

**Special Town Council Meeting
January 25, 2010
Hamilton Town Office**

Mayor H. Ray Whitbey called the meeting to order at 7:06 PM.

The Pledge of Allegiance was followed by Roll Call.

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

Also Present: Ms. Maureen Gilmore, Town Attorney

Ms. Margaret Morton, Leesburg Today

Mr. and Mrs. Gallagher

Ms. Sally Hood, ASL interpreter

Ms. Michelle Rosati, Attorney for the Gallagher's

Ms. Sally Mann (7:10)

Mr. Dimitri Kesari

Public Comment – none

Mayor: The topic for discussion tonight for the special meeting is the issue with the Gallagher's and Ms. Mann is here if you could put her on the record for showing up.

Mr. Unger: Mr. Mayor may I say something?

Mayor: Sure, briefly

Mr. Unger: I have been a member on the Council for 25 years and I have never seen anyone have the affront to bypass the Mayor and the rest of the Council and call a special meeting as this one was done. Just as a matter of common courtesy, if I want, this has never happened before, it has certainly never happened by an elected Town Official let alone an appointed one who has never been on the Council before and I think it's very rude and I think it shows little respect for the Mayor and little respect for the rest of the Town Council. You've stated that you've contacted me before the meeting, I have not heard from you except for today. 1 phone call, I have never had any email or phone calls from you. Michael is the same way. But you stated to other people that you contacted everyone on the Town Council and you have not. That really bothers me. I don't know why you're doing this, I don't know what's going on but I think, I just feel very strongly and I am bothered by this kind of approach. What normally is a very collegial kind of Town Council that we have in Hamilton and I don't see 3 or 4 people on the Council getting together and circumventing normal circumstances, I don't see any good reason for it. And I would just like to be on the record saying that.

Mayor: Alright, let me move along. I would like to say before I start, what I would like to do this evening because this obviously is a special meeting, it may have far reaching implications as we move forward so let's attempt to speak 1 at a time so Mary can get down exactly what is said, what has happened and what the ending result would be, I would appreciate that. I would like to start by saying that at the last Town Council meeting on January 11 Maureen and I went away with the thought that we were going to pursue the Gallagher issue in regards to VRA. That was on Monday. On Wednesday Maureen and I had a conference call with Arthur Anderson which as you know is McGuireWoods. We tried to determine from that phone call who we should call and where they were located so we could contact them concerning VRA, concerning the letter.

During that discussion with Arthur Anderson, he did inform us that there was a draft letter sitting at VRA stating that the fee should be \$25,000. So based on that we thought that was the end result. During the meeting, based on that fact, we tried to come up with an alternative solution rather than having that letter issued. One of the things we discussed at great length, probably for

an hour and a half I guess, was coming up with a special class that would fit this situation, that would not be far reaching we hope with others, and that was to come up with a class that was disabled and on tax relief. Those things are very specifically defined by the County and I think we have a copy of that this evening if you want to. So that was in opposition to just going ahead and having the VRA letter issued. We spent that time, Wednesday evening, I know that Arthur Anderson attempted in the afternoon to fax some information to Maureen on what it would take to have a special class concept. Maureen spoke with Jack Roberts about this and possibly placing the Gallagher's in the Sewer Tax District and therefore that would result in maybe their funding the particular project down there. On Friday Maureen and Arthur Anderson spoke again and she called Jack Roberts at the County and briefed him and I will let her fill you in on what is happening in a minute but it was clear in an email from Arthur Anderson that VRA, having been involved now, would like to avoid getting involved and that's one of the comments we have here from them, from Arthur Anderson actually. But, like John, I would like to say that Council really Mr. Campbell, didn't authorize you to go off and independently contact the Tyson's office of McGuireWoods. It does set a precedence I believe, that undermines the work of Committees and their approach toward solving problems which is based on much more detailed Committee information available at Committee level, so when we have folks going around trying to do things like this is actually could be detrimental to the work of the Committees. And obviously you did not contact us to see what point we were at before you made those phone calls. I understand you got a phone call back from Mr. Franklin, I believe only after repeated phone calls to him. I will say that Mr. Anderson, he was very generous and was in Texas speaking over the weekend and, did have a conversation with Maureen but I will let her fill that back in. Art Being out of town did send us this document that you have which pretty clearly states his opinion as to what we should do and that would be the only way around it would be the special class. I know that Maureen has another meeting to go to so I would like her to do her little presentation and if anyone else has a comment.

Ms. Gilmore: As Ray said, when we spoke with Arthur Anderson to find out who should get the letter at VRA, we did that Wednesday afternoon, so the Council meeting was Monday night. I had to set up a time where Mr. Anderson would be available, and in case anyone was wondering McGuireWoods was not the firm representing VRA back in 1999 when we did have, when the loan was first awarded to the Town. McGuireWoods does represent VRA now so again it was helpful to have Mr. Anderson's help on this and he has been more than accommodating. Ray and I had asked because Council member Campbell had wanted a letter from VRA. We explained the situation to Mr. Anderson and said who should we send the letter to? VRA of course had been aware of the Town's requests all along and that is when Arthur indicated to us that there was a draft letter on VRA's desk saying that the fee should be the current fee and Mr. Anderson asked Ray if there was support on the Council to try to accommodate the Gallagher's in some way. And hearing that there was Arthur I think, set about to find a way with discussions with VRA where this could happen. A number of steps would be required for that to happen so Arthur suggested the creation of a special class for individuals who qualify for Property Tax Exemption or deferral for being handicapped or disabled, and there are specific requirements the County has for individuals to meet those criteria. It is my understanding and Lori checked with the County Assessment Office that the Gallagher's do receive tax relief and perhaps they could confirm that for us this evening, but since 2006 they have received relief from the payment of Personal Property Tax because they have qualified as being handicapped. Ray and I have expressed to Arthur Anderson the importance in writing and Ray is correct that the steps that would need to happen if the Town Council were interested in doing this. We would draft an amendment to the Sewer Ordinance creating class and that amendment, the adoption of that amendment would be advertised twice and there would be a Public Hearing. And there are certain code requirements

