

REGULAR MEETING
BOROUGH COUNCIL
MALVERN BOROUGH

April 16, 2013
7:30 P.M.

PRESIDING: Catherine Raymond, Vice-President

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL:
 - Council President Van Sciver - Late
 - Council Vice President Raymond
 - Council Member Giandonato
 - Council Member Macaleer
 - Council Member McCrory - ABSENT
 - Council Member Sponenbergh
 - Council Member Uzman
 - Mayor McGlone - ABSENT

2. PUBLIC FORUM:

Council Vice 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. John Buckley, 165 Church Street, stated that the signs on the borough property that “ask Borough Council to not allow TAG to wreck their neighborhood” are an eyesore.

- b. Cassandra Doughty, 145 Woodland Avenue, reported that yesterday she took another look at the plans for 144 Church Street because the developer had removed a tree that he verbally stated that he would try to keep. She stated that her feeling is that TAG may not be in compliance with Section 511(F) of the SALDO. She stated that she would like an answer from Borough Council, the Planning Commission, the Borough Engineer or the Borough Manager as to whether they are in compliance with that section. As a resident, she would like it to be addressed.

Council Vice President Raymond stated that Council will look at it and will provide an answer.

- c. Danny Fruchter, Channing Avenue, expressed the concerns of he and his neighbors over the proposed TAG development plan for South Warren Avenue and presented charts he had prepared outlining some of the issues. He also presented a timeline of events that occurred in March and April. Mr. Fruchter feels the Borough Engineer missed the following items in his plan review:

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Violations of Zoning

201

702B

2309

SALDO

508

511(F)

Application

Not complete or acceptable without the four-part design procedure

Mr. Fruchter stated that Council can say “we grant no waivers in Malvern” unless the developer and engineer agree to make the plans public.

Mrs. Doughty, 145 Woodland Avenue, reported that TAG broke ground yesterday and there is a big hole in the ground. She requested a response to her question before he pours concrete. If he is not in compliance, she’s sure it is a quick look in the Plans by the Borough Engineer.

Council Vice President Raymond responded that we will get an answer as quickly as we can.

Council Member Uzman stated that he has been reading everything that has been coming through on this whole matter and he understands the scheduling concerns that the neighbors have. As far as getting copies of the Plans, they are available at Borough Hall. Council Member Uzman stated that being an engineer himself, he also knows that the Plans are the property of the owner and the people he is giving them to. The right to make copies has to be signed off by one of the owners. We aren’t doing anything differently than anyone else. We are not asking you to do anything different that we aren’t asking any other citizen to do. Council Member Uzman stated that he takes all the comments very seriously. He just read the letter that Dan Daley sent regarding this application and there are things addressed in that letter that are on Mr. Fruchter’s list of items not addressed by the engineer and there may be some things he missed. And, yes, being an engineer who also reviews plans, there are certain things that you miss. It is a given. Council Member Uzman stated that he understands the neighbor’s passion. He doesn’t appreciate the tone of the comments and accusations that something is being done underhandedly. Coming in professionally and saying that you have issues would go a lot further without giving that tone that we are doing something underhanded. Council Member Uzman stated that he has been making sure the comments are addressed in a professional manner and when you are making personal attacks, he thinks that is not appropriate. Council Member Uzman stated that he will review the Plans when they come in and will look for those items of concern that have been expressed. Council Member Uzman asked that Mr. Fruchter keep his comments on a professional level and to not make accusations.

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Council Members Macaleer and Sponenbergh echoed Council Member Uzman's comments.

Mr. Fruchter stated that he was providing a recitation of facts. He thought he was very specific about the alley change and thought that Council was aware that it would have made a difference. The neighbors feel unempowered. He stated that Council has the gavel and the Manager has a pulpit. Everything on that list was missed by the engineer on the first or second letter.

3. APPROVAL OF MINUTES:

A motion was made by Council Member Macaleer and seconded by Council Member Uzman to approve the minutes of the Regular Meeting held on Tuesday, March 5 and Tuesday, March 19, 2013, as submitted.

Council President Van Sciver had sent an e-mail with requested changes regarding comments he had made. Those changes are as follows:

March 5, 2013 – Page 5, Line 19, should read: Council President Van Sciver stated that the curbs we utilize are 8" curbs and prevent vehicles from getting into the pedestrian walkway area. Line 28 should read: Council President Van Sciver stated that there are two large path plans that are evolving that will connect from Willistown Township through Randolph Woods to Second Avenue.

March 19, 2013 – comments from the Channing Avenue groups correspondence and Council President Van Sciver's comment on Mr. Fruchter's comment: "One thing he does understand is that Mr. Fruchter believes "no reasonable person" would approve of this development." Council President Van Sciver believes he stated "Mr. Fruchter's comments appear to state his interpretation of the submission is the only reasonable interpretation and I believe there are others.

The motion, as amended, unanimously carried by a vote of 5-0.

4. APPROVAL OF REPORTS:

A motion was made by Council Member Uzman, seconded by Council Member Sponenbergh and unanimously carried by a vote of 5-0 to approve the Treasurer's Report, the Committee Reports for Finance and Administration, Public Safety, Public Works and the Chief of Police Report, the Code Enforcement 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 March 2013, as submitted.

Council President Van Sciver arrived at the meeting.

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5. APPOINTMENT TO SHADE TREE COMMISSION:

A motion was made by Council Member Sponenbergh, seconded by Council Member Macaleer and unanimously carried by a vote of 6-0 to appoint Bobbi Tower of Monument Avenue to the Shade Tree Commission for a term to expire January 1, 2018, as recommended by the members of the Shade Tree Commission.

6. PUBLIC HEARING – PROPOSED MURAL ORDINANCE:

Council Vice President Raymond announced that Borough Council will now open the public hearing to consider an ordinance to permit community-based outdoor murals in commercial and industrial districts.

The Notice of Public Hearing was published in the Daily Local News on April 5 and 8, 2013, as required.

The Manager reported that the County Planning Commission had some comments regarding the proposed ordinance, however, we probably want to have an ordinance in place that will permit the mural projects that have already been approved by Council to get underway. Going forward, the Borough Planning Commission can look at amending this Ordinance as they go through the process of amending the Zoning Ordinance to be consistent with the Comprehensive Plan. There will probably be a lot of amendments at that time. During that process, they can consider things like where we might want to permit murals and under what conditions they should be permitted. The Ordinance being considered tonight will permit these two murals that have already been approved by Council to move forward. It will then allow us more time to get a better definition for murals. Both our attorney and the County Planning Commission have looked for a definition but the only one that could be found is Tredyffrin's definition of "super graphic" and may fit for our murals, but we should take a little more time to review it.

There being no additional comments, the public hearing was closed.

ORDINANCE NO. 2013-1 – MURALS:

A motion was made by Council Member Uzman, seconded by Council Member Sponenbergh and unanimously carried by a vote of 6-0 to adopt Ordinance No. 2013-1, an Ordinance amending the Borough of Malvern Zoning Ordinance of 2003, as amended, to permit community-based outdoor murals in commercial and industrial districts.

7. PUBLIC HEARING – PARTICIPATION IN THE DELAWARE VALLEY WORKERS’ COMPENSATION TRUST:

Council Vice President Raymond announced that Borough Council will now open the public hearing to consider an ordinance authorizing participation of the Borough of Malvern in the Delaware Valley Workers’ Compensation Trust.

The Notice of Public Hearing was published in the Daily Local News on April 7, 2013, as required.

Council Member Macaleer stated that he had been concerned about the DVWCT coverage being self-insured and that the borough was not taking on undue liability. However, the Agreement states that the stop gap is \$600,000 and it is then re-insured.

No additional comments being received, the hearing was closed.

ORDINANCE NO. 2013-2 – PARTICIPATION OF BOROUGH OF MALVERN IN THE DELAWARE VALLEY WORKERS’ COMPENSATION TRUST:

A motion was made by Council President Van Sciver, seconded by Council Member Sponenbergh and unanimously carried by a vote of 6-0 to adopt Ordinance No. 2013-2, an Ordinance authorizing the participation of Borough of Malvern in the Delaware Valley Workers’ Compensation Trust in accordance with the Pennsylvania Workers’ Compensation Act and the Pennsylvania Inter-Governmental Cooperation Law.

