

REGULAR MEETING
BOROUGH COUNCIL
MALVERN BOROUGH
1 East First Avenue
Malvern, PA 19355

April 20, 2021
7:30 P.M.

PRESIDING: Amy Finkbiner, Ph.D., President

INVOCATION: David B. Burton, Mayor

1. ROLL CALL

PRESENT

Council President Finkbiner
Council Member Bones
Council Member Laney
Council Member Meisel
Council Member Phillips
Council Member Raynor
David B. Burton, Mayor

ABSENT

Council Vice-President Grossman

Council President Finkbiner announced that this evening's meeting was being held virtually due to the COVID-19 pandemic and as permitted under Act No. 15 of 2020. Council President Finkbiner announced the following guidelines for the meeting:

- Participants will be asked to identify themselves when being accepted into the meeting.
- The public will be muted during the meeting when the members of Borough Council are speaking.
- For each agenda item, the public will be unmuted and given an opportunity to comment and ask questions.
- Public Comment received via email will be read by the Borough Manager either during the topic on the agenda or the general "Public Forum" period.
- Participants wishing to comment must state their name and must speak one at a time.

2. APPROVAL OF AGENDA

A motion was made by Council Member Laney, seconded by Council Member Bones, and carried by a vote of 6-0, to approve the agenda for the April 20, 2021 meeting of Borough Council as presented.

3. ANNOUNCEMENTS

REGULAR MEETING

April 20, 2021

Page 2

a. Recording of the Meeting

Council President Finkbinder asked in accordance with Resolution No. 787 if any member of the audience was recording the meeting.

No member of the audience identified themselves as recording the meeting.

b. Council President Finkbinder announced that Pennsylvania has opened COVID-19 vaccine eligibility to all residents age 16 and older. Information from the Chester County Health Department is available on the Borough website. A link to the Chester County Health Department was provided on the agenda.

c. Council President Finkbinder announced that the Malvern Public Library will host a book sale on Friday, April 30, 2021 and Saturday, May 1, 2021. The book sale will occur in the rear yard of Borough Hall along Channing Avenue.

d. Council President Finkbinder announced that Malvern Borough will host a Community Visioning Session on May 10, 2021 (rain date of May 12, 2021) at the Paoli Battlefield. This is part of the update to the Borough's Comprehensive Plan that is currently underway. Council President Finkbinder encouraged everyone who is available to participate and thanked everyone who completed the recent public survey.

e. Council President Finkbinder announced that Jennifer Benson and Amy DiElsi have submitted their resignations from the Parks & Recreation Committee. These vacancies will be announced on the Malvern Borough website. Borough Council thanked Ms. Benson and Ms. DiElsi for their service to the community.

4. MINUTES & REPORTS

a. APPROVAL OF MINUTES

A motion was made by Council Member Laney, seconded by Council Member Bones, and carried by a vote of 6-0, to approve the minutes from the April 6, 2021 meeting of Borough Council as presented.

b. APPROVAL OF REPORTS

A motion was made by Council Member Laney, seconded by Council Member Bones, and carried by a vote of 6-0, to approve the Treasurer's Report, the Committee Reports for Finance and Administration, Public Safety, Public Works, the Chief of Police Report, the Code Enforcement Department 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 March 2021, as submitted.

c. BOROUGH COUNCIL COMMITTEE REPORTS

REGULAR MEETING

April 20, 2021

Page 3

- Finance & Administration

Council Member Laney stated that the Finance & Administration Committee has not met since the March 16, 2021 meeting of Borough Council. The Committee reviewed information via email regarding proposals for enhanced cybersecurity insurance coverage for the Borough. The proposal from Travelers Insurance was discussed at the April 6, 2021 meeting of Borough Council and approved. This coverage has been added to the Borough's policy.

- Public Safety

Council Member Meisel stated that the Public Safety Committee has not met since the March 16, 2021 meeting of Borough Council, but will be looking to schedule a meeting during the month of May. At the April 6, 2021 meeting, a concern was raised regarding site visibility at the intersection of First Avenue and Church Street. The Code Enforcement Officer reviewed this matter and noted issues with site visibility. This matter will be addressed through the Code Enforcement process.