regarding the timing of the hearing before the Town Council has, or the number of days before the Public Hearing can occur and then Town Council could listen to Public Comment and then act on whether or not to adopt the amendment. A lot of information needed to be gathered. One piece of information that was important was how many property owners in the Sewer Tax District have yet to buy their taps. Because of course since the increase to the tap fee even those people who are in the Sewer Tax District who have been paying taxes for 10 years, an extra tax, for eventually hooking up to sewer still have to pay the current fee, they do not get to pay the \$6500, so there was a real concern on the part of the County and the VRA that those people not be prejudiced in some way. There are 27 properties/property owners who have not purchased their taps yet and there have been a couple since 2006 that have come in to purchase taps and have paid the \$25,000 as opposed to the \$6500 fee. We don't know if some of the 27 property owners in that Sewer Tax District are, would qualify for that type of tax relief so there may be others, if you create this special class there may be other property owners out there who would qualify for the same type of fee. Also, the VRA believes that the County's involvement is key in this and I had contacted, I talked to the County Attorney about this subject a number of times, most recently last Wednesday. And as some of you may know Supervisor Burton has been trying since November to find a source of funds to assist the Gallagher's with the tap fee. He tried a number of different ways and was unsuccessful in finding that money, according to what I was told by the Town Attorney, or the County Attorney. When I spoke with the County Attorney he indicated that the County would like to help but there had not been a source of funding to, for the County to finance the Gallagher's tap fee has not been found. He was not certain funds would be available. So on Thursday afternoon after I got out of court, that is last Thursday, I did call Mr. Anderson. He had been in Texas most of the week but he was nice enough to call me yesterday and I explained to him that we were having a special meeting that was being called and that it would be helpful for the Council to have the information that had been discussed. I think the thing to keep in mind is that because there are number of factors that play into whether or not this could be accomplished, they have to be resolved and it is difficult to talk about this alternative without knowing if the County is going to participate, whether they can find funding for the Gallagher's if the Gallagher's are not able to pay the fee. Whether or not the Town council is will give direction to go to move forward in drafting and creating an amendment that could be an amendment to the Sewer Ordinance that could be adopted, creating this special class. So a lot of information and a lot of pieces have to go into this alternative that has been suggested in the letter. And so without those pieces in place it is difficult to present a package that if we have to keep chasing down some things it makes sense to have everything lined up so that the Town Council can feel confident that what they're trying to do can be accomplished. If you have any questions I am happy to take them. I am, I did ask Mr. Anderson if he wanted to put the letter in final form and he said he would prefer to wait and see what the Town Council would like to do and the he will be happy to put it on letterhead and he would sign it. So I will tell you that the alternative he suggests in this letter was first suggested about, well it was two days after the Council meeting and then trying to get a, trying to get the County's feedback on that and the County was off on that Friday and that Monday, so trying to, and then they had a Board Meeting, so trying to get a read from the County as to whether or not they could participate with us in this, they are. The County Attorney is aware of this alternative but again there seems to be a lack of a source for funding, for the County funding alone to the Gallagher's.

Mayor: Any questions for Ms. Gilmore? Any discussion?

Mr. Snyder: I have one question. The question I have is if the County is saying now that we do not have a funding source whether it is \$6500 or \$25000 it doesn't matter we just don't have a funding source.

Ms. Gilmore: They have not been able to find a funding source and you know my suggestion would be that if Council members want to contact our Supervisor and see if that would be a way to persuade the County to find those funds then that might be a suggestion.

Mr. Snyder: Is it fair to say that there are two issues then. One is how you fund it, whatever the price is and the second issue is whether we want to embrace what they are saying and that is amending the ordinance to create a special class of users. Is that essentially it?

Ms. Gilmore: Yes

Mr. Snyder: Ok, ok.

Mr. Wine: If we amend this thing, the Sewer Ordinance this allows so that we do not have just anyone coming in and asking for that \$6500 rate

Mr. Snyder: We create a special class

Mr. Wine: We create a special class with a cap for the \$6500 rate

Ms. Gilmore: That is the suggestion, yes.

Mr. Wine: That is the way I read it, I just wanted to make sure

Ms. Gilmore: And the County does have qualifications that must be met

Mr. Wine, Yeah, well my mother is on tax relief

Ms. Gilmore: So you are familiar with that, yes, that would be the

Mr. Rollins: I think that is a great idea that we can have this option to go to and I'm all for it.

Mr. Wine: I am too

Mr. Rollins: We had two issues and I guess I can add to it a third issue, I still go back to the fact that we can't support a document saying that we supplied them with a Deed of Trust I think, the Certified Letter with the folder, with their file folder, is that correct?

Ms. Gilmore: I cannot find it; I find it very unusual that there is nothing in the file

Mr. Rollins: I don't care if they are handicapped, I don't care if they are whatever, to me that is not the issue here. I think the issue here is that I feel the Town has dropped the ball on this and that is my view. And if it say's we are supposed to send a document and they say they never got a document and we went to look for the document, or the Certified Receipt, there is no Certified Receipt.