8. OTHER BUSINESS:

a. Public Safety Committee Recommendations – Council Member Sponenbergh reported that the Public Safety Committee had asked that the Chief provide some recommendations for improvements in public safety that he might witness in his travels through the Borough. There are four recommendations that the Committee would like Council to consider. The issues are as follows:

1) Add Stop signs at Channing Avenue, Woodland Avenue and Church Street where they intersect with Second Avenue and adopt an Ordinance to make the signs legally enforceable;

2) Consider installing a Stop sign on Second Avenue where it intersects with Warren Avenue. Because of the proposed development for this site, and the current conditions at this intersection with the concrete driveway, it may be more feasible to erect the Stop sign at the time when new curb and sidewalks are being constructed.

3) Increase the cost of parking permits at all municipal lots from \$10.00 per year per vehicle to \$36 per year per vehicle for residents who have no driveway and \$60 per vehicle per year for businesses.

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4) Increase the cost of parking ticket violation fees from \$15 to \$25 and \$50 for handicap parking spaces and include appropriate signage that must state "Violators Subject to Fine and Towing – Minimum fine \$50; Maximum fine \$200.

Council Member Macaleer stated that when Council attempted to get a Stop sign on Crest Avenue, we were told there had to be a study completed.

Chief Marcelli responded that this is an intersecting road. A study would have to be done to erect a sign on Highland Avenue, where the sign would need to be erected, not on Crest Avenue. We are asking that the Stop sign be placed on Second Avenue and not on Warren Avenue. If you did a study for it, it is a T-intersection and it is a stop intersection. The Chief feels that the Stop sign should be erected on Second Avenue at Warren Avenue now because it is a liability issue.

Mrs. Baglini asked about the parking permits?

Council President Van Sciver responded that there might be a whole evolution of parking regulations once the E. King Street development project is complete.

Chief Marcelli reported that the parking permits are not meant for commuters. They are only to allow parking in the municipal lots for more than four hours.

It was suggested that the parking violation fees be increased to a fee greater than \$25. Chief Marcelli stated that he didn't know if there were any laws that state we can charge whatever we want so he wants to make sure we have the legal right to do it and that there are no restrictions on the fee if we want to enforce it.

This item will be tabled for permit and parking ticket violation fees.

A motion was made by Council Member Sponenbergh, seconded by Council Member Uzman and unanimously carried by a vote of 6-0 that we add the Stop signs at Channing, Woodland and Church that intersect with Second and that we install a Stop sign on Second at Warren.

b. Mr. Fruchter stated that it has been the neighbors point that the TAG development on So. Warren Avenue was uncharacteristic of the SALDO, Zoning and requirements for Old Town as discussed in an e-mail from John Snook a Senior Planner at the Brandywine Conservancy. Mr. Fruchter feels the developer is trying to build McMansions on postage stamp lots.

Mr. Fruchter stated that there has been not one single waiver request in writing. Something has come up recently, a zoning issue with Section 201. Buffering is being proposed on Borough property. The engineer said it was okay to do that because the lights from the parking lot will shine in the homes. If the hedge was allowed to grow, it would solve the issue of the lights from the parking lot shining into the homes. Mr. Fruchter presented a chart showing where the lights would shine in relation to the buildings.

Mr. Fruchter read excerpts from Mr. Snook's e-mail to him where Mr. Snook suggested that a financial consideration be obtained from the developer should the widening of South Warren Avenue be waived. Mr. Fruchter feels four lots should be constructed instead of five lots.

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Mr. Fruchter also asked that Council hold the developer to a no waiver situation and a monetary contribution for not widening South Warren Avenue. He asked Council for their comments with regard to the big picture.

Council President Van Sciver responded that he selected and worked with Mr. Snook during the SALDO update. The Four-Step Design Process has never been used. It was brought into the ordinance because there are two large parcels in the Borough that they were deemed applicable to. If these two parcels were ever designed for residential use, it would be very important to have the four-step design process – those properties are Malvern Retreat and Malvern Prep. Those provisions were deemed somewhat burdensome for the balance of the Borough. Council President Van Sciver stated that he thinks Mr. Fruchter's presentation was fantastic. Everyone knows that zoning ordinances are crude tools. We're netted out as a municipality and we can't restrict your use of private property. State regulations through the Municipalities Planning Code is stacked for the private landowner. If we adopt an ordinance, the rights of the private property owner are considered paramount. We can't take away a person's private rights. The Market Analysis that is being completed as part of the TOD Study indicates that bigger developers might be interested in how well crafted our ordinances are and we have to be prepared for that. The alley could have a private access. That is allowed.

