

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

June 15, 2021
7:30 P.M.

PRESIDING: Amy Finkbiner, Ph.D., President

INVOCATION: David B. Burton, Mayor

1. ROLL CALL

PRESENT

Council President Finkbiner
Council Vice-President Grossman
Council Member Bones
Council Member Laney
Council Member Phillips (attended remotely)
Council Member Raynor
David B. Burton, Mayor

ABSENT

Council Member Meisel

Council President Finkbiner announced that this evening's meeting allowed for a virtual meeting option via Zoom.

2. APPROVAL OF AGENDA

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 6-0, to approve the agenda for the June 15, 2021 meeting 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 meeting was not being recorded by the Borough.

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

b. Council President Finkbiner announced that Borough Council met in Executive Session on Tuesday, June 15, 2021, prior to this evening's meeting in order to discuss a personnel matter.

c. Council President Finkbiner announced that the Malvern Fire Company have announced the return of the annual Fire Company Fair. The event will run from Tuesday, July 13, 2021 until Saturday, July 17, 2021 from 6:00 pm to 10:00 pm each night at the Paoli Memorial Grounds. Fireworks will occur on Friday, July 16, 2021.

REGULAR MEETING

June 15, 2021

Page 2

d. Council President Finkbiner announced that the Malvern Business & Professional Association will be accepting donations to Alex's Lemonade Stand as part of the Malvern Stroll on June 17, 2021. A donation stand will be located at Campli Photography.

4. MINUTES & REPORTS

a. APPROVAL OF MINUTES

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 6-0, to approve the minutes from the June 1, 2021 meeting of Borough Council as amended.

b. APPROVAL OF REPORTS:

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 7-0, 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 May 2021, as submitted.

c. BOROUGH COUNCIL COMMITTEE REPORTS

- Finance & Administration – Council Member Laney

Councilor Laney stated that the Finance & Administration Committee has not met since the June 1, 2021 meeting of Borough Council.

- Public Safety – Council Member Raynor

Council Member Raynor presented the report from the Public Safety Committee in Council Member Meisel's absence and stated that the Public Safety Committee last meeting was on May 10, 2021. Information from that meeting was presented at the June 1, 2021 meeting of Borough Council.

- Public Works – Council Member Bones

Council Member Bones stated that the Public Works Committee has not met since the June 1, 2021 meeting of Borough Council. Council Member Bones stated that the Committee is scheduled to do a site walk for the Malvern Preparatory School pedestrian access on June 16, 2021.

5. SPECIAL BUSINESS

a. PRESENTATION – 2020 FINANCIAL REPORT AND AUDIT FOR THE BOROUGH OF MALVERN

George Fieo, CPA, of the firm Peterson, Fieo, & Co., appeared before Borough Council in order to present the results of the 2020 financial report and audit for the Borough of Malvern. Mr. Fieo reported that the financial statements being presented to Borough Council are accurate.

Council President Finkbiner asked if there were any questions from Borough Council on the 2020 financial report and audit. No questions or comments were noted.

Council President Finkbiner asked if there were any comments from the public on the 2020 financial report and audit.

Gary Stark, 51 Ruthland Avenue, asked if the audit would be publicly available. Council President Finkbiner stated that the 2020 financial report and audit would be made available on the Borough website.

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 6-0, to approve the 2020 financial report and audit for the Borough of Malvern.

b. RATIFICATION OF AUTHORIZATION TO SUBMIT MALVERN BOROUGH'S APPLICATION TO THE PA DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT FOR FUNDS AVAILABLE THROUGH THE AMERICAN RESCUE PLAN ACT OF 2021

Borough Manager Bashore stated that on June 2, 2021, Malvern Borough was notified that an application must be submitted to the PA Department of Community & Economic Development (DCED) in order to access funds available through this legislation. A five (5) day time period to submit the application was instituted and the Borough's application was submitted to DCED on June 7, 2021. The Borough is scheduled to receive \$361,632.12 through the American Rescue Plan Act of 2021. The use of these funds must be determined by December 31, 2024 and the funds must be spent by December 31, 2026. Borough Manager Bashore stated that in order accurately track the use of these funds as required, a separate bank account has been established.

Borough Manager Bashore noted that the Borough's application has been recommended for funding by the analyst reviewing it.

Council President Finkbiner and Council Member Raynor commended Borough Manager Bashore for his work in getting the Borough's application submitted in a timely manner.

A motion was made by Council Member Raynor, seconded by Vice-President Grossman, and carried by a vote of 6-0, to ratify the approval of the Borough Manager to submit an application to the PA Department of Community & Economic Development for receipt of funds

through the American Rescue Plan Act of 2021 and authorize the execution of all necessary documents associated with the application.

c. EXPANDED OUTDOOR DINING FORBEARANCE AGREEMENTS

- Restaurant Alba

Council President Finkbinder 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 August 18, 2021.

A motion was made by Council Member Raynor, seconded by Vice-President Grossman, and carried by a vote of 6-0, to approve a 60 day extension to Restaurant Alba's expanded outdoor dining forbearance agreement.

6. UNFINISHED BUSINESS

Council President Finkbinder stated that there were no items of "Unfinished Business" before Borough Council this evening.

7. NEW BUSINESS

- a. Bicycle Pump Track

Council President Finkbinder stated that Malvern Borough has been awarded \$91,677 from Chester County's Park Preservation Partnership Program Grant for the construction of a bicycle pump track on the Randolph Woods property, including buffering and a sidewalk connection. The next step in this project is for the Borough Engineer to be authorized to begin the necessary survey and design work. The initial concept plan will be reviewed by the Public Works Committee. Feedback on the concept plan will be sought from the community, including meetings to be scheduled with neighbors and potential users.

Vice-President Grossman asked about the time limit under the grant to complete the project. Borough Manager Bashore stated that there is a three (3) year deadline under the grant contract to complete the project.

Gary Stark, 51 Ruthland Avenue, asked if other grant opportunities will be sought in order to make the park as nice as possible. Council President Finkbinder stated that the Borough was waiting for the results of the application to Chester County and will research other possible grant opportunities for this project.

Council President Finkbinder acknowledged receipt of a letter on this topic from Christopher Buckley, 55 Ruthland Avenue. Council President Finkbinder stated that since Mr. Buckley was in attendance, she asked if he would like to read his letter into the record. Mr.

REGULAR MEETING

June 15, 2021

Page 5

Buckley stated that the reason he submitted the letter was so that he did not need to read it. Borough Manager Bashore stated that since he is attendance, it is appropriate for him to read his correspondence if he would like it included as part of the record.

Christopher Buckley, 55 Rutland Avenue, read the following statement into the record:

Borough Council,

This letter is in regard to The June 15th, 2021 Meeting Agenda Item 7(a): Bicycle Pump Track.

I would like this letter to be read into the meeting minutes by the secretary along with the Council's response and any responses, comments, or questions from the community members without altering the letter's language upon its submission into the recorded meeting minutes.

The Council is now voting on whether to authorize the Borough Engineer to start the necessary survey and design work for the current proposed Pump Track site on the emergency access road behind Rutland Avenue. I am requesting that the Council also authorize the Borough Engineer to survey previously proposed alternative locations for the construction of the Pump Track. In previous meetings, this Council has stated that they have not requested or authorized an evaluation of any alternative locations, but rather solely focusing on the current proposed site. Therefore, the Council lacks any professional information with which to make an informed decision regarding an "appropriate location." By not properly evaluating and surveying alternative locations with a written report from an engineer, the Council cannot reasonably conclude that the current proposed location is the most cost efficient or provides the least impact to the environment.

If the Council does not authorize the Borough Engineer to survey and properly evaluate alternative locations, it would show that Council had already reached a siting conclusion, notwithstanding its statements to the contrary.