Mr. Snyder: Both of us dropped the ball, both people dropped the ball. If it is really important to them then it is at least as incumbent on them to come to the Town and say hey, you've dropped the ball. We are four years beyond

Mr. Rollins: Right

Mr. Snyder: So there is no, it doesn't do any good, look, from my point of view it doesn't do any good to blame the Gallagher's or to blame the Town, it just didn't happen so we have to deal with what is.

Mr. Rollins: Right, but I also agree and I hate to say this but people are dependant on the Government and in this case the Government is the Town and the Government dropped the ball, they dropped the ball. And some people don't know to contact and say hey, what's going on, they don't know. Some people don't know.

Mr. Campbell: Well I'd like to, I'd like, are you done?

Mr. Gilmore: Yes.

Ms. Campbell: I'd like to address Mr. Unger's comments and Mayor Whitbey's as well. There is two ways special meetings can be called under our Ordinances. One is the Mayor can call them, the other is four Council members can get together and call a special meeting. That's what our Ordinances read.

Mr. Unger: Correct.

Mr. Campbell: In my brief time on the Council two special meetings have been called, I'm not talking about this one. One was to discuss personnel issues and that was a meeting that Ray set up, a second one was discussing annexation. Both times the only notification I ever got, as well

as far as I know the rest of you, was an email from our Town Treasurer saying hey, there's going to be a special meeting on such and such a day at such and such a time, come if you like.

Mr. Unger: That is right, that is the way it's done.

Mr. Campbell: And so when Greg, myself, Tommy and Kenny discussed and said hey, we'd like to call a special meeting to discuss the Gallagher issue that was well within our authority to do so. It was not a single Council member. I am happy to take the heat for it, but it was not a single Council member ordering a meeting or something. I don't have that authority; neither does any Council member by themselves. Only the Mayor has that ability to call a special meeting by himself. When I came in here and set the meeting Lori, like she always does, sent out the email to everybody notifying them that the meeting was taking place.

Mr. Unger: That didn't happen. Look at your email, look at your email. You, you sent an email out saying you had informed everybody on the Council about this meeting when you had only talked to these four people. You said that.

Mr. Campbell: Who did I send that email to?

Mr. Unger: You sent it to Lori.

Mr. Campbell: I sent an email to you saying

Ms. Jones: When you were here you said you had contacted four of you and that you would take care of contacting the rest.

Mr. Unger: (reading an email) Lori, I did talk to the other Council members

Mr. Campbell: Correct, that was these three here

Mr. Unger: Other Council members are me and Mike too, we're on the Council too.

Mr. Campbell: Oh, absolutely.

Mr. Unger: But you didn't talk to us

Mr. Campbell: you have to understand John

Mr. Unger: I'm trying to

Mr. Campbell: Ok. The whole purpose of having this meeting is so we can discuss this issue.

Mr. Unger: Right.

Mr. Campbell: There was never any intention nor was there any design to try to hide that fact that we were going to have a meeting from yourself or Mike or from Ray. There was never any effort made on that at all. And in terms of discussion about the substance of this item here, we didn't need to have those discussions prior to this meeting here, that is what this meeting is for. Here is where we can discuss and say what our thoughts are. And vote, etc.

Mr. Unger: But the four you discussed it

Mr. Campbell: No, the only the four of us discussed was whether or not we should have this meeting. Again it takes four Council members. Again it could have been you and Mike and Greg and Ray, then again Ray is the Mayor. It could have been any four of the six of us, could have gotten together and said hey we'd like to have a special meeting, and again that is what the Ordinances say we are allowed to do. Either that or the Mayor. So I, again I am sorry you were offended by it, there was no intention on my part to do so.

Mr. Snyder: Well I would just like to move forward and decide what we are going to do cause it's not terribly productive to

Mr. Campbell; I agree but I wanted to address those comments

Mr. Snyder: I think we need to figure out what our approach is going to be and there is an approach outlined here that seems reasonable to me and that's where I am coming from. I am interested in a solution to this, I don't want to have another meeting on this and there is an approach outlined in this letter that seems like a reasonable approach to me. It still leaves open the question of where the money is going to come from.

Mr. Campbell: Well, for background here, and I would actually like to have Mr. Kesari speak to this matter, if you'd like. You don't have to, but Dimitri is on the Board of Loudoun Water and

called me after having a discussion with Mr. Franklin, so I'll let, if you'd like to say what those events were.

Mr. Kesari: Yes, Thursday after your Monday night board meeting was the Loudoun Water Board Meeting, I am also on the Board of Directors for Loudoun Water. Stanley Franklin is our Corporate Attorney, he is also the attorney for VRA. He asked me what was going on with this and I gave him a little briefing and he said this is what Arthur Anderson told him. I don't see a problem. We are not looking at a single user, we never look at a single user being hooked up. If the Town wants to do it that's the Town's prerogative. He had no problem with us hooking up a single user especially since motions were made in 2004 and 2006, he goes, we had a contract with them and that was already on the books as far as we are concerned. So he did not see the big hullabaloo that was going on about this and thinks just fix the problem and let them have sewer. So that's how I got involved, I was approached by Stanley Franklin of VRA because he knew I work in the Town of Hamilton and with Loudoun Water also.

Mayor Whitbey: Mr. Kesari, would he have been in a position to know what our Sewer Ordinances stated and things of that nature? Was he well informed about the specific instances of this situation as opposed to generically answering a question?

Mr. Kesari: Well Arthur Anderson is his partner, he had already talked to Arthur Anderson.

