

**Hamilton Town Council
August 10, 2009
Hamilton Town Office**

The meeting was called to order at 7:23 PM. Roll Call:

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

Absent: none.

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

Minutes

Mr. Unger made a motion to adopt the July 13, 2009 minutes into record. Mr. Wine made a second on the motion and the vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Guests

Ms. Shannon Sollinger, Loudoun Times Mirror
Mr. Keith Reasoner, the Honorable Former Mayor of Hamilton

Public Comment

Mr. Bob Moore, 303 Orchard Circle Dr. is President of the Hamilton Volunteer Fire Department and wanted to provide some information about the expressed concern over siren noise. Mr. Moore has lived in Hamilton since 1973 and has been a volunteer firefighter for 31 years. Hamilton is a volunteer station and paid firefighters staff the station from 6:00 AM - 6:00 PM. All other hours are staffed by volunteers. Mr. Moore explained that pagers cost approximately \$500.00 each and the funds are not available to provide to the 58 members of the department. Mr. Moore stated that pagers do not always reach intended recipients due to lapsed signals and sometimes no signal at all in western Loudoun County is received. Mr. Wine inquired if Fire and Rescue has purchased new radios and Mr. Moore responded that this has not been done yet due to budget restrictions. The average of calls of the period over a year is less than 2 per day, 2 rotations per signal, 15 seconds total and Mr. Moore asked for information as to what complaints had been raised about the siren. Mr. Snyder suggested using the siren for emergency use only, tornado, etc only.

Mr. Mike DeBaise, Hamilton volunteer fire fighter, noted that Purcellville has 7 DOW a week, 12 hour a day staffing and though they have pagers, the signal reception on the outskirts of Town is not reliable.

Mr. Bob McCann, 41 W. Colonial Hgwy., stated that he was the person who raised the siren noise issue to the Council based on information he received that the Purcellville Fire Department has turned off their siren and has gone to a pager notification system. Mr. McCann believes that the pager issues as explained are outrageous and need to be resolved and the fact that this was raised at this meeting is ridiculous. Mr. McCann asked that the Town appoint someone to respond to citizen questions, suggestions and complaints. Issues are being raised and no response is being provided to the Town and Mr. McCann believes that citizens are being left in the dark, citing the fire siren as an example. (The issue was raised 2 months ago and as of this morning no response had been provided by the Town).

Mr. Brent Campbell stated that he lives close to the siren and the noise wakes his small children. In addition Mr. Campbell had his office at home for a period of time and noted that the siren can be disruptive due to the very high noise level. Mr. Campbell acknowledged the work of the squad as his wife was a former member of the Purcellville rescue squad and understands the importance of notification but thinks there might be a better way to ensure communication.

Ms. Sally Mann, Harmony Church Rd., stated that for once she agrees with Mr. McCann on the subject of slow Town responsiveness and poor communication to resident requests. Ms. Mann states that she has been ignored by the Town representatives in regard to a subdivision request that was started in 2006 and feels that the Town has found every possible way to delay her. Emails go unanswered, the County requirements contradict the Town requirements, the Town Ordinance language is confusing and the Town is requiring things for her subdivision request that are not required per the Ordinance. Ms. Mann states that she has asked repeatedly to be on the agenda but has been ignored and that Mr. Beniamino sent her a letter in early July advising that she needed to make the County happy before the Town would even respond to her at all, which she believes is contradictory to the ordinances. Ms. Mann has had to revise her plat several times and now that the plat is at the final stage there are problems from the County with some of the language that is being required per the Hamilton ordinances. Ms. Mann states that Mr. Beniamino advised her that she could appeal the ordinance language if she had a problem with the ordinance. On June 29, 2009 Ms. Mann states she received an email from the Town Treasurer acknowledging the received request and believes that some people have personal clout to get on the agenda and others do not have this clout and claims the Town is playing games with her. Ms. Mann has received an email from the County asking for coordination through Ms. Gilmore but Ms. Mann cited Ms. Gilmore as being unresponsive and questioned why the Town is paying her money since she is not doing her work. Mr. Whitbey advised Ms. Mann that the Subdivision update is on the agenda for discussion this evening and discussion can continue at that point of the meeting.

