

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

May 4, 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 Meisel
Council Member Phillips
Council Member Raynor

ABSENT

David B. Burton, Mayor

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 Vice-President Grossman, and carried by a vote of 7-0, to approve the agenda for the May 4, 2021 meeting as presented.

3. ANNOUNCEMENTS

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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 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 Finkbiner announced that Borough Council met in Executive Session on Tuesday, May 4, 2021, prior to this evening's meeting in order to discuss a matter of litigation with the Borough Solicitor and to discuss emergency preparedness.

c. Council President Finkbiner announced that Malvern Borough will host a Community Planning Open House on May 10, 2021 from 5:00 pm to 7:30 pm at the Paoli Battlefield (rain date of May 12, 2021). This is part of the update to the Borough's Comprehensive Plan that is currently underway. Information on this event is available on the Malvern Borough website. Borough Manager Bashore stated that COVID-19 protocols will be utilized during this event.

d. Council President Finkbiner announced that Restore Chester County, the initiative focused on reopening and restoring Chester County's quality of place impacted by the COVID-19 pandemic, is asking county residents to indicate their willingness to participate in activities in the community over the summer and fall seasons. A link to the survey is available on the agenda for this evening's meeting and on the Borough website.

Council Member Meisel asked if there was any news regarding the Malvern Memorial Parade and the Malvern Fire Company Fair. Borough Manager Bashore stated that the Malvern Memorial Parade has shifted its date to September 26, 2021, but he did not have any news on the Malvern Fire Company Fair.

4. MINUTES & REPORTS

a. APPROVAL OF MINUTES

A motion was made by Council Member Phillips, seconded by Council Member Laney, with Vice-President Grossman abstaining, and carried by a vote of 6-0-1, to approve the minutes from the April 20, 2021 meeting of Borough Council as amended.

5. SPECIAL BUSINESS

a. ORDINANCE NO. 2021 – 2: AMENDMENTS TO CHAPTER 200 (VEHICLES & TRAFFIC)

- Public Hearing

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Council President Finkbinder announced that Borough Council will now open a public hearing to consider Ordinance No. 2021 – 2. 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 200-12 in order to establish Second Avenue from Warren Avenue to Channing Avenue as a one-way street in the eastbound direction. The Notice of Public Hearing was published in the April 23, 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 Raynor, and carried by a vote of 7-0, to open the Public Hearing on proposed Ordinance No. 2021 – 2.

Council President Finkbinder opened the floor to comments on the proposed ordinance from Borough Council.

Vice-President Grossman asked if the Public Safety Committee has reviewed the proposed ordinance and are recommending this course of action. Borough Manager Bashore stated that this has been reviewed and recommended by the Public Safety Committee. Borough Manager Bashore stated that establishing this section of Second Avenue as a one-way street heading east is recommended in the 2018 *Malvern Borough-wide Multimodal Transportation Study* and that is sufficient documentation for the proposed ordinance to proceed.

Council Member Bones stated that he believes that this is a good option due to the school buses that travel this roadway and the site distance issues at the intersection with Warren Avenue.

Council President Finkbinder provided clarification on the discussion from the April 20, 2021 meeting regarding the ability of a school bus to make the turn off of Warren Avenue in the current state of this section of Second Avenue. Council President Finkbinder stated that the Borough Engineer provided additional information outlining that a standard school bus can make the turn without widening Second Avenue if the road is made one-way heading east.

There being no further comments from Borough Council, Council President Finkbinder opened the floor to comments from the public on proposed Ordinance No. 2021 – 2. No comments from the public were noted.

A motion was made by Council Member Meisel, seconded by Vice-President Grossman, and carried by a vote of 7-0, to close the public hearing on proposed Ordinance No. 2021 – 2.

