

MALABAR TOWN COUNCIL REGULAR MEETING

March 03, 2014 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 Steve Rivet. The prayer and pledge were led by Council Member Wayne Abare.

B. ROLL CALL:

COUNCIL CHAIR
VICE-CHAIR/MAYOR:
COUNCIL MEMBERS:

STEVE RIVET
CARL BEATTY
JIM MILUCKY
WAYNE ABARE
DICK KORN
MARISA ACQUAVIVA
BONILYN WILBANKS
KARL BOHNE
DEBBY FRANKLIN

TOWN ADMINISTRATOR:
TOWN ATTORNEY:
TOWN CLERK/TREASURER:

For the record Fire Chief Christopher Robinson and Asst Fire Chief Dan Welton are also present.

C. ADDITIONS/DELETIONS/CHANGES:

Put proclamation after Consent Agenda since there are people to accept it. Clerk asked to pull item 1A, #2, #5, #9 and #11. TA also asked to pull Fire Chief Report and put on next agenda. Apologized for condition of minutes.

D. Consent Agenda

- 1a. **Approval of Minutes - Regular Town Council Meeting – 2/03/14** - PULLED
1b. **Budget Adjustment – Resolution 06-2014**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2013-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 1b

Recommendation: Request Approval with a rollcall vote.

Chair read Resolution by title only

MOTION: Jim / Wayne to approve Consent Agenda as presented. Discussion: none

ROLL CALL VOTE: 1)Milucky, Aye; Abare, Aye; Rivet, Aye; Korn, Aye; Acquaviva, Aye. Motion carried 5 to 0.

Mayor read proclamation at podium to President of Hibernians Assn and presented same.

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

F. **ATTORNEY REPORT** – nothing

G. **BCSO REPORT** – no representative present.

H. **PUBLIC HEARING:** Applicants for Land Use & Zoning Change postponed until 5/5/2014.

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

2. Recommendation from T & G re: Mandatory Sewer Hook-up PULLED

J. ACTION ITEMS:

3. **Veto by Mayor Beatty of Ord 2014-01** – Override or let stand.

Exhibit: Agenda Report No. 3

Recommendation: Request Council Action

Chair calls on people that have submitted cards. Mr. Paladin: waived his time.

Mrs. Hirsch: waived her time.

Pat Reilly: Chair of P&Z, read a response to the veto letter by the Mayor and the newspaper article on the same issue. It is attached to the minutes. Reilly said that about 90% of town is rural with only 10% left for

other zonings. When Town organized and became a town, a comprehensive plan was developed that detailed the desired zonings within the town limits. In addition, the State required the town to include some higher density areas to insure diversity with the town. Reilly has been on PZ for over 12 years. He believes P&Z has done a good job of keeping the rural culture and they have done due diligence of researching topics before voting on them. The ordinance vetoed by the Mayor did not change the zoning of any land within the town; it just added another possibility to existing land uses. This ordinance updated types of facilities and brought it in line with Florida Statutes. They have worked on this steady since January 2013. Density for ALF is less than other uses. Gave ex. 20 per ac vs. 12 per acre. Residents have had adequate time to provide comments. Second point, the calls to 911 are less than for multiple family home. It was also properly advertised.

John Kiernal, Florence St, thought this was something that just happened last month. After hearing the explanation, he has no objections. He thought all of that information should be in the article.

Brian Vail, missed his window of opportunity; he should have asked at last meeting if the parking ratio could be changed to 3 to 1. He thinks that it would be more conducive to our rural character.

Back to Council

MOTION: Wayne / Marisa to override Mayor's veto of Ord 2014-01.

Discussion: none. CM Jim called for the question. No objections.

ROLL CALL VOTE: Milucky, Aye; 1) Abare, Aye; Rivet, Aye; Korn, Aye; Acquaviva, Aye. Motion carried 5 to 0.

ORDINANCES: 1

4. Fertilizer Ordinance 2014-04

An ordinance of the Town of Malabar AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADDING NEW ARTICLE III TO CHAPTER 7.5 OF THE CODE OF ORDINANCES OF THE TOWN RELATING TO THE REGULATION OF THE USE OF FERTILIZERS; PROVIDING FOR A SHORT TITLE, PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REGULATION OF FERTILIZER USE AND APPLICATION; PROVIDING FOR EXEMPTIONS, TRAINING AND LICENSES; PROVIDING FOR PENALTIES; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

Chair read by title only.

