

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
July 3rd 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 Clevenger led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	DAVID SCARDINO 7:35
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL - EXCUSED
	JIM CLEVINGER
	MARY HOFMEISTER
	MATT STINNETT
	KARL BOHNE
	LISA MORRELL
	RICHARD KOHLER
	ANTHONY GIANTONIO

TOWN MANAGER:

TOWN ATTORNEY:

SPECIAL PROJECTS MANAGER:

TOWN CLERK:

INTERIM CHIEF:

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

4. CONSENT AGENDA:

4.a. Approve Minutes of 6/5/2023 RTCM

Exhibit: Agenda Report Number 4a

MOTION: CM Acquaviva/CM Clevenger to approve Consent Agenda.

Vote: All Ayes (3-0).

5. ATTORNEY REPORT: No report.

6. BCSO REPORT: None

7. BOARD/COMMITTEE REPORTS:

7.a. Trails and Greenways Committee

Written Report provided.

7.b. Parks and Recreation Board

Written Report provided.

7.c. Planning and Zoning Board

Written Report provided.

8. STAFF REPORTS:

8.a. Town Manager – Matt Stinnett states he is pleased to be back. The Allen Street drainage project is progressing nicely. The budget season is underway.

8.b. Special Projects Manager – Lisa Morrell states that she is still working on the financial system transfer. CM Acquaviva states that the recycling day has changed to Thursday.

8.c. Town Treasurer – Lisa Morrell states that she has provided a written report. As we end the fiscal year, we are preparing a budget amendment.

8.d. Fire Chief – Interim Chief Giantonio No report.

8.e. Public Works Director – Written Report

8.f. Town Clerk – Richard Kohler

Clerk Kohler informed Council that he recently attended the 2023 FACC Summer Conference in St. Petersburg. The Conference offered several courses specifically relevant to Florida Municipal Clerks. He also informed Council that he attended an EOC refresher course at the EOC Command Bunker in Rockledge.

Staff was made aware that the Electronic Display sign at Malabar Park is currently down. After investigation, it was determined that a circuit breaker broke. A contractor has been contacted, and we expect a repair on Wednesday July 5th.

Waste Pro has indicated that they wish to change the recycling collection day from Wednesday to Thursday. The change will take effect on the week of July 10th. July 5th will be the last Wednesday collection, and July 13th will be the first day of Thursday collection.

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)

Mark Gunther, 1240 Pemberton Trail – States he is here to discuss the Gopher Tortoise awareness signs along Briar Creek Blvd. He also asked about the repair of Rocky Point Road. TM Stinnett states they are working towards completing the project. He also asked about the sailboats that were washed up on the shore. Mayor Reilly states the process has been done. It is mostly an issue with Florida Marine Council. He also asked about the Treasurer post. Staff replied that Ms. Morrell has been appointed to that position.

10. **PUBLIC HEARINGS: 3**

10.a Amending Land Development Code, Article II – Land use Zoning, Section 1- 2.6 – Land Use Classifications and Table 1-3.2 Land Use By Districts for Limited Manufacturing Activities and Limited Manufacturing Activities providing for a permitted or conditional use in Article VI. Conditional Use and Special Exception Use Criteria in Table 1-6.1(B) - Conditional Land Use Requirements. (Ordinance 2023-01; First Reading)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE II – LAND USE ZONING, SECTION 1-2.6 – LAND USE CLASSIFICATION; AND ARTICLE III – DISTRICT PROVISIONS, SECTION 1-3.2 – LAND USE BY DISTRICT - TABLE 1-3.2 LAND USE BY DISTRICT TO INCLUDE LIMITED MANUFACTURING ACTIVITIES IN CERTAIN ZONING DISTRICTS, RESIDENTIAL/LIMITED COMMERCIAL (R/LC), COMMERCIAL LIMITED (CL), AND COMMERCIAL GENERAL (CG); AND ARTICLE III SECTION 1-3.2, LAND USE BY DISTRICT; ARTICLE VI, SECTION 1-6.1 CONDITIONAL USES; TABLE 1-6.1(B) CONDITIONAL LAND USE REQUIREMENTS AS CONDITIONAL USES IN RESIDENTIAL/LIMITED COMMERCIAL (R/LC), COMMERCIAL LIMITED (CL), AND COMMERCIAL GENERAL (CG), ZONING DISTRICTS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Clerk read by title only.

Public Hearing Opened: None

Public Hearing Closed.

Staff: SPM Morrell states this item was presented on 4.3 for discussion. This is the next step. After approval tonight, the Ordinance will be sent to the DEO for review.