Council Member Meisel stated that two (2) ordinances are before Borough Council this evening to amend chapter 200 (Vehicles & Traffic) of the Borough's Code of Ordinances. An ordinance establishing no parking regulations on a segment of the west side of Channing Avenue and loading/unloading restrictions on Bridge Street is before Borough Council this evening for a public hearing and possible adoption. An ordinance to establish Second Avenue from Warren Avenue to Channing Avenue as a one-way street headed east is before Borough Council for consideration to authorize advertisement.

- Public Works

Council Member Bones the Public Works Committee has not met since the March 16, 2021 meeting of Borough Council. The bid results for the paving of Ruthland Avenue and Green Street are before Borough Council this evening for consideration of the awarding of the contract. Council Member Bones stated that information was sent to Borough Council regarding an emergency repair to pump station #1 in the Borough's sanitary sewer system. Borough Manager Bashore summarized the repair, noting that the system is functioning properly and the new hydraulic grinder should be received within four (4) weeks. Borough Manager Bashore noted that there is an additional repair to pump station #1 that will be sent to the Public Works Committee for review.

5. SPECIAL BUSINESS

- a. 51 Ruthland Avenue Subdivision – Request for street trees not to be planted

Council President Finkbiner stated that the residents of the new subdivision on 51 Ruthland Avenue are requesting that the street trees on Ruthland Avenue outlined on the approved subdivision and land development plan not be planted. The approved plan calls for the installation

REGULAR MEETING

April 20, 2021

Page 4

of eight (8) street trees and the owners of four (4) of the five (5) new homes are requesting that a fee-in-lieu be accepted by the Borough.

Borough Manager Bashore stated that the Borough's Subdivision & Land Development Ordinance requires the planting of street trees at a rate of one (1) for every 35 ft. of street frontage and noted that there are ten (10) species outlined. The trees that must be planted are a 3" to 3 ½" caliper as specified in the Subdivision & Land Development Ordinance. Borough Manager Bashore stated that he believes that the following options are before Borough Council for consideration in this matter:

- Require that the street trees outlined on the approved subdivision and land development plan be installed.
- Permit a reduction in the number of street trees for the development and accept a fee-in-lieu for any trees not planted.
- Allow the developer to not plant any trees and accept a fee-in-lieu for this project.

Borough Manager Bashore stated that Borough Council could permit the installation of a different species and could select from the Plant Material List outlined in the Borough's Zoning Ordinance, which allows for deciduous trees to be planted at a minimum 2 ½" caliper.

Borough Engineer Daley noted that utility locations and other constraints have impacted the placement of trees in other projects and stated that the approved plan is not always followed as presented and approved. Borough Engineer Daley stated that he has not fully analyzed the site, but he has not received any notices about utility conflicts from the developer. Council President Finkbiner asked if utility locations are documented on the final as-built plans that are submitted for a project. Borough Engineer Daley stated that required public improvements are documented on as-built plans, but not utility locations.

Council Member Bones discussed the tree species outlined in the Borough's Subdivision & Land Development ordinance, noting that the list needs to be updated. Council Member Bones noted that an update is currently being developed. Council Member Bones stated that the Shade Tree Commission would support the installation of smaller caliper trees, and noted that there may be planting obstacles in front of 51 Ruthland Avenue.

Council Member Laney stated that she believes that the request is to not plant any trees.

Council Member Meisel stated that he was in agreement with Council Member Bones and discussed the environmental benefits of street trees. Council Member Meisel stated that he believes that allowing for no street trees would set a bad precedent.

Council Member Phillips stated that he would support the planting of flowering trees. Council Member Raynor agreed with this recommendation.

REGULAR MEETING

April 20, 2021

Page 5

At this time, Council President Finkbiner opened the floor to public comment.

Rebecca Stark, 51 Ruthland Avenue, thanked Borough Council for considering this request, desired to work with the Borough, and stated that she would support the installation of flowering trees. Ms. Stark noted her concern over the impact the proposed trees would have on the underground utilities. Ms. Stark asked if it would be possible to locate the trees to the rear of the properties. Borough Manager Bashore stated that this would not satisfy the requirements of the Subdivision & Land Development Ordinance.

