

MALABAR TOWN COUNCIL REGULAR MEETING

November 4, 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 Council Member Marisa Acquaviva.

B. ROLL CALL:

COUNCIL CHAIR
VICE-CHAIR/MAYOR:
COUNCIL MEMBERS:

STEVE RIVET
CARL BEATTY
JIM MILUCKY
WAYNE ABARE
JEFF MCKNIGHT, excused
MARISA ACQUAVIVA
BONILYN WILBANKS
KARL BOHNE
DEBBY FRANKLIN

TOWN ADMINISTRATOR:
TOWN ATTORNEY:
TOWN CLERK/TREASURER:

For the Record, Acting Fire Chief Dan Welton is also present.

C. ADDITIONS/DELETIONS/CHANGES: Milucky, asked to move Item 10 up and keep Atty through that item. Wayne wants to pull Item 10. Some of the issues on that item may be affected by action we have yet to take. No objection. Jim has received a plethora of information on Item 8 and would like to move it to discussion. TA said she would like to pull it. Marisa would like to keep it for discussion. TA said pull it because of the liability of going forward without having all the required public documents in our possession. Items 8 & 10 are pulled. Marisa asked to move the scouts up next; it is a school night. No objection. Chair calls for the Scouts Report before Consent agenda.

Jacob Adkins, Senior Patrol Leader; Greg Carson, Asst. Senior Patrol Leader; Connor Mahoney, Troop Scribe; Aaron Hosey, Troop Guide. There have been a lot of changes lately. Recently moved to Valkaria airport but still consider themselves Malabar troop. Jacob introduced Greg. Greg explained to Council that the Pack is for boys age 6 to 12, with adult leaders. Boy Scouts have more freedom in what they do. Adults step back and are more advisory. Boys lead troop, Troop Leader Council. Guide direction of troop. Connor Mahoney, Eagle Scouts – hard work and dedication, service projects. Because of the troop/town relationship we have done many project for the benefit of the Town, Connor listed the Eagle projects performed by their Troop for the Town & Johnny Henkelman, Eagle project done in 2001, installed signs, 2 bar-b-q grills, handicap parking signs and striping, basketball goals; park bench and stenciled "Town of Malabar" on the trash cans at Malabar Community Park.

Jared Souders installed fence at Huggins Park in 2002.

Jarrold Little cut down Pepper trees at Malabar Road and Highway 1 ROW,

Joshua Hoffman installed plants at Malabar Community Park in 2003.

Daniel Henkelman, put signs through the EELs property at the Malabar Sanctuary in Nov 2003.

Robert Schepperle restored the landscaped island in front of the fire station & installed the plaque that says "For all those who serve" in Nov 2003

Robert Klaasen planted around the flagpole at the fire station in Oct 2006

Robert Ritter put up the fence on the south border of Fern Creek Crossing in Nov 2008.

Alexander Hoffman did work at Malabar's Frisbee Park in Dec 2009

Scott Prasse refurbished Fern Creek Crossing with a new mulched path and planted native plants in June 2010.

He, Connor, put in the fire pit at Malabar Community Park in 2011
Kevin Pagliarulo built a kiosk at Malabar Community Park in 2012.
Connor stated that Jacob Adkins is in the process of completing his Eagle Service Project to build the gateway to the new "Skyman Park" at Valkaria Airport.

Greg Carson just completed his project to landscape the land between the buildings at the First Baptist Church of Malabar and to put up a fence that keeps children on the playground and not allow them to run out into the parking lot.

Aaron Hosey, what scouts do, major things we do is camp, hike, water ski or go sailing. Special campout annually to do blacksmithing. This Friday will be camping at Malabar Park. Would like to invite Council for the campfire. Camp there annually for scouting for food, to give to food pantries. They dropped off bags last Sat and will pick up this Sat. They should get there 6PM and campfire at 7PM. Bring your own chair and bug spray.

Jacob said Mayor reminded him about using the Town sign for scouting for food. Also wanted to ask about using the town logo. Could they be grandfathered in? The request came in after the cutoff date and will be on the next agenda. Council didn't see a problem but they have to authorize it. It will be on next agenda.

