

PRESIDING: Woody J. Van Sciver, President

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL: Council President Van Sciver  
Council Vice President Raymond  
Council Member Crawford  
Council Member Lynch - ABSENT  
Council Member Smith  
Council Member Vike  
Mayor McGlone – ABSENT

2. PUBLIC FORUM:

Council President informs all present that copies of the agenda are available at the front desk. This is a Public Session of Council. Should any citizen/taxpayer wish to offer comments on any item on the agenda, now is the time to bring those comments before Council. Are there any citizens/taxpayers who wish to bring before Council any item not on the agenda?

- a. Joe Giandonato, 39 Crest Avenue, reported on traffic and speeding cars on Crest Avenue. He asked that No Cut Thru or reduced speed limit signs, to 15 MPH, be placed on Crest Avenue.

William Mann, 28 Crest Avenue, stated that he does not know what it will take to get something to happen at the intersection of Crest & Highland. He requested that something similar to the No Cut Thru signs on Broad Street be placed on Crest Avenue, as well as, 15 MPH speed limit signs.

Francee Eisenhardt, Crest & Monument Avenues, stated that Crest Avenue has a stop sign at either end on King Street and Monument Avenue. When the new stop signs were added on King Street, traffic got backed up. Cars have to stop at the stop sign at Crest & King and if they see traffic backed-up on King, they cut down Crest Avenue. She feels they need some help with this extra traffic. She reported that they don't have sidewalks and lots of young children reside on the street. She expressed concern over how angry people are and the rising tensions with both the residents on the street and the motorists. She requested any kind of help that could be given.

Sean Deegan, 27 Malvern Avenue, stated that if a No Cut Thru sign is placed on Crest Avenue, the cars will then go up Malvern Avenue and Malvern Avenue is more narrow than Crest Avenue. A reduced speed limit could be an answer but he's not sure a No Cut Thru is the answer. Even if a car is doing 20 MPH, it's too fast.

Ms. Eisenhardt stated that parking cars on the street did slow traffic, but her car was hit twice.

Tom Glenn, 12 Crest Avenue, requested a reduction in the speed limit as he feels it is too high.

Sean Deegan reported that having a police presence in the past has programmed the motorists to be more cautious. It has helped. He has requested that the police again provide a presence so that the motorists are again programmed that they are there. He also reported that people don't stop at the stop signs.

Brian Opielski, 45 Crest Avenue, reported that the demographics in the last ten years have changed drastically – there are more young children on the street now.

Council President Van Sciver stated that the residents picked a good time to come to Council as four of the new Council members are in the audience and are hearing what you are saying. He stated that he would think that Council will be sensitive to the comments made this evening. He suggested that they come back in January to see if they have put something on the Public Safety Committee agenda at that time. We will ask the Chief to do some speed measurements. It is sometimes perceived that cars are going faster than they really are. He stated that he does not know if the Borough has options or not. We will check into the reduced 15 MPH speed limit.

b. Tony Dufour, 25 W. Broad Street, thanked the departing Council Members for their service to the community.

3. APPROVAL OF MINUTES:

A motion was made by Council Member Smith, seconded by Council Member Vike and unanimously carried by a vote of 5-0, to approve the minutes of the meetings held on Tuesday, November 4, 2009 and November 17, 2009, as submitted.

4. APPROVAL OF REPORTS:

A motion was made by Council Member Crawford, seconded by Council Vice President Raymond and unanimously carried by a vote of 5-0, to approve the Treasurer's Report, the Committee Reports for Finance and Administration, Public Safety, Public Works and the Chief of Police Report, the Code Enforcement Officer's Reports (Building Inspector's Report, Housing and Property Maintenance Report and Zoning Report), the Superintendent of Public Works Report and the Manager's Report for the month of November 2009, as submitted.

5. PUBLIC HEARING – THE PATRIOT'S PATH:

Council President Van Sciver announced that Borough Council will now open the public hearing to solicit public comment on the proposed Patriot's Path Plan. A copy of the revised Plan was available on the Borough's website, as well as, at the Borough Administration Offices.

The Public Hearing was advertised in the Daily Local News on December 2nd and 7th, 2009, as required.

An Act 247 Review was performed by the Chester County Planning Commission and comments were received. Comments and recommendations were also received from the Malvern Borough Planning Commission.