Council President Finkbiner thanked Mr. Buckley for his comments and noted that the sites and suggestions he has made previously were evaluated and found not to be viable, but that she looked forward to working with all stakeholders to produce the best possible result for this project. Council Member Bones agreed with this assessment.

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 6-0, to authorize the Borough Engineer to begin the necessary survey and design work associated with the construction of the bicycle pump track.

- b. Ordinance Amendments – Proposed amendments to the Malvern Borough Zoning and Subdivision & Land Development Ordinances

REGULAR MEETING

June 15, 2021

Page 6

Council President Finkbinder stated that at their meeting on June 3, 2021, the Malvern Planning Commission recommended three (3) ordinance amendments to the Borough's Zoning and Subdivision & Land Development Ordinances. Action may be considered by Borough Council to send these proposed amendments to the Chester County Planning Commission for review and comment.

- Zoning Ordinance Amendment – Outdoor Dining

Council President Finkbinder stated that this proposed amendment would revise the Borough's outdoor dining provisions in order to allow outdoor dining on private property as a use by right, while permitting outdoor dining in the public right-of-way permissible by Conditional Use. Council President Finkbinder noted certain items with the proposed ordinance that Borough Council may wish to have the Planning Commission evaluate further. Council President Finkbinder stated that there are certain hour limitations for outdoor dining abutting a residential use or district contained in the Conditional Use provisions that should be considered for by right outdoor dining uses. Council President Finkbinder noted a provision in the Zoning Ordinance requiring that the business offer table service in order to receive Conditional Use approval for outdoor dining, which may prevent certain establishments from having outdoor dining.

Borough Manager Bashore stated that the hour limitations may be difficult to enforce for establishments with a Liquor License due to the permitted hours by the PA Liquor Control Board (LCB). Borough Solicitor McLean stated that the hours under the LCB would prevail if the Borough were challenged. Borough Solicitor McLean stated that the Borough had previously not permitted outdoor dining and that the current regulations were written during the development of Eastside Flats. Borough Solicitor McLean noted that it might be beneficial for the Planning Commission to review the Conditional Use provisions as well in order to determine if there need to amendments. Borough Council agreed.

A motion was made by Council Member Raynor, seconded by Vice-President Grossman, and carried by a vote of 6-0, to return the proposed Zoning Ordinance amendment for outdoor dining to the Malvern Planning Commission for further review.

- Zoning Ordinance Amendment – Plant Materials List

Council President Finkbinder stated that this proposed amendment would be to revise the Borough's Plant Materials List as recommended by the Malvern Shade Tree Commission and permit this to be updated by resolution of Borough Council.

Council Member Bones outlined the history of the proposed ordinance, noting the work that the Shade Tree Commission has undertaken to update the Plant Materials List. Borough Manager Bashore outlined the species being removed and added to the Plant Materials List as recommended by the Shade Tree Commission.

Council President Finkbinder noted that the current regulations allow for the selection of a species hardy to the area outside of the defined Plant Materials List. This language

is included in four (4) sections. Council President Finkbinder stated that she spoke with Council Member Bones regarding this provision and they believe that this language should be removed as the proposed ordinance amendment would provide Borough Council with greater flexibility to adjust the Plant Materials List. Borough Council was in agreement with this change.

Council Member Phillips stated that the topic of native and non-native species has been discussed at recent meetings of the Environmental Advisory Council and potentially only allowing the planting of native species. Council Member Bones stated that limiting choices to native species only may have a negative impact and noted that both native and non-native species may be needed depending on the soil conditions. Council Member Bones noted that adjustments are easier under the proposed ordinance since they would be able to be made by resolution. Borough Manager Bashore stated that both the proposed ordinance and the existing language strongly encourage the use of native species.

Council Member Laney asked if the Plant Materials List must be followed by all residents. Borough Solicitor McLean clarified this requirement and stated that these are the species to be utilized during the subdivision & land development process or in the Shade Tree Protection Area, not for an individual landscaping their private property.

