

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

SEPTEMBER 23, 2019

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 the mtg to order at 7:30 pm. CM White led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

TOWN ADMINISTRATOR:

MATT STINNETT

TOWN ATTORNEY:

KARL BOHNE

TOWN ENGINEER

MORRIS SMITH

TOWN PLANNER

TOD MOWERY

BLDG DEPT MGR

DENINE SHEREAR

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk said for the record the Fire Chief Mike Foley was also present.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:

Chair asked for Motion to remove from table Item 8c. **MOTION:** CM Korn / CM Vail to untable item 8c. Vote: All Ayes.

4. CONSENT AGENDA: Chair asked for a motion on the consent Agenda -

4.a. Regular Town Council Meeting Minutes 9/09/19

MOTION: CM Vail / CM Ball to approve the Consent Agenda as presented. **Vote:** All Ayes.

5. ATTORNEY REPORT: Nothing

6. STAFF REPORTS:

6.a. ADMINISTRATOR: Nothing

6.b. FIRE CHIEF: Postponed from 9/9/19. He went over August stats.

6.c. CLERK: Nothing.

7. 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.**

Speaker Card: Carlene Conroy, who can she speak to about a remodel plan to make the room bigger. TA suggested she come in and speak to him.

8. PUBLIC HEARINGS/SPECIAL ORDERS: 3

8.a. ORDINANCE 2019-11 Setting Millage for FY 19/20 – 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.2680 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020, AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only.

PH OPEN: none **PH CLOSED:**

MOTION: CM White / CM Rivet to adopt Ordinance 2019-11. Discussion: none.

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.

Motion carried 5 to 0.

8.b. ORDINANCE 2019-12 Adopting Budget for FY 19/20 – 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$2,204,996.00 FOR THE FISCAL

PERIOD FROM OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020;
AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only and Section 1.

SECTION 1. The Town Council, in regular session duly assembled adopt the Fiscal Year 2019/2020 Budget of \$2,204,996.00 consisting of \$1,910,996.00 for general fund expenditures and \$294,000.00 in approved expenditures for Stormwater projects funded through non-ad valorem fees DEP financing.

PH OPEN: none **PH CLOSED:**

MOTION: CM Rivet / CM Vail to adopt Ordinance 2019-12. Discussion: none.

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.
Motion carried 5 to 0

8.c. ORDINANCE 2019-08 Land Use and Zoning Change for Stuart J Borton and Nancy Tinio Borton Trust – 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING LAND USE MAP AND ZONING MAP FOR THE .31 ACRE (+/-) ON THE EAST SIDE OF US HIGHWAY 1 IN TOWNSHIP 28S, RANGE 38E, SECTION 31, PARCEL 250.4, MALABAR, FLORIDA, FROM COASTAL PRESERVE (CP) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN LAND USE AND ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

Chair stated the process that would be followed. Speak to the request only. He will use the timer and gavel if speaker goes off topic. Also address comments to Council, not the audience.

Chair asked for the Ordinance to be read by title only.

Chair asked petitioners to present request. Attorney Smith spoke for the Bortons, it is a small tract of land, the applicants have a good track record on their existing business. For the same reasons that Town staff recommended approval, he will just ask for a favorable vote.

Stuart Borton, 950 Highway 1. Thanked Council for supporting their request at the first reading. He recognized that many in audience were wearing IRL supporter stickers. For the last 20 years they have worked with the IRL and done fundraiser after fundraiser to support the IRL. People in audience call point of order. Mr. Borton said they are trying to help the IRL. The land they are trying to develop is a little over 20,000 sq. ft. They currently work in harmony with the land. Recognized that audience interruptions did not allow him to continue his presentation. He appreciated the Council's prior action and asked for continued support. CM White asked why the applicant could not address the Indian River Lagoon.

