

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

June 16, 2020
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 Meisel
Council Member Phillips
David B. Burton, Mayor

ABSENT

Council Member Raynor

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

Council President Finkbiner stated that the motion to approve the agenda should include an amendment to add Resolution No. 813 – Schedule of Fees under "Special Business" after item 5.c.

Cathy Raymond, 6 Karen Drive, asked for clarification on proposed Resolution No. 813. Council President Finkbiner stated that Resolution No. 813 would incorporate the fees associated with alarm systems into the general fee schedule due to proposed Ordinance No. 2020-4 on the agenda. The fees are not being changed from the current schedule.

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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 June 16, 2020 as amended to include Resolution No. 813 – Schedule of Fees under “Special Business.”

3. ANNOUNCEMENTS

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. Council President Finkbinder noted that the 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 the basketball courts at Quann Park and Herzak Park have reopened for use. Guidelines have been posted at both locations.

c. Council President Finkbinder stated that due to the cancellation of the annual fair, the Malvern Fire Company will host the “Malvern Fire Company Food Fare” from July 8, 2020 to July 12, 2020 at the Paoli Memorial Grounds. Please watch the Malvern Borough website for additional information.

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 Bones, seconded by Vice-President Grossman, and carried by a vote of 6-0, to approve the minutes of the meeting held on Tuesday, May 19, 2020 as amended.

b. APPROVAL OF REPORTS

A motion was made by Vice-President Grossman, 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 May 2020, as submitted.

c. BOROUGH COUNCIL COMMITTEE REPORTS

- Finance & Administration

Council Member Laney stated that the Finance & Administration Committee has not met since the May 19, 2020 meeting of Borough Council.

The Borough Engineer, through their sub-contractor, Hydraterra, is continuing to evaluate the scope of work for the proposed sewer rate study and will provide a recommendation on adjustments to the scope of work.

The Borough Treasurer, Mary Lou Whitcomb, has established the two (2) money market accounts for the General and Sewer Fund Contingency accounts as discussed at the last meeting of Borough Council. After two (2) years, the total interest earnings from the previous CDs was \$32,144.29.

- Public Safety

Council Member Meisel stated that the Public Safety Committee has not met since the May 19, 2020 meeting of Borough Council. The installation of line-painting at the intersection of Ruthland Avenue and King Street as prepared by the Borough Traffic Engineer has been completed.

- Public Works

Council President Finkbiner stated that the Public Works Committee has not met since the May 19, 2020 meeting of Borough Council. Construction on the N. Warren Avenue Transit Project resumed on May 20, 2020. All contract documents for the approved paving projects on N. Warren Avenue and E. King Street have been executed. A date for the start of paving has not yet been determined.

d. Mayor Burton – Report on review of Police Department policies

Mayor Burton provided a report on the review of the policies pertaining to the Malvern Police Department. Mayor Burton noted that the review of the Police Department's policies and procedures has been ongoing under Chief Marcelli since 2013. Mayor Burton stated that, in light of recent events, there is a particular focus on use of force policies, and he and Chief Marcelli are working on an extensive review of the Malvern Police Department's use of force policies. Mayor Burton noted that the Malvern Police Department's policies are in line with the recommendations of "8 Can't Wait" and these were in place before recent events.

Chief Marcelli stated that all police officers in Pennsylvania are certified every year with mandatory training requirements. If they do not complete the certification process, they cannot serve as a police officer. Chief Marcelli notes that he emphasizes training with his officers, has expanded training opportunities since 2013 and they are kept up-to-date. Chief Marcelli outlined his actions, including condemning the actions of the officers in Minnesota, condemning police brutality and racism, and speaking with his officers. The Malvern Police Department operates professionally and will continue to do so. Chief Marcelli stated that while the Malvern Police Department cannot become an accredited police department due

circumstances beyond its control, policies for accredited police departments are being used to revise the Malvern Police Department's policies and procedures.

Mayor Burton noted that Corinne Badman, Executive Assistant to the Chief of Police, is well versed in law enforcement policies and she will be used to assist in updating the Police Department's policies and procedures. Mayor Burton commended Chief Marcelli for the work he has done to professionalize the Malvern Police Department. Mayor Burton highlighted the activities that the Police Department does to engage with the community.

