

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

The meeting was called to order at 7:30 by Mayor H. Ray Whitbey.

The Pledge of Allegiance was followed by Roll Call.

Present: Mayor H. Ray Whitbey, Vice Mayor John Unger, Mr. Brent Campbell, Mr. Tom Rollins,
Mr. Greg Wilmoth, Mr. Ken Wine

Absent: Mr. Mike Snyder

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

Deputy Matt Bressler, Community Service Officer for western Loudoun (Hamilton, Purcellville, Round Hill), introduced himself to the council, mentioning that his department offers problem solving to resolve chronic issues in the community.

Mr. Jeff Mitchell, of Mitchell & Company presented his 2008-2009 Audit results to the council. Mr. Mitchell commended the budget committee for their accuracy in calculating the Town's estimated revenue and expense in last year's budget.

Public Comment

Ms. Lynne McCann, 41 West Colonial Highway, expressed her concern over the Town's lack of notice to the public and enforcement of the park hours. She said that no notification or signs had been posted, and no newsletters or flyers had been sent to residents. Visitors to the park do not respect the chain that is put up when the park is closed and will either drive around it or take it down. She suggested that the Town may be able to generate revenue by having the Sheriff's Office impose fines on after-hour visitors.

The Gallagher Family, 17398 Hamilton Station Road, and Ms. Sally Mann, Harmony Church Road, agreed to hold their comments regarding the sewer hookup at 17398 Hamilton Station Road until the issue was addressed in the council agenda.

Minutes

Mr. Unger made a motion to adopt the amended October 19, 2009 Town Council Meeting minutes in record. Mr. Rollins made a second on the motion and the vote passed 6-0-1 (Aye: Whitbey, Unger, Campbell, Rollins, Wilmoth, Wine. Nay: none. Absent: Snyder).

Mr. Unger made a motion to move the Gallagher Sewer discussion forward in the agenda. Mr. Wilmoth made a second on the motion and the vote passed 6-0-1 (Aye: Whitbey, Unger, Campbell, Rollins, Wilmoth, Wine. Nay: none. Absent: Snyder).

Old Business

Mayor Whitbey asked Ms. Mann if she is speaking on behalf of the Gallagher's and she responded that she is speaking in support of the Gallagher's but Mr. Gallagher will be speaking for himself. Mr. Mann has stated that she has spoken to many people in an attempt to coordinate all of the information and that Mr. Gallagher has met with Schooley Construction, has signed a contract and is ready to begin construction pending a final decision. Ms. Mann stated that she has a lot of the background work done and can help answer questions if necessary.

Mr. Nelson Gallagher, 17398 Hamilton Station Road, addressed the council regarding the septic field on his property, via ASL interpreter Ms. Sally Hood. The following is an account for the Gallagher's to the Town of Hamilton:

Copies of the Deed of Trust were distributed for review along with an original application for hookup on which the fee amount is left blank pending the outcome of the decision by the Town, but this step was necessary in order for the completion of the grant request process. "Mr. Gallagher thanked the Town Council for the consideration given at the last meeting and they are extremely grateful that the Council is willing to listen to and answer additional questions. In 2004, Mr. Matt Tolley from the Loudoun County Health Department advised the Gallagher's that their septic field was starting to fail. In 2004 - 2006 Mr. John Andrews assisted in getting easements recorded and to purchase a grinder pump. The easements were recorded in the Loudoun County Land Records of April 2005. Mr. Gallagher stated that The Town Attorney advised Council at the last meeting that the easements were not recorded which is not accurate and the Gallagher's have since provided copies of the recorded documents to the Town. The Gallagher's are unsure why the Town Attorney presented the information that the Gallagher's were not ready to start construction. Mr. Gallagher advised that he was ready to begin construction in October of 2006 and Leo Construction was willing to due the construction at no cost. Due to the delay this offer is no longer possible and the Gallagher's are ready as of November 11, 2009, if the permit is approved tonight, to begin construction as a new contract has been signed with Schooley Construction. Mr. Tolley has helped the Gallagher's complete the grant application for \$15,000 and the work needs to be completed by November 30, 2009. Mr. Schooley has advised that he has faxed a copy of his certificate insurance to the Town for assurance. The Gallagher's are asking the Town to consider 1 of the following options; waive the hook up, reconsider the amount of the fee or honor the \$6500 fee as approved in 2006 with the loan prime as agreed since no notice of agreement was ever received that a hook up to sewer was approved. Ms. Gallagher stated that Ms. Gilmore sited section 19.13 of the Town Sewer Code stating that they only had 6 months to hook up and lock in the fee yet as the Gallagher's understand the law it states that they would have 180 days for hook up once a notice was received, yet no notice was ever received. Mr. Gallagher stated that the Ms. Gilmore advised that she prepared the documents in 2006 were mailed, to the best of her knowledge, but none were ever received. Mr. Gallagher advised that Reverend Paul Campbell, Minister and friend, contacted the Hamilton Town Office to assist and he was advised to wait and that the documents were coming. Later the Town advised the Gallagher's that there were too many liens on the property and that the agreement was off. There are emails in the Town file from 2007-2009 inquiring about the hookup and delay but the process is confusing to us. Mr. Gallagher advised that the recent documents the Town emailed to the Gallagher's have been reviewed and seem incomplete and do not seem to apply to us. If the Town will not agree to waive the fee or to reconsider another amount then we have signed the hookup permit application showing the \$6500 fee to be loaned and would hope that it would be approved with the Mayor's signature tonight. Also signed is the a version of a Promissory Note and a Deed of Trust that we think is more complete and more applicable to our situation, with the name of a local Attorney Mr. Stephen Jackson, to act as the Trustee. This was added because it was left blank in the draft proposal that was sent to the Gallagher's. We know that the Town Council has tried to be very generous and kind to us and we appreciate it all. We would like to ask for 1 more thing which would be that first payment be delayed until April 1, 2010. The Gallagher's would like to gather their total costs, collect the grant money and hopefully some other contributions and we hope to pay the entire amount of the sewer hookup fee to the Town by April 2010 thus avoiding the need for a loan. We would like to come to an agreement to all of these issues as soon as possible, hopefully tonight. If this can be accomplished we ask that the hook up permit be signed so we can start immediately. Thank You, Mr. Nelson Gallagher".

