

## MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

**JUNE 15, 2020 7:30 PM held at the Malabar Fire Dept**

This mtg of the Malabar Town Council was held at Malabar Fire Dept at 1840 Malabar Road.

**1. CALL TO ORDER:**

Chair, Mayor Patrick T. Reilly called the meeting to order at 7:30 pm. CM Vail led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

MATT STINNETT

TOWN MANAGER: (TM)

KARL BOHNE

TOWN ATTORNEY:

TOD MOWERY

TOWN PLANNER:

DEBBY FRANKLIN

TOWN CLERK/TREASURER:

Malabar Fire Chief Mike Foley also present. Mayor thanked the FD for setting up the station to accommodate this meeting.

**3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: none**

**4. CONSENT AGENDA:**

**4.a. Regular Town Council Mtg Minutes of 6/01/2020**

**4.b. ILA CARES Act Funding**

**MOTION:** CM Rivet / CM Vail to approve consent agenda. **VOTE:** All Ayes.

**5. ATTORNEY REPORT:** Nothing

**6. LIFE SAVE AWARD PRESENTATION BY CHIEF FOLEY TO MFD LT JOSEPH HOOKER, D/E SEAN BORDA AND FF BRAUN FRITZ**

Chief Foley called up the three individuals and presented them with certificates and pins recognizing their life saving actions that saved a Malabarian's life. Mayor Reilly then presented Certificates of Appreciation to Lt. Hooker, Driver/Engineer Sean Borda and Fire Fighter Fritz Braun.

**7. AUDIT PRESENTATION BY JAMES MOORE AND COMPANY**

Doug Gillikin went through the PowerPoint presentation and then went through any questions. Thanks Council and management. No material weaknesses or deficiencies; no current year comments and prior year comments were corrected. Looked at investment policy and are in compliance. It is a clean audit report – definitely a good year.

**8. STAFF REPORTS:**

**7.a. MANAGER:** Nothing at this time.

**7.b. CLERK:** If Ord 2020-05 is adopted on its 2<sup>nd</sup> reading on July 6, 2020, the Qualifying Period for the Nov 2020 election will be July 28, 2020 through August 11, 2020. We are preparing packages now. Districts 1, 2, 3 and the Mayor are all up for election. There is a tentative date on your meeting schedule for a Budget WS on June 22, 2020 at 7pm to hear Council priorities for the FY 2020/2021.

**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**

**10. PUBLIC HEARINGS: 2**

Chair said both he and CM Scardino were at the P&Z Board meeting on 6/10/20 and asked the Attorney to speak to the issue from ethics position. The Attorney said he is going to ask first the Mayor and then CM Scardino if they had predetermined how they would vote on the 10.a. item.

Would they be able to listen to the evidence and consider both sides before voting? Both said yes.

Chair read the title of the request. The ordinance is the formalization of the request. The Public Hearing is on the request to change the land use designation and corresponding zoning designation for this parcel. After the presentation and Public Hearing, he will ask for an affirmative motion on the Ordinance. That is the Robert's Rules of Order that we use as a guide in handling public meetings.

**10.a. Land Use Map Amendment and Zoning Change Request for the 1.35 acre (+/-) site known as Parcel 568 in Section 10, Township 29, Range 37, located at the northeast corner of Osage and Babcock Streets, Malabar, Florida from Residential/Limited Commercial (R/LC) and Office Institutional (OI) to Commercial General (CG). The applicant is Mr. Henry Morin representing the property owner, Phaneesh Sai, LLC. (Ord 2020-03)**

Chair stated that this land use and zoning change was heard at a public hearing at P&Z on June 10, 2020 and the P&Z Board voted 3 to 2 to deny the request.

Chair called applicant up to present his request.

Mr. Morin presented this request for the owners who are doctors. Has potential for development in the future. He knows that CG is the most suitable for this location. This property is unique. One of the things brought up at P&Z is the domino effect. He disagrees. It has 300' of frontage on Babcock St. The others only have 200 feet of frontage. It is a corner parcel. Also, it is right across the street from GV and they have that zoned in heavy commercial and the planner has confirmed that. Most unique item is of all the other pieces fronting on Babcock Street, this piece does not back up to residential zoning. All the others north of there do back up to residential zoning. This unique parcel is surrounded by RCL is the lower grade of commercial. It acts as a buffer between residential and CG. When you take all those facts it is ideally suitable and the fact that the Town has created that usage, they should locate them somewhere. The 10 points have been addressed by both the Atty and the Planner. He would like to say that he listened to the objections from several of the homeowners on Lett Lane. The complaints do not fall in those 10 items. Homeowners were concerned about their lifestyle changing; but any development would damage wildlife whether commercial or a new home next door. As far as lifestyle, Lett Lane does not go down to Osage Road and there are wetlands. He is willing to talk to the owners of the RLC lots to suggest they get that portion of Lett Lane vacated. He does not see how going from OI to CG, same size building, same size setbacks would negatively affect them. He did take careful notes. The two people that made the motion and second said OI provides enough uses for the property. That is not a valid factual reason to deny. Hofmeister echoed that and pointed to the audience and said the Lett Lane people don't want it. That is not a valid reason for denial. He will answer any questions.

CM Scardino asked if he had submitted the road vacate application. Were you planning to vacate that? Morin said he does not have the authority to be that applicant. Morin thought the Lett Lane residents should be making that request. He will help the owners on Lett Lane by contacting the landowners of the adjacent properties. CM Scardino asked how much lighting comes from an AutoZone? Morin said your code covers lighting. CM Scardino stated you don't know what they are planning to develop; do they own service stations? Morin said no, they own three lots on Malabar Road. Morin stated these owners are not in the trucking business. CM Scardino asked what they have developed. Morin said they are doctors. Market forces will come out and decide what should be there. Morin said there is not a use plan at this point.

Chair asked Town Planner to speak.

He walked through an abundance of information that you look through. There is a difference of quasi and legislative items. 2 items – LU and Z. LU is RLC with request to go to CG. Z is OI and request is to go to CG. They did get changed to RLC. A request to change the Z to match the LU. You have 4 commercial categories. Remain vacant remain as it is. He will focus on 10 standards go into each of those. And explains how they meet or don't meet those 10 standards. 3 C's. Some of the uses in OI – how different is that from CG – community facilities., parks, ofcs, med, vet clinics. CG allows retail, storage and restaurants. Adult daycare centers are allowed in OI but not in CG. OI could go to RLC. RLC would provide for neighborhood shops, up to 6 dwelling uses per acre. Just as an idea. Typical taco bell is 1500sf. It is for neighborhood shops. It is for one lot on the intersection at Osage. You know the plans to widen the road and the interchange with I95 in GV. When they look at that parcel, not a large lot; can't put significant size bldg. There are 4 commercial districts. The rear setback is the same at 25' the side setback is a range between for 20 and 30. Coverage is the same for all – 65%. 20K is the minimum lot size lot. The length and width requirements are the same. 195 deep and 310' on Babcock. There is considerable information in the packet with the acreage to the west and as well as GV. They put the application meets the 10 points and recommend approval. There was a three to two vote to deny. The Chair of the P&Z is also present.

Attorney Karl Bohne reiterated he provided the memo to P&Z and went over the 10 factors to consider. Two of those are environmental and economic effects. His memo did not provide a recommendation; the planner is the expert. Atty said the application was brought forward by a landowner. Council has to determine if the landowner has met the burden. The Land Use and Zoning is inconsistent. Whether they change the Zoning or the Land Use, it must be consistent to develop.

This is a legislative decision because you have a Zoning request coupled with the Land Use change and the test is the fairly debatable standard. If there is a rational basis, the courts will not interfere with the legislative matter. You can't be capricious. The concerns of the residents are paramount; the ten standards you consider, you cannot make your determination based solely on whether people want it or not. There needs to be additional evidence in the decision. Impacts on general health, safety and welfare of the public.

Planner added when are making these decisions, it is not whether we like the owner, this decision goes with the land, not the owner. What the owner does and what he develops is not relevant to the decision. Is it in the general health, safety and welfare of the public is relevant?

Wayne Abare, PZ Chair, provided a brief summary of the comments made at the P&Z. Babcock Street is going to be four laned in that area. There are not any homes within 700-800 feet. Many residents on Lett Lane spoke and what struck him is that Lett Lane roadway does not connect to Osage. Residents on Lett Lane must go north on Lett Lane, west on Booth Road and then south on Babcock Street for a half mile to get to this parcel.

CM Scardino asked PZ Chair if RR-65 zoning could be changed to CG. Yes.

CM White drove the area today and said it is on the other side of I-95. CM White understands the Lett Lane residents' concerns. He measured from Osage Street to the first homesite is more like a .25 mile. The concern is when people think OI, they think they won't see high lighting.

Chair opened Public Hearing:

Charles Smutco, Lett Lane, addresses 10.a. This seems to have been an item of residents on Lett Lane against the request. There are also residents on Osage and there is another home on the south side of Osage. There was a sporting facility that was proposed on Booth and Lett and had no notice before the meetings. The current zoning will allow a buffer. There is property on

Osage being cleared. They have been moving to make them aware of what would transpire if this is approved. Lett Lane must use Booth to get out. 800' was cleared through wetlands to allow development. A lot of properties north of Booth are commercial. They understand and it is identified on the maps for commercial development. Why change it now. The other things are it is west Malabar, it is not a commercial district. Consider P&Z vote of 3 to 2.

Dick Korn, Weber Road, been on council and this is in his district. He was also not familiar with it once he became the representative. He pays attention to detail. The owner should not be the object of your decision. Change the zoning and then sell it. He stated the Town Planner misstated that R/LC allowed six residential units per acre and asked him to clean up his presentation. Mayor asked Planner to respond. Planner said the statement in report is correct.

Shawn Potter, Lett Lane, bought because the rural zoning. When you turn off Booth onto Lett Lane it is a whole different life. He can let the kids play and not worry about getting hit by a car. Changing this zoning will change the whole dynamic of the street. Worst thing you can do for the Town of Malabar.

Chair closed Public Hearing:

Chair invited applicant to respond to PH comments:

Typically, when he works with other cities, it is at the site plan stage, they would look at the other step. CM Scardino was concerned about the owners buying this for a petroleum use. Most cities require a CUP for a gas station. At one time most of these lots were zoned BU-1 or BU-2 and he showed the 1985 showing the heavy of the county commercial zoning. That falls into place with the point that he wanted to make that this corner was so unique and changing this zoning is not a slippery slope. Asked each of the council members to look at the zoning (page from packet).

Chair thanked applicant.

Chair asked the Clerk to read the Ord read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN AND THE ZONING MAP FOR THE 1.35+/- ACRE SITE KNOWN AS PARCEL 568 IN SECTION 10, TOWNSHIP 29 AND RANGE 37 LOCATED AT THE NORTHEAST CORNER OF BABCOCK AND OSAGE STREETS, MALABAR, FLORIDA FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) AND OFFICE INSTITUTIONAL (OI) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE FUTURE LAND USE AND TOWN ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

Chair asked for a motion in the affirmative.

**MOTION:** CM Rivet / CM Vail to approve first reading of Ord 2020-03.

Discussion: CM Scardino is not concerned with what the zoning plan was in 1985. His main concerns are light and noise pollution. The I-95 hwy already brings a tremendous amount of noise. More commercial development will bring more noise and lights. The original intent with heavy industrial, was designed as a buffer. There is already a lot of noise. That strip was designed to be a buffer. Are they not entitled to the same consideration as the other areas zoned RR-65?

CM Ball said they made plans that the development was going to be on Malabar, US1 and Babcock. Peays Electric on Malabar Road was denied, Yellow Dog on U.S. 1 was denied, now they are considering denying this on Babcock Street. They should have a discussion on should we double our millage rate, so we don't need commercial development and keep it all RR. 'Not in my back yard.' Either we change the FLU or double the taxes. It seems to be a fit, Babcock Street will be four laned. Palm Bay and Grant Valkaria will capitalize on the frontage along Babcock Street. He doesn't know if we have a better fit for this zoning.

Mayor said we are required by the State of Florida to have the Comp Plan and it requires we provide these types of use.

CM White asked who staff is. Who makes the recommendation? Franklin explained that office staff accepts and reviews the applications. We confirm that the request is complete, accurate and that the request is within the regulations stated in either the Future Land Use element of the Comp Plan and/or the requirements listed in Article XII of the Land Development Regulations. We then forward it to the outside professional staff, planner, attorney, engineer and ask for their written direction and/or recommendation. That is the requirement of staff per the Code. The Agenda Report gives the background provided by office staff and then states it met the requirements and was sent to outside professional staff for review and then list the attachments within the package. So, the staff recommendation is a combination of the professional office staff also professional outside staff comments.

CM White said that Babcock Street will be widened and will be commercial use. He was accused of not having 'skin in the game' on the Yellow Dog request. It is beyond him to think anyone would want to change the RR in his residential area. Why was it OI to begin with? They must have considered the residents on Lett Lane.

CM Vail said you can't consider the potential use at this point. Reviewing the evaluation, per the ten conditions and the FLUM so all of that was – we allowed it open to give the people the standards. Need to hold our ground on that. He does not believe it is consistent with the ten standards.

CM Rivet said they want it for what is appropriate for the land. If the residents don't want commercial development, do you want to pay higher taxes? CM Vail said we have commercial. CM Rivet said much of the low intensity commercial development guarantees that there will be no commercial development.

**ROLLCALL VOTE:** CM Ball, Aye; CM Vail, Nay; CM Rivet, Aye; CM Scardino, Nay; CM White, Nay. Motion failed 3 to 2. It will not be advertised for a second reading.

#### **10.b. MSTU Question for 2020 Ballot (Ord 2020-04)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING REPEAL AND AN EFFECTIVE DATE.

**Exhibit:** **Agenda Report No. 10.b.**

Ord read by title only. Open PH – no one. Closed PH

**MOTION:** CM Vail / CM Scardino to adopt Ord 2020-04. Discussion: none

**ROLLCALL VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

#### **11. UNFINISHED BUSINESS/GENERAL ORDERS:**

#### **12. ACTION ITEMS:**

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

##### **12.a. Change Qualifying Dates for 2020 Election and beyond (Ord 2020-05)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2019-10 AND AMENDING SECTION 2.03 OF THE TOWN CHARTER RELATING TO THE CANDIDATE QUALIFYING PERIOD; AMENDING SECTION 2.04 OF THE TOWN CHARTER RELATING TO THE MAYOR QUALIFYING PERIOD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING

FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH;  
AND PROVIDING FOR AN EFFECTIVE DATE.

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

Ord read by title only.

**MOTION:** CM White / CM Rivet to approve Ord 2020-05 for first reading. Discussion: none

**ROLLCALL VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

**12.b. Amend Chapter 13 re: Special Assessments (Ord 2020-06)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA TO AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES; PROVIDING FOR A COST SHARE IN THE PAVING OF IMPROVED AND ACCEPTED DIRT ROADS THAT HAVE MET THE REQUIREMENTS FOR A SPECIAL ASSESSMENT IN SECTION 13.52.(2)b.; PROVIDING FOR NEW SUBSECTION 13.52.(2)c.; PROVIDING FOR THE FUNDING SOURCE FOR THAT COST SHARE; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

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

Ord read by title only.

**MOTION:** CM White / CM Ball to approve Ord 2020-06 for first reading. Discussion: .CM Vail made a comment reiterating that this Ordinance is only funded by TIFT funds, and will cease to exist if that fund runs dry.

**ROLLCALL VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

**RESOLUTIONS: 1**

**12.c. Acceptance of Audit on FY 2018/2019 (Reso 09-2020)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2018/2019 BY THE AUDIT FIRM OF JAMES MOORE AND CPA; AND PROVIDING AN EFFECTIVE DATE.

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

Reso read by title only.

**MOTION:** CM Vail / CM Rivet to adopt Reso 09-2020 as submitted. Discussion: none

**ROLLCALL VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

**MISCELLANEOUS: 0**

**Chair excused Attorney and Planner at this Point**

**13. DISCUSSION/POSSIBLE ACTION: 1**

**13.a. Town's Method to Share Information with Residents, Property owners, and Businesses** – Quarterly MailBoat or continue monthly Hometown News

**Exhibit:** **Agenda Report No.13.a.**

**Discussion:**

CM White asked about the preference

CM Ball supports an electronic option. It saves on costs, and only goes to the people who want to read it.

Dawn Danielson, Hall Road, she subscribes to everything and has never once gotten a notification that the hometown issue. That needs to be fixed if you are going to make this available electronically.

CM Scardino had to adapt to the electronically. He had to learn how to do that. Life amber alerts. Electronically communicate with the citizens. Richard declared he had met with the vendors and from here on out that is a notification. It is usually in the mailbox within 5-10 minutes. CM White said dispersing this electronically compared to paper copies. He thinks as long as we can address with concerns that Dawn brought up. CM Vail stated we need to have a transition period maybe an annual paper form. CM Ball said we are used to doing a mailout and with a couple of little highlights. Going forward make sure that everyone has an opportunity to get this information.

Susan Shortman said when she can't come to meetings she tries to listen to recording and she has trouble listening it was almost lip reading the video.

**MOTION:** CM Rivet / CM Ball to approve the continuance of three more monthly issues in HomeTown News. Plan on seeing it at a particular time of month. Also do one more Mailboat mailed to residents explaining it is the last issue. **VOTE:** All Ayes.

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

Ms. Marcie Adkins introduced herself to Council and said she is running for state office and is a Valkaria resident for 24 years; she is your neighbor.

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

CM Vail: nothing

CM Ball: Got the letter from Scardino. CM Scardino asked what do the people of Malabar want. That was the intent of the letter. People want the RR and he wasn't on it. People want to be involved. Get the people more involved. Concerned with the vision. CM Ball said one of the points he brought out was that employees should be from the town. CM Scardino said he is a developer and a city planner and a police officer. Might not be feasible. CM Ball said when we picked out last administrator, one of the top questions he asked for the administrator was if they lived in Malabar. Might live here but not be qualified. It is up to Council to make that point salient. That should be one of the criteria. You had a lot of trouble getting information from the town. You bashed staff. CM Scardino said it was the website he had trouble getting info. CM Ball asked the Fire Chief how many volunteers for FD how many are from Malabar. Two.

CM Rivet: impact on people. Why is that zoning different from zoning on south side of Malabar Road. CM Rivet said they had an agreement that the LU would only extend 660 south of Malabar road and that was changed at the last minute. Asked for the justification leading up to that. That was a group decision. He wants to understand. CM Scardino asked why those cases different. CM Vail decisions are the same as they were when they made those decisions. Steve said they would have commercial zoning on Malabar Road. They agreed to have it 660 feet south of that. CM Vail had always stood firm on the 1320'. CM White said there is no difference, it was his perspective. They talked about wanting commercial development, but the people don't want commercial development. There is a great resistance to it. CM White thought with the Yellow Dog he was doing the right thing, but he did not listen to the people. Any for what his remaining term he will listen to the residents.

CM White: It was not well thought out thing to say. He has never had a problem getting information from staff. He is there 2 times a week. Last time you looked at property. When you pay people what we pay they can't afford to live in Malabar. The only person that doesn't live in the area is the town planner. He is exactly of the opposite opinion. CM Scardino stated he was looking for information and had a number of days in delay due to the Covid-19.

CM Scardino: It was is intention to look at the rural characteristics of the Town, and how they were viewed. He asked for it to be electronically sent and there was delay.

Mayor: the letter from CM Scardino really upset him. He was not prepared to speak to it unless it was on the agenda so he will not.

**16. ANNOUNCEMENTS:** Openings on T&G and Park and Rec Bds.

**17. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:40 P.M.

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

ATTEST:

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

Date Approved: 7/06/2020