

**Hamilton Town Council
October 19, 2009
Hamilton Town Office**

The meeting was called to order at 7:30 by Mayor H. Ray Whitbey.
The Pledge of Allegiance was led by Mr. Chris Bridges, Goose Creek Unit Commissioner.
Present: Mayor H. Ray Whitbey, Vice Mayor John Unger, Mr. Tom Rollins, Mr. Ken Wine,
Mr. Brent Campbell, Mr. Michael Snyder (7:44)
Absent: Mr. Greg Wilmoth
Also Present: Ms. Maureen Gilmore, Town Attorney
Mr. David Beniamino, Zoning Administrator
Ms. Lori Jones, Treasurer

Guests

Ms. Shannon Sollinger, Loudoun Times Mirror
Ms. Margaret Morton, Leesburg Today

The Gallagher Family, 17398 Hamilton Station Road, was present with an interpreter to seek approval for the sewer connection and tap fee of \$6500. Fiscal assistance is being sought by the Gallagher Family via a State grant and the Department of Health. Mr. Gallagher is requesting a connection fee of \$6500 to be offered, as it was in 2006, due to a breakdown in communication between the Town and the applicant. Mayor Whitbey advised that this is on the agenda for the meeting and will be discussed under Old Business.

Ms. Shirley Pearson, owner of the Hamilton Trailer Park, offer her gratitude for the help of the Town Council, Planning Commission and the Zoning Administrator for helping to resolve the issues of home replacement on her property.

Mr. John Mills, 589 Curry Springs, inquired about the idea of annexation in Hamilton, with an emphasis on sewer rates of in Town versus out of Town residents. Mr. Mills asked how sewer usage is accurately measured, is lawn watering and car washing included, is it based on water intake, etc. Mr. Unger explained that in extraordinary circumstances the sewer bill can be adjusted per the guidelines in the Town Ordinance. Mayor Whitbey explained that the water fund and the sewer fund operate independently of each other and are managed differently.

Minutes

Mr. Wine made a motion to adopt the amended September 14, 2009 Town Council Meeting minutes in record. Mr. Unger made a second on the motion and the vote passed 6-0-1, (Aye: Whitbey, Unger, Snyder, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth.)

Mr. Wine made a motion to adopt the amended September 22, 2009 Special Town Council Meeting minutes into record. Mr. Unger made a second on the motion and the vote passed 6-0-1, (Aye: Whitbey, Unger, Snyder, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth.)

Water & Sewer Committee

The Staley Route 704 Waterline easement was recorded on October 1, 2009 in the Land Records. Right of Entry letters are complete and construction will proceed once all other easements have been recorded and a bid has been awarded. In addition, letters are being drafted to be sent to the property owners who have Deeds of Trust on the property. The letter/information sheet will request the submission of the Deed of Trust information which will be kept by the Town Treasurer and the Town Attorney. The information will be used to assist in securing signatures from the lenders for the easement. Those property owners who do not have a Deed of Trust on the property will be given the easement document and the plat for signature.

A Harmony Water Treatment Facility update was reviewed by Mr. Bowers, Stantec, highlighting the 8 outstanding items. Mr. Bowers advised that the Town is released to provide water through the facility.

No work has started on the Well 14 generator as it is still unclear what permits are necessary. Ms. Gilmore advised that no Commission permit is required for Well 14 but the question is whether or not the special exception for the water treatment plant at Harmony included a special exception for well

14. If necessary, there is a Loudoun County Zoning Ordinance provision called a Minor Modification which is an administrative type of determination that would be made by the Zoning Department. If the County does not feel comfortable that well 14 was included in the Special Exception that was processed by the Loudoun County School Board, it might be necessary for the town to apply for a special exception permit. The decision will be made by the end of next week by an Assistant County Attorney. A permit will not be granted until a decision is made and Mr. Bowers advised that he has already conveyed to County Staff that a generator has been ordered in addition to the fact that a Contractor has been issued a notice of award and a notice to proceed. Ms. Gilmore thanked Mr. Bowers and acknowledged that this might be helpful.

Mr. Bowers provided a summary of action for the Integration Plan which began in the spring of 2009. he is requesting approval to move forward with the integration of well 6 and 8 and doing work at the South Rogers tank. This would include raw water from 6 and 8 that would go into the water treatment plant by the school. Mr. Snyder distributed additional information about the integration plan for the Council to review and discuss. Mr Snyder asked Mr. Bowers if the Town has enough water and Mr. Bowers responded that the Town has enough water but there was a hydro-geological study in progress on the wells outside of town and there might be a conflict with how much water is being taken out of well 14. Mr. Bowers advised that caution should be used and a report should be available in a week or so. Mr. Snyder asked if there is an issue with storage capacity and Mr. Bowers responded yes. Mr. Campbell acknowledged that Mr. Bowers might be the best option for the town to proceed with but would welcome additional information to allow comparison. Mayor Whitbey added that the trigger point is to satisfy the requirements for Mr. Edelman. Mr. Snyder suggested that since data is still coming forward perhaps the Town could request that more time be granted by Mr. Edelman. Mr. Campbell expressed interest in getting at least 2 additional cost proposals, including Waste Water Management and Loudoun Water. Mr. Snyder agreed with Mr. Campbell citing that as good stewards of the budget this is something that the Council should pursue. Mr. Snyder acknowledged that new data from the monitoring program could change the course of action and costs by Stantec and other companies. Mayor Whitbey will advise Mr. Edelman of an updated plan of action.

Mr. Snyder made a motion that the Town send a letter to Loudoun Water asking what their fees would be to gain access the system and that the Mayor and the Water & Sewer Committee be involved in making the request. Mr. Wine made a second on the motion and the motion passed 6-0-1, (Aye: Whitbey, Unger, Snyder, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth.) Ms. Gilmore advised that Loudoun Water will charge a fee for the assessment and Mr. Campbell noted that a second proposal will then be made for services and costs required now that the current state of affairs will be known. Mr. Campbell suggested that a Town appoint a contact person, Mr. Wilmoth, to work with Loudoun Water.

Action Items

Mayor Whitbey asked if the voluntary water restrictions could be lifted and the Council agreed that there was no harm in keeping a voluntary program in place.

Mayor Whitbey advised that the Town is working to submit paperwork by December 1, 2009 in an effort to win a Federal Grant of \$200,000.00 grant for sidewalk repairs. Stantec found the grant and Hamilton would need to match 20% of the grant allowance. Mr. Beniamino advised that since this is a Federal grant, ADA compliance will be mandatory. Ms. Jones advised that Stantec is using existing mapping and is working on estimated project costs. Mr. Snyder made a motion to hold a Public Hearing on November 9, 2009 at 7:00 PM to advise the public that the Town is going to try to obtain federal funds for sidewalk repairs. Ms. Gilmore will check to ensure that advertising guidelines are met. Mr. Wine made a second on the motion and the vote passed 6-0-1, (Aye: Wilmoth. Unger, Snyder, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth.)

Mayor's Report

Hamilton Day 2010, Mayor Whitbey is asking that a date be established at the November Council meeting so organization can begin and a committee can be established. He also requested volunteers to help with Hamilton Day.

The South Hughes Traffic Signs have been installed advising motorists of the increased speeding fines.

Mayor Whitbey asked the Council to consider whether to establish a meeting schedule for the Water & Sewer Committee or if it was best to hold "as needed" meetings. As needed was agreed upon.

Parks & Recreation Committee

The Reston Bicycle Club presented Hamilton with a check of \$1000.00 to be placed into the General Fund to help maintain the park. The check is a gesture of appreciation for the use of the Park for the 27th Annual Century Bicycle Event.

Halloween will be celebrated October 31, 2009 from 5:00 - 9:00 PM.

The Christmas Tree Lighting will be December 6, 2009 at 6:00 PM.

The Luminary assembly will be December 24, 2009 at 1:00 PM with the lighting planned to begin at 6:00 PM. Mr. Rollins suggested using the water bills as a form of communication to the residents.

Mr. Unger discussed the Town land behind Hamilton Knolls as he would like to make trails for hiking and bird watching. The idea will be reviewed at the next Park Committee meeting,

Mr. Campbell inquired why the Park hours were restricted versus being open dawn to dusk. Discussion began about the definition of dawn and dusk, with Mr. Robert McCann vocalizing concerns of courtesy toward the neighboring properties of the park. Mr. Campbell suggested that the Town Park match the hours of the regional parks to allow residents increased access to the park. Mr. Campbell also inquired why there were chains installed at the entrance of the park and inquired why they were not removed every day when the park opened. It was explained that Lt. Chris Hines of the Loudoun County Sheriff's Department had advised that this was an option the Town could take in order to allow trespassing enforcement. Mr. Campbell stated that he would like the chain removed.

Treasurer's Report

Ms. Jones provided a review of the report and Mr. Campbell asked if a summary of checks could be provided for review. Ms. Jones advised that yes, this could be done. Mr. Wine made a motion to adopt the Treasurer's Report into record and to proceed with the final notification and disconnection of delinquent utility accounts. Mr. Unger made a second on the motion and the vote passed 5-0-2, (Aye: Whitbey, Unger, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth, Snyder.)

Ms. Gilmore advised Council that another local town has adopted an ordinance that whenever the water account is set up for a renter that the property owner be required to sign and agree to be responsible for the water fees in the event a renter does not pay their bills. This would require an ordinance change and if this is a wish of Council and Ms. Gilmore and Ms. Jones offered to work on some suggested language to present to the Council at the November meeting for review and consideration. Ms. Jones also suggested that perhaps the 60 day allowance for payment is too long and that time frame could be shortened. This will also be presented in a proposal for review and consideration at the November meeting.

Finance Committee

The auditor's report will be presented at the November Council meeting.

Public Safety & Zoning Enforcement Committee

Mr. Beniamino advised that the Mann Subdivision will be available for Council to review at the November and a Staff Report will be reviewed at that time.

Mr. Campbell opened discussion as to whether there could be a waiver provision adopted for the outstanding fence ordinance. Mr. Campbell spoke with Ms. Heard asked if she would permit Mr. Campbell to open discussion with Mr. Culbert to attempt to bring resolution to the outstanding zoning issue. Ms. Heard agreed to the discussion. Mr. Campbell is looking for suggestive resolutions that could be brought to the Town for review and consideration. Ms. Gilmore asked Mr. Campbell if he was talking directly to Mr. Culbert and Mr. Campbell responded yes. Ms. Gilmore asked Mr. Campbell if he is also talking to Mr. Mitchell, who is representing the BZA in the lawsuit, and Mr. Campbell responded no. Ms. Gilmore asked if Mr. Campbell is discussing the lawsuit and appeal to the BZA and Mr. Campbell responded that he is trying to seek resolution to the issue that is broader and could help in the future for homes that are oddly situated. Mayor Whitbey asked if this action could imply that the Town was wavering on the position and Ms. Gilmore replied that it is a little sensitive due to the pending litigation. Ms. Gilmore asked Mr. Beniamino to review a Middleburg Town Ordinance that could offer potential resolutions for broader problems and flexibility within ordinances. Mr. Beniamino advised that in Middleburg there is a provision in the ordinance that would allow the Town Council to waive certain

provision of the Zoning Ordinance for properties that are located in the Historic District. Mr. Beniamino has discussed this with Ms. Gilmore to see if there is a way within the State Code to allow the Hamilton Town Council to waive certain provision of the ordinance.

Ms. Gilmore contacted Ms. Whiting, Middleburg Town Attorney, for process clarification. The Ordinance allows the Middleburg Town Council to only grant a waiver without a special exception process in the Historic District after the Historic District Review Committee has reviewed the request for a waiver and made recommendation. The Town Council must then find that the waiver of the provision is necessary to maintain or enhance the integrity of the Historic District and that public safety can be maintained. Ms. Gilmore continued to explain why Middleburg felt the need for this exception and agrees that Mr. Campbell makes a good point that many of the properties in Hamilton are legally non-conforming. Ms. Whiting advised that in Middleburg, the standard special use permit process is used for all properties outside of the Historic District with specific findings being cited when requested. It does not appear that this can be applied in Hamilton as here is no Historic District but Ms. Gilmore is checking into other options for feasibility and is checking with other local government attorney's for input. The State Code allows localities to pass an Ordinance to allow the Zoning Administrator, with specific findings being required, to grant the exception but there must be an Ordinance present to allow this process. Previously Hamilton has not been interested in enacting this type of Ordinance and some of the Zoning Administrators do not want this authority as it is too broad as the State Code is cumbersome. Ms. Gilmore pointed out that there is a difference between a special use permit and physical characteristics of height, size, features, location, yard, etc in relation to structures, building and improvements. Mr. Campbell asked if the special use/special exception can have a waiver provision applied for special characteristics and Ms. Gilmore responded that is her legal opinion that you cannot use a waiver provision unless you enact an ordinance that allows the Zoning Administrator to take action and the Zoning Administrator follows the authorized or implied allowances. Mr. Wine believes that the process has been a waste of time, effort and money of the Town though he does understand what Mr. Campbell is trying to accomplish. Ms. Gilmore agreed with Mr. Wine and advised that she and Mr. Beniamino have asked for a much needed comprehensive Zoning Ordinance review. Mr. Campbell reiterated that when he spoke to Mr. Culbert he asked if he might have any suggestions that might be beneficial to the Town for future consideration. Mr. Beniamino reminded Council that consideration needs to be given to residents who do follow the established processes that are in place and feels it is wrong that time is focused on a solution for 1 person who illegally erected a fence. Justice needs to be served for the whole of the Town and the Town might be better served by completing an overall review of the ordinance.

Planning Commission

The next Planning Commission meeting is November 11, 2009 with a final Comprehensive Plan review scheduled for November 4, 2009. Once the final review is completed Mr. McCann is hoping to present it to the Town Council at the December meeting. There will be a Public Hearing on November 11, 2009 for the Manufactured Housing language and variance proposal.

Old Business

Ms. Sam Whitbey has submitted a letter of interest for the open BZA position which has been advertised in excess of 1 month. Mr. Unger made a motion to recommend appointment of Ms. Whitbey by the Circuit Court to the BZA for the Town of Hamilton and Mr. Whitbey made a second on the motion. Discussion was held and with concerns raised about a conflict of interest. It was noted that there are presently and previously have been married couples in the Town who serve on Town elected and appointed bodies. Ms. Gilmore cited that this issue is addressed under State Code, ultimately requiring the person to recuse themselves from voting when appropriate, supported by documented disclosure. Ms. Gilmore continued to explain that once a recommendation is made she will prepare a petition, accompanied by a copy of the minutes, to the Circuit Court for appointment. The motion did not pass 2-3-2, (Aye: Whitbey, Unger. Nay: Rollins, Campbell, Wine. Absent: Snyder, Wilmoth). The BZA open position remains and the Town will continue to advertise for interested candidates. Discussion began and the history was reviewed concerning the request by Mr. Gallagher for a sewer connection. (Mr. Gallagher had an interpreter present). In 2006 the fee was \$6,500.00 but the availability/connection fee has since been raised to \$25,000.00. The grinder pump is purchased and previously an agreement had been reached between Mr. Gallagher and the Town Council in 2006 for payment of the \$6500 hookup fee to be paid in the form of a payment plan, with a required hook-up within 6 months. No communication was received from either party in that 6 month window.

Ms. Gilmore noted that the availability fee could not be waived under the requirements of the loan documents that Hamilton holds, citing that the availability fees are already pledged. Ms. Gilmore clarified that there is 1 deed of trust on the property and Mr. Gallagher confirmed this information. Mr. Unger recalled that in 2006 that Pastor Paul Campbell from the Abundant Life Church came to the Town and advised that the church was going to help with the finances but it was unclear if that was for the availability fees or hook-up fees. After continued discussion for possible options Ms. Jones advised that she has spoken to the County Department of Health because there is a grant involved which would cover up to 75% or \$15,000 for the availability fees and hook up. Mr. Wine expressed concern about undo burden being placed due to a communication failure and raised fees. Mr. Gallagher advised Council that December 1, 2009 is the deadline for submission of the estimates from the contractor, developer, the Town of Hamilton and the neighbors to the Department of Health. Ms. Gilmore read from the Sewer Ordinance 19.13 clarifying the hookup requirements, fees and timeline and discussion continued about available options. Mr. Campbell made a motion that the Town to agree to finance up to the amount of \$25,000.00 for the sewer availability fee at a monthly repayment fee not to exceed \$72.00 a month, including an interest rate of 3% at a term of no more than 30 years. Mr. Wine made a second on the motion and the voice vote passed 5-0-2, (Aye: Unger, Whitbey, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth, Snyder). Mr. Gallagher is in agreement of the motion and Ms. Gilmore will contact Mr. Gallagher via email if any additional information is required.

Mr. Wine made a motion to approve the Sherman Sewer application and Mr. Unger made a second on the motion. The vote passed 5-0-2, (Aye: Unger, Whitbey, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth, Snyder).

Route 704 waterline bids have been received and Mr. Unger made a motion to accept the bid and award the contract to Schooley Construction for the Route 704 south waterline. Mr. Wine made a second on the motion and the voice vote passed 5-0-2, (Aye: Unger, Whitbey, Rollins, Wine, Campbell. Nay: none. Absent: Wilmoth, Snyder).

Mr. Wine made a motion to adjourn at 10:52 PM.



Mayor H. Ray Whitbey



Ms. Mary Tassing, Recorder