

MALABAR TOWN COUNCIL REGULAR MEETING

September 16, 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 7:31 pm by Council Chair Steve Rivet. The prayer and pledge were led by Council Member Wayne Abare, District 2.

B. ROLL CALL:

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

For the Record, Chair announced Acquaviva is excused.
Clerk stated that Acting Fire Chief Dan Welton is also present.

C. ADDITIONS/DELETIONS/CHANGES:

Clerk asked to comment: Agenda Item 4 has been withdrawn by the resident and not rescheduled. Re: minutes: she deleted a duplicate section of minutes in 8/13/13; she made a correction to the wording on a motion in 8/19/13; she corrected "road" to "street" in reso and ILA with G-V. All changes have been copied and provided to Council members. Also we made a change in Agenda Item 3 and ask in the Agenda Report for Council consideration of giving our two part-time employees the same 1.5% raise as fulltime were given. Mayor to add comment under Attorney 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)

Chair read resolutions by title only.

1a. Approval of Minutes

Regular Town Council Meeting – 8/19/2013

Budget WS #2 – 8/13/2013

Exhibit:

Agenda Report No. 1a.

1b. Support National Estuaries Day (Reso 32-2013)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, RELATING TO NATIONAL ESTUARIES DAY AND THE HANDS ACROSS THE LAGOON EVENT, SEPTEMBER 28, 2013; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 1b.

1c. Approve Devin Lane as New Street Name (Reso 33-2013)

A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE NAMING OF RIGHT OF WAY SOUTH OF MALABAR ROAD FOR A DISTANCE OF 1300 FEET IN SECTION 2, TOWNSHIP 29S, RANGE 37E AS DEVIN LANE; PROVIDING FOR THE FORWARDING OF THIS INFORMATION TO BREVARD COUNTY ADDRESS ASSIGNMENT FOR E-911 EMERGENCY IDENTIFICATION PURPOSES; PROVIDING

FOR THE POSSIBLE FUTURE RE-NAMING; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 1c.

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

MOTION: Abare / McKnight to adopt consent agenda including Reso 32-2013 and 33-2013.

ROLL CALL VOTE: 1)Milucky, Aye; Abare, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, excused.

Motion carried 4 to 0

E. PUBLIC COMMENTS: Comments may not address subsequent Agenda Items. Comments do not require Council response. (Speaker Card Required)

Five (5) Minute Limit per Speaker

Ted Oglesby and Kristi Worley, Waste Pro, have been following our agendas and would like opportunity to bid on contract. Very interested. Key points, citizens concerned with large containers. They don't do one size fits all. Call or email him with questions. Chair asked if they did GV – yes. How long – since last Oct.

F. ATTORNEY REPORT – nothing. Mayor Beatty reviewed everything and then called Atty. Chair clarified this was about the railroad property. Mayor said they want a letter of intent. He said he and the Attorney think they should offer \$500.00. Less than that would be slap in face. Mayor asked that Attorney write letter of intent and he will sign it. Consensuses of Council to have Attorney write it. Atty will be out of office starting tomorrow (Tuesday) for rest of week.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT – Crpl Jennings, BCSO, introduces himself. Went over a list of recent incidents. Grand theft, Aug 3-5, numerous tools and they have ID on theft. Mayor asked if BCSO should have list of DOT vendors doing work in area on private property. Wayne asked about MSTU – we pay into it. When we first started it there were 4 persons dedicated to south precinct. Some months ago that was dropped to three. Last supervisor's mtg they are almost at full staffing. They have two openings. He will forward question up the chain of command.

H. PUBLIC HEARINGS: 2

2. Ordinance Setting Millage FY 2013/2014 (Ord 2013-63)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE MILLAGE RATE OF 1.6630 FOR THE LEVY OF AD VALORUM TAX WITHIN THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2013 THROUGH AND INCLUDING SEPTEMBER 30, 2014; PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 2

Recommendation: Request Approval of 1st Reading of Ord 2013-63

Chair read by title only.

PH opened: none

PH closed.

MOTION: McKnight / Abare to approve first reading of Ord 2013-63

ROLL CALL VOTE: Milucky, Aye; 1)Abare, Nay; Rivet, Aye; McKnight, Aye; Acquaviva, excused.

Motion carried 3 to 1

3. Ordinance Setting Budget FY 2013/2014 (Ord 2013-64)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF 1,620,963.00 FOR THE TOWN OF MALABAR FOR THE PERIOD FROM

OCTOBER 1, 2013 THROUGH AND INCLUDING SEPTEMBER 30, 2014; PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Approval of 1st Reading of Ord 2013-64

Chair read by title only.

PH opened: none

PH closed.

MOTION: Milucky / McKnight to adopt budget with modification mentioned by Clerk (include in Ord 2013-64. Mayor clarified not the new PT that hasn't been hired. Wayne asked was dump truck 40K in 541 – yes.

Chair then read Sec 1 of Ord 2013-64.

SECTION 1. The Town Council, in regular session duly assembled adopt the final Budget of \$1,620,963.00 for the proposed expenditures from October 1, 2013 through and including September 30, 2014, reflecting the general operating millage rate of 1.6630 mills. This total budget includes \$1,497,197.00 in the General Fund and \$123,766.00 in the Stormwater Fund.

ROLL CALL VOTE: Milucky, Aye; Abare, Aye; 1)Rivet, Aye; McKnight, Aye; Acquaviva, excused.
Motion carried 4 to 0

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

4. ~~Anne Crane, Request for Speed Hump on Township Road~~

J. ACTION ITEMS:

ORDINANCES: First Reading 0

RESOLUTIONS:

5. **Formalize Job Descriptions with Resolution (Reso 26-2013)** A
RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR ADOPTION OF THE ROLES AND RESPONSIBILITIES OF THE TOWN ADMINISTRATOR AND THE TOWN CLERK; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Approval

MOTION: Abare / McKnight to adopt Reso 26-2013. Remove utility billing from clerk description. TA said Risk Mgmt. Is under HR. TA will include two separate descriptions for what she does as Risk Mgmt and Code Enforcement since they are different skill sets.

Abare said he has pursued this and thinks it has worked out and is very positive. Mayor was he was here when roads was taken away from the Clerk. Franklin explained her involvement is the money portion. TA is going to prepare others so they can see job desc of all employees. Should review all job descriptions every two years.

ROLL CALL VOTE: Milucky, Aye; Abare, Aye; Rivet, Aye; 1)McKnight, Aye; Acquaviva, excused.
Motion carried 4 to 0

6. Approve Interlocal Agreement with Grant-Valkaria (Reso 27-2013)

Exhibit: Agenda Report No. 6

Recommendation: Request Approval

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE INTERLOCAL AGREEMENT WITH GRANT-VALKARIA FOR MANAGEMENT AND HANDLING OF MAINTENANCE OF

ROADS AND PERMITTING FOR CULVERTS AND DRIVEWAYS ON PROPERTIES ABUTTING BENJAMIN, OSAGE AND REESE ROADS; PROVIDING AN EFFECTIVE DATE.

MOTION: McKnight / Abare to adopt Reso 27-2013.

Atty explained G-V had a hiccup and explained it as wanting the permit fees to be the same so the ILA was changed to add that language. Wanted to ensure permit fees would be same.

ROLL CALL VOTE: 1)Milucky, Aye; Abare, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, excused.
Motion carried 4 to 0

TA said next mtg will have the golf cart ord.

7. Amend Council Procedures (Reso 30-2013)

Exhibit: Agenda Report No. 7

Recommendation: Request Approval

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 11-2012 RELATING TO COUNCIL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Abare / McKnight to adopt Reso 30-2013 with change noted below.

Abare – trying to be more civil. Milucky questioned the part they regularly violate – not engaging in conversation with speakers. Subsection “g.” McKnight disagrees and thinks it should be in there and said this is a loose set of rules and Chair should have flexibility. Abare agrees with McKnight.

McKnight also said they should be able to “so moved” as long as the motion is clear. Under 1.D. delete the prohibition of “so moved” unless motion is not clear.

Atty is still concerned with 4.D.g. and suggested wording – “however the chair may relax this rule if it will assist the council in their deliberation.”

ROLL CALL VOTE: Milucky, Aye; 1)Abare, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, excused.
Motion carried 4 to 0

8. Appoint Members and Establish Terms for Trail & Greenways Committee (Reso 31-2013)

Exhibit: Agenda Report No. 8

Recommendation: Request Approval

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR REPEAL OF RESOLUTIONS 06-2008 AND 29-2012; PROVIDING FOR COUNCIL APPOINTMENT OF MEMBERS AND SETTING OF TERMS FOR THE TRAILS AND GREENWAYS COMMITTEE; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

MOTION: Abare / McKnight to adopt Reso 31-2013.

Abare explained how the terms were determined terms: they wrote number and he pulled them from a hat. Council has right to change. McKnight pointed out typo in Wilbur's term to correct. McKnight explained his question of how member's terms were chosen and wanted to avoid any sense of impropriety. He thanked staff for the method they used.

ROLL CALL VOTE: Milucky, Aye; Abare, Aye; 1)Rivet, Aye; McKnight, Aye; Acquaviva, excused.
Motion carried 4 to 0

MISCELLANEOUS:

9. "Qualify" Unopposed Candidates for District 4 and 5

Exhibit: Agenda Report No. 9

Recommendation: Request Approval

MOTION: Abare / McKnight to "qualify" the unopposed candidates.

VOTE: All Ayes (Acquaviva excused). Motion carried 4 to 0

(No Recess – Attorney Excused) McKnight asked about next item. Re: infrastructure improvements to developments like Brook Hollow and Country Cove. Attorney said if you don't want to maintain, then don't accept the dedication. Wayne asked about sidewalks. Malabar is rural and doesn't have sidewalks. Franklin said we would have to modify the SD code. Abare said we have learned that oak trees and sidewalks don't go together. TA said it was the tree of choice back then. Abare said he was not criticizing what earlier Councils did.

K. PRESENTATIONS: Certificate of Completion to Mayor Beatty - Chair asked Mayor to give overview. Mayor said it was geared up for IT persons and their process. He thought it was good seminar.

L. PROCLAMATIONS:

M. STAFF REPORTS:

ADMINISTRATOR: last two active members of Eagle Patrol have resigned. We will not be doing repairs to vehicle. Leaving money there since it just happened. It was personal issues. Mayor said it was down to two people once a week. TA said Council may get calls about Al Tuttle Trail maintenance. They want it mowed. It is in EELS property. Malabar is not mowing. From the discussion with EELs we would only empty trash on occasion.

CLERK: nothing.

N: DISCUSSION ITEMS:

10. Procedures for Dealing with Subdivision Improvements

Exhibit: Agenda Report No. 10

Recommendation: Request Discussion and Direction

Jeff doesn't have the answer if they accept a SD we should recognize something that could be a great expense. Staff will work on language. Wayne applauds Jeff for bringing this up.

11. Procedures for Board of Adjustment

Exhibit: Agenda Report No. 11

Recommendation: Request Discussion and Direction

Franklin stated that this came about regarding the BOA meeting held on 7/16/13; one resident from Alexander Lane took offense to wording used and made a case on the 15th of July to Council and again on the 16th of July to the BOA. A lot of miss-statements were made but as an outcome the Town Clerk met with Abare and TA. The suggestion was made that some of the issues need to be cleared up and as a result of the meeting, at the appeal process, the notice, which is not mandatory, is placed on the property; it will also have the appeal information on it. If it is to be appealed, it must be done within 30 days to the court. The other thing that was a good idea was to include the staff memo in the actual package. The way the code is written now and how it has been handled, if the Building Official had something to say, he could come to the meeting. When the BOA Chair asks for staff comments, the Building Official would speak at this time. Wilbanks pointed out that she wants it as part of the package so when it goes out, it will have everything that will be presented at the meeting that we are aware of at the time. The applicant still has the opportunity to present evidence at the time of the meeting. Staff would also have the opportunity to speak to the

BOA, if asked question. But the actual staff memos would be included in the packet. Those two things are good ideas that came from that meeting. This ordinance was drafted that proposes that BOA requests first be filtered through the P&Z Board. Franklin doesn't think it's a good idea; just her opinion.

Rivet asked if there were any additional comments. TA stated she always had concerns with the size of the signage; that just comes from her experience in the south. You would not put out a BOA the size of an 8 x 10 page size on something; it would be something that is posted so as you drive down the road, it would catch your attention. She felt this is something to be considered; it's not included in here. But as we look towards transparency with government, felt that we do a disservice to the people in the area where the BOA hearings are concerned if you don't see that little sign. It's time for the Town to consider the sign options. Franklin stated that everyone gets a letter. Abare stated the sign is a minimum size; they can be made bigger. TA stated that staff assists the applicant by giving them the sign. This comes from the indoctrination from coming from the south. Abare stated that if we want the signs bigger, that would not be a problem; it could be done. TA stated this would come from Council; we don't have the size of the signage in the packet. She knows that everyone gets letter but sometimes they don't get opened. They would certainly see a sign.

Milucky asked if we are in the discussion part of this; Rivet stated it is a discussion item. Milucky stated that he struggles with the idea of running the BOA applications through the P&Z Board for feedback. P&Z is its own unique thing and is designed to do so; it's chartered to do its own thing. This is just one more hurdle that someone has to go through to get an application through. There is a board that has been assigned to do this and to look at this process. He doesn't recall Council giving staff that instruction to have that. He would be uncomfortable. P&Z has their hands full with land use and healthcare facilities; they have a full plate and to add this is to it when it's something that goes to BOA, he would like to see that go away.

Abare respectfully disagrees; the BOA, he was on the P&Z Board for a few years and spent 6 to 7 months on ponds and decorative features. How can the BOA understand some of the battles for voting for/against certain things? He feels that P&Z could provide some insight to the BOA. He doesn't see it as a bad thing to have the applications go to P&Z first; he sees it as potentially good.

McKnight stated he agreed with Abare; most of the issues that come to the BOA are going to be zoning type issue anyway. The P&Z Board has historical knowledge and he thinks it's a good idea. Just to air this thing out and get more information out to everybody that's involved in it. Most of the time, it will work itself out. If he were to apply for a variance himself, he would want to have P&Z look at it; he knows that by exposing it and getting everything out, there is less chance of non-transparency taking place. It's another airing point before going to the BOA. You may go to the P&Z and they say it's a crazy idea and negate it altogether. He feels it's an excellent idea.

Mayor Beatty stated that before someone goes to BOA, if they have to be turned down by staff or Building Official. So they can't just go right to go and bring their sharp lawyer and walk all over a group of people who are trying to do the best job they can. He thinks it should go that process and only when they get rejected on their addition, their bridge or whatever. Then they can go to the BOA.

The process for the BOA starts when the applicant pays there \$300 application after they have asked to build something that is not in the code. Franklin stated that when someone comes in and wants to build something that is not in the code and there is a hardship, they can request a variance. When the applicant pays his fee of \$300 and the application is submitted, the variance process is started and it must be done within 30 days.

McKnight stated that he doesn't feel that if an applicant is turned down for something the BOA should take place right away; this is when it should go to the P&Z for their review and not have the applicant pay the \$300 application fee. Applicant can get clarification from P&Z and see if they should proceed with a variance application.

TA stated that the process McKnight is describing is what some cities do; she submitted the survey that she had done when this discussion came about. Many of them use the P&Z and then move to the BOA. She sees what McKnight is saying but we are time driven. McKnight stated that once you pay the \$300, it is time driven; more time is needed to air all that out. You can't require them to go to P&Z but have it as a recommendation would be the correct thing to do for the resident so they are not out their \$300 and they can air it out to see what their chances are. Abare asked what if someone wants a huge variance; they go to P&Z and they say it's crazy. What's P&Z going to do? The applicant wants to pay the fee and take to the BOA to see what they will do. P&Z can't stop the applicant from applying for a variance; McKnight stated they are an advisory board but they can advise. Abare is a little torn with what P&Z would do.

TA says that this will pit one board against the other; it goes against what she just said about some cities using this process. That, in of it, do we really want to do that? McKnight stated that some of the ordinances and codes are not that easy to decipher so if you go to P&Z and get some clarification on that code; it's part of their job.

Mayor Beatty stated that he could see where there could be a situation where someone was turned down. But if they ran it by the P&Z, being the experts in that field, might say well no and they can clarify a lot of things. That is his suggestion on that. If he thinks of anything else, he will come back.

Milucky's fear is that someone comes to Council and pleads their case; Council sends it to P&Z. A day or week becomes a month; P&Z sends it back. Here is his fear, it's not to hide anything or try to get away with anything. It's trying to be responsive. If the property owner already understands that what they are asking for is already non-compliant; it's been rejected by staff; his thought was he didn't see P&Z stopping what they were doing because what he would expect P&Z to say is here's the Bible; you're right, staff has it nailed. He doesn't expect P&Z to do anything after that. They have set down land use plans and he expects them to support that. That is not what this process is about; it's about the property owner already knowing this is wrong but I want to do it because I have a hardship. But it is ok with all my neighbors to do this.

Abare stated that the compromise in this is to just send the draft out to Council and the Mayor so we could see it and be involved with what is happening. We don't make the decision or get involved in the decision. As an individual, someone may want to go to the BOA meeting and make their comments known as a resident. He doesn't think it's a good compromise but a reasonable one.

Rivet asked for anymore comments, actions or discussions. Mayor Beatty is in agreement with Abare; a copy out to all individuals that might be concerned. McKnight's primary concern in all this is consistency; as we go through this, each case is dealt with the exact same way. Milucky asked if we can take out it goes to P&Z. Mayor Beatty stated that a copy would also be sent to them as well. If someone has an idea, it can be brought to them. TA stated that based on the comments tonight, we will fix the ordinance and bring it back to Council. It will be sent out with the changes brought forth tonight.

12. Procedures for Teen Council**Exhibit:** Agenda Report No. 12**Recommendation:** Request Discussion and Direction

Mayor didn't ask for this. Franklin stated that Council direction from last April was to hold the August meeting and then have Mayor report back to Council. Chair said that was his item back then and that was the direction Council gave. Mayor said they met for the first time since break in August. They have a count of 9 and may have two more coming on. They plan to set up everything internal. Nothing from Eschenberg to go by. Have a recording secretary. One of the members graduated so she has shifted over to recording secretary. He has three issues for next meeting. They were carrying three people that did not show up. He suggested buying a cake. They all thought that was the last meeting. He suggests they don't run it every month. Also he wants them to lay out their procedures and run their meetings. Have teen council members rotate chair position. Abare applauds his participation in this. Mayor wants to turn it over to them like a meeting Tom did – so if he can't make it someone else can attend. He will have the agenda layout like a teachers plan. Mayor stated that their behavior once on the dais does change and get more serious. They will bring their own recorder.

Chair said there is flexibility but it does start with Council. Not just structured by Teen Council. Invite others to come in and speak.

O: REPORTS – MAYOR AND COUNCIL MEMBERS

Marisa - excused

Jeff – nothing

Jim - nothing

Mayor – TA, TC and Mayor will all be attending separate committee meetings for the FLC Policy preparation for next legislative session. Mayor is driving up day before. He also said there will be an IEMO (Institute for Elected Municipal Officials) 3 coming up and will be by invitation only.

Steve – dedication for Tom Eschenberg Park will be at 11AM on Weds at 1800 Weber Road. Went to fund raiser for Bill Posey. He was very gracious with his time and invited us to call if they could help. Also Haridopolis made similar offer.

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: McKnight / Milucky to adjourn. **VOTE:** All Ayes. The meeting adjourned at 9:00 PM.

BY: Carl A. Beatty

Mayor Carl Beatty

ATTEST BY:

Debby K. FranklinDebby K. Franklin, C.M.C.
Town Clerk/TreasurerDate Approved: 10/7/13(seal)