Paul Driscoll, Urban Research and Development, presented the Patriot's Path Plan to Council. Paul explained that he assisted the three municipalities—East Whiteland Township, Tredyffrin Township and Malvern Borough—with the development of the Plan. He explained that the Committee met for one year and the Plan was originated by the Chester County Planning Commission. He reported that they put together a pathway system to link sites with American Revolutionary War significance. It is a multi-purpose, non-motorized trail. Paul explained that this is an ambitious long-term plan. Paul explained the various segments of the Patriot's Path Plan as they related to each community.

Council President Van Sciver stated that the Malvern Borough Planning Commission thought this was a good plan and recommended that Malvern Borough attempt to secure financing for its portion of the Plan.

Duane McCrory, 34 Raffaella Drive, asked if this Plan is supposed to be budgeted over several years in cooperation with several municipalities? Paul responded that it was and that the long term plan is to connect the Path amongst all municipalities.

Mr. McCrory asked if there was a recommendation for how the segments will be constructed.

Mr. Driscoll replied that there is a recommendation and the Malvern segments should be a higher priority item. The Plan does recommend going with Malvern first.

Mr. McCrory felt that going underneath the railroad was very bad. It seems to him more logical to come back to Old Lincoln Highway and cross at Route 30 & Old Lincoln Highway. He feels this will eliminate the need for dealings with the railroad.

Mr. Driscoll replied that there were many discussions regarding this issue at the committee level and it was felt that this option was the most feasible.

All comments having been heard, Council President Van Sciver closed the public hearing.

6. RESOLUTION NO. 611 – THE PATRIOT'S PATH PLAN:

A motion was made by Council Member Vike, seconded by Council Member Smith and unanimously carried by a vote of 5-0 to adopt Resolution No. 611, a Resolution adopting the Patriot's Path Plan, a Development Guide on How to Design and Build The Patriot's Path Trail Network, as an amendment to the Malvern Borough Comprehensive Plan of 1999, as amended.

7. RESOLUTION NO. 610 – ARAS RUG EXTENSION OF LAND DEVELOPMENT:

A motion was made by Council Vice President Raymond and seconded by Council Member Smith to approve Resolution No. 610, a Resolution extending the approval contained within Resolution No. 528, approving, subject to conditions, the Final Land Development Plan, submitted by Angelo and Jayne Aras, pursuant to the Malvern Borough Subdivision and Land Development Regulations of 1977, as amended, for the development of certain property located in the Borough of Malvern, Chester County, PA, which development is known as the Aras Rug Company Land Development, at 190 Pennsylvania Avenue.

Gregory DiPippo, Esq., attorney for Angelo and Jayne Aras, reported that the proposed stormwater management meets the new Ordinance. Mr. DiPippo requested a 1 ½-2 year extension for this project.

Mr. DiPippo stated that the applicant will incorporate all the comments in the Engineer's letter dated November 27, 2009 regarding the design standards requirements.

Mr. Aras reported that he has to get financing in a hurry. His bank stopped lending and even though he has the down payment, it is a \$700,000 project and he would not want to put the company in danger if the bank was not backing it up.

Council President Van Sciver stated that Mr. Aras's engineer was saying that the plan would conform to all of these new standards that the Borough Engineer pointed out in his memo dated November 27<sup>th</sup>, 2009. Currently all that complies with the current ordinance is the stormwater. However, Mr. Aras is stating that he agrees to be in compliance with the current Borough Subdivision and Land Development Ordinance.

Mr. Aras stated that he would comply with everything except the sidewalk. He stated that he had an issue with the sidewalk on that street. If it is mandated, he will comply with the new Borough Ordinance. Mr. Aras stated that the original plan complies to every single amendment. The only modifications on his part are if the sidewalk is required by Malvern Borough.

Council President Van Sciver asked Mr. Aras if he would be willing to accept the approval subject to conformance with all the items except for a waiver related to sidewalks. Council President Van Sciver stated that he would be okay with a one year extension if Mr. Aras complies with all the Borough's requirements.

Council President Van Sciver explained to Mr. Aras about the Malin Road Feasibility Study that will be completed and stated that if the road is extended, that may change what his project is able to do. Given that that may come forward, he's not inclined to extend beyond one year.

Mr. Aras would also be required to execute a Stormwater Management Facilities Maintenance Agreement.

Council Member Vike asked what Mr. Aras would be required to do within the one year extension period. Ms. McLean responded that he must have a building permit and post escrow within that year.

Council Member Vike stated that Mr. Aras would be required to comply with the entire Ordinance and he would be required to add a sidewalk or contribute to the sidewalk fund as a fee-in-lieu.

The motion carried unanimously by a vote of 5-0 with the amendments proposed by Council and the Borough Solicitor at this meeting. Those amendments include the following:

- 1) Demonstration to the satisfaction of the Borough Engineer that the plans comply with the current ordinance including construction of sidewalks or appropriate payment of fee-in-lieu of constructing sidewalks;
- 2) Compliance with all conditions and comments set forth in the Borough Engineer's letter dated November 27, 2009;
- 3) The Applicant is required to execute a Financial Security Agreement, a Land Development Agreement and a Stormwater Management Facilities Maintenance Agreement together with the posting of adequate escrow to guarantee the required public improvements, as approved by the Borough Engineer, in a form and manner satisfactory to the Borough Solicitor, along with the procurement of all required permits, approvals, etc.

8. WAIVER OF LAND DEVELOPMENT – CALL CENTER CONNECT:

A motion was made by Council Member Smith and seconded by Council Vice President Raymond to approve the request of Call Center Connect for a waiver from land development to install a generator and propane tank on their property at 118 W. King Street. A recommendation, with conditions, was received from the Borough's Planning Commission.

Mike Irwin of Call Center Connect reported that they moved to 118 W. King Street in August 2009. They are requesting a waiver from land development to install an external generator so if they lose power, they will have auxiliary power to continue fielding calls. They are open 24/7.

Council President Van Sciver questioned if there was a need to have some kind of out of the land development process for minor things that the Borough could incorporate into the SALDO?

Wendy McLean, Esq., responded that if it is a normal accessory use request and meets all the setback for height requirements, you don't have to do it, but there could be something touchy about it that you would want them to request the waiver; i.e., storing hazardous materials in a storage shed.

Mr. Irwin stated that the Planning Commission asked that they put arborvitae around the generator.

Ms. McLean stated that if this generator was going on a residential property, it would not constitute land development. The definition for the requirement of land development is improvement to a non-residential property.

Mr. McCrory, 34 Raffaella Drive, asked if the homeowner abutting the property had been contacted and if they had any issues.

Mr. Irwin responded that the Planning Commission recommended that they give the neighbors a heads-up although they could not enforce that. The location where they plan to put the generator is far away from the neighbor's house. There is a big back yard.

Council Member Raymond amended the motion to say that the motion is to approve the request provided that the applicant accepts the conditions recommended by the Malvern Borough Planning Commission.

Council Member Smith accepted the amendment and the motion carried unanimously by a vote of 5-0.

9. RESOLUTION NO. 612 – SOUTHEAST PENNSYLVANIA TRANSPORTATION AUTHORITY (“SEPTA”):

A motion was made by Council Member Vike and seconded by Council Vice President Raymond to approve Resolution No. 612, a Resolution approving, subject to conditions, the land development plan of Southeastern PA Transportation Authority entitled “Malvern Station Tunnel and Parking Lot Improvements” prepared by Stantec Consulting Services, Inc., dated October 23, 2009, together with associated and supplemental plans as enumerated in the Borough Engineer's letter dated November 25, 2009 as a preliminary land development plan, pursuant to the Malvern Borough Subdivision and Land Development Regulations of 2006, as amended, for the development of certain property known as the Malvern Train Station located in the Borough of Malvern, Chester County, Pennsylvania, which development is located in the LI and C-1 Districts.

Michael Gill, Esq., requested preliminary/final land development approval this evening. He explained that they need to clean up plans to comply with the conditions of approval but that all the engineering work has been completed. He stated that they will resubmit for signature in late January. He reported that at the suggestion of the Shade Tree Commission and the Planning Commission, the plan was revised to extend the landscape islands to allow the trees a greater amount of green area to take root. The landscaped area was designed so that the driving movement is not a straight shot to King Street but a controlled movement to King Street. The fence line has also been shifted approximately ten feet to the east to facilitate movements around the rim of the Harlan building. There are also breaks in the curb to allow for the flow of stormwater.

Mr. Gill reported that eleven parking spaces will be striped on the Kenney tract. The total number of parking spaces on the SEPTA lot will be 332 after full build. All the issues in the Borough Engineer's letter can be complied with.

Regarding the tree replacement agreement, the Planning Commission was looking to make sure the trees are replaced when they expire. Michael Gill stated that the Borough could use the same document as West Whiteland Township's perpetual tree document.

