

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
FEBRUARY 07, 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 7:30 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

MARY HOFMEISTER, excused

TOWN MANAGER:

MATT STINNETT

SPECIAL PROJECTS MANAGER

LISA MORRELL

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

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

4. CONSENT AGENDA:

4.a. RTCM Minutes of 1/03/22, 1/24/22 Spec Mtg, 1/24/22 WS ARP, 2/2/22 Spec Mtg

4.b. Cancel RTCM of 2/21/2022

4.c. Approve Standard Allowance for Coronavirus State & Local Fiscal Recovery Funds (SLFRF)

MOTION: CM Vail / CM Scardino to approve Consent Agenda. Vote: 4 Ayes.

5. ATTORNEY REPORT: nothing

6. BCSO: none

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Chair Drew Thompson – asked Murray Hann to join him. Offered to go over hard copy of presentation from the Special Meeting that was handed out but not reviewed at that mtg of 1/24/2022.

7.b. Park & Recreation Board: Chair Eric Bienvenu – not present

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

8. STAFF REPORTS:

8.a. Town Manager Matt Stinnett – FLC Attorney representing the Town in the Painted Acres lawsuit is working on a response to their proposal.

8.b. Special Projects Manager Lisa Morrell

- Sign RFP has closed and will be on 3/7 agenda for award
- Staff report for P&Z re: tree clearing and conservation.
- Pre-pre mtg request under new RVP Ord
- Rivet Ln EDC Eng. Design will be on next agenda. She introduced the Eng. David Baggett, and he was able to construct it, but it will be very tight. Due to swales, etc., there is an alternate and you may want to adopt a Reso to augment road standards to make the drainage in the center. 100% Eng. plans not the cost estimate yet so it is not ready to bring forward. Intro Eng. David Baggett and showed the existing ROW swales, utilities. Went over the extra steps necessary if following the existing road specs; relocating mailboxes, removing DW and relocating culverts. This will be on private property and would require about nine months of activity. May want to consider alternative plan that provides centerline drainage. Any opposition to providing the

alternative plan? No opposition. She will bring Eng. estimate using the alternative plan as well as the estimated cost at an upcoming meeting. Eng. David Bagget of EDC offered additional input on the alternative plan to put drainage in center of ROW.

- MCCi Laserfiche scanning contract will be on 3/7 agenda
- Digital sign at park asking for piggyback or will go out for RFP
- Per the SLFRF (State & Local Fiscal recovery Funds) – once Council takes action tonight on approving the standard deduction, SPM will start on the RFP for upgrading the MCP restrooms to make them as touchless as possible
- CE Orders and Cases are still being addressed on Malabar Road (Rico & Grindley)

8.c. Fire Chief – no written report.

8.d. PW Director (written)

8.e. Clerk - nothing

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.

Jim Cannon – new rep with SJRWMD for this area. Deadline is 2/18/22 for current grant application. He started in Dec and his area includes all Indian River, Brevard, and Volusia Counties and parts of two other counties.

10. PUBLIC HEARINGS: 2

10.a. (Ord 2021-16) Final Adoption of Comprehensive Plan Amendment 2021-02ESR within Ordinance 2021-16 to add a Property Rights Element to Malabar Comp Plan
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02 BY ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS TO THE COMPREHENSIVE PLAN; RECEIVING NOTIFICATION OF COMPLIANCE FROM THE STATE; AND PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 10.a.

Ord read by title only.

Opened PH: none Closed PH:

Chair asked staff – as presented in Agenda Report.

MOTION: CM Vail / CM Acquaviva to adopt Ord 2021-16.

Discussion: Clerk said it was long process, but this completes it.

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

10.b. (Ord 2022-01) Final Adoption of Solid Waste Franchise for Codification
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 No. 10.b.

Ord read by title only.

Opened PH: none Closed PH:
Chair asked staff – as presented in Agenda Report.

MOTION: CM Rivet / CM Scardino to adopt Ord 2022-01.

Discussion: CM Rivet stated he has experienced no missed pick-ups – he called this morning for a special pick-up and an electronic pick-up, and both were set for this Friday. Very pleased. CM Vail is also very happy. CM Scardino wishes they had different colors for cans. Mayor thanked Lisa for the smooth transition. CM Acquaviva had some neighborhood complaints, but it is still the same number of trucks.

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

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING: 2

11.a. Request for Special Exception to Construct eight-foot (8') fence on south property line by Malabar Resident Jennifer Doyle

Exhibit: Agenda Report No. 11.a.

Chair asked Clerk to introduce: Franklin said the applicant requested this special consideration due to issues with neighbor as explained in her agenda request. Clerk explained that the applicant asked that she be given special consideration to construct an 8" high privacy fence on a portion of her south property line to provide privacy from the adjacent property. Her agenda report summarized her reasons and her appeal for staff to present.

MOTION: CM Rivet / no second to approve request as presented for that portion of fence. Motion failed.

MOTION: CM Rivet / CM Vail to deny request.

Discussion: CM Acquaviva stated the other neighbors should have to be noticed if Council is considering. CM Scardino is against changing the allowed height. Attorney doesn't think this is the right process. CM Vail said that we have codes for a reason. Vegetative buffers work great – CM Scardino said there is a bamboo that doesn't spread.

Vote: Ayes, 4; CM Hofmeister excused.

11.b. Agenda Request to Accept Walker Lane south of Atz Road by Linda Walker

Exhibit: Agenda Report No. 11.b.

Chair asked Applicant or Agent to present.

Collette McNamara is friend and presented request on behalf of Ms. Linda Walker. They both moved here in 1970s. Went thorough the history of Malabar Road maintenance in the early days of 1970s-1980s – one man ran the grader and filled in the potholes.

Walker Lane is now full of gargantuan holes that could be described as small ponds. The rented places on the west side use this roadway dozens of times per day. There are large piles of debris. There are large piles of dirt in front of D&D Ranch. The same owners own the property to the west. The Ranch uses their own material and equipment to carefully fill potholes over there for the cattle ranch access. Why hasn't the Ranch done that on the south side of Atz Road for their tenants? Asked Council to provide minimum services to existing road for public safety.

MOTION: CM Rivet / CM Scardino to maintain Walker Ln to minimum safety standards for 725'.

Vote: 4 Ayes.

12. ACTION ITEMS: ORDINANCES for FIRST READING: 0; RESOLUTIONS: 1; MISC: 0

12.a. Resolution 02-2022 opposing House Bill 531

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA OPPOSING HOUSE BILL 531 WHICH WOULD REQUIRE ALL LOCAL ELECTIONS TO DESIGNATE THE POLITICAL PARTY EACH CANDIDATE BELONGS TO IN THEIR SIGNAGE AND ON THE BALLOT; BILL WOULD ALSO RESTRICT VOTERS TO ONLY VOTE FOR THE ONE SCHOOL BOARD CANDIDATE THAT REPRESENTS THEIR DISTRICT AND NO LONGER ALLOW VOTERS TO VOTE FOR ALL DISTRICT CANDIDATES FOR SCHOOL BOARD; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION TO THE BREVARD LEGISLATIVE DELEGATION, THE FLORIDA LEAGUE OF CITIES, THE PRESIDENT OF THE SENATE, SPEAKER OF THE HOUSE AND THE GOVERNOR; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 12.a.

Reso read by title only.

Chair asked Clerk to introduce. Franklin said there are many bills going through the 2022 Legislative Session that again strive to remove local municipality's ability to govern their communities at the local level. HB 531 represents a proposal first introduced in 2019 that failed. It essentially would require candidates for local office to declare their political party to serve their community; and by doing so would only encourage outside county, state and federal input, pressure, influence, and monetary support. Both major political parties admitted to this in 2019. Since 1947 Florida law has provided for an at-large voting system.

This bill also intends to restrict voters' ability to elect all representatives on the school board that set policy for the education of our children by only allowing voters to vote for the one candidate from their district. Again, since 1947 Florida law has provided for an at-large Voting system wherein each voter in a district is entitled to vote for all school board members elected to the district member residence areas. School board members make employment and budgetary decisions for the schools within their county, establish long-term vision for the district, and provide oversight on some of the district's higher-level employees. Florida contains over 4,000 schools serving over 2.5 million students, so each board plays a role in thousands of students' lives.

MOTION: CM Vail / CM Scardino to adopt Reso 02-2022.

Discussion: CM Rivet said district voting has created more problems here in Malabar.

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

12.b. T&G Request for Council Endorsement of their proposed amendments to the Malabar Scrub Sanctuary Restoration Plan for submittal at Brevard County Commission meeting of February 8, 2022

Public:

Murray Hann – Said he asked the SMC what is the hurry if they must stop by March 1?

Drew Thompson – This is the most serious issue this Town has faced. FS 1264 provides process for dispute resolution. If the County is claiming a critical situation exists that exempts them from this process without even discussing at staff level it is a demonstration that the County govt is not listening to us. Need to be on record for the reasons he identified in the presentation that a workable solution can be reached with dispute resolution.

TM Matt said he was not planning to go to the meeting but would if directed. He has drafted and forwarded a letter to the Cty Mgr. and copied all of County Commission. CM Scardino and Vail want him to attend the County Commission meeting to again present Council's request.

Council discussed the presentation given by Drew. They understand the need for written document as directed by Council at the Jan 24 mtg. and completely support TM Matt written communication to County. But that needs to be reiterated by Council formally endorsing the latest plan revision presented by Malabar T&GC at the Special meeting on 2/2/2022 and directing TM to attend BCBOCC mtg on 2/8 and requesting Commission to direct County staff to work with Malabar staff to reach an agreeable mediation and presenting said resolution to their respective councils/commissions.

MOTION: CM Scardino / CM Vail to endorse the plan as depicted in the revised presentation; Direct TM Matt to attend the County Commission and ask the County Commission to table the proposed Resolution.

Discussion: CM Acquaviva asked TM if he would attend. Yes. CM Scardino said his attendance and the endorsement of this plan by Town Council will speak volumes for the residents.

VOTE: 4 Ayes, CM Hofmeister excused.

Chair dismissed Attorney.

5. DISCUSSION / POSSIBLE ACTION: 0

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

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: no

CM Vail: no

CM Rivet: no

CM Hofmeister: excused

CM Scardino: no

Mayor Reilly: no

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 9:00 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 03/07/2022