

MALABAR TOWN COUNCIL REGULAR MEETING

June 16, 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 Chair Steve Rivet.

B. ROLL CALL:

COUNCIL CHAIR	STEVE RIVET
VICE-CHAIR/MAYOR:	CARL BEATTY
COUNCIL MEMBERS:	JIM MILUCKY
	WAYNE ABARE
	DICK KORN
	MARISA ACQUAVIVA
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the record Fire Chief Christopher Robinson was also present.

C, ADDITIONS/DELETIONS/CHANGES: Chair announced Item J. Audit Presentation and Item 7 Reso approving Audit have been postponed and they will be on July 7, 2014 agenda. Chair asked Franklin to explain. Franklin stated that an adjustment had been discovered and needed to be made before the audit report could be presented. It was discovered after copies were sent to council so we (Auditors and Staff) wanted to postpone to allow council adequate time to review the adjusted report before the presentation and approval.

CM Dick asked to delete Item 3 dealing with board procedures. Korn said that council had promised to let the boards review. He wants to table until the boards can provide their comments. Attorney suggested that the PH had already been advertised and the expenditure made and he suggested they allow the Public Hearing to go forward and then make his motion after it comes back to Council.

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** None Ready

1b. **Budget Adjustment (Reso 18-2014)**

Chair read Reso by title only.

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 No. 1b.

Discussion:

MOTION: Dick / Marisa to approve Consent Agenda consisting of Reso 18-2014 only.

ROLL CALL VOTE: 1)Milucky, Aye; Abare, Aye; Rivet, Aye; Korn, Aye; Acquaviva, Aye.

Consent Agenda approved 5 - 0.

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**

Debbie Kicinski, 2470 Ski Lane, came to reiterate the same road complaint, but at 1:45PM today saw and met with Tom of Public Works who was very polite and he explained that the tire blew out on piece of equipment and he had to wait to get it repaired. She understands that. Her complaint is the communication regarding her complaint from Town Hall is still lacking.

F. ATTORNEY REPORT – FYI- Gov just signed 100 bills and one was short term vacation rentals, and there have been many problems in some of those types of facilities. Now you can regulate and tax them. VHBO have taken off. Attorney did not think Medical Marijuana, for compassionate use, had been signed yet – still on his desk. Even if it passed, we would not be one of those five locations where they could be located. Dick asked about a fictitious name using a Malabar PO address that plans to go into this business. Atty said if SB1030 is signed it would not allow it. If the voters approve it on the ballot it could be a different situation. Marisa thought Gov did sign for children and epilepsy. Ms. Kicinski showed on her phone that it had been signed.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT – Not one present.

H. MALABAR FIRE CHIEF: Nothing

I. PUBLIC HEARING: Ordinances - 2

2. Amend Code to Provide for Mayoral Veto Process (Ordinance 2014-07) AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR A PROCESS FOR THE MAYOR AND COUNCIL TO FOLLOW RELATING TO THE MAYOR'S AUTHORITY TO VETO AN ORDINANCE; PROVIDING A REQUIREMENT THAT THE VETO SHALL BE SUBMITTED IN WRITING TO THE CLERK; PROVIDING FOR A TIME LIMIT; PROVIDING FOR EMERGENCY ORDINANCES; PROVIDING FOR COUNCIL OVERRIDE PROCESS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Adoption of Ord 2014-07

Chair read ordinance by title only. Legally advertised on June 8, 2014.

PUBLIC HEARING OPENED:

none

PUBLIC HEARING CLOSED.

MOTION: Jim / Marisa to adopt Ordinance 2014-07 on 2nd reading.

Discussion: none

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

3. Amend Code to Provide for Establishment, Purpose and Procedures for Volunteer Advisory Boards and Committees (Ordinance 2014-08) AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BOARDS AND COMMITTEES; AMENDING CHAPTER 2, ARTICLE VIII OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING DIVISION 1 BY CREATING SECTION 2-211 GENERAL PROCEDURES FOR APPOINTING MEMBERS TO BOARDS AND COMMITTEES; CREATING SECTION 2-212 OPEN MEETINGS, PUBLIC COMMENT AND AGENDAS; CREATING SECTION 2-213 RELATING TO AD HOC COMMITTEES; CREATING SECTION 2-214 RELATING TO PUBLIC MONIES; CREATING SECTION 2-215 RELATING TO STAFF SUPPORT FOR BOARDS AND COMMITTEES; AMENDING DIVISION 2, SECTION 2-221 RELATING TO THE PARKS AND RECREATION BOARD; PROVIDING FOR ITS ESTABLISHMENT AND PURPOSE; PROVIDING FOR ALTERNATE MEMBER DUTIES; CREATING DIVISION 3 SECTION 2-230 CREATING THE

TRAILS AND GREENWAYS COMMITTEE; PROVIDING FOR THE ESTABLISHMENT AND PURPOSE; PROVIDING FOR DUTIES; CREATING DIVISION 4 SECTION 2-240 RELATING TO THE BOARD OF ADJUSTMENT; PROVIDING FOR THE ESTABLISHMENT AND PURPOSE; CREATING DIVISION 5 SECTION 2-250 RELATING TO THE PLANNING AND ZONING BOARD; PROVIDING FOR THE ESTABLISHMENT AND PURPOSE; AMENDING ARTICLE XII OF THE MALABAR LAND DEVELOPMENT CODE; DELETING SECTION 1-12.2, AND SECTION 1-12.3; AMENDING SECTION 1-12.3.C.4 RELATING TO DECISIONS OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Adoption of Ord 2014-08

Chair read ordinance by title only. Legally advertised on June 8, 2014.

PUBLIC HEARING OPENED:

None.

PUBLIC HEARING CLOSED.

MOTION: Dick / no second to table until each Board has had an opportunity to review and comment.

MOTION: Jim / Marisa to adopt Ordinance 2014-08 on 2nd reading as written.

Discussion: Jim said with due respect to Dick, this has been discussed by Council at length and Board Members are welcome to attend and participate. He thinks it is a good ordinance.

Dick asked Board members present in audience: Vickie Thomas of Park Board – had they seen procedures? no; Dick asked Liz Ritter of P&Z Board – no. Dick said we need to show them the respect to allow them to make their comments.

Marisa said we have reviewed this for a long period and have been very thoughtful. It has been reviewed by the Attorney, had a first reading and been legally advertised for this PH. She agreed with Jim.

Wayne said a lot of this is just clean up. The consensus is there has been no harm caused by this. He got two calls from members and does not think it needs to be reviewed by them.

ROLL CALL VOTE: Milucky, Aye; Abare, Aye; 1)Rivet, Aye; Korn, Nay; Acquaviva, Aye. Motion Approved 4 to 1.

J. RECOMMENDATIONS FROM TOWN RESIDENTS/BOARDS/COMMITTEES PRESENT AT MEETING

4. Request by Resident to Waive Special Activity Fee

Exhibit: Agenda Report No. 4

Recommendation: Request Action

TA gave background on event and said that the person came in and was told by clerk it did not fit the criteria for "special event" but they wanted to pursue a permit. Marisa asked if this is a sanctioned event. TA said by Code law enforcement would be required. TA explained that this is for a combined birthday, graduation and farewell party – not on public property or needed Town support. Atty said it is not a special activity. Jim agreed. Jim said do we want to waive the fee. He also doesn't think it is a special activity. Jim said his neighbor has a party every quarter. If town wants to issue then he would support waiving the fee but he needs to comply with all the other criteria. TA will contact applicant. Marisa's concern is she doesn't want it to look like the town rubber stamped this event.

MOTION: Dick / Wayne to waive \$100.00 permit fee for Mr. Braun if he pursues permit.

Discussion: Marisa said the Code states it is the Administrator that approves/denies such permits. Asked TA if she is going to tell him he must meet all criteria. **Vote:** All Ayes.

POSTPONED UNTIL 7/7/14 MEETING

Audit Report for 2012/2013 FY by Auditors Averett Warmus Durkee

K. ACTION ITEMS:

ORDINANCES: First Reading - 2

5. Approve Referendum Question for 2014 Ballot re: Cost of MSTU for Law Enforcement (Ordinance 2014-09)

Chair read ordinance by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; AMENDING ORDINANCE 2007-06 CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY LAW ENFORCEMENT MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT PATROL SERVICES; PROVIDING ACKNOWLEDGEMENT PROVIDING INFORMATION ON THE COST SINCE 2007 FOR MALABAR RESIDENTS; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Approval of 1st Reading

MOTION: Jim / Wayne to approve Ordinance 2014-09 on 1st reading.

Discussion: Jim, his understanding this comes up regularly for renewal every two years. The twist this year is that this year we are letting the residents know what they signed up for and what they are paying now. Dick said people have right to know. But should they provide an alternative and how much it would cost. Put all that information in newsletter.

Atty said the Sheriff is required by State law to enforce the law. The part that will end is the patrol portion.

Wayne said that we should share that information with residents.

Dick said if they vote no, there will be no more speed checks or burglary response. Now they have the patrols but they also have a Deputy within the proximity. Other alternative is to have a police dept but need deep pockets. Need to provide all sides of this. Need pre-election publicity.

Jim said that is all good, but Council had discussed this and wanted to get this information to voters. Wayne said they get an annual tax bill and it is broken down. It passes with 75% - it was not close.

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

6. Approve Referendum Question for 2014 Ballot re: Council and Mayor Terms (Ord 2014-10)

Chair read ordinance by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A REFERENDUM ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE PARTICIPATION IN THE BREVARD COUNTY LAW ENFORCEMENT MSTU AND TO DETERMINE IF THE TOWN CHARTER, SECTION 2.07 RELATING TO TERMS FOR COUNCIL MEMBERS AND MAYOR; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL

BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Approval of 1st Reading

MOTION: Marisa / Wayne to approve Ordinance 2014-10 with two questions, MSTU, Council with 4 yr terms with 2 term limit on 1st reading.

Marisa said everyone should have the same length term. Some may be affected but it is the position, not the person. Mayor said to increase Council term to four years; said most other cities have 4-year terms. Mayor said if you change council term to three years with limit of three terms then you have nine years and he thought goal was to have max of eight years.

Wayne said it takes a good while to get in the swing of the job; three year term makes sense but not four years. Wayne said he is not in favor of shortening the Mayor's term.

Dick said the intent is to equalize the terms between Council and Mayor. Let's look at council terms this year and based on election results deal with Mayor's term next year.

Marisa said to make all the same. It has nothing to do with who is sitting in these seats now.

Dick asked if motion maker would change motion to delete the Mayor reference. Atty said the motion was to have 3 questions: 1)MSTU, 2)Council term changed to three years, 3) Mayor term changed to two years.

Marisa doesn't like reducing the Mayor's term; she just wants them all to be the same. She amended her motion to read 2 questions: 1) MSTU and 2) council term increased to 4 years. Wayne also supported the amendment.

ROLL CALL VOTE: Milucky, Aye; Abare, Aye; Rivet, Nay; Korn, Aye; 1)Acquaviva, Aye. Motion Approved 4 to 1.

RESOLUTIONS: 2

POSTPONED TO 7/7/2014

7. Approve Audit Report (Reso 19-2014)

8. Approve Resolution 20-2014 Related to Requirements for All Aboard Florida to Comply With Prior to Approval to Expand.

Chair read ordinance by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REQUESTING THAT THE STATE OF FLORIDA AND THE FEDERAL RAIL ADMINISTRATION REQUIRE ALL ABOARD FLORIDA TO FUND, WITH NO GOVERNMENTAL ASSISTANCE, ALL COSTS RELATED TO THE ALL ABOARD FLORIDA PROJECT, AND TO TAKE ALL NECESSARY STEPS TO PRESERVE AND ENHANCE THE QUALITY OF LIFE FOR VISITORS, RESIDENTS, AND BUSINESSES WITHIN THE TOWN OF MALABAR AND ALONG THE ENTIRE ROUTE; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8

Recommendation: Request Approval of Resolution 20-2014

MOTION: Dick / Jim to approve Resolution 20-2014.

Discussion: Dick said the Flagler Group opinion is that they can do what they want.

Marisa said their presentation was that no taxpayer dollars would be used. Their presentation said no taxpayer dollars; and State has already approved tax dollars to use on Orlando terminal.

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

MISCELLANEOUS:

9. Council Award of Solid Waste Contract

Exhibit: Agenda Report No. 9

Recommendation: Request Action

TA gave background. They tightened up the contract language. Lengthy discussion on what can be recycled. The big point was in their participation in SpringFest and Trash Bash.

Thanked Dina; 8 people at negotiation table. In Exhibit B, the increase in billing will not go into effect until Oct 1. If you call in and want to change the size of container, you will get within 7 days. Also if it is damaged or stolen it would be replaced. The caveat, they (WM) would have to pay \$25/day if they don't deliver within seven days.

MOTION: Wayne / Marisa to award contract for Solid Waste Collection to WM.

Discussion: Wayne said it is in line with Dick's question – if no garbage is left behind. Will the flipper handle regular cans? Dina said yes, the 2nd person will get the container. Dick said his point has been to continue with current method. He has reviewed the survey responses and thus far:

25 leave as is

7 cheapest

12 people said once a week was ok.

Marisa said twice a week – Tues and Fri and that is fine.

She has had very few comments. The penalty situation is a good thing. People will be glad of that. We are not just doing this to "them" we are all "Malabarians"

Jim said he thought they voted on was Option 1, 2 or 3. 3 was keep as is. 1 is you get carts of your choosing. Dick said semi-automated service. Atty read from the bid – Option 1 was a choice of cart size. Dick said education is important. He would have problem with WM publishing our newsletter. TA said that is not what was stated. They would use the Mailboat to educate Malabar residents. We control the publication, but it will be completely paid for by WM.

VOTE: All Ayes; Nays, 0. Motion Approved 5 to 0.

10. Close access to Unimproved Right-of-way Known as Beekeeper Road

Exhibit: Agenda Report No. 10

Recommendation: Request Action

MOTION: Dick / Wayne to approve closing of Beekeeper Road.

Discussion: Dick, this is a difficult question. The property involved is hard to get to in a fire situation. He showed his only copy of colored map showing parcels. Dep Sheriff said he used to go out there. Another Lt also said he partied out there. Go out there and find carcasses of alligators, gunfire, drinking, late parties, etc. People that go out there are not all Malabar residents. Talked to TA about contacting property owners to have them post "no trespassing" signs. The Ag Division of BCSO has been out there in AM.

TA clarified that it was not closing it permanently. She talked to Chief; he wanted the trees trimmed back. This is a water filled barrier and this is not an accepted road. This is the beginning step to curtail it.

VOTE: All Ayes

L. **PRESENTATION:**

M. **PROCLAMATION:**

N. **STAFF REPORTS:**

ADMINISTRATOR: Flag pole update.

Dick said he got chemicals to clean Brian's pole. When his son died Council gave \$50 towards Bethesda. ~~Brian~~ was one of the first killed in Iraq. The flag he got donated was supposed to come with the halyards and hardware and ropes. Wants Council to know that Jim Clevenger a Malabar resident also on the BOA has volunteered to install the flag poles when we are ready.

TA said she got response on DEP restroom grant and there were deficiencies. They have already discussed the corrections and will refile before the deadline.

CLERK: Made an observation that when we sent out the in depth surveys we gave them a month and only got 124 responses out of 2500. Compare that to the solid waste questions we asked in the newsletter - we have received 53 in 1.5 weeks. And they continue to come in.

O. DISCUSSION ITEMS:**P. REPORTS – MAYOR AND COUNCIL MEMBERS**

4) Jim – He received a call from a resident in his District. Person found out about the sticker for the golf cart. It was \$50 here and \$25 in GV. Keep in mind the perspective some residents have. Marisa said it is onetime fee.

3) Wayne, nothing

5) Steve, re: Ballot questions – reason for that is he thinks the elected officials should have to face the voters every two years. He used House as example. He believes in current terms. Wanted to explain his reasoning.

1) Marisa, nothing

6) Mayor, Honor Flight next Sat. Mayor Meehan will be going as a guide. AAF is coming up next month at SCLC and he will be asking more questions. He ran the roads, every paved road. West Hall is #1, #2 West Old mission, Glatter #3, Wayne and Jim and Marisa want this to be an agenda item to have discussion. He'll have for 2nd meeting in July. He'll expand on that and take pictures.

2) Dick, nothing

TA asked about Outstanding Action List. Generators, hardening of town hall. They are CIP and budget items not outstanding action items. Water sewer hook ups, gave information, the other things was the fencing the Golf Disc park. She did not put them on Outstanding Action List.

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

One (1) vacancy each on the Planning & Zoning Board, Board of Adjustment, Park and Recreation Board and the Trails & Greenways Committee

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 9:30 PM.

BY:

Steve Rivet, Council Chair

ATTEST BY:



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

Date Approved:

8/18/14

(seal)