Mayor Whitbey: Alright, that is what I was just trying to clarify to make sure he is

Mr. Kesari: I don't know how much he is familiar with our specific Sewer Ordinance but I know he said VRA is not interested in pursuing this. He goes just fix the problem. That was his comment.

Ms. Gilmore: When was your meeting?

Mr. Kesari: Thursday after your meeting

Ms. Gilmore: Just Thursday?

Mr. Kesari: Last Thursday

Ms. Gilmore: Because Arthur did tell, he and I spoke Friday the 15th and he mentioned that he had received a call from Mr. Campbell, that Stanley Franklin had received a call from Mr. Campbell and that Stanley had not returned it because he wanted to talk with Arthur Anderson because he knew he had been working on it. And Arthur did tell me today that he talked to Stanley and he knew that Stanley had ultimately talked to Mr. Campbell. On Sunday, last night, Arthur mentioned that there had been several calls from Mr. Campbell to Mr. Franklin so Mr. Franklin wanted to make sure he knew what Arthur was doing with that and apparently the two of them talked this morning.

Mr. Kesari: Just wanted to let you know what

Ms. Gilmore: They are all partners in the same firm and Stanley is up here in Tyson's and Arthur is down in Richmond so they were trying to coordinate so that's why

Mr. Campbell: I contacted Stanley directly because I didn't want to go off of here-say or something and I asked him and I, we talked once, he left a message for me and I called him back the following day and said here's my thoughts and he confirmed what Demetri said and to me that was important. I can tell ya, I've been frustrated from our meeting on the 11th in which my understanding, well I felt like I was beating a dead horse there, but my understanding was that you all, in as a matter of fact it was going to be you Mr. Mayor, were going to write up a letter stating what the Town's position, what we wanted to do and as of today the 25th I never got a chance to look at that. I know you said that you did that, maybe some other members have looked at, I don't know. I haven't seen one. I don't know what has happened there. But talking to Mr. Franklin who is Bond Counsel and is good Bond Counsel and after he says if shouldn't be a problem at all and in my opinion I felt like hey, ya know, this grant money is supposed to expire here at the end of this month. Matt Tolley has continued to communicate that and I felt like this was an important issue that needed to be decided on by the end of this month here. Talking to the

Gallagher's Counsel here that after this month if they cannot get the money to pay for the construction of the line as well, that complicates their issues further and creates additional problems. So in my opinion, you know, I think the right thing to do is allow them hook up to our sewer at the agreed upon rate that we had in 04 and 06. That is what I feel the right thing to do is. If other members don't feel like that, that's fine but I have an obligation to the folks here in Hamilton and I am up for reelection John so if people don't like what I'm doing then they don't have to reelect me, but just because I was appointed I don't feel like I'm half a Council member or something like this and I feel like I need to do the right thing and I am not responsible for your vote or anyone else's but I am responsible for mine and I felt like we needed to move this thing forward, we've had a lot of discussion about it.

Mr. Snyder: What we need, if you look at Roberts Rules of Order, what we need is a motion, so I'm going to make a motion and if we get a second we can discuss the motion. And my motion is going to be that the Town Council amend the Sewer Ordinance to establish a class of elderly or disabled customers and provide for such a class with a different hook up fee to be determined by the Council and different payment terms determined by the Council. And as a condition of qualifying for this special exemption, the person will have to produce written evidence of qualification for Property Tax Relief under County standards. That's my motion.

Ms. Mann: I signed up to speak under Public Comment

Mr. Wine: I second

Mr. Snyder: So we have a motion and we have a second so we at least have something on the table now. We can discuss it, reject it but here's a concrete suggestion.

Mr. Unger: Maureen, are we going to need something similar for water?

Ms. Gilmore: You don't have to have that at this time and one of the things I had checked Thursday was whether or not you, this would be a Sewer Ordinance Amendment and you do need to advertise what fee would be for that class. It requires 2 advertisements and the second one cannot be less than 5 days before your meeting so we did not have time to accomplish this in February because I looked into that before Arthur suggested it before the February regular meeting, but if you wanted to schedule a special meeting in March you could do that. And we would have enough time to advertise it.

Mr. Snyder: Ok, then let me do this; let me propose this amendment to my motion that we make the fee \$5000.

Mr. Unger: Connection and availability?

Mr. Snyder: Yes. C'mon help me out here, second the

Mr. Wilmoth: Second

Mr. Snyder: You don't have to vote for it you just need to second it. So the fee for the special class would be \$5000. Ok? That's my motion and my amendment.

Mr. Campbell: So something I am unclear about, assuming we did something like this, do we need the County's participation in this?

Mr. Snyder: Well, my motion said we would set the fee and come up with the payment terms, assuming we can comply with Virginia Law. I'm taking it right out of this letter we

Mr. Unger: I think we would have to go to the County to identify people that are eligible and they would provide us with the information, just like they do with In Town Residents now that get Property Tax Relief, the County would be involved.

Mr. Campbell: Yeah

Mr. Snyder: My point is that the Gallagher's get a \$1500 break

Ms. Gilmore: \$15000

Mr. Wine: \$1500

Mr. Gilmore: Oh, oh from the \$6500

Mr. Snyder: From the \$6500 break and you know and I just, you know the thing I am wondering about is the four years that elapsed and what happened in that four years. And so I would love to accommodate them but I think we have a responsibility to the other citizens of Hamilton and the other users. We don't just represent the Gallagher's and we represent everyone here in Town you know, and it is the government thing and mistakes were made but they weren't all our mistakes.

Mr. Wine: Mistakes were made on both sides

Mr. Snyder: Absolutely. So this is, that's my motion and that's how I feel about it and I'm done talking.

Mr. Campbell: So Maureen besides the County needing to provide us, like John said, who meets these requirements or not, what else, what other involvement would the County need to have in this?

Ms. Gilmore: I think that would be up to the, one of the things Arthur Anderson has always stated is that under that Service Agreement that the County should be providing that financing. I think this gives you an alternative that whereby you would be setting a different payment fee with different terms and you could make it that specific in the ordinance if you wanted to.

Mr. Campbell: Well I understand but what my questions is, is what other involvement besides just simply identifying who's on this, who is qualifying for this tax relief, what other involvement would the County have on something like this?

Ms. Gilmore: I think it would be helpful if the County would agree to finance these availability fees under the Service Agreement.

Mr. Campbell: We've agreed in the past, what other things would they have to, they don't have to finance, they don't have to

Mr. Unger: Building Permit or something like that so they can dig in the ground.

Mr. Campbell: Well sure they've gotta do that regardless of either. I'm asking what, is there anything else in your opinion that the County would be involved in to facilitate something like this?

Ms. Gilmore: For the Gallagher's since they are hooking up across properties, they are reaching the main on their own. They are hooking up behind them; they are going across the two properties behind them to reach the Town Main. You're asking me what else might be needed, Depending on where the property they might have to hook in there may be Commission Permits, there may be some type of Land Use Approval that the County would have to perform. So I can't say generally they would have to do this this and this. If as it pertains to the Gallagher's when I talked to the County Attorney about the location and where they would hook up, the Gallagher's are, from what they have described installing a private lateral to

Mr. Campbell: I understand that, I understand they have easements in place and I understand they have to get Building Permits, it relates

Ms. Gilmore: You asked me if there was anything else that the County needed to do.

Mr. Campbell: to creating

Mr. Wine: For creating this ordinance, is there else the County needs to know?

Mr. Campbell: Right.

Ms. Gilmore: The County does not have to participate.

Mr. Wine and Mr. Campbell: Alright.

Mr. Rollins: This could go into effect tonight?

Ms. Gilmore and Mr. Snyder: No.

Mr. Wine: No

Ms. Gilmore: It needs to be advertised twice, we need to have a Public Hearing

Mr. Snyder: All I have done is set the fee and

Mr. Wine: All you have done is set things into motion if we vote for it. Advertise it twice before we set a meeting

Mr. Snyder: Set it up and maybe, it occurs to me that maybe somebody wants to amend the motion that the Town Council has to approve the payment terms, whatever they might be but somebody is going to have to come up with payment terms. But I don't know what they ought to be I'm not, I just trying to move the ball forward.

Mr. Rollins: I thought we couldn't lend money.

Ms. Gilmore: You can't, this is allowing payment over time, you are not lending your own money for this.

Mr. Wine: You are simply allowing payment, not lending

Mr. Snyder: Lending is you write them a check

Ms. Mann: There are people signed up to speak, I don't know, are they going to be allowed to speak?

Mayor Whitbey: Public Comment, we have already been through that Ms. Mann, thank you

Ms. Mann: I was here?

Mayor: At 7?

Ms. Mann: At 2 minutes after 7 you were still talking,

Mayor: No we weren't, we didn't start, we were already past

Ms. Mann: So you are saying you are not going to allow me to do Public Comment?

Mayor: Yes Ma'am you were not at Public Comment so we are moving forward

Ms. Mann: Did you start the meeting early?

Mayor: 7:00 we started the meeting actually we started at 7 what?

Ms. Tussing: 06

Mayor: 7:06 and we are already past Public Comment, I'm sorry we are moving forward

Ms. Mann: I was here at 7:02 did you call for Public Comment?

Mayor: Yes I did, absolutely

Ms. Mann: I didn't hear it. My name was on the list.

Ms. Jones: It was put on the list after we had got to the Public Comment section of the agenda.

Ms. Tussing: She came in afterwards

Mayor: After we had already moved forward?

Ms. Tussing: Yes

Mayor: Alright

Mr. Campbell: Can I ask what the Gallagher's Attorney thinks of Mr. Snyder's motion on this?

Mayor: Is that really?

Mr. Campbell: Absolutely. I would like their input. Absolutely.

Ms. Gilmore: I mean they can come to the Public Hearing.

Mr. Campbell: No

Mr. Snyder: I mean we have to do what's best for Hamilton and the Gallagher's Attorney has to do what's best for the Gallagher's.

Mr. Campbell: Totally agree.

Mr. Snyder: I'm just trying to move the ball along. We can have the Public Hearings and based on input from the Public Hearings we can amend the ordinance because we don't have the language of the specific ordinance now.

Ms. Gilmore: Right

Mr. Snyder: This is proposed from the framework that I have taken from this letter and there is a process. I think we ought to follow it.

Mr. Campbell: I agree with that. It might be very likely

Mayor: This is a better deal isn't it?

Mr. Campbell: What I'd like to give the Gallagher's a chance to

Mr. Snyder: But there will be Public Hearings Brent. We are not adopting the ordinance

Mr. Campbell: I understand, I just would like their input through their representative or they can speak directly, it doesn't matter to me. Maybe they sit here and say this is great, this is great, thank you. I don't know. I would just like their input, they are here and they have been listening to us discuss this issue. I'm not asking them to give a dissertation but I would like them to give their initial comments. This is a new thing, tonight is the first time we have all seen this and I think it is fair to give them a chance to comment.

