

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

September 5, 2017  
7:30 P.M.

PRESIDING: Council President Bramwell

INVOCATION: David B. Burton, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL: Council President Bramwell  
Council Vice-President Uzman  
Council Member Finkbiner  
Council Member Grossman  
Council Member Lexer  
Council Member Meisel  
Council Member Sinquett  
Mayor Burton

Council President Bramwell informed all present that copies of the agenda were available at the front entrance.

2. RECORDING OF MEETING:

Council President Bramwell asked in accordance with Resolution No. 714 if any member of the audience was recording the meeting.

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

3. APPROVAL OF MINUTES:

A motion was made by Council Vice-President Uzman, seconded by Council Member Grossman, and carried by a vote of 7-0, to approve the minutes of the meetings held on Tuesday, July 18, 2017 and Tuesday, August 1, 2017 as amended.

4. APPROVAL OF REPORTS:

A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett and carried by a vote of 7-0 to approve the Treasurer's Report, the Committee Reports for Finance & Administration, Public Safety, Public Works and the Chief of Police Report, the Code Enforcement and Zoning Officer's 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 July 2017 as submitted.

5. BOROUGH COUNCIL COMMITTEE REPORTS:

- a. Finance & Administration

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Borough Manager Bashore stated the Finance and Administration Committee has not met since July 18, 2017 at which time it met with representatives from InR Advisory Services, LLC to review the second quarter performance of the Borough's pension funds.

b. Public Safety

Borough Manager Bashore stated the Public Safety Committee has not met since its June 28, 2017 meeting. Topics of discussion at the meeting included the line stripping of East King Street.

c. Public Works

Borough Manager Bashore stated the Public Works Committee has not met since the July 18, 2017 meeting of Borough Council. The Committee met on September 5, 2017 and a report will be provided in the materials for the September 19, 2017 Borough Council meeting.

6. PRESENTATION – VALLEY CREEK TRUNK SEWER:

a. Consideration of Resolution No. 743

A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett, and carried by a vote of 7-0, to adopt Resolution No. 743 to authorize execution of a settlement agreement to resolve responsibilities for the rehabilitation of the Wilson Road Force Main of the Valley Creek Trunk Sewer; to provide for a process for the sale of the Valley Creek Trunk Sewer and wind-up of the Valley Creek Trunk Sewer Agreement; to resolve litigation; and to authorize all necessary actions thereto.

b. Consideration to engage Dilworth Paxson LLP as special transactional counsel

A motion was made by Council Vice-President Uzman, seconded by Council Member Lexer, and carried by a vote of 7-0, to engage Dilworth Paxson LLP as special transactional counsel, with payment up to the amount of \$5,000, and engagement terms to be controlled by the provisions of the Wilson Road Force Main / Valley Creek Trunk Sewer Settlement Agreement approved this same date, and per the Dilworth Paxson LLP engagement letter.

c. Consideration to engage PFM Group as special transactional consultant

A motion was made by Council Vice-President Uzman, seconded by Council Member Lexer, and carried by a vote of 7-0, to engage PFM Group as special transactional consultant, with payment up to the amount of \$4,000, and engagement terms to be controlled by the provisions of the Wilson Road Force Main / Valley Creek Trunk Sewer Settlement Agreement approved this same date, and per the PFM Group engagement letter.

d. Consideration of authorization to the Borough Manager, Borough Solicitor, and

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Borough Engineer in relation to the Valley Creek Trunk Sewer

A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett, and carried by a vote of 7-0, to authorize the Borough Manager, Borough Solicitor, and Borough Engineer to undertake any actions and execute any documents as may be necessary or expedient to effect the foregoing actions.

