

REGULAR MEETING  
BOROUGH COUNCIL  
MALVERN BOROUGH

June 4, 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 Giandonato
  - Council Member Macaleer
  - Council Member Sponenbergh - ABSENT
  - Council Member Uzman
  - Mayor McGlone

2. 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.

b.

3. AWARD BID – POLE BARN & SALT SHED:

A motion was made by Council Member Uzman, seconded by Council Vice President Raymond and unanimously carried by a vote of 5-0, to award the bids for the Pole Barn and Salt Shed to Agpoint Construction in the amount of \$117,360.00 and \$32,985.00, respectively, as recommended by the Borough Engineer.

4. OTHER BUSINESS:

a. George Fieo, CPA – 2012 Audit Results – Mr. Fieo presented to Borough Council the results of the 2012 Audit. Pursuant to the requirements of Generally Accepted Auditing Standard #114, he explained that auditors are required to specifically communicate certain information upon the completion of the audit. Mr. Fieo reviewed the required items and reported that there were no irregularities in the audit and no findings were found.

With regard to the Financial Monitoring System metrics, because a change had been made in the reporting of employee benefits and insurance costs in 2012, years 2008, 2009 and

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2010 could be revised, upon Council's recommendation, to reflect the same information as reported in 2012. It would require a breakdown in healthcare benefits information vs. insurance information from the Treasurer. Council agreed that this change should be made and the report revised to reflect the updated information. Mr. Fieo reported that the Borough is in good financial condition.

b. Transit Oriented Development along No. Warren Avenue – Council President Van Sciver stated that given the potential for the Birchall Tract, he would like Council's permission to send the Draft TOD Study information to the Planning Commission for their review.

Council Member Macaleer asked the difference between a zoning overlay and spot zoning.

Council President Van Sciver explained that during the discussions on the TOD, the question was raised by our solicitor regarding spot zoning that is basically singling out a parcel and saying it will have a different zoning than it's neighbors. The problem with that is that all the laws are regulated and if we say the Birchall tract was approved for rezoning, we wouldn't have a defense for one parcel. Any changes for access provisions are expensive and the idea was the people who gained all the added value for their property because of the zoning change should be the significant contributors to the cost for paying for those improvements. There are mechanisms to limit those payments to specific groups through TIF's or a Municipal Capital Improvement Fund. You would have to establish a committee and they would say this would be the cost basis that would be adopted into a Program and everyone in the area that you are drawing from, they would be a party to it. We would want to pursue this jointly with East Whiteland.

Council Member Macaleer stated that the solicitor said you couldn't require these other entities to share in the cost. Council President Van Sciver responded that that was true, unless you have a plan already in place. It is very difficult to extract contributions from developers for off-site improvements without those two mechanisms. It is important to get a plan together. If you don't want to see any development occur, you don't want a plan.

c. Danny Fruchter, Channing Avenue, reported that what he could not get from any of his informants was some idea of what Borough Council sent TAG away to do. He understood that there were some models looked for but he didn't understand whether Council was expecting TAG to address some of the zoning and SALDO issues or to understand the density issues. He asked if Council was expecting a new plan to be presented by the applicant.

Council President Van Sciver responded that his recollection of the meeting was that the applicant had already presented his plan. Council President Van Sciver stated that the criticism that he heard to date were that the houses would be McMansions and that Mr. Fruchter used a model to show the size of the houses vs the existing houses in the neighborhood. What has not been presented to date is the actual size of the house that is going to be built. We can regulate the envelope and the maximum height. Council President Van Sciver stated that he thought that

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if that was one of the strongest oppositions, the applicant should be able to present something to Council showing the size of the house that is being proposed to be built. It would be an enforceable, quantitative communicative device. If the applicant said this house was going to be this high, with these kinds of gables, it would give the Council the opportunity to have the option to say it could be approved with what the rendering showed that was presented. He was given the option to develop that model and bring it back so you can get a picture of what the home will actually look like.

Council Member Macaleer asked what the neighbors would like to see?

Mr. Fruchter responded that they have been trying to talk to TAG. They asked for a cooperative situation where they would look at something together. The neighbors have spoken about not being anti-development and four single homes. They've talked about a combination of twins and singles that could be five. Maybe five homes but much smaller that would be allowed under the zoning regulations. They believe five homes would be out of keeping with the neighborhood. Consider ratios of volume vs. square footage. Those ratios were different by 400%. We did make assumptions about the sizes of the houses and looked at the sizes of the houses he's already built.