Mayor said the agenda item is a request to change the land use and zoning from coastal preserve to commercial general. The decision made by Council relates to the land – not the owner. If approved, the owner could sell the property tomorrow and the land use and zoning would remain with the land. For the Public Hearing the Mayor said he would call out the speakers by number handed out earlier by Richard Kohler. State your name and the address where you reside. Address comments to Council, not the public. Stay on topic of land use and zoning and allowable uses for the parcel. He will gavel if you address public or go off topic.

PH OPEN:

1) Richard Kovach, Malabar Dist. 3. Read the Malabar Charter Preamble. The Borton's request to rezone flies in the face of the Comp Plan. The request was soundly rejected by P&Z. They have property on the west side that could be used. You are dooming the future of riverfront and defacing and destroying CP. If you vote for this, you will have betrayed the wishes of the residents. Requests this be denied.

2) Colleen Darby, Malabar, spoke to the reasons she did not think the request met the requirements. She asked for tolerance if going over the 5-minute limit as she has 485 Malabar signatures on petitions opposing this request that she submitted to Clerk. She said they are prepared to go forward with petition to request a special election that could cost the Town over \$5,000.00. Stated the application does not meet the 3 C's. Council that supported this request at the first reading did not offer any support on why you voted for it. We don't fear growth. Commercial growth on the west side was what was intended. Made a statement that CM White voted for this as they were friends.

Chair called on CM White. He did not know them before they submitted this application. When he and wife started looking at property here he asked realtor about a good place for lunch and realtor said the best place was Yellow Dog Cafe. He has only eaten there for special occasions. He talked to people when getting signatures for his re-election. He got opinions. Property owners have rights too. He also stated this parcel has CG on two sides. He asked how this was the domino effect. There are no other parcels that have this situation.

Attorney Bohne said to keep the comments related to the request only. Interrupting Council does not work – it does delay the meeting. It is customary to allow more time if a speaker is representing a large group in order to streamline the process. Suggests speakers focus their statements to the request and keep the personal attacks out by being civil.

3) Keith Kessler, Malabar, 29-year resident. He looks at the abandonment of the CP. He does enjoy the river view. We will never get it back if we approve the request.

4) Dawn Danielson, Malabar, read about a similar statement made by Patrick Henry; the Malabar Charter is not intended to restrain the people but rather restrain Council. Referenced Art III, Sec 1.3.3 Table. Appreciates the long hard work done on the P&Z packet that was lacking in the Council packet. Suggested they read all the good stuff that was in the 7/24/19.

5) Debra Ball, Malabar, read from paper. Already have problem with parking. It is a small parcel and does not meet the setback. It would increase traffic. Proposed development could be from 4-12 rooms. Pedestrians were killed while they offered valet parking. Crosswalk has been added but peds don't always use it and drivers don't always stop. They own four homes in Riverview Subdivision. Many of the residents of Riverview have spoken against this request. She supports the CP and commercial free riverfront. She read from Mailboat in 2010 when Mrs. Borton was on Council and spoke in favor of the beautiful riverfront view.

6) Laura Pasula, Malabar, was there in support of the applicants who over the course of 20+ years have helped to put Malabar on the map. Her daughter worked there. She also saw how Nancy and Stuart Borton treat their employees like family. They are not an unknown stranger. They have a vested concern. There is already water and sewer. Excellent opportunity to allow local businesses to expand and grow their business.

7) Susan Shortman, Malabar – said the request does not meet the requirements. The lot has a slope. The slope protects the Hwy. Talked about tax dollars. \$1200 to Malabar is not that much. She opposes.

8) Not present

9) Marisa Acquiviva, Malabar, said that Council has the final decision; they have a strong Council form of govt. Disappointed in treatment of the applicant with all the 'point of order' signs in audience. You were voted in. She lives in Country Cove, she doesn't know anyone that was asked. This does not represent most of the Town. She supports the Borton's and this is an addendum to their business. Hope you support this request.

10) Regina Rodrigues, Malabar. Born here. Anytime there is the chance for new things. They could have built there building up and blocked more views. There is a lot of hostility. They have only done good things. Should be rezoned so they can grow their business. She got accosted by a solicitor they used to get signatures. She shouldn't be afraid to answer door.

11) Michelle M., W Melbourne, works for Nancy and Stuart Borton at Yellow Dog and in working with these people she has seen what they contribute in their community. Atty Bohne said focus on the request for change in zoning. She said this maybe too simple. It would be tasteful and bring resources. Support them 100%.

12) Bruce Johnson, Malabar: once you give it away you will never get it back. Keep it CP.

13) Julane Kikla, Malabar, retain rural residential. Do not change CP to CG.

14) Liz Ritter, Malabar – first thing objects to the wording in the ordinance – seems deceptive because it does not state that P&Z Board recommended denial. Atty said that is typical language. She said it does not meet the size and setbacks.

15) Regan O'Rourke, Malabar, reiterate the points made by the first and second speaker. Don't change the CP to CG.

16) Stephen Chalmers, Palm Bay, wearing the MRC shirt. MRC recommends denial. He was a long-time resident of Malabar. This decision will affect the future of the Town.

17) David Ness, worked for Nancy and Stuart, worked Sunday night. There were 120 customers sitting out on deck enjoying the riverfront and watching the dolphins. Small expansion will not adversely affect Malabar or the river.

18) Lloyd Behrendt, Malabar, need to be reasonable with zoning or you will be sued. He was Malabar Council Chair when they adopted the first land use plan and zoning. Excellent opportunity to support a local business. This use is contiguous with the Yellow Dog. Asked Council to approve the request.

19. Lachen Smith, Malabar, against this change of zoning. He said he was bullied off this property. This would open door for lawsuits for the Town if more accidents happened.

20. Virginia Foley, Grant. She owns Berri Patch preschool in Malabar. Spoke of property rights. When you buy property, you should have the ability to develop it. If you want it CP, then buy it. She supports the request.

21. Dave Botto serves on MRC – the effect on the lagoon will not be significant. Eventually it will be built out and will contribute the pollution of the IRL. This area totals 10 acres. CM White said how is the raindrops go into the IRL. The water works its way down there. CM Korn said there is already water and sewer there.

22. Dave Montgomery works fulltime on stormwater and the negative impact to the lagoon. Stormwater does not go into the river, it is – how would you reroute that small of an area. Very fragile lagoon. CM White – this is the first he has heard of this. How does other development deal with this? Dave explained how the living shoreline works and a pond because they have the size to do it at the Lagoon House. It is the stormwater that is already impaired. Hard to mitigate.

23. Cindy Zindel, Malabar, talk about property rights. You have a right to ask for zoning change.
24. Laura Mahoney, Malabar, we are not going to live forever. Whatever gets built there in the future. She said the change will happen forever.
25. Dave Kello, Malabar, at the last meeting he talked about the fear opposers verbalized. Tonight, they are still stating the fear, but he is here to talk tonight of value. This area is flush with value. The value that this brought to this area has been brought in on the backs of people like him. We are vested in the value. Our economy has flowered. We are not exempt from the growth. When he comes in to Town Hall he hears the calls from residents who are so worried about what their neighbors are doing. He has heard about complaints from those who oppose growth. Typically, those people who come to these meetings are people who oppose growth. The weight and critical opportunity that faces this generation is for growth; this is the changing of the guard. What do you want your legacy to be? This is where we define what these rezoning's provide. Prior Councils have gone back and forth. This is not a shot across the bow. He sees the opportunity for growth. He watches other towns do more with less.
26. Bob Wilbur, Malabar, was on P&Z and T&G. Had a lot of input from Diane Barile. Now that we have a scenic highway it is important to keep this CP. Changing to CG would be open the whole area. He opposes the request.
27. Wayne Abare, Malabar, PZ Chair. He is pleased CM Vail voted against this. The Mayor has five business days to veto any action of Council. It takes 4 out of 5 Council Members to override the veto.