7. RESOLUTION NO. 744 – PRELIMINARY/FINAL LAND DEVELOPMENT PLAN FOR 100 QUAKER LANE – MCMOUR L.P. 100 QUAKER LANE:

A motion was made by Council Member Meisel, seconded by Council Member Sinquett, and carried by a vote of 7-0, to adopt Resolution No. 744 approving, subject to conditions, the plan entitled "McMour L.P. 100 Quaker Lane," prepared by Vastardi Consulting Engineers, LLC., dated January 30, 2017, last revised August 7, 2017, signed and sealed by Nicholas L. Vastardis, P.E., Registered Professional Engineer, pursuant to the Malvern Borough Subdivision & Land Development Ordinance of 2006, as amended ("Land Development Ordinance") for the development of certain property ("Property") located in the Borough of Malvern ("Borough"), Chester County, Pennsylvania, UPI #2-3-3.1, in the LI-1 Limited Industrial zoning district.

8. RESOLUTION NO. 745 – PRELIMINARY/FINAL LAND DEVELOPMENT PLAN FOR 346 E. KING ST. – ROBERT & PATRICIA CHAMBERS:

A motion was made by Council Member Lexer, seconded by Council Vice-President Uzman, and carried by a vote of 7-0, to adopt Resolution No. 745 approving, subject to conditions, the plan entitled "Proposed Preliminary/Final Plan for Robert and Patricia Chambers," prepared by RHC Design, LLC., dated February 18, 2017, last revised July 19, 2017, signed and sealed by Robert K. Wager, P.E., Registered Professional Engineer, pursuant to the Malvern Borough Subdivision & Land Development Ordinance of 2006, as amended ("Land Development Ordinance") for the development of certain property ("Property") located in the Borough of Malvern ("Borough"), Chester County, Pennsylvania, UPI #2-4-297, in the C-3 Commercial zoning district.

9. RESOLUTION NO. 746 – PRELIMINARY/FINAL SUBDIVISION/LAND DEVELOPMENT PLAN FOR 323 OLD LINCOLN HIGHWAY – PROVIDENCE ONE BUILDERS, LLC C/O DAVID HOPKINS:

Phil Mellusi, 343 Old Lincoln Highway, asked for borough council to read aloud the conditions placed on the applicant as part of receiving approval. Borough Manager Bashore read aloud the conditions. Mr. Mellusi read aloud an email he wrote that was addressed to the property owners on the shared private road. Mr. Mellusi asked for his letter to be entered into public record.

Exhibit 1: "*Borough Council Meeting – 5 Sept. / Private Road Issues – Rev. A*"; dated August 31, 2017 from Phil Mellusi, 343 Old Lincoln Highway

Laurie Sweigard, 341 Old Lincoln Highway, would like borough council to not grant waivers from its regulations as part of approving a land development project.

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Council President Bramwell stated he is aware that the owners of the shared private road have concerns based on previous borough council meetings. He suggested that the property owners work together towards a common end result, whether it is for the borough to accept the road and/or utilities dedication(s), or to make certain improvements for the betterment of the owners.

A motion was made by Council Vice-President Uzman, seconded by Council Member Lexer and carried by a vote of 6-1, Vice-President Uzman voted 'Nay', to adopt Resolution No. 746 approving, subject to conditions, the plan entitled "Preliminary/Final Plan for 323 Old Lincoln Highway," prepared by JMR Engineering, LLC., dated April 4, 2017, last revised July 28, 2017, signed and sealed by John M. Robinson, P.E., Registered Professional Engineer, pursuant to the Malvern Borough Subdivision & Land Development Ordinance of 2006, as amended ("Land Development Ordinance") for the development of certain property ("Property") located in the Borough of Malvern ("Borough"), Chester County, Pennsylvania, UPI #2-4-37, in the R-3b Residential zoning district.

### 10. OLD BUSINESS:

- a. Ordinance No. 2016-2: Issuance of Non-Electoral Debt

Council President Bramwell tabled this agenda item for discussion.

### 11. NEW BUSINESS:

- a. Pension Plans – Minimum Municipal Obligations

A motion was made by Council Vice-President Uzman, seconded by Council Member Siquett and carried by a vote of 7-0, to accept the 2018 Pension Minimum Municipal Obligation for the Police and Non-Uniform Pension Plans as required by Act 205 of 1984.