- ADOPTION – ORDINANCE NO. 2021 – 2: AMENDMENTS TO CHAPTER 200 (VEHICLES & TRAFFIC)

A motion was made by Council Member Meisel, seconded by Vice-President Grossman, and carried by a vote of 7-0, to adopt Ordinance No. 2021 – 2, amending chapter 200,

section 200-12, of the Malvern Borough Code of Ordinances in order to make Second Avenue from Warren Avenue to Channing Avenue a one-way street in the eastbound direction.

b. 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 currently on-site for an additional year. An extension was previously granted by Borough Council on July 7, 2020. This request is being made in order to continue with their COVID-19 protocols. Council President Finkbiner stated that this was reviewed by the Borough Engineer and Borough Fire Marshal, who do not object to the extension being granted. Council President Finkbiner noted that the Borough Fire Marshal recommends that this be the final extension that is granted. Borough Manager Bashore stated that the request from Malvern Preparatory School outlines this as the final extension that will be requested for this use.

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 7-0, to approve the request from Malvern Preparatory School for a one (1) year extension of the use of the temporary classrooms on the property.

c. Escrow Release Requests

- 13 Lovers Lane – Severn Properties, LLC – Release Request #3 (Final)

Council President Finkbiner stated that escrow release request #3 for the approved subdivision and land development project at 13 Lovers Lane is before Borough Council. The amount requested for release is \$8,930.39. A recommendation from the Borough Engineer is before Borough Council. If approved, this will close out the escrow for this project.

Borough Manager Bashore stated that the letter from the Borough Engineer outlines certain outstanding fees that must be paid prior to the release of the requested funds. The outstanding fees include the following:

- Sewer tapping fees
- Stormwater O&M fees (\$1,200)
- Sidewalk Fee-In-Lieu (\$3,523.50)
- Street Tree Fee-In-Lieu (\$450 x 3 = \$1,350)
- Outstanding engineering invoices

A motion was made by Vice-President Grossman, seconded by Council Member Phillips, and carried by a vote of 7-0, to approve escrow release request #3 for the approved subdivision and land development project at 13 Lovers Lane in the amount of \$8,930.39 based on the Borough Engineer's recommendation letter dated April 27, 2021.

- 523 Monument Avenue – Providence One Builders – Release Request #2

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Borough Manager Bashore stated that escrow release request #2 for the approved subdivision and land development project at 523 Monument Avenue is before Borough Council. The amount requested for release is \$12,672.75. A recommendation from the Borough Engineer is before Borough Council. If approved, this will close out the escrow for this project. Borough Manager Bashore stated that the letter from the Borough Engineer notes the following fees that must be paid prior to the release of the requested funds:

- Sewer tapping fees
- Stormwater O&M fees (\$1,200)
- Outstanding engineering invoices

Borough Manager Bashore stated that the necessary sewer tapping fee has been paid by the developer.

A motion was made by Vice-President Grossman, seconded by Council Member Bones, and carried by a vote of 7-0, to approve escrow release request #2 for the approved subdivision and land development project at 523 Monument Avenue in the amount of \$12,672.75 based on the Borough Engineer's recommendation letter dated April 29, 2021.

d. EXPANDED OUTDOOR DINING FORBEARANCE AGREEMENTS

- Anthony's Pizza & Italian Restaurant

Council President Finkbiner stated that Anthony's Pizza & Italian Restaurant 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 July 3, 2021.

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 7-0, to approve a 60-day extension to the Expanded Outdoor Dining Forbearance Agreement with Anthony's Pizza & Italian Restaurant.

6. UNFINISHED BUSINESS

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

7. NEW BUSINESS

- a. Flow Data Industries, Inc. – Proposal for repairs to sewer pump station #1

Council President Finkbiner stated that Ira Dutter, Superintendent of Public Works, is recommending repairs to the platform in sewer pump station #1. A proposal has been received from Flow Data Industries. The proposal is below the threshold for obtaining written/telephonic

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quotes and public bidding. Due to the fact that this is unbudgeted, approval from Borough Council is required. Council President Finkbiner stated that the quoted price is \$5,940.00.

Council Member Bones discussed the pictures that were provided by the Superintendent of Public Works, noting the condition of the platform, and stated that he believes that the pictures warrant proceeding forward with the project.

