

## MALABAR TOWN COUNCIL REGULAR MEETING

April 21, 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 7:32 pm by Council Chair Steve Rivet. The prayer and pledge were led by Council Chair Steve Rivet.

### B. ROLL CALL:

COUNCIL CHAIR

VICE-CHAIR/MAYOR:

COUNCIL MEMBERS:

STEVE RIVET

CARL BEATTY

JIM MILUCKY, excused

WAYNE ABARE

DICK KORN

MARISA ACQUAVIVA

BONILYN WILBANKS

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

KARL BOHNE

DEBBY FRANKLIN

Clerk explained that CM Milucky was out of town on business and could not make it back for the meeting. For the record Fire Chief Christopher Robinson was also present.

C, **ADDITIONS/DELETIONS/CHANGES:** Marisa felt review of TA and Clerk should be postponed, Mayoral Duties and Mayoral veto process also until they have a full Council. No objections. Moved to next meeting.

### D. **CONSENT AGENDA:**

(Any Council Member may request an item on the Consent Agenda to be removed and placed on regular agenda immediately after new business to be discussed and voted on separately by the Town Council)

#### 1a. **Approval of Minutes**

Regular Town Council Minutes – 4/07/2014

#### **Exhibit:**

Agenda Report No. 1a

#### **Recommendation:**

Request Approval with a voice vote.

Discussion: Dick – pg 6 5th para, please clarify the minutes re: “Dick shared uncomfortableness with Jim about ... not Wayne.” Clerk will clarify.

**MOTION:** Dick / Wayne to approve Consent Agenda as corrected. **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**

### F. **ATTORNEY REPORT**

Attorney gave update regarding lawsuit filed by Painted Acres. They have filed their second amended complaint, 3<sup>rd</sup> shot at it. FLC legal counsel has moved to dismiss. The case is in the process of getting a hearing date. There is no limit on how many times this can be resubmitted. He will keep TC apprized.

G. **BREVARD COUNTY SHERIFF’S OFFICE REPORT** - None present

H. **MALABAR FIRE CHIEF:** Nothing outside of what was submitted. TA said they will have several items on the next agenda. One is his car. Get rid of two and get one new one. Wayne said Chief found county wide discount. TA said the Chief will present a number of things at next meeting; one of which is the Chief’s vehicle. Get rid of two vehicles that are costing us money and replacing them with one. Chief has done research and found a State procurement bid.

I. PUBLIC HEARINGS: 0  
 J. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

2. Recommendation from Park Board – Signage

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Park & Recreation Board Member Bill Sastrum explained what he is willing to do for Malabar's benefit. The frames he builds would have slot for sign page would slip in from the top. The parties sponsoring the event would be responsible for changing the signage; SpringFest, Tree Lighting, etc. It would be for Town Sponsored events. Town would still do maintenance, which should be little to none.

Marisa asked if the Park Board had decided where they should go. Bill said yes – at town hall, and at intersections of Weber and Corey at Malabar Road.

**MOTION:** Dick / Wayne to approve signage up to \$250.00 for three signs built by Bill Sastrum with MOU that the Parties involved with the events would be responsible for placement and removal of signs.

Vicki Thomas stepped forward as Chair of Park and Rec Board and wanted to praise Bill Sastrum for his initiative to build the sign frame work and also for the cabinet for the bell in front of the dais on display. The cabinet also provides a storage place when not on display. He also refurbished the bell. She said Scott Bishop gave her the bell and Bill cleaned it up and built the cabinet/stand. She thought it could be used/rung at Town events or when someone dies.

**VOTE:** All Ayes - 4; Nay - 0; Motion carried 4 to 0.

**PRESENTATION** – Atkins Engineering – Short Update on SR514 Project by Lance Decuir. There will be public meeting on May 6 at hospital auditorium from 5 to 7pm. Lance gave overview. They divided the project from Babcock to Highway 1 into three sections and then provided options for each section.

Section 1: Babcock to Weber - 4-lane Urban

Section 2: 4-lane Suburban from Weber to Marie w/ 148' right of way or the other option would be Rural design but that would require 182' right of way. Another option would be to make intersection improvements at Marie, Corey and Weber with no build past Corey.

Section 3: Marie St to US1. There studies there is no need for 4-lane in this area. Probably could have a 3-lane urban (70+' needed), sidewalks, bike paths and trail crossings. Also have a no build option on this segment.

After the May 6 meeting, they will come back to Council in another five months and have recommendations to present. He will have several different pond locations to share. This corridor is a Class 3 but they will try and make it a Class 5 so they can put in more openings / cut throughs on the median. He explained the shared driveway for FD Disc Park and Malabar Com Park. They will display matrix board to show how they evaluated the different impacts. The biggest environmental issue is the F-4 conservation lands. They are trying to come up with widening options that will minimize the impacts to the conservation lands.

He said there is no funding in place beyond the PD&E study. There is funding for safety improvements at Corey and that will start in October to add turn lanes on SR514 and also on Corey.

Wayne asked about using Glatter and Township. Lance said they looked at that but it can't be done.

Wayne also sees the traffic back-ups on Malabar at 8AM. Lance has done the traffic count. Counts were done before the work at Babcock and Malabar. This is also a hurricane evacuation route.

Dick said with the passenger train traffic, there will be 32 more trains crossing Malabar Road between 7AM-9PM. It is also difficult to get out onto Malabar from Weber if someone is trying to turn left ahead of you.

Marisa asked about the speed. Some will be reduced around Weber but not the rest.

Dick said SR514 is the only east/west in Brevard County with a 55mph. He thinks it is a very dangerous situation. Lance said he thinks it is because there is no development. Marisa said if our input is not listened to, then it is discouraged. She would like to come to meetings and know they are being listened to. Lance understands the issues. The safety improvements will help but he suggested council keep up the pressure on FDOT.

Dick said the BCSO deputies have told him that there they can't do many traffic stops because there is nowhere to pull over. Lance said improvements will help that because they will be widened.

Mayor said the 4-lane Urban should be continued to Marie Street. Mayor said the other issue, heading east and freight trains going across Malabar Road can stop traffic all the way back to the hospital. On the US1 they have traffic backed up all the way down Highway 1.

Other issue is with the crossing and double tracks, they will coordinate with the improvements. They have 18 freight trains and they go 65 mph.

Wayne if you are ever going to get the land, why not just do it now. Why not make it 4 lanes all the way through. He thinks it is not logical.

Marisa, Malabar Road is used monthly when traffic is detoured off I-95. Traffic is stacked up along Malabar Road. Also lots of people use Malabar Road as a short cut from Grant Valkaria up Corey and Weber Roads.

#### **K. ACTION ITEMS:**

##### **RESOLUTIONS:**

Moved to next meeting:

3. **Adopt Mayoral Duties (Reso 10-2014)**

##### **MISCELLANEOUS:**

4. **Approve Date for 2015 SpringFest and CowBell**

**Exhibit:** **Agenda Report 4**

**Recommendation:** Request Action

Franklin said she discussed this with Renee White and she felt that the CowBell would do better as part of the SpringFest event. Proposed 3/28 because the 4/4 date is the date before Easter. The weather should be better than 4/18 – too hot.

**MOTION:** Dick / Wayne to set date for SpringFest 2015 as 3/28/15 and the CowBell the same day in early afternoon. Approved by consensus.

5. **Decision on Corrective Action re: W. Railroad Avenue**

**Exhibit:** **Agenda Report 5**

**Recommendation:** Request Action

TA said they originally brought the ROW agreement as an easy resolution with the least amount of harm to the businesses. TC had no interest. They directed her to meet with owners and tell them

to buy the Lot 10. In trying to deal with this, buying the property does not solve the problem. She did contact Flagler Dev and they verbally told her 10K but when she asked for it in writing they want 12,500.00. She is uncomfortable with negotiating with them if Town is not the buyer. Also in order for this option to solve the problem, Dr. Ireland would have to dedicate the property to the Town. They have done a lot of research and spent a lot of time on this and discussed the best method to resolve the liability issue without a financial burden to the businesses. TA and Clerk met with Dr. Ireland this morning and went over the options. TA asked Clerk to speak.

Clerk said she met with the Town Surveyor Craig McKinnon on Friday afternoon. He also doesn't know how a person can take part of a platted right of way and move it but that is what happened in 1912. He also told her there were many other similar issues of encroachments into rights of way or survey errors. Requiring the property owner(s) to buy the 20' x 210' Lot 10 would not reduce the encroachment at all unless the property owner then dedicated it to the Town for ROW. Right of way cannot be given or sold. It can only be vacated by the agency having jurisdiction. This lot was created in 1912. From what Morris has determined it looks like it was made up of the eastern edge of Lots 1, 2 and 7 and the rest from the right of way.