5. SPECIAL BUSINESS

- a. Ratification of Forbearance Agreement between the Borough of Malvern and the Flying Pig Saloon for temporary outdoor dining

Council President Finkbiner stated that this proposed agreement would permit outdoor dining at the Flying Pig Saloon as Chester County has entered the yellow phase of Governor Wolf's economic re-opening plan. Council President Finkbiner stated that this would be temporary, there would be limitations on the hours of operation, and there would be seven (7) tables with temporary fencing and lighting.

Council Member Bones noted that he is happy that the Borough is able to accommodate a longstanding business in the community.

Council President Finkbiner stated that the business owner has contacted the Borough regarding extending this into the green phase as the relaxed restrictions would bring him closer to his usual capacity. Borough Manager Bashore recommended preparing an addendum to extend the operation to 60 days from the date of execution, which would be August 9, 2020.

Cathy Raymond, 6 Karen Drive, thought that this was a great idea

Gary Kochinsky, 2 Jennings Lane, asked if other restaurants were under similar requirements. Council President Finkbiner stated that restaurants such as Christopher's and Brick & Brew already have approved outdoor seating. Council President Finkbiner noted that other discussions are occurring with businesses.

Kel Schmitt, 17 Channing Avenue, stated that everything at the Flying Pig Saloon appears to be going well.

A motion was made by Council Member Bones, seconded by Council Member Phillips, and carried by a vote of 6-0 to approve the forbearance agreement with the Flying Pig Saloon for outdoor dining.

A motion was made by Council Member Phillips, seconded by Council Member Bones, and carried by a vote of 6-0 to amend the forbearance agreement with the Flying Pig Saloon to extend outdoor dining for a period of 60 days from the date of execution.

b. ORDINANCE NO. 2020 – 3: AMENDMENTS TO CHAPTER 25
(ADMINISTRATIVE CODE) OF THE MALVERN BOROUGH CODE OF
ORDINANCES

i. Public Hearing

Council President Finkbinder announced that Borough Council will now open a public hearing to consider Ordinance No. 2020 – 3. The proposed ordinance would amend Chapter 25 of the Malvern Borough Code of Ordinances in order to address items such as board and committee secretary functions, the role of certain employees, bonding limits on certain employees, and the disposal of surplus property.

The proposed ordinance was advertised in the June 2, 2020 and June 9, 2020 editions of the Daily Local News as required, as well as posted on the Malvern Borough website.

Council President Finkbinder opened the floor to comments from Borough Council on Ordinance No. 2020-3. No comments were noted.

Council President Finkbinder opened the floor to comments from the public on Ordinance No. 2020-3. No comments were noted.

Council President Finkbinder closed the public hearing.

ii. Adoption of Ordinance No. 2020-3

A motion was made by Council Member Bones, seconded by Council Member Laney, and carried by a vote of 6-0, to adopt Ordinance No. 2020 – 3, amending Chapter 25, the Malvern Borough Administrative Code, of the Malvern Borough Code of Ordinances.

c. ORDINANCE NO. 2020 – 4: AMENDMENTS TO CHAPTER 62 (ALARM
SYSTEMS) OF THE MALVERN BOROUGH CODE OF ORDINANCES

i. Public Hearing

Council President Finkbinder announced that Borough Council will now open a public hearing to consider Ordinance No. 2020 – 4. The proposed ordinance would amend Chapter 62 of the Malvern Borough Code of Ordinances in order to address the penalties for false alarms and fees required for registration. Council President Finkbinder noted that there are no proposed changes to the fees and would exclude personal medical alert devices from the provisions. The fees were reviewed.

The proposed ordinance was advertised in the June 2, 2020 and June 9, 2020 editions of the Daily Local News as required, as well as posted on the Malvern Borough website.

Council President Finkbinder opened the floor to comments from Borough Council on Ordinance No. 2020-4. No comments were noted.

Council President Finkbinder opened the floor to comments from the public on Ordinance No. 2020-4. No comments were noted.