Gary Stark, 51 Ruthland Avenue, noted concerns with the placement of the proposed trees as it pertained to the fire hydrant on Ruthland Avenue and the existing electrical line that runs to his home.

Chris Buckley, 55 Ruthland Avenue, stated that he was open to compromising and agreed with Council Member Bones that the proposed trees were too large. Mr. Buckley noted that the proposed trees on the plan could become a large issue with the utilities that are in existence. Mr. Buckley requested that a less messy tree be considered, as well as one that may not be susceptible to the spotted lanternfly. Mr. Buckley noted that he was unsure if two (2) trees on his property was possible.

Council President Finkbiner asked about the next steps. Council Member Bones recommended that Tony Dufour, a landscape architect who the Borough has worked with on past projects, be consulted in conjunction with the Borough Engineer. Borough Engineer Daley agreed and recommended that he and Mr. Dufour consult with the developer. Borough Manager Bashore recommended that Borough Engineer Daley and Mr. Dufour work with the developer to outline the species and make the trees uniform from an aesthetic perspective. Borough Manager Bashore recommended that the Shade Tree Commission review the final plan once that is complete.

Council President Finkbiner asked if this would be the final step and if the changes would be documented. Borough Manager Bashore stated that all the changes would be documented on the final as-built plan, but this would not need to come back before Borough Council.

Council Member Bones noted that the Borough would like to see the right trees in the appropriate location.

Mayor Burton asked if a fee-in-lieu would still be required for any trees that may not be able to be planted. Borough Manager Bashore stated that it would be as the developer is required by ordinance to plant a specified number of trees. Borough Manager Bashore stated that the fee-in-lieu would be based on the funds in escrow for the project.

Council President Finkbiner asked if there were any additional public comments.

Gary Stark, 51 Ruthland Avenue, stated that he is open to street trees, but was concerned about the originally proposed maple trees due to their size.

REGULAR MEETING

April 20, 2021

Page 6

Chris Buckley, 55 Ruthland Avenue, stated that he would prefer to only have one (1) tree planted in front of his property.

John Buckley, 165 Church Street, stated that could accept the trees if the Borough needs a place to plant them.

There being no further discussion, Council President Finkbinder called for a vote.

A motion was made by Council Member Raynor, seconded by Council Member Bones, and carried by a vote of 6-0, to approve a change in street tree species for the approved subdivision and land development project at 51 Ruthland Avenue, subject to the review of the Borough Engineer and Landscape Architect, with final species selection to be approved by the Shade Tree Commission, conditioned on the developer paying a fee-in-lieu if it is determined that any street trees required cannot be planted.

b. ORDINANCE NO. 2021 – 1: AMENDMENTS TO CHAPTER 200 (VEHICLES & TRAFFIC)

- PUBLIC HEARING: Council President Finkbinder announced that Borough Council will now open a public hearing to consider Ordinance No. 2021 – 1. This ordinance would amend chapter 200 of the Malvern Borough Code of Ordinances pertaining to vehicles and traffic. Specifically, the proposed ordinance would amend section 200-23 in order to restrict parking on the west side of Channing Avenue from First Avenue to the entrance to the Malvern Police Department and section 200-26 in order to establish prohibitions for loading/unloading times by commercial vehicles on Bridge Street.

The Notice of Public Hearing was published in the April 9, 2021 edition of the Daily Local News, as required, as well as posted on the Borough website.

A motion was made by Council Member Bones, seconded by Council Member Laney, and carried by a vote of 6-0, to open the public hearing on proposed Ordinance No. 2021-1.

Council President Finkbinder asked if there were any comments from Borough Council on the proposed ordinance. No comments were noted.

Council President Finkbinder asked if there were any comments from the public on the proposed ordinance.

Kel Schmitt, 17 Channing Avenue, asked about the location of the proposed parking restrictions and if it was where the current temporary no parking signs are located. Borough Manager Bashore stated that it was.

John Buckley, 165 Church Street, asked if police officers would be permitted to park their personal vehicles in this location, which is currently occurring. Borough Manager Bashore stated that authorized vehicles would be permitted to park in this location. Chief Marcelli stated that the main parking lot is intended for use by the residents, library patrons, and the administration. Council Member Bones stated that this has been in place for some time and has been working well. Council Member Phillips noted that the spaces are needed, particularly when the COVID-19 pandemic ends, highlighting the need for extra parking. Borough Manager Bashore stated that there are times when all the parking spaces in the main lot are filled.

There being no further discussion, Council President Finkbiner thanked the public for their comments.

A motion was made by Council Member Raynor, seconded by Council Member Laney, and carried by a vote of 6-0, to close the public hearing on proposed Ordinance No. 2021-1.

- ADOPTION – ORDINANCE NO. 2021 – 1: AMENDMENTS TO CHAPTER 200 (VEHICLES & TRAFFIC)

A motion was made by Council Member Bones, seconded by Council Member Phillips, and carried by a vote of 6-0, to adopt Ordinance No. 2021 – 1, amending chapter 200, sections 200-23 and 200-26, of the Malvern Borough Code of Ordinances.

c. **EXPANDED OUTDOOR DINING FORBEARANCE AGREEMENTS**

Council President Finkbiner stated that Restaurant Alba is requesting a 60-day extension of their existing agreement for outdoor dining during the COVID-19 pandemic. All existing conditions are proposed to remain in place. The extension would expire on June 19, 2021.

A motion was made by Council Member Raynor, seconded by Council Member Bones, and carried by a vote of 6-0, to approve the 60-day extension to the Outdoor Dining Forbearance Agreement for Restaurant Alba.

6. UNFINISHED BUSINESS

Council President Finkbiner stated that there are no items of unfinished business before Borough Council this evening.

7. NEW BUSINESS

- a. 2021 Paving Program – Awarding of Bid – Ruthland Avenue & Green Street

REGULAR MEETING

April 20, 2021

Page 8

Council President Finkbiner stated that a recommendation on the award of the contract for the paving of sections of Ruthland Avenue and Green Street are before Borough Council. These projects involve the mill overlay of Ruthland Avenue from First Avenue to King Street and Green Street from Second Avenue to First Avenue. Costs for these projects have been allocated in the 2021 budget in the Highway Aid Fund. Council President Finkbiner noted that the low bidder, John A. DiRocco Contractors, has completed other paving projects in the Borough before.

Chris Buckley, 55 Ruthland Avenue, asked when the paving would occur. Borough Manager Bashore stated that the Borough typically completes paving projects during the summer. Council Member Bones asked when property owners will receive notice of the work. Borough Manager Bashore stated that the contractor must provide at least 48 hours' notice, but that an announcement would be placed on the Borough website. Mr. Buckley asked if he would be able to access his property during the paving. Borough Manager Bashore stated that he would.

A motion was made Council Member Bones, seconded by Council Member Phillips, and carried by a vote of 6-0, to award the contract for the paving of Ruthland Avenue from First Avenue to King Street and the paving of Green Street from Second Avenue to First Avenue to John A. DiRocco Contractors based on their bid dated April 1, 2021 in the amount of \$32,582.22 based on the recommendation of the Borough Engineer.

- b. Proposed Ordinance Amendment – Chapter 200 (Vehicles & Traffic) – Authorization to Advertise

Council President Finkbiner stated that an ordinance is before Borough council this evening to amend Chapter 200 of the Borough's Code of Ordinances. This ordinance is being recommended by the Public Safety Committee. The proposed ordinance would establish Second Avenue from Warren Avenue to Channing Avenue as a one-way street in the eastbound direction. This has also been recommended in the 2018 Malvern Borough-wide Multimodal Transportation Study. If authorized for advertisement, a public hearing on the proposed ordinance could be held at the May 4, 2021 meeting of Borough Council.

Council President Finkbiner asked if there were any comments from Borough Council. No comments were noted.

Council President Finkbiner asked if there were any comments from the public.

Carroll Sinquett, 223 Green Street, discussed the turning radius studies that were previously completed by the Borough Engineer and stated he believed that those showed that a school bus could not make the turn on to Second Avenue even if it was a one-way street. Council President Finkbiner stated that she would need to review this information, but did recall discussion about softening the radius on the Malvern Retreat side of the intersection, but noted that this was a long term project. Council Member Bones noted concerns with site visibility in the westbound lane for vehicles turning left onto Warren Avenue.

