

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

July 7, 2020
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 Bones, seconded by Council Member Laney, and carried by a vote of 6-0, to approve the agenda for the July 7, 2020 meeting of Borough Council as presented.

3. ANNOUNCEMENTS

a. Recording of the Meeting

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

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meeting was being recorded for minute taking purposes, but the recording would not be posted on the Borough website.

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

b. Council President Finkbinder announced that all Malvern Borough park and recreation facilities are re-opened for use as of June 26, 2020.

c. Council President Finkbinder announced that the “Malvern Fire Company Food Fare” will be held from July 8, 2020 to July 12, 2020 at the Paoli Memorial Grounds.

d. Please watch the Malvern Borough website for updates pertaining to COVID-19 (e.g., community events, meetings, etc.).

4. MINUTES & REPORTS

a. APPROVAL OF MINUTES

A motion was made by Council Member Raynor, seconded by Council Member Phillips, and carried by a vote of 6-0, to approve the minutes of the meeting held on Tuesday, June 16, 2020 as presented.

5. SPECIAL BUSINESS

a. PRESENTATION – 2019 FINANCIAL REPORT AND AUDIT FOR THE BOROUGH OF MALVERN

George Fieo, CPA, appeared before Borough Council in order to discuss the 2019 Financial Report and Audit. Mr. Fieo stated that his office has issued a clean opinion on the Borough’s financial statements. Mr. Fieo reviewed the audit process and noted that field work began on the last business day of January, but issues with the COVID-19 pandemic delayed completion of the 2019 audit. Mr. Fieo stated that there are certain issues noted in his correspondence to Borough Council that are beyond the Borough’s control due to its size. Mr. Fieo commended the Borough for its hands-on management at all levels. Borough Council thanked Mr. Fieo for his report.

A motion was made by Council Member Laney, seconded by Council Member Meisel, and carried by a vote of 6-0, to approve the 2019 Financial Report and Audit for the Borough of Malvern as presented.

b. EXPANDED OUTDOOR DINING FORBEARANCE AGREEMENTS

- Restaurant Alba

Council President Finkbinder stated that Restaurant Alba is seeking to expand its existing outdoor dining due to the limitations placed on indoor dining due to the COVID-19 pandemic. Borough Manager Bashore noted that Restaurant Alba had approved outdoor dining and noted that the expansion was for 14 seats on an existing patio area and along King Street.

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Borough Manager Bashore noted the agreement would allow this expansion for a period of 60 days. Council President Finkbiner asked if there have been any issues since the new tables have been installed. Borough Manager Bashore stated that no issues were noted. Council Member Raynor noted that she appreciated how the tables were arranged.

A motion was made by Council Member Laney, seconded by Council Member Phillips, and carried by a vote of 6-0, to ratify the expanded outdoor dining forbearance agreement with Restaurant Alba.

- Malvern Pizza

Borough Manager Bashore stated that Malvern Pizza is seeking to provide for outdoor seating in their parking lot adjacent to the building. Borough Manager Bashore noted that the plan outlines that six (6) tables will be installed and the proposed tables will be enclosed with a barrier.

John Buckley, 165 Church Street, asked about the loss of parking spaces with the outdoor seating. Council President Finkbiner stated that this is temporary and there would be parking available in the adjacent municipal lot. Council President Finkbiner stated that the approval could be rescinded if parking becomes an issue.

A motion was made by Council Member Phillips, seconded by Council Member Laney, and carried by a vote of 6-0, to ratify the forbearance agreement for outdoor dining with Malvern Pizza.

c. MALVERN PREPARATORY SCHOOL – REQUEST FOR EXTENDED USE OF TEMPORARY CLASSROOMS

Council President Finkbiner stated that Malvern Preparatory School is requesting an extension of the approval previously granted for the use of temporary classrooms an additional year. Approval for this use was granted in 2015 and was for a period of five (5) years. This request is being made in order to adhere to COVID-19 social distancing and safety requirements for schools. Borough Manager Bashore stated that both the Borough Engineer and the Borough's Building & Code Enforcement Official/Fire Marshal have no objection to this use being extended.