Speaker's cards

Clyde Giesenschlay, Melb Village, FIT Thomas Ballenger. Currently doing research on fertilizer getting into the lagoon. DEP has provided model Ord but it does not reduce pollutants into IRL. Dr Brian LaPont, last Nov, most effective is to have the 4 restrictive clauses. Baseline Ord is not enough. He also provided the Tampa Bay article on how everything is great. He supports this Ord.

Mary Spar, Cocoa, sent emails to everyone. Everyone knows the lagoon is in trouble. Won't cost a lot of money. Will get grant money for educational purposes? Handout attached. Hopes you will vote for the stronger.

Leslie, Palm Bay, wants Council to support the strict version; it's cheap and easy. Need to show you're serious. Have to do something – either the model or the stricter version. Not trying to shut down the fertilizer industry. There are 12 different types of new products (gave them as a sample) that are being used on west coast. Must have the rainy season ban to qualify for grant money. Back to Council.

Chair said he did get information from FIT and it also supported the more restrictive version.

MOTION: Wayne / Dick to approve Ord 2014-04 for first reading.

Discussion: Nitrogen is the bad guy here. Rainy season is June – Sept. Is there a ban during rainy periods – yes there is a prohibition.

Mayor said he went to a presentation by FIT with Posey. FIT has been monitoring IRL since 1959. His theory is the faster they put this into place the faster it will get clean. He thinks they should adopt the more restrictive version. There is another article that states the septic does not do the damage.

Marisa, she lives in a deed restricted community, how are you going to police that? The professionals are policed; but they sell it at Home Depot.

Wayne to follow up to Marisa has talked to vendor and the bag said 1lb to 1000sf – professionals use ¼ of that and do it 4 times. In 2007 it was most grows in water in less than 4 feet. Sea grass is dormant right now.

Dick the 4th item speaks to Marisa. The bags have specific language for Florida but it follows model ordinance. Asked Atty if they can ask FLC to help get this to vendors and mfg. Dick wants tweaks – change 10 to 25' buffer. Wayne asked about water bodies after a heavy rain. Atty said water in ditches is not a water body. Wayne suggested enacting the State model and look at it in 6 months and maybe make it stricter. Atty said Palm Shores is doing just that.

Marisa – who is going to enforce this? She knows when there is a water ban that people sneak and water in the middle of the night. Atty – educate, educate, educate.

Jim, point of order – we were to limit each person to 2 times. Jim agrees with Marisa; but it is 4 months not 3 months. Jim said he would not support any exception. If it is good for everyone then why should the park not be included? He would support what is on the books.

Dick, what makes the athletic fields special is that it gets a lot of use, wear and tear. They benefit the activities of the community.

TA said once it is approved, she had planned would put it in the Mailboat and she would send it to corporate offices of Home Depot, Lowes and Ace Hardware. Re: professional code enforcement; Malabar has reactive process.

Chair called for the question.

ROLL CALL VOTE: Milucky, Aye; Abare, Aye; 1)Rivet, Aye; Korn, Aye; Acquaviva, Aye. Motion carried 5 to 0.

RESOLUTIONS: 1

5. Amend Council Procedures (Reso 07-2014)

PULLED

MISCELLANEOUS:

6. Set Date for Fire Dept WS #2

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Consensus to do it March 11 at 7PM

7. Approve Expenses for CowBell 5K

Exhibit: Agenda Report No. 7

Recommendation: Request Approval of Expenditures

MOTION: Marisa / Wayne to approve the CowBell expenditures and vendor fee for pony rides.

Discussion:

Clerk said we have done nothing different from the last two years. The local vendors we used in past are not available. We contacted an outside vendor. The Mayor said he would ok it. Since

there were allegations that SpringFest committee made expenditures not approved by Council, that it why this is before them. Mayor said the issue here is the Town may have to subsidize the pony rides. But we already give free face painting and that cost us 350.00. They will also have the trail ride to the trailhead

VOTE: Ayes: 5; Nays: 0.

8. Use of Town Hall by outside organizations on Week-ends

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Discussion:

TA explained the MMA mtgs were held on one Tues at 5pm and then they went to all on Sat every month. They just changed the calendar. That is why she is bringing it to Council. We would have no security on building for whole weekend. Also could not program AC to go up like it does now to save money. TA is bringing this to the legislative body to approve using money from all taxpayers to benefit a private organization. Dick said is it possible to designate a responsible person to give a key and the security code. She is uncomfortable with that. No one on Council has key or code.

Mayor several issues: If it is programmable, you should be able to set it to go up after they leave. Also could have key to access the side door only and it won't set off alarm unless front or back doors are opened. He talked to a member of the Mariners and that was the ideal situation but it was not set in stone. Mayor told him he would speak to Council on this item.

Jim asked chair if he could ask a MMA member to speak.

Hans is a member, exists to teach people to sail and navigate. He wasn't aware of the change. Jim asked how many meet. Hans said there are 7-15 at a Board of Governor's (BOG) meeting. Jim wants to be supportive of this group – what about the fire station – it is the Town's? TA said yes. Marisa asked if the Fire Department had a small conference room or area they could meet on Saturday mornings for their quarterly meetings. She thought this could be a great venue for them. Hans said at this time, they can meet at a member's home and if they can't meet here they can meet at the dock. Jim would like to resolve this happily. Jim asked Hans if he could bring it up to the next Bd of Gov meeting about meeting at the Fire Dept and bring back their thoughts. Mayor said he spoke to Grant. Hans will ask them.

Wayne said the Rocky Pt HOA will meet here tomorrow for their annual meeting. Chair asked if the question is – are using public money to support private groups. Marisa, how about a rental fee? Charge a fee and have guidelines, have a key process. Pay for their own use of elec for AC.

TA will work with them and talk to them.

Chair is there consensus to charge a fee. No.

9. Request Boy Scout Troop 37 to relocate their trailers from PW yard.

PULLED

10. Approve Request to commit funds for Grant Subscription

Exhibit: Agenda Report No. 10

Recommendation: Request Action

Discussion:

TA explained the presentation she attended. They assisted with grants. They can cancel at any time. It would be open to all our needs, parks, T&G, FD, bldg hardening. Cost is per year. To fill out the grant would be extra cost. TA sat on a webinar with this guy for 15 min and got 3 grants we qualify for and he locked in the price of \$495.00 for three years and we can cancel at any time. They will provide weekly reports on grants available that fit our priorities which she will provide them. The vendor told her that large cities have all kinds of grants and financial resources that the

smaller communities don't. This vendor seeks out rural towns that are under 5000 in population. He also told her that they would not require a percentage. Building hardening, Trailhead improvements, Fire Department assistance for equipment and trucks are all areas that he said they could help get money for. She would ask for Council to support this at least for the first year. By budget time she will be in a position to evaluate the benefit. Wayne asked if this was an annual payment. Yes. Who is going to be the grant champion? TA does grant writing. She sent the grant info for the ADA trail improvements to them and they said to evaluate the pros and cons of package they would charge \$4,000. She said if they were applying for a \$250,00.00 grant then she could see maybe paying for such a review but not for this DEP grant. DEP essentially told her what that needed – move the location of the restroom and it will be granted. Wayne said he is all for this if we can start hitting pay dirt and getting some grants approved.

MOTION: Dick / Wayne to approve.

VOTE: Ayes: all; Nays: 0 .

11. P&Z Board – Scope of duties

PULLED

(No Recess – Attorney Excused)

K. PRESENTATION:

L. PROCLAMATION: Done earlier

M. STAFF REPORTS: Atty said we should consider adopting process to do the veto. He is asking for direction from council. Jim is all for more documentation. Jim said since 1962 we have only had three vetoes. Might want to spend more time on things that are broken.

Dick said it is not broken it is incomplete. Just add language to complete. Have the suggestions be made by Mayor. Wayne, we need to define – did he do a pocket veto by just not signing? No, that is a whole different discussion on who signs. Malabar is the only municipality in Brevard with a Mayoral veto. As for signing, the statute states that the presiding officer signs ordinances and resolutions. But, Atty said there is an AGO that says if there is a process in place before the date of the statute, then it would control. He doesn't know how Malabar did it with the Mayor being the ceremonial head, the titular. Attorney said they have to put a time limit on it, because in his opinion, the ordinance doesn't take effect until the Mayor doesn't veto or Council overrides the veto so a definite period of time is necessary.

Marisa, the problem she had with the veto is that she never heard Mayor speak to this and then got the letter and then read the article. She wished the Mayor would have voiced his concerns at one of the meetings before the vote because they do listen to his comments.

