

MALABAR TOWN COUNCIL REGULAR MEETING
July 21, 2014 7:30 PM

Prior to this meeting WM held a Town Hall meeting at 7PM to answer questions from residents about the new cart system for trash and recycle that will go into effect on August 23, 2014. 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 7:40 pm by Council Chair Steve Rivet. The prayer and pledge were led by Council Member Marisa Acquaviva.

B. ROLL CALL:

COUNCIL CHAIR	STEVE RIVET
VICE-CHAIR/MAYOR:	CARL BEATTY
COUNCIL MEMBERS:	JIM MILUCKY
	WAYNE ABARE, excused
	DICK KORN
	MARISA ACQUAVIVA
	BONILYN WILBANKS
	KARL BOHNE
	DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

For record Fire Chief Christopher Robinson and Town Engineer Morris Smith were also present.

C. ADDITIONS/DELETIONS/CHANGES: TA asked to pull #3 on advice of counsel. Mayor wants to give his road report verbally. Mayor said he tried to do it at earlier meeting. Chair suggested he do it under his report.

D. CONSENT AGENDA: none

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**

Jim Milucky, stepped down from dais and stood at podium and gave his name, 1280 Highway 1, read some famous sayings regarding freedom of speech and giving a life for the country. Jim read the following: The founding president of the Jewish Labor Committee, B. C. Ladnic, when describing Hitler's decent to power, spoke on this topic: A great silence is descending upon Europe. A silence like a sinister shroud of death, the instruments of torture that Hitler has prepared for Jews have been turned on the labor unionist. That is very cryptic and not everyone will get the point of the story; here is the point: he will read from a short one that is written by Steve Crosby and David Tabaldi that he thinks is on point with the point that he would like to make. But there is another great tradition in American political and social life that seems to require an abandonment of civility and favor of neither of even higher good and that is justice. This is the tradition of descent without which someone argued progressive reforms from the abolition of slavery, the Civil Rights Act of 1964 to the good rich decision legalizing same-sex marriage in Massachusetts could not have otherwise been achieved. From this perspective, calls for civility can be seen a purial virtue as a smoke screen for maintaining the status quo. He would encourage the citizenship of Malabar that if they have something on their minds to stand up and speak it. You should be allowed to speak your mind and don't let others stifle your passion whatever that is. This is his encouragement to the citizens of Malabar.

Speaker's card - Chair asked Mr. Caulderon if he still wanted to speak since Item 3 was pulled. He came forward and introduced himself and his wife as Federico and Teresa Caulderon; he is from Argentina and Teresa is from Jamaica. They have four children and have purchased land and are looking forward to building their home and living in Malabar and having a few animals and a garden.

F. ATTORNEY REPORT – FYI- Update on Bert Harris Claim.

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

H. MALABAR FIRE CHIEF: Nothing beyond what has been submitted. CM Jim stated he had asked informally what the truck was doing out of area. Jim handed out email correspondence.

He had also spoken to TA. He did not mean to demean the Chief; but he wanted to know what the truck was doing out of town. He doubled checked his facts; it was July 1 between 1 and 2pm. The call log doesn't indicate the truck was anywhere on July 1, 2014. Jim said now he is putting him on the spot. He is a taxpayer and he wants to know if a PW vehicle is in Indialantic someone can tell him why. Chief said it is perception both ways. Jim said as a citizen, taxpayer and voter he should be able to ask where the fire truck was going when it was out of town and get an answer. Chief said Jim never asked about a vehicle only the policies and procedures on FD apparatus; he needed specific information regarding what he was asking otherwise the Chief could spend weeks doing research. Jim stated that he will let the Chief ponder his request and let the TA handle it and if the Council is acceptable to this, he will let it go. It wasn't something that was supposed to turn into this big issue; he asked a simple question about a fire truck being out of the area on July 1st between the hour of 1 & 2 in the afternoon and wanted to know what was going on that they were not in Malabar but on Port Malabar Road in Palm Bay. If there is a good reason for a vehicle belonging to the Town of Malabar to be in a different area, he has no issue; he just was inquiring as to why they were not in Malabar at that specific date and time when he was returning to his office after a lunch break.

Dick asked to speak. Perception takes precedent over facts. Jim had asked where the truck with "99" on was heading on north Babcock Street. At that time, you didn't know the date or the time; you just gave that information at this meeting tonight. Dick stated that he didn't think, at the last meeting, that he mentioned anything about lights and siren going on the truck. The Chief was asked that question but it wasn't answered. Dick's answer is that it may have been going to Palm Bay for a repair or to a mutual aid; it could also be headed to Brook Hollow. At the last meeting, he got phone calls about Jim's behavior towards the Chief, the Auditor and Mr. Hard; the perception was that people thought Jim was in an attack mode at the last meeting. We don't need anybody to defend anyone or themselves here. We need to move on from this and say this was an incident where communication wasn't what it should have been. The Chief is doing a good job; he called the FD last night because he had a lawn mower that was smoking. Got an email from Chief this morning. He seems to know everything that goes on down there whether he is there.

Chair said does Chief have enough information to determine where the truck was. Jim withdraws the questions. TA said that we had case of several FD personnel that took vehicle out of town. Also had a Fire Chief that was disciplined for taking a vehicle out of town. Also had problem with generator.

Jim said Sat Bch engaged him to do a forensic investigation and that is as detailed as he gave and he got the records. There is no more detail to be given. He did a formal public records request. Jim said we have a policy on petty cash, lumens, etc. Council seems to think he attacked others but he didn't get any other calls. The TA should be able to work with Chief to get this information. Should have a policy.

Marisa was here when the chief's car was way out of town. She has seen truck at Publix getting sandwich. TA was under impression that log was being continued. Chief Strandell did away with the log. She did not know. Chief has reenacted the policy.

Dick has been aware of FD since 1987, Chief McClelland. He has watched and for the first time in a long time things are going in a straight line. Referenced his prior comment. He complements the Chief.

I. PUBLIC HEARING: 1

1. ORDINANCE 2014-10 – Referendum Questions for November 2014 Ballot

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 LENGTH OF TERMS FOR COUNCIL MEMBERS; 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.1

Recommendation: Request Approval of 2nd Reading

Chair read by title only. PH opened: none. PH closed.

MOTION: Dick / Marisa to adopt Ord 2014-10 after 2nd Reading.

Discussion: Mayor said his issue with first question has to do with the language; he wants to convert it back to the original question. If we want to give the voters additional information, we should use the Mailboat. Marisa said the wording was discussed and several prior meetings and was this language was proposed and supported by Wayne. Dick is uncomfortable with the writing but also thinks the people are entitled to know the costs. He suggested they also use the newspaper to sum up the referendum questions and provide additional information. If we don't approve the MSTU then we must have our own police dept. Mayor still wants it changed. Mayor said we have done it a certain way several years. He is not comfortable with this wording. Jim said we discussed this since June. This is the third time we have walked down memory lane. It is necessary to give voters information. Make a conscious decision to raise the taxes. Marisa said this is information that they should know. Dick said they need to know. TA said we can do article in Mailboat. Dick said there will be no road patrols, etc.

Mayor on Question 2, he discussed why a 4-year term was better. Palm Bay Ken Greene said they are glad they changed from 3 to 4. If they are not comfortable with 4 years, leave it at two years and remove question.

Dick said if this is approved he will be first to be affected. Chair said no, Pat Dezman was the first as she completed a term for another and it counted as a term.

ROLL CALL VOTE: 1)Milucky, Aye; Abare, excused; Korn, Aye; Acquaviva, Aye; Rivet, Aye.
Ordinance 2014-10 adopted 4 - 0.

J. PUBLIC: COMMENTS FROM TOWN RESIDENTS:

2. Request by Resident William Hard to Change Method of Maintaining Roads

Exhibit: Agenda Report No. 2

Recommendation: Request Discussion and Direction.

Mr. Hard, said thank you to Eng Morris Smith, TA and Clerk, Mayor and entire Council regarding stormwater projects. He is going to speak about roadologist; Rhodes scholars. He handed out examples and was not going to identify the specific roads depicted in pictures. He said retained water degrades the roads. Water can wear away rock. Shoulder of road is higher than roadbed. Should be graded to be lower and fill the depression. Went through the 4 pages of handouts. Fix is to fill the depressions so water is not contained on the road. Pg 5, untreated depressions degrade the roads. He suggested they adopt the following:

Grade road sides to allow water to run off. Fill the depression whenever doing potholes.

Dick said Weber was paved in late 1980's when it was rainy. It has held up very well. Dick said we didn't pay for it, right Carl. Carl said he was here then. Dick said there was an advisory board for roads and drainage. For next meeting have this on agenda for discussion. Dick said

Morris said if they are doing inspections, or for funding, he could not sign and seal that work. TA said maybe back in the 1980's this worked but now there is NPDES requirements. They would have to have certification.

Morris said a lot of his getting his feet wet are driven by residents. Marisa said we are getting off track again just like last time he was here. Skip said even with a light rain the roads hold water. The roads have some years on them. What he is presenting tonight is a method to extend the roads before they get so bad they can't be fixed.

Skip was on roads and drainage board and they acted like a filter for citizens similar to P&Z. They did not do inspections.

Morris has observed that and has a design standard in place that does just that. Mr. Hard's point is correct; but need to sod after scrapping. Is it more cost effective to address the road edge or the potholes. TA suggested a meeting between Morris and Skip to go over that. Skip said it may not be a cost savings if you have to do the sod. TA said the riprap is also a big expense. Skip is talking about an inexpensive stop gap by scrapping the edge of the roads.

PULLED:

3. **Request by Resident Matthew Herndon to Vacate ROW at North End of Fins Lane**

K. ACTION ITEMS:

ORDINANCES: First Reading - 2

4. **Adopt Ordinance Continuing the Waste Management Franchise Fee and Terms (Ord 2014-12)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ORDINANCE 2014-04 ADDING AN ADDITIONAL EXEMPTION TO THE REGULATIONS PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Approval of 1st Reading

Chair read Ordinance by title only.

MOTION: Dick / Marisa to approve 1st Reading of Ord 2014-12.

Discussion: Dick asked about the motion. Atty explained the franchise agreement is codified; the one in the code book is from 1989 and needs to be removed and replaced in its entirety. Dick said he was asked by a member in the audience if we can get reduced service costs for the residents in lieu of eliminating the franchise fee. He said the individual was present. Franklin said that would be a loss of \$33,000 in revenue for budgeting. Marisa said when we had the contract discussions why wasn't it done then? TA said she used the G-V agreement as a model and they do not get a franchise fee. TA also said it is not normally put in the service contract.

Dick called for the question.

ROLL CALL VOTE: Milucky, Aye; 1) Abare, excused; Korn, Aye Acquaviva, Aye; Chair Rivet, Aye. Ordinance 2014-12 approved at first reading 4 - 0.

5. **Amend Fertilizer Regulations Ordinance to add Additional Exemption for Private Use Gardeners (Ord 2014-13)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ORDINANCE 2014-04 ADDING AN ADDITIONAL EXEMPTION TO THE REGULATIONS PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Approval of 1st Reading

Chair read Ordinance by title only.

MOTION: Marisa / Dick to approve 1st Reading of Ord 2014-13.

Discussion: none.

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

Ordinance 2014-13 approved at first reading 4 to 0.

RESOLUTIONS: 0

MISCELLANEOUS:

6. Set Maximum Millage Rate and 1st Public Hearing Date for Millage and Budget

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Chair had speakers card. Drew Thompson, Holloway Trail, Malabar, said that for the recent several years, council has been very conservative about raising taxes. He gave analogy of not putting oil in vehicle engine and eventually the vehicle engine will burn up.

Chair then asked Clerk to introduce. Franklin explained that the Town is requested to notify the tax collector of the proposed maximum millage and the date of the first public hearing so that it can be inserted into the (truth in millage) Notice that is mailed to each property owner in Brevard so they know when the meetings will be held for public input. There is a special law that was passed for Brevard that restricts the property tax (ad Valorum) millage rate from being increased more than 10%. (Note: 1 mill is \$1.00 per \$1000.00 of property value as determined by the Property Appraiser) The Town's roll back rate (RBR) is 1.6355 and the maximum millage allowed would be 1.80. The calculation must be based on the RBR not the current rate. Current millage is 1.6630 and has remained at this for the last five years.

MOTION: Marisa / Dick to set the maximum millage for discussion purposes at 1.8000 and set September 8, 2014 as 1st PH for millage and budget.

Discussion: Dick concurs with Mr. Thompson. There have been some incidents where they have been dead set against raising taxes which caused safety issues. Marisa, we are not setting millage at this meeting, we are establishing the highest percentage to start the discussions. Skip said we should have gone to residents and told them what was needed and what it would cost.

VOTE: All Ayes: 0 Nays; Motion Approved 4 to 0.

Atty excused at 9:10pm

L. PRESENTATION:

M. PROCLAMATION: Revised Pledge of Civility – Mayor read

N. STAFF REPORTS:

ADMINISTRATOR:

Update on bridge – Georgianna looked at it after the meeting last week. They needed to remove 419 Sand Pine trees. They did get a building permit as a courtesy. The permit did say hard woods. She sat at all the SMC meetings when this was discussed and no mention of hardwoods was made. She contacted Mike Knight and St. Johns. Now they have torn up the roadway by dragging their equipment. Morris will be meeting with the contractor tomorrow (Tuesday). It we need to pursue replacing it then we need to include in the budget.

Dick said that bridge is in bad shape and now the roadway has been clear-cut. Make it useable by normal vehicles. Not brush trucks. It is a mess. They need to correct. That is a very serious situation over there.

CLERK: nothing

O. DISCUSSION ITEMS:

7. Financial Recordkeeping

Exhibit: Agenda Report No. 7

Recommendation: No Action Required – Information Only

TA introduced. Came up with the Action Plan. Accolades from Auditor. Also provided to her that he could do the work as a pre-audit. Laura was very helpful and she do this when there are periods of concern. It was the reporting method.

Jim spoke gave a disclaimer, did not audit the books, however he did work with staff for many months and lately. Staff is absolutely engaged. It is learning process. Got a rough start with the PT people we got in. He has quite a few meetings. He made some suggestions and time moves forward and we always have. He wanted to correct the 1st para. He is held to a different standard. Staff has done a great job of working through the issues. It is a FYI for council on what they have done and it is all solid and all good. In the operations part, staff has done everything he has asked them to do. Can't give them better complements. Get the auditors to put in the beginning balances, hiring someone knowledgeable in government finance, have a plan to have it done. Major change from the way they were doing.

Marisa has been here for five years. We are neighbors first, she thanked him. The QB has saved the town money. There have been some struggles but it has saved money. TA said it does save about 20K.

Dick said when he first came into town and he would sit with guy in yellow shirt. Each one has their own talents. Dick doesn't want Jim to stop helping. He won't. Jim said it is his perception, that if he would bill the town for his services there would be conflicts. He has given time. This last time was to get them focused. Dick said it has saved the town money and council concern.

P. REPORTS – MAYOR AND COUNCIL MEMBERS

3) Jim Did this last year and the year before make a list and then council made the decision. He wants to do the same. TA said Carl made the list. It was the one that Mayor Tom put together.

) Wayne, excused

5) Steve Wants to see the report on the roads. Travel to League of Cities he would like to see document – let's close the loop. If you are spending town money, then it should be put in writing for rest of Council.

2) Marisa, Marisa said what would be more helpful would to have it in writing. Could he please write it down and put it in a report. She is not a roadologist. Also too, Tom needs to be here. These meetings are getting off topic. We know what we did in the past. She would really like him to be here. Council did say they didn't have to come. But this is important. Common sense is always common. We do feel passionate at times but she liked the civility.

1) Mayor, it is in CIP to improve old Mission and west end of Hall, chip and seal – 1.5 miles. You can't let them get any worse. They are raveling. Glatter from Marie St to Malabar Road and was built with millings. It is the worse road in Malabar. He thinks there are enough millings for a good base. Have contractor give price for chip and seal. If there is money we should do it now. It is beyond grading. That would be the 3 roads.

Jim said do this with current budget. TA will get in touch with contractor.

Mayor said if we go down Weber, Corey, Hall and Atz and there are some places that need to build up the shoulders – some are a foot deep. Second issue on Weber and Corey the pitch has changed and it is going into the ditch. Do core samples to see if the road is indeed going into the ditch. Seal the cracks so the water doesn't get under the road. He thinks there is a tape they can use. Third issue, where you have repeated potholes, they have chemicals that make the patch hold better. The road is brittle and breaks off even with a new patch. Put this in early next year. Talked about golf carts. TA said Tom suggested putting curbing at corners of major intersections. Dick said for District 4. Cutting corners – they didn't have this problem before.

4) Dick, no

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

Drew said he serves as T&G Chair. Also is President of HOA. He appreciates everything the town has done. He encourages Council to look at both ends of Briar Creek Blvd. Every time it rains, they lose more of the road, now it is undermined. The cement encasement blew out and the dirt is washing out. Recommend they make a personal inspection of both ends of the road. Got to get something done. Divert the water by blocking the drain. Buy some time. It is going to cost a lot more money.

Brian Vail, 2700 Smith Lane, He does not see this council behavior in the last 30 minutes. We are a small town and we should agree to disagree.

Skip wants to deviate from his speaker's card. Talk about how we are going to stretch the budget. He asked them to consider raising the millage. Take a look at what needs to be done. The budget cannot accommodate every need.

R. ANNOUNCEMENTS:

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

S. ADJOURNMENT:

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

MOTION: Jim _____ / Wayne _____ to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:13 PM.

BY: Steve Rivet
Steve Rivet, Council Chair

ATTEST BY:

Debby Franklin

Debby K. Franklin, C.M.C.
Town Clerk/Treasurer (seal)

Date Approved: 8/18/14