

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
May 15th 2023, 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 Hofmeister led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

DAVID SCARDINO

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

JIM CLEVINGER

MARY HOFMEISTER

MATT STINNETT

TOWN MANAGER:

KARL BOHNE

TOWN ATTORNEY:

LISA MORRELL

SPECIAL PROJECTS MANAGER:

RICHARD KOHLER

TOWN CLERK:

- 3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** CM Vail requests to add a cemetery as discussion 8a. Mayor suggests adding as public comment. CM Vail states council should be aware of the constituent issue. Agenda Item added under discussion as item 11d.

4. CONSENT AGENDA:

4.a. Approve Minutes of 5/1/2023 RTCM

Exhibit: Agenda Report Number 4a

MOTION: CM Vail/CM Scardino to approve Consent Agenda.

Discussion: None

Vote: All Ayes (5-0).

- 5. ATTORNEY REPORT:** None

6. STAFF REPORTS:

6.a. Town Manager – Matthew Stinnett

TM Stinnett stated that a new Public Works employee started Wednesday morning. Also, Waste Pro is interested in changing the recycling day from Wednesday to Saturday.

6.b. Town Treasurer – Lisa Morrell

Exhibit: Agenda Report Number 6b

Treasurer Morrell stated that the revenue and expenditures report through April is included in tonight's packet. Next month, she expects a longer report as she is cleaning up old accounts before we move to the new BS&A Accounting Software.

6.c. Special Projects Manager – Lisa Morrell

Exhibit: Agenda Report Number 6c

SPM Morrell stated that the bathroom renovation project is complete. One stall in each is handicap accessible. Mach Alert has also completed their installation. Park improvements are the next project she plans to tackle during budget season. There are still several large budget items, including roads, stormwater, and water expansion. CM Scardino asks how many commercial properties will gain water access? SPM Morrell states currently there aren't many, but the whole stretch is Zoned R/LC, so as it

develops there may be more. Mayor asks if she needs any additional Council action? SPM Morrell states not at this time. Mayor states the two major projects are roads and stormwater, so we should begin work on them. CM Scardino asks if running water to the FD could include water fountains in the park? SPM Morrell states yes, it can. CM Acquaviva asks if future action can come at a budget workshop? She would rather discuss before she acts. CM Vail agrees and would like a refresher. CM Acquaviva asks if there is an auto lock for the doors in the park? SPM Morrell states currently, no, but we can budget for that. A realistic estimate is about \$1,500.00 per door.

6.d. Town Clerk – Richard Kohler

Clerk Kohler informed Council that he has signed up for the FACC Summer Conference, to be held in St. Petersburg from June 17th to June 21st. Topics covered in the conference include an annual legislative update, municipal fraud awareness & prevention, understanding first amendment audits, Robert's rules of order, campaign & election overview among others. He will be available via phone or email while he is there. Also, at today's Brevard County City Clerks Association lunch, Mr. Walker, Communications Director of Brevard County proposed a rate of \$125.00 per ad. The County Commission will vote on an MOU at their May 23rd meeting. Upon approval by the County, an MOU will be sent to the municipalities for their approval. Finally, state mandated ethics training will be available online July 12th, October 18th, and December 13th by the Florida League of Cities. If you have any questions or would like assistance signing up, please let me know.

7. AUDIT PRESENTATION

7.a Presentation of the FY21/22 Audit by JMCO

Exhibit: Agenda Report Number 7a

Mr. Chalifour thanked Council and began his presentation. (Included in Agenda) He also thanked Staff for being excellent to work with. He noted that it is not a concern, but the Town does not plan for OPEB. The second report covers any issues found. One finding is to reconcile and clean up the accounting system at the end of the years. Nothing is of critical concern. The third report is a management letter. The only note here is that the BD is holding too much in its fund. A plan is in place to expend the funds, so it is not a concern. Finally, the Town is in compliance with all related state Statutes. The fund balance is growing nicely. The net pension liability through FRS is 1.2 million, however, the Town makes all of its required deposits.

8. 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.

9. PUBLIC HEARINGS / SPECIAL ORDERS: 0

10. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO TOWN APPOINTED BOARDS/COMMITTEES: 1

10.a. Trails and Greenways Committee Recommendation to Council

Exhibit: Agenda Report Number 10a

Clerk Kohler stated that at the May 8th Trails and Greenways Committee Meeting, the Committee discussed the tentative agreement reached during the May 1st Joint Conflict Assessment Meeting. The Committee stated the 6 listed items were not discussed during the joint meeting. Items 3, 5 & 6 of the request have been included in the ILA. On Saturday, the Committee held a trail day with volunteers from Country Cove, Brook Hollow, Stillwater

Preserve, and the BMBA to mark the western and southern boundaries of the Cameron Preserve with surveyors' tape to ensure item 1 would be followed.

Public Comments:

Mark Britt, 1671 Country Cove states he doesn't know quite where we stand. Have we reached a written agreement? He is scared by the whole issue. His property backs up to the sanctuary, and he is concerned about damage from controlled burns. He hopes the county will still be required to get a permit and are bonded to ensure they repair any damages to the roads. Without a permit, the County could not be responsible for the damages. He also is concerned about the lack of the logging company. Who will oversee the chemicals during controlled burns? We have a lot of senior citizens, what kind of effects will this have on them? He quotes a letter from UF stating that residents in the area of controlled burns should be informed and given information on how to offset any issues. When will work begin, and will the County follow the suggestion to require notice? TM Stinnett states some of the issues discussed in this memo were addressed. Attorney Bohne states request 2 is included as well in the ILA. He also states that at the last minute today, we received an agreement from the County that they would not remove any trees from the Briar Creek ROW. They still would like to do controlled burns, but the mature trees are resistant to fire.

Gary Sampson, 1045 Oak Tree Place – States there will be a chipper and burning. Brook Hollow has one way in and one way out. If a logging truck goes over the bridge and damages it, how will the residents get out?

TM Stinnett states past discussions indicated that the County would use Malabar Road to exit, as the core tree removal area is near Malabar Community Park.

11. ACTION ITEMS:

ORDINANCES for FIRST READING: 0

RESOLUTIONS: 1

MISCELLANEOUS: 2

11.a. Acceptance of the Fiscal Year 2021/2022 Financial Audit (Resolution 05-2023)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR THE FISCAL YEAR 2021/2022 BY THE ADUIT, PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 11a

Clerk Kohler read by title only.

MOTION: CM Scardino/CM Hofmeister move to approve Resolution 05-2023.

DISCUSSION: None

ROLL CALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Clevenger, Aye; CM Scardino, Aye; CM Hofmeister, Aye; Motion Carries 5-0.

11.b. Select Dates for TRIM Public Hearings

Exhibit: Agenda Report Number 11b

Staff has put together a suggested calendar of meeting dates for the upcoming budget season. Considering the School Board and County Commission budget hearing dates, as well as feedback from Council, Staff has suggested that the first Budget workshop take place on Monday July 24. The second budget workshop could be held before the 1st RTCM of August on the 7th. If necessary, a third budget workshop could be scheduled for Monday April 21st. Staff would also like to recommend that the second RTCM of August be moved to Monday August 28th. Staff would like to schedule the first Public Hearing for this meeting. As the first Monday in September is Labor Day, staff would like to recommend that the first RTCM of

September either be cancelled or held on Wednesday September 6th. We would also like to request the second RTCM and second Public Hearing take place on Monday September 25th. Consensus from Council is to accept the meeting schedule as presented.

11.c. ILA between the Town of Malabar and Brevard County

Malabar Scrub Sanctuary Restoration Project.

Exhibit: Agenda Report Number 11c

Public Comment

Mark Gunter, 1240 Pemberton Trail – He spoke at the 5.1 Joint Conflict Assessment meeting. What did the Town get out of this agreement? It looks like you gave everything away! Before you were going to charge them, why did that change? What did the Town get aside from the gates being open? The main objective was to hold the line and protect the trees. All of a sudden, the Town changed its stance. He asked Mr. Thompson what happened, and they were both dumbfounded. A presentation was made that included all of the information needed to win. Why did Council walk away with nothing? The EELs program destroyed bridges in the Sanctuary. He lives bordering the Sanctuary. When they burn, where will the animals go? Mr. Thompson's presentation was spot on, using the County's own information to prove the Town's point. Why did no one speak about his hard work? He hopes that surveys, bonds, and permits are necessary. He feels Council failed the people.

Gary Sampson, 1045 Oak Tree Place – He has Mr. Thompson's presentation, and was shocked the Council went against it. He does not know what the gain is for destroying 577 acres for 20 birds. How will their progress be counted, and how will the County verify their numbers. He feels the commonsense approach would be better. He has a friend who bought beachfront property and was not allowed to build due to an endangered beach mouse. Council has the power to stop the madness. Vote no and send this to arbitration. The people who live in the subdivisions are the major taxpayers, and their property values will drop. He hopes Council will consider changing their minds.

Mayor Reilly states that he requested a bird count from the County and was informed there were 14. He states Mr. Thompson represented the Town, but the meeting was intended for Elected Officials to discuss the conflict. Mr. Thompson was allotted 15 minutes and spoke for 20. He did an excellent job. The gates were there to keep Brevard County residents out. Residents were escorted out by the Sheriff. He made the first proposal, which was to base the restoration project on Mr. Thompson's presentation. Commissioner Tobia changed the proposal to include the County's map.

CM Vail states that the maps presented by the EELs program were very different from previous proposals. It was not what Mr. Thompson was asking for, but it was considerably more than their first proposal. The perimeter is better protected.

CM Scardino states the buffer zones around communities were greatly expanded from prior proposals.

Motion: CM Scardino/CM Acquaviva move to accept the ILA including the Briar Creek Blvd protection.

CM Acquaviva states Council, Staff, and Volunteers worked tirelessly to prepare for this. In the past, construction was stopped in Country Cove due to Scrub Jays. The EELs program should have been maintaining the land as they did in the past. We are used to it being lush due to the lack of care from the County. They let their permit lapse and didn't provide adequate public notice. She is proud that the Town was able to get concessions from the County on land owned by the County. If we go to court and lose, we could get nothing. It was a moment in time for

compromise. She has seen previous lawsuits drag on for a long time. The burden of costs spent was adding up. She feels we came together and created a better relationship with our County.

CM Vail states staff has been working tirelessly to express the Town's desires. The County is finally working with us. They are being flexible, and we are being flexible. If we continued, the little Town of Malabar would be fighting the State. The final proposal is much improved over the initial proposal from the County. It will be ugly for a little, but eventually it will look beautiful. Burns will encourage healthy growth in the sanctuary. He has been a firefighter since 1989, and has spent hours fighting the wildfires and controlled burns. He feels the Town came to an acceptable agreement. He has ridden in those woods since 1978. He hopes to keep Malabar connected to its grass roots. He is not absolutely comfortable with this, but he feels we reached an acceptable agreement.

CM Scardino believes we reached an acceptable agreement. The map they finally showed us had a lot of trees. If we went to court, we would have had to pay attorney fees we would not have been guaranteed to get anything.

MaryLee Bowen, 1255 Pemberton Trail – She would like to know if the County will reimburse residents for damages? Will any Malabar resident be assessed for this project? What is really going to happen to the land? There are endangered species aside from the Scrub Jays, what will happen to them? Is it right to trade one species for another? Can the Scrubs be transferred to another property? Brevard County states the land was donated to them so they could protect the habitat.

CM Hofmeister states the County is doing that and moving them to Malabar. The packet submitted by T&GC was not done overnight. There have been additions and inclusion at every step of the way.

Vote: 5-0 (All Ayes)

11.d. Thomas Williams, Cemetery Discussion

Mr. Williams states he was born and raised in Malabar. He is here today to discuss the Malabar Cemetery. He would like to ensure it is not disturbed. Mr. Linnell states the cemetery is located in and around the Mary Street ROW. Past work was ensured to not disturb this area. Concrete Blocks were placed at the headstones, but they have been stolen. Mr. Williams has family members in that area, and we should respect them. He would be happy to assist in the search.

Mayor Reilly states he did some research on this in the past, and he is fully aware of the issue. Florida State University sent a team down and were unable to help us. If Mr. Linnell can stake it out, we can bring in GPR to search. Mr. Linnell states that the property has been sold, and someone stated it will be a towing yard. They were aware of the cemetery and stated they were going to develop over it.

CM Vail states he has spoken to three people who ran into the new owners and all of them had the same story of development. He feels Council should direct Staff to research and find a solution.

CM Acquaviva states she has some familiarity with this issue, as she grew up near an Indian burial ground and remembers special attention being given to the area.

SPM Morrell states she has done significant research. The newly sold property has two units. It is illegal to disturb a gravesite. If we don't know where it is, we can't preserve it. There are hundreds of abandoned cemeteries in Florida. Municipalities can take over it pursuant to FS 497. She would like to come back with a better report.

CM Scardino is in favor of getting more information so that we can better track this.

CM Vail states using the local knowledge to assist in the search will greatly expedite this process.

Chair excused the Attorney at this time.

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

13. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: None

CM Vail: None

CM Clevenger: None

CM Hofmeister: Requests the reviews be completed before TM Stinnett goes for his deployment. TM Stinnett states they have been completed.

CM Scardino: None

Mayor Reilly: Mayor's breakfast is this Friday.

14. ANNOUNCEMENTS: (1) Vacancy on the Planning & Zoning Board; (2) Vacancy on the Parks & Recreation Board; (1) Vacancy on Board of Adjustment.

15. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:50 P.M.

BY: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler
Richard W. Kohler
Town Clerk

Date Approved: 06/05/2023