

Malabar Regular Town Council Meeting Minutes
FEBRUARY 1st, 2021 7:30PM, Meeting held at Malabar Town Hall, 2725 Malabar Road

1. CALL TO ORDER, PRAYER AND PLEDGE

Council Member White led the prayer and pledge.

2. ROLL CALL

CHAIR:

VICE-CHAIR:

COUNCIL MEMBERS:

MAYOR PATRICK T. REILLY

STEVE RIVET

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

LISA MORRELL

KARL BOHNE

RICHARD W. KOHLER

INTERIM TOWN MANAGER:

TOWN ATTORNEY:

DEPUTY TOWN CLERK:

For the record Fire Chief Mike Foley was in attendance.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: NONE

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 1/04/2021

CM Vail / CM White to accept the minutes of 01/04/2021 as presented.

All Ayes: Motion Carried 5-0.

- 5. ATTORNEY REPORT:** Painted Acres litigation, insurance defense council Mr. Connor has left the firm defending the Town. Douglas Noah will be the new counsel. This litigation has been going on since 2012, and the new Attorney has been in contact with him. Motion was filed to short cut the case. Attorney also sent an email about litigation in Palm Beach County regarding face coverings. Made it to an appellate court. Failed to show likelihood of success, affirm the lower court ruling. Highlighted portion states that we all have individual rights, but in an emergency, the Government has the right to temporarily halt those personal freedoms, such as back in the 1920's in the influenza pandemic.

6. BCSO REPORT: NONE

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee:

Deputy Clerk Kohler gave a brief explanation of the concept of the "Zig-Zag Trail" proposed at the North end of Corey Road.

7.b. Park & Recreation Board: None

7.c. P&Z Board: None

8. STAFF REPORTS:

8.a. Town Manager – Hunter Lane has gone out for quote. Reached a coordination agreement between KSM and Goodson Paving. Will only need to work on 2 culverts. Will move forward with stability testing. Parks and Rec board is working on a survey about possible future playground equipment. EDC Engineering & Kimberly Horn Engineering have been contacted about their continuing services, which will be reviewed by the attorney and approved by Council at a future date. SAI will soon start staff training. Gave an in-depth update of the playground equipment, tennis and basketball courts. Also discussed north Corey Road project, and FDOT road closure.

8.b. Fire Chief – Written Report given to Council at the meeting. Three grants out for a life pack, 45K unit. Starting off the year on the right foot. CM Acquaviva asked about the policy for emergency lights

after hours, Chief stated they do not use the siren in residential areas after dark, but require the lights stay on while performing emergency services. CM White asked about EMS services. Chief explained the Malabar Fire Fighters are all EMT certified, and the department provides BLS services. The County is the only transport system, and they perform ALS.

8.C. Clerk – Deputy Clerk Kohler informed Council of an upcoming Ethics Training Webinar provided by the Florida League of Cities taking place on 2/24 from 10 AM to 3:30 PM. It is a free class and it will cover the annual requirements for ethics training. A date has been set for Fall in Love with Springfest, March 20th from 9 AM to 1 PM. Malabar BTR holders will pay no vendor fee and Dolphin Auto will be presenting the car show. Social distancing will be encouraged.

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.

10. PUBLIC HEARINGS: 1

10.a. Road Improvement Waiver Request – right-of-way know as Beekeeper Lane – tabled from July 6, 2020; applicant Adam Hayward

Exhibit: Agenda Report No. 10.a.

CM Vail / CM White to un-table the issue. 5-0 approve.

Applicant Adam Hayward was asked to come to the podium and present his case. He is trying to build a house, but his property is not on an accepted road. The code states he needs to put in 70' ROW which would cut into current residents' yard. There have only been 2 35' dedications. Old owner had an agreement to improve the road in 2004. He is requesting a waiver to the requirement for the road to be widened to its planned width if he maintains it. As each person builds, they dedicate more road.

Mayor asked if there is anyone using the road past his property? Applicant stated that there is an agricultural goat farm at the end of the road.

ITM Morrell gave a brief overview of the history on this item. Waiver is in the authority of Council. Engineer's report has not changed since his letter advising against a waiver.

Mayor opened the Public Hearing.

Lyndon Jones, 2885 Corey Road, lived there 20 years. He asked the Town to dig out the ditch along Beekeeper Lane and was told by the Town it was wetlands 7-10 years ago. Mayor asked if he is in favor or against this waiver? He states he is in support of it as he believes it will improve his drainage situation.

Mayor Closed Public Hearing

MOTION: CM Rivet / CM Scardino to approve the waiver.

CM Rivet stated the petitioner is looking to make a bad situation better. Asked himself if it was right to deny this man the best use of his property. We should make every effort to help him.

CM Vail agreed we can't deny people the use of their property. If there is a ROW issue, it will still be better than many existing roads in Malabar. He does not believe the 70' portion is applicable here, but you need at least 24' for emergency services. The Town has code for 50' and 25' roads, use them. Can we find a way to make this 50' all the way? We should reach out to the owner of the undedicated lot and let them know how beneficial the road will be for them.

Attorney Bohne stated the current road is below standard. If we are going to accept the road, it needs to be brought up to a standard that will hold emergency vehicles. This isn't so much a waiver as it is a delay of getting this done.

CM Acuaviva asked if everyone has dedicated, and if the neighbors need to be noticed.

Attorney Bohne stated that no, one lot west of Mr. Hayward (lot 291) has not dedicated property, and notices are issued after a Building Permit, and the building of a road is a requirement for getting a Building Permit.

CM Rivet asked if this road should be re-classified? It probably isn't a collector.

CM Vail agreed, but urged caution. Eau Gallie Blvd was developed through a swamp. This could also help with stormwater. It can connect the properties around it with the Town's Stormwater system.

CM Scardino reminded Council this is only about Mr. Hayward's property. Not the neighborhood in the future.

CM White stated eminent domain is no way to make friends. However, if there is no other way to improve the road without a dedication, then we should get the land.

CM Vail asked who should reach out to the owner not dedicating land? Town – Attorney. He asks ITM Morrell to reach out to owner of lot 291 and ask if they would be interested in dedicating ROW.

Applicant stated that there are 16 roads that are under 13'. There are about 60 homes served by roads in worse condition than Beekeeper Lane is right now.

Attorney Bohne stated that is the problem. We should not create anymore of these situations.

CM Vail reminded the applicant of the Town's road payback program and states it has worked in the past for Malabar residents. Road was built, and development followed.

Attorney Bohne stated that the applicant isn't interested in giving the road to the Town for improvements, so there would be no payback.

Applicant stated he wants to improve the road on the current footprint to build an "Interim Roadway" that he will maintain.

Attorney Bohne asked to what width do we want him to build the road?

CM Acquaviva asked Fire Chief Foley if he had any question?

Chief Foley stated he can't get a fire engine to the applicant's property due to the poor road quality, but he can get a brush truck. It'll matter the road base and stability. He would love to see 50', but 25' road surface would suffice.

CM White stated he is sympathetic to the applicant. If he follows the Town standards, he's going to build an expensive road with a small possibility of the payback program. However, that doesn't mean we should ignore our standards.

CM Acquaviva asked if this qualifies as a hardship?

Attorney Bohne stated that Council has the power to grant relief, but the only hardship is getting the dedicated ROW.

ITM Morrell stated the difficulty is our Code says 70 feet. Council has the authority to grant a waiver. The applicant is looking for relief from the vision of the Town.

Mayor stated he believes the applicant should build a 25' road.

CM Vail stated it should be built as 50' road where applicable, and narrow where its needed. If we build a 25' road now, how do we enforce building it up to 50'?

ITM Morrell stated that if lot 291 would dedicate the ROW, a 25' road is possible and could be accepted.

CM White suggested the Town accept the improved road so it can be maintained to the Town's standard.

Applicant stated he does not want to improve the road; he wishes to use the current path as an interim roadway.

Attorney stated that then the answer is to deny the request because it would not be meet the Town's standard for an accepted road.

Mayor suggested the Council table this item until the owner of lot 291 can be contacted.

CM Vail stated the request seems to be to do a minimal improvement to the existing two trail, provide no drainage, and build a house at the end. We already have 60 of those houses and do not need anymore.

Mayor Reilly stated he sees four options, Council can table the request, they can deny the request, they can approve the request, or they can deny the request and come up with a different agenda item.

Motion: CM Vail / CM Rivet to table this item for 30 days until the owner of lot 291 can be reached by ITM Morrell.

VOTE: 5-0 (all ayes).

CM White stated that this proposal was to keep the road at its current dimensions with minimal improvements and the applicant would maintain it. That idea is a nonstarter. Our policy is if you build a house, you build a road. Recommends the applicant meet with ITM Morrell to develop a plan that can meet the Town's standard.

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Amend Signage Code, Article XIX (Ord 2021-01).

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE, ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS; AMENDING THE PROVISIONS OF TABLE 1-19.18 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERMITTED IN RESIDENTIAL AND NON-RESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING; 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.

Chair asked the Deputy Clerk to read the Ordinance by title only.

MOTION: CM Rivet / CM Scardino to approve Ordinance 2021-01 for First Reading.

Discussion: CM Vail stated that this is essentially changing the residential to 16 square feet and commercial to 32 square feet.

ROLL CALL VOTE: CM Marisa Acquaviva, Aye; CM Brian Vail, Aye; CM Steve Rivet, Aye; CM David Scardino, Aye; CM Danny White, Aye. Motion Carried 5 -0.

RESOLUTIONS: 0

MISCELLANEOUS: 1

12.b. Permission for the Town Manager to negotiate and amend the terms and conditions pertaining to the Exclusive Solid Waste and Recyclable Material Collection Franchise Agreement

Exhibit: Agenda Report No. 12.b.

Discussion: ITM Manager explained that this is a 21-year contract, but that every 7 years we can amend terms and conditions. This is an opportunity to do just that. Any final changes will be reviewed by the attorney and presented to Council at a future date.

MOTION: CM White / CM Vail to authorize ITM Morrell to negotiate.

VOTE:5-0

Chair may excuse Attorney at this Point

13. DISCUSSION/POSSIBLE ACTION: 0

14. PUBLIC COMMENTS: General Items Five (5) Minute Limit per Speaker. Speaker Card Required

15. REPORTS – MAYOR AND COUNCIL MEMBERS

Council Member Marisa Acquaviva: **None**

Council Member Brian Vail: **None**

Council Member Steve Rivet: **None**

Council Member David Scardino: **None**

Council Member Danny White: **None**

Mayor Patrick T. Reilly: **None**

16. ANNOUNCEMENTS:

(2) Vacancies on the Trails & Greenways

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

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

ATTEST:

Richard W. Kohler
Deputy Town Clerk/Treasurer

Date Approved: 03/01/2021