

"The following draft minutes are subject to changes and/or revisions by the Town Council and shall not be considered the official minutes until approved by the Town Council."

MALABAR TOWN COUNCIL REGULAR MEETING

December 15, 2014 7:30 PM

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Council Chair, Mayor Beatty. The prayer and pledge were led by Mayor.

B. ROLL CALL:

COUNCIL CHAIR:	MAYOR CARL BEATTY
VICE-CHAIR:	MARISA ACQUAVIVA
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DON KRIEGER
	DICK KORN
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the Record, the Fire Chief Christopher Robinson and Town Engineer Morris Smith were also present.

C. ADDITIONS/DELETIONS/CHANGES: Clerk stated there were two typos in 11/17/14 minutes that she has corrected: pg 4, 3rd para used past tense "Tabled" and page 7, under Agenda Item 6, motion stated appoint of CM Acquaviva as check signer; I have deleted the words after that "appointed Vice Chair.

Mayor said that the resident that asked for placement on the agenda (under J.2. had contacted him and asked for the item be removed from the agenda. Mayor said he was also asked by another resident to add the Slope Mower information Mr. Ryan had formulated to the agenda. CM Acquaviva mentioned it had been added to last the agenda and was discussed for a long period. These types of items should be on the agenda so Council can review the information. CM Vail said we are waiting for more information from TA. CM Vail would like to see it as big picture and placed on meeting agenda.

TA said this is setting precedence. CM Krieger asked if it can it be placed under old business. CM Korn said the last time Mr. Bud Ryan had lost the audio and visual he had prepared, but said Mr. Ryan would be handicapped as the Public input is limited to five (5) minutes. (Note: Council does not have to reply). As an agenda item he could speak longer. (Note: and engage in Council discussion). CM Acquaviva said she appreciates Mr. Ryan's efforts. He wasn't being cut off; rather it should be an agenda item for next meeting. The agenda package should include Mr. Ryan's pictures. Mayor Beatty directed it be an agenda item for 1/5/15 meeting.

D. CONSENT AGENDA: To Be Approved as a voice vote.

(Any Council Member may request an item on the Consent Agenda to be removed and placed on regular agenda immediately after new business to be discussed and voted on separately by the Town Council)

CM Krieger to remove the minutes from the Consent Agenda.

~~1a. Approval of Minutes. Regular Town Council Meeting — 11/17/2014 as corrected~~
~~Regular Town Council Meeting — 12/01/2014~~

1b. Budget Adjustment (Reso 42-2014)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2014-2015; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 1b.

Recommendation: Approval of Consent Agenda with roll call vote on Reso 42-2014

Chair read by title only.

MOTION: CM Korn / CM Vail to approve the Budget Adjustment Reso 42-2014.**ROLL CALL VOTE:** 1)CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 5 to 0.**1a. Approval of Minutes.** Regular Town Council Meeting – 11/17/2014 as corrected
Regular Town Council Meeting – 12/01/2014**Exhibit:**

Agenda Report 1.a

Corrections: 11/17/14 minutes: CM Ball referenced n page 7, Item #4, he voted Nay. Clerk will correct. Also on page 1 of same minutes, under "C" the reference to "ranking" – Attorney Bohne stated that is the word he used. If a fact finding board makes a recommendation or "ranks" their findings then they are subject to the Sunshine Law.

CM Krieger said on page 4 of 11/17/14 the Clerk typed "issue" and word used was "situation."

CM Krieger requested on pg 6 of 12/1/14 to delete the last four words "and shut her down" as they were not said. CM Acquaviva said that is what happened though.

Mayor has issue with Mayor/Chair reference in minutes. Other cities simply refer to their Mayors by their name. Franklin said now she knows what he wants it will be changed.

TA suggested putting Agenda Items in parenthesis (that were moved) as it will work better with audio.

MOTION: CM Korn / CM Vail to approve minutes as corrected. **VOTE:** All Ayes

F. PUBLIC COMMENTS: Comments may not address subsequent Agenda Items. Comments do not require Council response. (Speaker Card Required) **Five (5) Minute Limit per Speaker**
Bud Ryan to talk about slope mower and will hold pictures for the next agenda. Marisa said this happened at last meeting. She would like it put on the agenda with the backup material so all of Council can review before the meeting.

G. ATTORNEY REPORT – nothing. Mayor asked if the 3 new members have spoken to the outside attorney. Yes.

H. BCSO REPORT – 0

I. PUBLIC HEARINGS: 0

J. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

The following item **PULLED** at resident's request as explained by Mayor Beatty.

2. Resident Laura Mahoney Amending Ord 2014-03 re: Burning yard waste

K. ACTION ITEMS:**ORDINANCES: First Reading – 1**

3. Land Use Amendment & Zoning Change for the West side of Highway 1 of Parcel 28-38-31-00-00750 aka 1300 Highway 1, Malabar, FL 32950; Request to change from Residential/Limited Commercial (R/LC) to Commercial General (CG); Applicant: KellWill, LLC, represented by Mr. William Carmine.

First Reading (Ord 2015-01)

Mayor Beatty read Ordinance 2015-01 by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RECLASSIFYING THE COMP PLAN MAP AND REZONING THE PROPERTY AS FOLLOWS: THAT SECTION 3+/- ACRE PARCEL IN TOWNSHIP 28, RANGE 38, SECTION 31, LOT 750, LYING ON THE WEST SIDE OF HIGHWAY 1, NORTH OF MALABAR ROAD, AKA 1300 HIGHWAY 1, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 3

Recommendation:

Request Adoption of Ord 2015-01

Speaker's Cards.

P&Z Chair Pat Reilly said for the record the applicant should be allowed to speak first. Despite that the reasons it was supported by majority of P&Z Board was that the history shows it was CG; Professional Planner said it was not spot zoning; and it meets the Goals and Objectives of the Comp Plan and the Land Development Code.

Hans Kemmler, 2785 Malabar Road – He got the notice about the change of land and came to PZ and supported this. They had a blight study done. In that study there were a lot of old buildings like the one we had next door. He has no idea why they are against this project. It will make the Town of Malabar a better place and the Town will gain in taxes.

Mayor Beatty called applicant to podium.

Mr. Carmine, as he sees this everyone is familiar with his request. This is his second attempt. He is really disheartened. He sits in audience and hears the “what ifs, and maybes and what ifs”. He has done everything by the book. It is located on what is the busiest intersections in Malabar. It was B2 and was Lang's auto repair. It clearly states what the zoning needs to be to operate the business he operates. He is hoping to get Council support.

Bud Ryan, 1923 Howell Lane, Member of P&Z Board. He said it was handled as Quasi-Judicial at P&Z and now is not. Attorney Bohne said it is not quasi-judicial but rather quasi legislative. Mr. Ryan is referring to the last P&Z meeting. Atty Bohne said it should not be Q-J at P&Z if it is not at Council. Setting policy is legislative and implementing policy is quasi-judicial. Mayor Beatty said he found it on Malabar Matters.

Mayor said when Council gave the directive for P&Z Board to look at changing language in Code for R/LC it is like a moratorium. Atty Bohne said nothing prohibited applicant from re-submitting. Mayor said the subject should have more research.

P&Z Chair Pat Reilly said we had a Public Hearing at P&Z.

P&Z Member Liz Ritter, suggested all take a deep breath. Obviously there are misinterpretations of the Code. Also miscommunications. She suggests Town should refund the money to applicant. The P&Z Board is trying to protect the residences in the vicinity. She thinks that they are getting cart in front of horse. She said there seems to be a big rush on this item.

CM Korn – big rush/ - this came before us over a year ago. It is time to get on with it. You can't “Tweak” 2.5 times what is allowed for maximum building coverage.

Park Board Member Bunnie Knudson, 2480 Hunter Lane, is in favor of this request. The applicants have improved the property that Malabar Mo's is operating. She is shocked with the confrontational

actions. We need to act like neighbors. We all need to help this Town grow. That property has been vacant for 20 years. She is shocked with the way meeting has been handled.

CM Ball disclosed he has talked to both Milucky and Carmine. CM Vail also spoke with Carmine.

CM Acquaviva said he is willing to do a Developer Agreement. She has not heard one bad thing about the applicant or his businesses. Have Atty Bohne put one together before next meeting.

P&Z Member Ritter said her vote of non-support was because she wanted a Developer Agreement to go along with LU/ZC request. She understood from Atty Bohne that you couldn't do that.

MOTION: CM Korn / CM Vail to approve the P&Z Board's recommendation to approve 1st Reading of Ord 2015-01 adding a proviso that prior to second reading, a Development Agreement is offered by the applicant and agreed upon by Council.

CM Vail said it is productive to tell him what Council's concerns should be addressed. CM Korn asked Atty Bohne if a P&Z member, Atty Bohne, TC Chair Mayor Beatty and Mr. Carmine can have a meeting. Attorney said he is very familiar with the concerns that have been raised at the meetings.

Carmine is ready to throw in the towel on this project. Now he is looking at another expense. Atty Bohne said if he is not being represented by legal counsel then we can put it together. Atty Bohne said he was familiar with the concerns of the Board and Council as they have been discussed.

Discussion: CM Krieger spoke with Jim Milucky. He has never been against someone developing their land. CM Krieger said if you change the "errors" it would not need a LU and ZC. Atty explained that first the narrative in Comp Plan would have to be changed and the language and the Table in the Land Development Code.

CM Korn restated his reasons to support this request.

CM Ball said what they are supposed to be looking at is not 'what's good for Mr. Milucky or Mr. Carmine'. They are supposed to look at what is best for the Town. He is very much in favor of this. This is opening that up for that zoning for Hwy 1. Applicant has deleted the east side of property. If they continue to delay they owe some consideration to Carmine for all he has done to meet the Town's requests.

CM Vail said this has been going on for too long. The only resolve is to grant the rezoning. He believes it is a good project. The man has proven himself. It is a good change and we need to move forward. Atty said now would be the time to do the Development Agreement so let's do it.

Mayor said he could support the zoning change with the approval of the Development Agreement.

Atty said we have no obligation to change the RLC LU and Zoning to CG.

MOTION; CM Krieger to table. Died for lack of 2nd.

ROLL CALL VOTE: Ball, Aye; 1)Vail, Aye; Krieger, Nay; Korn, Aye; Acquaviva, Aye.

Break from 9:20 to 9:30.

RESOLUTIONS: 0

4. Approve Selection of Contractor for Repair of Bridge under Briar Creek Boulevard and Adopt Reso 43-2014

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF BID PROPOSAL FROM VOLUSIA GENERAL CONTRACTORS, DBA FORMASTERS AT A COST OF \$39,695.00 FOR THE FABRIFORM BREAK REPAIR & ERODED SOIL REPLACEMENT WITH FLOWABLE FILL UNDER THE WEST END OF BRIAR CREEK BOULEVARD BRIDGE ID#705500 OVER TURKEY CREEK; PROVIDING FOR FUNDING; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Reso 43-2014 read by title only by Mayor Beatty.

MOTION: CM Acquaviva / CM Vail to approve the Reso 43-2014 approving Volusia General Contractors, DBA Formasters, to perform the Bridge on Briar Creek Blvd per bid for a cost of \$39,695.00.

Discussion: CM Korn asked if this would cure the entire problem. No this stops the erosion. The curbing has to be changed. This is the major repair. Yes.

Mayor said what it was was, on east side someone put asphalt, the guardrails to be welded. The sidewalk needs fixing. Design for the sidewalk. Why he pressure washes part of sidewalk – it was built flat so algae keeps reoccurring. This will stop the erosion at the west end of the bridge.

CM Acquaviva asked about the timetable. Contractor said he would like to start in Feb. TA will work on contract and get it out to Atty. CM Ball asked how much more needs to be spent to do the rest of the fix. TA explained how contracts were done. Morris explained unit pricing. CM Acquaviva said it is a big safety issue. CM Krieger asked what the metrics are and how long will repair last. Engineer Smith said the original fabricore should have lasted 50 years. It lasted 26 years. The new should last 50 years.

ROLL CALL VOTE: Ball, Aye; Vail, Aye; 1)Krieger, Aye; Korn, Aye; Acquaviva, Aye. Motion carried.

MISCELLANEOUS:

5. Approve Final Payment to North Florida Emulsions

Exhibit: Agenda Report No. 5

Recommendation: Request Action

MOTION: CM Acquaviva / CM Vail to approve the final payment to North Florida Emulsions.

Discussion: CM Acquaviva said she signed the check. CM Korn is happy. Old Mission is the only issue. CM Krieger said today on Glatter there were two large dump trucks. The beginning of that road was built by him. He is wondering. Could be Oakmont SD. TA will notify contractor. Also no through trucks signs.

VOTE: All Ayes.

6. FMIT Trustee Nomination

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: CM Korn / CM Vail to endorse CM Krieger to submit for nomination to FMIT Board.

Discussion: **VOTE:** All Ayes.

7. Presentation Date for Transportation Planning

Exhibit: Agenda Report No. 7

Recommendation: Request Action

TA said they want to do a 20 min presentation and have them go over the projects. Consensus to approve March 16, 2015 for Joint Meeting with Boards for presentation by TPO.

8. Expenditure for Elevation Survey of Thomas M. Eschenberg Memorial Park**Exhibit:** Agenda Report No. 8**Recommendation:** Request Action

TA introduced. Take it from contingency. Park and Rec Board Chair Hans Kemmler said if they were to open it up and determine how to make a walking trail and where they can put a footbridge to other side of creek, they need to know what they are facing.

MOTION: CM Korn / CM Acquaviva to approve the expenditure of \$500.00 for an elevation survey of the 17 acres in Tom Eschenberg Memorial Park with funds coming from contingency.

Discussion: none. **VOTE:** All Ayes.

(No Recess – Attorney Excused)

L. PRESENTATIONS:**M. PROCLAMATIONS:**

Mayor asked when newsletter going out? Before SpringFest.

N. STAFF REPORTS: ADMINISTRATOR – She told Council about the Miss Florida recently crowned was from Malabar. The Waring Lane work will start tomorrow.

CLERK: nothing

O. DISCUSSION ITEMS: 0**P. REPORTS – MAYOR AND COUNCIL MEMBERS**

Dist 1: CM Ball asked if there was any update on the fire at Southern Comfort. TA said it is arson.

Dist 2: CM Vail asked if we still do a Christmas luncheon for Council and staff; TC said no and TA said there is no money in the budget for this.

Dist 3: CM Krieger got call from Dr Seybold about Devin Lane.

Dist 4: CM Korn said we have 8 vacancies on Boards. Put it up on website and in the Mailboat. TA said TC was to be editor. But Council then changed and wanted them to review it first. CM Acquaviva said she did not recall it that way; Council could submit articles and they could review it but they didn't edit or approve it. CM Korn said it used to be done like clockwork. Mayor said it should be quarterly. Marisa said she agrees with Brian – we aren't the editors.

Dist 5: CM Acquaviva has had complaints about the signs on Corey Road re: Field to Forks.

Wanted it on the record. Mayor said it is a co-op. He knows they charge for memberships. Gradall repairs was 6500.

Mayor: will skip due to the time.

Q. PUBLIC COMMENTS: General Items (Speaker Card Required)**R. ANNOUNCEMENTS:**

One (1) vacancy on the Board of Adjustment

Three (3) vacancies on the Park and Recreation Board

One (1) vacancy on the Trails & Greenways Committee


Two (2) vacancies on the Planning & Zoning Board

S. ADJOURNMENT:

There being no further business to discuss, Chair asked for a motion.

MOTION: CM Ball / CM Krieger to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:30pm.

BY:


Mayor Carl Beatty, Council Chair

ATTEST BY:


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

(seal)

Date Approved: 1/5/15 AS PRESENTED