PH CLOSED:

Attorney Bohne said it is ultimately Council's decision.

Planner Tod Mowery does not have any other comments but will answer any questions.

Engineer Morris Smith said he had no other comments.

MOTION: CM White / CM Rivet to adopt Ordinance 2019-08.

Discussion: CM White said they do things above and beyond. That is what they do. This is a unique parcel of land and bordered by two other CG. No other parcel of CP is next to CG and no other parcel in CP has city water and sewer. People have property rights. He cannot deny this out of fear of what may happen on other parcels.

CM Korn said Council has been adamant about building commercial development on the main corridors. This will not decrease the rural character of Malabar. Malabar on Weber Road is not rural. They are a suburban community. He named several neighborhoods. They would still have to go through the site plan approval process. He asked Planner how many other agencies the applicants would also have to comply with - many. We need to create a business community.

CM Ball said the Borton's Attorney sent a notice to the Town Attorney that he must recuse himself from the vote because they also have property on the east side of Highway 1. He has a piece of property that could be used for a similar project. As a Council Member he believes it is in the best interest of the Town of Malabar to continue with the CP. When he listens to the Town Council, the three members that voted for it have no skin in the game because it doesn't matter to them because they have no constituents along the water. It has been pointed out by CM Rivet that we don't care about each other's districts. Only CM Vail and CM Ball have constituents in this area. Approving this change from CP does open the door. CM Ball said they knew what the designation was when they bought it. He has owned his riverfront before it was CP. CM Rivet said they have gone over this issue and everything that is relevant has been said. He pointed out that CM Ball's statement about what he had said is incorrect. CM Vail supports keeping the CP.

Mayor stated he will ask for a motion in the affirmative. First, he asked if the language in Section 1 of Ordinance 2019-08 should be changed to clearly state that the P&Z Board recommended denial. CM White said if it is standard language, he doesn't see a need to change it. Mayor asked and there was no interest to change language.

CM Korn said residents have a right to circulate the petition – but he opposed the way the whole thing was handled – allowing a petition at the cash register of a local diner and at a local church. CM White said regarding the zoning measure – one of the biggest opponents is in my district. Maybe we should go back to 'at large' voting.

Atty Bohne said the initiative petition procedure is in Chapter 5 of the Charter and has a specific process to follow; if the petition doesn't meet the requirements it can be rejected.

Roll Call VOTE: CM Rivet, Aye; CM Korn, Aye; CM White, Aye; CM Ball, Abstained; CM Vail, Nay. Motion carried 3 to 1.

Mayor thanked all for coming. CM Rivet thanked all and said that he had talked to many constituents and although they did not all agree they were civil and able to talk and better understand each other's position.

9. UNFINISHED BUSINESS/GENERAL ORDERS - 0

10. ACTION ITEMS:

ORDINANCES FOR FIRST READING: 0 - RESOLUTIONS: 0

MISCELLANEOUS: 1

10.a. Accept Raulerson Lane for Town Maintenance

MOTION: CM Rivet / CM Vail to accept Raulerson Lane for regular maintenance.

Discussion: **VOTE:** All Ayes.

11. DISCUSSION/POSSIBLE ACTION: 0

12. PUBLIC COMMENTS: General Items (Speaker Card Required) none

13. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: nothing

CM Vail: nothing

CM Rivet: thanked TA for the derelict boats that were removed from property on Hall Road.

CM Korn: Called TA today regarding spraying defoliants in the ditches. Defoliants are poison. CM White asked if the vendor could come in and talk about the product used. Put on for discussion on next agenda. CM Korn said stop it now. TA said it is not poison. CM White said you can stop foliage growth in ponds without the poisonous effects of Round-up.

CM White: nothing

Mayor: nothing

14. ANNOUNCEMENTS: Openings on Bd of Adjustment and Park and Recreation Bd.

15. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 9:25 PM.

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

ATTEST:

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

Date Approved: 10/07/2019

Form 8B attached to minutes