Mr. Fruchter stated that for a common driveway, the right-of-way is 35'. None of these lots meets that condition.

Council President Van Sciver responded that there are ways that the applicant can manipulate that. He has the right to change those lines. If he's clever enough to minimize the waivers, he can do that.

Mr. Fruchter stated that there is no way in the world he can bring in a by-right plan. There is no provision for a separate lot with a private alley. He has to ease it across other people's property. It puts him way outside of the lot coverages.

Council President Van Sciver stated that he met with Mrs. Doughty on Sunday. The initial opinion was that some of the wording in the ordinance is not great and it may not be black and white. We have to make a decision that is enforceable. I have not seen any letter asking about putting shrubbery on Borough property. At the same time, I have to ask the neighbors, would you want to be restricted on your property if all of these restrictions were put into place and no waivers would be considered?

Mrs. Baglini stated that she would like to ask Council to give some consideration to how many of these issues we have to fight before we feel Malvern isn't going to be Malvern anymore.

David Burton, 19 Powelton Avenue, stated that he couldn't agree with that more. What quality of life do you want in the Borough. The Borough is getting dense. When you are talking about 600 new dwellings, that is going to happen and you have to be prepared to deal with that. There is so much more involved to think about and consider because it is going to change us considerably.

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c. TOD Discussion – Council President Van Sciver stated that the draft Market Analysis indicates that the market would support 600 new residential dwellings.

Bobbi Tower, Monument Avenue, stated that she's sure that Council has looked at the traffic situation and the impact that it would have on our town.

Council President Van Sciver asked Council if anyone had any thoughts on this Analysis?

Council Vice President Raymond stated that she would only see them build 600 units over her cold, dead body. She sees the report as saying only that Malvern is an attractive location to home buyers. She thinks that the report is somewhat limited in purpose, and she does not believe the report meant to say that 600 homes would fit economically or desirably in the TOD development area.

Council Member Macaleer stated that he thinks it is something we should pursue to the extent we could get some development over there or additional tax revenue. Maybe not 600 units. He's sure someone made a similar comment about Raintree and Charleston Greene.

Council Vice President Raymond stated that ground is flatter at Sugartown Road. The study only says where people want to be but doesn't address to what extent we can let that area be developed.

Council Member Uzman stated that any applicant would have to come in front of the Planning Commission or Borough Council for zoning changes. He believes that we need to seriously consider any zoning change in that area because he does not want to see 600 units up there. He stated that he lives in Charleston Greene and there are twelve buildings with each building having 20 units. It is a nice community but has its own issues – parking, traffic, congestion, etc. He would hate to see us do another development with that much density up there on Pennsylvania Avenue.

Council Member Sponenbergh asked if there was a reason why we wouldn't want to finish that study going from draft to final.

Council President Van Sciver responded that the study looks at access. They took the E. King Street model and duplicated it on the north side. Council President Van Sciver asked why wouldn't we want to consider office use. There would be less of a tax burden but they still contribute tax-wise. East Whiteland has very low tax rates because of a large amount of office space.

Mr. Fruchter stated that it seems like this is an incredible opportunity with only two possibilities. I have been in places in the world where the municipality has looked at a big tract like this and decides to plan. He stated that he can't imagine that both public and private money can't be used. Why don't we look at the most wonderful planning that we can do. There are so many interesting applications and designs being done by really forward thinking people who have already solved traffic, steep slopes, etc. Look for money for creating planning.

Council President Van Sciver stated that we have a train station there. We have a regional duty to optimize that train station.

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Council Member Giandonato thinks we should look at a bigger picture. He doesn't know about corporate but office space would be a ton of traffic. If he lived there, why would he drive and come into town to get out of town.

Council Member Uzman stated that he sees that development as not having that impact to the town.

9. ADJOURNMENT:

All business having been discussed, a motion was made by Council President Van Sciver, seconded by Council Member Uzman and unanimously carried by a vote of 6-0 to adjourn the meeting at 9:47 p.m.

Respectfully submitted,

Sandra L. Kelley
Secretary/Manager