- b. Deed of Dedication – Public Right-of-Way – 1 Raffaella Drive

A motion was made by Council Member Siquett, seconded by Council Member Vice-President Uzman and carried by a vote of 7-0, to accept a deed of dedication from Renehan Building Group LLC., for a certain strip of ground being hereinafter conveyed as and for a public road at the intersection of Old Lincoln Highway and 1 Raffaella Drive.

- c. Discussion – Potential Zoning Ordinance Amendments

After some discussion, council agreed to direct Borough Manager Bashore to budget in the 2018 Budget for a professional consultant to perform an analysis of the Borough's Zoning Ordinance, with a detailed scope of work to be identified by the Malvern Borough Planning Commission to include, but not limited to setbacks in the residential zoning districts.

- d. Escrow Release Requests
  - i. 347 Old Lincoln Highway – Release Request #5

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A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett, and carried by a vote of 7-0 to authorize the release, subject to conditions, of \$30,331.58 per the recommendation of the Borough Engineer's letter dated, August 31, 2017.

ii. 361 Old Lincoln Highway – Release Request #7

A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett, and carried by a vote of 7-0 to authorize the release, subject to conditions, of \$13,000.07 per the recommendation of the Borough Engineer's letter dated, August 31, 2017.

e. Announcement – Resignation from the Parks & Recreation Committee

Borough Manager Bashore stated Autumn Lexer has submitted her resignation from the Parks & Recreation Committee, term to expire on January 1, 2019. Any resident interested in filling the unexpired term is to submit a letter of interest and resume to the attention of the Borough Manager.

f. Zoning Hearing Board

i. 328 E. King Street – Renehan Building Group

Borough Manager Bashore stated an application was received from Renehan Building Group for their property located at 328 East King Street. This property is located in the C3 – Town Center Commercial district. The applicant is seeking a variance from section 220-2401 of the Borough's Zoning Ordinance. This section limits the maximum height of an accessory structure to 15 ft. The request is related to the renovation project Renehan Building Group is currently under taking to the five (5) existing garages on the property. This application will be before the Zoning Hearing Board at their meeting scheduled for September 25, 2017.

ii. 126 Channing Avenue – Saint Patrick's Church

Borough Manager Bashore stated an application was received from Father Christopher Redcay on behalf of St. Patrick's Roman Catholic Church. The Church owns three parcels of property containing 2.66 acres located at 130 Woodland Avenue and 131-133 Channing Avenue in the I-4 Zoning District. Applicant seeks a special exception pursuant to §220-1901.B of the Malvern Borough Zoning Ordinance in order to build a 14,733 square foot building for classrooms, convert the existing residence on Channing Avenue into a Parish office, demolish two existing residences on Woodland Avenue, create a new grass playground area for school use and renovate existing classrooms in the Church basement for use as Parish meeting rooms.

12. PUBLIC FORUM:

Council President Bramwell advised citizens/taxpayers that Public Forum is the time to offer comments to bring any issues/concerns before Council that were not on the agenda.

a. John Buckley, 165 Church Street, stated the perimeter fence at the intersection of

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Bridge Street on East King Street encroaches onto the sidewalk and creates a safety hazard by pushing walkers closer to the street/vehicle traffic. Borough Manager Bashore stated he will have the Codes & Zoning Officer investigate the fence location and contact the property owner regarding the location of the fence.

John Buckley wanted to know what the borough can do about dog owners allowing their pets to defecate on his property. Borough Manager Bashore stated the borough is unable to take action against a dog owner, unless a Police Officer and/or the Codes & Zoning Officer witnesses the violation.

John Buckley stated drivers have been driving over his property adjacent to Green Street and ruts in the lawn have formed. Borough Manager Bashore stated he will have the Public Works Superintendent and Borough Engineer investigate his concern and will follow-up with Mr. Buckley and borough council with their findings.

b. Kelly Schmitt, 17 Channing Ave. - First Floor, announced the Oktoberfest is scheduled for Sunday, September 9<sup>th</sup> from 11:00 a.m. to 4:00 p.m. along King Street, as well as, Bark in the Park to be held in Burke Park.

Kelly Schmitt asked for an update regarding the Woodland Avenue Streetscape project, North Warren Avenue sidewalks, and Old Lincoln Highway traffic calming measures. Dan Daley, Borough Engineer said the Woodland Avenue Streetscape project is in design stage. North Warren Avenue is being prepared for review by PennDOT, while Old Lincoln Highway traffic calming measures are on hold until older projects are completed.

c. Frank Ortner, 144 Griffith Avenue, questioned if a left-turn lane could be added on King Street, heading west-bound that connects to South Warren Avenue. Police Chief Marcelli stated that he does not think there is sufficient road width for a turning lane. Mr. Ortner asked if restricting on-street parking, Monday through Friday, 6:00 a.m. to 9:00 a.m. in front of the Saddlery would suffice in widening the intersection for a turning lane. Police Chief Marcelli stated the problem is King Street is not wide enough to allow for any lane shifting, especially with the on-street parking on both sides. Council President Bramwell recommended the Public Safety Committee review Mr. Ortner's inquiry regarding a left-turn lane. Council Member Lexer was in agreement with Council President Bramwell's recommendation and directed Borough Manager Bashore to include the topic on an upcoming committee agenda.

### 13. ADJOURMENT:

At 9:37 p.m. Council President Bramwell stated Council will adjourn to executive session to discuss litigation matters.

Council President Bramwell reconvened the public meeting at 9:52 p.m.

All business having been discussed, a motion was made by Council Vice-President Uzman, seconded by Council Member Grossman, and carried by a vote of 7-0 to adjourn the meeting at 9:54 p.m.

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Respectfully submitted,

Neil G. Lovekin  
Assistant Secretary

## Christopher Bashore

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**From:** [REDACTED]  
**Sent:** Thursday, August 31, 2017 11:51 PM  
**To:** [REDACTED]  
[REDACTED]  
[REDACTED]  
**Cc:** Christopher Bashore  
**Subject:** Borough Council Meeting - 5 Sept. / Private Road Issues - Rev. A

Borough Council Meeting – 5 Sept. / Private Road Issues – [Rev. A](#)

Hi,

[This is a revision to my earlier email. The revisions are in blue. I find I left out several references.](#)

We are at the point where the Malvern Borough Council is going to make decisions that have major impact on the Private Road.

- 1.) At the Thursday, 17 August meeting the Planning Commission did a final review of the plans submitted by Dave Hopkins, Providence One Builders, LLC, for development of the Sheetz property abutting the west side of the road. They decided to forward the plans to Borough Council for Council action at the 5 September meeting with, I believe, eight waiver requests and several items that required further input. I have not seen the agenda for the 5 Sept. meeting but presumably this will be one of the action items.
- 2.) By now I am sure you have seen Heather Griesser's email regarding approved building permits for construction of a single family home at the north end of the Road. This house will be built on the first of three adjacent lots. The plan is to then build two additional houses. The builder for the house is Kevin Hillsinger, Sturbridge Home Builders, LLC.

As you can imagine both of these activities will have significant impact on access to the Road due to the required construction vehicles and equipment. This will be an inconvenience.

**However, this not the major concern!**

**The major issue is that the Borough considers these plans separately to the detriment of the Road and the abutting property owners.**

**For example:**

l) Borough Code, Chapter 180 Subdivision and Land Development, Section 181-520 paragraph G (7) states: *"In residential developments, fire hydrants shall be included within 600 feet of all existing and proposed structures, measured by way of accessible streets"*. The closest fire hydrant is at the SW corner of Miner Street about 597 feet to the closest corner of lot 2 of the property on the west side of the road. This does not include the additional distance to the front center of the twin house (total distance of perhaps 645 feet). We brought this up at the Planning Commission meeting. As I

understand it the Borough now plans to add a fire hydrant on the south side of Old Lincoln Hwy at the foot of the Road. When questioned what about the planned house at the north end of the Road, the response is that the property is not being subdivided at this time, therefore the Subdivision and Land Development Ordinance does not apply.

I would argue that this part of the ordinance is "Good Practice" and certainly should apply.

