

REGULAR MEETING
BOROUGH COUNCIL
MALVERN BOROUGH

July 21, 2009
7:30 P.M.

PRESIDING: Woody J. Van Sciver, President

INVOCATION: Gerard J. McGlone, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

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

2. PUBLIC FORUM:

Council President informs all present that copies of the agenda are available at the press 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. Anita Freeman, 101 Old Lincoln Highway – Ms. Freeman stated that she was behind in her sewer payments, did not keep to her payment plan, but did provide the Borough with three post dated checks. Ms. Freeman asked Council to accept her three post dated checks and to allow her to continue with the agreement and not shut off her water.

Following discussion, Council told Ms. Freeman that she would have to set up an automatic payment with her bank for payments to be paid by the 30th of each month, beginning August 30th, and that if payments are not received on time, the Borough will proceed with water shut-off. This is the final consideration that will be given to Ms. Freeman. Ms. Freeman must provide a written confirmation from her bank, by July 30th, that she has made the automatic withdrawal provision.

Council President Van Sciver asked if the Council wanted to set up this provision for delinquent payers going forward, but that it be set up earlier in the process when a resident becomes delinquent in their sewer payments. Council agreed.

3. APPROVAL OF MINUTES:

A motion was made by Council Member Crawford, seconded by Council Vice President Raymond and unanimously carried by a vote of 4-0, to approve the minutes of the meetings held on Tuesday, June 2, 2009, and June 16, 2009, as submitted.

4. APPROVAL OF REPORTS:

A motion was made by Council Vice President Raymond, seconded by Council Member Crawford and unanimously carried by a vote of 4-0, 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 June, 2009, as submitted.

5. RELEASE OF ESCROW FUNDS – GREENSTONE DEVELOPMENT II CORP.:

A motion was made by Council Member Vike, seconded by Council Member Crawford and unanimously carried by a vote of 4-0, to authorize Release #2 of escrow funds for Greenstone Development II Corp. (TAG Builders), in the amount of \$21,422.33, as recommended by the Borough Engineer.

6. PUBLIC HEARING – GRASS & WEEDS ORDINANCE:

Council President Van Sciver announced that Borough Council will now open the public hearing to consider an Ordinance amending Chapter 153, Article II "Grass and Weeds" and also amending Chapter 131, Section 131-1, to amend the definition of "Nuisance" to make it consistent with the provisions of Chapter 153, as amended.

The Public Hearing was advertised in the Daily Local News on July 13, 2009, as required.

No comments being received, the hearing was closed.

7. ORDINANCE NO. 2009-4 – GRASS & WEEDS ORDINANCE:

A motion was made by Council Member Vike, seconded by Council Member Crawford and unanimously carried by a vote of 4-0, to adopt Ordinance No. 2009-4, an Ordinance amending Chapter 153, Article II "Grass and Weeds" to amend regulations relating to the height of grass and the procedure for enforcement, and also amending Chapter 131, Section 131-1 to amend the definition of "Nuisance" to make it consistent with the provisions of Chapter 153, as amended.

8. OTHER BUSINESS:

a. Chester County Optional 1% Sales Tax – Following discussion, Council agreed to not take a position on this 1% Sales Tax as they felt there was not enough information available to make an informed decision. Enough information is not available about the Municipal Collaborative Efforts Fund, or who would administrate the fund, what projects will be considered by this Fund, etc.

b. LaGrie, LLC – the Manager reported that LaGrie, LLC, had withdrawn their eight lot subdivision plan on the private road off Old Lincoln Highway.

c. Paoli Battlefield Preservation Fund – the Manager reported that she had been asked by the PBPF if the Borough would allow the Fund to charge a fee for events at the Battlefield site. The Manager reported that she had talked to Wendy McLean, Esq., about this request and Wendy felt that the Borough would lose their immunity if someone was injured at an event sponsored by the PBPF at which a fee was charged. The Manager stated that the purpose of the PBPF was to provide educational activities at the site and that those activities cost money. Attendees are not making the requested donations when attending the events.

Wendy reported that the Borough has immunity under the Recreational Use of Land and Water Act. We have a blanket immunity for certain exceptions. Anyone who makes unimproved land available to the general public for free for recreational activities is immune from lawsuits. We have no immunity from Burke Park because it is improved with playground equipment. The Battlefield is unimproved. With it being unimproved and not charging a fee for events, the Borough should be immune from lawsuits. If the PBPF has an activity and someone gets hurt, the Borough could be sued. The PBPF is not currently insured so if someone gets hurt, the Borough would be the one they would go after. If we have enough insurance, it may not be a problem.

The question was asked if they only charge for some events, does that make us immune from all events or just those that they charge a fee to attend. Could that one event lose us our immunity?

The question was asked, what would be the cost of obtaining insurance vs the amount they would receive for donations from an event.

The Borough can either revoke the indemnification of the Fund or get the Fund to obtain insurance. If they want to charge a fee for events, they would have to obtain insurance.

Wendy suggested that Council ask the Fund to evaluate the cost of insurance vs proceeds received from charging a fee to their events so that they can make an informed decision.

It was suggested that perhaps the Borough could consider making a contribution to the PBPF for events so that the Borough could retain their sovereign immunity. However, in the meantime, the PBPF should look into the cost of insurance.

d. Contractors Licensing Ordinance – Wendy McLean stated that if the list of licensed contractors were put on the website, it would not mean that the Borough was endorsing the contractors. We would just be letting the public know that we have checked them out, they have insurance, etc. Wendy will proceed with crafting an Ordinance.

COUNCIL RECESSED TO EXECUTIVE SESSION TO DISCUSS A LEGAL MATTER
FOLLOWING THE EXECUTIVE SESSION, COUNCIL RECONVENED THE MEETING.

9. ADJOURNMENT:

A motion was made by Council Member Crawford, seconded by Council Vice President Raymond and unanimously carried by a vote of 4-0, to adjourn the meeting at 9:00 p.m.

Respectfully submitted,

Sandra L. Kelley
Secretary/Manager