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 – 10/21/2013

Exhibit:

Agenda Report 1.a

1c. Finance Report – September, 2013

MOTION: Jim / Wayne to approve consent agenda as presented.

VOTE: All Ayes.

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

Liz Ritter has been actively involved with scouts for years and spoke about all the good the scouting program does.

Next, Ritter said re: the P&Z recommendation on mandatory hook up to water from the last meeting; she wanted to clarify the Board's concern; the minutes didn't seem to capture their concern. The State may require mandatory hook-up but the water provider, Palm Bay, can issue exceptions. That is what they wanted Council to discuss with Palm Bay. They are concerned that the people along Highway 1 would be financially burdened with mandatory hook-ups. TA said the contract specifies no mandatory hook up to water unless required by the State. Ritter said the statute allows the water provider to issue an exception. Attorney was not familiar and would have to review the statute. He will review it and the contract.

John Gagnon, Quarterman Lane, Malabar, re: Item 8, fertilizer, said Council is going to get a lot of information from both sides on this issue. He has lived here a long time. This is Malabar; there aren't a lot of yards that get fertilized. He said don't pass this ordinance because it makes us feel good. Go north to next city on a rainy day and see what flows into IRL.

David Laster, Palm Bay, works for Slug a Bug and has been in the industry for 32 years. This is a very scientific business; The Model Ord has been approved by FDACS. Go to Vero Beach and look at water difference. He asked them to take into consideration all the fresh water that has been dumped into the IRL with the storms from the last few years. The percent of people using

professional services that applies it correctly is small. It is the homeowner that pays the yard guy to apply fertilizer that doesn't know what they're doing. To point finger at the professionals is wrong. How are you going to control homeowners and enforce them? How are you going to control what is sold at Lowes, Wal-Mart, etc. This will only stop the professionals from doing their job correctly. Use the scientific information that has been provided.

Michael Zeno, Palm Bay, Stated he agreed with what has been said and he also supports the current DEP model ordinance and asked Council to adopt it.

Elliot Zace, Palm Bay, talked about recent conversation with a Mayor of another city, re: do we create this black out period and the 50%. He said your growing season is the summer season when the turf takes up the nutrients. In the dormant period the turf is not taking up nutrients. He said the 50% reduction requirement prior and after the blackout period is also not helpful. The fertilizer is laying there waiting for the grass to absorb it. It absorbs it in the growing season. You are going to require the professionals to put down a 50% of fertilizer that will just stay there. They are not anti-environmentalists. They are pro environment. Cities are being told they are the big bad industry. He asked that they read the research. Don't restrict the professionals. It is the homeowners that cause the problem. He teaches BMP (best management practices) certification and the industry requires this certification. Consider that.

Michael Alfred, Melbourne, asked that they adopt the State's DEP model ordinance. Sometimes you feel you have to do something to fix it. If you have to make a stricter ordinance, then exempt the professionals that carry a State certification. The 50% reduction requirement is bad legislation and should be removed. Also the blackout period should be removed as that is when the lawn needs it the most.

Steve Konrath, is with a GINIP, stated the model ordinance was put together by combination of experts, environmentalists and universities, He asked Council to adopt the State DEP model.

- F. **ATTORNEY REPORT** – nothing
- G. **BCSO REPORT** – no representative present
- H. **PUBLIC HEARINGS: 4**

2. Final Reading of Ordinance Setting Millage FY 2013/2014 (Ord 2013-63-C)

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 Adoption of Ord 2013-63-C

Chair read by title only. Chair asked Franklin to explain again why this had to be redone. Franklin explained that the first ad had a wrong figure in the VAB column and thus was found deficient by DOR. Florida Statute spells out the corrective action. The ad had to be corrected and rerun with specific language stating it was found deficient. It changes nothing that was approved. The millage remained the same at 1.6630 and since property values have gone up a little it results in a 2.33% tax increase. None of that has changed. The VAB adjustment was listed at \$21,000 and it should have been \$29,000.

PH open:

none

PH closed:

MOTION: Marisa / Wayne adopt Ord 2013-63-C setting millage. Discussion: none

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

Motion carried 4 to 0

3. Final Reading of Ordinance Approving Budget FY 2013/2014 (Ord 2013-64-C)

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 Adoption of Ord 2013-64-C

Chair read by title only and then read Section 1 of the ordinance:

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.

PH open:

none

PH closed:

MOTION: Marisa / Wayne to adopt Ord 2013-64-C setting budget. Discussion: Marisa asked about provisions Clerk has taken to ensure the mistake doesn't happen again. Franklin stated that in the future she will submit the ad to DOR for review before submitting to the paper.

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

4. 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 SIGNAGE; 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. 4

Recommendation: Request Adoption of Ord 2013-65

Chair read by title only.

PH open:

none

PH closed:

MOTION: Jim / Marisa adopt Ord 2013-65 allowing Golf Carts. Discussion: Steve notes that it does not include any requirement for insurance. TA said it mirrors the one adopted by G-V. Attorney said you can't deviate from the State requirements; can't impose additional requirements. Insurance is not required by State statute. Wayne said everyone goes faster in cars and if the golf carts are out on the roads going slow, there may be problems. Marisa said bicyclists on Malabar Road. At least we have some kind of regulation over it.

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

5. 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. 5

Recommendation: Request Adoption of Ord 2013-66

Chair read by title only.

PH open:

none

PH closed:

MOTION: Marisa / Wayne adopt Ord 2013-66 re: Town Logo. Discussion: Mayor looking for clarity, noting the shifting of the letters on seal. Atty said it should not require separate identification.

Pat Reilly, 1985 Howell Lane, go to pg 20 of packet, it also has shifted letters.

Marisa, there can be changes to logos and they can still be used and protected. Used the universities as examples. She asked Atty if they have to be approved after the fact. Karl said if you want to provide protection for every rendition, he doesn't feel it is warranted. The Atty said the scouts request needs formal approval. There is no grandfathering. Give them authorization to use the logo.

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

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

Moved to after Items "C"

6. State of the Troop Report – Troop 37

J. ACTION ITEMS:

ORDINANCES: First Reading

7. Amend Land Use and Zoning Maps Murdoch CL to R/LC (Ord 2013-67)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE FUTURE LAND USE MAP AND THE OFFICIAL ZONING MAP OF THE TOWN REFERENCED IN ARTICLE II OF THE TOWN LAND DEVELOPMENT CODE; CHANGING THE LAND USE DESIGNATION AND ZONING DESIGNATION OF THE PROPERTY AS FOLLOWS: A PARCEL OF LAND LYING ON THE NORTH SIDE OF MALABAR ROAD, LOCATED IN TOWNSHIP 28, RANGE 37, SECTION 36, PARCEL 00753, ALSO KNOWN AS 1490 MARIE STREET, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 36; THENCE NORTH 89 DEGREES 50' 34" WEST ALONG THE SOUTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SOUTHEAST ONE-QUARTER OF SAID SECTION 36, 30.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89 DEGREES 50' 34" WEST; ALONG SAID SOUTH LINE 423.00 FEET; THENCE NORTH 00 DEGREES 29' 19" EAST 260.00 FEET; THENCE SOUTH 89 DEGREES 50' 34" EAST, 423.00 FEET; THENCE SOUTH 00 DEGREES 29' 19" WEST, 260.00 FEET TO THE POINT OF BEGINNING, IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; FROM COMMERCIAL LIMITED (CL) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC); PROVIDING FOR AMENDMENT TO THE FUTURE LAND USE MAP AND THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 7

Recommendation: Request Approval of 1st reading of Ord 2013-67

Pat Reilly, Chair of P&Z, stated the Board recommended Council approve request with a vote of 5 to 0. Pat read the four reasons they approved it.

1. Follows the Proposed Land Use changes that the Board recommends for the future of the Town.
2. Meets the intent of the R/LC Land Use District definition in Article 3 in the Land Development Code.
3. Cultural and Civic Activities are a Permitted Use in R/LC per Table 1-3.2 in the Land Development Code.
4. Meets the parameters in Table 1-3.3(A), Size and Dimension Regulations for R/LC.

Chair read by title only.

MOTION: Jim / Marisa approve first reading of Ord 2013-67 re: Land Use & Zoning Change.

