Unger, Wilmoth, Baxter, Snyder, Rollins, Wine. Nay: none, Absent: none.)

Guests

Ms. Shannon Sollinger, Loudoun Times Mirror.

Ms. Margaret Morton, Leesburg Today.

Former Mayor Keith Reasoner

Lt. Chris Hines had no report and Mayor Whitbey expressed concern that with warming temperatures problems might arise with teenagers in the park late at night. Mr. Snyder inquired if any enforcement can be offered by the County for parking issues in the Town Park and it was noted that if Hamilton were to adopt an ordinance with clear definition then assistance could be provided by the Sherriff's Department. Mr. Rollins asked if there was a status update for the animal poaching that was taking place on the edge of Town and Lt. Hines advised that he will check and advise back. Lt. Hines also advised that April 1, 2009 is the effective date of the new County ordinance in reference to trailer parking on a residential property. More details are needed.

Mayor's Report - none

Public Comment - none

New Business

C-2 Zoning. Mayor Whitbey asked everyone to review the Planning Commission Notice of Action.

Mr. Snyder made a motion to allow residential use in a C2 district by right and Mr. Baxter asked Mr. Snyder if he was referencing the proposed ZTA to the Town of Hamilton Zoning Ordinance, Article 4, Section 6.3, C-2 District Regulations. The proposed ZTA would permit single family residential use in existing structures. Mr. Snyder acknowledged the clarification and Mr. Wilmoth made a second on the motion. The voice vote passed 4-2-0, (Aye: Snyder, Wilmoth, Rollins, Wine, Nay: Unger, Baxter.

Absent: none). Discussion highlights:

*Mr. Beniamino clarified that presently there are two different sections within each Zoning Ordinance classification, one for permitted use and one for special use permit. There is another section which addresses the Zoning Ordinance & Land and Subdivision Ordinance, with reference to business change uses. This would require a site plan to be submitted, review from the Planning Commission and site plan approval.

*Mr. Unger asked if this would give an existing residential property owner the right to change to commercial use by right and Mr. Beniamino responded that this would not be possible as a permitted use.

*Mayor Whitbey noted that the blue highlighting on the Land Use map has been identified as a central commercial core by the Town Council in the Comprehensive Plan and questioned if this proposed allowance would punch holes in the area by allowing residential use.

*Mr. Snyder referenced the bank property and noted that it has been in decline for 30 years and currently cannot be used as a commercial property. Overall a decline is taking place in the center of Town and until a commercial core is established with a vision, an incentive should be provided to retain and promote upkeep, which would be of no cost to the Town and work as an incentive to the property owner for possible future use.

*Ms. Gilmore stated that from a legal standpoint Mr. Snyder made a very good point that there are many commercial properties that are almost hamstrung due to parking difficulties. The way to remedy this is to focus on fixing the Zoning Ordinance so that there are different parking alternatives available.

*Mr. Beniamino advised that by right of residential uses generally will not require any improvements to the existing commercial structure. Normally, commercial uses on commercial lots have requirements.

*Mr. Snyder stated that the proposed option does not change the character of the property but would allow the property to be retained in hopes of a higher future value. Mr. Snyder believes that a special use permit process opens the door for a discrimination lawsuit if the Town approves other requests and not everyone is treated the same. Ms. Gilmore disagreed and stated that a special use permit process would allow the Town to determine if a residential use is appropriate for that location. Mr. Snyder stated that he wants to give the people the maximum amount of freedom to do with their property what they want, particularly when there is little or no cost to the Town. Mr. Snyder referenced the deteriorating bank building and Mr. Unger noted that the bank building was deteriorating when it was a residential use so the argument is not a good one.

*Mr. Baxter disagreed and believes that this is putting a band-aid on the problem instead of resolving the issues that need addressed. Mr. Baxter is unclear how special use versus permitted use drives a behavior change in the needed direction and desires a case by case consideration. Mr. Snyder responded that permitted use would mean that the Town would not have to be involved. Mr. Baxter stated that it is our job in government to be involved and to ensure that the uses of the residences are per zoning guidelines. Mr. Unger questioned why there is zoning in place at all if no involvement is desired. Ms. Gilmore advised that the permitted use will become an administrative process and special use review is a legislative process. Mr. Baxter and Mr. Unger agreed that a special use permit might be more burdensome to the Town but it would allow the public to be aware of what is happening.

*Ms. Gilmore noted that the Planning Commission had recommended a review of the fee schedule. Ms. Gilmore also advised that the BZA previously had the ability to grant a 24 month special use permit for residential use of common property but can no longer make those exceptions.

*Mr. Beniamino noted that the term permitted use would have been better suited than by right use.

*Mr. Robert McCann voiced concern that control, to some degree, has always been in place and requested that the Council look at the entire community to make sure all citizens are protected and have input, not just a small block or two. Mr. McCann would like some type of oversight or review by the Town, as there are many residents in Hamilton who live adjacent to a commercial property. Concern that commercial properties could be forever lost to residential use was raised and Mr. McCann noted that Mr. Campbell should be congratulated for the improvements he has made to his property.

*Mr. Snyder declared that the Planning Commission did not do what was asked by the Town Council and Mr. McCann disagreed. Mr. Snyder and Mr. McCann agreed that neither the Town Council nor the Planning Commission should dictate action to the other.

*Mr. Wine is in support of people having the freedom to do what they want with their property and he understands both sides of the argument and the confusion about the proposed change. There are still processes in place to control what change takes place and the basic argument comes down to whether the Town wants to hear all arguments or have it taken care of administratively.

*Mr. Unger inquired if there is any place in the proposed process where a request could be denied? Mr. Beniamino responded that yes, if all provisions of the Zoning Ordinance cannot be met.

Parks & Recreation

Discussion was held and ideas shared about way to help alleviate the problems of parking, trash, dogs and safety issues in the Town Park. Parking is the main concern with enforcement and quantity of cars being the largest issues. Mr. Baxter made a motion that effective April 15, 2009 no parking be allowed in the park and all access will be via walking. Mr. Unger made a second on the motion and the vote passed 6-0-0, (Aye: Unger, Wilmoth, Baxter, Snyder, Rollins, Wine. Nay: none, Absent: none).

Treasurer's Report

Ms. Jones reviewed the most recent report. Mr. Unger made a motion to accept the report into record and Mr. Wine made a second on the motion. The vote passed 6-0-0, (Aye: Unger, Wilmoth, Baxter, Snyder, Rollins, Wine. Nay: none, Absent: none).

Finance Committee

Mr. Unger reported that the next Budget Workshop meeting is scheduled on April 23, 2009 and a preliminary budget will be presented at the May Town Council meeting. Mr. Unger advised that the primary concern is the real estate tax income.

Public Safety & Zoning Enforcement Committee

Mr. Beniamino stated that there has been a complaint about the property on Sydnor Street for the trailer and yard trash issues. Mayor Whitbey requested Mr. Beniamino start proactive zoning enforcement rather than complaint driven compliance.

Water & Sewer Committee

Chemical Feed Building, there is a meeting March 10, 2009 with the contractor to review project needs, schedule and approval.

Route 704 Waterline Update, Ms. Gilmore stated that the day after the February 9, 2009 Town Council meeting she sent another copy of a standard easement to Mr. Staley's Attorney. No action has been taken since then by either party. Ms. Gilmore also advised that all of the deeds have been updated and letters have been drafted to the property owners who have lenders. Mayor Whitbey asked what would be the next step the Town could take to move this process forward and Ms. Gilmore responded that the Town could file for a declaratory judgment to establish a prescriptive easement. This would give the Town the needed easement, per a provision in the State Code that says if you have utility lines that are over 10 years old then you have a prescriptive easement. Mr. Baxter made a motion to pursue a prescriptive easement, if necessary, for the Route 704 Waterline to get the water line repaired and updated. Mr. Snyder made a second on the motion and the vote passed 6-0-0, (Aye: Unger, Wilmoth, Baxter, Snyder, Rollins, Wine. Nay: none, Absent: none). Ms. Gilmore advised that she will contact Mr. Staley's Attorney for feedback and will take action only as a last resort.

Harmony Water Treatment Facility Update, Mr. Wilmoth reported that the project is on schedule and the end of June is the projected completion date.

I & I Update, equipment has been purchased for tracking but low rainfall has been an obstacle.

St. Paul update, the contractor began work on the sewer line and due to high water pressure problems there was some personal property damage while flushing out the lines.

Planning Commission

Mr. Gallant sent a notice out to all Council members reviewing the Business Summit meeting of the P.L.A.C.E.S. group. Mr. Gallant would like to form a business association in Hamilton, possibly working with the towns of Purcellville and Round Hill. Mayor Whitbey noted that the Ruritans have a Business Development Committee and are anxious to assist the Town and that it might be possible that the interests of both the Town and the Ruritans could be combined. Mr. Unger would like to see local business participation and Ms. Jones suggested the Town draft a letter of interest for distribution. Mr. Wilmoth recognized that business owners are very busy with their daily demands but that they might have input and ideas. Mayor Whitbey asked Mr. Gallant to explore the option of working with Purcellville who has an established organization.

The next Planning Commission meeting is Wednesday March 11, 2009.

New Business

Mr. Wilmoth advised that a generator would be a good idea for well 14 since this will be a main water source for the Town. Ms. Gilmore advised that this should go out to bid since some of the money will come from the VRA. Mayor Whitbey will gather data for specifications before it can be put out for bid and Mr. Snyder stated that there was one specification for the original RFP that might be of assistance.

Turkey vultures, Mayor Whitbey advised that a scare gun was purchased by the Town but before it can be used the Sheriff needs to be advised because it sounds like a gunshot.

An Oak Ridge connection application has been submitted to the Town and Ms. Gilmore will be review under Executive Session.

Red Flag Rules are enclosed and must be in place by May 1, 2009.

The mowing contract is up for renewal and Mr. Snyder made a motion to put the contract out for bid. Mr. Baxter made a second on the motion and the vote passed 6-0-0, (Aye: Unger, Wilmoth, Baxter, Snyder, Rollins, Wine. Nay: none, Absent: none). Ms. Jones advised that the American Disposal contract expires June 30, 2009. No action taken.

Mr. Wilmoth inquired about the status of the Heard property. While he commends the Planning Commission and the BZA for their work, he believes that the fence gives Ms. Heard the opportunity to safely use her home. Mr. Snyder stated that the Town should think about changing the rules to allow a case by case review, though Mr. Baxter pointed out that it becomes an arbitrary decision which is what the Town ruled against earlier tonight. Mayor Whitbey warned against Hamilton making decisions based on the desire of one person verses what is best for the whole town. Mr. Baxter stated that it is the responsibility of every citizen in Hamilton to educate themselves on the current policies and not the Town's responsibility to teach its citizens, and that the information is easily accessible. Mr. McCann added that if the processes had been followed either by submitting an application or calling the Town for information, Ms. Heard would have been advised what options were available to her prior to building a non-conforming fence. Mr. Baxter provided an example of where the Town worked with a resident for a fencing issue where resolution was reached for both the Town and the resident. Mr. Unger noted that the contractor should be held accountable and Mr. McCann advised that the Planning Commission had suggested that a warning be issued to the contractor. The BZA appeal hearing for Ms. Heard is scheduled for April 1, 2009.

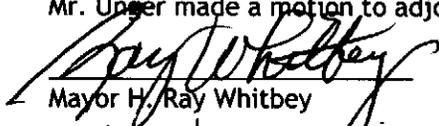
Mayor Whitbey thanked Ms. Pearson for attending the meeting and asked if there was any update on her request. Ms. Pearson is seeking direction from the Council on how to proceed with trailer replacement in the mobile home park. Mayor Whitbey responded that they are waiting on a formal request from Ms. Pearson to the Town to move forward with a phased in site plan. Presently site plans are required for the replacement of trailers under current ordinances. Ms. Gilmore and Mr. Beniamino advised that the Planning Commission is working on a draft zoning ordinance which would create a new district but the Town needs information from Ms. Pearson with numbers and a vision of the property in order to move forward. Mayor Whitbey offered assistance as needed.

The Council entered Executive Session at 9:46 PM.

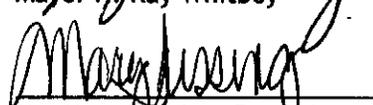
The Council exited Executive Session at 10:24 PM.

Mr. McCann closed the meeting by clarifying what he feels the role of the Planning Commission is and added that he has no problem with the decision the Council made tonight. Mr. McCann is concerned that if the Council believes that the job of the Planning Commission is to rubber stamp their desires, then that would mean that the Planning Commissioners are not doing their job. The Planning Commission owes it to the Council and the Town to look at all sides of the issue and make recommendations. They will take guidance from the Council, but the Commission will seek input, propose resolution, hold hearings and recommend action to Council for consideration. Mr. McCann cited a previously denied request to turn a residential property under a special use permit into a teen center. If this would have been allowed this would have set a precedent that would have been difficult to change. Oversight, not control, is desired by the Planning Commission to protect the best interests of the Town. Mr. McCann respects the decision made tonight and will stand behind it.

Mr. Unger made a motion to adjourn at 10:24 PM.



Mayor H. Ray Whitbey



Ms. Mary Tussing, Recorder