MOTION: CM Scardino/CM Hofmeister to adopt Ordinance 2023-01

Discussion: Mayor Reilly states that the Town has lost most of its industrial zoning to conservation. He wanted to see what industrial uses could be moved to the commercial

districts. P&Z has looked at this and made the recommendation to approve. CM Acquaviva states she believes it will be a benefit. Attorney Bohne states the title will clean up before second reading. Mayor Reilly noted a minor scrivener's error as well. Clerk states they will be corrected before the second reading.

ROLL CALL VOTE: CM Vail, Excused; CM Clevenger, Aye; CM Scardino, Aye; CM Hofmeister, Aye; CM Acquaviva, Aye. Motion Carries 4-0.

10.b Vacate Requests within Section 11, Melbourne Heights subdivision (SD) Section "E" east of Corey Road (Resolution 06-2023)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE VACATE OF THREE FIFTY (50) FOOT-WIDE UNIMPROVED PLATTED RIGHT-OF-WAYS AND ONE FIFTY-FIVE (55) FOOT-WIDE UNIMPROVED PLATTED RIGHT-OF-WAY ABUTTING PARCELS 29-37-11-75-24, 29-37-11-75-15-1, 29-37-11-75-16-1, 29-37-11-75-17-1, 29-37-11-75-27-1, AND 29-37-11-75-14-1 IN SECTION "E" MORE SPECIFICALLY KNOWN AS CORIANDER STREET, FEVEROOT STREET, COLORADO AVE AND CHERVIL STREET, AS DESCRIBED HEREIN; 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 Number 10b

Clerk read by title only.

Chair calls the applicant to present. Larry Primavera states he hopes to consolidate his property. He hopes to combine all parcels.

Public Hearing Opened: None.

Public Hearing Closed.

Staff: Clerk states it is as presented in the agenda. The request is similar to previous vacate requests in the same Subdivision. Mayor Reilly reiterated that this request conforms to the overall plan for the area.

MOTION: CM Acquaviva/CM Scardino to adopt Resolution 06-2023.

Discussion: None

ROLL CALL VOTE: CM Clevenger, Aye; CM Scardino, Aye; CM Hofmeister, Aye; CM Acquaviva, Aye; CM Vail, Excused. Motion Carries 4-0.

10.c Request Road Improvement Waiver for the North end of Kramer Lane adjacent to Parcel 814. Request by parcel owner Joy Maximin.

Exhibit: Agenda Report Number 10c

Chair called the applicant to present. Ms. Maximin thanked Council for the opportunity to represent her case. She was able to combine 2 of the 3 lots in her property. There are now only 2 lots in question. At the last meeting, the neighbors spoke against her application. After explaining her position, they have all signed a petition to keep Kramer Lane as a dead end, and to approve the requested waiver. She believes she has met all requirements for the waiver, in that there is already access to the lot, and the waiver will be the minimum requirement. As there is already access to the property, she feels her getting a waiver will not be injurious to anyone else.

CM Acquaviva asks if she has gone to the BCPAO to request the combination? Ms. Maximin states yes, she has.

Public Hearing Opened: None

Public Hearing Closed.

Staff: SPM Morrell states she met with Ms. Maximin while the TM was on leave. She explained that the reason the previous request was denied was because it was viewed as a subdivision. That has been corrected by combining two of her parcels. They discussed potential alternatives. They also went over the past issues on Walker Lane and the similar issues. They discussed building a long road, building short, and building east/west. In her

Staff report, there are noted wetlands in the Kramer Lane ROW. In reference to the past BOA orders, a past owner was already granted multiple variances, one of which will include her in road payback for future Kramer Lane expansion. She reminds Council that tonight's decision is final, and that financials can not be the hardship the waiver is granted on. Attorney Bohne states that we were originally presented with 3 lots, which triggers a subdivision code. The applicant has drafted an easement to grant access for the rear parcel. He states the other issue is the variance that was granted to Dr. Ireland. In that variance, the applicant was required to dedicate 30 feet of ROW for Kramer Lane, and 20 feet for Beekeeper Lane, and to his knowledge, there has been no dedication. He also states that if a waiver is granted, the applicant will still have to share in the road building expenses. It also provided a path for the residents on the east side of Kramer Lane to pursue legal action. He believes Council should require the dedications regardless of if Council approves this request.

CM Acquaviva asks what the requirements are in the code? Attorney states the code requires a ROW be improved to the farthest extent of the lot. The Ireland variance allowed him to build without improving Kramer Lane. Mayor Reilly reiterates the extension of the road would only be to the southern lot. SPM Morrell reiterated that this request is for parcel 814, not 753. Attorney Bohne confirmed that the back property would keep the lot but provide an easement to the front house.