SEPTA expects to have a shovel in the ground in March with the project extending 14-16 months.

SEPTA will be installing the town center type of light standards on Warren Avenue and will look for more attractive light standards for the lot. However, they can't do anything much different than what they have done in other stations—they need a uniform fixture that is more innocuous to blend in. If the light fixtures are decorative, it will require more training for their maintenance personnel and require having more replacement supplies on hand.

As the stretch of road on Warren Avenue from King Street to the end of the SEPTA property on No. Warren Avenue will be adversely impacted by the project, SEPTA will entirely repave this stretch of Warren Avenue. A crosswalk will be placed on both sides of Broad Street at Warren Avenue.

Jim Vike asked if there would be curb between the Shopping Center and the Mobil Station. He anticipates that this exit will be a bigger problem in the A.M. and was wondering if there will be a raised curb in the driveway on the Kenney property side.

John Grant from Stantec replied that there will be a double yellow line off the 20' two-way drive aisle with another white line. The negotiations with the Shopping Center included restricting their employees from parking cars behind the stores. SEPTA is not looking at doing anything on the Kenney side. Putting a 6" curb at this location would only be for traffic calming.

Mr. Vike stated that if you envision the morning, there will be a line of cars wishing to make a left turn. In the evening, everyone is coming out of the lot and the motorists turning left will have a real problem and he feels it is going to be difficult getting out of that lot turning left. He thinks that will be a real bottleneck. He also thinks we need to try to recognize that somehow. We should involve the Kenney property in that discussion as that will be a bigger problem than it is now.

Mr. Gill responded that the options are very limited at this location. The only option that is not desirable from everybody's perspective there is that to alleviate that pressure you are anticipating, is to have cars go out by Harlan's and it is not desirable from Harlan's perspective. In the morning, I don't foresee it as being as big a problem. In the evening, I think it is a problem that doesn't have a solution given the nature of the layout.

John Grant stated that there is a 5-6' grade break between the two elevations between the Malvern Shopping Center and the Kenney property. The physical barriers hold us back from making any improvements. There is the added liability concern for both Harlan and SEPTA. Mr. Grant stated that a stop sign will be placed exiting the lot by Kenney and the Shopping Center. There will be a crosswalk and handicapped ramps at the Kenney property.

Ms. McLean asked if a traffic engineering study was still being requested by the Planning Commission. Mr. Mongeau, Chair of the Planning Commission, responded that it was. The Planning Commission would like the traffic engineer to assess the best way to get people in and out of the parking lot.

Mr. Gill responded that the design of the access can't change.

Mr. Van Sciver stated that if the Borough has a headache every evening, with all these cars coming out at the same time, it could be a problem for the Borough. This must be addressed now.

Mr. Gill stated that the intention of the Reinvestment and Recovery Act was to get this work completed in a timely manner—two to two and one-half years from the Act being signed last February. SEPTA is still pushing very hard to maintain that time-frame. A March approval date would allow SEPTA to meet that goal.

Mr. Van Sciver stated that Council is very sensitive to what you are saying. It is important.

The motion carried unanimously by a vote of 5-0.

10. ORDINANCE NO. 2009-8 – KILLED-IN-SERVICE:

Council President Van Sciver opened the public hearing to discuss an Ordinance amending the Borough of Malvern Code of Ordinances by repealing Section 32-16.B(2) regarding death benefits for the families of police officers killed in service.

Wendy McLean, Esq., reported that Council is amending the Code of Ordinances because it is no longer necessary for the Borough to pay the killed-in-service benefit. The State decided that they should pay that benefit so the Borough has to remove it so they are not responsible for this benefit. The benefit remains, it is now being paid by the State.

There being no additional comments, the hearing was closed.

A motion was made by Council Member Smith, seconded by Council Member Crawford and unanimously carried by a vote of 5-0, to adopt Ordinance No. 2009-8, an Ordinance amending the Borough of Malvern Code of Ordinances by repealing Section 32-16.B(2) regarding death benefits for the families of police officers killed in service.

11. WAIVER OF PERMIT FEE – FIRST BAPTIST CHURCH OF MALVERN:

A motion was made by Council Member Crawford, seconded by Council Member Smith and unanimously carried by a vote of 5-0, to approve the request of the First Baptist Church of Malvern to waive the permit fee for the replacement of a roof on their property at 148-150 Channing Avenue (church annex, apartment, and one car garage).

12. ADOPTION OF THE PROPOSED BUDGET FOR 2010:

A motion was made by Council Vice President Raymond and seconded by Council Member Smith to adopt the Proposed Budget for 2010 as presented.

Council Vice President Raymond reported that in light of previous discussions, the Finance Committee is aware of the financial conditions in general in the country, as well as,

here. The Committee felt that the lock-step increases between the Union and Non-Union employees should be reconsidered. They did not think, however, it was a good idea to reconsider it on the fly and their recommendation is to consider this for next years budget but, at this point, remain with what we have bearing in mind the input we are getting from you and neighboring municipalities regarding how they are addressing employee wage issues.

Duane McCrory, 34 Raffaella Drive, stated that the Borough employees don't get the upside that people get when the economic upside is good. He does not think that just because times are bad we should take that away from the employees because they don't benefit when times are good. Their increases remain pretty much the same all the time.

The motion carried with a vote of 4-1, with Council President Van Sciver voting "No".

Council Vice President Raymond asked why he voted "No" and Council President Van Sciver stated that he did not agree with the assumption that we should work with the lock-step method.

Council Member Crawford stated that he agreed that the non-uniformed shouldn't be tied with the uniformed. His problem with making a change at this late date is that the Finance Committee discussed the impact of the budget items and came up with a proposal that called for increases in some items and decreases in others, but at least it was thought out. With all due respect to cuts of employees vs. non-cuts, it doesn't do any good to come in and raise an issue and expect to decide something on the fly but we should be able to deliberate and we have not had that. This issue was just proposed at the last meeting and this was done on the fly.

Council Member Smith stated that he agreed. To turn around at this late time to reverse ourselves at the expense of the employees is just not fair. Next year this matter should be given careful consideration.

Council Vice President Raymond would recommend to the new Council that consideration be given in January to begin discussions as to what needs to be done.

13. PUBLIC HEARING – FIXING THE TAX RATE FOR 2010:

Council President announces that Borough Council will now open the public hearing to consider fixing the tax levy for 2010.

The Notice of Public Hearing was published in the Daily Local News on December 7, 2009, as required.

It was reported that the tax levy would increase by one-quarter mill to 3.9697 mills.

There being no further comments, the hearing was closed.

14. ORDINANCE NO. 2009-7 – FIXING THE TAX RATE FOR THE YEAR 2010:

A motion was made by Council Member Smith, seconded by Council Vice President Raymond and unanimously carried by a vote of 5-0 to adopt Ordinance No. 2009-7, an Ordinance of Malvern Borough, Chester County, Commonwealth of Pennsylvania, Fixing the Tax Rate for the Year 2010 as follows:

Tax Rate for General Purposes	3.9697 Mills, 39.697 Cents
Total:	3.9697 Mills, 39.697 Cents

15. RESOLUTION NO. 613 – APPOINTMENT OF CPA FOR THE YEAR 2009 – WILLIAM J. ROSSITER:

A motion was made by Council Member Vike, seconded by Council Member Crawford and unanimously carried by a vote of 5-0, to adopt Resolution No. 613, a resolution appointing William J. Rossiter, Certified Public Accountant, as the independent auditor to audit the financial records of the Borough of Malvern for the year ending December 31, 2009 at a cost of \$9,450.00.

16. OTHER BUSINESS:

A. Healthcare Benefits – Council Vice President Raymond reported that the Finance Committee had a discussion regarding healthcare programs that are to be made available to our employees. After a lengthy discussion with the insurance broker, the Committee came up with a plan that provided a small amount of change with a significant decrease in cost to the employees. If the Borough kept the 2009 level of coverage, there would be a 12.13% increase in premium. By making a few changes that involve a co-pay for an inpatient hospital stay and a co-pay for outpatient surgery, plus an increase in prescription drug co-pays for brand names and formulary drugs but a \$0 co-pay for generic drugs, the healthcare premium only increased by 1.08% over the 2009 rate.

Council Member Smith stated that part of these changes took into consideration the compensation increase for 2010 to try to equal it out as much as possible. The 65+ coverage raised prescription drug co-pays and hospital visits.

17. ADJOURNMENT:

All business having been discussed, a motion was made by Council Member Crawford, seconded by Council Vice President Raymond and unanimously carried by a vote of 5-0 to adjourn the meeting at 9:40 p.m.

Respectfully submitted,

Sandra L. Kelley  
Secretary/Manager