Council President Finkbinder closed the public hearing.

ii. Adoption of Ordinance No. 2020-4

A motion was made by Council Member Bones, seconded by Council Member Laney, and carried by a vote of 6-0, to adopt Ordinance No. 2020-4, amending Chapter 62. Alarm Systems, of the Malvern Borough Code of Ordinances.

d. RESOLUTION NO. 813 – SCHEDULE OF FEES

Council President Finkbinder stated that Resolution No. 813 would amend the Borough's fee schedule in order to incorporate the alarm system fees, which were removed from the Code of Ordinances through Ordinance No. 2020-4.

A motion was made by Council Member Laney, seconded by Council Member Phillips, and carried by a vote of 6-0, to adopt Resolution No. 813.

e. ORDINANCE NO. 2020 – 5: AMENDMENTS TO CHAPTER 220 (ZONING ORDINANCE) OF THE MALVERN BOROUGH CODE OF ORDINANCES

i. Public Hearing

Council President Finkbinder announced that Borough Council will now open a public hearing to consider Ordinance No. 2020 – 5. The proposed ordinance would amend the Malvern Borough Zoning Ordinance based on work that was done with the Brandywine Conservancy. The ordinance would address area and bulk requirements in the R-1 through R-6 zoning districts, including building coverage and side yard setback requirements, as well as establish criteria for Conditional Use and variance relief. A summary of the proposed amendments was included on the Malvern Borough website.

Council President Finkbinder stated that the proposed regulations would result in 80% of the properties being conforming by right and 90% permitted by Conditional Use. Council President Finkbinder noted that the proposed ordinance reduces the by right building coverage, but allows for a Conditional Use approval to increase the building coverage allowances in the R-2 through R-6 zoning districts.

The proposed ordinance was advertised in the June 2, 2020 and June 9, 2020 editions of the Daily Local News as required, as well as posted on the Malvern Borough website.

Council President Finkbinder opened the floor to comments from Borough Council on Ordinance No. 2020-5. No comments were noted.

Council President Finkbinder opened the floor to comments from the public on Ordinance No. 2020-5. No comments were noted.

Council President Finkbinder closed the public hearing.

ii. Adoption of Ordinance No. 2020-5

A motion was made by Vice-President Grossman, seconded by Council Member Bones, and carried by vote of 6-0, to adopt Ordinance No. 2020 – 5, amending Chapter 220 of the Malvern Borough Zoning Ordinance, of the Malvern Borough Code of Ordinances.

6. UNFINISHED BUSINESS

Council President Finkbinder stated that there are no items of “Unfinished Business” before Borough Council.

7. NEW BUSINESS

a. Acknowledgement of correspondence and referral to the Malvern Historical Commission

Council President Finkbinder stated that the Borough is in receipt of email correspondence on June 9, 2020 regarding recognition of African-American history in the Borough of Malvern. Council President Finkbinder noted that Borough Council wanted to refer this matter to the Historical Commission to see if they have or can develop a report on this history. Council President Finkbinder noted that some other information will be forwarded to the Finance & Administration Committee.

Kel Schmitt, 17 Channing Avenue and Secretary of the Malvern Historical Commission, noted that they will need access to archives in Borough Hall to create the report. Council President Finkbinder noted that there would not be a strict timeline to prepare the information. Mr. Schmitt asked if the Historical Commission would have access to Borough Hall once Chester County moves to the green phase of Governor Wolf’s economic reopening plan. Borough Manager Bashore stated that plans for the green phase are currently being discussed.

Lynne Frederick, 227 E. Broad Street and Chair of the Malvern Historical Commission, noted that she believed that only one (1) person needed to have access to the building. Ms. Frederick stated that the Historical Commission is planning an upcoming social media post related to Amos Trowery.

The Malvern Historical Commission will provide a report to Borough Council at a future meeting.

b. Malvern Borough Shade Tree Commission – King St. Tree Survey/Management Plan

Council President Finkbinder stated that the Shade Tree Commission is recommending a proposal from the Borough Engineer, Daniel Daley, P.E., of Edward B. Walsh & Associates for a survey and management plan for trees on King Street. The Borough Engineer is before Borough Council this evening to discuss the proposal.

