

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
MARCH 21, 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 Scardino led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA, excused

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

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: TM to add request a letter of support from FDOT for a grant.

4. CONSENT AGENDA:

4.a. RTCM Minutes of 3/07/22

4.b. Approve Purchase of Replacement of Public Safety Radios Utilizing Piggyback of Brevard County Contract, B-7-21-81, 800mHz Radio System Maintenance, awarded to Communications International, Inc. (CII)

4.c. Letter of Support added by TM

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

ATTORNEY REPORT: done under Staff Reports this meeting

5. STAFF REPORTS:

5.a. Town Manager –

John in PW is retiring, and his last workday was today. He has worked and served the Town for many years. They have posted his position opening today.

5.b. Special Projects Manager –

ARPA funds – approval of radios under consent agenda will be paid with these federal funds as an approved expense. The other items approved at last meeting: scanning of records by MCCI – PO has been issued and contract signed; Electronic sign in front of FD: PO issued, site plan and BP is being processed and renovation/upgrades of restrooms at MCP are under review now.

5.c. Clerk – Have prepared the MSTU Referendum ordinance for the 2nd meeting in April. We do every two years. The qualifying period for this year's election is Aug 2 – 16. We have received our first request for the qualifying period. In 2014 both the MSTU question and the proposed 3-year terms for Council was drafted in the same ord.

5.d. Attorney – update on Painted Acres litigation. Atty explained he had briefed Council on the FLC use of Dean, Ringers, Morgan & Lawton in this litigation. The timeframe of the League covering this has expired and he recommends the Council approve continuing with this firm and the engagement agreement.

MOTION: CM Vail / CM Scardino to direct TM to sign contract. **Vote:** All Ayes

6. 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.**7. PUBLIC HEARINGS: 2****7.a. 2nd Reading of Ordinance 2022-02**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL CONSTRUCTION CODES DEALING WITH ABATEMENT OF DANGEROUS BUILDINGS AS PROVIDED IN THE FLORIDA BUILDING CODE 1997 EDITION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:**Agenda Report No. 7.a.**

Ord read by title only. Opened PH: none Closed PH:

Chair asked staff – as presented in Agenda Report.

MOTION: CM Rivet / CM Hofmeister to adopt Ord 2022-02.

Discussion:

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

7.b. Public Hearing – Request to Vacate 10' Alley Separating Parcels and Serving No Public Purpose (Reso 05-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE VACATE OF THE TEN (10) FOOT WIDE ALLEY THAT RUNS APPROXIMATELY 138 FEET BETWEEN PARCEL 29-38-06-02-A-1 AND PARCEL 29-38-06-02-A-6; AUTHORIZING THE TOWN CLERK TO RUN A LEGAL ADVERTISEMENT OF THIS ADOPTED RESOLUTION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:**Agenda Report No. 7.b.**

Resolution/Request read by title only.

Chair called for an applicant to podium. Tony Childers owns the parcels that are split by this alley. Also, in order to build his accessory structure/garage he needs four feet of this and will have this if the alley is vacated. It does not impact any other property owners except him and the co-applicant. Each will gain five feet and in addition his two parcels will be joined.

Opened PH: none. Closed PH:

Chair asked staff – as presented in Agenda Report – vacating this alley will benefit these two property owners only and have no adverse impacts to the public.

MOTION: CM Vail / CM Hofmeister to approve Reso 05-2022 vacating this 10' alley and directing Clerk to record the adopted resolution and forward to the Property Appraiser's office.

Discussion: none

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

8. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING: 2**8.a. Park and Recreation Board Recommendation to Seek Bids for Pavilions****Exhibit:****Agenda Report No. 8.a.**

Chair asked Clerk. Clerk said it is as stated in Agenda Report, but Board Secretary Richard Kohler is present and can give summary. Deputy Clerk Kohler summarized the Park Board request/recommendation to request approval to bid for similar pavilions on FCT (Florida Community Trust) parcels utilizing some of the Federal ARP funds at Cameron Preserve and part of the FDEP money from the transfer of Fern Creek Park to FDOT for intersection improvements at install a pavilion at the Eschenberg ((park (preserve/sanctuary)).

MOTION: CM Vail / CM Hofmeister to approve recommendation and direct TM to seek bids for two pavilions. **Vote:** All Ayes.

8.b. Offer from Space Coast Flight to Pay for an additional Porta-potty in Malabar Community Park near Soccer Field during remainder of season

Exhibit: Agenda Report No. 8.b.

Chair asked if applicant was present. Did Staff want to speak to this. Clerk said this item had a follow-up receipt of a written commitment to pay for additional porta-potty during their season. Staff is asking if the increase of public use at MCP warrants the Town to provide this additional porta-potty in the future. This request by this user is only for their season which ends in May. Council may want to consider this improvement year-round in the future.

MOTION: CM Vail / CM Scardino to approve offer and authorize Space Coast Flight to pay for an additional porta-potty during their season of play ending in May of 2022. **Vote:** All Ayes.