Mr. Siquett noted that the Planning Commission had recommended that this road be widened in 2013 has part of the approval for the Gables subdivision and that he has never had an issue on Second Avenue. Council Member Phillips stated that this is a lower cost option to address the concerns with Second Avenue and that the Borough could revisit other possibilities if this is not beneficial.

John Buckley, 165 Church Street, stated that there had previously been discussion about placing concrete barriers at the intersection with Warren Avenue and if this was still being considered. Borough Manager Bashore stated that taking that course of action may impact the Borough's liquid fuels funding.

There being no further discussion, Council President Finkbiner called for a vote.

A motion was made by Council Member Laney, seconded by Council Member Phillips, and carried by a vote of 6-0, to authorize the advertisement of a proposed ordinance to amend Chapter 200 of the Borough's Code of Ordinances to establish a section of Second Avenue as a one-way street.

c. Volunteer Board & Committee Appointment Considerations

- Zoning Hearing Board (alternate member)

Council President Finkbiner stated that Lloyd Stackhouse had submitted his resignation as an alternate member of the Zoning Hearing Board effective March 31, 2021 as he intended to move out of Malvern Borough. Mr. Stackhouse has advised that he will be remaining in the Borough and desires to continue in his role as an alternate member of the Zoning Hearing Board. Borough Council would need to re-appoint Lloyd Stackhouse as an alternate member to the Zoning Hearing Board for a term to expire on January 1, 2024. With this re-appointment, there would still be one (1) vacancy for an alternate member on the Zoning Hearing Board.

A motion was made by Council Member Bones, seconded by Council Member Raynor, and carried by a vote of 6-0, to re-appoint Lloyd Stackhouse as an alternate member of the Zoning Hearing Board.

d. Zoning Hearing Board

Council President Finkbiner announced that there are no new applications before the Zoning Hearing Board.

8. PUBLIC FORUM

Council President Finkbiner stated that Borough Council will now take comment from the public on any item not on the agenda.

REGULAR MEETING

April 20, 2021

Page 10

Council Member Bones announced the bare root tree program and thanked the Borough staff and the Public Works Department for coordinating the pick-up and delivery of the trees.

Chris Buckley, 55 Ruthland Avenue, discussed the condition of the sidewalks in the Borough, noting that some are in poor condition and discussed safety concerns. Mr. Buckley recommended having a sidewalk installed on E. First Avenue due to the number of people who walk that street. Council President Finkbiner recommended that the Public Safety Committee review the possibility of installing sidewalks on E. First Avenue.

Borough Manager Bashore stated that sidewalk maintenance is the responsibility of the property owner and is handled through the Code Enforcement process. Borough Manager Bashore noted changes in regulations and is not aware of any authority the Borough has to compel a property owner to remove sidewalk and upgrade it to current regulations. Council Member Meisel recommended having funds available in the annual budget to address areas that may be missed or may not meet the requirements for Code Enforcement.

Council President Finkbiner discussed previous conversations that occurred about entering into a contract for sidewalk repairs where the cost for repairs would be at a fixed rate and would be paid directly to the contractor. Council President Finkbiner noted that she was unsure if such an arrangement was possible. Borough Manager Bashore noted that the Borough could inspect sidewalks that need repair as part of the annual paving program and send notices out so that the work is done in conjunction with the paving projects.

John Buckley, 165 Church Street, asked about the status of his request for curbing on First Avenue to Green Street. Borough Manager Bashore stated that he has referred this to the Borough Engineer and the recommendations will be provided to the Public Works Committee for review.

Kel Schmitt, 17 Channing Avenue, announced that the Malvern Farmers Market will begin weekly operations on May 1, 2021. Mr. Schmitt thanked the Public Works Department for the recent work completed to the pavilion in Burke Park.

9. ADJOURNMENT

All business having been discussed, a motion was made by Council Member Laney, seconded by Council Member Raynor, and carried by a vote of 6-0, to adjourn the meeting at 8:53 p.m.

Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary