

## MALABAR TOWN COUNCIL REGULAR MEETING

May 20, 2013 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 7:32 pm by Council Chair Steve Rivet. The prayer and pledge were led by Council Member Marisa Acquaviva, District 5.

### B. **ROLL CALL:**

COUNCIL CHAIR	STEVE RIVET
VICE-CHAIR/MAYOR:	CARL BEATTY
COUNCIL MEMBERS:	JIM MILUCKY
	WAYNE ABARE, excused
	JEFF MCKNIGHT, excused
	MARISA ACQUAVIVA
TOWN ADMINISTRATOR:	BONILYN WILBANKS, excused
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN, excused
DEPUTY TOWN CLERK	CINDI KELLEY

For the record, Fire Chief Bob Strandell is also present.

**C. ADDITIONS/DELETIONS/CHANGES:** Proclamation for Civility. Rivet stated that Fire Chief asked to be moved to be heard after the Sheriff's report. Without objection, the Fire Chief's report was moved after the Sheriff's report.

### D. **CONSENT AGENDA : To Be Approved as a Group with one Roll Call Vote on All Items if Resolution is included, otherwise 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)

#### 1a. **Minutes of 5/6/13**

**Exhibit:** Agenda Report No. 1a

#### 1b. **Budget Adjustment (Reso 19-2013)**

**Exhibit:** Agenda Report No. 1b.

Resolution read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2012-2013; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

#### 1c. **Appointment of Joanne Korn as regular Member of BOA (Reso 20-2013)**

**Exhibit:** Agenda Report No. 1c.

**Recommendation:** Request Action on all with one motion and a roll call vote

Resolution read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, FOR THE APPOINTMENT OF JOANNE KORN TO THE MALABAR BOARD OF ADJUSTMENT AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

### **MOTION: Acquaviva / Milucky to approve the consent agenda.**

Discussion: Acquaviva's stated that the information regarding the Wet Spot makes it sound like she was there; would like it removed. Mayor Beatty suggested it be stricken from the minutes; it is not information that needs to be stated. Acquaviva is in agreement and asked that it be stricken.

**VOTE:** 1)Jim Milucky, Aye; Wayne Abare, Excused; Steve Rivet, Aye; Jeff McKnight, Excused ;  
Marisa Acquaviva, Aye.  
Motion carried 3 to 0.

**E. PUBLIC COMMENTS:** Five Minute Limit. Comments may not address subsequent Agenda Items. Does not require Council response. (Speaker Card Required)

**F. ATTORNEY REPORT**

Attorney stated he had sent proposed request for opinion to AGO in regards to complaint against Leeannee Saylor as alternate board member; he received a letter regarding the receipt of his request and it will be July at the earliest to be placed on the agenda. He must authorize to give permission for them to use his name or it will be an anonymous request. He had nothing else to report at this time.

**G. BREVARD COUNTY SHERIFF'S OFFICE REPORT –** No one present to make report

At this time, Chief Strandell came forward and gave his report to Council. He reported that there were 53 calls last month; one medical at MIMA. The tanker is back on line. It has all new aluminum cabinets with powder coat on the inside of the cabinet. They have used it three times since it was returned to the station. He invited anyone and everyone to stop by the station to see the truck if they would like to see it. The Fire I class has been completed; got five new members out of the training. The class was opened up to other fire departments; charged \$800 for the class and it only costs \$400 for the Town. The cost of the class is the printing of the materials and the fire academy when planning these classes.

Chief Strandell stated he promoted John Luzzi to Driver/Engineer. He is on the list for a fire department in Kissimmee; we have to wish him well if he is hired on. Melanie Jerazol was also hired on in Kissimmee as well. These kids are coming from volunteer fire departments with certifications that make them very marketable. William Dooley, retired Battalion Chief from Melbourne, will be the Safety Officer.

Rivet asked about the five new members and the two that we have lost. He also asked how many active members we have now. Chief Strandell stated that it's hard to tell; it changes on a daily basis. He has held two interviews and is waiting for the \$30 background fees to be paid. Kelley advised Council that she does an average of 25 pay per call checks each month. Rivet asked Chief how close we are to having 24/7 coverage; he stated it is very close. During the holiday season is the hardest; usually only have the paid Lts. on staff during the holidays because everyone wants to be with their families.

Acquaviva asked about the recent fires. Chief Strandell gave a brief overview of the fires. There was one that the driveway was covered with vegetation and it was very hard to get to. Need to have DOF come in and bulldoze it to move the stuff. Saturday's fire was a fast mover; had seven people at the station with good coverage. The wind was high and there were about 15 pieces of apparatus on site but Malabar put the fire out. DOF got there quick and dug a fire line and Palm Bay was out as well.

**H. PUBLIC HEARINGS: 1**

**2. Commercial Site Plan Application for Malabar Local Market Located at 1896 Highway 1, Malabar Florida 32950, 1.95 acre, R/LC Zoning**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

Chair called applicant to podium. Frank Plata, Plata Engineering, 3700 N. Harbour City Boulevard, Melbourne, came forward to make presentation. This site plan was originally worked on in 2007. It was a preliminary site plan approved by St. John's; it is 1.9 acres on the south side. A site plan review was held in March with staff. The P&Z Board had a list of seven items that needed to be addressed. All design parameters are there to meet the minimum requirements.

Acquaviva asked what the Malabar Local Market is. Bohne stated that they are not going for a particular zoning. They are calling it that because it is what the code calls for; it must comply with the code. Mr. Plata stated that they are looking to have three tenants in the building. It will probably be three different store fronts. It will be commercial use but not the intense commercial use that she is thinking of. Acquaviva stated she was confused by the name. Mayor Beatty stated that it may be the equivalent of the Shady Oaks Plaza.

Milucky asked about the square footage of the building for the fire flow calculations. He wanted to know if the building was going to be 4,000 square feet or 4,620 square feet. Mr. Plata stated that the building is the foot print of the building envelope. Each business would be 1,200 square feet. They are only putting in 25% of the coverage that is permitted. Milucky is stating on the plans that it is Institutional/Residential. It is his understanding that this is light commercial; not residential. It is Milucky's understanding that it is commercial use and not residential use.

This portion of minutes verbatim:

*Based on, he wished the fire Chief was here because he could answer the question; it all comes back to when you have the residential institutional and the classification is light hazard, and it has a ordinary "C" value, which I don't know what that is because it sounds like it's engineering stuff, but he does understand this. It says the occupancy is light minus 25%; he's thinking that, since this is under fire code, all those things probably together minimize the exposure the Town has on the Fire Department's need to take care of your structure. He asked if he understood that correctly.*

Plata stated that all the factors are based on industry code; you get credits for being concrete block instead of a wood structure as well as being light commercial instead of residential with sleeping quarters. We go by Brevard County fire codes. There will be 24 parking spaces and the lighting will be in compliance with Malabar's dark at night code. Mr. Plata stated that the lighting will be well within the code and it comes with a full shield. Milucky also asked about the cutting of 16 trees; he doesn't know what the restrictions are. Bohne stated that trees will be removed with a tree removal permit. Milucky asked Mr. Plata if he heard that; wants to make sure that all is done correctly. Mr. Plata also stated that some of the trees will be moved on the site, not cut down but moved.

Mayor Beatty stated he didn't know if it is in the code or not; the restrooms are being used jointly from the sidewalk. Is there any provision in the utility room for a sink to dump out the dirty water from cleaning the floors? You can't just open a door and dump the dirty water outside. Mr. Plata stated this hadn't been taken to the Building Department yet; they will have their requirements that must be met. This is just the basic shell; the septic will need to be adjusted as well. This is the starting point for the site plan. Acquaviva asked about the four large vehicles. Mr. Plata stated that all parking issues have been met; traffic goals have been met to make it easier. All comments will be sent to the Building Department to make sure that all requirements are met for the project.

Chair declared Public Hearing open

Pat Reilly, 1985 Howell Lane; Chair of P&Z. came forward and addressed Council. The P&Z Board created a list of conditions that needed to be met by this meeting; the Board supports this project with a 5 to 0 vote.

Chair declared Public Hearing closed

Bohne stated that they have carved out the 1.95 acres of parcel; the remaining 14 acres are to be completely separate from this project and will be developed down the road.

Rivet asked before discussion, if anyone needs to make any disclosures. Milucky stated that his wife is on P&Z but they have not discussed the plans.

**MOTION: Milucky / Acquaviva to approve Site Plan for Malabar Local Market located at 1896 Highway 1, Malabar, FL 32950.**

**Roll Call VOTE:** Jim Milucky, Aye; 1)Wayne Abare, Excused; Steve Rivet, Aye; Jeff McKnight, Excused; Marisa Acquaviva, Aye.

Motion carried 3 to 0.

Bohne stated that he attended P&Z and they did a great job reviewing this project.

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

Presentation on PDE Study of Malabar Road Widening Project presented by Lance Decuir, PE, Sr. Transportation Engineer, Atkins Engineering & Design, 482 South Keller Road, Orlando, Florida 32810 Tel:(407) 806 4482 Email: [lance.decuir@atkinsglobal.com](mailto:lance.decuir@atkinsglobal.com)

Malabar Road Widening Project Website: <http://www.SR514Malabar.com>

Mr. Decuir gave a brief overview of this project; handouts provided.

Libertad Acosta-Anderson, P. E. is the project manager. She introduced Lance Decuir who made the presentation. After he was finished, Rivet asked what Mr. Decuir's vision would look like. Mr. Decuir stated it would be four lanes to US 1. Rivet stated that the Town has repeatedly asked for traffic lights at Corey/Malabar Roads and Weber/Malabar Roads. Ms. Acosta-Anderson stated that this would have to be justified with a traffic study and the number of deaths in the area. Acquaviva expressed concerns if Malabar Road keeps the bend at the park area at 55 mph. Again, Ms. Acosta-Anderson stated the speed limit would be looked at and would have to be justified in lowering it with a traffic study and the number of deaths in that particular area. Acquaviva stated that there have been 3 deaths within the last year and two were very recent. Ms. Acosta-Anderson stated that is why public input is very important and that they are advertising the meetings; they want the input of the public. She also stated that Weber and Corey Roads will be looked at as one of the major concerns for the Town. They will also look at the rural and urban sections of the road as well. In order to take out the bend in Malabar Road, it would have to be realigned. Mayor Beatty stated that he was here back in 1985 with the first study; he can't imagine that they don't have that information and it will help in the review of the project. You look at the existing road and then you look for alternate routes as well. It could be that Malabar Road will go down Glatter and be a straight road or they could keep it the way it is. All this will be looked at and reviewed. Ms. Acosta-Anderson stated that the newsletter they handed out has contact information for anyone who has questions or would like more information regarding the project. They are holding a meeting on June 11, 2013 at the Palm Bay Hospital; invite all the public. Milucky asked if the kick-off meeting will be like this evening. Mr. Decuir stated it will be but there will be more information available to look at as well. Rivet stated he would like all the meeting information on the Town's website so the residents can be made aware of what is taking place. Kelley stated she would give the information to Denine Sherear who is working the website while the Town Administrator is on vacation.

**3. Recommendations from Park & Recreation Board:**

Vickie Thomas, Chair, Park Board, came forward to answer questions.

**• Hay Co-op**

Milucky asked Bohne about liability if someone gets hurt while doing this on Town property. Bohne stated it doesn't have any liability on our part. Mayor Beatty stated he had several issues. First, there are signs in the park that say no trucks in the park. He state that when this first came about,

they talked about the Boulevard; that's County property and has nothing to do with the Town. Kelley stated that she could provide information regarding this. A phone call was received by Pat Lint, a participant of the co-op, asking for contact information for the County. Mike Knight was contacted and he informed Ms. Lint that a proposal for what they would like to do would be required so he could get the request looked at and approved. In the meantime, to try to save time, Ms. Lint was asking if they could use the parking area as originally brought to Council. Kelley stated she explained that this request first had to go to the Park Board, per instructions of Council. The Park Board would then make a recommendation to Council and Council would have the final decision. Ms. Lint was looking to see if this could be done as a faster means as the next delivery of hay is scheduled for June 16, 2013. It was explained that this would take some time as it had to go to two meetings for discussion and actions. Mayor Beatty stated that the park is for recreation; allowing someone to use the park for something other than recreational, someone else could come in and ask for something else; we would be very hard pressed to say no. He gave an example of a pharmacy coming into the park to sell drugs; he wasn't picking on pharmacies, he was using it as an example only. Acquaviva stated that would be selling drugs in the park.

Dick Korn, 3115 Weber Road and previous Park Board member, came forward and addressed Council. He stated that there are two issues; first, it would look like the Town is endorsing one business over another who pays their taxes. The impropriety is there and the Town needs to be mindful of this. Also, if a business is in the Town and they pay their taxes are there sales tax liability issues to the Town? Korn stated that Council should not do this. Mayor Beatty stated he is adamant about not doing any co-op on Town property. He doesn't feel the park is the place for this activity. Vickie Thomas, Park Board Chair, came forward and stated that this group did try to use private property, Jan Pence's property at the north end of Corey Road; it didn't work out. Acquaviva stated she understands the issues.

**MOTION: No motion made.**

Recommendation fails for lack of action.

- **Naming 17 acres on Weber Road**

Acquaviva stated that Council had the background information and it is self-explanatory. There has been contact with Mrs. Eschenberg and she prefers the 17-acre parcel over the soccer field and Acquaviva would like to respect Mrs. Eschenberg's wishes.

**MOTION: Acquaviva / Milucky to approve the motion to name the 17-acre parcel on Weber Road for Thomas M. Eschenberg. VOTE: All Ayes.**

Motion passes 3 to 0.

- **Making openings wider for Horse & rider**

Vickie Thomas addressed Council on this and advised them that this had been addressed and taken care of. No vote needed at this time.

- **Fence 360' at south side of Disc Golf Park**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Acquaviva asked Thomas to explain how the Parks & Recreation Board came up with the Town placing fencing on this property. Thomas explained that each of the other parks have fencing to delineate the property. Mr. Krieger is asking that the Town put up the 330' of fence along the south side of the park. Kelley stated that most of the parks have been fenced in with the exception of Huggins Park; that fence that is in the park was donated for the cemetery and relocated. The fence at Fern Creek Crossing Park was an Eagle Scout project that the Town paid for portion of the materials; Acquaviva stated that the funds came from the Council's discretionary funds and we no longer have those funds available.

Milucky stated he is struggling to understand; Mr. Krieger needs to have a survey done; if he wants a fence and signage, he can do it with a permit and put up the signs. The question is do tax-payers want to pay for a survey and fencing to keep people off his property? What he is hearing is Mr. Krieger is looking for a short way to get a survey and fence.

Korn, 3115 Weber Road, came forward and addressed Council. He was present at the Park Board meeting when this issue was brought up. All of the parks have fencing around them to delineate the boundaries of the parks. He felt that we are within our rights to identify the boundaries of the park and Mr. Krieger is within his rights to ask the Town to identify the boundaries of the park.

Acquaviva asked Mrs. Thomas if Mr. Krieger is looking for the Town to pay for a survey. Kelley interjected and stated that the Town had a survey and Franklin knew where it was and when she went to get it, as Kelley advised her of this when it came up at the Park Board meeting, it was not where it belonged; she has been looking for the survey. We are trying to locate it so we can see the boundaries of the property.

Mayor Beatty stated that the boundaries of the parks are delineated one way or another. He recommends that this be tabled until the survey can be found.

**MOTION: Acquaviva to table until survey is found.**

Motion dies for lack of a second.

**MOTION: Acquaviva to place "No Trespassing" signs to help delineate that property.**

Acquaviva stated she wanted to know what the Town's cost would be. Can't we just put up "No Trespassing" signs; posts are already there. Mayor Beatty stated that at Rocky Point, the Town paid for and installed "No Trespassing" signs based on a complaint being received. Acquaviva asked Bohne for some guidance on this issue. Bohne stated that the Town doesn't have to do anything but they certainly can if they so choose. Thomas stated that it was discussed at the Park Board meeting to use barbed wire but was afraid someone would get hurt. We could use some type of ribbon to delineate the boundaries. Rivet stated that anyone can put "No Trespassing" signs out. Milucky stated that he has 4 signs that he will donate to the cause; the Town doesn't have to pay anything and Mr. Krieger can have them.

Leeanne Saylors, 1280 US Highway 1, came forward and addressed Council. She is in agreement with the Mayor regarding the hay co-op. With regards to the Disc Golf Park, the Town has made an effort to delineate the property boundaries. Should Mr. Krieger want a fence on his property, he would not be rogue in putting up a fence. If he would like to put up "No Trespassing" signs, he could do this as well. She felt it would be inappropriate for the Town to do this. If you do it for one, you have to do it for everyone.

Motion dies for lack of a second.

- J. **ACTION ITEMS:**
  - ORDINANCES: First Reading – 0**
  - RESOLUTIONS: 0**
  - MISCELLANEOUS: 0**

Attorney leaves at 9:15 pm

- K. **PRESENTATIONS:**
- I. **PROCLAMATIONS:** National Civility Resolution - Mayor read.
- L. **STAFF REPORTS:**
  - ADMINISTRATOR – excused

FIRE CHIEF REPORT FOR APRIL – moved to be heard after the Sheriff's report

CLERK – nothing

**N: DISCUSSION ITEMS:**

**O: REPORTS – MAYOR AND COUNCIL MEMBERS** (number indicates in which order they spoke)

- 2) Mayor Beatty – stated that Grant Valkaria Park opening is scheduled for June 8, 2013. He will be there. Thomas Eschenberg, grandson of Mayor Eschenberg, is one of the Chic-Fil-A cows.
- 1) Jim Milucky – not sure when disclosure is supposed to happen. The email in building use on Malabar Road; no discussion outside publicly advertised meeting. Mr. Wolfington did call the office and Milucky a week ago. He suggested that he come to Council. He asked for a read on Council. Milucky told him he could fill out a card and address Council. Rivet stated he received the same email. Disclosure usually happens at the time it appears for Council. Milucky thanked staff for the expenditure report received; he is recommending that staff check the formulas, feels something may be a little off. He would also like to have some of the accounts in Streets & Roads reviewed; money has been budgeted but not used and we are six months into the budget year. He would like to know before the next meeting about these funds. Accounts in 541, Repairs & Maintenance, 541.4600; 4800, 4810, 4820; the list goes on with no monies spent. Acquaviva stated he could call and speak to Franklin about this. He just would like an answer by the next meeting. Milucky also asked about the FF that was injured. Kelley stated she did know that a report was submitted to FLC; she doesn't know for sure, but believes he is doing better.
- ) Wayne Abare – excused
- 4) Steve Rivet – nothing to report at this time.
- ) Jeff McKnight – excused
- 3) Marisa Acquaviva – nothing to report at this time.

**P. PUBLIC COMMENTS: General Items (Speaker Card Required)**

**Q. 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

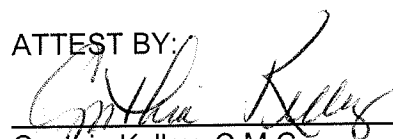
**R. ADJOURNMENT:**

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

**MOTION: Acquaviva / Milucky to adjourn. VOTE: All Ayes.** The meeting adjourned at 9:20 PM.

BY:   
Mayor Carl Beatty

ATTEST BY:

  
Cynthia Kelley, C.M.C.  
Deputy Town Clerk

Date Approved: 06/03/13 as corrected

(seal)

