

**Hamilton Panning Commission
August 12, 2009
Hamilton Town Office**

The meeting was called to order at 7:30 PM by Chairman Robert McCann. The Pledge of Allegiance was followed by Roll Call.

Present: Chairman Robert McCann, Mr. William Gallant, Mr. Tom Rollins, Mr. Dimitri Kesari

Absent: Mr. Russ Beal, Mr. Les Carlson

Also Present: Mr. David Beniamino, Zoning Administrator

Ms. Maureen Gilmore, Town Attorney

Mr. McCann extended a welcome to the newest Planning Commissioner, Mr. Dimitri Kesari.

Minutes - defer to September 9, 2009

Standing Committee Reports

Mr. Gallant distributed the Resources for Small Businesses guide which was compiled by the Loudoun County Department of Economic Development to help small businesses in Loudoun County. Mr. Gallant would like to see a Business Association in Hamilton and Mr. Beniamino advised that if Mr. Gallant would write a letter to the Hamilton business owners he would distribute the information for him.

New Business

Mann Subdivision Plat request - Mr Beniamino provided a history of the plat timeline and actions taken to date. On July 10, 2009 the referral requests were sent out and July 22, 2009 the Town Staff issued comments to Ms. Mann and her Engineer for review. (A copy of the plat was distributed for review.) At this time there are several outstanding issues from the review agencies, specifically the Loudoun County Department of Building & Development with 7 review comments and the County Attorney's Office with 13 review comments. (copies were provided to the Commissioners for review).

Mr. Beniamino has sent a letter to Mr. Swartz, Engineer for Ms. Mann, regarding the 5 issues the Hamilton Staff had with the plat. (copies were provided to the Commissioners for review). #2 and #3 have been resolved in a meeting earlier today with Ms. Mann and Mr. Snyder. The changes will be reflected on the next plat submission. Issues #4 and #5 are outstanding and Mr. Beniamino referred the Hamilton Subdivision Ordinance concerning Private Access Easements which pertains to item #4 in the Staff letter. Mr. Beniamino reviewed his concerns and noted that Ms. Mann has some disagreements with his view. Mr. Rollins asked what the County requirements were and Mr Beniamino advised that he does not have the County Ordinance in front of him but he remembers a difference in easement width, which is what was advised by Mr. Mike Seigfried, but Mr. Beniamino stressed that he does not have the County requirements in front of him and added that he is not making recommendations to Council. In a meeting earlier today Ms. Mann was asked if she would be willing to put the County standards located in the Facility Standards Manual on the plat and then Mr. Beniamino would make the recommendation to Council as a compromise to which she refused. Mr. Beniamino added that the meeting today between Ms. Mann, Mr. Snyder and himself was recorded and he is willing to play that back for the Planning Commission if requested. Mr. Beniamino added that his recommendations are only that, recommendations from the Zoning Administrator and the Planning Commission and Town Council can take action as they deem appropriate. Mr. Gallant asked that as long as minimums are met, there should be no problem and Mr. Beniamino agreed. Mr. Beniamino has checked with Ms. Gilmore, and per the State Code provision, when there are 2 ordinances being applied the more stringent of the ordinances shall apply. The 2 letters issued by the County site specific sections of the Loudoun County Zoning Ordinance that the County Staff is saying is not in compliance. Mr Beniamino cannot challenge the ordinances of the County and can only follow their recommendations and guidelines adding that requirements by the County are mandatory and recommendations are optional. Ms. Mann has expressed that she does not agree with the process and Mr. Beniamino has advised Ms. Mann of the steps to take if she wishes to challenge the Loudoun County Staff interpretation. Mr. Beniamino has stated that if the County comes back and says that they are ok with the application, then Mr. Beniamino will be fine with what the County approves.

