

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MAY 03, 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 Acquaviva 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

For the record, the Fire Chief Mike Foley was also present.

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

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg April 19, 2021

4.b. 52nd Annual Professional Municipal Clerks Week May 2 - May 8, 2021

MOTION: CM Rivet / CM Vail to approve. **Vote:** All Aye.

5. **ATTORNEY REPORT:** Governor DeSantis issued two executive orders (EO) today: first will lift all Covid 19 restrictions on July 1 for all government agencies. The second one invalidates and suspends all local govt mandates or restrictions related to emergency declarations going forward after a maximum of 42 days. He thinks we fall under the first EO. CM Acquaviva stated the Florida Surgeon General came out with his opinion.

6. BCSO REPORT:

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Mayor read written report.

7.b. Park & Recreation Board: Chair Eric Bienvenu – a few things to talk about. Presentation by Annalie Harvey at last Park Bd mtg regarding plans for a regular Farmers Marketplace at the Malabar Community Park (MCP) with different themes; the Park Bd really supported the idea. He understands that she will present to Council at their next meeting and wants Council to know the Park Board will assist in any manner necessary.

He also reported the Park Bd has looked at putting a pavilion at the north end of Corey Road (entrance to Cameron Preserve) instead of just the one picnic table there now. They have applied for a grant with Home Depot.

Last update is the playground replacement: as ITM Lisa has previously reported the playground equipment is 18 years old and is rough. ITM Lisa has taken down parts of it that create a hazard or danger, but it has reached its serviceability and needs replacement. They have put out a survey for citizen input on the Town's website and Facebook page and he put a link to the survey on Next-door. They have gotten a good response of over 40 responses. They posed questions about the age groups the play equipment supports. They saw that the visitation rate is pretty high. Climbing walls, slides, and jungle gym elements were the most favored elements. Forrest and jungle were the most popular themes. Section on survey added comments. Mother and baby swing was very popular. A paved ADA trail around lake with exercise stops was also suggested. Historical markers were also suggested and those will blend with the historical house under development. The sale

reviewed lasts until June. The Park Bd submitted serious questions for the ITM Lisa to request regarding the warranty, installation cost, "coastal preservative coating". They also want to know if the metal in new equipment is equal to what they have now. Any idea of what normally breaks so they can plan for replacements, as necessary. CM Vail said the drums are still good. If they are still working and they are detached they will be kept. Nice climbing wall and two swings. CM Vail has person that has volunteered to refinish or recoat. Park Board Chair Eric Bienvenu stated that the shade structure will also need to be sand blasted and painted.

7.c. P&Z Board: no report

8. STAFF REPORTS: 8.a. Town Manager

Singhofen and Assc (SAI) may have a report to Council at next meeting. She is also ready to sit down and discuss WM rates with their management team. They have figures ready.

Talked about the FDOT insp of the bridge for Briar Creek Boulevard (entrance to Brook Hollow phase 1 Subdivision). Insp is done every two years. FDOT did not have any comments about the proposed bike path alongside the bridge. SM Rivet asked about Hunter Lane. ITM Lisa said she has followed up with the vendor and is still waiting on their estimator. They picked up the plans in March.

8.b. Fire Chief – went over fire report for March. Mayor asked about 4 power lines down. Chief said it was a typo and the corrected report shows it as 1.

8.c. Clerk – nothing. CM Acquaviva

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: 3

10.a. Road Improvement Waiver Request – unimproved portion of right-of-way in line with Beekeeper ROW and Old Mission ROW running west from Corey Road – tabled from May 6, 2019 to March 15, 2021 to this date; applicant Mr. Chris Thomas

Exhibit: Agenda Report No. 10.a.

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

Introduction. Chris Thomas, Palm Bay FL. He owns 20 acres south of Atz. His property sits about 750' west from Corey in the line of right of way of Old Mission and Beekeeper. The ROW was used for farming in the past. His biggest concern is if he must build a regular road, he will impact wetlands. He would like to ask for a variance to use roadway that is there, and he will maintain it until it becomes an official road.

PH opened. None. PH closed.

Staff: ITM Lisa said the staff recommendation would be for Council to deny the waiver request tonight that has been tabled over the last two years and let the applicant reapply with a building permit to develop, the corresponding road improvement requirement and then the Waiver request to those requirements.

Currently there is no active building permit applied for; no survey or engineering; the wetlands issues are not stated in packet. That would be staff recommendation – deny the variance. Let applicant apply for a building permit and the road improvement application and then have a Waiver request proceed. Should not come to us until they apply for a building permit and then if they need a road permit and that would trigger the waiver. Can be done at same time. Environmental report is also required. CM White we had a similar request on Beekeeper. He would be inclined to try and help him out to stay out of the wetlands. CM Vail said we are streamlining the process. CM Acquaviva said her questions were answered.

MOTION: CM Vail / CM White to approve waiver for that portion of ROW.

CM White said it was not until later that we have unintended consequences. Atty restated the significance of staff recommendation to deny without prejudice.

ROLLCALL VOTE: CM Acquaviva, Nay; CM Vail, Aye; CM Rivet, Nay; CM Scardino, Nay; CM White, Nay. Motion failed 4 to 1.

Applicant then stated he started this in 2017. He is not trying to avoid responsibilities – he will follow whatever direction from Council.

10.b. 2nd Reading Amend Comp Plan and LDC regarding MBC in R/LC to 20 percent (Ord 2021-02)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S COMPREHENSIVE PLAN FUTURE LAND USE ELEMENT; PROVIDING FOR A TEXT CHANGE TO THE PERMITTED MAXIMUM BUILDING COVERAGE IN THE RESIDENTIAL AND LIMITED COMMERCIAL (R/LC) MIXED USE DESIGNATION; PROVIDING FOR A SIMILAR CHANGE IN THE LAND DEVELOPMENT CODE DELETING THE MAXIMUM BUILDING COVERAGE OF 4,000SF AND UTILIZING THE TWENTY PERCENT COVERAGE AS STATED IN TABLE 1-3.3(A); PROVIDING FOR CODIFICATION; SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR TRANSMISSION OF ADOPTED PLAN TO THE FLORIDA STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING AN EFFECTIVE DATE.

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

Ord read by title only. PH opened. None. PH closed.

Discussion: Clerk said the changes recommended by the State DEO were incorporated into the final draft before Council. One was a typo as the minimum sf was also deleted in the text but not the table. The other was to add emphasis that the Comp Plan Amendment will take affect a maximum 31 days after sending the adopted amendment to the State or whenever they send confirmation which could be as quickly as one day. Then the amendment to the land development code (LDC) will become effective.

MOTION: CM White / CM Acquaviva to Adopt Ord 2021-02.

Discussion: no additional comments.

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

10.c. 2nd Reading Amend Article VIII of the Land Development Code to provide updated requirements for Culverts (Ord 2021-03)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; AMENDING SECTIONS 1-8.4 DEFINITIONS; AMENDING SECTION 1-8.8 ITEM 11b; AMENDING SECTION 1-8.14 ITEMS A, E & G; AMENDING SECTION 1-8.16 PARAGRAPH 3; PROVIDING UPDATED REQUIREMENTS FOR SURFACE WATER MANAGEMENT IN MALABAR; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

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

Ord read by title only. PH opened. None. PH closed.

MOTION: CM Vail / CM Acquaviva to Adopt Ord 2021-03.

Discussion: as presented in agenda report.

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

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 Chapter 13 of the Malabar Code of Ordinances, Street Improvement to provide codification of Exhibits (Ord 2021-04)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ARTICLE II, DIVISION 2 OF THE MALABAR CODE OF ORDINANCES RELATED TO STREETS; AMENDING SECTION 13-37 DEFINITIONS; AMENDING SECTION 13-38 PRECONDITION TO ISSUANCE OF BUILDING PERMIT; DELETING SECTION 13-40; AMENDING SECTION 13-41 ROADWAY IMPROVEMENT PROCESS AND ADDING EXHIBITS "B-4", "B-5" and "B-6" TO SECTION 13-41; AMENDING SECTION 13-42 ROADWAY IMPROVEMENT PROCESS; AMENDING SECTION 13-46 STANDARDS FOR ROAD IMPROVEMENTS; AMENDING SECTION 13-47 REIMBURSEMENT FOR EXPENSES INCURRED BY OWNER IN CONNECTION WITH THE CONSTRUCTION OF ROAD IMPROVEMENT; AMENDING SECTION 13-48 IMPROVEMENT OF UNACCEPTED PORTION OF PARTIALLY IMPROVED ROAD; AMENDING SECTION 13-49 IMPROVEMENT REQUIRED IF LAND PARTIALLY ABUTS UNACCEPTED ROAD; DELETING ARTICLE III IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

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

Ord read by title only.

Intro by Clerk: As stated in the agenda report – provides consistency between published code, application package and online version.

MOTION: CM Vail / CM Rivet to approve first reading of Ord 2021-04.

Discussion: CM Vail – questioned payback process. Clerk responded that the payback process is not part of this ordinance.

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

RESOLUTIONS: 0**MISCELLANEOUS: 1****12.b. Approve 460' of Improved Rivet Lane and Certify Cost at \$38,395.89**

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

MOTION: CM Vail / CM Scardino to approve 460' of Rivet Lane and Certify Cost.

Discussion: ITM Lisa refers to memo and has new engineering firm review for correction.

VOTE: All Ayes.

Chair released Attorney at this time.

13. DISCUSSION/POSSIBLE ACTION: 2**13.a. Parks & Recreation Advisory Board Playground Recommendation**

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

ITM Lisa explained that the recommended play equipment is a 52 x 52 play area. She has submitted to vendor, a company in America (Wisconsin) to see how they can set it up to put part of it under the shade structure and see if it can fit under shade structure.

MOTION: CM Scardino / CM Acquaviva to authorize ITM to proceed with the negotiation for the best deal for the Town.

Discussion:

VOTE: 4 Ayes 1 Nay (CM White).

13.b. Upcoming Amended Zoning Map for Council adoption (Ord 2021-05)**Exhibit: Agenda Report No. 13.b.**

Intro by Clerk: Applied Ecology created the GIS layer and ITM created the template with new columns for designations and Clerk input the designations. The Mayor provided Quality Assurance before finalizing the maps. The proposed ordinance with Zoning map was introduced to P&Z Board on April 28, 2021. They voted unanimously to recommend Council approval.

This is information only – no action required tonight. It will be on the next two Council agendas for Public hearings as required by law. Then the official zoning map and Future Land Use Map will be published on the Town's website. And it will be available for real time updates. This has been a 12-year process.

14. PUBLIC COMMENTS: General Items (Speaker Card Required) None:**15. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Acquaviva: nothing

CM Vail: nothing

CM Rivet: nothing

CM White: voted no on play equipment until they see asphalt on Hunter Lane. He will not vote for any more expenditures. He may not run again. CM Rivet said we all share the frustration. How to twist arms of contractors. We are small fish.

CM Scardino: contractors are very backed up. He has had a lot of delays. He does not know specifically the reason, but he does not have the labor for it. With Covid and unemployment. ITM Lisa said she is waiting on estimate from Goodson. She will contact other paving contractors. There are other things that are – She will have to get three prices. She has already been on Rivet Lane with other engineering firm. Council suggested she put a package together for multiple roads to get more interest. She does not have engineering on any of the other roads. Get more quotes.

Mayor: noting

15. ANNOUNCEMENTS: Openings on T&G Committee.**16. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 8:50 P.M.

BY: original signed

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 05/17/2021