II) The version of the site plans for the construction of the house at the north end of the Road that I have seen shows three 2-inch water lines being brought up the center of the paved cart-way in the Road with meter pits and separate shut off valves for each in the foot of the road (there are already four meter pits and valves in the road). When questioned: *would not a water main located in the right-of-way on the west side of the road make more sense especially if it serviced the twin house and the house at north end of the street and terminated in a fire hydrant solving all of the problems;* the obfuscation begins. Most of the reasoning being either catch-22 or doublespeak, such as: Aqua provides water mains not the Borough, Aqua won't install a water main, the cost is prohibitive but nobody knows the cost, Aqua says they don't install water mains in private streets and the Borough defined the Road as a private street, and the circular catch-22 reasoning continues.

III) The Borough sent a letter to abutting property owners on the private street regarding the privately owned public sewer main located in the Road. The Borough indicated it was amenable to accepting dedication of the sewer (which would bring the sewer existence in compliance with DEP regulations) but placed the onus for action on the property owners. It did not offer an acceptable form of the agreement but stipulated testing pressure testing and camera inspection at no cost to the Borough. Dedication of the sewer main would allow tie in of both of the properties in question as well a provide for future development. To date no further action has been taken.

IV) My understanding is that if plans are accepted by the Borough as final the work must be completed in conformance to the plans provisions unless the plan provides acceptable alternate approaches. I think the plan for item 1.) above provides alternative water and sewer connections. The plan that I am aware of for item 2.) only shows the three water lines going through the middle of the paved cart-way. If this is allowed and the road were trenched for the waterlines and only patched the consequences will negatively affect all property owners for the foreseeable future.

V) These plans do not properly address the cart-way widening and restoration unambiguously. This will impact the feasibility of snow removable and trash pickup by the Borough in the future. e.g., more catch-22: *it's a private road, it doesn't have a turn around, it's a dead end, it's not wide enough, the borough can't accept dedication because it doesn't meet Borough standards such as width, sidewalks, PennDot paving requirements, it is up to the abutting property owners to bring the Road up to standards and the Borough might accept dedication, et cetera, et cetera.*

VI) Code Section 181-502. Streets. Paragraph H. states: *"Private streets as permitted by the Borough are to be designed and constructed to meet all requirements of public street standards and the recorded plan and other recorded documents shall disclose the parties or persons responsible for the cleaning, maintaining, improving and repairing of private streets."*

Code Section 181-502. Streets. Paragraph F. states: *"Dead-end streets shall not be permitted, except as stubs to permit future street extension into adjoining tracts, or designed as cul-de-sac or otherwise approved by the Borough Council."*

Code Section 181-513. Driveways. Paragraph D. states: *"No more than two lots shall be served by a private driveway in cases of common ownership or shared use of a private driveway. As a condition to final plan approval an agreement providing for the maintenance, repair, construction and*

*reconstruction, including drainage facility maintenance and snow plowing of the common driveway shall be submitted to and approved by the Borough, and shall be recorded against each of the lots in question.”*

Code Section 181-512. Easements. Paragraph F. states: *“The Borough may take dedication of easements prior to the final dedication of improvements if necessary to enforce easements during construction or prior to completion of all improvements.”*

If the streets code sections shown above had been enforced by the Borough in the past the Road would not be in the condition that it is now. I personally cannot comprehend how the Borough rationalizes that it is up to the present owners to bring the Road up to standards for the Borough to accept dedication especially when has made allowances in other areas of the Borough.

The easement code section shown above, I think, gives the Borough the wherewithal permit Aqua to bring a water main up the road thus eliminating one of the catch-22's.

The plans for the property at the north end of the Road appear to violate the Driveway code section shown above, both at the end of the current paving and with in the property.

**In summary:**

I am not opposed to the building of these houses. I do oppose any actions that make conditions worse. I have tried to outline some of my concerns. Please come to the 5 September Borough Council Meeting at 7:30 PM and express your opinions. Without significant representation I am afraid decisions will be made to the detriment of the future of the Road.

One final thought, the weather today was beautiful, but winter and snow are coming. We should have a meeting to discuss and plan snow removal soon.

Phil Mellusi