Mr. Snyder: If we were passing the ordinance tonight that would be one thing

Mr. Campbell: We're not

Mr. Snyder: I don't want to set the precedent that whatever this Council decides people get to comment on before we vote on it. That's not the way democracy works. There's going to be Public Hearings and the purpose of the Public Hearing is so that people can say this is a stupid idea, this is a great idea, you ought to change it this way and we listen to those comments and then we do it. All I'm to do is rather than go around in a circle and have six more meetings on this is that we establish a process where everybody understands the process and that's what we do. That's where I'm coming from. I don't care, whatever the Council decides is ok with me but that's where I am coming from on it.

Mr. Campbell: I would like to give them a chance to respond. If nobody else would that's fine but I'd like to give them an opportunity.

Mayor: Well again Brent, that's in Public Comment. I agree with Mike, we are going to have at least two more meetings on this so, or Public Hearings

Ms. Gilmore: Public Hearings, but you can act the same night as your Public Hearing

Mayor: Well that would be two sessions out, alright.

Ms. Gilmore: So do you want to schedule a special meeting in February so that you can have the Public Hearing in February?

Mr. Rollins: We need to vote on it first, it's a little premature

Ms. Gilmore: Well I was going to

Mr. Snyder: Ray you have to decide if we are done with discussion and vote and if it is defeated we are back to square one.

Mayor: Let me just clarify one more thing and then we can move on but to answer Brent's question about whether or not Maureen and I went off and wrote the letter, we did. Maureen drafted the letter, I actually edited it

Mr. Campbell: Why didn't we get to see that?

Mayor: Well wait a moment, when we called Mr. Anderson we were prepared to send it off with the \$6500 recommendation which would have been a blanket recommendation. When he came up with the special class we thought there's the answer. Not to have a blanket \$6500 but to possibly have a \$6500 special class so we didn't give him that letter and Maureen continued to pursue what she thought really would work up until 2-3 days ago when we thought we had an answer. We thought we did until we learned that the County was unable to participate.

Mr. Campbell: There is no communication of any of this with us. If you want to talk about communication

Mayor: Well on the same hand you never checked with me Mr. Campbell

Mr. Snyder: Wait, wait, we've got a motion pending. I'd like to get my motion voted on and then if you all want to argue about who shot John I can go home and have my Jack Daniels, my one Jack Daniels on Monday night.

Mayor: Ok, so the motion had been made and seconded. You have all heard it; do we need to repeat the exact wording of the motion?

Mr. Campbell: Did your motion address the issue of their grant money?

Mr. Snyder: No. I don't know anything about their grant money.

Mr. Campbell: Well we do. We know that is expires at the end

Mr. Snyder: I don't know anything about their grant money. My motion is to amend the Sewer Ordinance. That's all I am really prepared to do. Somebody else can make a motion about the grant money if they want to, but my motion is limited to

Ms. Gilmore: And \$5000

Mr. Snyder: \$5000

Mayor: So we need a voice vote for this. Motion was made by Mr. Snyder, seconded by Mr. Wine, amended by Mr. Snyder and seconded by Mr. Wilmoth. Ok, Voice Vote: Wilmoth Aye, Snyder Aye, Unger Aye, Campbell Aye, Rollins Nay, Wine Aye, Whitbey Aye. (6-1).

Mr. Campbell: Now my question here is even if we adopt, well we just voted on this so we are going to have a Public Hearing, but my problem with this is that this does not, or the only thing in this I see is lacking, they're going to lose their ability to pay for the construction of this line. This addresses the availability fee which I think is great. It's too bad in my opinion in just the that this has taken, that money is not available any more. That again is the whole reason we are meeting tonight as opposed to the regular Town Council meetings is that money is no longer available after the end of this month, according to Matt Tolley.

Mayor: Do we know that for sure Brent?

Mr. Campbell: The only guy I have talked to is Matt Tolley, past that I don't know but

Ms. Morton: If it is of any help to any of you when I called Matt Tolley this morning he said there may be some more flexibility. It will require going to the Department of Conservation and Recreation in Richmond to seek permission.

Mayor: Thank you.

Ms. Mann: If she is allowed to speak may I speak?

Mr. Unger: That is State money right?

Ms. Gilmore: It is State money

Mr. Campbell: It is State money, yeah.

Ms. Mann: You are taking public testimony from her will you take it from me?

Ms. Gilmore: The County Attorney also indicated to me that there was flexibility in the timing. Because I told him it was our understanding that it was January 31 and he said I talked to Mark, Mike, Matt, I think there is some flexibility there.

Ms. Mann: I have an email from Matt Tolley that said absolutely not, it has to be completed by the 31st.

Mr. Snyder: I guess my question is if it the 31st or was it yesterday there's not a damn thing we can do about it.

Ms. Gilmore: Right

Mr. Campbell: Well I would disagree with that.

Ms. Mann: You could honor your contract with the Gallagher's for the \$6500.

Ms. Gilmore: There is no contract.

Mr. Campbell: The only other option we have, which many people don't feel comfortable with, the only other option we have today is to allow them to hook up to our sewer under the terms we agreed to in 2004 and 2006. That's an option we have. If people do not feel comfortable with that, that is fine. Again the main reason

Mr. Snyder: Put it in a motion. Here's what I don't want to do. To some extent we need to make decisions so I was trying to give a framework to make decisions. If somebody else wants to make another motion that rescinds what I did that's fine. But it doesn't do any good, it's just counter productive for us to sit around and talk without a specific proposal on the table. That's the way it works.

