

## MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

OCTOBER 07, 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 meeting to order at 7:30 pm. CM Korn 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 CLERK/TREASURER:

DEBBY FRANKLIN

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

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

Mayor said after the consent agenda he will swear those Board Members in attendance.

No other changes.

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

**Agenda Report 4.a.** Regular Town Council Mtg Minutes of 9/23/2019

**Agenda Report 4.b.** Resolution 16-2019 – appoint Joanne Korn to BOA

**Agenda Report 4.c.** Resolution 17-2019 – appoint Donna Hanna to BOA

**Agenda Report 4.d.** Resolution 18-2019 – appoint David Sowards to BOA

**Agenda Report 4.e.** Resolution 19-2019 – appoint George Foster to P&Z

**Agenda Report 4.f.** Resolution 20-2019 – appoint Jennifer Bienvenu to Park & Rec Bd

**Agenda Report 4.g.** Resolution 21-2019 – appoint Eric Bienvenu to Park and Rec Bd

**Exhibit:** Agenda Report No. 4.a. – 4.g.

**MOTION:** CM Rivet / CM Vail to approve the Consent Agenda as corrected. Discussion: CM White wanted what he said on Page 3 of minutes, says he did not know the Bortons before they he made this zoning application which is a difference of four years. Also did not think some statements like 'skin in the game' should have been in minutes. Don't know if it addressed any item.

**Roll Call VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, abstain; CM White; Aye. Motion carried 4 to 0. Atty Bohne explained why CM Korn abstained. Mayor then swore in Joanne, Donna and George.

**5. ATTORNEY REPORT:** nothing

**6. BCSO REPORT:** Lt. Cline is not present – out on a call.

**7. BOARD / COMMITTEE REPORTS:**

**7.a. Drew Thompson, Chair, T&G Com:** Not Present

**7.b. Eric Bienvenu, Chair Park & Rec Board:** Not Present

**7.c. Wayne Abare, Chair, P&Z Board:** Wayne Abare – briefed Council on Huggins Park. It is 3.4 acres. Currently zoned RS10. That is the size of lot in Brook Hollow. Need city water and sewer for that density. There are existing roads to the north and south. Break the parcel up into 3 or 4 pieces and recommend they make – 3 pieces makes it a subdivision. List it directly with a realtor. Don't believe you have to have a survey. He talked to the Brevard Dept of Health Dept regarding minimum for septic. Break it up and sell it to more people. CM White asked for history. Franklin gave history. CM Korn explained how it got named after Huggins family. Mayor explained that the playground at Malabar Community Park was named after the Huggins family and signage has been installed.

**8. STAFF REPORTS:**

**8.a. ADMINISTRATOR:** He attended TAC this morning and gave handout regarding the Oct 25<sup>th</sup> – Nov 2<sup>nd</sup> is Mobility Week. He also provided the October PW schedule and it is posted on website. We got proposals on the SW plan and will have something to first meeting of November.

**8.b. PW DIRECTOR:** submitted written report.

**8.c. FIRE CHIEF:** Went over grant results. Thomas Wilson reached out to Harris and got a donation of five new radios valued at 22K. Also got the annual fit test on masks and tanks done by City of Palm Bay for a savings of 2K for a total of 24K. October starts the grant month and they will be applying for two grants soon.

**8.d. CLERK:** Nothing.

**9. 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:** Laura Mahoney, Malabar Road, Preamble of the Charter, stop hiring contractors and employees that don't read and follow the boundaries of our well thought out plans for the people who reside here and expect us to protect this well-established limit. Nothing wrong with property owners asking for changes. These professionals cause enmity. Council you are responsibility for the hostility against the residents. Too many of our volunteers, committees and children have been driven out of town hall. Please bring the people back. Who knows you may learn something?

**10. PUBLIC HEARINGS/SPECIAL ORDERS: 0****11. UNFINISHED BUSINESS/GENERAL ORDERS: 1****11.a. Override Mayoral Veto of Ord 2019-08**

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.

**Exhibit:** Agenda Report No. 11.a.

Chair reads the Mayor's veto letter verbatim. He will read veto, then he will speak and then let public speak. Then Council will discuss and then he will ask for a motion and ask for a rollcall vote.

Mayor read the veto letter verbatim.

September 26, 2019

Town Council, Town of Malabar

2725 Malabar RD

Malabar, Florida 32950

Re: Veto of Ordinance No 2019-08, Comprehensive Plan Amendment and Rezoning

To:

Honorable Council member Ball

Honorable Council member Vail

Honorable Council member Rivet

Honorable Council member Korn

Honorable Council member White

By the authority vested in me as Mayor of the Town of Malabar, pursuant to Article II, Section 2.04, (a) of the Town of Malabar Charter and the provisions of Article II, Section 2-26, I do hereby transmit my

veto and objections to Ordinance No. 2019-08. My veto is based upon the record evidence presented at the public hearings, both at the Planning and Zoning Board level and at the Town Council level.

A. My first objection is that this proposed land use and rezoning is contrary to the policy statement in the preamble to the charter ratified by the voters of Malabar. The intent of the people of the Town is to preserve the rural quality of life.

PREAMBLE

The people of the Town of Malabar desire to maintain the rural residential quality of life in their Town and they are concerned about the possibility of uncontrolled growth in the future affecting that type of lifestyle... Therefore, they have ratified by referendum this Charter and enacted it into law. They wish to maintain the rural residential character of their community..."

This policy statement is further codified in various other provisions of the Town Code, Comprehensive Plan and Land Development Regulations, including, but not limited to, Section 7.5-26 Land Development Code, Section 1-5.28 Land Development code, Section 1-16.1 Land Development Code, and Section 1-3.3 of the Comprehensive Plan. (regarding the Objective to prevent land uses inconsistent with the Town's character)

B. My second objection is that Ordinance No. 2019-08 is contrary to Article II, Section 2.16 in that such Ordinance will be inconsistent with the Charter and the Comprehensive Land Use Plan of the Town, specifically Chapter 5, Coastal Management of the Comprehensive Plan.

C. My third objection is that the proposed rezoning from CP (Coastal Preserve) to CG (Commercial General) is contrary to the provisions of Article III, Section 1-3.1, A and L of the Town's Land Development Code, especially those provisions relating to the intent of the Coastal Preserve zoning district.

D. My fourth objection is that the criteria provided for in Article XII, Section 1-12.5 C were not adequately addressed and that the overwhelming evidence of record presented at the public hearings at the Planning and Zoning Board level and at the Town Council level showed that the proposed Comprehensive Plan Amendment and Rezoning did not meet the following criteria:

1. Consistency with Plan. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board. The Town's Planning and Zoning Board voted 4-1 against the proposed Comprehensive Plan Amendment and Rezoning. The Planning and Zoning Board, as well as the Town Council heard overwhelming testimony regarding the purpose of the CP zoning district and the policy behind the Coastal Management Element, Chapter 5, of the Comprehensive Plan. However, despite such overwhelming evidence regarding the purpose of the CP zoning, Council members who voted in favor apparently determined that the need for more commercial development in the Town was more important than the preservation of the coastal areas zoned Coastal Preserve.

2. Conformance with Ordinances. Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances. The overwhelming evidence presented and apparently admitted to by the Applicant, even if the property land use is changed and zoning changed, there is an enormous hurdle to overcome with regards to meeting setbacks and minimum lot sizes as provided for in Section 1-3.3 of the Land Development Code. In so much as the Land Development Code is part of the codes of the Town, its provisions cannot be ignored.

3. Changed Conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment. There was no evidence that there has been any change of circumstances since the creation of the Coastal Preserve Zoning and the adoption of the Town's Comprehensive Land Use Plan and Land Use Map that could be relevant to the current request for a Comprehensive Plan Amendment and Rezoning.

4. Land Use Compatibility. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved. At the time of the application, the Town's Planner made a preliminary assessment of the proposed Comprehensive Plan Amendment and Rezoning, and made a preliminary assessment of Compatibility, and recognized that there would be a reduction of the Coastal Preserve. However, since this preliminary assessment, the evidence presented by the residents of the Town clearly identified that changing the zoning and land use on this property now within the Coastal Preserve would open the door and allow the rezoning of similarly situated lands in the Coastal Preserve to some uses which would be inconsistent with the Coastal Plan Element, Chapter 5, of the Town's Comprehensive Plan.

5. Adequate Public Facilities. Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or

programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. There appears to be a lack of credible evidence presented by the Applicant regarding this criteria and therefore the Applicant did not sustain their burden to prove compliance with this criteria.

6. Natural Environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection. The overwhelming testimony by concerned residents clearly identified the potential adverse impacts that a commercial development on the banks of the Indian River Lagoon will have on the quality of the Indian River Lagoon. Years ago, Malabar leaders established the Coastal Preserve zoning area to conserve the strip of land east of U.S. 1 abutting the Indian River Lagoon. Uses are limited to non-commercial piers, boat slips and docks. This vision clearly identified the need to retain and conserve coastal area of the Town. As one speaker put it "defacing and destroying what is an essential spirit of immeasurable value to the residents of the rural community here..."

7. Economic Effects. Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare. There was ample testimony that such a land use and zoning change would adversely affect the general welfare of the Town by eliminating a parcel of land from Coastal Preserve and protection.

8. Orderly Development. Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

The legitimate concerns of the residents established that by changing the land use and zoning for this parcel could lead to a domino effect and the proliferation of similar requests which could lead to the complete eradication of the Town's Coastal Preserve zoning contrary to the Town's Comprehensive Land Use Plan. Such a potential can only be characterized as creating "negative effects" by eliminating the Coastal Preserve.

9. Public Interest; Enabling Act. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation. With regard to this consideration, we cannot ignore the Ordinance language which created the Town Charter, including the Preamble; the provisions of the Ordinance creating the Town's Comprehensive Land Use Plan, Chapter 5, Coastal Management Element; and the Town's Land Development Regulations, especially Section 1-3.1. With the potential of losing Coastal Preserve land, the public interests are in jeopardy and the proposal would be in conflict with the public interest of preserving coastal properties. A petition in opposition to this request was signed by over 450 residents of the Town expressing their concerns with the request. While there was testimony regarding how these Applicants and their current business operation have provided a benefit to the Town, those matters were not relevant to the issues before the Town Council and should not be a consideration.

10. Other Matters. Other matters which the Planning and Zoning Board may deem appropriate. The Planning and Zoning Board identified, at their hearing, many of the issues identified in this veto. These sentiments were emphasized by the Planning and Zoning board Chair, Wayne Abare, at both public hearings before the Town Council.

For the reasons stated above, I withhold my approval of Ordinance # 2019-08, and veto the same.

Sincerely, Mayor

Town of Malabar

Mayor then referenced an email. Dr. Diane Barile assisted the Town in creating these ordinances. The same team of scientists created the MRC. The petition with 485 signatures represents 21% of the Town.

Then speakers' cards are called. Speaker's Card: George Foster, Malabar Road, He is a volunteer member of the P&Z. He is here in support of Stuart and Nancy Borton in their request to rezone their property. They all have one thing in common. The people that we trust are our Town Staff, our Administrator and our professional members and all of these dedicated individuals. They tell us they struggle to find the funding for the basic needs like the work on Malabar's historical drainage problems. They had decided they would seek and encourage quality business along the three arterials. A typical business often pays 20 times or more than an individual taxpayer. Many of our residents are small business owners. They should be able to improve and expand their businesses within the limits of our Town. The

professional all have determined. The current zoning of this parcel happened over 40 years ago. It was a meaningful. A lot has changed in 40 years. There are other issues and other consideration like the needs of our town. This is exactly the type of quality growth. The advantages of this are many. Provide benefits, waterfront enjoyment. Water and sewer on the site. Valet service for all their guests. The town of Malabar has a strong Council form of govt. Council has voted twice.

Liz Ritter, Orange Ave., deferred says a lot of our professionals and staff don't live in this town. Not denying anything. Not meeting the required setbacks in a negative area. They knew what the zoning was when they bought it. CP doesn't allow this. 90 other people that also may have the ability to build. Noncommercial dock use. We are not denying.

Debra Ball, Highway 1, spoken at every meeting about this. PZ 24, RTCM August 5. Facts have not changed. Parking problems also impact the small neighborhood. Increased traffic, on August 19, there could be up to 12 rooms. After the restaurant patrons were killed. Not everyone that crosses the road pushes the button. She and husband lived in River view homes. They still own 4 houses there. It is a very small neighborhood. 13 homes total. Large representation at the meeting. Following that time, the Bortons decided to obstruct the view with the planting of the trees. Malabar is very unique with it rural development and its river views. She showed a picture of a building going up north in Melb. At a previous meeting many people spoke in favor of the Bortons who have no skin in the game.

Holly Yolles, wanted to publicly thank Mayor for vetoing the ordinance. Doesn't meet the setbacks and min size. Very impressed for representing the majority of the constituents that I speak to in my neighborhood.

Colleen Nowlin, Hall Road, she and 485 signers of the petition do support the Mayors veto.

#### Council Discussion:

CM White, said he and wife moved here for the rural characters. Got chickens and geese and ducks. But he does think that the rural character is subject to interpretation. Quite a few areas of the Town that aren't rural. He said he can't argue with 2nd and 3rd point. There is a need for commercial development. That was not his point for supporting the zoning. The lot size and the setback are key issues. He was told with the unity of title the lot size issue would be moot. The setback would be an issue. Everything can be resolved with enough work. CP zoning was created over 40 years ago. We have changed a whole bunch of zoning since then and granted variances to those codes. The most concerning was the domino effect. How do you present evidence on speculation? Evidence to the opposite was presented. It is served by water and sewer from Palm Bay. No other parcel is similar; they could not get septic on the east side of Hwy 1. No other parcel meets that criteria. You could grant this exception and not worry that the 90 other parcels following suit. The two things that were addressed by speakers were the parking and the effects of solid waste. Yellow Dog Café has sewer and uses valet parking. He goes up Hwy 1 several times a week and doesn't see people crossing the highway. Applicants did not address the adverse effects. The only environmental issue he has heard if the stormwater runoff. It now goes directly into the IRL. We don't pump it back up and into Turkey Creek. This .31 acre – do we plan to stop all future development along Hwy 1. The loss of the CP was the .31 acre was the adverse effect. The petition represents 482 residents. How many are registered voters and how many refused to sign the petition. Stating that the benefits the applicants now provide is not relevant to the request is not correct. A lot has to do with the purpose of the request and the amount we trust the applicants. For the reasons he stated, not because he is a friend of the Bortons he is opposed to the veto.

CM Rivet echoes CM White's statements. They are not getting rid of CP, this is a unique piece of property. Unintended consequences. Malabar won't get any revenue. That is a concern. What lawsuits will prevail. He will not vote to allow this land to leave Malabar. Take that into account.

CM Ball has weighed in on this as he has similar land. This part of the land, the waterfront in the town of Malabar. There were buildings on the east side in the 1950s. US 1 was 2 lane road and the State widened the road and FDOT bought only what they needed. He spun off Malabar Mariners Assoc. When the Town fathers in the 1970 set up that zoning, they made it unique in one way – they called it preservation. Their intent was to preserve into perpetuity. For us to go against that – there is nothing set in concrete. They went out of their way to make it a preserve. That is what he sees.

CM Vail concurs with CM Ball, he has considered all the information and he stands strong on the no vote.

CM Korn, his advice in the future. His suggestion is to be aware of the potential of the emotional responses. People are well informed. A lot of misinformation. It can be approached in a better way. Listening to the detail of the veto has given that a thought.

Mayor's closing statement. They did vote to change to RLC to CG for Route 1 Motorsport and that was only one step up. This request would be a step up of five land use intensities. CM White asked Mayor how many meetings did it take for Route 1 Motorsports to accomplish that little step?

Mayor supports commercial development on those corridors but not in this particular location.

**MOTION:** CM Rivet / CM White to override Mayor's Veto.

**Roll Call VOTE:** CM Ball, Abstained; CM Vail, Nay; CM Rivet, Aye; CM Korn, Nay; CM White, Aye. Motion failed, veto stands, Ord 2019-08 is ineffective.

#### **11.b. Council Duties and Conduct – Agenda Request from Richard Kovach**

**Exhibit:** Agenda Report No. 11.b

Speakers:

Laura Mahoney, Malabar Road, would like Council to set a hearing date for a set for the forfeiture. Censure set for CM Korn.

Dawn Danielson, Hall Road, incident at end of last meeting. Read title 46, battery - strike means hit with a hand or an object. 784.08 older than 65 – 2C it goes to felony 3<sup>rd</sup> degree. I was battered by a Councilman in these chambers. He should be removed from Council immediately.

#### **Richard Kovach In Re: Council Duties and Conduct**

- It pains me greatly to say what I am about to say, but for the sake of the Town of Malabar, it begs to be said.
- Council members Korn, Rivet, and White, I request that you extend to all speakers the courtesy of the same proper level of attention to the speakers that we extend to you, instead of looking around the room, the walls, the ceiling, your laptops, and giving the impression of utter indifference to what they have to say, as has been observed many times. Per Town of Malabar Code of Conduct section 2-27, paragraph 2d: "I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as a member of the Town Council". You three have a long and visible history of showing shameful indifference to the speakers, and this must stop. The very fact that I have to say these words to you speaks volumes.
- The people of the Town of Malabar have seen a steady deterioration by certain members of Council and Town employees, of adherence to the Oath of Office, Charter, Code of

Ordinances, and of accuracy in documentation of Town matters, including altering information or intent in agendas and minutes presented to the Town by Citizens. This must stop. Our system of government offers checks and balances, and I am putting the Town Council on notice that this is a wakeup call to you, to clean up your actions. I request that you tell me the process by which we can get the podium statements, that are handed to the clerk, back in with the meeting minutes, where they justly belong. (Pause to allow Council input).

- Three of you council members: Korn, Rivet, and White, violated the Town Charter and Code of Ordinances by passing the recent zoning change, with blatant disregard for its rules. The Code of Conduct, in Chapter II, Code of Ordinances, Article II, section 2-27, paragraph (c), states: "I will represent the interests of the entire town when making decisions and will rely upon available facts", which you clearly did not do. Same section, paragraph (q), states "I understand that my first priority as a councilmember will always be to look out for the best interests of the citizen of the Town and the public health, safety and welfare", which again you did not do. Specifically:
- You ignored the facts that the parcel in question could not meet three of the most clear and basic requirements for a CG parcel: Parcel in question is a "negative" parcel by setback definition. The proposal was, in reality, Dead on Arrival. You were given those facts, all of which and more, were given to you by the Townspeople, and repeated so eloquently and accurately by the Mayor in his veto. What manner of logic are you using when you three act as if those basic requirements don't even exist? In the interest of transparency, you owe the citizens a precise answer to that very important question. I have asked you three for this information, and you have refused to provide it. I must then conclude that: (a) you do not have a valid reason and made the decision for a non-valid reason, (b) you do not care what the Ordinances say, or (c) you have been paid off to make such an invalid decision. Now is the appropriate for you three to respond to this request. (Pause for Council input)
- You have contaminated the future of the Coastal Preserve by opening the door for future Commercial General zoning by this precedent. You on council who have attempted to downplay this recipe for disaster are kidding yourselves if you do not see the consequences of your action, else you have abandoned the intent of Coastal Preserve.
- You have abandoned your constituents; you have lowered yourselves to the influence peddlers. You have abandoned your Oaths of Office to defend our Town by **willfully** ignoring the Ordinances.
- Your actions are an embarrassment to your office, the rule of law, and a betrayal of your constituents. You have dishonored the Town Charter, the Town of Malabar, the Code of Conduct, and yourselves.
- Council member Korn, your demeanor, as I have witnessed multiple times in the past, has been bullying and reprehensible, but when you batter my wife, you have gone too far! That mischief was actionable! You have made a mockery of the Code of Conduct by abusing and battering a resident, to wit: (d) "I will demonstrate dignity, respect, and courtesy toward those whom I am in contact... I will refrain from intimidation and ridicule of... citizens of the town" etc. (e) "In my capacity as a member of the town council, I will refrain from inappropriate language including statements that are malicious, slandering, disparaging, mean-spirited, vulgar, or abusive. All disagreements, concerns, or criticisms shall be framed in language that is in keeping with the dignity and professionalism of an elected official and the honor of the town council". (r) I will be accountable to the town council for violations of this code of conduct,
- I request that the Town Council exercise both the first and the second violation steps in the penalty section of the Code of Conduct, to wit: (a) a public hearing of the charges, and (b) written charges filed with the Town Clerk, and resulting in Censure.
- You, Dick Korn, deserve to be expelled from council immediately and permanently. I hereby formally inform against you that you have violated a State misdemeanor of F.S. title XLVI (46),

Chapter 784, section 784.03, of Battery, and made Felony by section 784.08 (2)(c). This should result in your removal from office by law.

- Mr. Korn, Mr. Rivet, Mr. White, you three serve at the pleasure and trust of the Citizens of the Town of Malabar. You have betrayed that trust. For your collective actions, none of the three of you deserve to remain on Council.
- I insist that the three pages comprising this document be included in tonight's minutes, and I hereby ask the attorney to support me.

CM White said he had responded.

Mr. Kovach said exercise both the 1 and 2<sup>nd</sup> steps and result in censure.

