

**TOWN OF MALABAR
TOWN COUNCIL MEETING
MONDAY AUGUST 24, 2015
7:00PM – Executive (Closed) Council Meeting
7:30PM Reconvene Regular Meeting
2725 MALABAR ROAD
MALABAR, FLORIDA**

MINUTES

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. RECESS FOR CLOSED ATTORNEY-CLIENT SESSION**

Pursuant to Florida Statute 286.011(8), the Town Council will hold a private attorney-client session, **which will not be open to the public**, with the Town Attorney, Karl W. Bohne and outside Attorney John Conner to discuss pending settlement agreement in the PAINTED ACRE PARTNERSHIP, LLP & TWILIGHT ZONE PROPERTIES, LLC, and DONALD E. FOLEY, Plaintiff vs. Town of Malabar, Case No. 12-CA-49753, filed in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida. The following persons will be present at said meeting:

Council Chair:	Mayor Carl A. Beatty
Council Vice-Chair:	Marisa Acquaviva
Council Member:	Grant Ball
Council Member:	Brian Vail
Council Member:	Don Krieger
Council Member:	Dick Korn
Town Attorney:	Karl W. Bohne, Jr.
Certified Court Reporter:	King Reporting Service

A verbatim transcript of this meeting shall be transcribed by King Reporting. The transcript will be filed with the Town Clerk and open to the public for inspection **after** the conclusion of the litigation.

Chair reopened meeting and announced termination of Closed Session - Certified Court Reporter left. Meeting back to order at 8:05.

D. ADDITIONS/DELETIONS/CHANGES:

Mayor said we are going to take Item 10 next before the approval of the minutes as we have an outside attorney for this issue.

CM Korn asked if Item 16 could be deferred to another meeting with specific examples. CM Acquaviva has specifics. She will allow it to be moved to the next meeting. CM Vail / CM Korn to move to the next meeting. All Ayes.

CM Krieger / CM Vail to move Item 12 to next meeting. CM Acquaviva said they need to do these performance evaluations. Vote: All Ayes to move to next meeting. Mayor asked to pull Item 14. CM Acquaviva said it needs to stay; CM Vail and CM Korn agree; item stays. CM Korn / CM Vail to accept agenda with the two other changes. Vote: All Ayes. CM Krieger wanted to move Item 3 to Item 9. Agenda had already been approved.

10. Consider Mediation Agreement Discussed at Executive Session

Exhibit: Agenda Report No.10

Recommendation: Discussion and Action

Discussion: Much discussion on this during closed session.

MOTION: CM Korn / CM Ball to approve the Mediation Agreement.

VOTE: Ayes, 4; Nay, 1 (Krieger).

1. Approval of Minutes Regular Council Minutes – 7/20/15 as clarified

TA Sel Com WS Minutes 7/27/15 w/ verbatim

Regular Council Minutes 8/03/15

TA Sel Com WS Minutes – 8/10/15

Special Council Minutes – 8/10/15

TC Budget WS Minutes – 8/11/15

Exhibit: Agenda Report No. 1

Recommendation: Request Approval of Minutes

MOTION: CM Krieger / CM Ball moved to approve the minutes from July 20, 2015 as clarified.

Discussion: no. **VOTE:** All Ayes.

MOTION: CM Krieger / CM Vail moved to approve the TA Sel WS minutes from July 27, 2015 with verbatim portions. Discussion: no. **VOTE:** All Ayes.

MOTION: CM Ball / CM Krieger moved to approve the RTCM minutes from August 3, 2015 as presented. Discussion: no. **VOTE:** All Ayes.

MOTION: CM Ball / CM Vail moved to approve the TA Sel Committee WS minutes from August 10, 2015. Discussion: CM Krieger asked about the check marks next to the names and also asked what “need” means. Franklin explained that is how Deputy kept track of who submitted rankings at that meeting so she could send emails out to the others. **VOTE:** All Ayes.

MOTION: CM Krieger / CM Korn moved to approve the Special Council Meeting minutes of August 10, 2015. Discussion: no. **VOTE:** All Ayes.

MOTION: CM Ball / CM Vail moved to approve the Budget Workshop Minutes of August 11, 2015. Discussion: no. **VOTE:** All Ayes.

E. 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) **Five (5) Minute Limit per Speaker.**

Skip Hard, 2560 Hard Lane. Moved here in 1981. Roads were horrible. Mid 1980s we had Hall, Atz, Weber and Corey roads paved. That was a high point of the road project. They have had drainage problems since then but wanted to give credit to CM Dick Korn when he got upset when no progress was being made at project at Hall and Weber. Staff then went out to stand with shovels and take a photo op. That project still isn't done. Mr. Hard said when you leave,

what is your legacy going to be? The major problem in Malabar is drainage. He gave credit to CM Korn.

F. PUBLIC HEARINGS: 3

2. RESOLUTION 15-2015 A RESOLUTION OF THE TOWN OF MALABAR, VACATING THE UNIMPROVED PUBLIC RIGHT OF WAY KNOWN AS JOHNSTON AVENUE EAST OF THE UNIMPROVED RIGHT OF WAY KNOWN AS JENNIE STREET TO THE FURTHEST POINT OF APPLICANTS PARCEL 12; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Approval of Reso 15-2015

Resolution read by title only.

CM Korn disclosed his sister owns land in the area. CM Krieger, Vail and Ball also had contact with property owners. Mayor made similar disclosure.

Chair opened the PH.

Comments:

- 1) Phil Crews lived on Johnston Avenue for quite a few years. This connects Blanche and Marshall Dr. He does not favor vacating any ROWs. He said when they gave away ROWs in Malabar Scrub Sanctuary the county wouldn't give an additional 15' along Marie Street.

Additionally he wanted to comment on the drainage mentioned earlier. He now lives off Weber Road and part of the problem was the subdivision outfall that was not functioning properly. The contractor has made the corrections and it flows really well now. He said along the east side of Weber Road it drains very well and thought the town PW Dept did an excellent job.

- 2) Kim Alford owns property adjacent to Clines. He said applicant, Ms. Clines, opinion that we have gun crazy drivers going down the road is wrong. Jennie Street & Alice Street were vacated and he is against Malabar going ahead and vacating this portion of Johnston Avenue. 1164 ft is approved, with the last 306' due a payback. He saw the pin. He is going to commission a survey to prove that. You are giving away my property and you do not have the right to do that.
- 3) Charles (Randy) Carmichael, 609 Aldin Place, Melb Bch. The notice he received that the Reso was listed as 13-2015, the correct one is 15-2015, and Clerk clarified that the number is not what council votes on; it is the subject matter and the numberings is for filing. He sent letters to all of Council and the P&Z member. He said he only got one notice on the 13th. It was dated the 12th.

His bottom line position in this is – if they vacate the ROW then he has the loss of access from the west and that equals loss of value. He does not claim to be a realtor. He did not take time to go thru all the points in his letter. Don't pass this as it means he will lose half of his access. He understands Ms. Cline's desire to join her properties.

In this instance no other property owners are harmed. He doesn't know what the benefit to the town would be. They are charged with doing what is best for the town. By a line of sight from the survey markers, Smith Surveyor – in looking eastward from her home, he does see that the landscaping appears to be in the ROW. If there is any existence of the controversy then he has more concerns.

Pat Reilly, 1985 Howell Lane, Chairman of P&Z. It got tabled because they had some questions about the ROW. He showed how the parcel 264 could be developed. There is no land locked issues if the ROW is vacated. He wanted to bring up some more facts. P&Z Board had no consensus. They voted to table.

Chair closed the PH.

Applicant called to podium.

Discussion: Applicant went over PowerPoint showing the various angles going east and west and how much of the ROW she and her husband cleared the pepper trees. There is now or in the future an accepted road to reach parcel 264. They (she & husband) have cleared the additional ROW in front of their parcel for appearances

MOTION: CM Vail / CM Acquaviva to table and send back to P&Z Board. **VOTE:** Ayes, 3; Nays, 2 (Ball, Korn)

3. RESOLUTION 14-2015 A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING AN ANNUAL BUDGET FOR THE TOWNS STORMWATER UTILITY; PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Approval of Reso 14-2015

Resolution read by title only.

Chair opened the PH.

Comments: none

Chair closed the PH.

MOTION: CM Vail / CM Korn to approve Reso 14-2015

Discussion: CM Krieger had questions. He faced Attorney and said residents are charged flat rate. Some are grandfathered. But businesses that are in compliance may still pay more. If you have a 2 acre property with a business on it and have a storm water system, you should not have to pay more than a residence on five acres that has a house and several horses on it with no storm water system. Franklin said that this is only to certify the county's final assessment of what the estimated non-ad valorem revenue will be for storm water.

ROLL VOTE: 1)CM Ball, Aye; CM Vail, Aye; Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion approved 4-1.

4. SECOND READING AND PUBLIC HEARING OF ORDINANCE 2015-03 AN ORDINANCE OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE IX OF THE LAND DEVELOPMENT CODE RELATING TO OFF-STREET PARKING; PROVIDING FOR COMPUTATION OF PARKING SPACES; ADDING A PROHIBITION OF NON-CONTIGUOUS AND OFF SITE PARKING; PROVIDING FOR OFF STREET LOADING; PROVIDING FOR SURFACING REQUIREMENTS; AMENDING ARTICLE XX PROVIDING FOR DEFINITION; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Approval of 2nd Reading of Ord 2015-03

Ordinance read by title only.

Chair opened the PH.

Comments:

Pat Reilly, 1985 Howell Lane, Chairman of P&Z Board. He showed the correction made under section E.2. He explained they worked on this for six months.

Chair closed the PH.

MOTION: CM Vail / CM Vail to approve 2ND reading of Ord 2015-03

Discussion: no

ROLL VOTE: CM Ball, Aye; 1)CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. Motion approved 5-0.

G. ACTION ITEMS:

ORDINANCES FOR 1ST READING: 1

5. **1st READING OF ORDINANCE 2015-06** AN ORDINANCE OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE XIX OF THE LAND DEVELOPMENT CODE RELATING TO SIGNAGE REQUIREMENTS AS A RESULT OF RECENT SUPREME COURT RULING; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Approval of 1st Reading of Ord 2015-06

Ordinance read by title only. Atty said he briefed Council on recent Supreme Court case. These are the things that should be addressed. He wants to wait and see what the others do.

MOTION: CM Korn / CM Acquaviva to approve 1st reading of Ord 2015-06

Discussion: CM Korn spoke about webinar he told clerk about. She did not get a chance to watch it. CM Korn said at the FLC Conf most said they were waiting to see what other cities did. CM Ball said the verbiage can't be subject based, yet it refers to political signs, subject based. Attorney said this is the way they wrote it; that is why he provided for a waiver. Two categories – temporary signs and permanent signs. If it comes up they can ask Council for a waiver. Cape Coral or Coral Gables code on this is pretty content neutral. Actually he said Malabar's sign code is not that bad. He agrees CM Ball. Vail said he has done the best for now. It will require more changes.

ROLL VOTE: CM Ball, Aye; CM Vail Aye; 1)CM Krieger, Aye; CM Korn, Ave; CM Acquaviva, Aye. Motion approved 5-0.

RESOLUTIONS: 4

6. **RESOLUTION 16-2015** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, APPOINTING TOM TAYLOR AS A REGULAR MEMBER FOR A THREE YEAR TERM TO FILL THE OPENING ON THE VOLUNTEER ADVISORY BOARD FOR PARKS AND RECREATION AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Approval of Reso 16-2015

Resolution read by title only.

MOTION: CM Korn / CM Acquaviva to adopt Resolution 16-2015 to appoint Tom Taylor to Park Board. Discussion: none.

ROLL VOTE: CM Ball, Aye; CM Vail Aye; CM Krieger, Aye; 1)CM Korn, Aye; CM Acquaviva, Aye. Motion approved 5-0.

7. **RESOLUTION 17-2015** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING AND SUPPORTING MALABAR DESIGNATED PORTION OF THE SPACE COAST LOCAL MITIGATION STRATEGY AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 7

Recommendation: Approval of Reso 17-2015

Resolution read by title only.

MOTION: CM Vail / CM Acquaviva to approve Reso 17-2015

Discussion: Ms. Prosser explained the importance of this in order to ask for FEMA funds in a declared disaster.

ROLL VOTE: CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; 1)CM Acquaviva, Aye. Motion approved 5-0.

8. RESOLUTION 18-2015 A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, APPROVING AN ILA WITH BREVARD COUNTY E-911 DIVISION AT NO COST TO THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8

Recommendation: Approval of Reso 18-2015

Resolution read by title only.

MOTION: CM Vail / CM Acquaviva to approve Reso 18-2015

Discussion: No cost to the town. CM Ball said if we do this anyway why the agreement. Ms. Prosser explained it updates all the agreements. If Malabar wanted County do the addressing, then another ILA would be required.

ROLL VOTE: 1)CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. Motion approved 5-0.

9. RESOLUTION 19-2015 A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, APPROVING A ONE-YEAR EXTENSION TO THE ILA WITH BREVARD COUNTY FOR STORMWATER MANAGEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 9

Recommendation: Approval of Reso 19-2015

Resolution read by title only.

MOTION: CM Vail / CM Acquaviva to approve Reso 19-2015

Discussion: Ms. Alvarez, Dept of Natural Resources, SW Division. She explained in 1990 the county hired a consultant to come up with the method to use for assessment SW fees. Each property is assessed a basis of one "equivalent residential unit" (ERU) at \$36. This was based on a 2500sf single family home. For commercial properties it is a more complicated formula that takes into account the amount of pervious, impervious, parking, and a percentage of percolation, retention and runoff. Malabar has not increased that rate although the county has to accommodate larger homes and commercial uses that have more impervious surfaces. Overall residential uses have more pervious surfaces than commercial uses. CM Krieger said not necessarily. Alvarez said a typical five acre lot with a 3,000sf home would still produce less. CM Krieger what about a 50,000sf house; they would still only pay \$36.

CM Krieger said a corporation that has built to proper specifications is not putting any more runoff into the IRL than a 5 acre parcel with horses running around on it and draining into swales that go straight to the IRL. Ms. Alvarez said Malabar can hire a consultant and come up with their own assessment and fee process. Atty said this would be an inordinate burden on Town.

CM Korn said he has three acres and he doesn't have any impervious ground other than his house and sheds. He said Council is joisting at windmills. CM Korn thought it would be a good to have a Regional project; it could be a benefit to Malabar. Ms. Alvarez said you are free to use the consultants that they have negotiated with. She did say that you would want to use the TRIM notice to do this, and then the property can be lienied if they don't pay.

ROLL VOTE: CM Ball, Aye; 1)CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion approved 4-1.

MISCELLANEOUS:

This item was considered first.

10. Consider Mediation Agreement Discussed at Executive Session

11. Council to Qualify Candidates for District 4 & 5 for the 2015-2017 term

Exhibit: Agenda Report No. 11

Recommendation: Qualify Candidate

CM Korn wanted these voted on separately.

MOTION: CM Acquaviva / CM Vail to approve the qualifications of Dick Korn for District 4.

Discussion: no. **VOTE:** All Ayes.

MOTION: CM Acquaviva / CM Vail to approve the qualifications of Richard Kohler for District 5.

Discussion: no. **VOTE:** All Ayes.

This item was postponed until the next meeting

12. Performance Review of Clerk/Treasurer Franklin

13. Consider TA Sel Committee Rankings and Approve Candidates to invite for Face to Face Interviews.

Exhibit: Agenda Report No.13

Recommendation: Discussion and Action

CM Krieger wanted only one topic per motion.

MOTION: CM Vail / CM Acquaviva to acknowledge the input of the advisory committee rankings that were selected for the phone interviews and set a workshop date. **VOTE:** Ayes, 4; Nay, 1. (Korn)

MOTION: CM Vail / CM Acquaviva to schedule a meeting with a workshop to discuss the above and then a "Special" meeting to discuss their (the Council's) own selections and take action.

VOTE: Ayes, 4 Nay, 1 (Krieger). Consensus?

Verbatim Portion of 8/24/15 RTCM Regarding Ranking of TA Applicants:

Krieger: I am not good with that, I have more discussion. I agree with Mr. Korn; you are prolonging the agony. We just accepted; I think we just accepted the rankings and I look at the first page and see Jeff as #1, page 2 see Jeff as #1, page 3 see Wilkinson.

Franklin: that's not the ranking.

Krieger: I'm just looking at #1 on each sheet and reading it into the record. Next is Kruger. Oh, here's another Jeff; another Kruger; oh here's a Kellogg. So far, I see mostly # 1s are for Jeff. I'm not going by the multiple matrix

Acquaviva: Mr. Chair

Krieger: No, don't interrupt me, I want to finish this statement. Oh, another Jeff. These are all Jeff's at #1.

Acquaviva: Really?

Krieger: Really; I see Kruger and Wilkinson as #1s; most have ranked Jeff as number 1; I didn't turn in my paper at the workshop but my vote is for Jeff as well. I'm just pointing out the obvious. I think we are wasting a lot of time.

It was discussed to have a workshop and special meeting to discuss the applicants and then decide who they want to have come in for an interview. CM Krieger said he had a legal question; is this necessary? Can the Council make a decision on the next TA this evening and

can they make that decision on at the workshop meeting? CM Acquaviva spoke up saying that she is not prepared to make that decision this evening. CM Krieger stated that he is not asking that; he's asking a question of the attorney. Attorney Bohne stated that the way the item was placed on the agenda, Council cannot vote on the selection of the next TA this evening.

MOTION: CM Korn / CM Vail called for Action on face to face interviews.

VOTE: Ayes, 4; Nay, 1(Krieger).

CM Acquaviva called for point of privilege. 2 min

14. Consider Consultant Agreement to Present to Bonilyn Wilbanks

Exhibit: Agenda Report No. 14

Recommendation: Discussion and Action

MOTION: CM Vail / CM Acquaviva to approve consultant agreement as submitted.

Discussion: CM Vail said he has no problem with offering this. CM Krieger said that they can get by until a new TA is selected. CM Ball said why you want to burn that bridge. CM Korn said who would be allowed to call her? CM Ball said you don't have to define who has permission to call her.

CM Acquaviva asked how this contract got drafted. Atty Bohne said he presented it at last meeting. CM Krieger proposed changes. Consensus of Council to send Krieger's version to the attorney. Mayor said it makes her executive. CM Korn said he agrees with Ball, why burn the bridge. CM Acquaviva called for the question.

CM Krieger, we have gotten by before and can do it again. CM Korn, it would be good to be able to call her and ask questions if necessary. CM Krieger said whatever they want info on. Who measures the time? How is her time verified? CM Ball said the same way the attorney's is verified. It is a mute point if she is not going to sign. Atty said if it is approved tonight, send it to BW and if she signs it, then it is in effect.

VOTE: All Ayes.

H. DISCUSSION/POSSIBLE ACTION:

15. Consider Appointing a Malabar Rep to the County Charter Review

Committee Exhibit: Agenda Report No. 15

Recommendation: Discussion and Direction

MOTION: CM Korn / CM Krieger to appoint Mayor. **VOTE:** All Ayes.

I. STAFF REPORTS

Franklin stated she did a written report and placed it in their mailboxes. Also memo on burn ordinance and another about the October SCLC dinner meeting.

Postponed to next meeting.

16. Discuss Hostile Work Environment re: Town Hall Staff being harassed

CM Korn / CM Vail to extend 5 minutes in case needed.

CM Krieger said we have 1 minutes we could move to adjourn. Mayor Beatty said we could do that. Ball to adjourn. Vote: all ayes. CM Vail said I thought we were going to extend for 5 minutes. Franklin asked what they voted on. Meeting adjourned at 10:30pm.

Rest of agenda not covered.

J. REPORTS – MAYOR AND COUNCIL MEMBERS

K. PUBLIC COMMENTS: General Items (Speaker Card Required)

L. ANNOUNCEMENTS:

- (2) Vacancies on the Board of Adjustment;
- (3) Vacancies on the Park and Recreation Board (We had 1 volunteer but one resignation)
- (1) Vacancy on the Planning & Zoning Board

M. ADJOURNMENT: Meeting was not extended and adjourned abruptly at 10:30pm.

TOWN OF MALABAR




Mayor Carl A. Beatty
Council Chair



(seal)

ATTEST:



Debby K Franklin, C.M.C.
Town Clerk/Treasurer

Minutes approved:

