

PRESIDING: Woody J. Van Sciver, President

INVOCATION: Gerard J. McGlone, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

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

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. SEPTA Informal Presentation (Michael Gill, Esq.) – Mike Gill, Esq., presented Council with an update on the scope of the Septa land development project. Mr. Gill reported that Septa will acquire the rear third of the Harlan property to allow increased parking. They also reached agreement with the owner of the Shopping Center for an access easement to allow for the driveway between the shopping center and the gas station to be a full 20' driveway. They will be replacing some existing dumpsters and creating a trash enclosure area for the shopping center. Employees of the shopping center will not be permitted to park directly behind their stores abutting the building, but Septa will be providing a separate parking area just for the shopping center employees.

Mr. Gill stated that the Planning Commission spent a great deal of time discussing landscaping. As part of the design standards, Septa has created landscaping design standards that would require landscaping between a maximum of every 30 parking spaces. Looking west, the landscaping will soften the area. There will be more "human element" landscaping on the east side where the station building is located and where there will be more pedestrian traffic. The human element landscaping includes more flowering perennials, more color and more vegetation. On the north side of the tracks there will be a mix of trees and flowering perennials.

Mr. Gill stated that once Septa has received a copy of their lighting plan from the consultant, they will try to alternate the lights between the trees. One issue will be the location of the stormwater basin where no vegetation or light standards can be placed. The lights closest to Warren Avenue will have glare shields.

Tony Dufour, Chairman of the Shade Tree Commission, asked if there would be any crosswalk from Broad Street to the north parking lot. Septa replied that they would take a look at this area. Mr. Dufour also advised that they be careful with their plant selection as many

trees will not grow in the soils in this area. Septa stated that they would expect to get the landscape plan to the Shade Tree Commission for review by later this week or early next week.

Glenn Morris of Septa reported that they are not touching the rest of the station for lots of reasons, one being the historical nature of the station. The Platform will have to be addressed later, as well. The tunnel, parking and lighting improvements are part of this project. The tunnel is not just for Septa passengers, but is also a pedestrian underpass for residents and hikers/walkers.

COUNCIL RECESSED TO EXECUTIVE SESSION TO DISCUSS A LEGAL MATTER

FOLLOWING THE EXECUTIVE SESSION, COUNCIL RECONVENED THE MEETING

3. APPROVAL OF MINUTES:

A motion was made by Council Member Vike, seconded by Council Member Smith and unanimously carried by a vote of 4-0, to approve the minutes of the meetings held on Tuesday, September 1 and September 15, 2009, as submitted.

4. APPROVAL OF REPORTS:

A motion was made by Council Member Crawford, seconded by Council Member Vike 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 September 2009, as submitted.

5. RESOLUTION NO. 604 – REVITALIZATION PLAN:

A motion was made by Council Member Smith, seconded by Council Vice President Raymond and unanimously carried by a vote of 4-0, to approve Resolution No. 604, a Resolution adopting the Malvern Borough Revitalization Plan 2009 Update as an Amendment to the Malvern Borough Comprehensive Plan of 1999, as Amended.

6. RESOLUTION NO. 605 – APPLIED ENERGY SYSTEMS:

A motion was made by Council Member Crawford, seconded by Council Member Smith and unanimously carried by a vote of 4-0, to approve Resolution No. 605, a Resolution approving, subject to conditions, the land development plan of Applied Energy Systems, entitled "Applied Energy Systems", prepared by McCarthy Engineering Associates, P.C., dated November 25, 2008, last revised August 7, 2009 as a preliminary/final development plan, pursuant to the Malvern Borough Subdivision and Land Development Regulations of 2006, as amended, for the development of certain property located in the Borough of Malvern, Chester County, Pennsylvania, which development is located in the LI-1 District, at 180 Quaker Lane.

7. RESOLUTION NO. 606 – ELIMINATE CONTRIBUTIONS TO THE POLICE PENSION PLAN FOR CALENDAR YEAR 2010:

A motion was made by Council Member Vike, seconded by Council Vice President Raymond and unanimously carried by a vote of 4-0, to approve Resolution No. 606, a Resolution to eliminate for the Calendar Year 2010 members contributions to the Police Pension Plan.

8. MINIMUM MUNICIPAL OBLIGATION – PENSION PLANS:

A motion was made by Council Member Smith, seconded by council Member Crawford and unanimously carried by a vote of 4-0, to enter into the 2010 Budget the Minimum Municipal Obligation for the Uniformed Pension Plan the amount of \$0 and for the Non-Uniformed Pension Plan the amount of \$33,378.

9. OTHER BUSINESS:

a. Shade Trees in the Borough – Following Council's last meeting, the solicitor advised that the Borough can require replacement trees for any shade trees that are removed. Council will investigate further what will be required if there is no room on a specific property to plant a replacement tree; i.e., fee in lieu, plant at another location in the Borough, donate a tree, etc. However, these options should only come into play if there is no alternative to planting on the property where the shade tree was removed.