Mr. Campbell: I agree with that then. I will make a motion and if the motion fails it fails but the motion as I'll read it will allow them, well I will just read it then there can be discussion. I would like to make a motion to affirm the approval of the extension and connection of sewer service to

the Gallagher's residence per the Town Council's motion on August 29, 2004. The 2004 approval remains fully valid and full force in effect, therefore the applicable availability and connection fees total \$6500 which the Gallagher's owe as of today. Upon the receipt of the fully execute Note and Deed of Trust we authorize the Mayor to issue the Permit.

Mr. Rollins: I second it

Mayor: Discussion?

Mr. Campbell: Something I'll add is that I believe that these two things that have been proposed here are the only solutions that we have and that we are aware of. Is that accurate and does anybody have a third option that they are thinking of?

Mayor: Alright, let have another voice vote then.

Mr. Unger: So you think that the middle paragraph from Mr. Anderson is erroneous then? On the second page when he says "In my view a one-time specially negotiated agreement between the Gallagher's and the Town would not comply with the provisions of either the Town's Sewer Ordinance or Section 8.9 of the Financing Agreement. You think this guy's wrong, is that right?

Mr. Campbell: Well, here's, it's wrong in this respect that I don't believe it was a one-time specially negotiated agreement because at the time in 04 and 06 that was the fee. And that wasn't a discount, that wasn't anything like that, that was the fee. And the issue, and I haven't been on the Council as long as the rest of you but so here we come in 2009 these people say hey we need to hook up

Mr. Snyder: We're giving them a better deal

Mr. Campbell: My only hang-up with this is I'm saying the only hang-up; the only problem I see is that with this is that again, the only guy I have talked to is Matt Tolley. Matt Tolley has told me that the grant money is not available past the end of this month. That is what he has told me, that's the only thing I am going on right now. So if somebody else has talked to him that's fine.

Mr. Snyder: Don't the Gallagher's, I mean, they have some responsibility to say when it the

Mr. Campbell: Absolutely

Ms. Mann: Mike if you would look in the file you would see

Mayor: Ms. Mann

Ms. Mann: They went in over and over

Mayor: Ms. Mann, Ms. Mann

Ms. Mann: Mike you have not looked at the file

Mr. Campbell: Let him finish please, I'm sorry

Ms. Mann: Well I'm sorry but what he is saying is wrong

Mr. Campbell: Let him finish please

Ms. Mann: It's not their fault, it's the Town fault

Mayor: Ms. Mann please do not interrupt if you would like to remain in this meeting.

Mr. Campbell: Please go ahead Mr. Snyder.

Mr. Snyder: Look, four years have gone by and nobody has said anything about this. Not the Town, not the Gallagher's. It seems to me, they're not wogs, I mean if it is an important issue to them, if it was an important issue to me and I didn't have what I wanted I would speak up. I mean that's not rocket science. That's just whether it's the Town of Hamilton, the State of Virginia or the Federal Government and I'm trying to accommodate them. What I'm saying is I'm not saying maybe the Town is not without fault but neither are the Gallagher's. So the Town, I'm saying, is we give them a discount of \$1500. That's what I am saying and we create a solution for the Town which comports with the letter that we got from a guy who purports to VRA's Counsel and says hey, you want an approach, here's an approach. I think that's the best we can do and that's what we ought to do.

Mr. Campbell: Again I can appreciate that and agree with that in the sense that it's difficult to look back into time and say why has this taken five years? I don't know. So here's all I do know,

is I look in the file and I see what is there and we go why didn't, I ask the question why didn't the Gallagher's get hooked up. Well because they never paid so we never issued them a permit. Well their payment, in lieu of payment was a Deed of Trust and they say well we didn't get a Deed of Trust, well then I look in the file and say when did we give them a Deed of Trust?

Mr. Snyder: And my question is if I cannot flush my toilet and it's an emergency why am I going to remain quiet for five years?

Mr. Campbell: And that, I don't know

Mr. Snyder: Well, nobody has answered that question.

Ms. Mann: They weren't quiet, they came in

Mayor: Ms. Mann, Ms. Mann please. I'm going to ask you one final time. We have a motion; we are trying to conduct business here. Please ma'am. Alright, motion's been made by Mr.

Campbell and seconded by Mr. Rollins. Mr. Wine do you want to start it this time, voice vote please? Wine Nay, Rollins Aye, Campbell Aye, Unger Nay, Snyder Nay, Wilmoth Aye, Whitbey Nay. (3-4).

Mr. Campbell: Alright, so we'll have a Public Hearing on this when?

Ms. Gilmore: When would you like to have it? If you would like to accomplish it in February

Mr. Snyder: Let's do it quickly

Mr. Campbell: That would be nice.

Ms. Jones: We missed the deadlines for advertising for this week

Ms. Gilmore: so we could advertise the week of the 3rd or the 5th and the 10th or the 12th and then you've got to add 5 days on to that second ad. Is the 15th President's Day or is it the 22nd?

Mr. Wilmoth: 15th

Ms. Gilmore: So if you advertised it on the 3rd and the 10th you could have it anytime after the 15th. If you advertise it the 5th and 12th you could have it the 18th or 19th.

Mr. Wine: Do you include Saturday's and Sunday's in that too?

Ms. Gilmore: Yes, the 5 days include Saturdays and Sundays

Mr. Snyder: When is our February meeting?

Ms. Gilmore: The February meeting is the 8th

Mayor: But the earliest would be the week after our meeting

Mr. Snyder: Let's do it as soon as we can

Ms. Gilmore: Let me ask you, do you want to change your meeting

Mayor: To the 15th and not have a meeting back to back?

Ms. Jones: The 15th is the holiday

Mr. Wine: Can we do it on the 16th? That is just move the meeting to the 16th and then be done with it altogether?

Ms. Gilmore: Yes

Mr. Unger: I like that Ken.

Mr. Wine: I'm just trying to be efficient.

Ms. Gilmore: So move it to Tuesday the 16th beginning at 7:00 PM

Mr. Snyder: That's good

Mr. Campbell: So at the Public Hearing, after we have the Public Hearing, my understanding is it that we can move adopt this regulation if we so desire.

Ms. Gilmore: Yes you can.

Mayor: Yes, so we can conclude it that night.

Mr. Campbell: But as Mr. Snyder said his motion did not contain terms it just contained the amount, is that accurate? Did I hear that right?

Mr. Snyder: Well it says that payment terms will be negotiated

Mr. Campbell: Well is that, I would think that that would be something

Mr. Snyder: Well here is the thing I think we can do is, there is the United States Congress there trying to decide whether to appoint Ben Bernanke to a second term in the Federal Reserve. I don't know if interest rates are going to be 3% or 13% so I don't know whether 1% or 10% is a good deal. So I think it would be a mistake. I think the interest terms or the payment terms whatever they are going to be, we have payment terms with the Gallagher's that have been negotiated but I would think they would be on a case by case basis, but I don't know.

Mr. Wine: The fact of the matter is we're not loaning money anyway we are providing a payment plan so regardless, whatever Bernanke or whoever decides to do it's really not going to make any difference to us anyway cause we are not lending any money.

Mr. Campbell: Yeah, I agree with that.

Mr. Snyder: So we can set that, I don't think I've tied the Council's hands on the payment terms at all.

Mr. Campbell: No you haven't. I was just saying for the sake of the meeting so that at the meeting in February we can just move forward and not have a lot of discussion.

Mr. Snyder: Anybody can make a motion on what the payment terms for the Gallagher's ought to be.

Mr. Campbell: What are they currently at Maureen with the Deed of Trust we had?

Ms. Gilmore: 3%

Mr. Campbell: Amortized over how many years?

Ms. Gilmore: Well you wanted a \$72 monthly payment so I think it ended up being 14, 816 months

Mayor: No, 43 years or something

Ms. Gilmore: 43 years

Mr. Campbell: 43 years?

Ms. Gilmore: for the \$25,000

Mr. Campbell: I'm going to make a motion that the terms we adopt in conjunction with Mr. Snyder's previous motion would be that the interest rate be at 3% and the term be a 30 year term.

Ms. Gilmore: May I suggest, you can't presume that you are all going to adopt the ordinance.

Mr. Campbell: Yes and if we don't fine

Ms. Gilmore: Put that in your motion and wait. I was going to suggest you wait until you adopt your ordinance or act on it.

Mr. Snyder: Wait until you adopt the ordinance and then you have somebody here who wants to do it.

Mr. Campbell: Is that not something that should be part of the Public Hearing? I means that's part of what we are adopting is the terms.

Ms. Gilmore: Well no, what you are adopting is you are creating a special class with this fee.

Mr. Snyder: It says will negotiate the terms

Mr. Wine: And you will negotiate terms individually

Mr. Campbell: Well what I am suggesting is the terms be the same no matter who they are.

Mr. Snyder: But I don't want to tie some future Council's arms to what we decide is right for the Gallagher's. Cause they may be, you can make whatever motion you want but we have a framework we agreed to the Gallagher's. Once we adopt the ordinance we can make a motion saying hey, these are the terms we want to make it on the Gallagher's and when the Jones's come to us and say we want to do it we look at it and say ok, this is what we did with the Gallagher's does it make sense for you and the Town, because not everybody is going to be the same.

Mr. Wine: True

Mr. Campbell: I know but we always talk about discrimination and all this, I'd feel more comfortable just setting the same terms, having them be in the ordinance and if somebody in the

future feels they are to lax or too much or whatever they can change them but instead of every time somebody comes in here we can have to come up with a percentage rate

Mayor: Well the interest rate changes too. 5 years from now it will be different than it is today.

Ms. Gilmore: I think the other thing you might be is you want to be careful. What you are creating is a class with this amount. There may be somebody who qualifies as a member of the class who doesn't need financing, who pays it up front. So you don't want to

Mr. Unger: Financing wasn't part of your motion; the whole idea of giving them, I mean 99 times out of 100 I would expect the \$5000 up front so there would be no financing.

Mr. Wine: Sure, there would be no financing. If you set a financing rate across the board everybody is eligible

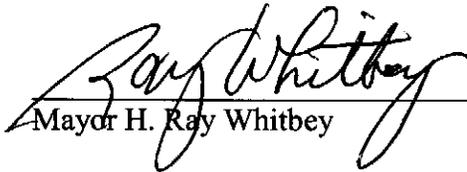
Mr. Snyder: That is what I don't want to do

Mr. Wine: Because somebody might come in and have the money and be able to pay it right then.

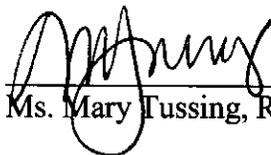
Mr. Snyder: I am happy to vote for whatever deal we have with the Gallagher's once we have the ordinance in place and if somebody else comes we deal with them. I mean, I'm not

Mr. Wine: I move that we adjourn (8:07 PM)

Mayor: So be it.



Mayor H. Ray Whitbey



Ms. Mary Tussing, Recorder