Gary Stark, 51 Ruthland Avenue, asked about the hornbeam tree to be planted on his property and if he would be required to replace it with a native species. Council President Finkbinder stated he would not. Mr. Stark stated that for the street trees in front of his property, he was only allowed to select from a limited number of species. Borough Manager Bashore stated that the species were recommended by a Landscape Architect for the Borough.

A motion was made by Council Member Bones, seconded by Vice-President Grossman, and carried by a vote of 6-0, to authorize the Borough Manager to submit the proposed Zoning Ordinance amendment pertaining to the Plant Materials List as amended to the Chester County Planning Commission for review and comment.

- Subdivision & Land Development Ordinance Amendment – Plant Materials Acceptable for Street Trees

Council President Finkbinder stated that this proposed amendment would revise the Subdivision & Land Development Ordinance in order to amend the provisions for street trees as recommended by the Malvern Shade Tree Commission and permit this to be updated by resolution of Borough Council. Council Member Bones noted that the street list attached to the proposed ordinance was based on West Chester Borough as it included species tested in an urban environment.

Council President Finkbinder stated that the current draft includes a “may” clause as it pertains to the species required for street trees and recommended that this be changed to “shall” as the proposed ordinance will allow for amendments by resolution. Borough Council agreed with this change.

REGULAR MEETING

June 15, 2021

Page 8

A motion was made by Council Member Bones, seconded by Vice-President Grossman, and carried by a vote of 6-0, to authorize the Borough Manager to submit the proposed Subdivision & Land Development Ordinance amendment as amended pertaining to the plant materials acceptable for street trees to the Chester County Planning Commission for review and comment.

c. Volunteer Board & Committee Appointment Considerations

- Parks & Recreation Committee

Council President Finkbinder stated that the Parks & Recreation Committee currently has three (3) vacancies. Two (2) applications have been received to fill certain vacancies: Gail Newman and Tiffanie Quinn. If appointed, they would complete terms that expire on January 1, 2025 and January 1, 2026.

Vice-President Grossman asked if the Parks & Recreation Committee has met with both applicants. Council Member Phillips stated that the both applicants attended the last meeting of the Parks & Recreation Committee and that the Committee had interviewed Gail Newman for a previous vacancy.

Council Member Bones thanked both applicants for offering to volunteer their time to the Borough.

Borough Manager Bashore stated that the Borough has received a third application for the final vacancy on the Parks & Recreation Committee.

A motion was made by Council Member Bones, seconded by Council Member Phillips, and carried by a vote of 6-0, to appoint Gail Newman to the Parks & Recreation Committee to complete a term that expires on January 1, 2025.

A motion was made by Council Member Bones, seconded by Vice-President Grossman, and carried by a vote 6-0, to appoint Tiffanie Quinn to the Parks & Recreation Committee to complete a term that expires on January 1, 2026.

d. Zoning Hearing Board

Council President Finkbinder stated that there are no new applications before the Zoning Hearing Board.

8. PUBLIC FORUM

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

REGULAR MEETING

June 15, 2021

Page 9

Vice-President Grossman commended Council President Finkbiner and Borough Manager Bashore for their service and leadership in guiding the Borough through the COVID-19 pandemic. Mayor Burton and the balance of Borough Council echoed these sentiments.

Danny Fruchter, 234 Channing Avenue, discussed the Retirement and Separation Agreement between the Borough of Malvern and Lloyd Douglas and noted the date on which the agreement was signed. Mr. Fruchter asked if Council President Finkbiner had the necessary authority to execute the agreement. Borough Solicitor McLean stated that Mr. Douglas signed the agreement in advance of Council President Finkbiner and that Council President Finkbiner had the authority to sign the agreement for the Borough.

9. ADJOURNMENT

All business having been discussed, a motion was made by Vice-President Grossman, seconded by Council Member Raynor, and carried by a vote of 6-0, to adjourn the meeting at 8:34 p.m.

Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary