

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MARCH 01, 2021

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 meeting to order at 7:30 pm. CM Scardino led P&P.

2. **ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

TOWN MANAGER: (ITM)

LISA MORRELL

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

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

4. **CONSENT AGENDA:**

4.a. Regular Town Council Mtg Minutes of 2/01/2021

4.b. Continuing Engineering Services with EDC and Kimley-Horn

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

5. **BCSO REPORT:** not available yet

6. **ATTORNEY REPORT:** Staff needs direction from Council on 1870 Hall Road. SM found three violations and gave until 7/17/2020 for compliance. Applicant has not complied, and those fines today are about 85K. Property is valued at 30K with taxes still owed for 2020 of about \$400. PA shows address in south FL. Atty recommendation is to send the notice of intent to close the lien. Court is not going to support an 85K lien on a property valued at 25K. The goal is compliance. Give him 15 days to cure. CM Scardino asked about sending a process server. Try and minimize costs. Once the 15 days lapses, then he will be served with a process server. Council supports sending this notice. Not here to make money. Atty also noted that one of the many bills going through the Legislature is HB 403 and it would preempt local govt from regulating home businesses.

7. **BOARD / COMMITTEE REPORTS:**

7.a. T&G Committee: written and summarized by Mayor. Focus on the Eagle Nest Trailhead improvements on south Marie Street adjacent to Jordan Scrub Sanctuary.

7.b. Park & Recreation Board: Eric Chair on Park Board. Also written report. Adding a parks and rec page on website. Go live later this month. Amenities and notices. Working with ITM on sign replacements. Most need to be replaced. Talked to facility next door and they use a plastic. Save money by having us paint signs. Passed out the survey they had in mind. Then we can add the survey to the residents on the amenities they would like to see. We have money is reserves to pay for the new equipment.

7.c. P&Z Board: Mayor said they are working on the RLC with 20% instead of the MBC of 4,000sf.

8. **STAFF REPORTS:**

8.a. Town Manager – written in package. Also went over some other items. Cares Act reimbursement #2 has not only been approved but we received the funds today, in full for our request. Also, SB 1494 allows either Governor or local government authority to enact the local emergency and need to use distance meeting procedures. Need to create and adopt processes and procedures to provide guidance. KSM sent wrong crew but that is being corrected. Waiting on field reports. Goodson will do the earth work and paving when ready.

No date yet. Had internal training with staff on how to update the stormwater masterplan online. Will have field training. We will be able to use that overlay to show zoning and FLUM. Also looked at Town Engineer invoices for last year. His 9-year-old contract. May want to look at building services contract, an inspector, and plan reviewer. Uptick them or reduce them as necessary. Currently have PT emp from 3-5 or 6pm. Questions on the graph. Fill was delivered for north Corey road to slightly improve that. Springfest is upcoming. The goal of the 50/50 raffle for funds to go to playground equipment. Met with Country Cove and will be doing some SW work in the area. Will send out door knockers first. Also held a virtual community meeting last week regarding the homeowners on Waring that are interested in SA for paving and had 10 participants. Steve asked about how many roads requesting paving are in que. Waring will make three.

Two PW members will be re-certifying their SW certification as required by the Town's NPDES permit. Sink hole on Rocky Point Road has also been fixed.

8.b. PW – written

8.c. Clerk – Reminder for ***Fall in Love with Springfest*** on Saturday March 20, 2021. It will run from 9am to 1pm. Richard is coordinating with Kenny Schofield of Dolphin Auto for the car show and we will have food trucks and local arts and craft vendors. We are also offering free space to all active Malabar BTR holders. Richard and Kenny would like to know if any of Council would be interested in judging the categories he listed in his memo to you such as best old car, best old GM, Ford etc., best stock car and best modified. In addition to those 8 categories, Dolphin Auto will be presenting three other awards. Please contact Richard if you are interested.

- 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. (Speaker Card is Required) Five **(5) Minute Limit**

10. PUBLIC HEARINGS: 3

10.a. Amend Signage Code – Ordinance 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. 10.a.

Ord read by title only.

Public Hearing opened. None. Public Hearing closed.

Chair asked staff: as expressed in the agenda report.

MOTION: CM Vail / CM Acquiva to adopt Ord 2021-01.

Discussion: none

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

10.b. Final Plat for 'Twin Lakes' Subdivision

Final Plat Approval for Twin Lakes Subdivision, consisting of 16 homesites in Rural Residential (RR-65) Zoning located on the south side of Malabar Road, east of Weber Road more fully described as Lot 26 & part of Lot 25 of Pb 1 Pg 165 as desc in Orb 8065 Pg 1488 exc Orb 8313 Pg 1942. Applicant: Malcom Kirschenbaum, Weber Woods LLC, represented by Mr. Brian Daigle of MBV Engineering, Inc. This request was heard at Planning and Zoning on 2/24/2021 and they voted 5 to 0 to recommend Council approval.

Exhibit: Agenda Report No. 10.b.

Chair asked Clerk to read title of PH.

Chair asked applicant to present:

Owner Mr. Malcolm Kirschenbaum introduced himself and Mr. Brian Daigle. No questions.

Public Hearing opened. None. Public Hearing closed.

Chair asked staff: as expressed in the agenda report and P&Z Board recommendation.

MOTION: CM Rivet / CM Acquaviva to approve Final Plat of Twin Lakes SD. Discussion: none

VOTE: All Ayes. Motion carried 5 to 0.

10.c. Road Improvement Waiver Request – right-of-way known as Beekeeper Lane – tabled from February 1, 2021 to this date; applicant Adam Hayward**Exhibit: Agenda Report No. 10.c.**

Chair asked Council for motion to remove from table.

MOTION: CM Vail / CM Rivet to remove from table. Vote: All Ayes

Chair asked Clerk to read title of PH continued from 2/1/2021.

Mr. Adam Hayward property owner of parcel 295 located in Township 29, Range 37, Section 12 with no address assigned on Beekeeper Lane, approximately 1200 feet east of Corey Road is seeking a Road Improvement Waiver to the road improvement requirements referenced in Chapter 13 of the Malabar Code.

Chair called on applicant. Mr. Hayward summarized previous meeting discussions. Since then he has received estimated costs on road improvements using the Town code. He got an estimate of 290K and then the required bond amount is the same amount as the improvement so the total would be over 500K. Plus it would take a year of time to get the Army Corp of Engineer permit. The first parcel has already been developed so would not be required to participate in the road pay back. The other parcel fronting Corey would also not be required because they have access from Corey Road. He would like the Town to build the road. He is not trying to get away with not paying or not improving. The Town's process is time consuming, and extremely expensive. Also parcel 291 will not dedicate. Also, the existing parcel developed would be harmed. He would enter into a contract that would attach to the deed and travel with the property it should sell before the rest of the road is developed.

Open PH – none. Close PH

Chair asked Staff: they have provided a table of the road improvement options available in the 2nd page of the agenda item 10.c. package. ITM Lisa explained the authority of the granting of the waiver lies with Council. The question of ROW dedication of Parcel 291 was answered with the email from the applicant; property owner said no.

CM White had hoped ITM and applicant could come up with some agreement. He stated if you buy property in Grant-Valkaria you are still required to improve the road. He is sorry but that is the case here with our Code. Property on an unaccepted road is cheaper. ITM Lisa met with TM Jason Mahaney of G-V regarding another roadway and learned that G-V has adopted a moratorium on dirt roads and is requiring paved roads.

Chair asked for motion.

MOTION: CM Rivet / CM Scardino to approve waiver.

Atty stated there should be conditions as applicant is not offering anything new. Atty suggested a recordable agreement should be included. CM Rivet said improve as B3.

Discussion: Council continued discussion on Town's requirements as described in the Exhibits. CM Rivet said we can work with him and make progress by allowing him to improve to Exhibit B6 standard and that moves us in the correct direction and could be an incentive to future development. CM Vail said as it stands now it is 70 ft.

Clerk Franklin explained the Town of Malabar's Comprehensive Plan and Land Development Regulations define Beekeeper Lane as a *minor collector* roadway within a 70-foot right-of-way. If Council is considering a road waiver, Exhibit 3 and Exhibit 4 would be the more applicable as Exhibit B-5 and B-6, adopted by Council via a resolution is intended for local lanes with few parcels and not connecting to cross streets.

Chair asked applicant to comment.

The imposition of the ROW improvement on the first parcel would encroach into their driveway. CM Vail also said it could also be bumped to the south. His decision is not going to be based on imposition of the driveway.

CM Vail said Council could allow improvement per the Exhibit B4 for the 50' area and then make an adjustment to the Exhibit B3 for the area that there is ROW lacking. That would be holding firm to our Code. He would support a B4 where it can and a B3 in the other areas. When development comes there is more development. He feels it is prudent to stand on that standard.

CM Scardino asked if approving this would set a precedent. Atty said Council has final authority. CM White proposed having applicant build to Exhibit B4 where it can be built to the narrow section and then do a driveway from that point. CM Vail said if that is done, we are compromising our code. When those people want to build on 291 then they will have to dedicate and build to the Exhibit B4 standard. CM Vail said drainage is critical and it should be done to Exhibit B4 where it can be and the rest adjacent to Parcel 291 to Exhibit B3. CM Rivet said then it won't get built. CM Acquaviva said it should be done per code.

MOTION: CM Rivet / CM Scardino to approve waiver with condition it be done as Exhibit B-3 with a recordable cost share agreement running with the land, to hold owner of parcel 295 responsible for the future cost share and to allow a reduced improvement width adjacent to parcel 291 where there is not sufficient ROW where it is only 20 feet.

VOTE: Ayes, 4; Nays, 1 (CM Vail). Motion carried 4 to 1.

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: 0

RESOLUTIONS: 1

12.a. Resolution 17-2020 – Extend or Sunset Face Covering Policy

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PURSUANT TO THE GENERAL POWERS RESERVED TO THE TOWN COUNCIL IN THE TOWN CHARTER; MAKING LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; REQUIRING ALL PERSONS TO WEAR FACE COVERING AT DESIGNATED TOWN FACILITIES; PROVIDING FOR EXCEPTIONS; PROVIDING FOR SUNSET; PROVIDING FOR SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

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

MOTION: CM Vail / CM White to extend policy to October 5, 2021.

Discussion: Council discussion on following CDC guidelines. Attorney said Council sets policy. CM Rivet said staff is looking for guidance. **VOTE:** All Ayes,

MISCELLANEOUS: 1**12.b. Authorization to submit Malabar Code of Ordinances to Municode for a Legal Review Exhibit: Agenda Report No. 12.b.**

Chair asked staff: Clerk said as expressed in the agenda report. Chair asked ITM. Lisa said this would provide an outside agency with legal experts in all fields to review the Code and the Land Development Regulations and provide analysis. Attorney Bohne said he strongly supports this request. He did it for Indian Harbor Beach and it is too much for one person and probably cost more. He also said over time we adopt ordinances and don't realize the references weren't also updated. Lisa said to have fresh eyes reviewing it was also a benefit.

MOTION: CM Vail / CM Rivet to authorize expenditure for legal review of Code and LDC by Municode as submitted. **Discussion:** none. **VOTE:** All Ayes.

DISCUSSION/POSSIBLE ACTION: 0

13. PUBLIC COMMENTS: General Items (Speaker Card Required) None:

14. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: nothing

CM Vail: He read his position regarding the code requirement for road improvement. He strongly supports property owners' rights to develop their land consistent with zoning and land use. However, allowing said improvements with substandard road improvements has historically and currently created resident and emergency access issues as well as drainage issues. This inadvertently costs the taxpayers that could be prevented by adhering to the road improvement standards. Some waivers are inevitable due to lack of available ROW, but the Town should not compromise on emergency access and drainage. It is up to Council to enforce the standards when the ROW is available. Doing otherwise puts an undo obligation on future ROW improvements and is not helping anyone.

CM Rivet: nothing

CM White: referenced the anonymous complaint mailed to all of Council regarding home business operating on Flashy Lane. When he started on Council, he asked TA Doug Hoyt about how he enforced codes. Hoyt said we have reactive enforcement. Which means you don't have any enforcement. You have businesses that don't meet the home business rules intended for a family business but if no one is complaining about them nothing is done. But then you have others that are complained about. He really does think we need to enforce for what it takes to do business in a residential neighborhood. We have some residents that have heavy manufacturing going on. Also have a trucking firm operating in residential areas. Re: SCLC business: HB 219/SB522 short term rentals. The State has already pre-empted municipalities from governing short-term rentals. This new bill would pre-empt local govt from regulating family home businesses. Short term housing rentals is not a residential use; these aren't new neighbors; it is a commercial business with short term stays by tourists. He called Sen Mayfield and asked her to vote no. Both bills have already passed the committee hearings.

Regarding the Malabar Home Business Tax rules, he would like to see this on a future agenda on how we are going to handle the existing and non-compliant persons.

CM Scardino: re: Twin Lakes SD, it surprised him about how many of the trees were cleared. Council discussion on the Town's strong code supporting tree preservation of protected trees. ITM Lisa then explained the SD covenants and its requirements on what must be left, and she also explained the tree preservation requirements on the developer and what staff had already done before it got to this point. It was also discussed again at the recent P&Z board. She has had discussions with Maronda on their request of how many trees could be removed and she provided the code and requirement for replacement or payment into the tree preservation fund. She agreed with Council that more information could be provided on Malabar tree preservation rules on the website, Facebook, etc. The Town takes a lot of calls on this topic.

Mayor: nothing

15. **ANNOUNCEMENTS:** Openings on T&G Committee.
16. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:10 P.M.

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

ATTEST:

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

Date Approved: 03/15/2021