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Daniel Daley, P.E., Borough Engineer, stated that the Shade Tree Commission requested a plan of action to address the shade trees along King Street. The evaluation would extend the entire length of King Street in the Borough. Mr. Daley noted that the scope of work proposal was prepared with Anthony Dufour from Anthony Dufour Gardens.

Mr. Daley stated that the plan is separated into three (3) phases. The first would involve an inventory of the existing trees along King Street in order to understand what currently exists. This would include the creation of a map and summary of analysis, including size, species, and any issues noted. The second phase would be development of a preliminary action plan to make improvements. Mr. Daley noted that this would not be completed as one project and would be done in phases. The final phase would be a final action plan including cost estimates and evaluating infrastructure impacts. The estimated cost to do the first two (2) phases is \$6,300. Mr. Daley noted that a cost estimate for the third phase is based on the information gathered in the preliminary action plan. Mr. Daley stated that the Shade Tree Commission would like to include this as an appendix in the update to the Comprehensive Plan and potentially do an ordinance amendment to have developers complete this work if possible.

Vice-President Grossman asked what action the Borough can take on trees outside of the public right-of-way and on private property that may pose a hazard to the public if they are dying, diseased, or dead. Borough Manager Bashore stated that a notice from the Code Enforcement Officer could be sent. Borough Solicitor McLean noted that if they are not shade trees as defined by ordinance, it may be considered a violation of the International Property Maintenance Code (IPMC). Vice-President Grossman recommended taking proactive steps as a result of the recent storms in the area. Council Member Bones noted that the Shade Tree Commission has generally focused on defined shade trees and trees on Borough property. Council Member Bones stated that the Shade Tree Commission would be happy to provide assistance to the Code Enforcement Officer.

Borough Manager Bashore noted that this project is allocated in the 2020 Budget in the Capital Reserve Fund and is outlined in the Borough's Capital Improvement Plan. Council Member Bones stated that he believes that this a good starting point for this project.

John Buckley, 165 Church Street, stated that the Borough had previously determined that more trees would not be installed on King Street due to sidewalk impacts. Council Member Bones noted that sidewalk impacts would be taken into consideration and no additional plantings are proposed at this time. Council Member Meisel stated that there is a way to balance street trees and sidewalks and that street trees are a critical component of the streetscape of the Borough. Mayor Burton stated that he believes that the street trees along King Street are approximately 25 years old.

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 6-0, to approve the proposal prepared by the Borough Engineer for the King Street Tree Survey/Improvement Plan dated June 5, 2020 as submitted.

c. Escrow Release Request – 11 Griffith Ave. – Release Request #1

Borough Manager Bashore stated that before Borough Council this evening is escrow release request #1 for the approved subdivision and land development project at 11

Griffith Avenue. The amount requested for release is \$57,053.40. In a letter dated June 2, 2020, the Borough Engineer recommends the release of \$50,033.40. Funds are being withheld due to issues pertaining to landscaping for the project.

Danny Fruchter, 234 Channing Avenue, asked if this project was the one in which there was a sidewalk replacement on King Street. Borough Manager Bashore stated that it was. Mr. Fruchter asked why the developer was not required to use stamped concrete. Dan Daley, P.E., Borough Engineer, stated that the sidewalks in the project are not streetscape sidewalk because the remainder of the area does not have streetscape sidewalk.

A motion was made by Vice-President Grossman, seconded by Council Member Phillips, and carried by a vote of 6-0, to approve escrow release request #1 for the approved subdivision and land development project at 11 Griffith Avenue in the amount of \$50,033.40 based on the recommendation of the Borough Engineer.

d. Zoning Hearing Board

Assistant Manager Loomis provided a summary of the application before the Zoning Hearing Board. Assistant Manager Loomis stated that the application for 418 E. King Street has been withdrawn as the applicant has reached a shared parking agreement with Malvern Fire Company for four (4) dedicated parking spaces. There is no requirement for land development and the applicant will adhere to all comments from the Borough Engineer. Vice-President Grossman commended Assistant Manager Loomis on the reports provided on zoning matters in the Borough.