Ms. Sally Mann, 17635 Harmony Church Rd, advised the Council that the Original Promissory Note and the Original Deed of Trust, and copies of each, have been distributed for the Council to review. Ms. Mann read a prepared statement: "I am here to support Mr. and Mrs. Gallagher and am asking that the Town Council look again at the amount being charged to the Gallagher's and also to consider waiving the Gallagher's sewer hook availability fees. First the Town Attorney and Mayor apparently relied on section 19.12 of the Sewer Ordinance, and I have attached a copy of the Sewer Ordinance for the Council's review, to determine the amount of the fee required at the last meeting. That section stated that the hook up fees are to defray the cost of building sewer to the property line and assumes completed construction of the sewer line to the property owner's lot line. See section 19.12 of the Sewer Ordinance which is meant to apply to property owners who had sewer extended to their property but declined to hook up prior to completion of the sewer to the property line. This is not the Gallagher's situation. As the Town knows sewer has not been extended to the Gallagher property line. The Gallagher's are responsible for getting easements to their property, they are responsible to pay a contractor to extend sewer to their property line and further they are responsible on their easements to maintain the sewer extension that they will construct. Section 19.12 anticipates that the line has already been extended to the property line at a public cost and this is not the case here. Since the hook up fee is stated to be for the purpose of defraying the Town's cost of extending the sewer to the property line the Town has no cost, the Town is doing nothing in this case. Section 19.12 does not seem to apply to the Gallagher property. Applying 19.12 to the Gallagher's is in essence asking them to pay twice. Section 19.11 has a \$200 fee for those outside the Town and I think that is really the more appropriate fee. Since that is the section of your code that sets fees before construction has been completed to the property line. I think Town Council should consider taking another look at your code and consider applying Section 19.11 to the Gallagher's and a total fee of \$200 since it has been a lot of work to get the easement, with the engineers and having to pay for everything themselves.

With respect to the waiver issue the family lives outside the Hamilton sewer service area and that is the subject of service and loans. According to the Hamilton Sewer Service Agreement dated December 1998, the Town agrees to repay the loan and the interest subject to the availability of funds only from the following sources; i.e. tap fees and availability charges for sewer service to property owners, tenants or owners only in the service area. Those are the only fees that are pledged and are within the service area. For this reason the statement made at the last Town Council meeting that the Gallagher's Sewer and Tap availability fees were pledged and could not be waived was an erroneous statement. With respect to the waiver issue in 2004 the Mayor told the Town Council that they could waive the fee, and there is a memo attached from the Mayor dated 2004. In 2006 there was discussion about waiving the fee and a letter from Mayor Whitbey was sent to the Town Council with the 2004 options restated. Apparently the Town Attorney thought it would be a bad precedent to waive the fees. I think the Town Attorney was correct in 2004 and 2006 when she gave the legal opinion that the fees could be waived. I think she was wrong that the waiver in this particular case would be a bad precedent. However, this is a unique situation. When the property is outside the service district, where the Town has not extended sewer to the property line, where the Town has no cost in extending the sewer to the Gallagher property line, when there is a unique hardship, possibly financial hardship, but especially a hardship given that the hook up is being mandated by the County due to failure of the Gallagher septic system. In fact they were given 30 days and they were threatened there would be criminal prosecution. Considering the Town's unexplained and inexcusable delay in officially notifying the Gallagher's of the ability to hook up, after the Town Council directed Staff to do so, it would be fair to waive the hook up fees. The delay by the Town has resulted in the Gallagher's costs increasing significantly since 2006. In 2006 the Gallagher's contacted a construction company who had agreed to do the extension and hook up for free. As of October 2006 the Gallagher's were ready to go, contrary to the statements made by the Town Attorney at the last meeting. All required easements were recorded in April 2004 and there is no explanation by the Town Attorney at the last meeting that the easements have never been recorded or that the Gallagher's were never ready to go. At the October 2006 meeting the Town Council directed the Town Attorney to prepare the necessary paperwork indicating the Town's agreement to allow the

Gallagher's to hook up to Town Sewer. This was the only step left as an official agreement with the Town to hook up.

Apparently that paperwork was never prepared and it is not in the Town's files. I have looked over the Town Attorney's billing records, I FOIA'd those a long time ago and have all of the billing records from 2006 and 2007, and there is no time billed for this. The Gallagher's and their Minister were told by the Town Office to wait. Ms. Gilmore told the Town at the last meeting, "I prepared a Deed of Trust and sent that to the Town, I am not sure where it went from there." There is no evidence that it was ever prepared or sent. It certainly was not sent by Certified Mail as required by the Town Ordinance. When questioned by Town members whether the Deed of Trust note was sent to the Gallagher's Ms. Gilmore said "I believe that Hooper recalls that day the Town Staff did" and there is no evidence to back this up. It appears to be an erroneous statement. There are Town emails, I have seen them from 2007-2009 that show the Gallagher's did inquire about the hook up but were ignored. In 2009 the Gallagher's are required to pay almost \$12,000 for the construction. The County has grant money but only if the Gallagher's can complete construction by November 30 of this year. The Town's continued delay may result in the Gallagher's getting no grant money. The Gallagher's cost for construction has gone up from \$0 to almost \$12,000 since 2006. Assuming the Gallagher's can still finish in time to get the grant they are going to have to pay 30% of this amount because the grant only covers 70% of the costs, which are all due to the Town's unexplainable, unreasonable and inexcusable delays. To me it would be the fair and right things to waive the Town's fee to connect. I think it is especially fair to waive the fee since the Town, in ignoring the Gallagher's situation, has increased their cost to extend sewer to their property line. Thank you for considering my statement and begging the Town Council to do something they are not."

Pastor Campbell noted that there was not much more he could say but noted that the grant money is only \$15,000 and the contractor is charging \$11,375 and hopefully he will serve as Chairman for a fundraiser in the community, kind of making this a community project. Pastor Campbell is grateful for the kindness and consideration in this matter and appreciates Ms. Mann for assisting and Ms. Sally Hood for her translation assistance and would appreciate any consideration that could be given to the Gallagher's. If Pastor Campbell can be of any further assistance he urged the Town to reach out to him.

Ms. Gilmore responded to Ms. Mann with the following:

"Council member Campbell had inquired as to what provisions of the Town's loan prohibit the Town from waiving the fee. In the loan documents from the 1999 Sewer Bond in the financing agreement, Article 8, Section 8.9 is entitled No Free Service. "The Borrower, the Town, shall not permit connections with or the use of the System, or furnish any services afforded by the System, without making a charge therefore based on the Borrower's uniform schedule of rates, fees and charges."

Article 5 of the financing statement, Section 5.1 "requires the Town to pledge all revenues to secure the payment of the principal of and interest on the Local Bond and the payment and performance of the Borrower's obligations under this Agreement."

Subsection A also provides that "the Borrower covenants and agrees that it will fix and collect rates, fees and other charges for the use of and for services furnished or to be furnished by the System, and will from time to time revise such rates, fees and other charges so that in each Fiscal Year the Net Revenues Available for Debt Service will equal at least 115% of the amount required during the Fiscal Year to pay the principal of and interest on the Local Bond, the Additional Payments and all other indebtedness of the Borrower payable from Revenues..."

The financing statement further requires the Town in Section 5.1(c) to "review the adequacy of its rates, fees and other charges for the next Fiscal Year, and, if such review indicates the Borrower's

rates, fees and other charges are insufficient to satisfy the rate covenant [in subsection (a) of this Section,] the Borrower shall promptly take appropriate action to increase its rates, fees and other charges or reduce Operations and Maintenance Expense to cure any deficiency."

Also in connection with the Sewer Loan, the County and the Town signed a Service Agreement. Section 1 of that agreement sets forth obligations of the Town. Under Paragraph 4, in addition to other provisions concerning usage charges and the monthly surcharge, 4(c) states: "The Town shall charge a hook up fee for each new customer in accord with its then adopted Standards, Rates, Rules and Regulations as the same may be in effect from time to time."

And finally, the financing statement defines revenues as "all rates, fees, rentals, charges, income and money properly allocable to the System in accordance with generally accepted accounting principles or resulting from the Borrower's ownership or operation of the System, including all amounts paid to the Borrower by Loudoun County [(the "County")] pursuant to the terms and conditions of that certain Service Agreement between the Borrower and the County dated as of the 16th day of December, [1998,] but excluding customer [and other] deposits..."

(copies of the loan documents to be attached to the minutes per Ms. Gilmore's request.)

In addition, the Council should be mindful that with these loan covenants that were made in 1999, they are in effect until the loan is paid off. Virginia Code Section 15.2-2119 allows the Town to establish connection fees, as well as usage charges. Water and sewer connection fees established by any locality, which you are required to do under the terms of this loan, shall be fair and reasonable. I sent this information to you, the Town Council, earlier last week. Such fees and charges shall be uniform for the same type, class and amount of use or service of the sewage disposal system. They can be based on consumption of water, the number and kind of water outlets, the kind of plumbing or sewage fixtures or facilities or the number of average persons residing or working on otherwise connected or identified with the property.

So the Town Council has set an availability charge that is charged to all people who hook up to the system, which is in compliance with the Service Agreement with Loudoun County, as well as the loan documents, the commitments and covenants that were made in the pledge agreement.

In addition, Ms. Gilmore advised that the Town Council did make a motion at the last meeting. I prepared documents in connection with that, sent them to the Town Council members, and the Treasurer who was able to provide those to the Gallagher's. There were some comments that came back through the Gallagher's about a revision that was made to the insurance and that was a good suggestion. There seems to be some confusion over the insurance. When you take out a loan to buy a home or buy a piece of property the lender requires you to carry property insurance. That is to protect the interests of the homeowner as well as the interest of the person who is lending you the money. The insurance requirements that are in the Deed of Trust, I believe you received the second draft on Friday, indicate property insurance for the property, the real estate and the parcel as well as naming the Town as the insured. I believe the confusion arises because when construction work is done, as we are having done in the 704 waterline, the State Code requires that a contractor provide proof of insurance and carry Worker's Compensation insurance and name the Town as the insured for that project, so that if anyone were to be injured or some type of situation would arise with that construction the Town would be protected. So they serve different purposes. With respect to the Mayor's memorandum, I think Mr. Reasoner was trying to find a way back in 2006 to provide some relief for the Gallagher's and the County has a copy of these documents as well. I am not sure what his conversations were with the County, but it is my understanding that when the County created the Sewer Tax District the owners of the Gallagher's property at that time did not want to be in the Sewer Tax District so they were not entitled to a tap, as were all the other members of the Sewer Tax District. There was a question about a blank being in the Deed of Trust and I believe that the memorandum that I sent you or the email I sent you on Friday. Are there any questions related to that?

I spoke with 2 real estate attorneys in Leesburg when that question came up. The Town in this case is the Lender as it is making a loan to the Gallagher's to make the availability fee. The lender typically chooses a Trustee to act of their behalf. I am not sure who authorized the Attorney who is named in the Deed of Trust that was presented to us; did someone authorize that law firm to serve as a Trustee? Mayor Whitbey responded "no". And certainly, as my suggestion was to you, I have talked with the Town Treasurer and the Town Treasurer can serve as your Trustee or if you would like to have a law firm do that it is fine, but the Trustee serves the interests of the lender, not the interests of the borrower. The reason the line is blank in the Deed of Trust is because you need to appoint a Trustee and put the address in there. And if any actions need to take place after the Deed of Trust is recorded then the Trustee can act on behalf of the lender, the Town, which is also referred to as the Beneficiary. Are there any questions I can answer at this time?"

Mr. Campbell stated that he and Mr. Wilmoth have spent a lot of time have looking over the file and into the issue. Mr. Campbell thanked everyone for their comments and feels that the most pertinent issues, as he understands the issue it is the Gallagher's claim that the Town never got them a Deed of Trust. We never gave them notice which is required in the Town Sewer Ordinance and explained that when he listened to the audio minutes from the October 6 meeting that this is why the Town put the 180 day caveat on that motion. Per the Ordinance:

"All hook ups paid to the lot owners must be used by physically connecting the house plumbing to the main sewer line within 6 months after receipt of notice from the Town by Certified Mail stating that the municipal sewer is available to serve the property." Mr. Campbell stated that the Gallagher's have claimed they never received that notice by Certified Mail and when he and Mr. Wilmoth emailed Ms. Gilmore asking about what happened because there was no notice that anything was sent by Certified Mail, and Ms. Gilmore interjected saying that she believes that the Ordinance reads "after it is paid" and there has not been a payment. Ms. Gilmore asked Mr. Campbell if he had talked to the former Council member who had made the motion because she is not certain why the 6 month time was added and the minutes reflect "as it says in the motion"

Mr. Campbell continued to state that "that there was no record that the notice was sent nor is there record of a Deed of Trust in the Town file. While there are many files, this is not in any of them. In an instance where we have 1 party claiming that something did not happened and another party claiming that yes it did happen, in this instance I believe the evidence is in their favor because we cannot produce anything that shows that we did indeed send anything to them and that is our responsibility in my opinion."

Mr. Campbell made a motion to recognize that, due to the Town neglecting to provide pertinent documents to the Gallagher's, such as a Deed of Trust and notice by certified mail of an available connection, the same terms are in still effect from the October 2006 Town Council meeting and those terms are as follows: that the connection fee be \$6,500 financed over 10 years at an interest rate of prime minus 2, which today would be 1% (the prime rate today is 3 ¼%). Mr. Wilmoth made a second on the motion.

Ms. Gilmore asked Mr. Campbell: how will you take that action based on your loan documents? Mr. Campbell responded that this is first a motion that was made first in 2004, again in 2006 and that what I am saying is that the 180 clock that was attached to that motion, in my opinion, has never started ticking because we never got them the notice that is required under the Sewer Ordinance., and that is my opinion.

Ms. Gilmore asked again: how do you act when not in compliance with your loan covenants?" Mr. Campbell said he would restate it, this is not something that we are doing fresh, I would not do this today. This is a motion that was made 3 years ago now and the issue started 5 years ago and even prior to that and in my opinion the Town never filled it's obligations under that motion that was made in 2006 and therefore that motion and the terms that were made in 2006, in my opinion, are still in effect.

Ms. Gilmore asked: with respect to the copy of the email that you all received from the Treasurer, who was the Treasurer at that time, did you all receive that? Mr. Campbell responded that there

was nothing in the email and she basically just said "I think we got it to them but there are no records that we got this" and Mr. Campbell stated that he wants records.

Ms. Gilmore stated that she received a telephone call from a property owner who had been asked to sign an easement, I think at our last meeting, Mr. Gallagher had a copy of an easement that was not signed a copy that he showed us, do you recall this? Mr. Campbell responded yes and Ms. Gilmore continued to say that there was a statement made that they were ready to go and the easements were recorded but I got a telephone call from someone 2 weeks after the meeting saying that they were contacted to sign the easement and apparently now the easements have been recorded. Do you have any information about this? Mr. Campbell responded Yes, I have actually looked up the land records and Ms. Gilmore responded that she has Angela look that up as well. Mr. Campbell stated that yes, they are recorded, both of them, but the easement has nothing to do with this which is that we are providing them a connection fee of \$6500 and they have 180 days to hook from the time we give them notice. I would like to promptly provide them notice after this meeting and they have 180 days to sign the Deed of Trust for \$6500 amortized over 10 years at 1% interest rate and have this thing constructed in 180 days, which is in their best interest to get it constructed a lot sooner than that.

Mayor Whitbey stated that in attempting to figure out where the delay began and where the thing fell apart, he went to Mr. Jordan Dimoff a month ago. Mayor Whitbey agrees that this is a terrible situation we are all in and that the very difficult decision that needs to be made tonight. Mr. Dimoff advised Mayor Whitbey that LEO Construction backed out of the project because the Gallagher's didn't want the line where it was going to go because they possibly wanted to add an addition later on and wanted to reroute the line. This is total hearsay from Mr. Dimoff. At this time LEO Construction said they were done, we are finished and walked away. We did try to bring this up in 2006 per Keith's suggestion but it was turned down again. This is a very complex situation.

Mr. Campbell asked if the Town had a record that reflects that we did indeed send them the documents that were required. Since we are not able to produce those records is why he has taken the position he has taken.

Mr. Unger inquired as to the potential liabilities this action would have on the Town's Sewer Loan. Ms. Gilmore responded that if the Town does not charge, according to the provisions and these covenants, the applicable rate at the time that a person hooks up that the Town will be in violation of your Service Agreement with the County, as well as the loan. Mr. Under said that basically we would have to convince Virginia Water Facilities Revolving Fund of Brent's argument and Ms. Gilmore said that you would have to convince them and I think that you would want something from them which will unfortunately delay the decision and I believe the Gallagher's want to hook up so they can qualify for the grant money. Ms. Gilmore stated that she could not advise, could not state to you, that there would not be a risk and or a violation of the loan documents. Mr. Wine asked: but if there are no records of having sent anything then really that is the only argument we have, we do not have a physical record that we sent them anything. Mr. Unger stated there are other arguments and that if he were in this position and I wanted to get this thing put in and nothing happened over nothing happened over 3 years I would be in here maybe every week or so, if my system was failing, and get the Deed of Trust signed, etc in order to get this moving and put in.

Mr. Campbell acknowledged that he does not get it and thinks it is an amazing thing that it has taken 5 years. Mr. Campbell also stated that he understands that the Gallagher's have severe disabilities that in itself lends to confusion and misunderstanding, but again we would not be having this discussion if there was not a time frame that had been placed on the connection fee. As Mr. Campbell understands the Sewer Ordinance the clock does not start ticking until after receipt of notice from the Town by Certified Mail that municipal sewer is available to serve the property, and we have no record of a receipt for Certified Mail. (read directly from the Sewer Ordinance)

Ms. Gilmore asked Ms. Jones if she sent certified letters to Oak Ridge, for example?

Ms. Jones responded: no, we give them a copy to sign but that certified letter is not sent until payment is received. In this specific case payment is not going to be received and in every other case we have a signed document after Town Council approval and the person comes in and gets it and they take the original signed application.

Ms. Mann disputed the need to collect a fee as the Gallagher's reside outside the Sewer Tax District and that the Town does not have to follow the service agreement and Ms. Gilmore disagreed responding that the Sewer Loan is for the system and applies to all of Town and that Ms. Mann's statement is not an accurate statement. The agreement itself states that the hook up fees shall be charged for every user and the loan that went to pay for the system applies to all users of the system and future users, that is what the covenants say.

Mr. Campbell interjected and asked if a vote could be taken on the motion on the table?

Mayor Whitbey acknowledged the comments from Council thus far and asked if there are any additional comments. Mayor Whitbey asked if we are setting a precedence that would create anything else coming forward being requested for a waiver because we have changed this.

Ms. Gilmore responded that the bigger concern is your loan documents and whether you are in compliance and the State Code which says if you charge fees they must be uniform and reasonable. So tonight you are deciding if you are going to reduce a fee, and I understand your position Council Member Campbell, for someone who is hooking up and connecting in 2009. That fee is not the fee that you charge today and what your loan documents say, what the State Code says is and what your agreement with the County that is part of this loan says is that we will charge a hook up fee. We will collect a hook up fee for anyone who connects according to the amounts then in effect at the time of connection. So I cannot advise you to take an action that would put you at risk of your loan as there are many consequences to that.

Mr. Unger acknowledged that he was the person who made the motion in 2006 to give the Gallagher's the hook up arrangements and make the loan arrangements, but knowing now what we know now about the system he now believes that the situation has changed and thinks he needs to follow the direction of the Town Attorney, and that is his opinion.

Mr. Wilmoth stated that there is a motion to grant a hook up for a fee of \$6500 and the verified that the only other option that the Council has is to grant hook up for a fee at the current rate of \$25000. Ms. Gilmore agreed and stated that this is what is required by the loan documents and the State Code because they have to be uniform for all types of classifications and residential taps have to be the same. Ms. Gilmore wishes there was a way, and she has spoken to both Hunton & Williams and McGuire & Woods who both do bond closings to try and find a way that there could be some flexibility, but unfortunately the Town does not have a hardship provision in the Sewer Ordinance that would allow some type of reduction. Ms. Gilmore would venture to say that if you want you could request an opinion from McGuire, Woods, Battle & Boothe who was the Bond Council who represented you in the loan closing as to whether you can reduce the fee from \$25000 to \$6500. You could describe the facts and they would give you a legal opinion as it relates to what the outcome of what the consequences would be with the loan.

Mr. Rollins asked: with what has been said by Mr. Campbell, Ms. Mann and Ms. Gilmore, in your opinion what would be the legal ramifications if we went the way of \$6500, what can we expect down the road if they decide to take legal action against us? With what Brent has said could there be legal ramification against the Town for what has not been disclosed? I mean could there be legal action like the Gallagher's suing the Town for lack of disclose? Ms. Gilmore responded that she does not believe so as there is no obligation for the Town to serve them. Though she understands that you would like to help them out but you have no obligation to serve them and it is completely your discretion whether or not to serve them. Mr. Campbell stated that the concern is that the Gallagher's have stated that they have never received documents. Ms. Gilmore responded that she understands what they have said and has contacted the Treasurer at the time,

to whom she gave the information that was sent to the Council and Mr. Campbell responded that there is no proof that documents were sent and that is concerning.

Ms. Gilmore stated: that as a licensed member of the Virginia Bar I will tell you that I prepared the documents and I sent them by email to Ms. Hooper McCann, our Treasurer at the time, and if you would like an affidavit from her perhaps we should ask for one. She specifically remembers "handing the documents to Mr. Gallagher" is what she said to me. I am not sure what more information other than you have your Treasurer at the time who recalls the situation and I prepared the documents and sent them to the Town. I do not represent the Gallagher's, I represent the Town Council so I don't, unless the Town Council authorizes it, negotiate with a property owner. Mr. Campbell responded that he agrees and but his concern is that he expects the Town Attorney to keep records of when documents are sent to other people, Deeds of Trust, etc and the concern is that there are no records.

Mayor Whitbey asked if there was any other discussion and asked Mr. Campbell to please restate his original motion:

Mr. Campbell made a motion to recognize that, due to the Town neglecting to provide pertinent documents to the Gallagher's, such as a Deed of Trust and notice by certified mail of an available connection, the same terms are in still effect from the October 2006 Town Council meeting and those terms are as follows: that the connection fee be \$6,500 connection fee financed over 10 years at an interest rate of prime minus 2, which today would be 1% (the prime rate today is 3 ¼%). Mr. Wilmoth made a second on the motion.

Mayor Whitbey called a voice vote on the motion and the vote failed to pass at 3-3-1,
(Aye: Campbell, Rollins, Wilmoth. Nay: Unger, Wine, Whitbey. Absent: Snyder)

Mr. Wine asked if that if the motion was going to go back as far as 2006 then perhaps a review of the interest rate should be further reviewed and look at what the interest rate was back then and perhaps it should be interest -2 at what the rate was then and not today. Mr. Campbell explained that it was his understanding that the interest rate was applicable whenever the load was paid and was a floating figure. Mr. Campbell reviewed the present terms extended to the Gallagher's are a \$25,000 connection fee not to extend past 37 years and not to exceed a monthly payment of \$72.00.

Ms. Mann questioned the blank areas on the Deed of Trust and wants to know how to move forward. The terms are confusing and no Trustee was named. Draft documents were received Saturday morning. Ms. Gilmore asked Ms. Mann if Mr. Gallagher has had the documents reviewed by an Attorney, on his behalf, who would like to contact Ms. Gilmore directly?

Ms. Mann responded that she contacted 2 Attorneys who have offered to work pro bono but Ms. Mann did not direct the question to Mr. Gallagher and Ms. Gilmore again ask Ms. Mann to ask Mr. Gallagher. Ms. Mann responded that she does not think they remember who the Attorneys were but the question was again not answered by Mr. Gallagher.

Ms. Mann continued her plea for a different outcome of the vote and specifically asked Mr. Wine to reconsider his vote. Mr. Wine responded that he did not want to hurt anyone and that he is concerned about future precedents being set. Ms. Mann added that she has been ignored by the Town and many of the men are very nice but there are other forces present and you need to understand that.

Ms. Gilmore asked Pastor Campbell if the Gallagher's had legal representation that she could contact if there are issues with the Deed of Trust and he responded that Mr. Gallagher would need to acquire legal representation.

Ms. Mann continued to urge the Council into look at section 19.11 of the Sewer Ordinance and specifically asked Mr. Wine to look at this section to reconsider his opinion. Ms. Mann believes that the fee can be waived and there is an allowance for hardship in the Ordinance. Ms. Gilmore responded that there was a previous instance in Hamilton where the property owners, The Griffith's, did not want to be included in and opted out of the Sewer Tax District. When Ms. Griffith then applied to receive a hookup, Ms. Gilmore and then Mayor Keith Reasoner were directed by the Town Council to contact the County Attorney's office to see what the situation would be for Ms. Griffith. Ms. Gilmore was advised by the County Attorney that the Sewer Ordinance could be amended to allow the Griffith's property in the Tax District but then the County would assess taxes for the prior years, which is allowable under the State Code. If you would like us to look into putting the Gallagher's into the Sewer Tax District we can do that but retroactive taxes would be applicable. Ms. Mann asked what the \$200 fee is for under section 19.11. Mr. Unger explained that section 19.11 applies during the time of construction of the municipal sewer of the Hamilton Sewer System and that presently the sewer is already in place. Ms. Gilmore explained that the availability fee covers capital contributions to the system, not the construction. The person who requests the connection pays for whatever it takes to get to the existing Town line but the Availability fees apply toward the capital expenses, repayment of the loan and the acquiring the resources in the future. It does not pay for the actual construction of the line. Ms. Mann stated that the availability fee needs to be reasonable and justifiable and disagrees completely with what Ms. Gilmore is saying and feels that the Council is hurting people, seriously hurting people. Ms. Mann believes that this reflects poorly on the Town's character and the way the Town deals with its citizens. Mr. Wine responded: that he cares about the people and cares about the situation and know how people were and how people are now. Mr. Wine stated that he would love to give it to the Gallagher's free of charge but unfortunately if I do that next week someone will be coming in asking for it the same things for free or a deal to be made. Ms. Mann is begging for reconsideration.

Mayor's Report

Mayor Whitbey announced to the council that the INOVA Urgent Care Center is now open in Purcellville.

The Town has sent a letter to Verizon requesting the removal of the old telephone poles running down Colonial Highway. The mayor gave details from his meeting with Loudoun County regarding the Town's annexation plan. The county does not want the town to re-extend the JLMA and wants to make sure that the Town will have the necessary resources to annex properties and not require financial assistance from the County. The County suggested a mini-annexation of commercial properties on the eastern and western ends of Town but would require more discussion if the Town expands further in the future. The County also wanted to know if the Town was going to bring in portions of the JLMA or the entire area and they will need a plan for extending water and sewer to JLMA properties that are not currently served with utilities.

Abundant Life Ministries is requesting to be added to the DEQ waterline extension on the eastern end of town. The waterline would extend to Route 704 at no cost to the town.

The Town has found that Mary Phillips is now the oldest lady in town and will be presented with the cane.

Water & Sewer Committee

Two more easements have been signed for the Route 704 Waterline and Mr. Lemarr met with Mr. Hitchens to discuss the easement.

There has been no update on the status of the permit to install the Well 14 Generator. The contractor is ready to install as soon as the permit is approved.

Well 14 Integration Plan – VDH wants the Harmony water tank to serve the town. The valve at the tank is run by pressure switches; there will be a meeting on the 17th to discuss what needs to be done to install the controls for the valve.

The Town has authorized purchase of a replacement pump for Well #1.

Infiltration and Inflow – The Town has delayed purchasing a third flow meter to monitor I&I in the town due to lack of recent rainfall and collectable data. A camera needs to be run down Route 7 to determine the extent of I&I in the main line. The Town has run cameras down Woodlawn and Kerr Streets, finding a small degree of I&I but nothing substantial.

Waste Water Management had requested a copy of the hydrological study. The Town recently received the final Pumping, Monitoring & Mitigation Report from Triad and copies will be forwarded to VDH and Waste Water Management.

Parks & Recreation

The Parks & Recreation Committee asked for a motion from the Town Council to change the park hours to “dawn to dusk” and to include a note on the sign prohibiting trespassing after park hours. The park committee has raised \$2,000 in fundraising for future improvements, and a boy scout would like to put benches in the park for his eagle project. Mr. Campbell and Mr. Beniamino are still discussing possible solutions for the parking lot. The boy scouts have been picking up trash from the park and the committee suggested having a “Day in the Park” in April, acting as a ‘spring cleaning’ type activity. Mayor Whitbey suggested that a possible park project could be to replace the dead trees lining the driveway into the park.

Mr. Unger made a motion to change the park hours to “dawn to dusk” and to include “no trespassing” on the sign. Mr. Wilmoth made a second on the motion. Mr. Bob McCann, 41 W Colonial Hwy, stated that there are interpretive problems with the phrasing “dawn to dusk” and that in the summer dawn would be at around 5:30 AM. He requested that the park open no earlier than 7:00 AM and remain open no later than 9:00 PM in general. Exceptions could be made for special events. Mr. Unger amended his previous motion, requesting that the park hours be changed to “7:00 AM to dusk” and that the current sign at the park be amended. Mr. Wilmoth made a second on the motion and the vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Treasurer’s Report

The 2nd Half Property Tax bills are due December 7th instead of December 5th since the 5th falls on a Saturday. Ms. Jones is working on getting a complete check report for the next council meeting. Ms. Jones noted that the expenses listed for July 2009 (FY10) were higher than normal because they included all additional expenses from FY09.

Mr. Wine made a motion to accept the Treasurer’s Report into record. Mr. Unger made a second on the motion and the vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Zoning

Mann Subdivision Final Plat – Mr. Beniamino stated that the final plat has not changed from the previous submission. At the October Planning Commission meeting, Ms. Mann asked for an exception during the meeting to remove Note 12 from the final plat. The Planning Commission

was not able to act on Ms. Mann's request at that meeting and asked for Mr. Beniamino to review her request and forward his recommendation to the Town Council. Loudoun County had no objection to Ms. Mann's request and Mr. Beniamino said that the removal of Note 12 would have no future effect to the Town.

Mr. Campbell made a motion to approve Ms. Mann's request for a waiver on the Mann Subdivision Final Plat. Mr. Wilmoth made a second on the motion and the vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Mr. Campbell made a motion to approve the Mann Subdivision Final Plat #2009-001 received September 18, 2009, as amended. Mr. Rollins made a second on the motion and the vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Planning Commission

The Planning Commission will be holding a public hearing for an ordinance change regarding the mobile home park at their November meeting. The meeting following the public hearing will be primarily to discuss the Comprehensive Plan and the Planning Commission should be ready to make a presentation at the December Town Council meeting.

New Business

Mr. Unger made a motion to adopt resolution 2009-02 requesting the Commonwealth Transportation Board to establish a project for the improvement and/or replacement of the sidewalks in the Town of Hamilton. Mr. Wine made a second on the motion and the vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Mr. Wine made a motion that the Hamilton Town Council recess its open meeting and convene a closed session to discuss the following: Motion to Convene Closed Meeting pursuant to Virginia Code §2.2-3711 (A) (7) Actual litigation and matters requiring the advice of legal counsel. Mr. Wilmoth seconded the motion and the voice vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Executive Session began at 10:31 PM.

Executive Session ended at 11:39 PM.

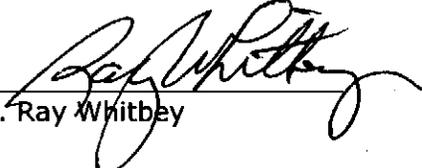
Mr. Wine made a motion that that Hamilton Town Council adjourn the closed session and reconvene the open meeting. Mr. Wilmoth seconded the motion and the voice vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Mr. Wine made a motion that the Hamilton Town Council certify that while in closed session, to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Mr. Wilmoth seconded the motion and the voice vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Mr. Wilmoth made a motion to approve the utility connection application for Mr. Nelson Gallagher contingent with the signed note and Deed of Trust which will give the Mayor the authority to sign and issue the permit. Mr. Wine made a second on the motion and the voice vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

Mr. Campbell made a motion to extend the loan terms to not have loan payments start until April 2010, whatever is indicated on the Promissory Note. Mr. Wilmoth made a second on the motion and the voice vote passed 6-0-1 (Aye: Unger, Campbell, Rollins, Wine, Wilmoth, Whitbey. Nay: none. Absent: Snyder).

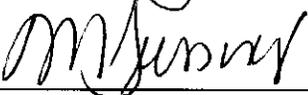
Mr. Wilmoth made a motion to adjourn at 11:40 PM.



Mayor H. Ray Whitbey



Ms. Audrey Reale, Recorder



Ms. Mary Tussing, Recorder