

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
March 04th, 2024, 7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

1. CALL TO ORDER:

Council Chair Mayor Patrick T. Reilly called meeting to order at 7:30 pm. CM Scardino led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

DAVID SCARDINO

COUNCIL MEMBERS:

MARISA ACQUAVIVA - EXCUSED

BRIAN VAIL

JIM CLEVINGER

MARY HOFMEISTER - EXCUSED

TOWN ATTORNEY:

KARL BOHNE

TOWN MANAGER:

LISA MORRELL

TOWN CLERK:

RICHARD KOHLER

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: None

4. CONSENT AGENDA:

4.a. Approve Minutes of 2/05/2023 RTCM

Exhibit: Agenda Report Number 4.a.

4.b. Approve Minutes of 02/26/2024 STCM

Exhibit: Agenda Report Number 4.b.

4.c. Code Enforcement Activity Report as of 02/28/2024

Exhibit: Agenda Report Number 4.c.

4.d. Fire Department Surplus Request

Exhibit: Agenda Report Number 4.d.

4.e. Town Organization Chart

Exhibit: Agenda Report Number 4.e.

MOTION: CM Vail/CM Scardino to approve Consent Agenda as presented.

Vote: All Ayes (3-0).

5. PROCLAMATION:

5.a. Irish American Heritage Month

Exhibit: Agenda Report Number 5.a.

Mayor Reilly read the proclamation and signed it into the record.

6. ATTORNEY REPORT:

Attorney Bohne states he has some insight on the Form 6 litigation. It has been filed. It has approximately 30 plaintiffs, and all are elected officials. The law firm handling the litigation originally planned to list municipalities as well and are no longer including them. The legal issue has been narrowed down to a first amendment challenge. There is an open request for additional municipal elected officials to join the lawsuit. The firm is requesting a flat fee of \$10,000.00 from any municipality who has an elected official who wishes to participate. He is aware of other local cities, Indian Harbour Beach and Melbourne, who have both joined. Whatever happens in the lawsuit, it will affect the Town whether we are named plaintiffs or not. Mayor Reilly states he heard that the fee is only for the first round. What happens when the loser of the suit appeals? Attorney Bohne states we would not be required to join the appeal.

7. BCSO REPORT:

Deputy Thomas states in February there were 255 calls for service in Malabar. There were a few crashes, 2 wanted person calls and 33 traffic stops, but overall it was a quiet month.

8. BOARD/COMMITTEE REPORTS:

8.a. Trails and Greenways Committee

Exhibit: Agenda Report Number 8.a.

8.b. Parks and Recreation Board

Exhibit: Agenda Report Number 8.b.

8.c. Planning and Zoning Board

Exhibit: Agenda Report Number 8.c.

9. STAFF REPORTS:

9.a. Town Manager –

TM Morrell began by stating Staff has been in contact with the Rocky Point Road contractor, and we should sign a contract this week. Staff is preparing staff reports for Planning and Zoning Board Site Plan reviews. 2 pieces of Public Works equipment are down, the Gradall and the Front-end Loader. Hopefully the loader is covered under warranty. PW has done a great job on the Weir Street project. Mayor Reilly asked for more information on the school capacity planning report. TM Morrell states that we have no schools in Malabar but is important to see where our children go and future projects in the school system.

9.b. Town Clerk

Exhibit: Agenda Report Number 9.b.

Clerk Kohler states that the Space Coast League of Cities is scheduled for March 11th at Up the Creek Farms. The Town will pay for all of Council to attend. Any members wishing to bring their spouses will be responsible for purchasing their ticket for \$35.

On February 22nd, Staff attended the Southern Brevard Trails Master Plan Working Groups first meeting. The TPO and planning engineer provided the overall project area, current conditions, and future goals. The project area is all of Brevard County south of Palm Bay Road, with a goal of increasing connectivity for pedestrian and multi modal transportation. The next meeting will be held in May.

Staff has also signed up to host a Town of Malabar Trash Bash with Keep Brevard Beautiful. The event will be held on April 6th from 8 AM to 12 PM. We are accepting volunteers to participate as Site Captains and as general volunteers. A sign-up survey can be found on the Town's website and Facebook page.

10. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) – None

11. PUBLIC HEARINGS/SPECIAL ORDERS: 1

11.a. FIRST READING – Amending Chapter 6, Section 6-1 of the Code of Ordinance to include the 2023 8th Edition of the Florida Building Code (Ordinance 2024-01)

Exhibit: Agenda Report Number 11.a.

Clerk read the Ordinance by Title Only

Staff: Clerk Kohler states this Ordinance has been reviewed by the Attorney, the Building Department, and has been legally advertised. TM Morrell states these updates will keep the Town in line with the rest of the State. If approved for first reading tonight, Staff will advertise for a final reading at the first meeting in April.

MOTION: CM Scardino/CM Vail to approve the First Reading of Ordinance 2024-01.

Discussion: None

ROLL CALL VOTE: CM Hofmeister, Excused; CM Acquaviva, Excused; CM Vail, Aye; CM Clevenger, Aye; CM Scardino, Aye. Motion Carries 3-0.

12. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO TOWN APPOINTED BOARDS/COMMITTEES: 0

13. ACTION ITEMS:

RESOLUTIONS: 3

MISCELLANEOUS: 0

13.a. Appoint Ms. Lindsey Wilson to the Parks and Recreation Board (Resolution 02-2024)

Exhibit: Agenda Report Number 13.a.

Clerk read by Title Only and noted a correction in the title.

Staff: Clerk Kohler states that Ms. Wilson has submitted all of the required paperwork for Board Membership. The Parks and Recreation Board met on February 21st and recommended unanimously that her appointment be approved.

MOTION: CM Scardino/CM Vail to approve Resolution 02-2024.

Discussion: None

ROLL CALL VOTE: CM Acquaviva, Excused; CM Vail, Aye; CM Clevenger, Aye; CM Scardino, Aye; CM Hofmeister, Excused. Motion Carries 3-0.

13.b. Acceptance of a Temporary Easement and Road Payback for Candy Lane (Resolution 03-2024).

Exhibit: Agenda Report Number 13.b.

Staff: Clerk Kohler states that CM Clevenger intends to abstain from this vote, and there will not be a quorum to vote on the item. It is recommended to Table this item until the 3/18/2024 RTCM.

MOTION: CM Scardino/CM Vail to table Resolution 03-2024 until the 3/18/2024 RTCM.

VOTE: All Ayes. Motion Carries 3-0.

13.c. Acceptance of a Right of Way Dedication and a Temporary Easement for Kramer Lane (Resolution 04-2024)

Exhibit: Agenda Report Number 13.c.

Clerk read by title only.

Staff: Clerk Kohler states Applicant Joy Maximin, 3040 Kramer Lane, plans to improve Kramer Lane 315' north of its existing terminus. In order to construct the extension of Kramer Lane as designed by the applicant, additional Right of Way is required. Ms. Maximin is dedicating such in the Right of Way Dedication Agreement. Also included in this Resolution is a Temporary Easement Agreement. The easement shall sunset upon the northern extension of Kramer Lane beyond the newly accepted terminus of Kramer Lane. The easement descriptions are included in the Resolution as Exhibit A. Town Engineer Morris Smith and Town Attorney Karl Bohne have reviewed the agreements and agree they meet the Town's requirements.

MOTION: CM Scardino/CM Clevenger to approve Resolution 04-2024.

Discussion: CM Vail states in his review of the package, he assumed the curve in the road goes around a pond. He is aware of past road design projects which were altered to avoid natural habitats like trees and wetlands. Mayor states he has the same question, was wetland mitigation included in the packet? Mayor Reilly asked the applicant why she is requesting to not simply use the Town's provided right of way. TM Morrell states notation 9 on the plan includes limited information on the wetland, and the submitted design preserves the natural wetland. CM Vail states it is nice that she is providing the land and is potentially avoiding the mitigation results.

Applicant: Ms. Joy Maximin, 3040 Kramer Lane, states the engineer she hired has discussed it extensively with Town Engineer Smith. Giving up the additional land is not to her benefit. She is hoping

to move forward. There is a large pond in the Town's Right of Way. She believes there were several options, but that is what her engineers suggested.

ROLL CALL VOTE: CM Vail, Aye; CM Clevenger, Aye; CM Scardino, Aye; CM Hofmeister, Excused; CM Acquaviva, Excused. Motion Carries 3-0.

14. DISCUSSION/POSSIBLE ACTION: 5

14.a. Amend Meeting Times for RTCMs

Exhibit: Agenda Report Number 14.a.

Staff: TM Morrell states

Discussion: CM Vail states he would be willing to move the meeting time up to 7. CM Scardino states he likes 7:30. CM Clevenger states he approves of 7:30 as well. Mayor Reilly states it is rough on Staff.

MOTION: CM Scardino/Clevenger to keep the meeting time at 7:30 PM.

VOTE: All Ayes (3-0)

14.b. Discussion of Quiet Zones - Tabled

Exhibit: Agenda Report Number 14.b.

Staff: Clerk Kohler states this item was tabled at the 1/8/2024 RTCM until there is a full Council Present. If Council wishes to discuss it tonight, a motion is required to remove the item from the table.

Item Remained Tabled until full Council is present.

14.c. Form 6 Litigation

Exhibit: Agenda Report Number 14.c.

Discussion: CM Scardino asks if this litigation will result in a stay? Attorney Bohne states he is unsure, and we shouldn't count on it. State legislature and County representatives already file this. CM Scardino asked if this is likely to succeed? Attorney Bohne states this is a difficult road ahead. The other issue is the proposed solution is to limit the requirements to municipalities under 500 voters. Mayor Reilly states there was recently an article in Florida Today reviewing Form 6s. The state is hoping to ensure we are not lining our own pockets. We all volunteer in Malabar. This was started by a Representative out of Orlando. He also states we don't have the additional funds for this. CM Scardino states he would like to watch from the sideline. We will benefit even if we are not included in the lawsuit. Consensus is reached to not move as participants in the lawsuit.

14.d. Town Hall and Historical House Location Discussion – CM Vail

Exhibit: Agenda Report Number 14.d.

Staff: TM Morrell states she has created a to scale drawing of the park, a potential new Town Hall, and the Historical House. She states the house could go by the existing pavilion, by the playground, or by the bathrooms.

Discussion: CM Vail states he has been in discussion with Staff, and a map of the park has been prepared, along with to scale cut outs of the proposed buildings. CM Vail states he would like to see it close to the fire station. CM Scardino asks if we will need to expand the Fire Station? CM Vail states he highly doubts that. He would like to see it by the driveway, and the cut out is rather large. Mayor Reilly states he is opposed to anything going south of the road, as he feels it would encroach on the new Town Hall. He feels the best spot would be by the lake by the existing pavilion or by the baseball field. CM Vail intends to put this on a concrete pad. He intends for the house to be about 18 inches above ground, but it will become a permanent fixture. He is hoping to get a roof on it soon, and to have full plans submitted to the Building Department by April. There are still several months if not a year's worth of work left before it is ready to be moved. The volunteers are making progress. He hopes to ensure that it works well with a new Town Hall and is close to the primary and existing commodities. He feels the Southern side of the road would be better. CM Scardino asks if they are abating the lead paint? CM Vail states he has 2 different painting contractors who are certified in this process working on the project. Mayor Reilly asks if the intent is to turn this over to the Town. CM Vail states yes. Mayor Reilly suggests he create an LLC,

and the Town leases the land to it, similar to the site for the Grant Seafood Festival. This discussion came up in the past. He doesn't believe that Council has approved ownership of this house. He remembers Council agreed to support the efforts. CM Vail states the goal is to have this as a Town used facility. The building will be a Historical Structure, and the volunteers are working hard to work on it. Mayor states he supports that but is unsure if we will have ownership. He looks forward to discussing this more at the next meeting.

15. **PUBLIC COMMENTS: General Items (Speaker Card Required)**
16. **REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Acquaviva: Excused

CM Vail: None

CM Clevenger: None

CM Scardino: He states he spoke to staff about a property that is dewatering the wetland around Lett Lane.

CM Hofmeister: Excused

Mayor Reilly: States he spent about 18 hours of hard labor to get the ball courts ready for resurfacing. He also reminded Council of the SCLoC Dinner next Monday. He also thanked Lisa for helping improve team spirit and morale. The Town Staff received their Town Shirts and love them!

16. **ANNOUNCEMENTS:** (2) Vacancy on the Planning & Zoning Board; (2) Vacancies on the Parks and Recreation Board; (2) Vacancy on the Board of Adjustment; (2) Vacancy on the Trails and Greenways Committee.
17. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 8:30 P.M.

BY: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler

Richard W. Kohler
Town Clerk

Date Approved: 03/18/2024

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <u>Cleaver James Paul</u>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <u>City Council</u>	
MAILING ADDRESS <u>1765 Elaine Lane</u>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY <u>Malabar</u>	COUNTY <u>Brevard</u>	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY NAME OF POLITICAL SUBDIVISION: <u>Town of Malabar</u>	
DATE ON WHICH VOTE OCCURRED <u>3-4-2024</u>		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, James Cleverger, hereby disclose that on March 4th, 20 24 :

(a) A measure came or will come before my agency which (check one or more)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____ ;
- ☐ inured to the special gain or loss of my relative, _____ ;
- ☐ inured to the special gain or loss of _____, by
whom I am retained; or
- ☐ inured to the special gain or loss of _____, which
is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

3-4-2024
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.