A motion was made by Council Member Phillips, seconded by Vice-President Grossman, and carried by a vote of 7-0, to approve the proposal from Flow Data Industries, Inc. for repairs to the platform in sewer pump station #1 based on their proposal dated April 15, 2021.

- b. Discussion – Recommending that the Pennsylvania General Assembly consider legislation to permit the use of virtual meeting platforms for municipal public meetings

Council President Finkbiner stated that Act No. 15 of 2020 currently permits municipalities in Pennsylvania to conduct meetings remotely due to the emergency declaration issued by Governor Wolf for the COVID-19 pandemic. This legislation authorized the use approved telecommunication devices to conduct public meetings until the expiration or termination of Pennsylvania's COVID-19 emergency declaration and temporarily suspended the requirements for physical in-person attendance requirements of a quorum in order to conduct business. Council President Finkbiner stated that Members of the Chester County Managers Consortium have found that the use of virtual meeting platforms has been helpful in conducting municipal business and have been speaking with state legislators about the possibility of making this a permanent option. A resolution has been prepared in the event Borough Council believes that this is something that should be supported. Council President Finkbiner stated that if the resolution is adopted, copies would go to PA Representative Kristin Howard and PA Senator Carolyn Comitta.

Vice-President Grossman asked when virtual meetings would be used verses in-person meetings. Borough Manager Bashore stated that it would depend on the legislation. Borough Manager Bashore noted examples of inclement weather where virtual meetings could be utilized.

Council President Finkbiner noted that the Borough allocated funds for hybrid meeting equipment in the 2021 budget in order to provide for virtual meetings when in-person meetings resume. Borough Manager Bashore stated that the equipment should be delivered soon.

Borough Manager Bashore discussed the implications of the Borough's Home Rule Charter and the procedures for virtual meeting participation by members of Borough Council contained in the Home Rule Charter. Borough Manager Bashore noted that legislation from the state would be necessary in order to allow for meetings to be conducted in a completely virtual format.

Council Member Bones stated that he was in favor of supporting the development of legislation to permit the use of virtual meeting platforms to conduct municipal meetings.

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Council Member Phillips stated that he would support legislation for a virtual meeting option and believes that it is important to have options available.

Council President Finkbinder stated that Resolution No. 825 is before Borough Council and a motion may be considered to adopt this resolution if Borough Council desires.

Council President Finkbinder opened the floor to comments from the public.

Cathy Raymond, 6 Karen Drive, stated that she likes the idea of making it legal to utilize virtual meeting platforms after the COVID-19 pandemic and possibly extending the reach of who may attend municipal meetings. Ms. Raymond stated that she agreed with the use in times of inclement weather or emergency, but does not desire for virtual meetings to replace in-person meetings. Ms. Raymond stated that she liked the hybrid option.

There being no further comments from the public, Council President Finkbinder asked if a member of Borough Council desired to make a motion to adopt Resolution No. 825.

A motion was made by Council Member Meisel, seconded by Council Member Laney, and carried by a vote of 7-0, to adopt Resolution No. 825, requesting that the Pennsylvania General Assembly adopt legislation to permit the use of virtual meeting platforms for public meetings held by municipalities.

c. 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.

Zeyn Uzman, 305 Charleston Greene, discussed the impact of the COVID-19 pandemic on restaurants in the Borough and stated that Borough Council should consider extending the approvals for outdoor dining into the fall. Council President Finkbinder stated that an ordinance is currently under review by the Planning Commission that would amend the way in which the Borough addresses outdoor dining. Borough Manager Bashore stated that the ordinance being discussed would permit outdoor dining by right where it does not involve public sidewalks and permit outdoor dining by Conditional Use where public sidewalks are involved.

Chief Marcelli reminded dog owners to please clean up after their dogs when they are walking them in the Borough. Chief Marcelli stated that he is continuing to receive complaints of waste not being picked up.

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9. ADJOURNMENT

All business having been discussed, a motion was made by Council Member Meisel, seconded by Vice-President Grossman, and carried by a vote of 7-0, to adjourn the meeting at 8:07 p.m.

Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary