

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

AUGUST 02, 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 White led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET Excused

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

TOWN MANAGER: (ITM)

LISA MORRELL

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN Excused

DEPUTY TOWN CLERK/TREASURER:

RICHARD W. KOHLER

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

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 7/19/2021

4.b. Special Town Council Mtg Minutes of 7/26/2021

4.c. Authorize Execution of ARPA Agreement after legal review

MOTION: CM Vail / CM Acquaviva to approve. **Vote:** All Aye. 4-0

5. ATTORNEY REPORT: Attorney stated he has no report

6. BCSO REPORT: none

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Committee Chair Thompson explained the Trails and Greenways Committee is delaying their fence building trail day. After the completion of the root rake project, we discovered that the fence line was a low spot on the property. They appreciate the work from the PW. They will be drafting a SOW to complete the remainder of the project. CM White asked if the Public Works crew did a good job? Chair Thompson stated they did an excellent job. More work was required after their project. CM Scardino asked how much dirt they will need, and if the Town can provide it? Chair Thompson stated their goal is to use dirt without invasive species. We don't want "dirty dirt."

7.b. Park & Recreation Board: Chair Eric Bienvenu – None

7.c. P&Z Board: Vice Chair Ritter informed Council about the Boards discussion on the Capital Improvement Plan.

8. STAFF REPORTS:

8.a. Town Manager – ITM Morrell informed Council that she has submitted the NDPES report. It is data collection for stormwater and illicit discharge. Includes recommended changes to our procedures which will make the reporting easier. We have also been working on Solid Waste RFP. We are working on a temporary extension with Waste Management. Still working on the upcoming budget. Compiling CIP recommendations, staff ideas and state revenue projections. There are several new building projects on Malabar Road, and one on US 1. We finished open enrollment. ITM Morrell then gave a demonstration of the Malabar Zoning Map, an interactive map with information on zoning and FLUM for every parcel in

Malabar. CM Scardino asked if there was a wetlands map. ITM Morrell states that we do not, but we have a link to Brevard County's. Mayor Reilly gave a Certificate of Appreciation to ITM Morrell, TC/T Franklin, and Deputy TC/T Kohler. ITM Morrell then gave a Certificate of Appreciation to Mayor Reilly for his hard work on this project.

8.b. Fire Chief: Acting Chief, Lt. Barkley- Lt. Barkley gave an overview of the monthly calls. Also informed Council that they are working on restoring the kitchen at the Fire Department. They are always looking for new members. Also, they are working on the brush truck.

8.c. Clerk – we are halfway through candidate qualifying – Qualifying ends at 4:30 PM on 8/10.

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.

George Foster – 1205 Malabar Rd – Disclosed he is on the PZ Board. He is not here in any official capacity. He is here to show support to ITM Morrell. He believes she has a wealth of information in municipal government. She has had many successes, including the sale of Huggins Park, park improvements, stormwater, road planning and budgeting work. He wants to thank her and the Council for their work.

Mary Hofmeister – 2340 Corey Rd – Also on the PZ Board, is here to reiterate her support of ITM Morrell. She is an asset to the Town, and we should do what we can to keep her.

10. PUBLIC HEARINGS: 2

10.a. Amended Code per new State Law on Home Businesses (Ord 2021-10)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REPEALING SECTION 1-5.25 IN ARTICLE V OF THE LAND DEVELOPMENT CODE REGARDING HOME OCCUPATIONS; AMENDING ARTICLE II OF CHAPTER 14 BY ADDING A NEW SECTION 14.40.2 RELATING TO HOME BASED BUSINESSES; AMENDING SECTION 14-46 BY ADDING HOME BASED BUSINESSES TO THE BUSINESS TAX RECEIPT FEE SCHEDULE; AMENDING SECTION 14-45 REGARDING FEES FOR BUSINESSES NOT SPECIFICALLY INCLUDED IN THE FEE SCHEDULE; PROVIDING FOR REPEAL; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.a.

Ord read by title only.

Atty Bohne referenced House Bill 403 which severely restricted our rights to ask regulate this subject.

PH opened. None. PH closed.

Discussion:

MOTION: CM Vail / CM Acquaviva to Adopt Ord 2021-10.

Discussion: CM White asked how these rules will be enforced? Who counts traffic trips to residential houses? Atty states that comes directly from the State Code. CM Acquaviva stated that resident self-regulate that. If there are excessive trips to a residence, residents will call and complain. CM Scardino referenced report of high activity in Cocoa and it was resolved by the BCSO.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

10.b. Approve Amended Code related to Open Burning (Ord 2021-11)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE III SECTION 8-72 DEFINITIONS; AMENDING SECTION 8-73 REGARDING REQUIRED PERMITS; PROVIDING FOR REPEAL, SEVERABILITY AND CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 10.b.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Acquaviva /CM Vail to Adopt Ord 2021-11.

Discussion: no additional comments.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 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: 2

12.a. Amend Code to Provide for Recreational Vehicle Parks (Ord 2021-09)

ZONING DISTRICT; AMENDING SECTION 1-3.3, SIZE AND DIMENSION CRITERIA, SUBSECTION "A", AND BY CREATING A NEW SUBSECTION "G"; PROVIDING FOR AN APPLICATION AND OPERATIONAL PROCEDURES FOR RECREATIONAL VEHICLE PARKS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 12.a.

Ord read by title only.

ITM Morrell gave an overview of the history of the project. There is new language included from the Attorney from the last time you saw this. The Town had no code for this, and a site plan was requested. This corresponds with the State code and provides the basic framework for RVPs. Applicants can always seek relief from the items. ITM Morrell then discussed the past PZ meetings that discussed this topic. Per attorney, include this in the R-MH zoning district. Item "G" there was a request to include different names for RVs. There was discussion of Public vs Private utilities. We wouldn't need an easement if its private. Public will require an easement, and we wanted to ensure access to them. Minimum size of 5 acres. Maximum density of 15 units per acre. Discussed the fence line, and noted if it isn't in the code, we can't enforce it. Discussed the size dimensions of back in parking vs drive through. Town already has a light restriction which will apply. You may never see this code, but at least you have it. CM Acquaviva asked what protections are in place for keeping waste out of the lagoon. ITM Morrell states the DEP and EPA will have their say. CM Vail states we need the correct land use and zoning, and this should provide that. Mayor Reilly stated ITM Morrell acknowledged the questions posed by himself, staff, and the PZ Board.

Liz Ritter – PZ Vice Chair – Begins by stating she is representing the Planning and Zoning Board. Also states that due to State Statute, if her business was destroyed, she could rebuild it as originally designed, therefore there is no conflict of interest in her position. After discussion with Mayor and Attorney about the lack of a motion from PZ directing her to address Council, Mrs. Ritter changed her position to just a resident. Gave out a handout (Attached). She discussed the state statues relating to RVPs. Section 5 includes the maintenance of vehicles, which she believes should not be included. On Page 42, principal uses, there should be additional definitions. Page 43/44 Section D, buffer strips, 3-2 vote from PZ to remove the necessity of a 6-foot fence. Buffering is already included in Town Code. G Design, minimum size. We shouldn't

differentiate length and width, only total sq ft. General Council Consensus agrees. Liz says the same for both back in and pull through. CM Scardino asks what provisions are included to restrict storage? ITM Morrell states that is addressed in a separate part of the code. Page 44 Section h) Provisions of service in RVP mandates the inclusion of water and sewage. That is already covered by state statutes, so why have we included it? ITM Morrell states including this in the Ordinance will help staff create a checklist for future potential RVP development.

Atty recaps, Mrs. Ritter is requesting changes to 5g on page 41, section 1 on page 42, Buffer zone (Include waiver), Page 43/44 item G section 1 Size of the spaces (Remove dimensions) and page 44 item H sections 2 & 3 water/sewer provisions.

MOTION: CM White / CM Vail to approve first reading of Ord 2021-09 subject to staff to include comments made tonight.

Discussion: Atty explained why he is suggesting it be placed in the R-MH. We can not update our comp plan until we pass the property owner rights ordinance. ITM Morrell states that is one of the 95 new laws passed by the State Legislation this year, and we must adapt to it.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

**12.b. Amend Chapter 13 of Code regarding tracking Road Paybacks
Ord 2021- 13)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, SECTION 13-47 PROVIDING FOR A ROAD REIMBURSEMENT RESOLUTION TO RECORD ROAD PAYBACKS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.b.

Ord read by title only.

Atty states this is housekeeping. This allows us to record the payback with the county, and a lien search will show it.

MOTION: CM Vail / CM White to approve first reading of Ord 2021-13.

Discussion: CM White asked if we have encountered this issue? ITM Morrell states yes, someone purchased land that was included in a road payback and learned about it after the purchase. CM Vail asks when is this collected, upon sale or pulling a building permit? Atty states that will be resolved in closing of each purchase.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

MISCELLANEOUS: 2

12.c. Set date for Executive Session to discuss FD Union Negotiations 8/10 or 8/17

Exhibit: Agenda Report No. 12.c.

Discussion: Introduction by ITM Morrell. All agree evening, and CM White suggests the 10th. Mayor suggests 7:30 PM.

MOTION: CM Vail /CM Acquaviva to set date for 8/10/2021 for executive meeting.

VOTE: All Ayes.

12.d. Solid Waste Bid Review Committee Members

Exhibit: Agenda Report No. 12.d.

Discussion: Introduction by ITM Lisa. The goal is to have a primary and secondary member from each district.

MOTION: CM White / CM Acquaviva to direct staff to contact the first two people on the list for each District and see if they are interested.

VOTE: All Ayes.

Chair released Attorney at this time.

13. DISCUSSION/POSSIBLE ACTION: 1

13.a. Amend LDC Article XVI regarding Road Maintenance (Ord 2021-12)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XVI SUBDIVISIONS; AMENDING SECTION 1 -16.4 PERTAINING TO ROAD DEDICATION AND REQUIRED LANGUAGE IN SUBDIVISION COMMUNITY ASSOCIATION RESTRICTIVE COVENANTS REGARDING MAINTENANCE OF ROADS, STREETS AND RIGHT OF WAYS; AMENDING SECTION 1-18.7 PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 13.a.

Discussion: Introduction by ITM Morrell – This amends Article XVI in the LDC so it must go before P&Z Board before Council can act. This will eliminate the requirement to dedicate improved roads to the Town; they can remain the responsibility of the developer and/or HOA. In the past, the Town has accepted the responsibility of road maintenance in HOAs. This will keep the responsibility on the developer and/or residents.

MOTION: CM Acquavia / CM Vail to direct this ordinance be sent to P&Z board for their review and recommendation.

VOTE: All Ayes.

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

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: Gave a spotlight to the upcoming Malabar Community Market.

CM Vail: nothing

CM Rivet: nothing

CM White: Reiterated his support of ITM Morrell.

CM Scardino: nothing

Mayor Reilly: 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 8:55 P.M.

BY: _____ Original Signed
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler

Richard W. Kohler
Deputy Town Clerk/Treasurer

Date Approved: 08/16/2021