A motion was made by Council Member Laney, seconded by Council Member Bones, and carried by a vote of 6-0, to approve the request of Malvern Preparatory School for a one (1) year extension of their temporary trailers.

d. CHESTER COUNTY SOLID WASTE AUTHORITY PROCESSING AND MARKETING CONTRACT – ONE (1) YEAR EXTENSION

Borough Manager Bashore stated that a new processing and marketing contract was entered into in 2018 with Total Recycling. Borough Manager Bashore summarized the history of the contract. Borough Manager Bashore stated that the partners in the Chester County Solid Waste Authority's Process and Marketing Contract for Recyclables desire to extend the contract for an additional year. The Borough has participated in this program since its inception.

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A motion was made by Council Member Raynor, seconded by Council Member Phillips, and carried by a vote of 6-0, to authorize the one (1) year extension of the Chester County Solid Waste Authority's processing and marketing contract.

6. UNFINISHED BUSINESS

a. Chester County Vision Partnership Program – Consultant Selection

Council President Finkbiner stated that this matter had previously been discussed at the May 19, 2020 meeting of Borough Council. Council President Finkbiner stated that Malvern Borough has been awarded a \$31,890 Vision Partnership Program Grant from Chester County for the update to the Borough's Comprehensive Plan. The next step is to consider the selection of a consultant to complete the plan. Council President Finkbiner noted that the selection of a task force would be delayed to the late summer.

Meredith Mayer from the Brandywine Conservancy appeared before Borough Council to answer any questions on the proposed scope of work and the process of updating the Comprehensive Plan. Ms. Mayer stated that she believes that this could still be completed by having the task force meet via Zoom, but noted that the community visioning session may be difficult.

Council Member Bones asked if it would be possible for him to receive a copy of the 2019 proposal. Council Member Raynor suggested that the previous proposal be summarized. Ms. Mayer summarized the Comprehensive Plan process, noting that it is a 10 year plan for the community and is not regulatory, but it does provide direction and vision to inform plans and policies. Ms. Mayer noted that the Municipalities Planning Code outlines a 10 year update timeline for Comprehensive Plans. Ms. Mayer stated that the process to complete the update is approximately two (2) years.

Council President Finkbiner outlined the sequence for updating the various land use documents for the Borough. Borough Manager Bashore noted that the two (2) year completion timeline will commence once the grant contract is executed.

Danny Fruchter, 234 Channing Avenue, asked about Meredith Mayer's team and what resources they bring. Ms. Mayer stated that the Brandywine Conservancy will be partnering with Thomas Comitta Associates due to their experience in more urban settings, the Chester County Planning Commission for the economic data, and McMahon Associates for the transportation components of the plan.

A motion was made by Council Member Bones, seconded by Council Member Raynor, and carried by a vote of 6-0, to appoint the Brandywine Conservancy as the Borough's consultant to complete the update of the Borough's Comprehensive Plan.

7. NEW BUSINESS

a. Malvern Borough Environmental Advisory Council – PA Single-Use Plastics Ban Preemption

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Council President Finkbiner stated that the Pennsylvania legislature has prevented municipalities from taxing or banning single-use plastics until July 1, 2021 or six (6) months after the expiration of Governor Wolf's emergency declaration, whichever is later. The Environmental Advisory Council recommends that Malvern Borough write a letter in opposition to legislation that would extend this preemption further. Council Member Finkbiner noted that Malvern Borough is not considering regulating single-use plastics at this time, only supporting the authority of municipalities to do so.

Council Member Bones stated that he will support the decision of Borough Council, but noted the potential issues that could be created when municipalities have different provisions and the burden that places on businesses that operate in various jurisdiction.