Mayor said it is not the nature of the beast. What it is is a check and balance. If at the final reading, not the second because if you modify it enough, you have to do it again. After the last reading with the majority voting in favor; only then can the Mayor exercise the veto. Normally there is a ten day period; the Governor has 15 days and the President has ten days not counting Sunday. After the vote citizens may come forward and say what happened, so it provides a check and balance. If the council voted it down the first time and then voted for it the second time, the public would not be aware of that. Pocket veto does not apply to the town; it applies to legislative sessions. Mayor suggests ten days for the veto. If he doesn't veto it is passed. If he vetoes and then within the ten days realizes the citizen's request is unreasonable, then the Mayor could just come in and sign. Mayor said it was a built in delay on a rocket launch to give you time to reevaluate things.

Marisa has a problem with this whole thing. Malabar is a rural town with a council and if now the Mayor has the power like the Governor or President; if he is truly permitted to do this, why didn't he voice his concerns when this was discussed. Council did discuss all those issues he brought up but his comment about rural sovereignty; she never heard him mention that. And with our rural sovereignty she did not see a groundswell of residents come forward when this was discussed and advertised and voted on by Council twice 5 to 0. Mayor made it look like we didn't do our due

diligence to keep our rural town; like we couldn't see the forest for the trees. If this is our rural little town, this was certainly not a very friendly way to go about it. We all spoke our concerns and actually updated the code language and put in restrictions. She was very disappointed.

Wayne said there was not a hint that Mayor hated that ordinance. Wayne got several phone calls after that. Some were very supportive and some were very much against it. Most calmed down after it was explained. But that didn't change his position. He knows how they went through this process and considered all the aspects and slugged out the differences. Apparently something came up later that bothered the Mayor. Wayne asked in the future for him to please bring it up during the discussions.

Jim proposed a motion to adopt a resolution eliminating the mayoral veto and returning to the original intent of the Town Charter. Attorney said it is in the Charter and would have to go to referendum. Jim asked how that is done. Attorney stated that first an ordinance must be drafted and passed by Council to put the referendum question on the ballot. Jim would like a consensus to direct staff to write an ordinance to eliminate the mayoral veto. Jim said it has already been rubbed in our noses that we are the only municipality that has a strong council form of government and a Mayor who can throw everything out. Get it out of the procedures. Jim said Marisa brought it up and then Wayne went there and he'll finish it up that it is a real slap in the face when you have three years of Planning and Zoning and a almost unanimous vote and then two readings and a public hearing at council where everyone gets a chance to speak and he doesn't speak and then for no other purpose than to political grandstand on his part to make it look like the rest of us are bumbling bumkins. He is offended by that and hopes that is not what he is going to use for his political platform of greatness in the State of Florida.

Dick looks at this totally differently and this is why. Mayor alluded to this earlier and we all missed it; the ordinance that was passed was not for some huge ALF facility. It was enabling language for our code to allow someone to apply. He got six calls himself from upset citizens. He doesn't know if the Mayor got calls from concerned residents after it was passed and that is why he exercised the veto. Dick thinks there should be a time after adoption; his biggest concern is the empty seats out there. Somehow we have to get the people of Malabar involved in what goes on in this room, and if this is what will do it, then let it be.

Mayor said just as an example, back in 1985 there was a rezoning ordinance he vetoed. The person was on council and he had bought the land cheap and couldn't do what he wanted so he had to get it rezoned to commercial. To the person, because he spoke with all the residents in the subdivision, they did not want this chunk of their subdivision to be rezoned. That is why he had to veto it twice because the old rules were you have to veto it between readings and the new rules say you do it after the final reading. Because Council could not override it was not changed. That is the checks and balances. Regarding this ordinance, he was never comfortable with the developer working with P&Z and talking from his chair in the audience. He also talked to sheriff and fire fighters. They get a lot of calls to ALFs and then Sheriff would need to respond.

Jim, Point of Order – what Mayor is saying should have come up at the one of the two Council mtgs or when this was discussed or at any of the P&Z meetings.

Marisa, she said we were misrepresented in the article. A resident spoke earlier tonight about his concerns after reading the article and then he heard the rest of the story. Marisa said his veto misrepresented the Councils actions. And she did bring up that concern about having the developer at those meetings and participating as he did. She brought that up several times. We had to update the language in the code and we did that. They did discuss the need for additional services but that is not the subject before them. This ordinance updates the code language. The other concern she voiced was that you can't discriminate against people. You can't say you don't want ALFs because you don't want old people because they require more services. We made the use stricter, making it a conditional use. We have always been allowed to have hospitals nursing and convalescent homes in two sections of town and now it is only one section of town.

