

**Hamilton Planning Commission
February 11, 2009
Hamilton Town Office**

The meeting was called to order at 7:37 by Chairman Robert McCann. The Pledge of Allegiance was followed by Roll Call.

Present: Chairman Robert McCann, Vice Chairman Les Carlson Mr. William Gallant, Mr. Russell Beal, Mr. Tom Rollins.

Absent: Ms. Melodie Baxter

Also Present: Ms. Maureen Gilmore, Town Attorney, Mr. David Beniamino, Zoning Administrator

Report of Officers

Mr. Gallant provided a status report for P.L.A.C.E.S. and advised that budget cuts are expected. There is a Business Association meeting planned on February 23, 2009.

Old Business

A review of the Land Use section of the Comprehensive Plan was initiated by Mr. McCann and the Town Council input was distributed for Planning Commission review. Mr. McCann and Mr. Beniamino inquired who recommended that 6 N. Laycock Street be included into the proposed commercial district and Mayor Whitbey responded that Mr. Snyder had made the recommendation. Ms. Gilmore advised that it was rezoned because the owners wanted to put on an extensive renovation. Because the structure was primarily being used as a residence a condition of approval to rezone to residential was agreed upon. Mr. McCann advised that for the Land Use section of the Comprehensive Plan the Commission should use the guidance provided by Council and also to consider what appearance is wanted for the Town in the future. For the considered MH district, Ms. Gilmore advised that the landowner has not made an assertive effort to request a change to a newly zoned area. Presently the property is legally non-conforming under a grandfather clause but for any change to occur the property must conform to current ordinances. Mr. Beniamino suggested a possible alternative for the property could be for mixed use which would allow both affordable housing and commercial growth.

Ms. Gilmore requested clarification of the opening paragraph under the Planned Land Use within the Town and JLMA section. Mr. Beniamino advised that he would research the 2003 Comprehensive Plan documents for a better understanding of what was trying to be communicated and will advise back to the Commission at the next meeting. Ms. Gilmore advised that any districts which might be affected by revised zoning under the comprehensive plan review will not be affected until formal action is taken. The Town should establish boundaries rather than rely on a future land uses map for options as change begins to be considered. Mr. Beniamino pointed out that current zoning ordinances work against the comprehensive plan to "enhance the viability of small businesses which are compatible with the Town's character." Discussion was held on how to best describe Hamilton and Mr. Beniamino provided several examples of commercial development for consideration and several area towns were referenced for their development, character and business mix. Mr. Beniamino explained that specific business uses would not be able to be pre-determined, but language about East/West commercial and mixed use options could be added. Mr. Gallant agreed that some businesses would be better suited on the ends of Town and others in the center, especially with the development out of town for the new athletic complex, new elementary school and the fire and rescue building. Mr. Beniamino agreed to attempt to define these areas and will refer the proposal back to the Commission for review and consideration. Ms. Gilmore added that a much needed water & sewer capacity review, in conjunction with the annexation proposal, is presently being completed by the Water & Sewer Committee. Noted was that any fees should reflect usage type and that the most recent capacity has been granted to schools, which do not pay taxes to the Town. Ms. Gilmore also requested that the definition of "urban" be clarified as it can be widely interpreted.

Mr. Beniamino asked the Planning Commission how they wanted to handle the remaining sections for the Comprehensive Plan review and Mr. McCann requested that Mr. Beniamino send out an email with a recap of changes/recommendations from both the Planning Commission and the Town Council. Mr. Beniamino also requested that the remaining sections of the Land Use section, Goals, Policies, Action Items, be reviewed independently.

Mr. McCann stated that the April 8 meeting be used to review the newly compiled document. Input can be sent to Mr. Beniamino.

Old Business

Mr. McCann provided a summary of discussion from the February 9, 2009 Town Council meeting in regard to the proposed ZTA to allow residential use in the C-2 Zoning District. The Commission was advised that the Council will hold a Public Hearing March 9, 2009 at 7:00 PM to hear comment on by right use only. Concern for by right use was expressed by Mr. Gallant, Mr. Carlson, Mr. Beal, Mr. McCann and Ms. Gilmore. Ms. Gilmore explained there is conflicting justification for a by right use allowance versus the special use permit if the Town wants to move in the direction of a central commercial district. Ms. Gilmore stated that the Council did not have the benefit of the minutes from the Planning Commission public hearing to use as consideration in their decision making, and Mr. Beniamino advised that the hearing minutes were used as a template for the staff report which was available for the Town Council's review. Mr. Rollins said he believes the Planning Commission wants to have government control and Ms. Gilmore responded that the Council's role is to ensure that the Town moves in a smooth process and in the same direction with oversight of all documents. Mr. McCann urged all to attend the March 9, 2009 hearing and expressed disappointment that the Council did not support the recommendation of the Commission and that only 1 option for resolution was being heard at the hearing. Ms. Gilmore believes that the Council did not fully understand the Commission's recommendation and that only partial information was provided. Mr. Beniamino inquired why the Council did not ask for further clarification and Mr. McCann responded that in the future he will forward the Commission meeting minutes to the Council, with the request that the minutes be added to the monthly Town Council meeting agenda. Mr. McCann further explained that Mr. Rollins is the liaison between the Planning Commission and the Town Council and is there to help explain perspective and answer questions that may arise.

Informational Items

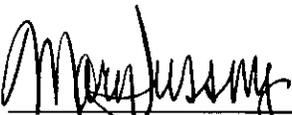
There will be a BZA Hearing in April for the fence erected on Ms. Heard's property. The fence was built without a permit being requested and is violation of the current ordinance. There is an appeal to the BZA which was filed by Mr. Culbert, Attorney for Ms. Heard, in an effort to convince Council to instruct Mr. Beniamino not to begin to penalize Ms. Heard and instead allow an opportunity for a ZTA to be considered which would allow a waiver provision. Mr. Beniamino stated that he was directed by the Council at the March 9, 2009 meeting not to stop the penalty process. Mr. McCann expressed concern for consistency in regard to other citizens in Town who have previously applied for a permit for the same type of fence, and asked how to handle those citizens, how do we explain? Ms. Gilmore clarified that the appeal is in response to the letter Mr. Beniamino sent Ms. Heard. The letter stated that Ms. Heard is in violation of the ordinance and the Town will start applying penalties as a result of non-compliance with the BZA's direction to take down the fence. The variance is gone but the letter was written for non-compliance and Mr. Beniamino provided options for resolution. Mr. Culbert is challenging the decision that Ms. Heard is in violation of the ordinance and is trying to prove that the fence does conform to the ordinance. Ms. Gilmore explained that the Town Council or Planning Commission does not have the authority to tell the BZA what decision to make. The BZA operates as a judicial branch of the Town government, the elected officials are the Legislators, the Planning Commission is appointed by the Council and the Mayor is the Executive. Mr. Beniamino reviewed the ordinance guidelines and the thought process supporting it. Mayor Whitbey asked if it was appropriate for Mr. Beniamino to engage in dialogue with opposing Counsel since this was going before the BZA and Ms. Gilmore responded that since Mr. Culbert has entered an appearance on Ms. Heard's behalf, Mr. Beniamino should no longer engage in dialog with opposing Counsel.

Mr. Beniamino reported that 30 days have passed since the last zoning ordinance violations were notified and the civil penalty process will now begin for the unresolved 5 violations.

Mr. Carlson made a motion to adjourn at 9:17 PM.



Mr. Robert McCann, Chairman



Ms. Mary Tussing, Recorder