Council Member Macaleer asked if they were concerned that if he could only put four, were they aware that he could put up four larger houses with double garages? Mr. Fruchter replied that they are comfortable that the zoning regulations and SALDO will prevent him from doing whatever he wants to do.

Mr. Fruchter stated the big issue is waiving conditions on the side of the developer/owner and are the waivers being sought a hardship and in the public interest. The public interest is in keeping with Old Towne Malvern. The neighbors are a little surprised that the applicant hasn't taken up their offer to sit down and do something creative. It feels like all of this could have been avoided five months ago as it is out of keeping with the Comprehensive Plan. He would ask that the applicant bring them something reasonable. He stated that there is nothing about the number five; one big house, two big houses, three big houses or two small houses. There is no architectural variation, lot size variation, front yard variation, etc. There are zoning issues. Mr. Fruchter doesn't think he can do it. When it becomes a common driveway, the whole mess has to be redrawn. He is not sure if there are other issues here, but it sounds like you are going to see the same plan come back that is impossible for you to vote on.

Council President Van Sciver responded that Mr. Fruchter's group has determined that the applicant is going to build something bad for the neighborhood, but they haven't even seen anything that is going to be built. The precedent that is being set is that neighbors are against granting waivers that are typically and routinely granted for developments. No development is able to conform to every issue in the SALDO. It is commonplace to waive certain items in the SALDO. It is much more beneficial to the community to have a single access into that site than have five different access points. Council President Van Sciver stated that he believes it is a benefit and a better plan for the community. There is always a balance. There is also aesthetic value to the proposed development. Neighbors don't always like what their neighbors do, but

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they have a right to do it. We cannot regulate the size of the house but we can regulate the outer parameters.

Mr. Fruchter stated they are not saying this is a question of aesthetics in terms of the limits of one particular house; that is not the point. They know that to sell a \$700,000 house, it has to be attractive-looking. The variations from house to house are inappropriate to Old Towne and to the neighborhood.

Council President Van Sciver responded that there are certain benefits to be gained by waiving certain SALDO requirements for the public benefit.

Mr. Fruchter responded that there is no question that a common access to the street is way preferable to five separate accesses, but he can't make it work.

Council President Van Sciver stated that Council will respond to the plans submitted, then we don't have to worry about five separate accesses.

Mr. Fruchter said they are asking Borough Council to regulate that which can be regulated in the public interest. We know the maximizing of profits to the applicant is not the Borough's problem. The public interest is the Borough's concern.

Mr. Fruchter asked that Council look at the attorney-client privileged letters and, if possible, redact the privileged sections and make the remainder of the letters available to them for review. Also, this business about the plans not being permitted to be copied and us having to come to the Borough offices to look at the plans, is very difficult. Mr. Fruchter stated that it is not necessary for you to accept plans that aren't available to the public. You could say to the applicant that if plans presented are not permitted to be made available to the public, they won't be considered. Mr. Fruchter requested that Council consider doing this. They think it is important that they be included as much as they can be.

Council Vice President Raymond stated that she would have to look at those memos again to determine if they would be worth distributing once all the redactions were made. She also questioned whether state or federal law would prohibit the Borough from accepting plans that could not be made available to the public.

Mr. Fruchter suggested that developers could be told we would not prevent plans from being accepted, but that any waivers being requested would not be considered until the plans were made public. If someone brings in a plan that is waiver-free, there is nothing that we can do.

Mr. Fruchter also asked if they believe that there is a zoning issue in the plans, how do they get the issue before the Zoning Hearing Board? There is a clear regulation in the zoning ordinance that says that citizens may bring the issue up as well as the Zoning Officer. He asked if they write to the Zoning Hearing Board or do they go to the Zoning Officer.

Council President Van Sciver stated that the Zoning Officer would be the first point of contact, then they might have to go to the Court of Common Pleas.

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5. ADJOURNMENT:

All business having been conducted, a motion was made by Council Member Uzman, seconded by Council Member Macaleer and unanimously carried by a vote of 5-0 to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

Sandra L. Kelley  
Secretary/Manager