Council President Finkbinder stated that a new application for additional relief for the property at 128-142 E. King Street has been submitted. Assistant Manager Loomis stated that the applicant is seeking relief for building height, parking requirements, buffers with residential districts/uses, and landscaped islands in the parking lot. Council President Finkbinder noted that the Planning Commission will review the application at the June 18, 2020 meeting and no action is required this evening. The Planning Commission will make a recommendation on sending the Borough Solicitor to the hearing.

John Buckley, 165 Church Street, asked if the applicant was using an earlier version of the plan for a mixed use building. Council President Finkbinder stated that they are proposing a single-use office building since the previous concepts were not feasible due to the amount of relief that would be required.

Danny Fruchter, 234 Channing Avenue, stated that he has several concerns with the application submitted to the Zoning Hearing Board. Mr. Fruchter noted concerns with the parking spaces provided for load/unloading, the right-of-way on King Street and the proximity of the build-to-line of the proposed building, the height of the proposed building, and the renderings submitted. Mr. Fruchter stated that he believes that the proposal is poorly conceived and intolerable for the Borough. Council President Finkbinder stated that Borough Council is aware of the hardship requirements and will allow the Planning Commission to review the application accordingly.

No action was taken.

8. PUBLIC FORUM

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

John Buckley, 165 Church Street, asked why trees were not installed with the Church Street streetscape project. Council Member Bones stated that the Shade Tree Commission does a bare root tree program and he would be happy to add Mr. Buckley's name to the list. Mr. Buckley asked if the Flying Pig Saloon could use the rear parking area for outside dining. Stephen Iacobucci, owner of the Flying Pig Saloon, stated that he does not believe that area is conducive to outside dining and he is happy with what the Borough permitted. Mr. Buckley asked who pays for the extra police officers when protests occur. Mayor Burton states that the Borough pays for its officers, but the officers from other municipalities are paid by their respective department.

Stephen Iacobucci, owner of the Flying Pig Saloon, thanked the Borough for their approval and hoped to potentially extend the approval in the future. Council President Finkbinder stated that could be discussed closer to the 60 day expiration and could be extended at the August 4, 2020 meeting. Mr. Iacobucci stated that this not an end-around for outdoor dining and he intends to abandon this concept when he is permitted to have full capacity in his restaurant. Mr. Iacobucci stated that he did not support the closure of King Street to accommodate additional outdoor dining.

David Campli, Campli Photography and President of the Malvern Business & Professional Association (MBPA), stated that he wanted to let Borough Council know what is occurring in the business district. Mr. Campli noted that businesses have been significantly impacted by the pandemic and that two (2) businesses to date have closed as a result of the current situation. Mr. Campli thanked the Borough for the work that has been done to date and hopes to keep working together. Mr. Campli noted that requests may be made to keep businesses surviving, specifically noting outdoor dining expansions. Mr. Campli stated that there has been discussion by the public about shutting down King Street for outdoor dining and no restaurants would like to shut down King Street. Council President Finkbinder stated that the Borough will continue working with the business community during the current situation.

Danny Fruchter, 234 Channing Avenue, asked about the Borough's revenue during the COVID-19 pandemic. Borough Manager Bashore provided a summary of the Borough's revenue sources during the pandemic. Council President Finkbinder stated that Borough Manager Bashore provided a report at the May 19, 2020 meeting and that information was included in the minutes from the meeting. Mr. Fruchter discussed the recent correspondence from the Malvern Police Department and that he appreciated the sentiments and review of the Malvern Police Department's policies and procedures. Mr. Fruchter asked about the racial demographics of traffic stops, noted concerns with the recent purchase of black police vehicles, and stated that symbols count.

Kel Schmitt, 17 Channing Avenue, stated that the tennis courts at the Paoli Memorial Grounds are re-opened.

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Lynne Frederick, 227 E. Broad Street, thanked the Malvern Police Department for their efforts with the peaceful Black Lives Matter protest on June 14, 2020 and the Malvern Public Works Department for their work in cleaning up from the storms on June 3, 2020.

9. ADJOURNMENT

All business having been discussed, a motion was made by Vice-President Grossman, seconded by Council Member Bones, and carried by a vote of 6-0, to adjourn the meeting at 9:16 p.m.

Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary