

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
JANUARY 03, 2022, 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 7:00 pm. CM Rivet led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL
	DAVID SCARDINO
	MARY HOFMEISTER
TOWN MANAGER:	MATT STINNETT
SPECIAL PROJECTS MANAGER	LISA MORRELL
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN
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 12/06/2021

4.b. Cancel RTCM 01/17/2022

4.c. Set American Rescue Plan Workshop for 01/24/2022 @ 7:00pm

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

5. ATTORNEY REPORT: None

6. BCSO REPORT: None

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Committee Chair Thompson – the T&G would like to continue work on the ENT (Eagle Nest Trailhead) on Marie Street but this EEL proposed project has taken a priority and he requests to speak after the presentation by Mike Knight.

7.b. Park & Recreation Board: Chair Eric Bienvenu – agenda report summarizes the request for porta-potty.

7.c. P&Z Board: Chair Wayne Abare – not present

8. STAFF REPORTS:

8.a. Town Manager – Matt Stinnett is back. He gave an update on the next TAC being in February and they are working on the NPDES permit audit responses. RFP on Town signage is closing on Jan 14, 2022.

8.b. Special Projects Manager – Ms. Morrell, SPM, ARP WS was just approve for 1/24/22 to discuss how to spend the first tranche of 750K – the NEU (non-entitled units) have to wait to receive their money from the State instead of directly from the federal govt because they don't participate in the CDGB (Community Development Grant Block) – we got our money late but have until 2026 to expend the funds. The 750K is only payment 1 of 2. Malabar is getting a total of 1.5 million for the ARP funding so will get the second tranche in 2022 and have until 2026 to expend the funds.

She also reported that the Road workshop is also coming up in January/Feb to discuss the possibility of modifying the road improvement requirement, such as width requirements.

8.c. Fire Dept: Lt. Hooker stated a written report was submitted separately to Council and the public for December but he was present to give an summary overview. The annual ISO audit is going on now and is their top priority.

8.d. PW Director – Provided written report.

8.e. Clerk – Happy New Year. The FDEO notified us on 12/21/2021 that our Comp Plan Amendment to provide a Private Property Rights Element to the Malabar Comprehensive Plan was reviewed by the State and other State agencies without adverse comments and will be legally advertised for the final public hearing and adoption at the Feb 7, 2022 RTCM.

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: 0

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING; PRESENTATIONS; RECOMMENDATIONS FROM BOARDS: 2

11.a. Presentation by Mike Knight Project Mgr of EEL Program re: Restoration Project at Malabar Scrub Sanctuary

Exhibit:

Agenda Report 11.a.

Environmentally Endangered Lands (EELs) Program Manager Mike Knight went over the history on acquisition and management plans. Florida Forever program and managed under lease 4263. He then gave a history of the ballot language voted on in 1990 and 2004. Went to voters in 1989 and failed because there was no science backing plan. Language was in place prior to the purchase. Can't burn during summer. That is where the roller chopping comes in. Fire lines are exempt from silt fencing. Old growth forests are not located here. Older trees are left in place, and flat topped pine trees are always left in place. Could be larger trees that are younger. Scrub habitats don't have many treed areas. Concern that we are not considering other species is incorrect. The EELs program must manage it for the scrub habitat. Went over some of the concerns. There is a mixture of species in that area. Comes back to the proximity of the scrub.

CM Rivet asked about the methodology they are using to take down the trees.

CM Vail stated that he has used that area since the late 1970's and he does not see much difference in both Jordan and Malabar Scrub. When Eels bought it there was 10 families. Now there are 4 or 5.

Mr. Knight explained how they did a mosaic pattern when roller chopping at Jordan Scrub. They did not do 750 acres as stated.

Mr. Knight then explained what is pushing all of this. Population Viability Assessment (PVA) study done in 2020. That is why there is a push – there is enough (30 yrs.) data in Florida to do the study. 3 groupings of scrub jays. Nasa, central Brevard and south Brevard are covered in the report. The south area is the only area that is salvageable. Only hope they have to keep them from becoming locally extinct is by doing this work in these areas.

CM Scardino asked if he knows if they are threatened or endangered. Mr. Knight said he believes they are threatened. CM Scardino asked if he knew the difference between those categories. Mr. Evan Hall, 1373 Blanche St. came forward and explained the difference and stated they are both have federal protections.

Mr. Knight then went over the timbering aspect of the project. Trying to target the pines per acre but they leave extra to account for other threats like stress or beetle infestation.

CM Vail asked for clarification - that the pine growth has caused the scrub jay population to decline. Mr. Knight said yes. CM Vail asked if he has studied any aerial photography from 40 years ago. Mr. Knight said since the "natural fires" have subsided in the 1940's the pine trees have grown and become resistant to dying in a planned fire.

There is an eagle nest in the area, and they are held to the same regulations and won't do any work in the area. Also following the USFW rules for managing jay territories. Trying to confirm the 6th family and 2 additional potential territories on Malabar scrub west. Also potential for two families in Cameron Preserve.

Mr. Knight showed some of the existing trails and showed how the trees would be mowed down to 4 and 5 feet in height. Too many cabbage palms. CM Rivet said that it is most attractive part of the trail system. Mr. Knight reiterates that the only thing he is saying is primary concern is preserving the jays. Primary focus should be jays not public use. CM Rivet is saying that the public did not vote with that knowledge.

CM Vail said the dense shaded trail on left of screen, and asked Mr. Knight how much of the trails still have shade coverage. Mr. Knight responded very little, probably less than 1%. By taking that down how much does that small parcel benefit – the one scientist says the population will increase.

CM Rivet said the objective has to be the entire use – not just the jays. 160 acre site in Rockledge. Private property is adjacent to that site and providing 1000' buffer is not possible. Mr. Hann explained how these rules weren't followed at that location. CM Acquaviva said we are trying to keep the trees here in this rural community. It is a bit of an arrogant thing to say that we are just bikers who want shade. The trees are very important.

Mr. Knight said if you don't manage habitat with fire, it will become overgrown. Some of those trees are not "natural" in those area.

Mr. Knight went over some of the areas that would keep the trees. They have made effort to keep some of those areas. They have a management plan which was revised in 2006.

They have always routinely removed trees before controlled fires. CM Rivet said the fact that we issued a permit shows we are willing to work with you. Mr. Knight hopes we can address both concerns.

CM Scardino said they are having a difference of opinion

Mr. Knight states that the project won't go forward until the permitting issue is resolved. Went over some of the codes other municipalities.

CM Rivet said he is ignoring the objectives – what are the priorities. The jays are his priority. The county is saying that they don't care about our objectives.

CM Scardino states a balance needs to be struck.

CM Hofmeister would like to see more communication. Close the gap between the town city and state.

Mayor said he only talked about 1% of the land is oak hammock. We moved here just to have this rural lifestyle.

11.b. Recommendation from Parks & Recreation Board: Town provide an additional Porta-Potty at Malabar Community Park (MCP)

Exhibit: Agenda Report 11.b.

Park Board Chair Eric Bienvenu stated request.

MOTION: CM Vail / CM Scardino to approve. **Vote:** All Ayes.

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Ordinance to codify Solid Waste Franchise Agreement (Ord 2022-01)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA REPEALING AND REPLACING ORDINANCE 2014-12 AND ALL OTHER SOLID WASTE AND RECYCLABLE MATERIAL FRANCHISE ORDINANCES AND AGREEMENTS IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES REPLACING SUCH REPEALED FRANCHISE ORDINANCES AND AGREEMENTS WITH ORDINANCE 2022-01 GRANTING AN EXCLUSIVE SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE PRO OF FLORIDA, INCORPORATED AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A HERETO; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report 12.a.

MOTION: CM Acquaviva / CM Hofmeister to approve 1st Reading of Ord 2022-01.

Discussion: None

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

RESOLUTIONS: 1

12.b. Adopt Performance Measures per NFIP (Reso 01-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE IMPLEMENTATION OF PERFORMANCE MEASURES FOR COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR FUTURE UPDATES AS NECESSARY TO COMPLY WITH THE OBJECTIVES OF THE NFIP AND CRS PROGRAMS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 12.b.

MOTION: CM Vail / CM Rivet to Adopt Reso 01-2022.

Discussion: Clerk said it is housekeeping to update the Code Book

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

MISCELLANEOUS: 0

Chair dismissed Attorney.

13. DISCUSSION / POSSIBLE ACTION: 0

14. PUBLIC COMMENTS: General Items (Speaker Card Required)

Drew Thompson, as T&G Committee consensus -

People that are paying for it need to have input. Need balance. Category 1 for passive recreation. Find a better way of doing this. (Presentation attached)

Sue Hann 1365 Corey Rd – thanked Council for having this discussion.

There are a lot of other topics that should be part of the science-based discussion. She asked Malabar Town Council to request the meeting on Jan 18 at EELs be held here in Malabar. The FS includes passive recreation as part of “conservation”

Confirmation Bias – lots of technical people here and experts we can search out. There is a lot of work we can do together. Why cut down the forest for a program that is set to sunset in 2024.

The Town should be an active partner at the table when these decisions are discussed and voted on. Need to make sure they are listening.

Financial plan should be requested. She then thanks Council for their time and consideration. (Presentation Attached)

Murray Hann – on T&G Committee. We want to discuss this at their next meeting. Develop compromise plan. Then bring it back to Town Council.

Alan Wollard – Country Cove Community HOA President – The land surrounding his community has changed dramatically since the EELs program has been managing the land. He represents 49 homeowners, 10 of whom have property adjacent to the Sanctuary. As the President of the HOA, potential buyers often call him before purchasing, and the Sanctuary is a huge selling point. He fears that it will be a detriment after the restoration process.

Mark Britt - 1617 Country Cove Circle – His property backs up to sanctuary. He was shocked when he heard about this project, and thanks Council for acting.

Jason Strouble, Vice-President of Brevard Mountain Bike Association – He wants to work with the Town to save the woods. The mountain bikers across the USA have built and expanded many trail systems. Mr. Knight referred to these lands are irreplaceable yet the proposed plan will take down all the trees. States he will save the majority of his comments for County Commission. Why was the Cruikshank sanctuary cleared and the trees removed if your PVA shows that those jays will be extinct soon?

Mike King, lives in Country Cove, - States his property borders sanctuary. He is happy that Council supports including more public outreach. EELs value science over compromise. Policy does allow for compromise. Thanks council for their position.

SPM Morrell asks direction from TC to staff. Special mtg before the WS on the 24th at 6:30 PM.

MOTION: CM Scradino / CM Hofmeister to amend code to regard conservation. This is INS in zoning. **Vote All aye.**

MOTION: CM Rivet / CM Vail to make special mtg at 6:30 on the 24th. Vote All Ayes

CM Vail asked if EEL Program allows mitigation projects within the Malabar Scrub for development. Mr. Knight said, yes, half of the Malabar Scrub and West to do development. CM Acquaviva said compromise have been made in the past when Country Cove Circle was developed due to Scrub Jays.

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: Shared that she is proud of the Town’s people for their expressing the importance in why we live here.

CM Vail: none

CM Rivet: Would like to see no “restoration” permits issued by the Town until we have some mutually agreed compromise.

CM Hofmeister: Thanked Murray and Sue Hann and Drew for their presentations. She runs within the Sanctuaries and hopes we can come to a compromise with the County and EEL Program – we have to do it together.

CM Scardino: Drove by Twin Lakes SD. It appears they have stopped watering the trees since their bond was returned. The trees appear to be dying.

Mayor Reilly: none

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 10:00 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 02/07/2022