Discussion: none

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

Pulled under Item C:

8. **Ordinance Providing Fertilizer Regulations (Ord 2013-62)**

RESOLUTIONS: 0

MISCELLANEOUS:

9. **Nominations for FMIT Board**

Exhibit: Agenda Report No. 9

Recommendation: Request Action

TA explained the way the nominations work. You may never be voted to serve on board.

Discussion: Any interest? No interest. Clerk will notify FMIT.

(No Recess – Attorney Excused)

K. PRESENTATIONS:

L. PROCLAMATIONS:

M. STAFF REPORTS:

ADMINISTRATOR: nothing more

CLERK:

Franklin stated they got the definitive answer back from the State regarding FF participating in FRS. The stipend personnel do have regular shifts and as such they are not considered "on-call". Therefore they are required to participate in the retirement program.

Cindi and I have input the 2013/2014 budget and all the October revenues and expenditures into the QuickBooks program and have run our first GL, trial balance and a variance reports for October. We are tweaking the reports to suit our needs and have been very pleased with the progress. Still plan on starting payroll in Jan. Liz Ritter uses QuickBooks payroll and has offered to help with any questions we have during set-up.

Newsletter will be out soon.

Jim asked about Fire Chief Interviews. TA said panel interviewed 4. #1 wanted to keep his job on west coast and be here for 2 days a week. He was ruled out. #2 she just handed out additional info to panel. She hopes it will be on next agenda.

N: DISCUSSION ITEMS: pulled under Item C.

10. **Procedures for Boards and Committees (continued)**

O: REPORTS – MAYOR AND COUNCIL MEMBERS

2)Jim Milucky: Thanked Jeff for his 6 years.

3)Wayne: Had a structure fire on Sat on Rocky Point Road. Asked Dan to speak to it. Crew of 3 and Dan. Immediately made request for mutual aid. Engine officer did assessment. It was summer kitchen. Dan said whenever they have a structure fire or a vehicle accident they immediately ask for mutual aid. They model themselves the same as other cities.

Wayne said there was an issue P&Z had, then they should define it and bring it to council. Since then our atty said there is a statute we need to follow. If yes, then he would suggest they schedule it. Get everyone in same room. Marisa said the two bodies are not set up that way. Decision making. Wayne said if everyone is there then there is no he said / she said. TA said it is set for next meeting. Let's follow the rules. If he says invite P&Z then. Mayor said his understanding they have PH and this person could not be reappointed. Jim called point of order. This is not an agenda item and not a report. If we are going to discuss then have attorney present. Marisa said it wasn't on agenda for simple reason that agenda was closed.

4)Steve: All got the email from Todd. He works for a PR firm that works for the environmental education. They do have an agenda but they could have good info. They feel very strong that the town should adopt the model ord.

Jeff: excused

5)Marisa: For TA, some complaints, cinch bugs, have been taking care of. TA explained the shade grass. She got a complaint that the weeds are coming back again. She said it was a continuing problem. Can't wait to see Mr. Korn on Thursday.

1)Mayor, Went to civic leadership mtg. He talked to attorney for 1 hour; you don't know what you don't know. Went to records class on his own nickel. Went to RR mtg and passenger train service will start in 2015. Increase rails from one to 2 or 3. When they redo the crossings we will have to pay for that. First train is a private concern. Orl to Miami. They may have alt routes that have additional stops. That is why he is pushing for 4 laning this area. Also with double the train traffic we will have double the backed up traffic on Malabar Road. Mayor said he went to a Mayor's meeting on Saturday. Fertilizer issue was talked about a lot. 11 mayors there. General consensus was that something has to be done. Even Melb Village. TA said what they have heard tonight is supporting the adoption of model ord. Wayne went to buy fertilizer, 20-0-10 – phosphorous free. Still has nitrogen. Steve said you can still buy 6-6-6. TA said she is going to put information together. She will give supporting info. Mayor said he has been invited to watch the launch of the Mars rocket that is going up in a couple of weeks. He takes every opportunity to learn. Marisa asked Mayor if he has worked on getting the bus to stop at Malabar. We do have residents that need bus service. The tower opened today at Port Canaveral.

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

One (1) vacancy on Planning & Zoning

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

BY: Carl A Beatty
Mayor Carl Beatty

ATTEST BY:

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

Date Approved: 11/18/13
as presented

(seal)