8.c. Request for Waiver of Accumulated Code Enforcement Fines/Fees and Release of Lien for 2415 Malabar Rd

Exhibit: Agenda Report No. 8.c.

Chair asked TM to present. TM said the new buyer of this property had asked for this. His item requires two separate considerations for two separate locations.

Discussion: 2415 Malabar Road

CM Rivet asked how this was sold without satisfying the lien. Cash sale. CM Rivet so the person that did the violation got off. Yes. CM Vail said definitely have to collect the administrative fees. The fines total \$7,500.00 on this. Council discussed many various pros and cons on how code enforcement liens can be circumvented.

MOTION: CM Vail / CM Rivet to approve removing the lien, reducing the \$7,500.00 in fines by 75% and requiring payment of the administrative fees of \$ 465.81 to bring case involving 2415 Malabar Road. **Vote** 4 to 0

Discussion: CM Scardino said he is not in favor of elimination of fines. Atty Bohne asked if he would be in favor of reduction. He could support that. CM Rivet said the new owner has remedied the situation. CM Rivet could support reduction.

Vote: All Ayes.

Discussion: 2425 Malabar Road – violation of placement of Conex boxes, junk cars, junk in general and the State's Sunbiz website has a business address listed here.

CM Scardino said we are not applying code to the violators. If they can sell like this, then they suffer no adverse effects from the violations.

MOTION: CM Vail / CM Scardino to approve removal of lien, reduction of fines by 75%, contingent to the following: person/applicant must buy the property within 90 days of this date; cleanup of property within 60 days following closing and payment of administrative fees of \$388.28. Administrative fees will still be due.

Vote: 3 Ayes, 1 Nay (Rivet).

8.d. Malabar Scrub Sanctuary Scrub Habitat Restoration Permit Application Submittal

Exhibit: Agenda Report No. 8.d.

Mayor asked TM to present and give an overview of the process and provide any insight into the compromises he and Mike Knight propose.

TM Stinnett states that what is in front of you is what Mr. Knight is willing to agree to. He is asking for a waiver of the per tree charge and is willing to pay \$5,440 for site plan. This is their submittal. CM Scardino asked if they submitted the permit? TM Stinnett states that they agreed to sign if the Town agrees to their conditions.

1) Sue Hann -Began by thanking Council and Town Staff for their work. This project will change the character of the town in a big way. The last SMC had discussion of the 183 bikers, 118 hikers and – walkers, they estimated that represented 20% of the normal users. That would be 1,000 persons. Lots of users that live in other areas of the County, other counties, and even other states enjoy this area. Consider council intent, submit to T&G for other user input, and put on for action on 4/4 RTCM. Important to take the fences down immediately. Issue the permit for Malabar East only. Not for Malabar West.

Mike Knight proposed no changes to the trails within the Malabar west and this submittal has significant changes to the trails.

Monitoring clause – County to pay for such monitoring. Request a surety bond in case of damage by logging equipment on Malabar Woods Blvd.

2) Murray Hann – two emails sent, and he will summarize. Appreciate TM work on this. Don't approve anything tonight except a path forward. Malabar East is a lot more ready for possible permitting. Malabar should be the one to pick the inspector. Malabar West is a whole different story and agrees it is not ready for consideration. It is pretty good for mountain bikers. People that know the trails would know it is not the best plan for all users. Some of the trails planned to be removed are favorites of hikers, and elderly walkers from the Glenbrook ALF.

Malabar East is the scrub property. Malabar West is not.

The T&GC plan should not have been called a compromise. TM should bring Mike Knight their concerns. The EEL program plan to use their own personnel to do both portions of the sanctuary concurrently – there should have been more public involvement.

Issue Malabar East for permitting. Trail modification is not thought through. We can work together. This is a unique piece of property. He didn't see anything in the proposed permit package on the marking of turtle locations.

3) Jason Stroble: Viera, Vice-Pres of Mountain Bike Assc. The gates and fences have no need to be there. Support the suggestion for Malabar East permitting only.

Malabar West should be vetted through the public notice policy. There are areas that EEL can't meet USFW rules.

4) Drew Thompson– Don't have the area in Malabar West to meet EELs specifications – we have forgotten 2004 bond referendum passed with a 60% to provide 60 mil in taxpayers money to manage. Simple verbiage, open space recreation was part of the wording. The EEL program ended procurement and went into management. Supports two permits also and the Malabar East both with specifics clauses for each. Consider requiring a 15-foot buffer on perimeter become a mandatory requirement. People have come here where Turkey Creek Sanctuary meets the EEL Sanctuary. We are different, 20% of our town is conservation we must stand firm. We need to locate and engage users as part of the interested parties. The Sanctuary is why we are all here. Several HOAs and Palm Bay, along with Town of Malabar Advisory boards and the BMBA should all be involved.

5) Craig Smith, representing himself, lives in G-V. He is on Board for the Mountain Bike Assc. Role works with the land manager when work is done inside

various sanctuaries. Thankful to Matt and Mike. Likes the idea of separating the permits. Threatening species and they include humans, people walk with animals, ride animals, push wheelchairs, joggers, etc.

T&G Committee have gone before SMC meetings and make more and more compromises.

Supports T&G working with EEL on the last final touches before the permit for Malabar East is issued. As a resident of G-V is thankful and hopeful that someday he can enjoy the types of trail experience Malabar offers in his home town.

One of 11 Towns designated Trail Town. Gem of place called Malabar.

6) Mark Britt - agrees with everyone that spoke, one issue that concerns him and HOAs – hasn't heard this discussed is the burn – start with the large burns – what does that mean for the surrounding areas. They are going to be under the gun to complete their work and need assurances that the resident near the smoke won't have long term affects. What can we do to get answer to this? Stay locked in our homes.

Supports having the T&G members meet with EEL and work on this and also require the 15' buffer. Don't understand the big rush.

MOTION: CM Rivet /CM Vail to approve permit for only Malabar East property, waive the per tree fee contingent on immediate removal of gates and fences and a perimeter buffer area and requiring review by T&G before issuance.

Discussion: PBA

CM Rivet states it is his intention to waive the per tree fee.

CM Vail we are trying to be agreeable. We need a workshop of sorts prior to issuing of permit contingent on set an agreement.

CM Rivet said he doesn't think need a workshop for Malabar East, but certainly will for Malabar West.

CM Scardino said they need to provide a tree survey.

CM Vail also wants the buffer a requirement.

CM Rivet wants involvement by T&G because they know the area best.

Drew Thompson said a buffer requirement could be a benefit we could offset the fee per tree. Use it as a tradeoff.

CM Scardino said he doesn't want to set precedent of waiving fees. At least charge them 0.50 per tree so we know how many trees they are removing. It sets a good standard.

CM Vail said this would not set a precedent.

CM Hofmeister asked if the EELs program has provided a tree survey?

TM Stinnett states they have not. They provided rough estimates for both Malabar East and West, but not an official count.

CM Vail states there are estimates included in the agenda packet, or about 6,500 trees for Malabar East.

CM Rivet states that though it is his intention to waive the fee, he would be open to amending it.

CM Vail states he agrees with Mr. Thompson that a buffer would be a good idea. It would shield the animals from adjacent residential properties, and residents from the tree clearing work. He also believes that a 15-foot buffer would not adversely affect the Scrub Jays.

CM Rivet states he wants the T&GC to review this, as they are the people who have done most of the research and know the area best.

CM Vail states the T&GC should be allowed access to the area to be able to review the plan, as currently they are not allowed behind the fences.

Thompson states that the option of a buffer could be leveraged to negate the tree survey. It could provide a precedent for future projects.

Vote: 3 Ayes, 1 Nay (Hofmeister).

9. ACTION ITEMS:

ORDINANCES for FIRST READING: 0

RESOLUTIONS: 1 done under Public Hearing "Agenda Item 7.b."

MISCELLANEOUS: 1

9.a. Request for Council to Take Legal Action to Provide Public Access to Publicly Purchased Land (Malabar Scrub Sanctuary) by CM Scardino (Tabled at the RTCM 3/7/2022)

Exhibit: Agenda Report No. 9.a.

Chair asked Council if there was a motion to remove from table.

MOTION: CM Scardino / CM Hofmeister to remove from table.

Vote: All Ayes.

Discussion: CM Scardino said we have discussed all the issues he had.

Chair to ask Attorney to remain for Discussion Items

10. DISCUSSION / POSSIBLE ACTION: 2

10.a. Expand Council Member Term Limits (CM Scardino)

Exhibit: Agenda Report No. 10.a.

CM Scardino said it takes one year to get the hang of it.

Mayor said sometimes we get a bad apple up here, and it may be better for the voters to have the opportunity to remove that person sooner.

CM Rivet said the government closest to the people is the most effective for the people. Being elected every two years keeps Council closer to the people.

CM Hofmeister state she is still new, and it takes a year to get a good understanding of how things happen.

Mayor said put this on next agenda when we have full Council

**10.b. Potential Road ROW Closure of Marie St ~~South~~ of NORTH
of Atz Road (CM Vail)**

Exhibit: Agenda Report No. 10.b.

CM Vail explained the situation. It is a safety concern. There is no bottom in that hole. Make the closure passable to pedestrian traffic.

Motion: CM Vail / CM Rivet to close Marie just south of Town property.

Mayor states he would not support this.

Clerk will prepare Reso and radius package.

VOTE: All Ayes (4-0).

Chair excuses Attorney

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

12. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: excused

CM Vail: none

CM Rivet: Still some property on Hall Road that we have a lien against and have not acted on- make an agenda item.

CM Hofmeister: none

CM Scardino: when is Brightline going to finish - 2023

Mayor Reilly: none

13. ANNOUNCEMENTS: Openings on T&G Committee.

14. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 9:21 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 04/04/2022