

REGULAR MEETING
BOROUGH COUNCIL
MALVERN BOROUGH

November 5, 2013
7:30 P.M.

PRESIDING: Woody J. Van Sciver, President

INVOCATION: Gerard J. McGlone, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL: Council President Van Sciver
Council Vice President Raymond
Council Member Coughlin
Council Member Giandonato
Council Member Macaleer
Council Member Sponenbergh
Council Member Uzman
Mayor McGlone

2. CONDITIONAL USE PUBLIC HEARING – RESTAURANT ALBA:

Council President announced that Borough Council will now hold a public hearing on the conditional use application of Restaurant Alba for an outdoor café for its property located at 7 W. King Street, Malvern Borough, Pennsylvania.

The public hearing was advertised in the Daily Local News on October 21st and October 28th, as required.

At the conclusion of the public hearing, a motion was made, seconded and unanimously carried by a vote of 7-0 to approve the conditional use application of Restaurant Alba for an outdoor café subject to the condition that the applicants will work with Borough Staff during the permitting process to find a way to ameliorate the views of the dumpsters and other utility areas at the rear of the property and the approval is conditional upon a favorable outcome from the Zoning Hearing Board.

A copy of the transcript is available at the Municipal Building, 1 E. First Avenue, Suite 3, Malvern, PA 19355.

3. PUBLIC FORUM:

Council President informed all present that copies of the agenda are available at the front desk. This is a Public Session of Council. Should any citizen/taxpayer wish to offer comments on any item on the agenda, now is the time to bring those comments before Council. Are there any citizens/taxpayers who wish to bring before Council any item not on the agenda?

- a. Council President Van Sciver announced that the final Malvern Transit-Oriented Development Plan presentation will be made on Tuesday, November 19, 2013, at 6:00 p.m. at the Borough Hall, prior to the Regular Borough Council meeting. He explained that there is no

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plan in that study that will result in any Borough Council action. It is a study for the area around the train station. We questioned how we could alleviate truck traffic through the Borough and that is when we commissioned the Malin Road Feasibility Study. The Malin Road Study was a joint study of Malvern Borough and East Whiteland Township through a grant from the Delaware Valley Regional Planning Commission. The Borough's interest was to explore infrastructure improvements to alleviate trucks from being on our residential streets. Council President Van Sciver stated that it was his initiative to find out how we might alleviate truck traffic and part of the TOD Study generated the question of what could we build there? An unexpected aspect of the Market Study indicated that 600 residential units could be occupied in the Borough within a ten year period if the Borough changed their land use regulations in this area of ½ mile of the train station. That is the study's findings. There is no legislation in the Borough to move forward with these findings. If we don't want development around the train station, we should have land use regulations in place to make sure there are no areas that developers could come forth to develop. The Task Force for the TOD Study discussed land use regulations and how they might or might not be changed to adapt to increased value in the LI Zoning District. There was a rumor that the Borough has a plan to put in 600 units and that is just not the case. The Study shows that this is what the Market is demanding and there are benefits to the Borough if they want to move forward. Council President Van Sciver stated that he is the responsible party for this Study.

Mrs. Leininger, 211 Channing Avenue, stated that she does not see how 1200 more cars going through Malvern will alleviate the traffic pattern. She feels that it will add significantly to traffic.

Council President Van Sciver again stated that this is only a study. There are no plans for development.

Mrs. Leininger asked if there was a Task Force to deal with the TOD.

Council President Van Sciver responded that there is no legislative TOD. This is only a study.

David Bramwell, Monument Avenue, asked if Council would make a motion this evening that the TOD will be completely tabled until after the new Borough Council is seated in 2014.

Council President Van Sciver responded that the Study is meant to collect information. There are no decisions pending.

Mr. Bramwell again asked if Council would postpone the meeting to collect public information on the TOD until after the new Council is seated? Nobody needs the inflamed sentiment.

Joyce Pettit, Church Street, stated that her first question is, East Whiteland is not on board with this Malin Road extension. The other suggestion is in line with Mr. Bramwell. She stated that her gut feeling is most people are against this zoning change for a ½ mile radius. If that is really the consensus of the residents here, why not shut it down?

Council President Van Sciver asked that if you know the market can bear 600 more units and if a developer can craft 600 new dwelling units to sell, might you not want to take a

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closer look at the existing land use, maybe look at the existing land use ordinance to make sure there are no loopholes and be extra vigilant of how the process could occur?