Mr. McCann asked if at this point in time the County is recommending denial of the plat. Mr. Beniamino responded yes and stated that presently he is also recommending denial of the plat based on unresolved issues. A point of contention is that Ms. Mann filed a second referral submission directly to the County which is not the normal process. All filings should come through the Town but the County is accepting this as an exception of the rule. The second submission has not yet been seen by Mr. Beniamino and since he only has the comments on the first submission he is unable to recommend the approval of the application first submitted. Mr. Beniamino would be open to the application request being deferred for 30 days to allow the County sufficient time to generate their comments to the Hamilton Planning Commission, but the request needs to come from the applicant.

Ms. Mann reviewed the comments from the County and stated that some of the conflict is coming from the requirements of Hamilton. Ms. Mann states that the County is asking for a Private Road Maintenance agreement but she disagrees with this requirement and believes she has a private access easement and not a private road. Ms. Mann advised that the County has told her that if Hamilton will waive the requirement they would honor Hamilton's decision. Mr. Kesari asked if Hamilton would require a maintenance agreement for lot 5 and Ms. Gilmore explained that lot 5 has frontage and that the Hamilton Subdivision Ordinance requires that lots to have public road frontage and you are permitted to have a private access easement serve as public road frontage. Ms. Gilmore continued to explain that the reason it becomes technically complicated is because of the zoning option that the applicant chose, which they are entitled to do. Under the County Zoning Ordinance it is required that the private access easements shall be maintained by the property owner and they have responsibility for the maintenance for the easement. The applicant decides which lot owners will be responsible which is necessary to be included in the land records. This notifies subsequent land purchasers through a recorded document of the responsibility for maintenance and the language stays with the deed. Ms. Mann explained why she does not agree with the requirement and Mr. Beniamino explained that this is a requirement of the County, not the Town of Hamilton and it is not up to him to interpret their ordinances and advised Ms. Mann that it is her decision if she wants to appeal to the County in regard to her difference of opinion. Ms. Gilmore also explained that neither the Zoning Administrator, Planning Commission nor Town Council can waive County requirements. Mr. Beniamino stated again that per the State Code provision, that when there are 2 ordinances being applied, the more stringent of the ordinances shall apply. Discussion continued between Ms. Mann and Mr. Beniamino pertaining to Mr. Ron Brown of Loudoun County and what he has advised Ms. Mann. The discussion is on the tape from the earlier in the evening between Mr. Snyder, Ms. Mann and Mr. Beniamino and Mr. Beniamino offered to play the tape to clarify the discussion. Ms. Mann is asking for direction from the town of Hamilton on how to resolve the different language requirements that are printed on the front of the plat.

Mr. Dimitri asked if in the future would the Town go to the County to ask for use of the easement for public utilities and Ms. Gilmore explained that it is her understanding that the private access easement goes to the County and not the Town, and the Town would not have a property interest in that easement unless the property owner agreed. If the laterals were owned and maintained privately the Town would not need an easement because the property owner would be responsible party. If you are asking whether a Town owned and maintained line would go down, the Town would need an easement. Ms. Gilmore continued to explain that The Town would not put a line in but rather a lateral. Ms. Gilmore explained that the way easement language for the Towns is drafted and recorded is specific for water and sewer line allowance. If it is not stated then it is not allowed, which is different than how it applies to the Loudoun Water as interpreted by Mr. Kesari. Ms. Mann continued to review the County referral comments and the conflicts to the requirements of Hamilton and the utility requirements as well as the comments from Mr. Beniamino. Ms. Mann is disputing the requirement of the Hamilton Subdivision Ordinance specific to Private Access Easements from 1998 but did not reference the current ordinance. Mr. Beniamino asked for clarification and proof from Ms. Mann but none was provided. Ms. Mann also noted that there were spelling errors and words missing throughout the ordinance. Ms. Mann continued to review the comments pointing out conflict and referenced "In Town" standards. Mr. Beniamino interrupted Ms. Mann stating that she was not being accurate with her statements regarding "In Town" requirements. Mr. Beniamino advised the Planning Commission that she is voicing her opinion for the "In Town" language and that verbiage is not present within the Town ordinance. Ms. Mann stated that she is using it as a logical thought not actual verbiage.

Ms. Mann noted that per the County she was allowed to email a proposed easement because she cannot resubmit until there is an agreement on the date of the easement. The County wants the entire easement and access maintenance agreement on the plat. Mr. Beniamino disputed this stating that he had advised Ms. Mann that she could not resubmit as that direction comes from the Town not the County. It is the responsibility of the Town to submit all information to the County.

Due to confusion and outstanding issues, Mr. McCann asked Ms. Mann if she would be willing to request a deferral for action until the next Planning Commission meeting. Ms. Mann expressed interest to resubmit but did not make a request. Mr. McCann asked again if Ms. Mann wanted to ask for a 30 day deferral until the issues could be resolved otherwise action will be taken tonight. Ms. Mann said again she was seeking direction so she could resubmit and Mr. McCann asked again if Ms. Mann would ask for a 30 day referral to resolve the issues thus allowing the Commission to take action in September. Ms. Mann stated she believes Mr. Beniamino's interpretation of the Ordinance is incorrect and the law requires that the County standards apply to her lot and Mr. Beniamino cannot supersede State Law. Mr. Beniamino asked Ms. Mann to specifically cite the State Code section that states this and Mr. Beniamino added that essentially what Ms. Mann is saying is that Hamilton's Subdivision Ordinance is illegal. Mr. Beniamino advised that Ms. Mann has selected several small pieces of the County Ordinance and presented them as fact when in fact the Zoning Ordinance is a complete document and it is the job of the Loudoun County Zoning Administrator and his agents to interpret the ordinance. Mr. Beniamino commented that he has not required Ms. Mann to do a single thing. Ms. Mann voiced concern that if Mr. Beniamino is wrong, and in her opinion he has been wrong before and she believes he is wrong now, that this provision of the Zoning Ordinance does not apply to the required Facility Standards Manual to her lot. Mr. Beniamino interrupted stating that he cannot be wrong because he has taken no position. Mr. Beniamino reiterated that he has absolutely taken no position on the lot and defers to the Loudoun County office of Zoning Administration. Mr. McCann asked Ms. Mann again if she is willing to ask for a 30 day extension or does she want the Commission to take action tonight, it is a simple yes or no question. Ms. Mann stated that she is asking for an opinion about the gravel and easement questions and wants to resubmit. Mr. Beniamino asked if any person on the Planning Commission would like to make a motion to recommend to the Town Council that Ms. Mann be allowed to add language to her plat. Mr. Beniamino feels this would satisfy Ms. Mann's request. Mr. Kesari re-worded Mr. Beniamino's question and has no problem with this. Ms. Gilmore asked if a waiver is being requested. Ms. Mann does not believe a waiver is necessary because the language is already contained in the subdivision ordinance and the County standards apply. Mr. McCann advised Ms. Mann that the next Planning Commission meeting is September 9, 2009 and the next TC meeting is September 14, 2009 which means that there is time to square things away before the next time the Commission meets without causing any delay in action by the Town Council. This is the simplest thing that the Commission can do tonight to help Ms. Mann. If you do not want that then the discussion will be closed and the Commission will take a vote. Ms. Mann stated that Mr. Beniamino has assured her that whatever the County requires the Town would go along with and now he is saying no, maybe not. Ms. Mann claims that Mr. Beniamino stated to her that that he does not care what they say and Mr. Beniamino disputed her statement and referred to the recorded conversation from earlier today. Mr. Beniamino clarified, again referring to the meeting and recorded discussion from earlier today where advised Ms. Mann that what the County decides as far as the private access agreement will stand and Hamilton will have no problem with the decision but the Subdivision ordinance is a completely different discussion. Ms. Mann asked for a copy of the tape and Mr. McCann asked Ms. Mann to make a decision of whether she was going to ask for an extension or does she want the Commission to take action tonight.

