

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

SEPTEMBER 14, 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 Vail 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 excused

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

For the record the Fire Chief Mike Foley is also present.

3. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** CM White to remove 4.c. from Consent agenda. No objections. The Union Agreement is moved to 12.j.

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 8/16/2021

4.a. Budget WS Mtg Minutes of 8/16/2021 & 8/30/2021

4.b. Surplus Material for sale or donation

4.c. Union Agreement with Fire Department IAFF (removed and moved to 12.j.)

MOTION: CM Acquaviva / CM Vail to approve. Vote: All Aye.

5. **ATTORNEY REPORT:** Attorney excused.

6. **BCSO REPORT:** none

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: none

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

7.c. P&Z Board: none.

8. STAFF REPORTS:

8.a. Town Manager – ITM Morrell informed Council that the playground was inspected and passed today. It is nicely done. Hunter Lane will be paved this week or next week. The Geotech came back real solid. She has submitted a DEP grant for stormwater projects recommended by SAI. 1.2 mil for first year and 4.5 for the next 3 years. Funded from fed govt. In good position since we had shovel ready. No match. Got SW masterplan final report to review and will bring back to Council and then submit to DEP for close out of revolving loan. ENT trailhead is progressing well. Re: FallFest – do you want to proceed or plan for a soft event or cancel. TPO and T&G will not be having their mobility ride. CM Acquaviva asked if we can combine with the marketplace event. ITM Lisa wants Council direction since many of the cities are cancelling or postponing. Discussed if they should ask Atty. No, it is up to us as a Council. CM Scardino said we will be dealing with Covid in Spring as well so go forward with plans. Outdoors is better than indoors. CM Vail is ok with it. ITM Lisa said she will be talking more about this on the 27th. She has not advertised yet, but we have planned for it. Mayor said we have full Council support.

8.b. Fire Chief: Handed out August report. Went over the details.

8.c. Clerk – There will be an opening on the P&Z Board in November when Mary Hofmeister is sworn in. There has already been an application submitted. There is also interest from another person that has not lived here for one year. To run for Council, you are only required to live in Town

for six months, but to sit on an appointed board, there is a one-year requirement. Is there any interest by Council to reduce that to six months or eliminate it entirely? No direction given.

The legal advertisements required by F.S. for the budget will run in the paper on September 23, 2021. She sent the legal to the DOR TRIM for review and approval before sending to the paper. No problems foreseen.

The Fee Reso (Agenda Item 12.e.) that was originally posted did not include the latest version that included the fee added for residential and commercial fill. They uploaded the corrected resolution online to include the fee info regarding the fill permitting. Website was corrected today but copies were made for each CM for tonight's meeting. The new fees in the Reso correspond to the ordinances up for Council action.

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. None.

10. PUBLIC HEARINGS: 5

10.a. SW Assessment Roll for Collection for FY 2021/2022 (Reso 08-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL FOR FY2021/2022; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.a.

Reso read by title only. Franklin said the final estimate received from the PA office is a little higher at \$129,089.58. The final number is attached to the Resolution.

PH opened. None. PH closed.

MOTION: CM Rivet / CM Vail to Adopt Reso 08-2021. 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. First Reading: Approve Millage Levy for FY 2021/2022 (Ord 2021-17)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.4899 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.b.

Ord read by title only. Franklin said per F.S. 200.065 we are required to state that the millage proposed for the 2021/2022 budget is 2.4899 and represents a ten percent increase over the RBR of 2.2503 which is needed to fund the expenses commencing 10/1/2021.

PH opened. None. PH closed.

MOTION: CM Acquaviva / CM White to Adopt Ord 2021-17. 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.c. First Reading: Approve Budget for FY 2021/2022 (Ord 2021-18)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$3,338,915.00 FOR THE FISCAL PERIOD FROM OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.c.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Acquaviva / CM Rivet to Adopt Ord 2021-18. Discussion: CM White is saying to the audience that the 3.3 mil budget is not the normal budget. It includes about 750K from Federal ARP money and TIFT sources.

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

10.d. 2nd Reading: Amend Chapter 13 to Provide for Road Closures and Vacates (Ord 2021-15)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ADDING A NEW SECTION 13-26 PROVIDING DEFINITIONS AND PROCEDURES FOR TEMPORARY CLOSURE AND/OR VACATION AND ABANDONMENT OF PUBLIC RIGHTS-OF-WAY; DELETING IN FULL SECTION 1-12.8 IN ARTICLE XII; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 10.d.

Ord read by title only. ITM Lisa addressed Council on recent requests. With passage of Ord tonight there will be three letters going out to residents explaining the process for Public Hearing to consider such requests; all the requirements will be communicated to residents. For the Town to open a closed ROW can be done by Council by legislative action.

PH opened. None. PH closed.

MOTION: CM Scardino / CM Vail to Adopt Ord 2021-15.

Discussion: no other discussion.

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

10.e. Amend Comp Plan to Provide Property Rights Element (Ord 2021-16)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02; ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS; REQUESTING EXPEDITED STATE REVIEW; AND PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 10.e.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Rivet / CM White to approve for Transmittal to the State DEO of Ord 2021-16.

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.

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: 4

12.a. Amend Article XVI Related to Required Road Dedication (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, PERTAINING TO PROCEDURE FOR ACCEPTING ROAD DEDICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

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

Ord read by title only.

MOTION: CM Vail / CM Acquaviva to approve first reading of Ord 2021-12.

Discussion: CM Acquaviva asked about the 60/40 plan for existing subdivisions. ITM Lisa said it is not retroactive and would not apply to PUD types. This was reviewed by P&Z on 8/11/2021.

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

12.b. Amend Article XV Related to Tree Protection and restoration (Ord 2021-19)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATED AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTION 1-15.8 AND 9 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

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

Ord read by title only. ITM Lisa said this passed unanimously from P&Z – kind of housekeeping to put the types of clearing and to add a type V, nothing in code to clear. Issuing lots of zero charge type 4 permits. To clear and not take down trees should still require a permit. Give them the permit and inspect the work before and after and sets a fee. CM Rivet asked about dead trees; they are included in Type 4 and is also authorized by State. CM Acquaviva said it is a good thing.

MOTION: CM Scardino / CM White to approve first reading of Ord 2021-19.

Discussion: CM Scardino said increase the fines or enforce the fines we have. Same holds for land fill on weekends-should have more strict enforcement. This is a good start.

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

12.c. Amend Article V Related to Fill and Erosion control (Ord 2021-20)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROLS MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

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

Ord read by title only. ITM Lisa said this goes with 12.d. These all go together. We have had several standards interpretations, - think it is easier to put it in simple language. More than 30 yards or two dump trucks will require a permit. 30 yards is plenty for a garden. Revise the code and make it simple and you are going to need a permit. Make it easy and P&Z also approved unanimously. CM White asked about a time limit. ITM Lisa said this is the first reading, and we can make the change. Outside the calls for road grading – this is the biggest complaint he has heard sitting on Council. A permit is valid for 6 months. CM Scardino would like it written in the language of Code as well.

MOTION: CM White / CM Scardino to approve first reading of Ord 2021-20. Discussion: none.

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

12.d. Amend Article VII Related to Site Plan Regulations (Ord 2021-21)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL

AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 12.d.

Ord read by title only.

MOTION: CM Acquaviva / CM Rivet to approve first reading of Ord 2021-21. Discussion: none

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

RESOLUTIONS: 2

12.e. Amend Fee Resolution (Reso 09-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR AN UPDATED APPLICATION FEE REQUIREMENTS FOR LAND CLEARING AND TREE REMOVAL ACTIVITIES FOR BOTH RESIDENTIAL AND COMMERCIAL PURPOSES; LAND FILL APPLICATION FEES; CLARIFICATION ON MINOR SITE PLAN FEE TO COMPLY WITH ORDINANCE; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 12.e.

Reso read by title only.

MOTION: CM Rivet / CM Acquaviva to approve Reso 09-2021.

Discussion: ITM Lisa said the residential fees stayed low and the commercial – if you want to increase then we would have to do the feasibility study. CM White said just allow them to get the permit and follow the process. CM Scardino wants to increase fines. CM Rivet gave example of process where the Town doesn't collect. ITM Lisa said we are bound by State laws and must have a due process. She suggested changing the Code to add language to say a violator can't pull other permits until fine is paid. CM Scardino asked if we should have an alternate attorney.

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

12.f. Recognize the Florida League of Cities Advocacy Team (Reso 10-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA COMMENDING THE FLORIDA LEAGUE OF CITIES (FLC) AND THE LEGISLATIVE AFFAIRS TEAM FOR THEIR HARD WORK REPRESENTING FLORIDA'S MUNICIPALITIES DURING THE 2021 FLORIDA LEGISLATIVE SESSION

Exhibit:

Agenda Report No. 12.f.

Reso read by title only.

MOTION: CM White / CM Vail to approve Reso 10-2021.

Discussion: Franklin explained the challenges facing cities last legislative period with so many bills, and COVID and remote meetings, etc. they did a fantastic job keeping cities informed of legislation affecting them. ITM Lisa said there are already 78 bills filed before the next session even starts and the Brevard Delegation will be meeting in Viera on Sept 29, 2021, in preparation of the next session.

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

MISCELLANEOUS: 2

12.g. Waste Management (WM) Memorandum of Understanding (MOU) for Interim Service Period from October 2021 March 2022

Exhibit:

Agenda Report No. 12.g.

Discussion: Introduction by ITM Morrell. Two items re: solid waste. WM current contract is ending on 9/30/21. This is short term bridge agreement but does have a price increase in monthly cost and provides a reduction in the quarterly franchise fee to offset part of the cost.

CM Rivet noted the price this is about two times what they are now paying. If the transition to new vendor happens sooner than three months, we can cancel.

MOTION: CM Vail / CM Acquaviva to approve MOU. **VOTE:** All Ayes.

12.h. Solid Waste RFP Bid Recommendation and Authorization to Negotiate

Exhibit: Agenda Report No. 12.h.

Discussion: Introduction by ITM Lisa. She went over the committee of volunteers. Happy to use them again. They came in prepared. Received three responses. No bid from WM. All of this is published on the website. Republic was complete but pricing was not complete but that was not reviewed by committee, so she did not eliminate. Waste Pro was complete on both items. They heard a lot about how it was so expensive about solid waste and yard waste. Really only had one complete submittal and the committee selected the same vendor. She forwarded to TM Matt, and he was pleased and supports this request to award to the recommended vendor of Waste Pro and authorize negotiations, that is why she worded the agenda report as through TM Matt Stinnett.

MOTION: CM Vail / CM Scardino to approve Committee's recommendation and authorize ITM Lisa to negotiate with Waste Pro vendor.

VOTE: All Ayes.

12.i. Amended Florida Communities Trust (FCT) Grant Requirements re: Fern Creek

Exhibit: Agenda Report No. 12.i.

Mayor asked Clerk to introduce. Franklin stated the amended FCT grant to release the Fern Creek property to FDOT also included a requirement to provide specific improvements to the remainder of the FCT property. There was some misunderstanding – we originally thought the 40K from DEP was for the land and minor improvements we had done at Fern Creek. But we must use the money to build specific things on the remainder of the FCT property so either the Cameron Preserve, Eschenberg Sanctuary, or the Disc Golf Sanctuary. I provided a timeline of the actions by Staff. This amendment was not brought before Council last year for explanation or approval before signing. We felt it was important to bring to Council's attention as this means the 40,445, we received and put into unrestricted fund balance for Park and Trail use must now be allocated to a restricted fund balance for specific improvements on the FCT property. Since none of these improvements were brought before Council there may be some need for future action by Council to amend the Grant Agreement to accommodate improvements that are more in line with the Town's ability to maintain. There is no Council action requested at this time.

12.j. Union Agreement with Fire Department IAFF

CM White said he was concerned about Section 35 that seems to require the Town to guarantee the union workers employment. ITM Lisa explained that if we gave up FD then the new vendor would have to employ the union members. Same are when PB took over parks from county and they had to keep employed employees. That section is not part of the contract that was up for negotiation; that was in the original. CM Vail said that ITM Lisa's explanation is how he recalls the original discussion. CM White said the FD is 750K. The first year's new wages are included in the budget. Brief discussion on rates charged by County in G-V. Mayor said they pay 4.5 times what we pay for fire assessment. CM White had looked at it 4 years ago. He is ok with the explanation. He does have concerns with the overall cost of FD. CM Acquaviva said the union is new to her since she served up until 2016. She was here when it was a volunteer FD and Chief got stipend. Talking in general they must ensure residents' safety. She doesn't see it as a comparison for either fire protection or road improvements. CM Vail said the union has been a positive improvement and provides much more training. CM Acquaviva said we need the stability since volunteers are scarce.

Motion: CM Vail / CM Scardino to approve to union agreement. **Vote:** All Ayes.

13. DISCUSSION/POSSIBLE ACTION: 0

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: nothing

CM Scardino: Still interested in getting an alternate attorney for attending these meetings and the P&Z meetings. CM Acquaviva said Karl does a good job. Mayor said there is no value added to have atty at P&Z. ITM Lisa said she would like Council to rather give direction to Atty Bohne to provide an alternate or perhaps a list of potential alternates. Mayor asked if they need a motion. No, Staff will send an email to Atty Karl Bohne.

Mayor Reilly: nothing

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 9:50 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 09/27/2021