

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

November 17, 2015
7:30 P.M.

PRESIDING: David G. Bramwell, President

INVOCATION: David B. Burton, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL: Council President Bramwell
Council Vice-President Raymond
Council Member Lexer
Council Member Meisel
Council Member Oswald
Council Member Van Sciver
Mayor Burton

2. PUBLIC FORUM:

Council President informs all present that copies of the agenda are available at the back of the room. 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 at the recent Zoning Hearing Board meeting, all voted no on the application until it was argued by a resident, then they changed their minds. Mr. Buckley does not feel it is right if they change their minds. He feels everyone should be treated the same.

3. APPROVAL OF MINUTES:

A motion was made by Council Member Lexer, seconded by Council Member Van Sciver and carried by a vote of 5-1 to approve the minutes of the Regular Meeting held on Tuesday, October 20, 2015, as submitted. Council President Bramwell abstained as he was not in attendance at that meeting.

4. APPROVAL OF REPORTS:

A motion was made by Council Member Van Sciver, seconded by Council Vice-President Raymond and unanimously carried by a vote of 6-0 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 October 2015, as submitted.

5. PUBLIC HEARING – HISTORICAL ORDINANCE:

Council President Bramwell announced that Borough Council will open the public hearing to consider adoption of Ordinance 2015-5, a Historical Ordinance that includes Tier 1 and Tier 3 Properties.

Wendy McLean, Solicitor, stated that this proposed Ordinance has come through a number of iterations and drafts. It has been reviewed by the Chester County Planning Commission, the Malvern Borough Planning Commission, and was duly advertised in the Daily Local News on November 2 and November 9, 2015.. Borough Council is now in a position to consider the Ordinance for adoption, to discuss and receive public input, to close the hearing and to entertain a motion regarding the disposition of the Ordinance.

Council Member Meisel stated there was originally a Tier II list that is not currently included in what is being considered at this time. It is his understanding that the properties on that list may be considered at a future time but notices did not go out to the Tier II properties. He stated that his concern is if the Historical Ordinance is amended at a future time, they would get notice at that time but would not have participated in the discussion to approve or disapprove the ordinance. He asked if it was appropriate for them to get notice for the original hearing if at some time they might be part of it.

Ari Christakis, Esq., responded that there is currently no Tier II included in the Ordinance. This Ordinance was designed to be a framework for the future. Additional Tier III properties can be nominated later, as can Tier II properties. Tier III properties can be moved up to Tier II properties if the property owner desires. Borough Council would have the opportunity to add them later.

Zeyn Uzman, Chairman of the Historical Commission, stated that down the road, Council can nominate any property to go from a Tier III to a Tier II. There is a section in the Ordinance that addresses adding properties to the list. A property would not go on the list if Borough Council does not act. Tier II properties can only be added with Borough Council approval. Tier II properties require Borough Council approval to be demolished. There are additional regulations for the demolition of Tier I properties as they are already on a State/County list of historic properties. Tier III properties would incur a modest delay for demolition permits. Tier III properties do not require a hearing to demolish but the Historical Commission has twenty days to get any pictures, documentation, etc., that they would like for their files.

Council Vice-President Raymond stated that if any property owner is to be nominated as a Tier II, the property owner would receive notification and there would be

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a hearing. If a property is nominated as a Tier III, the property owner is notified, Council can either proceed or reject the nomination, but it would not require a hearing.

Ari stated that the extent of demolition is determined by Borough Administration. If there is a roof change, structural walls moved/removed, that is more likely to be demolition.

Council President Bramwell asked where is the end game? If Council puts an ordinance in place tonight, and next year there is a nomination process for thirty homes, those thirty homes get notified, we go through the procedure, and they don't know this law is in effect, they could say that they would have voiced their concerns about being placed on this list, and the only remedies are legal. Council President Bramwell stated that he believes in historic preservation but this is a slippery slope because it sets up what will occur in the future.

There was considerable opposition voiced by Council President Bramwell and Council Member Meisel throughout this discussion and they had a number of questions pertaining to the proposed ordinance.

Sid Baglini, 203 Channing Avenue, stated that she would really like to see this Historical Ordinance approved for a lot of reasons. She believes that Council Members Bramwell and Meisel's concerns are legitimate. She stated that it sounds to her like they think there will be an overwhelming number of people coming to Council to be either on or off the list. Her guess is that there are a very few historic homes in the community that you would have to go to the mat for and possibly it is in the best interests of the community to preserve those few homes that just are historic Malvern. Other than that, if a homeowner comes in and their home was nominated for the list and they request to have their nomination removed, Council can just remove it. There are benefits but if a property owner doesn't feel the benefits are in their best interests, that's fine. But, maybe the next homeowner will want to be on this list. How many Revolutionary War buildings are in the community that Council would have to go to the mat for? It is definitely adverse for the property owner who would like to sell off acreage to get on with it, but there are real advantages for the Borough of Malvern to look at that property to see if there are ways and benefits to preserve it. We must consider the overall ambience and lifestyle of the Borough. This is a real baby step in terms of a historical ordinance. I would like to have seen a community of historical houses. Channing Avenue will be a street that comes in the historic overlay and has benefits to the homeowners.

Helen McDonnell, 322 E. King Street, stated that the goal here is to document. We have lost so many historic homes and we have no documentation for those homes. The Historical Commission can at least educate the homeowners. Mrs. McDonnell asked how we would do that without an ordinance?

Wendy McLean, Solicitor, stated that there is a third piece that hasn't been discussed at all and that is "demolition by neglect". People are asking about why

Council can't do this or that on certain properties. This ordinance will help those types of situations and at least for three of those properties, the owner had the means to repair it. You can then say there is demolition by neglect. It doesn't have to rise to imminent public safety. If it sits back from the street, there is nothing you can do about it unless it is unsecure and other steps are being taken. By adding the "demolition by neglect", for the house at the base of Bridge Street, there would be other steps under this ordinance assuming the structure was on the list. The Historical Commission gets more into the appearance of the structure but Ms. McLean wants Council to be aware of this provision. If the ordinance is not adopted, Council could adopt a separate ordinance that would include "demolition by neglect".

Following additional discussion regarding the pros and cons of the ordinance, Council President Bramwell closed the public hearing.

ORDINANCE NO. 2015-5 - HISTORICAL ORDINANCE:

A motion was made by Council Member Oswald and seconded by Council Member Van Sciver to adopt Ordinance No. 2015-5, an Ordinance Amending Chapter 220, Zoning, of the Code of Ordinances for the Borough of Malvern.

Council Member Van Sciver stated that he felt the original ordinance was very vague and he thought it could be interpreted if you even wanted to change landscaping you would have to go before the members of the Historic Commission. He understands the sentiment of Council Members Meisel and Bramwell in that if this ordinance doesn't address these concerns, the Historical Commission has wasted their time the last few years. Council Member Van Sciver stated that he remembers going back many years in discussing how we can address these historical concerns and we always came back to just use it as an administration procedure. As a contractor, a twenty-day delay is not a concern as whatever permitting is required generally takes much longer. Rather than adopting a list of 200+ properties en masse, every homeowner would be advised and have a meeting before Council if their property was being considered to be added to the list. As a community, we currently restrict everything. That is part of the fabric of our community. Council Member Van Sciver stated that he does not have a problem with the ordinance as currently drafted.

Council Vice-President Raymond stated that in the course of the discussion tonight, her questions have been answered. She stated that she is in agreement with Council Member Van Sciver. She believes this is a reasonable version of all the input that Council has received from the Planning Commission, Historical Commission, residents, etc.

Mayor Burton stated that about a year ago, Council almost passed a blanket parking ordinance. When a new ordinance goes into effect, you can do it piece by piece. Mayor Burton believes the bigger picture outweighs the smaller picture. This ordinance has more positives than negatives.

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Council President Bramwell stated that he feels that Council has to be the body who advocates for those not here and who may be affected by statute. He stated that he believes in the historical fabric of our community. He would like to see a softer approach and would have liked to have seen more people advocating for the other side. That is what reasonable people should do. He stated that he hopes it continues to be a reasonable level of discussion about what is and is not right. Council President Bramwell stated that he hopes that future Councilors will be reasonable.

Council Member Meisel stated that he agrees with Council President Bramwell.

The motion carried by a vote of 4-2 with Council Members Bramwell and Meisel opposed for the reasons they stated.

6. OLD BUSINESS:

a. Proposed 2016 Budget w/sewer update – Council Vice-President Raymond reported that Tredyffrin Township's scheme for allocation of costs for the repairs to the Valley Creek Trunk Sewer Line are based on present flow rates. Most of the other municipalities are in agreement with this approach. Willistown Township argued in favor of capacity and future capacity based on the 2035 Act 537 Plan. That approach is more favorable to us. We indicated that we are in alignment with Willistown Township. The difference in our share would be approximately \$130,000 more under Tredyffrin's scenario. Because there is no final consensus as to whether the partner's have to be unanimous or a majority rule wins, it is still up in the air. In the meantime, we are going to sit down with Willistown Township and brainstorm how we can advocate for an approach that is more favorable to us. At the last public meeting of Tredyffrin Township, the discussion indicated that Tredyffrin, if they had to, could front the money for the project.

Ari Christakis, Esq., stated that at Tredyffrin's last Supervisor's meeting, a direct quote from Tredyffrin Township was we have sufficient reserves to write a check for the entire project.

Wendy McLean, Esq., stated the Act 537 Plan is favorable to Malvern Borough.

Council Member Oswald asked that if we have to obtain a Note for funding this project, are we still looking at no tax increase and no increase in sewer rates? It was answered that no increases are included in the proposed 2016 Budget.

Frank Ortner, 144 Griffith Avenue, asked if there was any way that the public could obtain a copy of the proposed 2016 Budget?

Council President Bramwell responded that he would like to suggest that at the conclusion of our Executive Session, we will be in a position where we have a much better position on the FOP negotiations, Manager search, etc.

Council Member Van Sciver stated that he would not have a problem publishing this Draft Budget.

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b. Status Report – Search for Borough Manager – Council President Bramwell reported that a candidate was identified and they refused our offer. Council will discuss tonight in Executive Session what additional candidates to interview. A better update will be presented at the next meeting.

7. ADJOURNMENT:

A motion was made by Council Member Lexer, seconded by Council Vice-President Raymond and unanimously carried by a vote of 6-0 to adjourn the meeting at 9:15 p.m.

COUNCIL ADJOURNED TO EXECUTIVE SESSION TO DISCUSS PERSONNEL MATTERS

Respectfully submitted,

Sandra L. Kelley
Secretary/Manager