Mr. John Norman, 18 N. Reid St., has been having problems recently on the west end of Town with noise and traffic in relation to the restaurant on the west end. Mr. Norman lives next to the Crab Shack and has concerns if the annexation plans move forward and if this property is taken into the Town plan.

Action Items

Mr. Snyder made a motion to adopt the proposed amendment to the Town Code Water ordinance Chapter 4, Article III, Section 3-4, that will provide for the adoption of a schedule containing water usage rates. Code of Virginia of 1950, as amended, Sections 15.2-2111, -2119 and -2143 authorize the adoption of such charges. Mr. Unger made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Mr. Snyder made a motion to adopt the proposed amendment of the Town Code of Water Ordinance Chapter 5, Article IV, Section 19-32, that will provide for the adoption of a schedule containing sewer usage rates. Code of Virginia of 1950, as amended, Sections 15.2-2111, -2119 and -2143 authorize the adoption of such charges. Mr. Unger made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Mr. Snyder made a motion to enact the attached utility fee schedule by the Town of Hamilton Town Code, Pursuant to Chapter 4, Water Ordinance 090701, Article III, Section 3-4, Chapter 5, Sewer Ordinance, Article IV, Section 19-32. Be it enacted and ordained by the Council of the Town of Hamilton that the attached utility fees schedule is adopted pursuant to Chapter 4, Water Ordinance, Article III, Section 3-4, Chapter 5, Sewer Ordinance, Article IV, Section 19-32, of the Town Code of the Town of Hamilton. Mr. Wilmoth made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Mayor Whitbey reviewed the nominations for the open Town Council position which was vacated by Mr. Ralph Baxter. The 3 interested candidates are Mr. Brent Campbell, Ms. Frances Davis and Mr. David Simpson and resumes and nomination letters are included for Council review. Ms. Davis was present and requested that she be withdrawn from consideration at this time, leaving Mr Campbell and Mr. Simpson as interested candidates. Ms. Gilmore counted the ballots and Mr. Campbell had the highest vote count of 5-1. Mayor Whitbey congratulated Mr. Campbell and suggested coordinating with Ms. Jones for the swearing in process.

There was 1 interested applicant for the open Planning Commission position which was vacated by Ms. Melodie Baxter. Mr. Snyder made a motion to appoint Mr. Dimitri Kesari to the Planning Commission and Mr. Wilmoth made a second on the motion. The vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Mayor's Report

Mayor Whitbey advised that Ms. Jones is in the process of finalizing the FY Budget 2008/2009 and that a review will be available in October. Mr. Unger praised and thanked Mr. Jones for her hard work.

Parks & Recreation Committee

Mr. Unger reviewed the highlights from July 30, 2009 meeting:

Several committee members presented ample evidence of the fact that the County Health Department evidently does condone long-term use of portable toilets at many areas in the County, including little league facilities at schools and along the W&OD bike trail. Mr. McCann will contact the County to clarify this issue and find out what must be done to have temporary portable toilets in the Hamilton Park. Mr. McCann suggested a cleaning schedule be put into place and be included in the budget for the facility.

Concerning replacement of mulch around the swing set and other equipment, previously the Mormon Church furnished the labor to spread the mulch after the Town had purchased it and had it delivered. The Mormon Church is prepared to do the same this year and Mr. Wine offered the use of his truck to deliver mulch to the Park.

Mr. McCann brought up the issue of installing a gate at the Park entrance, the gate would be closed between the evening and morning closure times. Mr. McCann presented numerous dates and times in the recent past where vehicles entered and used the Park after hours noting that the Sheriff's Office was called. Mayor Whitbey asked Ms. Jones to please contact Ms. Baxter to see if a chain was purchased for use at the entrance gates and if so to please arrange for the chain to be put to use. 2 of the existing four Bar-B-Q pits will be replaced due to deterioration. Only 2 are being replaced because overall usage is low compared to other park facilities.

Ms. Ronni Ward reported that the fund raising efforts have netted about \$2,000 to date, including \$500 from Hamilton Day, \$500 from donations, and \$1,000 from Hamilton Elementary School. She also expects a \$300 donation from McDonalds in Purcellville.

Ms. Jones reported that she has received some inquiries for Park Pavilion reservations, but no reservations have been booked.

Treasurer's Report

Ms. Jones provided an overview of the budget and reviewed the delinquent utility accounts. Mr. Unger made a motion to give the Town Treasurer permission to give notice to delinquent customers and disconnect water for non-payment of bills. Mr. Snyder made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Mr. Wine made a motion to waive the all late fees and penalties for the property at 18 N. King St, totaling \$230.18 due to a delinquent tenant at the property who has moved out. Mr. Snyder made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none). Ms. Miller will pay the outstanding balance on the account through a payment plan.

Mr. Unger made a motion to accept the Treasurer's Report. Mr. Wine made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

Public Safety & Zoning Enforcement Committee

Mr. Beniamino reviewed the Mann Subdivision and the Hamilton Sub-division Ordinance. Mr. Beniamino highlighted that per the Land Development & Subdivision Ordinance, Article 6.1, subsection 1, the Town Council is authorized to direct and administer this Ordinance. The Zoning Administrator shall administer and enforce the provisions of this ordinance and as the Zoning Administrator Mr. Beniamino is also the administrator of the Subdivision Ordinance. 2 weeks ago Mr. Beniamino sent Ms. Mann an email stating that if she wanted the Town Council to hear an appeal to a provision of the subdivision ordinance she would need to write a letter to Mr. Beniamino stating specifically which sections of the Subdivision Ordinance she wanted to appeal and her rationale for appeal. Ms. Mann refused to do as requested by Mr. Beniamino and subsequently Mr. Beniamino has placed the item on the agenda as an informational item only since there is no official application on file. Ms. Beniamino explained that the subdivision process with Hamilton is dictated by the Land & Development Subdivision Ordinance and continued to explain that within a 1 mile boundary around the Town, Hamilton has an extra territorial subdivision boundary which means that any land within the 1 mile boundary requesting change are to be reviewed by the Town Subdivision ordinance though bound by the County ordinance. What has occurred with Ms. Mann was the approval of a preliminary plat in May 2009 with a final plat submitted June 29, 2009 with the application then being sent out for referrals on July 1, 2009 to all the county referral agencies as required per the Land Development & Subdivision Ordinance. All comments were received back with 2 major sets of comments received back from the Loudoun County

Department of Building and Development and the Loudoun County Attorney's office. Loudoun County needs to be satisfied before Hamilton can move forward with the subdivision request. After Loudoun County is satisfied that the application meets the standards and provisions of the County zoning ordinance, Hamilton can then move forward with the subdivision ordinance request. Ms. Mann interrupted Mr. Beniamino and was asked to please allow Mr. Beniamino to speak. Mr. Evan Harlow, Loudoun County Department of Building and Development advised that a second application has been submitted to the County directly by Ms. Mann bypassing the Town of Hamilton, which is not normal process. To date, Mr. Beniamino has not received a copy of this second submission. This item is on the agenda for the next Planning Commission meeting for review and at this date Mr. Beniamino is recommending that Ms. Mann's request for subdivision be not be approved as the application does not meet the standards set out in the Land Development and Subdivision Ordinance. Mr. Beniamino has clearly explained to Ms. Mann in several emails what the appeal process is to have the clear black and white language, which is located in the subdivision ordinance, to the Town Council and Ms. Mann has refused to follow that procedure citing that she feels it is unnecessary. Mr. Beniamino, as Administrator of the Subdivision Ordinance, has determined that this is a necessary requirement for the appeal to go to the Town Council for review. As soon as a letter is received from Ms. Mann to the Town, Mr. Beniamino will make sure the application is reviewed and will prepare a full staff report for the Council showing exactly what is being requested and what the Zoning Administrator's recommendation for action is. Mr. Beniamino stated that due to the large number of factual inaccuracies made by Ms. Mann, he will make available to any member of the Town Council all of the correspondence that has been exchanged between the Town and Mr. Mann over the last month, but the allegation made by Ms. Mann that the Town has stood silent is absolutely and categorically false.