Council Member Laney asked if a ban on single-use plastics would need to be approved via referendum. Borough Manager Bashore stated that it would require an ordinance adopted by Borough Council.

Council President Finkbiner recommended that any letter written not reference a specific bill number and speak to this topic in general.

Cathy Raymond, 6 Karen Drive, stated that it is important to maintain municipal authority to regulate single-use plastics and supported a letter being written.

Danny Fruchter, 234 Channing Avenue, stated that it is important for the Borough to make its voice known on important issues and topics, particularly on matters of the environment.

A motion was made by Council Member Meisel, seconded by Council Member Phillips, and carried by a vote of 6-0, to authorize the issuance of a letter opposing the prohibition on the ability of municipalities to regulate single-use plastics.

b. Zoning Hearing Board

Council President Finkbiner stated that there are no new applications before the Zoning Hearing Board. The existing application for 128-142 E. King Street was reviewed by the Malvern Planning Commission at its June 18, 2020 meeting, and will be discussed at the July 21, 2020 meeting of Borough Council. Council President Finkbiner stated that the hearing is tentatively scheduled for July 27, 2020, but that may be pushed back to August. Council President Finkbiner summarized the functions of the Zoning Hearing Board, the variances being requested by the applicant, and the land development process in general.

No action was taken.

8. PUBLIC FORUM

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

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Danny Fruchter, 234 Channing Avenue, asked about the link between not posting the application to the Zoning Hearing Board and the approval of the Planning Commission minutes from its June 18, 2020 meeting. Council President Finkbinder clarified this and stated that the posting of the application to the website is linked to when the hearing is scheduled. Mr. Fruchter stated that the public cannot speak with Borough Council about the application if it is not posted. Council President Finkbinder stated that the application will be posted when the hearing is advertised. Mr. Fruchter stated that the Planning Commission took no position on the application and asked the members of Borough Council their opinions on the project. Mr. Fruchter noted that the variances requested will tie the hands of the Borough during the land development process. Council Member Bones stated that each Council member is monitoring this closely and will make the appropriate decisions that are best for the Borough of Malvern.

John Buckley, 165 Church Street, stated that he believes that the first plan presented for a multi-use building would be best for the Borough.

Bill Doughty, 145 Woodland Avenue, noted that there were several concerns over this project, including that the building is out of scale and that the variances are not necessary. Mr. Doughty asked about the legal process and when the Borough must say yes to the requested relief. Council President Finkbinder outlined the process for variance requests and the land development process. Council President Finkbinder noted that the current issues are best addressed at the meeting of the Zoning Hearing Board.

Cassandra Doughty, 145 Woodland Avenue, asked if there will be a representative advocating for the residents and if there is anything that can be done to stop the project. Council President Finkbinder stated that the Zoning Hearing Board is bound to hear the application and it is the duty of the applicant to prove that they have a hardship. Borough Manager Bashore summarized the requirements for meeting a hardship.

Connie Scanga, 152 Woodland Avenue, asked where the balance of hardship to the community and the hardship to the property owner exists. Council President Finkbinder stated that if it pertains to the relief requested, the balance is determined by the Zoning Hearing Board; during the land development process, the balance is determined by the Planning Commission and Borough Council. Borough Manager Bashore stated that there is no requirement to grant any relief from the Borough's ordinances.

Council Member Laney asked for an explanation of the relationship between the Zoning Hearing Board and Borough Council. Borough Manager Bashore and Assistant Borough Manager Loomis summarized the relationship.

Danny Fruchter, 234 Channing Avenue, stated that the reason for Borough Council to send its Solicitor is because the Borough automatically has standing in front of the Zoning Hearing Board. Mr. Fruchter noted that hardships cannot be of the developer's own making.

9. ADJOURNMENT

All business having been discussed, a motion was made by Council Member Meisel, seconded by Council Member Laney, and carried by a vote of 6-0, to adjourn the meeting at 8:50 p.m.

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Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary