#### MALABAR TOWN COUNCIL REGULAR MEETING January 5, 2015 7:30 PM

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

#### A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Council Chair Mayor Carl Beatty. CM Ball led the prayer and pledge.

B. ROLL CALL:

COUNCIL CHAIR: MAYOR CARL BEATTY

VICE-CHAIR MARISA ACQUAVIVA

COUNCIL MEMBERS: GRANT BALL
BRIAN VAIL
DON KRIEGER

DICK KORN

TOWN ADMINISTRATOR: BONILYN WILBANKS

TOWN ATTORNEY: KARL BOHNE TOWN CLERK/TREASURER: DEBBY FRANKLIN

For the Record, the Fire Chief Christopher Robinson was also present.

#### G. BREVARD COUNTY SHERIFF'S OFFICE REPORT: held after ROLLCALL

Mayor moved BCSO Report to this point in meeting. Lt said that he has been back on road after long stint. You get statistics regularly. He went over Dec stats. He introduced Dep Star. Stolen property none reported. CM Acquaviva said she noticed the increased patrolling on Corey. CM Korn said there were two Deputies on Weber Road today. CM Ball said what about the new lower speed signs on Hwy 1. Dep Star said he and the other four Deputies that patrol this area regularly would not ticket. CM Korn said the prior Council requested the speed reduction. He added that when Malabar added stop signs at Atz Road, they put up signs weeks ahead of time. TA said she left msg with FDOT office to ask why no postings were done. She has not heard back yet.

Mayor Beatty then introduced Pastor Paul Rosbury and called him to podium. The pastor said he has been in this area for many years. He is here tonight to give the Kings James Bible and workbook to each CM and the Mayor. He then handed them out by name and thanked them for their service. He has 48 active ministries in Brevard County. He is happy with our prayer.

C. ADDITIONS/DELETIONS/CHANGES - BCSO report moved to top of meeting

D. CONSENT AGENSDA: none

1. Approval of Minutes Regular Town Council Mtg – 12/15/14

**Exhibit:** Agenda Report No. 1.

**Recommendation:** Request Approval of Minutes

Discussion: Corrections: none.

**MOTION:** CM Vail / CM Ball to approve the Minutes as presented. **VOTE:** All Ayes.

E. **PUBLIC COMMENTS:** Comments may not address subsequent Agenda Items. **Comments do not require Council response**. (Speaker Card Required) **Five (5) Minute Limit per Speaker.** 

**Speaker's Card**: Dr. Seybold, Corey Road, wanted to talk about the letters sent out by Town before the election re: the MSTU referenda. It seemed to him to be one-sided in favor of the MSTU. He said it should have been more balanced if you are using public money. Should have given both sides.

TA said they were done as directed by the seated Council at that time. (Clerk's Note: BCSO Sheriff Wayne Ivey sent separate letters to each CM, Mayor and TA in response to our intention to put the

MSTU question on our ballot. Council then directed TA to work with BCSO to produce an article on what the MSTU pays for; but alerting residents to what the millage increases have been since the MSTU inception in 2007. The Town of Malabar has no negotiation ability in this determination.)

CM Acquaviva stated the main reason for these letters to residents was to give the public the info on how much it has increased since it was originally approved in 2006.

# F. ATTORNEY REPORT: none H. PUBLIC HEARINGS: (3)

2. Development Agreement between the Town of Malabar and Kellwill, LLC as a condition for approval of Ord 2015-01 re: land use map and zoning map change for a portion of Parcel 28-38-31-750, Malabar, Florida Lying on the <u>WEST</u> side of Highway 1.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Approval of Development Agreement Mayor Beatty read the portion of Agreement dealing with the restrictions requested by previous meetings.

Mayor said anyone wishing to speak should provide their name and address and provide any handouts to Clerk and Council before speaking.

Mayor then asked if there is any need for disclosures for conversations held with any parties or site visits by CM. Mayor declared none being heard. Mayor called up the petitioner to podium.

Mr. William Carmine, 1310 Stack, wanted to thank Town staff, this Council, the previous Council and the P&Z Board on behalf of him and his family and his employees. He thanked Atty Bohne for putting the Dev Agreement together to deal with restrictions on uses some Council and Board members had concerns. He will answer any questions. Chair Opened PH:

No public.

Chair asked for staff comments: Atty Bohne explained what he and Carmine did in going over uses that they were going to restrict on the subject property per the Land Development Code District Provisions. Atty Bohne said Council may want to add additional restrictions. The LU and ZC ordinance is up for 2<sup>nd</sup> reading and it was approved at 1<sup>st</sup> reading with the stipulation that this Development Agreement be in place before 2<sup>nd</sup> reading. Chair Closed PH:

Chair said to Council that if you make a motion you are expected to support the motion. The Seconder does not have to support the motion. Both can vote against the motion.

MOTION: CM Acquaviva / CM Vail to approve the Development Agreement.

Discussion: CM Krieger asked Atty in re: Development Agreement, Section 8; can this be amended? Atty said it would have to be by mutual agreement. CM Krieger said the wording does not state that. Atty said that any change must be signed by both parties. Krieger said so three (3) votes (of Council) could end this Development Agreement? Atty said any change would require mutual agreement. CM Krieger then asked how this affects 'similar uses'. CM Krieger said he recalls seeing drive thru facilities, open 24 hours. Was that discussed at P&Z? No not really. CM Krieger said what about funeral homes. Once this zoning is changed it could be up to 20% of coverage. Yes. CM Krieger said there are so many uses.

CM Korn, there are several areas in Town that are CG. If we need to list the undesirable uses it would be a long list; we need to show good faith to this Malabar business owner. CM Acquaviva still supports this. You can have bars in RLC. There are things in place to require regulations on site plan. CM Acquaviva asked why funeral homes would be a bad thing. Why is drive thru a bad thing; what about banks.

CM Korn called the question.

ROLL CALL VOTE: 1)CM Ball, Aye; CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 4 to 1 (CM Krieger).

3. 2<sup>ND</sup> Reading and Public Hearing on Ord 2015-01 Request for a Land Use Map Amendment & Zoning Change, 1300 Highway 1, Malabar, FL lying on the WEST side of Hwy 1; Request to change from Residential/Limited Commercial to Commercial General: Applicant: KellWill, LLC. Represented by Mr. William Carmine.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE COMP PLAN MAP AND ZONING MAP FOR THE THREE (3+/-) ACRES OF LOT 750 LOCATED ON THE WEST SIDE OF HIGHWAY 1 IN TOWNSHIP 28, RANGE 38, SECTION 31, NORTH OF MALABAR ROAD, AKA 1300 HIGHWAY 1, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR A DEVELOPMENT AGREEMENT; PROVIDING FOR AMENDMENT TO

**Exhibit:** Agenda Report No. 3

THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Recommendation: Request Adoption of Ord 2015-01

Mayor Beatty read Ord 2015-01 by title only.

Mayor then asked for speakers to give their name and any handouts need to be given to Clerk. Then asked for disclosures since last meeting. None heard. Mayor called on petitioner.

William Carmine wanted to thank Council and staff. You are going to be really impressed with what he does to that corner.

Open PH: none Close PH: No staff. Mayor said motion maker should support the motion.

MOTION: CM Korn / CM Krieger to adopt Ord 2015-01 on 2<sup>nd</sup> reading.

Discussion: none

ROLL CALL VOTE: CM Ball, Aye; 1)CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 4 to 1 (Krieger).

**4. Elhoim Christian Church Site Plan Review** for a 15,000 sf Sanctuary on three (3+/-) acres located on north side of Malabar Road on Lots 759 & 760 in Section 36, Township 28 and Range 37 aka temporary address: 2170 Malabar Road, Malabar, Florida. Applicant: Ms. Ana Saunders for Mr. Scott Glaubitz, P.E. with BSE Consultants, Inc. representing Elhoim Christian Church.

Exhibit: Agenda Report No.4

**Recommendation:** Request Approval of Site Plan

Mayor Beatty called applicant to podium.

Ana Saunders, BSE Consultants, Inc., 312 S Harbor City Blvd. The project is for a 10K sanctuary and an additional 5K at a later point. Ms. Saunders told Council they went through all of staff comments and addressed them. CM Krieger asked if the parking includes the addition. Ms. Saunders said they are working with FDOT on minor comments. Parking takes in the addition. CM Acquaviva asked about the fire review. Franklin explained the 3<sup>rd</sup> party review. Ms. Saunders said the expansion area will be seeded and stabilized at proper elevation. Perimeter swale to catch storm water. CM Krieger said what about landscaping – Saunders said they will do all required landscaping plus install a fence on west side.

Open PH: none Close PH:

**MOTION:** CM Krieger / CM Ball to approve the Elhoim Christian Church Site Plan as presented. Discussion: CM Krieger said the extended use of the millings. He worries about dusting. With grass parking, you can assist that with echo stone. Mayor Beatty made statement about dusting.

The parking lot speed will be much lower than that on local roads. Mayor said the parking area is elevated and engineering provides drainage. CM Acquaviva said so we don't conduct fire inspections on new commercial construction? Franklin said the 3<sup>rd</sup> party review provides what is required for construction but Council did away with any inspections after that. Mayor called for vote.

ROLL CALL VOTE: CM Ball, Aye; CM Vail, Aye; 1)CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 5 to 0.

Break at 8:30pm - 8:40pm.

# I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

# 5. Report by Park & Recreation Advisory Board Chair, Mr. Hans Kemmler

**Exhibit:** Agenda Report No. 5

Recommendation: Request Direction

Park Board Chair Kemmler said the Malabar Madness Disc Golf Competition on the 1<sup>st</sup> Saturday of January was a great success. It is held each year. He thanked them for approving the expenditure for the elevation survey. They need it so they can see if trails could be installed on property. They are moving forward on restroom grant at Sand Hill trailhead.

TA explained how Jim Clevenger, a local resident and owner of Sweetwater Custom Homes volunteered to set the donated flag poles. TA explained how the poles would be installed. Mayor said you should use sand and not concrete in posts after flag poles are inserted; that would provide easy extraction of flag poles in future. TA said the contractor is following the instructions. CM Ball asked about the roadway between the Brook Hollow SD and Malabar Road and asked Kemmler if that was part of Parks Dept. No, the right-of-way belongs to the Town and the property on either side is EELs Malabar Scrub West.

CM Acquaviva said she and her family, friends and those visiting for the holidays play turkey bowl at Malabar Community Park over Thanksgiving holiday. She said many people attend; more every year. They have been doing it for 15 years and each year everybody complements the park and how nice and clean it is kept. She wanted Kemmler to know how much it is appreciated.

# 6. Resident Mr. Charles Ryan re: Slope Mower Repairs & Maintenance

**Exhibit**: Agenda Report No. 6

**Recommendation**: Request Action

Mr. Ryan, resident on Howell Lane, Malabar. He said he had 60 years of electronic, mechanical and electronic engineering. While in military service he did one year in Philippines working and taught himself to weld. Also while in service worked on power plants and steam plants and learned diesel equipment and what was needed to keep them running. Also was a machinist and that is how he funded his college. He had heard some concerns on Council and by non-Council residents regarding the slopemower. He did this just like he did the old school house when Council was considering that purchase.

Based on some questions about why we are replacing this. He met with Tom and this is when the pictures were taken. He is only dealing with slope mower, not the tractor. He showed pictures of the arm and the pin. He showed the way the arm is used. He pointed out there was no indication of being greased. He stated the grease keeps them from wearing.

He stated he did a public records request (PRR) on 11/19 for maintenance records on the slope mower. Eventually found out that there were no maintenance records, only miscellaneous receipts. He said Council can draw their own conclusions. The people in the Fire Dept and in

Public Works are custodians of Town property. Mr. Ryan said TC was under impression that Everglades was going to do the inspection and then found out it was done by Robinson.

CM Acquaviva asked Mayor Beatty what records he kept when he was in charge. Mayor said trip tickets were done. They did not do maintenance logs. Mayor Beatty said for the record, we, PW, back in the day; they had a log book and every piece of equipment. They hired two secretaries that were supposed to input all the records into an Excel spreadsheet. The one was sent to school to learn Excel on a Tuesday and then was let go on a Thursday.

TA said no records of trip tickets or any other records were found when Tom took over. CM Acquaviva said Council started with the FD with the two workshops last year and requested logs be kept; we need to do this for PW equipment also. CM Acquaviva asked Mr. Ryan what is the bottom line of his presentation? What is his conclusion? Mr. Bud Ryan said he will not make a recommendation. CM Korn said they are getting away from Mr. Ryan's report. All employees that operate equipment owned by the Town are responsible to maintain it. (Note: While Mr. Ryan was at the screen showing and speaking to the pictures his comments were not picked up by microphone.

TA reported on why they used Robinson Equipment. She explained the attempt to get the John Deere dealer to certify that the five heads we had could be used on that unit. They finally got back to her and said no the heads would not work. That is why they asked for the additional 12K so they could get the model with the arm that would allow us to use the Town owned heads. At budget time they discussed buying a new slopemower and using the old tractor to operate another head that would not have to be switched out and would save PW from three (3) hours of downtime while the heads are changed. Council asked her to get a professional inspection. Separate boom from tractor. She reported to Council that the inspection would be done by Robinson.

CM Acquaviva said they want to know how it is going to be fixed. What is the bottom line? Should they get the kit? Mr. Ryan said that it is an all inclusive kit. She said it seems Mr. Ryan is saying that maintenance wasn't done, and he didn't get requested records in a timely fashion. CM Korn said a 23 year old tractor is not old for a tractor. Mr. Ryan said he had to leave the meeting.

TA would like to afford the professional representative from Robinson Equipment the opportunity to speak. Brian Bresshard, came to podium. He lives in Mims; He is here on his own time. Gave a little background; was Chief Mechanic for 280 pieces of equipment at Titusville for 14 years. They had the exact same machine. Every 200 hours it is greased from top to bottom. In between other things need to be done. In nine years the boom was rebuilt several times. Where he worked if a piece of equipment needed work the piece was sidelined until it is fixed. When he arrived at Malabar PW to look at it, it turned over but did not start. Tom told him PB repaired the fuel system. He went over it best he could. The hydraulic pump had wrappings because it leaked. The last picture showed that the bad wear and is so worn that no bushing replacement kit will fix.

He showed the three feet of boom removed. That is substantial – he would have gotten a full replacement. After repeated welding's the metal fatigues. It is dangerous to the operator and is a liability for the Town.

He then went over the prior pictures. Regarding the pins, once it is worn out there is no fixing this. And until you pull it apart you don't know.

TA said that we do have all of the receipts for parts so our PW could do repairs. TA said since the recession the budget has not provided for any improvements in PW. We did everything possible in house to save money. Things changed in 2011 and we signed contract with Palm Bay Fleet Services. CM Acquaviva confirmed that.

CM Korn said it spent 8 weeks at PB. TA said it is not the only piece they work on. If we did that and if it is broke again did we contact Palm Bay? CM Ball how long do you expect a piece to last. Tractors, dump trucks, 15 years. They replaced the boom at 11 years. The cost of the tractor back then was 48K. You can get 12 to 15 thousand hours if it is operated properly. One bad operator in first two years could shorten the equipments life years later. Brian said it is 10 years of use – not misuse.

CM Acquaviva stated she is not a mechanic, but it is not always operator error. She relates analogy of her new dryer breaking down and her being at fault. Turned out there was a piece in the dryer that didn't fit and it jammed the drum. There are probably things that could be similarly wrong with any piece of equipment; we can pontificate all night, but that is not going to resolve this.

CM Vail is a mechanic and has worked on this machine. Bushings could be fabricated for this. The welds are nothing more than throwing bubblegum on it. Is the 8K kit for the mast? The bottom line is that 6K hours is not old. CM Vail said the 6450 John Deere they had to change fuel filters every three years. They cleaned out the fuel tank. He said Felix greases it twice daily. It is not operator abuse. Do we invest the money to repair what we have?

Mr. Bresshard said it is a catch 22; you can spend 20K and three months later it stops running again. PW Director Tom had told him it was like that since he was here.

Mayor wanted to address a few points. Has 20-25 years experience with Alamo and then John Deere. Explained how it was.

CM Vail – point of order. Can Attorney leave? Yes 9:50pm. (No Recess – Attorney Excused)

Mayor said he has extensive experience with this. There are issues with this tractor that should have been brought up three (3) years ago. He has pulled them apart and changed things and put in bushings. The boom doesn't swing fast. Mr. Bresshard said the expenses can just mount up. At Titusville they caught it before it got this bad. TA asked what Council wanted.

CM Vail said they want the refurb on the boom, remove the welds, so we have 3-5 years of extended life. Fuel system problem TBD. Worst case scenario, the arm can be mounted on something else.

Mayor said the fuel tank has never been cleaned. It should be run down and cleaned or replaced. Mayor wants to look at tractor when it is available.

CM Korn asked Mr. Bresshard if he could get Robinson to give us a quote to refurb the slopemower. Mr. Bresshard said yes.

#### J. ACTION ITEMS:

**MISCELLANEOUS: 4** 

7. Cancel or Reschedule 2<sup>nd</sup> Meeting in January & February

**Exhibit**: Agenda Report No. 7

Recommendation: Request Action

MOTION: CM Korn / CM Acquaviva to cancel the 2<sup>nd</sup> meeting in January and February, 2015 **Vote**: All Ayes

### 8. Request Ford Explorer used as Eagle Patrol be Declared Surplus

**Exhibit**: Agenda Report No. 8

Recommendation: Request Action

MOTION: CM Acquaviva / CM Vail to surplus vehicle and bring back to next meeting on how disposal is to be done.

Discussion: TA explained how staff handles it. CM Krieger called the question. VOTE: All Ayes

#### (No Recess – Attorney Excused)

### K. PRESENTATIONS:

#### L. PROCLAMATIONS:

### M. STAFF REPORTS: ADMINISTRATOR:

Detour signs for work on Corey and Atz. The concrete pipe needs to be wrapped. Work will start on 19<sup>th</sup>. She will look at sign on Glatter Rd for CM Krieger. She has put out the contract for bridge repair. The pre-construction meeting will be tomorrow. Tomorrow night the Brk Hollow HOA has asked for Eng to repair. **CLERK:** nothing.

#### N. DISCUSSION ITEMS:

9. Space Coast League of Cities, January Mtg. (Acquaviva)

**Exhibit**: Agenda Report No. 9

**Recommendation**: Request Action

CM Acquaviva said this was her item. In the past we took turns with Palm Bay hosting the January meeting. It is the one meeting a year that we all attend. It seemed to her that this was changed in the second week of December, after our staff had already started the preparations.

Mayor explained how they could not afford to use The Tides for the Christmas dinner. Cape Canaveral CM Georgia Phillips found the Cocoa Civic Center to use. Also Cocoa Mayor Parrish wanted to do in Cocoa. Marisa asked who broached it - did Mayor Beatty ask to be separated from Palm Bay? The proposal was if Cocoa did Christmas. How did that change our month of January? Ours was already in the works as it was coming up the next month. CM Acquaviva said Mayor Beatty is the person that attends those meeting as our Delegate. She wanted to know how they determined to remove Malabar from January meeting. Mayor Beatty said he talked to Betty Walsh, President of SCLC. The next day he came in and told Clerk. CM Korn – he caught wind of this at last meeting. He mentioned it to CM Betty Walsh. He then got with GV Mayor Del Yonts. Del said Palm Bay Mayor wanted to go alone and be on same level as Melbourne.

CM Acquaviva / CM Korn to extend 15 minutes. All Ayes.

Mayor Beatty stated that the next morning after the meeting at approximately at 9 AM he spoke to Franklin about everything he knew regarding what was coming up. It was positive with everyone on Board; all were in agreement with the change. Del was going to take it to his Council (and has) and they had no objection. He said he would take it to his Council but they ran out of time at last meeting. Next Monday (Jan 12) it will be on the SCLC Board agenda and there is no guarantee because they could change their minds and it not go through. CM Korn asked to finish what he was saying as well. If there is a loser in this, it is the Malabar Clerk because she did a lot of work to get this all lined up for January; arranging for the restaurant and everything. He asked if Palm Bay picked up on everything that we had lined up. Franklin stated we gave it all to them. CM Korn said but without Franklin knowing ahead of time, it probably felt

like a slight; unintentional but I would say, he was not in on it but he took the initiative to ask a few people questions. It wasn't his responsibility to come to the Council but he would have if he had remembered it at our last meeting because he felt that Franklin should have been given notice and thanked for all the work that she put into it. Now she has to do it all again in March if we are going to do it this way. He wants to be sure that Franklin gets credit where credit is due.

Acquaviva stated that she brought this up; she's not bashing Mayor Beatty, but she does think that it is something that we have done as a Town and as a Council; it was not just on the Mayor to say yes to such a change. That's fine if Council wants to agree to the change, but how this all happened; the fact that we are doing this in January of the year we host the meeting and our own Council didn't know about it was embarrassing to me; this is our turn. We do it, we take pride in it and our Council is well aware of it. To go and make all these changes; say by the way we are going to do it in March, which would have been fine but to make all the changes so quickly, that decision didn't just fall on you. It's a courtesy to ask the Clerk and this Council; I'm sorry but part of me was so confused after seeing the memo. This is now the second week of December and she's thinking "Oh my God, Palm Bay dropped us?" She didn't know what happened; she wanted to hear it from Mayor Beatty as he attends the meetings. We are all busy but we take pride in doing this with Palm Bay; it's a goodwill thing. She doesn't have an issue with doing it with Grant-Valkaria but that was nobody's decision here; it would have been nice to have it brought to Council. That's all she's saying about that. Mayor Beatty made comment; Acquaviva stated that she felt Mayor usurped power.

Franklin spoke and stated that after the Dec meeting Mayor Beatty came in and told her of what may be happening, she called Palm Bay and asked their Clerk; they checked with their Palm Bay Mayor and it was his opinion, whatever the decision was, that the changes would take place in 2016. Then she was really confused so she got back with Mayor Beatty and then he had all the back and forth telephone conversations. What appeared to be a done deal in December wasn't a done deal because there were people that didn't want December Christmas meeting at the Cocoa Civic Center. So that's why it's back on the agenda for SCLC Board action to decide at January meeting. CM Korn asked if the meeting was to be in Palm Bay on 1/12/15. CM Acquaviva stated that it's at the Melbourne Rialto; CM Korn asked if it's hosted by Palm Bay. Franklin stated yes. He thinks the ball got dropped as far as bringing it to Council but he does not think, he can't speak for Carl, but his opinion was Carl was approached. CM Acquaviva asked "right before Christmas"? Korn stated that what is done is done and we need to be careful in the future.

#### O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Korn – will be gone most of month. He suggests that Brian Vail be his backup.

CM Acquaviva - nothing

CM Ball - nothing

CM Vail - nothing

CM Krieger – Corey Road bump in the road needs attention

Mayor - nothing

#### P. PUBLIC COMMENTS: General Items (Speaker Card Required)

#### Q. ANNOUNCEMENTS:

Two (2) vacancies on the Board of Adjustment

Two (2) vacancies on the Park and Recreation Board

Two (2) vacancies on the Trails & Greenways Committee

Two (2) vacancies on the Planning & Zoning Board

#### R. **ADJOURNMENT:**

There being no further business to discuss, Chair asked for a motion.

MOTION: CM Korn / CM Krieger to adjourn. VOTE: All Ayes. The meeting adjourned at 10:43 PM.

Mayor Carl Beatty, Council Chair

Debby K. Franklin, C.M.C.

Town Clerk/Treasurer

Date Approved:\_\_\_

NOTE: RTCM 1/19/15 - cancelled

RTCM 2/3/15 - cancelled RTCM 2/16/15 - cancelled