Ms. Maximin states she does not want to build Kramer Lane, just use the existing driveway as access to the property. CM Acquaviva asks how a UPS driver would access the property? Ms. Maximin states the delivery is left at the gate at the edge of the property. There were recently emergency vehicles at the property. CM Scardino states he feels the issue is people only live in a house for an average of 7 years. Would this create future issues? Ms. Maximin states that is why she has provided an easement. CM Acquaviva states we have had issues like this in the past and required applicants to build the roads. The current request would allow a driveway to act as a road. Attorney states he believes CM Acquaviva is suggesting we enforce the expansion of Kramer Lane north, as is required by code. CM Acquaviva states that by approving this, we would be limiting peoples access to lots on the east end of Kramer Lane. Attorney Bohne states an easement is not prohibited for access, but the question is if there is a reason to waive the extension of Kramer Lane. CM Hofmeister asks how these properties will be addressed? If they share the same driveway, will it create an issue? Mayor Reilly asks the Attorney if this is similar to Alexander Lane? He believes once more than one house is accessed from a driveway, it must become an approved named road. CM Scardino states he is not for creating higher density without extending Kramer Lane. CM Clevenger states he believes Kramer Lane should be extended. Attorney states Council may grant a waiver for Kramer Lane instead of the driveway.

MOTION: CM /CM to approve the waiver request. No Motion Heard.

MOTION: CM Scardino/ CM Clevenger to disapprove the waiver request.

Ms. Maximin states there is another alternative. Beekeeper Lane is another option. Can she use that as her driveway? She has driven it recently. TM Stinnett states Beekeeper is not an accepted road.

ROLL CALL VOTE: CM Scardino, Aye; CM Hofmeister, Aye; CM Acquaviva, Aye; CM Vail, Excused; CM Clevenger, Aye. Motion Carries 4-0.

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO TOWN APPOINTED BOARDS/COMMITTEES: 0

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 0

RESOLUTIONS: 0

MISCELLANEOUS: 1

12.a. TRIM Update

Exhibit: Agenda Report Number 12a

Staff: Clerk Kohler states that Staff recently received the official TRIM calendar for this year. In preparing the DR-420 and the DR-420MMP, staff found that both Public Hearings for the Millage Rate and Budget must be held within 15 days of each other. Staff is recommending the Public Hearings be held on Monday September 11th and Monday September 25th. These changes will allow the August RTCMs to be held on their traditional 1st and 3rd Mondays. Staff is also recommending the maximin millage rate be set at 5.0000 Mills, and the first draft of the budget is being prepared at 4.5000 Mills.

MOTION: CM Scardino/CM Acquaviva to approve the new meeting schedule and the suggested maximum millage.

DISCUSSION: CM Acquaviva clarifies the second meeting will be on the 25th? Clerk states that is correct.

VOTE: Motion Carries 4-0.

Chair excused the Attorney at this time.

13. DISCUSSION/POSSIBLE ACTION: 1

13.a Discussion – Conditional Use and Special Exception Use Criteria and corresponding Table 1-6.1(B).

Exhibit: Agenda Report Number 13.a

Mayor Reilly states this is another project from Planning & Zoning Board. This is a companion piece for the earlier Ordinance. This is just discussion and will be a Public Hearing in the future. CM Acquaviva suggests that Planning & Zoning send the Chair to speak to Council. SPM Morrell states this was reviewed by the P&Z Board and they voted unanimously to send this forward.

MOTION: CM Scardino/CM Hofmeister move to direct Staff to draft an ordinance for a future Public Hearing.

Vote: All Ayes (4-0)

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

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: She reminds the residents about the new Recycling schedule. She also asked why there is no deputy again? Clerk Kohler states he contacted the resource office and was informed they would charge us an hourly rate for the deputy to attend. He brought that information to TM Stinnett, who said he would contact the South Precinct Commander. TM Stinnett states they are having a staffing issue and come when they can.

CM Vail: Excused.

CM Clevenger: None.

CM Hofmeister: She has been riding the sanctuary twice a week. The area was closed for habitat restoration between the Sandhill Trailhead and Malabar Community Park. She noted they used the concrete pathway to move heavy equipment. She also spoke with EELs program director Mike Knight about giving the Town advanced notice about prescribed burns.

CM Scardino: States he was passed on his way here tonight by a group of motorcycles and cars driving at a high rate of speed.

Mayor Reilly: None

17. ANNOUNCEMENTS: (1) Vacancy on the Planning & Zoning Board; (2) Vacancy on the Parks & Recreation Board; (1) Vacancy on Board of Adjustment; (1) Vacancy on the Trails and Greenways Committee.

18. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:30 P.M.

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

ATTEST:
Richard W. Kohler
Richard W. Kohler
Town Clerk

Date Approved: 07/17/2023