

REGULAR MEETING
BOROUGH COUNCIL
MALVERN BOROUGH

July 16, 2013
7:30 P.M.

PRESIDING: Woody J. Van Sciver, President

INVOCATION: Gerard J. McGlone, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. OATH OF OFFICE – NEWLY APPOINTED MEMBER OF BOROUGH COUNCIL

Mayor Gerard J. McGlone administered the Oath of Office to Robert P. Coughlin, newly appointed member of Borough Council to fill the unexpired term of Duane McCrory. Said term will expire January 1, 2014.

2. 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

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. John Buckley, 165 Church Street, asked when he was going to be left alone about the scrap in his yard. He stated that he is sick and tired of it.

b. Danny Fruchter, Channing Avenue, was asked to hold his comments about the TAG development at 217 So. Warren Avenue until the end of the meeting.

c. David Bramwell, Monument Avenue, inquired about long-term planning for increased traffic and what appears to be a shortage of parking on Monument Avenue and First Avenue during the daylight hours. He feels that Council's efforts have fallen short in addressing these issues. He also expressed concern about permitted parking on both sides of Monument Avenue and feels there should be a better solution for kids to cross Monument Avenue. He does not feel the speed bumps are a benefit as he doesn't think they do what they were meant to do. Mr. Bramwell also questioned the ADA compliance of the Borough.

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Council Members responded that although on-street parking on Monument Avenue and First Avenue is a problem, with the on-street parking on both sides of the street, you can't speed down Monument Avenue so that can be considered a benefit for traffic calming. Council also noted that we are ADA compliant with our crosswalks and at all intersections where streetscape improvements have been made over the past 15 years. Council Member Uzman agreed that Council must be proactive in anticipating the traffic and parking impacts of the E. King Street development and consider residential parking permits. He stated that he would be surprised if more than 5% of the commuters do anything in Malvern except use the train station and he would be in favor of two-hour maximum parking on our streets and residential permits for those streets around the E. King Street development. Council Member Giandonato agreed with his comments.

Mr. Bramwell questioned the hopscotch of sidewalks on First Avenue and suggested that the street be widened at every property transfer and that curbs and sidewalks be installed at every property transfer throughout town.

It was explained to Mr. Bramwell that Council has a streetscape improvement plan and intersections are being made ADA compliant at the time the improvements are made. Mr. Bramwell was questioned as to what he meant by ADA compliance – ADA compliance throughout town or ADA compliant curb cuts. There is a significant difference regarding cost and making the Borough ADA compliant throughout the town would be a multi-million dollar project that the Borough could not undertake, nor would they be required to do so. It was also pointed out that the traffic in town is not a result of increased development, but is a result of motorists passing through the Borough going to the Great Valley Corporate Center. We will always have traffic traveling north and south but we are putting in a lot of effort to make things better from a pedestrian aspect.

Council President Van Sciver asked the Public Safety Committee to look at the issue of parking on Monument Avenue in particular and where we are going next year with our road improvements.

Mr. Bramwell suggested that large signs noting "Speed Limit" and "Children at Play" are easy fixes. He feels that signs send a message. The East Whiteland signs at Warren Avenue and Old Lancaster Avenue send a cheap message and are something the Borough can consider.

4. APPROVAL OF MINUTES:

A motion was made by Council Vice President Raymond and seconded by Council Member Uzman to approve the minutes of the Regular Meetings held on Tuesday, June 4 and Tuesday, June 18, 2013, as submitted. Council President Van Sciver asked that one change be made regarding his comment on Page 3, first paragraph. Delete "In addition to that, it is a generally accepted good planning practice to support increased residential development" and replace with "It is considered a good planning practice to consider residential development where there is infrastructure".

The motion, as amended, unanimously carried by a vote of 7-0.

5. APPROVAL OF REPORTS:

A motion was made by Council Member Uzman, seconded by Council Member Sponenbergh and unanimously carried by a vote of 7-0 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 June 2013, as submitted.