Mayor begs to differ. Article was written by a reporter, and it wasn't about this it was about this being the second veto in 52 years. In the process he was asked why and he said he thought we were too wrapped up in the details and didn't consider the ramifications. That is what the veto is

for – to start the dialog; to create check and balance. Mayor said it came up tonight and they were not allowed discussion, it was just a flat out vote.

Dick said we chose not to have discussion. The Attorney also stated that there was no discussion after Chair called for discussion. Mayor said he realized that. Jim said to Mayor then don't say there was no discussion allowed. Council chose not to have any discussion. Marisa said we had plenty of discussion on this item. Jim asked Chair if Council was going to go forward with veto procedures. Attorney said his recommendations are on page 40 of the packet.

Discussion item for next agenda. Pg 40, put on agenda.

ADMINISTRATOR: ~~Fire Chief Robinson with January Report – copy attached~~

He did send a report – do they want him to present it. Dick said there should be the FD rep and a member from each board and staff members. Do we need the chief to do a presentation? Jim no, Wayne said the statistics are nice but if Chief has problem who does he talk to? Dick said have him at one mtg a month. Wayne said maybe quarterly. Report comes once a month. Marisa is good with that. Marisa asked why the BCSO doesn't come anymore. TA will let Major know. They used to come regularly and they don't now. Jim said it is obvious we are not a priority. Once a month for Fire Chief - Wayne and Dick would be happy with. General Consensus - yes.

CLERK: Spreadsheets on rev & exp for Springfest are being sent out by TA. New PT Acct Clerk has started. TA said they have had to let go three members of PW – 2 PT and 1 FT. They have replaced with 2 FT. Dick asked about drainage on Weber. TA responded. Mayor then gave history of the private property the town paid to have a pipe put in to drain the water northeast. New owners took it out and redesigned the flow.

N. DISCUSSION ITEMS:

O. REPORTS – MAYOR AND COUNCIL MEMBERS

1) Carl - none

2) Marisa - none

3) Dick – none

4) Wayne – would like in the next several months what he does routinely, what special projects, some things are funded some are not. Maybe a WS – get to know PW like we did for FD

5) Jim – the MSTU we have precious little time to find out what our 1.32 gets us. Went from .84 %.

If we are going to put this to voters let them know what is paid. What are they spending? Allocated expenses won't be shown. How do they develop their budget? But it is not a fair cost analysis. TA said BCSO has a separate budget the zone Malabar is in. They should be able to tell her exactly what is spent for coverage in Malabar. TA asked if she could meet with Jim to work on this. He is real busy this time of year. Wayne will meet with TA and go from there. He will fill in. He is very interested in this.

Mayor said only because it was brought up here; we need to have the documentation; the year of the trucks at FD – the hours on the trucks, so we can look at what to replace in our planning. He said the CIP hasn't been looked at since 2011. Last year we didn't do the CIP and just did a wish list. Marisa said it was not just a wish list. They were very diligent on the CIP needs during budget discussions.

TA said that is what they are preparing. Marisa said we did talk about this and the Mayor said he was going to do the list on road conditions and which to repair – but he didn't follow up.

6) Chair during the veto agenda item there was no discussion so he will speak to it now. He was very disappointed in the veto. It was a bald political move. There was plenty of time to bring up the issue. All of those issues were brought up, discussed and resolved. That is why it was a 5 to 0 vote. To go ahead with the veto was a blatant attempt to draw attention to yourself for political purposes and he was disgusted by it.

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

Q. ANNOUNCEMENTS:

One (1) vacancy on Planning & Zoning, One (1) vacancy on the Board of Adjustment
Three (3) vacancies on the Park and Recreation Board, One (1) vacancy on the T&G

R. ADJOURNMENT:

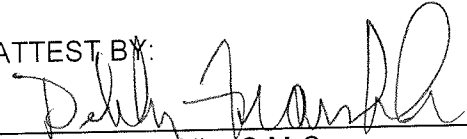
There being no further business to discuss, Chair asked for a motion.

MOTION: Jim / Dick to adjourn. **VOTE:** All Ayes. The meeting adjourned at 9:50PM.

BY: 

Steve Rivet, Council Chair

ATTEST BY:


Debby K. Franklin, C.M.C.
Town Clerk/TreasurerDate Approved: 4/7/14

as corrected

(seal)