Tony Dufour stated that he believes Ordinance language can be written to address existing vegetation, utilities, slopes, etc., that would address 90% of the cases.

Council Member Vike stated that he would favor a replacement policy but that he would like to explore specified language for replacement and exceptions if the tree could not be replaced on the property and the Borough should consider reasonable sense that there is a cost associated with removal and replacement of trees and consider ways to reduce the cost. Perhaps Public Works could assist with planting of the trees. A property owner would have to complete a form for assistance stating that the request conforms to whatever requirements are set for the appropriate size and species and that the property owner would like to have the tree planted within a specific time-frame and they are requesting the Borough to help defray the costs.

Council Vice President Raymond stated that she would like to have more information about how other municipalities handle this issue.

Council Member Crawford feels an Ordinance, rather than a policy, would be required that would set forth exceptions and guidelines to include whether a tree can or cannot be planted at a specified location. This would alleviate any case by case decision or discussion.

Mr. Sinquett, Green Street, stated that he liked the idea of having the Borough plant the trees, but asked what would happen if the trees died, who would pay for the replacement?

Council Member Vike stated that we could include language that says we are not liable if Public Works plants the trees.

Regarding the request by the property owner at One Karen Drive to remove a shade tree that is heaving a sidewalk, a motion was made by Council Member Crawford,

seconded by Council Member Raymond and unanimously carried by a vote of 4-0, to grant permission to remove the tree that is damaging their sidewalk.

b. Request from PBPF re. BRAVO Agreement – Council had no objections to executing the Contract with BRAVO regarding the archaeological survey to be completed at the Paoli Battlefield site.

A motion was made by Council Vice President Raymond, seconded by Council Member Crawford and unanimously carried by a vote of 4-0, to allow the Borough Manager to execute the version of the BRAVO Contract distributed with the Council packets for archaeological work at the battlefield.

c. Taser Recommendation – Council Member Crawford referred Council to the recommendation from the Chief regarding the use of tasers by his police officers. Council Member Crawford reported that the Chief's memorandum provided answers to all the questions presented by the Public Safety Committee. The Chief is requesting the purchase of two tasers, the cost of which will come out of their budget. One officer has had training and a gentleman came in and gave the Public Safety Committee a demonstration and explanation about the tasers and discussed legal issues involved. It was explained that there have been several court cases that have supported the appropriate use of a taser. The purchase of tasers will bring the Borough's Police Department in conformity with the surrounding municipalities that all have tasers.

Council Member Crawford asked Council's approval for the Chief and the Manager to make the purchase of two tasers.

Council Member Smith asked the Chief how many times in the past 5-10 years our officers have had to pull their weapon and asked if tasers weren't supposed to be an alternative. He stated that he could see tasers in Philadelphia or other towns rather than in a sleepy little town like Malvern.

Council Member Crawford responded that this is an alternative if the occasion came up. If you didn't have the alternative to pulling a gun, then you are subject to having to pull a gun rather than use a taser. In another town, why would we need guns? If a Police Officer comes upon a rare occasion when he must pull his gun and shoot someone, and has the alternative of using a taser instead, why not use a taser rather than a gun.

The Chief reported that once all the officers have been trained and certified in the use of tasers, once a year the officers must be recertified for tasers.

Council Member Crawford explained that the training provides the officers with the knowledge of when to use force or tasers. Tasers are used throughout the country.

Council Member Smith stated that every month Council receives a copy of the Police Report and there isn't anything in that report that would justify them using a taser.

Council Member Crawford responded that that is Council Member Smith's judgment call. He stated that Mr. Smith doesn't know what was involved when the officer stopped someone. You can't make that statement by just looking at a police report.

Mayor McGlone stated that there have been instances in domestic cases where they have gotten physical. If that person had a gun in that situation, you don't know what would happen.

Tony Dufour stated that he doesn't feel this is a sleepy little town. There have been three times when he felt his family was threatened by an incident out on the street. He stated that it is not pulling the gun that is the question, it is prevention.

Mr. McCrory, Raffaella Drive, stated that he likes the idea of tasers. If the officer is going to pull a gun and he has an option to subdue someone, he thinks that is the better option.

Council Member Crawford stated that at the Public Safety Committee meeting, he raised the question regarded training and that clearly the maturity of the officers didn't raise the question of using a taser just because they had it; the types of tasers available was discussed, and all members of the Committee agreed to proceed with a positive recommendation.

A motion was made by Council Member Crawford, seconded by Council Vice President Raymond and carried by a vote of 3-1 to approve the recommendation of the Public Safety Committee to allow the Police Department to purchase two tasers at the approximate cost of \$2,800, as soon as possible for the uses as described at the Public Safety Committee meeting. The Public Safety Committee voted unanimously to make the recommendation to purchase. Council Member Smith voted "No".

10. ADJOURNMENT:

All business having been discussed, a motion was made by Council Member Crawford, seconded by Council Member Vike and unanimously carried by a vote of 4-0 to adjourn the meeting at 9:24 p.m.

Respectfully submitted,

Sandra L Kelley
Secretary/Manager