Ms. Mann disputed the need for a letter to be submitted citing that she has sent an email and per the State Law, an email fulfills the requirement the same as a letter. Ms. Mann has asked for status updates and has received no response and Ms. Mann indicated that she sent a letter to the Mayor with no response and Mayor Whitbey stated that he would not offer "third party advice" that is best resolved between the Town Attorney and the Zoning Administrator. Ms. Mann stated that she asked Ms. Gilmore in February 2009 about the Deed of Subdivision with no response. Mr. Snyder explained again to Ms. Mann that the Council has no authority to move forward tonight and Ms. Mann disagreed with that determination. Mr. Beniamino explained again that it is his decision whether the application is complete and that everything Ms. Mann is stating is false. IN addition the request for a letter has been ignored and Ms. Mann has sent 35+ emails asking the same questions over and over again. Again, Mr. Beniamino stated he needed a letter citing the areas of the Subdivision Ordinance that she wants reviewed by the Council and Ms. Mann stated that the email sent on July 29, 2009 should serve as notice. Mr. Snyder advised that the process first goes to the Planning Commission makes a recommendation to the Council, there is nothing at this time for the Council to act on. Ms. Mann made an allegation that the 30 day deadline and Mr. Beniamino disputes ever giving a 30 day deadline. Mr. Snyder again advised Ms. Mann that no action can be taken without a recommendation from the Commission. Ms. Mann cited the Ordinance as being conflictive and Mr. McCann attempted to explained the process to Ms. Mann. Mr. Snyder asked Ms. Mann if she wanted her plat approved correct? Ms. Mann responded "Yes". Mr. Snyder asked Ms. Mann again to please submit the request in writing to the Town and Mr. Beniamino noted that there is no Land Development application for appeal that accepts an email as a request for appeal and stated that his request is not something that can be appealed. Mayor Whitbey advised that this issue was already planned for the August 12, 2009 Planning Commission meeting. Ms. Mann continued to advise that the County was asking for items that are not required and Mayor Whitbey advised that the Town has no control over what the County requests and how they interpret their ordinance. Mr. Beniamino commented that he has previously advised Ms. Mann of names and numbers to request an appeal to the County. Mr. Snyder and Mr. Under again asked Ms. Mann to write a letter, put a stamp on it, and send it to the Town. Ms. Mann refused. Ms. Mann insisted that she has complied with the requirements and Mr. Snyder again explained what is needed from Ms. Mann and what action the Council can and cannot take tonight. Mr. Beniamino cited Article III, section 3.4 of the Subdivision Ordinance, Private Access easement, which Ms. Mann refers to as a driveway and explained what is required by both the County and the Town. Mr. Snyder explained that since the Council does not have the plat before them no discussion is necessary tonight and Ms. Mann continued to discuss and dispute the requirements of County and Town for her plat request though this is not a plat review meeting. Mr. Whitbey asked Ms. Mann again to write a letter. Ms. Mann stated that Ms. Gilmore has not responded in over a 18 months of requested correspondence and asked the Mayor to direct Ms. Gilmore to respond to her. Ms. Mann states she is in the dark and Mayor Whitbey advised that both Mr.

Beniamino and Ms. Gilmore have been flooded with emails from Ms. Mann and this creates expense for the Town. Mr. Snyder asked Ms. Mann 2 additional times if she was willing to write Mr. Beniamino a letter and she did not answer and disputed the request and the need for it. Mr. Beniamino explained again what was necessary in the letter for the Town to review. Mayor Whitbey advised that Mr. Beniamino will be at the August 12, 2009 Planning Commission meeting and asked if the letter can be made available before then. Ms. Mann responded that she will hand deliver the letter to the Town on Tuesday August 11, 2009 and asked whether Ms. Gilmore will be at the Planning Commission meeting as she has been the "big hang up" so far.

Ms. Gilmore responded stating "that the mis-representations being made have gone on too long". When there was a request for the documents that would be required for a deed of subdivision and final approval, Ms. Gilmore contacted the County Attorney's office the next day. Ms. Gilmore spoke with an Assistant County Attorney who stated that Ms. Mann already requested the documents and because the applicant chose a development option under the County Zoning Ordinance, Hamilton has to defer to the County to make sure that the County is satisfied and that the required County Zoning Ordinance provision are met. Ms. Gilmore has been in touch with the County Attorney's Office, the Chief Planner of the Department of Building & Development and the Zoning Department about this application to make sure Hamilton is following what the 3 agencies are requiring. The Hamilton Zoning Administrator and Town Attorney have been very busy communicating with the County and a great deal of work has been done with this project. As Mr. Beniamino mentioned earlier the County prefers that Hamilton be the keeper of the information and be the gate-keeper of applications submitted to the County, which was not followed in this instance. A direct submission was made to the County by Ms. Mann and this came as a surprise to both Ms. Gilmore and Mr. Beniamino and Ms. Gilmore stated that the County is showing a great deal of consideration in this instance. Ms. Gilmore disputed a statement made by Ms. Mann the she advised that the private access easement is a private road, and Ms. Gilmore assured the Council that this was never said and she is not sure where or who started this story. This is a private access easement because otherwise her lots would all need road frontage. Ms. Gilmore advised that Ms. Mann did remove a document that was previously submitted, which resulted in a call coming to Ms. Gilmore from the County Attorneys office asking why the private access easement language been removed. Ms. Gilmore could not answer the question as the submission was made directly from Ms. Mann to the County and the missing language is required standard language, particularly for private easements with regard to private owner maintenance. Ms. Mann interrupted Ms. Gilmore disputing the easement language omissions. Ms. Gilmore advised that in some cases a private access maintenance agreements can be recorded which are accomplished wither in a deed or in a private access maintenance agreement which is recorded separately after the deed. Ms. Gilmore advised the County Attorney's Office that if this meets your requirements and the County can approve this then Hamilton will defer to the County Zoning requirements. Ms. Gilmore and Mr. Beniamino have been working weekly to try to make sure this application is being processed and the mis-representations have gone on long enough.

Ms. Mann called Ms. Gilmore a liar several times during the response and Mayor Whitbey asked Ms. Mann to sit down and cease interrupting the meeting. Ms. Mann continued to dispute what Ms. Gilmore stated and continued to interrupt the meeting several times while the Council worked through the remaining agenda items. With each interruption, Mayor Whitbey requested Ms. Mann to sit down and remain silent and requested that she not interrupt the meeting again. Ms. Mann directly stated 2 more times that Ms. Gilmore is a liar and is running up her bills to the Town. Mr. Beniamino offered to call the Sheriff/s office to have Ms. Mann removed but a call was not necessary.

Water & Sewer Committee

Rt. 704 Waterline Update - no action pending a meeting with Mr. Barry Staley

Harmony Water Treatment Facility - Mayor Whitbey reported that drinkable water is being produced and all leaks have been fixed. An integration plan is needed but the construction is complete and the punch list is being compiled.

East End Waterline Easement - Mr. Wine obtained consent from the landowners for the easements necessary for the waterline work.

VDH sampling requirements - heavy testing is due for the 3rd quarter of this year and Mr. Dickey is aware.

Mayor Whitbey stated that a Water & Sewer meeting is needed to with Mr. Dave Bowers to begin work on an integration plan. Mayor Whitbey suggested contacting Mr. Rigby to get files and all construction correspondence pertaining to the tank.

Planning Commission

Mr. McCann advised that there was no July meeting due to schedule conflicts which prohibited a quorum to be present. The next meeting is Wednesday August 12, 2009. A request was made for guidance to be provided to the Commission from the Council about the proposed changes to the Park.

Old Business

Mayor Whitbey advised that 43 residents of Hamilton have prepaid Availability and Connection fees for water & sewer connections and referenced a letter written on June 15, 2006 outlining the details of the agreement. Mr. Snyder made a motion to approve giving Mr. Mark Bailey a tap as the fee was paid on March 29, 2006. Mr. Wine made a second on the motion and the voice vote passed 6-0-0, (Aye: Whitbey, Unger, Rollins, Wilmoth, Wine, Snyder. Nay: none. Absent: none).

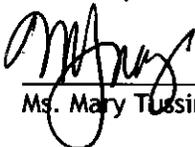
New Business

2 bids have been received for the generator at Well 14. Mr. Bowers is reviewing the bids from the 2 companies to ensure that all required technical specifications are being met.

The meeting was adjourned at 9:20 PM.



Mayor H. Ray Whitbey



Ms. Mary Tussing, Recorder