Mrs. Pettit believes that many people who wanted to move to Malvern before had to wait until a house became available. They can wait again. She stated that she will not support instant gratification.

Council President Van Sciver stated that Malvern is a very attractive community right now.

Mrs. Pettit stated that Sarah Peck, who is looking to develop a parcel on No. Warren Avenue, has constructed low income developments. This is not a good idea. Those residents would all be renters who don't have skin in the game. There is no reason to continue with considering this development.

Council Member Macaleer asked what is the alternative if nothing is done on the other side of the train station? It is all Limited Industrial.

Mrs. Pettit responded that if it is undevelopable land, that is not true.

Council Member Uzman stated that he agrees with a lot of things that Mrs. Pettit has said, but he stated that he is a renter and he has skin in the game.

Mrs. Pettit stated that this type of development is frightening to people. It is a no go.

Council President Van Sciver stated that the consultants want to complete the Study and get paid. Borough Council will never deal with the TOD until after the end of the year. They will wrap up the study after November 19th and it can sit on the shelf.

Joe Bones, High Street, stated that part of the problem is that Borough Council has offered a myriad number of variances to allow projects to go forth in the Borough. There is a little lack of trust.

A resident asked how does it get from studying a truck problem to 600 homes. 600 homes doesn't address the truck traffic.

Council President Van Sciver responded that if there is a land use change, there will be a very much increased land use value to the landowners on Pennsylvania Avenue and Quaker Lane if there is a road. He would not want to say to the rest of the borough to pay these costs but improve the area land use regulations to increase the value of the land. There is a market for it. You can generate the money for the road. Council President Van Sciver talked about Tax Increment Financing (TIF) and stated that there are very limited ways to extract money from developers. With a TIF there would be incremental value increases. The base value of the assessment would not change so the incremental value would be dedicated to the infrastructure improvements. If there is going to be change, it would be limited to those folks in the LI District.

A motion was made by Council Member Uzman, seconded by Council Vice President Raymond and unanimously carried by a vote of 7-0 to move that Council hold off on any borough action on Transit Oriented Development or on the Progressive Housing proposed project on No. Warren Avenue until after the new Borough Council is installed in January.

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b. Helen McDonnell, 322 E. King Street, reported that she had written an e-mail to the borough regarding notification of the special task force meeting.

Council President Van Sciver responded that he did receive a copy of the e-mail and explained that the Planning Commission is a body that recommends legislation and that they don't produce legislation. If notice of this meeting was not sufficient, there is still plenty of time. Meetings would be held a month in advance before anything would happen.

Mrs. McDonnell stated that there seems to be a sense of urgency about looking at this ordinance and questioned the need for a change in the ordinance.

Council President Van Sciver responded that someone wants to build townhouses on No. Warren Avenue.

Council Member Uzman stated that he agrees with Mrs. McDonnell about the short notice and stated that he found out about the meeting two hours before the meeting. He stated that he was never contacted about being on the task force. He feels there was a lack of communication with the public.

Mrs. McDonnell stated that if you want people involved, you want to involve them early. You want to invite people in so that they feel they are part of the process. She asked how they choose people for the task force and was told that Council Members, Planning Commission members, members of the public, members of the business association and others who might be familiar with the process.

Mrs. Marozzi stated that they established 4-5 meeting dates going into January.

Council President Van Sciver stated that members of the Planning Commission are all volunteers. The Planning Commission does have a specific role to fulfill as outlined in the Municipalities Planning Code. The concern seems to be that this thing is somehow steamrolling through the process without public input. He explained that there is no legislative action from Borough Council until there is appropriate public input with at least 1-2 public hearings from Council's level. He assured the residents that Council will make sure there is a thorough review of the process.

c. Joe Bones, 25 High Street, brought to Council's attention the buffer behind the battlefield area. A plan was approved by a previous Council to maintain a 20 foot buffer between the battlefield and the private homes. Mr. Bones stated that that buffer has been destroyed and a fence is on the battlefield property. He just wanted to bring it to Council's attention.

Council President Van Sciver stated that we must be vigilant in protecting our boundaries. We have previously contacted Willistown residents who were encroaching on our Randolph Woods property.

Mr. Bones asked that some follow-up occur regarding the intrusion on the battlefield property.

Council President Van Sciver called for a ten-minute recess. When Council reconvened at 9:24 p.m., the meeting continued.

4. RESOLUTION NO. 671 – FINAL SUBDIVISION PLAN APPROVAL – TAG BUILDERS, INC.:

A motion was made by Council Member Coughlin and seconded by Council Member Macaleer to adopt Resolution No. 671, a Resolution approving, subject to conditions, the plan entitled “Final Subdivision Plan for 217 So. Warren Avenue for TAG Builders, Inc.”, prepared by Inland Design, LLC, dated December 13, 2012, last revised October 29, 2013, consisting of ten (10) sheets, pursuant to the Malvern Borough Subdivision and Land Development Regulations of 2005, as amended, for the development of certain property located in the Borough of Malvern, Chester County, Pennsylvania, in the R-4 Zoning District.

Council President Van Sciver reported that Mr. Fruchter has trespassed on the Gables land for so long that he now wants to claim it. He started trespassing illegally and is now suing the Gables to obtain that piece of ground. That lawsuit should not play into any decision that is made this evening. Neighbors should be forewarned that property lines are important and fences are important so be careful of where your fence is located.

Seven waivers were granted for this subdivision. It is not uncommon to grant waivers. Every subdivision project has received waivers. Three of the waivers were related to Borough Council’s decision relating to improvements on Second Avenue. Another waiver had to do with a common driveway that solved a lot of planning issues so driveways don’t go out onto Warren Avenue and another waiver was a condition that would apply to Malvern Prep or Malvern Retreat if those properties were ever to be redeveloped.

Lou Colagreco, Esq., has acted as our conflict counsel as the borough solicitor had worked with Mr. Galbally in the past on projects in other municipalities and this subdivision presented a conflict of interest for them.

Mr. Colagreco read the Resolution into the record.

Andy Rau, Esq., for TAG Builders, stated that the Chair has referenced some of the legal background of the private lawsuit. Mr. Rau stated that they have sent in one additional request for a waiver that was suggested by the Planning Commission. Mr. Rau also pointed out the borough engineer’s review letter regarding the increased landscaping on the property and by approving it, it includes the landscaping for this property.

Mr. Diehl, attorney for Mr. Fruchter, requested that Council consider if the requested waiver is in compliance with the MPC.

Council Vice President Raymond stated that she would like to hear from the engineer as to why the final plan needs this additional waiver.

Lauren Duffy, TAG Builders, responded that this waiver was something the Planning Commission requested. They did not want the two driveways next to each other.

Mr. Rau stated that their position over the summer has always been that Section 513.E is really concerned about distance from Gables Alley to Warren Avenue and that it be more than 50 feet. It meets that requirement. The engineer has read it another way so we did it another way.

Council Member Macaleer stated that if Borough Council did not want to grant this additional waiver, what would you do?

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Roman Dychdala, Engineer for TAG Builders, responded that what could happen would be that you could move the driveway from Lot 5 to access on Second Avenue. We could make Lot 4 comply and would end up with a driveway that would hook a bit. The Planning Commission did not feel it would be in the best interests of the homeowner. The intent of the ordinance provision is to prevent queuing up at the intersections. We are accessing a common driveway with only five homes and feel that subdivision provision has to do with accessing streets and not accessing driveways. The Borough Engineer had a different opinion so we asked for a waiver.

Council Member Uzman stated the only comment he has is that he doesn't like the fact that you are coming back for another waiver. Since that last meeting, there has been a lot of things that have come to my attention and I feel betrayed. The reason I voted the way I did the last time was I was given a plan that was by-right. I felt I had a gun to my head and I thought it was a by-right plan. That left a bad taste in my mouth and for that reason I will not grant these waivers.

Mr. Galbally stated that this waiver was requested by the Planning Commission.

There was no public comment on the proposed Resolution.

Council President Van Sciver stated that once the Borough approves a Preliminary Plan, the applicant comes back and expects an approval.

Mr. Colagreco stated that the Borough approved the Preliminary Plan and is legally bound to approve the Final Plan based on the Preliminary Plan. Should the applicant go back, re-do his plan somehow to avoid that last remaining waiver, the new Borough Council would be obligated to approve the new Plan; otherwise, the new Council would be increasing liability for the Borough. If there are changes over the Preliminary Plan, that is a new discussion. The Plan has to come back to the engineer for final engineer approval to make sure the outstanding issues are compliant. There is time to make that change and come back to remove those driveways.

