

MALABAR TOWN COUNCIL REGULAR MEETING

October 21, 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 7:30 pm by Council Chair Steve Rivet. The prayer and pledge were led by Chair Steve Rivet.

B. ROLL CALL:

COUNCIL CHAIR	STEVE RIVET
VICE-CHAIR/MAYOR:	CARL BEATTY, arrived 7:38pm
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, Acting Chief Dan Welton is also present.

C. ADDITIONS/DELETIONS/CHANGES: none

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. Approval of Minutes Regular Town Council Meeting – 10/7/2013
Budget WS #3 – 9/9/2013
Exhibit: Agenda Report 1.a

1b. Budget Adjustment FY 2012/2013 (Resolution 42-2013)

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.

Exhibit: Agenda Report No. 1b

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

Chair read reso by title only.

MOTION: Jim / Wayne approve consent agenda as presented.

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

F. ATTORNEY REPORT – Atty spoke with TA and she did receive communication from railroad people and their number is \$10,500.00. Atty thinks if they are up to that dollar amount, maybe TA should contact the two property owners that are encroaching in our ROW. Then they could contribute towards the purchase price. Looking for direction. TA said there is a code

enforcement item open with AAA. Then they said why just them Kempher is also encroaching into the ROW. Mayor said if we go all the way back it will cost too much. We should talk to the two property owners. Atty said that is what they are looking for – some direction. Mayor said the front piece goes way back. The second party traded a ROW inside for giving additional ROW along W. Railroad Ave. Jim said he is no expert but the people that own those pieces could have a recourse against the title policy. TA said the back piece clearly did not follow the survey. The property owner in front could have those avenues. Consensus is to have TA to begin discussions with property owners and also keep negotiating with FEC.

G. BCSO REPORT – no representative present

H. PUBLIC HEARINGS: 0

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

2. Recommendation from Planning & Zoning Board

Exhibit: Agenda Report No. 2

Recommendation: Action

Discussion: Wayne was called by a member of P&Z. They are concerned if water and sewer comes down the street, then they may have to hook up. He knows the language says it will be voluntary. Steve said the language is clear unless by State law. If a septic fails the Health Dept could require them to hook up. State law requires mandatory hook-up if sewer is available. There is some formula. We can't do anything about that State law. Wayne said if sewer is run and your septic is good you could be required to hook up. TA said one of the things they negotiated was that hook up would be voluntary for water only. The sewer is different.

Dick Korn, Weber Road, was on P&Z. They read the agreement that stated "as required by State law" unless exempted by local jurisdiction. If there is a failure of septic it will be up to Health Dept. If water is run down Weber then he will have to hook up. No, it is not required for water. Section 12.4. clearly states it is by request. Atty said he could spend time looking at it. He doesn't know what the exemptions are. Wayne said most people would be thrilled to have water. TA questioned the request to re-negotiate. What is there to negotiate? Wayne said sewer doesn't affect anyone now since it is only in Brook Hollow. Wayne said Paladin wants to bring water and sewer down to his project. No direction given to attorney to pursue.

J. ACTION ITEMS:

ORDINANCES: First Reading

3. Ordinance Allowing Golf Carts (Ord 2013-65)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; CREATING SECTIONS 13-10 THROUGH 13-15; IMPLEMENTING PROVISIONS FOR THE OPERATION OF GOLF CARTS ON DESIGNATED TOWN ROADS; PROVIDING FOR LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; ESTABLISHING OPERATIONAL STANDARDS AND REQUIREMENTS; PROVIDING FOR SINAGE; PROVIDING FOR LIMITATIONS AND OTHER PROHIBITED CONDUCT; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR REPEAL, SEVERABILITY, AND INCORPORATION INTO THE CODE OF ORDINANCES OF THE TOWN; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Approval of 1st Reading of Ord 2013-65

Chair read by title only.

MOTION: Jim / Jeff to approve Ord 2013-65.

Discussion: Jim said change sinage to signage.

Wayne questioned the use of unimproved ROW in definitions.

Steve said add the words "for this purpose only"

Wayne asked about operator in definitions. Wayne thinks we will be sorry we did this. Then the 4-wheelers would want to do this. Atty said it is under State law. Jeff said in Viera they are all over the place. You will have 4-wheelers with or without this ordinance.

ROLL CALL VOTE: Milucky, Aye; 1)Abare, Nay; Rivet, Nay; McKnight, Aye; Acquaviva, Excused. Tie vote. Mayor voted Aye. Motion carried 3 to 2

4. Amend Code re: Town Letterhead (Ord 2013-66)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTIONS 2-1.(b) AND 2-1.(c) TO CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN TO INCLUDE COLOR OR BLACK AND WHITE DEPICTIONS OF THE LOGO; DESIGNATING ONLY ONE STYLE LETTERHEAD FOR USE BY TOWN OFFICIALS AND EMPLOYEES TO CARRY OUT TOWN BUSINESS; AMENDING SUBSECTION (e); ADDING A NEW SECTION 2-1.(f) PROVIDING FOR ADOPTION AND PROTECTION OF THE TOWN FLAG DESIGN; ADDING A NEW SECTION 2-1.(g) PROVIDING FOR ADOPTION OF THE TOWN SONG; PROVIDING FOR CODIFICATION INTO THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Approval of 1st Reading of Ord 2013-66

Chair read by title only.

MOTION: Jim / Wayne to approve Ord 2013-66.

Jeff asked about Section 2. What about handing out business cards with town seal at election time. Mayor would like to include the seals on vehicles. Can't manipulate the seal. Call it mono not black and white. Give an example. A beef he has is the T-shirt made for 50th anniversary has a pink boat. It should not have been done. Wayne asked about sticking his card in a mailer. Atty said it is ok to hand them out but if he hands them out while running for office that is not ok. Atty said use of seal on PW vehicles is authorized by Town Council and should be included. Jeff said what about wearing a Malabar t-shirt. Atty said it is ok to wear the t-shirt. Brian asked about car tag. It is also an authorized use. Jeff said it is authorized because it was bought from Town Hall. Atty said to be consistent it should be authorized by Council. Jim disagrees. He has issue. He wears a ball cap with Town seal that was given to him. Atty said he can't wear it while running for office. It is a fine line. Atty is trying to determine intent of code. Nothing prevents them from wearing their t-shirts or caps; the issue is if they use the Town logo for gain.

Dick Korn, if he is running a campaign, does he have to remove tag from truck. Jim said he thinks if they put the word *elect* on the t-shirt then it would be a problem. Atty said if they wore Town shirt and stood by a sign saying *elect* it would still not be ok.

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

RESOLUTIONS: 1

5. Dependent Benefits for New Employees (Reso 41-2013)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AN AMENDMENT TO THE BENEFITS SECTION 5 OF THE EMPLOYEE MANUAL ELIMINATING THE TOWN'S CONTRIBUTION TOWARDS HEALTH CARE INSURANCE COVERAGE FOR DEPENDENTS OF NEW FULLTIME EMPLOYEES AFTER OCTOBER 1, 2013; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Chair read by title only

MOTION: Jeff / Wayne approve Resolution 41-2013.

Discussion: Jeff has no problem with this. Wayne said he learned at conference from Ken Small that you must have uniform coverage for all employees. TA said if you are offering insurance then all fulltime employees must be offered insurance. It does not mean that you can't change the cost share requirement for new employees. If a new fulltime employee is hired after 10/1/13, the Town will provide him insurance and pay 75%. Employee pays 25%. If they want dependent coverage they would be responsible for 100% of that cost. Melbourne went to this policy in 2011. It is only for new hires. Jim referenced a training class he just had on the ACA (Affordable Care Act). He said there are certain things that will go into effect in 2014 and 2015. He learned that anything over 30 hours is considered fulltime and part-time employees are stacked until they equal one FTE for purposes of reaching the threshold of 50 employees. TA said we have nine FTE, four PTE, five stipend, and then the FD volunteers. TA said Franklin had told her of his concern and she checked with the FLC health insurance experts and was told they felt comfortable in saying that we do not include volunteers. She has checked with all sources and they all said same thing. TA stated the status of volunteers and stipend FF. We don't consider them employees. TA said that FF have submitted requests for employment verification and she has told them they are volunteers, not employees. Wayne asked about the \$5 per hour they get if they stay over? TA said they are paid stipend. The pay per call is considered special pay.

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

First page on vote, change names of council

MISCELLANEOUS:

6. Approve Date for SpringFest and Cow Bell Race

Exhibit: Agenda Report No. 6

Recommendation: Request Approval of 1st Reading of Ord 2013-66

Discussion: TA said we have always held the event on the first Saturday in April. Shouldn't change date to meet race mgnt calendar.

MOTION: Wayne/Jeff to approve the first Saturday, April 5, 2014 for SpringFest and April 12 for the Cow Bell race. **Vote:** Aye, 3; Nay, 1 (Jim); excused (Marisa) Motion carried 3 to 1.

7. Approve Articles for November Newsletter to Residents

Exhibit: Agenda Report No. 7

Recommendation: Request Approval of 1st Reading of Ord 2013-66

Discussion: No issue with articles. Place Council name on Abare's article.

MOTION: Wayne/Jim to approve newsletter articles. **Vote:** All Ayes

(No Recess – Attorney Excused)

K. PRESENTATIONS: Chair presented certificate FLC Seminar attended by Mayor Beatty

L. PROCLAMATIONS: Week of the Family 10/27 – 11/2. 2013 – Mayor read.

M. STAFF REPORTS:

ADMINISTRATOR: Done street striping, cost \$2,000.00. She would like to continue with this since we budgeted 26K. She would like to bring a new list back for Council approval.

CLERK: There will be a public hearing at P&Z on Wednesday to consider a rezoning of the old school house property. Council will then consider it at their November meetings. Mr. and Mrs. Murdoch would like to go forward with this at their expense rather than wait for the Town to consider the entire area encompassed by the upcoming P&Z recommendation. They are asking for zoning change from CL to R/LC.

The Dept of Revenue determined that the legal ad that ran for the millage and budget was not in compliance as the amount entered for the Value Adjustment Board's assessment changes was incorrect. She has to run the ad again and then we have to re-hold the final hearing on the millage and budget. In order to comply with their corrective action this must be done at the November 4 meeting. Ad will run on 10/31/13. We just got notice today and only have 15 days to comply or we face losing revenue sharing. Until correction is made, only the roll back rate will be collected.

N: DISCUSSION ITEMS:

8. Fertilizer Ordinance

TA said there was a change to the ordinance. The attorney was out of town and just gave it to her this afternoon. The condition of IRL has become an issue. She didn't use the county one; she used the one from Rockledge. She went with 10 foot border; didn't go stricter. If you have questions, let her know and she will research and get back to them. This was brought to them years ago and council felt it wasn't necessary.

Jim takes the other side. If he felt if this was an enforceable ordinance, he would be supportive of it. It is not enforceable. If we had 10,000 acres of corn he could see need for it. This is rural and has overgrowth that doesn't need an ordinance. Wayne agrees with Jim that it is a feel good ordinance. How would they get info to residents? TA said they would utilize the Mailboat and post on the website. TA said if someone makes a complaint, they respond. TA deals with annual audit for the NPDES permit and this is a question. Wayne said he does fertilize and he does it carefully. He doesn't oppose the ordinance.

Mayor said we should use this as a good guide.

Wayne said you fertilize and then it rains. Jeff is member of Brevard Marine Resource Council. He was at Lagoon House last Tuesday for their event. It is all about education. We can make a little bit of difference. He supports the ordinance. TA said we should all be concerned.

Wayne wants a summary. Residents are not going to want to read all these pages. TA will summarize and bullet the important facts for the Mailboat and website. Jeff said the MRC of Brevard County is good resource for type of fertilizer that is good.

Leslie Mahoney of Palm Bay - MRC does do water testing. This was started on west coast and it is all about education.

Mary Spahr, from Rockledge, said there are 10 municipalities working on some type of fertilizer ordinance. The restriction they are supporting prohibits fertilizer with nitrogen or phosphorus between June and September. Get a soil sample. There is a fertilizer buffer of 10 feet; some have reduced to 3 feet. IRC and Vero Beach have dealt with it by getting rid of buffer exception to 5 foot. Rockledge Drive is a fertilizer free zone. Titusville has a volunteer program.

TA will revise and have for 1st reading in November.

9. Procedures for Boards and Committees (continued)

MOTION: Jim / Wayne to table. **Vote:** All Ayes

O: REPORTS – MAYOR AND COUNCIL MEMBERS

Jim Milucky: nothing

Wayne: still researching FD. Met with all Lt except Paul. Met with Dan. Went to GV and talked to them and talked to County. Maybe by next meeting he can share with Council. TA said on 28th they will be interviewing Chief candidates.

Steve: Asked if Dan was going to participate in interviews. TA did talk to Dan and it is awkward situation to have a subordinate interview. He will funnel his comments to TA.

Jeff: nothing

Marisa: excused

Mayor – wanted to go last. Reported that on Thursday he went to Citizen Involvement- how to run for office. Had prosecutor there that prosecutes election violations. He has received many calls. There are issues with P&Z. One member brings issues to Board that have nothing to do with P&Z. That is why he was late tonight – on phone. Do we need to do anything? Jim said they need more detail. Mayor will listen to tapes. He has received repeated complaints. Wayne said he has also heard about problems. Wayne said the Board needs to put together summary of issues. They need to state the problem. Jim said have Chair come to meeting. Jeff said have them discuss it at a P&Z meeting and then present to Council.

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

Q. ANNOUNCEMENTS:

One (1) vacancy on the Planning & Zoning Board
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: Wayne / Jim to adjourn. **VOTE:** All Ayes. The meeting adjourned at 9:26 PM.

BY: Carl A. Beatty
Mayor Carl Beatty

ATTEST BY:

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

Date Approved: 11/4/13 as presented

(seal)