Mr. McCann advised that if no request for extension is made a vote will be taken tonight and he again explained why she is best served to ask for an extension until the September Planning Commission meeting.

Mr. Kesari asked if the Commission has to act tonight and Mr. Beniamino advised the Commission that in the 6-7 emails he has received today, Ms. Mann has consistently cited a 60 day requirement and has advised in writing that she will sue and bring this to circuit court if no action is taken tonight. Ms. Mann denies this. What Mr. Beniamino explained to the Chairman earlier tonight was that since Ms. Mann has brought up the 60 day requirement he should ask Ms. Mann, and have on record, a request made by her for a request for a deferral of action so that at a later point in time she cannot drag the Town into an costly lawsuit pertaining to the 60 day requirement. Normally the second submission would have come through the Town thus resetting the 60 day clock but since the Town does not have copies of the resubmission and it went directly to the County via email the 60 day clock still applies. This is all to avoid an expensive lawsuit against the Town brought by Ms. Mann. Ms. Mann disputed this and believes that the Town has to provide in writing the reasons and Mr. Beniamino clarified that the obligation for a written response, per the State Code, applies only if the application is denied. Ms. Mann disagrees. Mr. McCann again asked Ms. Mann if she wanted a deferral and she did not respond. Ms. Mann asked for a straw vote and the request was denied. Mr. Beniamino explained that this will move forward either way, with action tonight or a request for deferral. Mr. Beniamino explained that he will not work per Ms. Mann's time frame; he will not answer 30 emails a day or be at her beck and call. Mr. Beniamino has requested that Ms. Mann wait until August 24, 2009 when the County will send their new comments, when he will immediately start work on this. Mr. McCann again asked if Ms. Mann wanted to request an extension allowing Ms. Mann to work with the Town Staff and the Town Attorney so she can move forward. Ms. Mann then formally requested a 30 day extension until September 9, 2009. Once a second letter is received back to the Town a meeting will be planned with the Zoning Administrator and Town Attorney concerning the results of the letter and how to best proceed. Mr. Kesari made a motion to accept the request for a 30 day deferral. Mr. Rollins made a second on the motion and the vote passed 4-0-2, (Aye: Rollins, Gallant, McCann, Kesari. Nay: none. Absent: Carlson, Beal). Ms. Mann asked for help with the gravel driveway clarification and Mr. Beniamino advised her to put the language that she is proposing on the plat, at which point in time Mr. Beniamino will write a staff report explaining to the Planning Commission how he feels about the language, the pros and cons, he will not take a position either way, he will disseminate the information and the Commission can review and decide one way or another and then forward to the Town Council for review and a decision. Mr. McCann advised Ms. Mann that the request needs to come to the Town in writing, not via email.

Radford Subdivision

Mr. Beniamino reviewed the plat and Mr. McCann provided the history of the plat to the Commission. Mr. Kesari made a motion to recommend approval to the Town Council and Mr. Gallant made a second on the motion. The vote passed 4-0-2, (Aye: Rollins, Gallant, McCann, Kesari. Nay: none. Absent: Carlson, Beal).

Comprehensive Plan

Mr. McCann stated that there are 2 small sections left to review and since not all Commissioners present tonight he will defer action until the next meeting. A complete review is still needed and Mr. McCann would like to complete the work via individual meetings between the Commissioners and Mr. Beniamino for final review and comment:

Mr. Rollins - sections 8 & 9

Mr. Kesari - sections 1, 2, 3 & 4

Mr. McCann - sections 11 & 12

Mr. Carlson - section 10

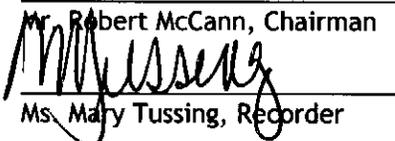
Mr. Beal - section 5

Mr. Gallant - sections 6 & 7

Mr. Kesari made a motion to adjourn at 9:13 PM.



Mr. Robert McCann, Chairman



Ms. Mary Tussing, Recorder