Council President Van Sciver stated the municipality must act within a time constraint. Our clock expires at the next meeting.

Council President Van Sciver stated that one of the concerns he has is that one of the conditions was a swap of improvements and we asked the developer to put the money for sidewalks and curbing into a pot of money that they would then transfer to the Borough. The way the condition was finalized was that money would be estimated by their engineer and submitted to our engineer and we would receive the money. To date, we have not seen those numbers. Council President Van Sciver stated that he would like to see Dan say the numbers are right. That money will be targeted towards improvements with Warren Avenue.

Andy Rau responded that in fairness, his understanding was the Borough Engineer wanted to do a design first and we are just being asked to post the money. That dollar figure is already based on what the Borough Engineer has designed. He stated that they just got that estimate a few days ago.

Mr. Dychdala stated that they did a cost estimate back in September but they wanted to hold off on submitting that to the Borough Engineer up until final approval.

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Mr. Galbally stated that they are agreeing to pay for it. They are waiting for feedback from the Borough Engineer.

Mr. Rau stated that they could give the Borough their number and Council can say we're required to post that money and it has to be approved by the Borough Engineer. The Borough Engineer will have the final say on the cost.

Mary Gable, property owner, stated that she has been to numerous meetings. Mr. Fruchter has done things to draw this out. She deserves to have an inheritance and they have been waiting all this time. She asked that it be approved tonight and have the engineer produce the numbers as she feels it is unfair to prolong it. The problem for her is that this process has gone on so long that she is losing money. TAG's engineer has the figures down and is willing to have the borough engineer look them over and the borough engineer has final say. TAG has their figures ready. It has been drawn out forever. She stated that she still has to go on with the lawsuit.

Lauren Duffy stated that they have never disagreed with the borough engineer's numbers. Our road widening estimate is in excess of \$30,000 and it will be up to Dan Daley who's decision is final.

Council Member Macaleer stated that the Borough is obligated to approve it from the Preliminary Plan.

Mr. Dychdala stated the waiver request was generated from a difference of opinion.

Carroll Sinquett, member of the Planning Commission, stated that they didn't want the driveways to line up. They saw it as a better plan.

The motion carried by a vote of 4-3 with Council Members Uzman, Sponenbergh and Raymond voting "no".

5. OTHER BUSINESS:

a. Draft 2014 Budget – Council President Van Sciver reported that as the budget stands, we anticipate a tax increase of approx. 11%. However, we are considering decreasing the minimum sewer rate from \$95.60 to \$80.00; or, a reduction of 16%. We had been ahead in the sewer fund but incurred significant costs for capital improvement upgrades at both the Valley Forge Sewer Authority and the Wilson Road Pump Station. Those capital improvements are now almost complete.

We received the \$114,000 contribution from the E. King Street development project and we are anticipating a sale of a borough owned property on Woodland Avenue. We believe the time is right to sell that parcel.

We have established goals that we never had before over target balances for a "rainy day" fund. We are also considering succession planning of our employees and have included in the budget an Assistant Manager position which we have not had previously. Also included in the budget is the purchase of a new police vehicle. The capital improvement project for Channing Avenue and So. Warren Avenue will cost the borough \$751,604, of which we received a grant from Chester County in the amount of \$500,000, leaving a balance to be paid from the Capital

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Reserve Fund of \$251,604. Healthcare costs are going up 13.37% or 8.57% net after employee contributions. These increased costs are attributed to the Affordable Care Act.

In discussions regarding the increase in taxes, Helen McDonnell, E. King Street, commented that she prefers to have small incremental increases in taxes rather than one large increase at one time but Isabel Leininger, Woodland Avenue, stated that she finds it irritating to have prices go up every year rather than a somewhat bigger jump every few years.

A motion was made by Council Member Sponenbergh, seconded by Council Member Uzman and unanimously carried by a vote of 7-0 to publicize the budget as drafted by the Manager in its current form reflecting the changes we have discussed this evening.

6. ADJOURNMENT:

All business having been discussed, a motion was made by Council Member Uzman, seconded by Council Vice President Raymond, and unanimously carried by a vote of 7-0 to adjourn the meeting at 10:17 p.m.

Respectfully submitted,

Sandra L. Kelley
Secretary/Manager