6. OTHER BUSINESS:

a. Council President Van Sciver announced that the 2nd Public Meeting for the TOD Study will be held on Tuesday, July 23rd from 4:00-7:00 p.m. with presentations by the consultant at 4:15, 5:15 and 6:15. Please plan to attend as the information presented will affect the entire Borough. Nothing has been endorsed by Borough Council and several different plans will be presented. A study is being performed by the Borough in anticipation of what we may be asked down the road. It is important the Borough be out in front of some of these things.

b. Sarah Peck, Progressive Housing Ventures, LLC – Ms. Peck stated that she went to the Planning Commission and discussed several planning issues. At the end of the day, for a variety of reasons, it was decided that something could be done along No. Warren Avenue.. The Planning Commission felt that a townhouse development made sense. She is requesting a map change for the area in question for a type of use that is not currently articulated in the Zoning Ordinance – Conservation Townhouse. There is an opportunity to define it in an eco-friendly development that will minimize degradation of the steep slopes. The Conservation Townhouse District would be an overlay district in the LI-1 Zone.

Council Member Uzman stated that when he looked at a map, it made 100% sense that this parcel is zoned LI until you go to the site and see it is impossible to build anything there because of the grade changes. To him, if this is a way to get away from spot zoning, he's all for it. It fits into the character of the rest of Warren Avenue because the rest of it is all residential along this area. He feels it would fit in well if Ms. Peck is willing to pay for a sidewalk all the way up to the train station. A lot of people walk from the industrial park to the train station and they almost get clipped. The prospect of fixing the erosion problem is a plus.

Council Member Giandonato stated that he agreed with Council Member Uzman. Once you get past that certain area, it is all residential. Light industrial doesn't fit. You don't want to see an industrial building there and would rather see residential housing.

Regarding spot zoning, Ms. Peck stated there is a new law that says you advertise right up front that you are proposing a zoning change and people have 30 days to file an appeal. If they don't file the appeal within the appeal period, they cannot go back later and file the appeal.

Council President Van Sciver stated that he disagreed with everything that Ms. Peck said. He disagrees with the spot zoning argument and given that we have a market study that says

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people want to be in the Borough and 600 dwelling units could be supported on No. Warren Avenue, we know there are big players that could be incentivized to build there. By upsetting the applecart of restricting the whole LI development without finalizing the TOD Plan, we're being tremendously short-sighted by agreeing to any change at this time.

Ms. Peck responded that this is the last undeveloped piece. It is not the same as existing industrial buildings that have already been built. You are talking about somebody who wants to down-zone and will take less money for their project. Why would they want to take less for their land than it is worth? It does not cry out for residential development. This is a totally different animal and your own solicitor is comfortable with the spot zoning issue.

Council Member Sponenbergh asked if Council President Van Sciver's objection to Ms. Peck's proposal was more a matter of the timing of when this might happen as opposed to the validity or attractiveness of what she is proposing? If it is timing, at the outside, what would be your best guess as to the delay time?

Council President Van Sciver responded that if there is all this demand for little shops or garages, as indicated by Ms. Peck, there is a lot of vacant land up there already. He believes the delay time would be a couple of years.

Council Member Sponenbergh stated that for Mr. Birchall and Ms. Peck who has to concern herself with money and the cost of development, we have a real loggerhead with the two year delay time.

Council President Van Sciver feels the Borough would be better served by not approving it at this time.

Ms. Peck commended Council President Van Sciver as it is rare to think of something globally and consider where the funding would come from for the Malin Road extension, but there are funding mechanisms to fund this kind of venture. The Borough still has that option. Maybe there is a middle ground. Maybe stopping progress here is not something that you want down the road. Ms. Peck stated the other reason Sean O'Neill was more comfortable was because she had a handshake to purchase the parcel that abuts East Whiteland Township.

Council Member Uzman asked what the harm was in moving forward.

Council President Van Sciver responded that there is no harm in investigating; it is acting upon it that concerns him.

Council Member Uzman stated that the underlying zoning would still be there with an overlay. He stated that he has strong objections to wait for a TOD study for one small parcel.

Council President Van Sciver's position is that we are putting the Borough in too much jeopardy for unplanned development.

Council Member Macaleer stated that he agrees with Council Member Uzman and that this parcel should be removed from the TOD zoning.

Council Member Giandonato stated that he agrees with both Council Members Uzman and Macaleer.

Council Member Uzman suggested that we have Sean look at the Draft Ordinance and proceed through the process.

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Ms. Peck stated that it does get vetted through all the channels and to consider this Draft to be an official submission.

A motion was made by Council Member Uzman, seconded by Council Member Macaleer and carried by a vote of 6-1 to move forward with the Draft Ordinance for the Conservation Townhouse (“CT”) Overlay District for the parcel in the LI-1 Zoning District. Council President Van Sciver voted no and stated that this is the strongest position he can express in any Council Vote – NO!

c. Attorney Fee Proposed Ordinance – Council Member Macaleer asked if somebody doesn’t pay, will we assess penalties on top of the fees?

Council President Van Sciver stated the Ordinance applies to all related property matters. Before agreeing to move forward, he would like one more session to discuss the proposed ordinance.

d. Chesco Grand Prix Bike Race - The Manager acknowledged the Police Chief, Fire Chief and Public Works Department for all the extra work they did to insure the public safety of our residents and participants in the bike race held on July 8th. The race generated a lot of extra work, but because of the Chiefs’ hard work and preparedness, we were well prepared and everything went off smoothly.

e. Liquor License Transfer – A request was received from Eastside Flats, LLC, to transfer a Restaurant Liquor License from Phoenixville, PA to Malvern Borough. Eastside Flats will use it in connection with its full-service restaurant at the premises. A public hearing must be held to allow transfer of the liquor license.

Council agreed to hold the public hearing on August 20, 2013. It will be advertised, as required.

f. Danny Fruchter, 234 Channing Avenue – expressed his concerns over TAG’s by-right plan for 217 So. Warren Avenue and stated that he felt it would not be a by-right plan if fully engineered. He thinks that through deliberate misrepresentation or grossly negligent representation, something happened in front of Council that was a fulcrum in helping you make your decision. Mr. Fruchter pointed out violations with the plan. He feels the approval was a hasty decision. Mr. Fruchter suggested that additional conditions be placed on the approval and it was explained that Council cannot add conditions once the plan is approved. Mr. Fruchter questioned the amount of money to be placed in escrow and Council explained that the escrow is always determined by the borough engineer based on required improvements, both public and private, and then an escrow amount is determined and an agreement entered into. It is routine for the borough engineer to evaluate the escrow amounts and Council relies on his input.

Council Member Sponenbergh stated that he asked Ms. Duffy if what they presented was a true by-right plan and she indicated that it was not. They were not willing to spend the money to prove it was a by-right plan because they felt the plan presented was a better plan for the

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Borough. Council Member Sponenbergh stated that his decision and vote took that into consideration.

Paul Dodson, Realtor for TAG Builders, offered to sell Lot 5 to Mr. Fruchter at the appraised value plus \$10,000 and that would eliminate all of the concerns.

Council President Van Sciver stated that the Borough doesn't get involved in private property disputes.

Frank Ortner, 144 Griffith Avenue, reported that Mr. Fruchter came to his home the other day and asked him to review a little further the proceedings of July 2nd, with special note of Section 702(b). Mr. Ortner stated that he spoke to Mr. Galbally and has come to his own conclusions after reading the lot/width definition.

Cassandra Doughty, Woodland Avenue, thinks the bottom line is our whole community is opposed to this project. The people who showed up were specifically concerned about the issues. It doesn't follow the majority of Malvernites. She stated that her objection is that she feels a decision was made two weeks ago without the scrutiny of the zoning.

Council President Van Sciver stated that we have two reasonable people who have different opinions. Council President Van Sciver thanked Mr. Fruchter for the activity that he brought to the table. He believes the swaps that were made are good for the Borough. He stated that the by-right plan was a part of the deliberative process. The fact of the matter is, the only way you find the will of the community is, elections are coming up and if you don't feel that Council is representing the people, go to the polls.

Council Member Sponenbergh read John Snook's latest e-mail.

Mr. Fruchter asked if Council would consider censure if the applicant would not consider additional conditions proposed by the neighbors.

Council President Van Sciver responded that he would not be in favor of censure. He respects Mr. Snook's professionalism very highly and feels that his comments can only enhance the project. However, as a private land owner, Mr. Fruchter and Mr. Galbally have to work things out on their own.

7. ADJOURNMENT:

All business having been completed, a motion was made by Council Vice President Raymond, seconded by Council Member Uzman and unanimously carried by a vote of 7-0 to adjourn the meeting at 10:19 p.m.

Respectfully submitted,

Sandra L. Kelley
Secretary/Manager