## **12. ACTION ITEMS:**

### **ORDINANCES FOR FIRST READING: 2**

#### **12.a. Ordinance 2019-14 Budget Amendment FY 2018/2019 – First Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2018/2019 TO PROVIDE FOR ADDITIONAL REVENUES RECEIVED; PROVIDING FOR THE UNSPENT BUDGETED FUNDS DUE TO REDUCED EXPENDITURES; PROVIDING DIRECTION TO DELEGATE SUCH EXCESS FUNDS TO DESIGNATED RESTRICTED RESERVES FOR BUILDING DEPARTMENT USE, STORMWATER USE, FIRE DEPARTMENT DONATIONS AND FOR VEHICLE REPLACEMENT; PROVIDING THE SHIFTING OF UNSPENT MONIES BETWEEN DEPARTMENTS TO BALANCE THE EXPENDITURES; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 12.a

Read by title only.

**MOTION:** CM Vail / CM Ball to approve first reading of Ord 2019-14

**Rollcall VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.

Motion carried 5 to 0.

#### **12.b. Ordinance 219-15**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING THE TITLE FOR THE TOWN ADMINISTRATOR IN ARTICLE IX; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

Read by title only.

Speaker Card: Laura Mahoney asked why the change was needed. Asked what the benefits and costs? Why are we doing this?

**MOTION:** CM Korn / CM Rivet to approve first reading of Ord 2019-15

Discussion: CM Rivet - This is a change in title only. Manager is better representation of the responsibilities performed by the office. No financial impact. CM Vail, the job is the same regardless of the title. There are fewer administrator than managers. The common terminology is manager. We have stuck with administrator. GV took a lot of our codes. In discussion with staff, I learned that all items and documents with the words Town Administrator would need to be changed to Town Manager. I don't see a need change it. CM Korn said the duties described in Chapter 2 are Managers duties. Out of the 412 municipalities, some don't have one but there are only 11 that have administrators. The type of government in Malabar is the Strong Council. The next time we have to fill the position, this title change will make it a more attractive position. These duties are management duties. CM Ball – I do not have a problem with it either way. In the Coast Guard my position held both titles. CM Vail brought up a good point, what are the unintended consequences to this



change? When our street addresses changed it created several issues, will this have the same effect?

TA said the educated people that he works with understand the terminology. Their duties are the same regardless the title. It does help when people don't know what an administrator is to the organization, that it is questions.

Franklin said the terms would be changed in Chapter 2 with a general statement that elsewhere in the Code book, where the word administrator is used, it means manager. The cost will be minimal for codification of one ordinance and the legal ad to run before the public hearing.

**Rollcall VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.  
Motion carried 5 to 0 for 1<sup>st</sup> Reading.

## **MISCELLANEOUS: 2**

### **12.c. APPROVAL OF INTERLOCAL AGREEMENT WITH BREVARD COUNTY FOR E-911 DISPATCH SERVICES**

Discussion: Question of wording. Correct term is Malabar Fire/Rescue. We had page three corrected but may have missed the reference on page 2. It will be corrected. **VOTE:** All Ayes

### **12.d. CANCELLATION OF RTCM 10/21/2019**

**MOTION:** CM Rivet / CM White to cancel the 10/21/2019 RTCM. **VOTE:** All Ayes

### **13. DISCUSSION/POSSIBLE ACTION:**

### **14. PUBLIC COMMENTS: General Items (Speaker Card Required) none**

### **15. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: For the TA – he is half way between Malabar Road and Yellow Dog Café, and he keeps the eastside of Highway trimmed. And press this area to push on State to clean the land. The ones that are owned by the State of Florida should be cleared by the State. It is a beautiful view. CM Vail – when the Brownosaurus equipment was used did the Town pay for that - yes. Can it be an ongoing thing. CM Ball said there is a living system down there. He left the ground stuff, so the habitat was left. Asked new manager to look into that.

CM Vail: nothing

CM Rivet: nothing

CM Korn: Dick said there was a large section that have grown back. CM Ball said it is a selfish reason – he likes to look at the river.

CM White: nothing

Mayor: nothing

Susan said the MRC would help you to get the pepper trees cut back. Liz said there is a restore our shore program that could help in planting mangroves. She would talk to them.

### **16. ANNOUNCEMENTS:** Openings on Bd of Adjustment and Park and Recreation Bd.

### **17. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:07 PM.

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

ATTEST:

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

Date Approved: 11/04/2019