In 2005 when Mr. Day and Mr. Cook bought the property, they pulled permits to demolish the ram shackled 2-story house and cleared out all the overgrowth and exotics. They wanted to market it for a commercial use. They asked the town if the platted E/W ROW could be vacated. Our engineer at the time said that in order for that request to go to Council they (Day & Cook) would have to dedicate additional ROW to the Town along W. RR Ave and also along Marshal Drive on the west side of their property. They dedicated 20' along W RR Ave to the Town. The Town did nothing with this additional ROW; we didn't clear it, stake it, fence it, or widen the roadway. Nothing has changed since that time. If the Town had not requested the additional ROW that we have done nothing with, AAA Storage's fence and trees would not be encroaching into the right of way. We approved the location of the trees and the fence. It was our error as much as theirs.

Staff strongly recommends that Council vacate the ROW known as W. RR Ave north of Malabar Road to its northern terminus while at the same time requiring the property owners to grant a 12' easement in perpetuity for ingress and egress of all property owners and their heirs that use that roadway as access to their land.

Once it is private, then the individual property owners can get together and make the improvements necessary for all their traffic to get thru there. Zackes Nursery has huge tractors with flat beds hold trees and the tree digger equipment. Heidekruger has well drilling equipment and trucks using the roadway. AAA Storage allows outside storage of vehicles and they enter and leave from this roadway. Kempfers has his deliveries made with large tractor trailers and they maneuver all over the private Lot 10 and the RR property to get turned around to unload. Clerk showed pictures on overhead.

TA said she and Clerk are frustrated because they want cure the encroachment but not cause economic hardship to any of these businesses. AAA Storage has offered to improve the road by bringing in material and having a contractor roll it out and tamp it. Right now if they want to improve the road they would have to follow town standards to build a "road" that would be accepted by Council for maintenance. If the Town makes him move the fence then he would also have to move the 17 trees we made him plant for landscaping compliance. It would not be simply a matter of moving them a little to the west because his storm water system is west of the existing tree line.

Wayne asked what happens if after they vacate the footage and then the railroad fences across Lot 10; that would be a problem as no one could access West Railroad Avenue. Wayne said it

may do Kempher's good to buy Lot 10 so that doesn't happen. The power pole is in the middle of the realigned right of way. That could be a problem.

Dick agrees, they are well aware of the location of the power pole. The power pole will be moved when the road is improved. Dick was here and saw how much work staff has done in trying to resolve this issue.

Dick does not see a downside to vacating. All other property owners would still have access.

TA said that is correct. Mr. Marks has been willing to improve it but can't if it is town ROW. Mayor said he had already talked with Attorney about eminent domain; he doesn't know if Council wants to do that or even if they can. The other issue is; he had Craig McKinnon explain to him once that if you maintain the roadway then you can claim the portion you have been maintaining. Attorney said you can do a *map reservation* if you can show the Town has maintained the roadway; you file the map with the clerk of court and it is just like adverse possession. Franklin said it has not been maintained by the Town in last many years any more than any other unimproved roadway – perhaps for life and safety. Carl said PW used to maintain it by grading and mowing and cutting back the pepper trees. Attorney doesn't know if we can prove we have maintained it consistently for the required period of time.

Attorney Bohne said the vacate and easement is the best way to go. Wayne said when they widen the road to three lanes where will they place power pole. Atty said if they widen then feed store may go away. Mayor doesn't mind pursuing this but he would like the Attorney to look at alternative ways to correct it. As he understands it if we vacate then half would go to each side. No, the easement would be made on the east side and the vacated portion will be on the west side. Wayne asked where the right of way would be vacated. Clerk showed on overhead.

Dick said we are rural community and have horses and they eat hay. We have two businesses that provide that and only one within town limits. TA said Mr. Ireland said that the sale of hay makes up 70% of his business. We have always wanted to help our businesses. If we tell him he has to remove the trailers then we might as well tell him to close down.

**MOTION:** Dick / Wayne to direct staff to prepare the vacate document while reserving an easement for ingress and egress.

Discussion: Chair recognized Speakers Card from Brian Vail. Vail said when FDOT does their widening project they will use eminent domain to get what they need. What prevents the Town from using eminent domain against the railroad for Lot 10? Attorney Bohne explained how the Feds can take from the State and the State can take from the municipalities but it does not work the other way. Franklin explained that the Charter was changed to eliminate the ability to do eminent domain in 2006. She doesn't know if they can still do it via another way. The Attorney said that looking at the picture of the tractor trailer; the rig is actually on private property. They are proposing to vacate 2' from Malabar Road north to the end of Dr. Ireland's property and then a wider distance from that point north to the end of AAA Storage property. Wayne asked about just keeping one trailer. Dick called for the question.

**VOTE:** All Ayes.

Moved to next meeting:

6. **Approve Method to Provide for Mayoral Veto Process (will be Ord)**

Moved to next meeting:

7. **Council Review of TA and Clerk**

8. **Action by council re: Raising Stormwater Non-AdValorum Fee**

**Exhibit:** Agenda Report 8

**Recommendation:** Request Action

**MOTION:** Dick / no second to leave as it is and reconsider at budget time.

**MOTION:** Wayne / no second to raise to 52.00 per residence

Both died for lack of a second

**MOTION:** Dick / Marisa leave as is.

Discussion: none. **VOTE: AYE**, Nay (Wayne) passed 3 to 1

**(No Recess – Attorney Excused)**

**L. PRESENTATION:** Mayor recognized Clerk and Deputy Clerk for their successful completion of the FLC University Best Budget Practices on 3/17/14 in Winter Park. Chair asked Clerk about class. Franklin said it was a very good class for both of them and they got a lot of good information she will be sharing with Council via an upcoming memo.

**M. PROCLAMATION:** Pledge of Civility for Month of May – Mayor read

**N. STAFF REPORTS:**

**ADMINISTRATOR**

TA showed the outstanding action lists. She suggests leaving them on until budget time so they can use it for budgeting plans. She sent out a memo with her responses to their evaluation.

Dates for RFP – are they set for review. Completed the mandatory pre-bid meeting for questions.

There were three bidders. On May 19 the bid proposals will be handed out to Council. May 27 is the special meeting to oral presentations. At next meeting, they draw straws to determine who goes 1, 2 and 3.

**CLERK**

Clerk said she was going to bring up an issue but since the topic didn't come up, she would like to reserve her ability to speak later if the topic comes up or with a memo.

**O. DISCUSSION ITEMS:**

**9. Board Member Procedures (Ord 2014-XX)**

An ordinance of the town of Malabar Brevard county Florida relating to board and committees; creating Section 2-213 relating to Parks and

**Exhibit:**

**Agenda Report 9**

**Recommendation:**

Request Action

Discussion: Franklin volunteered to combine all the recommendations and ideas council has come up with so far. Dick said what keeps getting lost is the staggering of terms. Dick said who determines Alt 1 and 2. It is not in code. Needs to be spelled out.

Wayne said we could micromanage or we can give them the ability to pick who would be the better choice. Mayor said since we let them pick their own Chair and Vice Chair. Marisa agreed they could do it but it needs to be clarified.

Steve, write down rules – council appt, board choice? In the event a vacancy occurs, is the vacancy filled by Alt 1 and 2. Mayor said let the board make the recommendation of the board and appointment by council. Wayne said he liked the ordinance submitted in the package. It seems to deal with a lot of the issues. TA said currently if they get two alternates on P&Z they take turns on voting to fill an absence. Wayne asked if they could get consensus on getting rid of use of the terms Alternate 1 and Alternate 2; just have two alternates. Next meeting put it on for discussion so we can beat it more.

**Council Consensus:** Have Clerk combine all the recommendations put in one ordinance and put it on upcoming agenda for discussion before Attorney leaves.

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

- 1) Dick, discussion about town hall. He would like to resurrect the town hall committee. This building was built by County for recreation center. First town hall was Mayor Brown's living rm. Then it moved to old building on PW parking lot. Wayne said GV has a beautiful new town hall. TA said FEMA will harden the building, not build it. Much discussion. Mayor said referendum showed they don't want a new town hall. It was a pretty good percentage. Marisa said they all did a lot of work.
- 2) Wayne asked about the follow-up from the Fire Dept workshop re: need a Lt 24/72 shift. TA said it will be on next agenda. Wayne said we could do special assessment.
- 3) Steve, nothing
- 4) Marisa, nothing
- 5) Mayor, nothing
- 6) Jim, excused

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

Brian Vail, re: vacate and he has a bad feeling. He will get more information about it.

Re: AAA storage, the gate was not supposed to be used. TA explained when code issues are. Brian said the trailers are ok.

**Q. ANNOUNCEMENTS:**

One (1) vacancy on the Planning & Zoning Board

One (1) vacancy on the Board of Adjustment

Three (3) vacancies on the Park and Recreation Board

One (1) vacancy on the Trails & Greenways Committee

**R. ADJOURNMENT:**

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

**MOTION:** Wayne / Dick to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:12PM.

BY: Steve Rivet  
Steve Rivet, Council Chair

ATTEST BY:

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

Date Approved: 5/5/2014  
as submitted

