

## MALABAR TOWN COUNCIL REGULAR MEETING

December 02, 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 Chair Steve Rivet.

### B. ROLL CALL:

COUNCIL CHAIR

VICE-CHAIR/MAYOR:

COUNCIL MEMBERS:

STEVE RIVET

CARL BEATTY

JIM MILUCKY

WAYNE ABARE

DICK KORN

MARISA ACQUAVIVA

BONILYN WILBANKS

KARL BOHNE

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

C. **ADDITIONS/DELETIONS/CHANGES:** Clerk explained that it was her error that the ALF ordinance from P&Z was left off. Chair approved revising agenda to add it for discussion. No objections. Talk about budget adjustments. It is an action item. Agenda stands as amended.

D. **CONSENT AGENDA:** none

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** – Called Insurance defense counsel as to status of painted acre litigation. They have re-filed and FLC will again ask to dismiss. They still have additional rights to revise and resubmit. Attorney said he won't be here for next meeting. Mayor asked the signature to be changed on ordinance in Agenda Item 5. Wayne asked Attorney to give summary of litigation for benefit of new member. Attorney gave brief overview. Dick stated he was familiar with the case. Marisa asked if going forward with this new ALF ordinance would have any bearing on the litigation. No. Ordinance deals with each and every facility recognized by State.

G. **BCSO REPORT** – no representative present

H. **PUBLIC HEARINGS:**

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

J. **ACTION ITEMS:**

**ORDINANCES:** First Reading - 0

**RESOLUTIONS:** 1

1. **Approve Budget Adjustment – Reso 46-2013**

Chair read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2013-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**MOTION:** Marisa / Wayne to approve Reso 46-2013 approving Budget Adjustment.

Discussion: TA introduced item showed picture of rotted tree. PW can't handle something this big. It is maintenance and is in the Town right of way. Dick said how these were picked. We have used them both before. Marisa asked why it is diseased. Wayne said it is a huge tree. He thinks you could cut the limbs hanging towards the road and section them off and let WM pick them up. His neighbor had 7 pines cut after hurricanes and WM picked them up. If we hire a tree service WM won't pick it up? Don't need to cut the whole tree down.

Mayor has several issues. It is declining Eucalyptus. There are electric wires just west of that. It needs to be removed. Grind down the stump. If the storm comes thru it can still blow it in to the road. Dick asked why we got quotes from these two vendors. We have used them both before. Dick suggests tabling til next meeting and getting quotes from local businesses. Dick didn't get a chance to look at tree.

**MOTION:** Dick / Wayne to table this portion of the Budget Adjustment. **VOTE:** All Ayes. Return to rest of discussion. Jim asked about the PW adjustment. TA said Council approved the mezzanine but she didn't move the money from the temporary help line up.

**ROLL CALL VOTE:** 1)Milucky, Aye; Abare, Aye; Rivet, Aye; Korn, Aye; Acquaviva, Aye. Motion carried 5 to 0.

#### **MISCELLANEOUS:**

#### **2. Approve Half Day for Employees – Christmas and New Years Eve**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

Discussion: Chair went over request.

**MOTION:** Marisa / Wayne to approve half day vacation off. Request. **VOTE:** All Ayes

Mayor said the Town has a floating holiday; why can't employees use that. TA said no one has a floating holiday. Dick said what about just closing the building for the whole day. That would force employees to use vacation. Wayne asked if they had asked PW. TA said yes. Jim asked if our vacation calendar included half day already. TA said employees get ½ day on Christmas Eve and New Years Eve.

#### **3. Approve Right-of-Way Agreement to Resolve W. Railroad Ave. Issue**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Discussion: Atty wants them to approve the concept of ROW Agreement. In lieu of what the FEC wanted 10,500.00. Encroachments in ROW can stay but they have to maintain them. This agreement is similar to the one we did before and he wants to add more detail. TA would like to expand the condition, if they continue the use, but if they have to repair the fence, or if he stops using tractor parking he can't build a building. TA talked to Clerk and she remembered they had done this before. Dick said the owner of Kempfers is a personal friend of his. He shared this with them as a concept. It looks like a good temporary fix. If it can be terminated at will. The fence has been recently identified as located in Town ROW. Dick said it was owned first by Archie, Paul and Dr. Ireland; it has been here for 40 years. Thinks this would be adverse possession. Attorney said a municipality can't lose to adverse possession.

Jim said it is the traffic that goes up the unaccepted row. If it is ok. They still haven't dealt with the issue of trucks going down the RR row. Who maintains the road. The affect property owner. Dick said the Town does not maintain it. TA said there is another group of trucks. They don't have any maintenance. Jim said we are going to allow them to use the road. Atty said we don't allow or disallow the use of FEC property. TA said if FEC puts up posts then they will be forced. Wayne agreed with Jim. The agreement is a band-aid. If we can resolve it with the agreement we should. Dick said Carl told him once that the row was 20 feet to the east. Mayor said ROW is the issue. Make things legal for the time being. FEC wants to put in another line. It makes that part of the

issue legal. He personally graded that road many times. Wayne said using the 50 ft. It is Dick said he will support it as a temp fix.

**MOTION:** Dick / none approve concept of ROW Agreement to solve the ROW issue with Kemphers and AAA Storage. Dies for lack of second

Wayne asked why are we pursuing this? Puts in writing that we recognize their property is on Town ROW and they must hold Town harmless. Attorney relayed incident in other city where they allowed a sign to be erected within the ROW. Someone wrecked and sued the city. The agreement includes insurance and maintenance. It is a liability to Town unless we do this. TA said it is her duty to bring this up to Council once she recognizes the issue. Mayor said the Eva Ln issue once it was recognized. Jim would like to invite two of the parties to the table to discuss this. Chair said the issue is the ROW. Wayne asked Clerk to address Council. She explained the agreement only deals with the structures in the ROW. Even if the FEC property is bought it will not solve the issue of the structures in Town ROW.

Brian Vail, 2700 Smith Lane, would be leery to give permission to use ROW, you are crossing a line. How did the fence make it past the As-Built? How? It is a recent project. The Town signed off on it. TA has been dealing with him on code violations and has met with him. TA said the Town signed off on the fence. Mayor said in one case we allowed structure to remain and in another case we are not. We have also allowed WM to park in Town ROW and they use it for business. Mayor said they should go forward with this as a stop gap; tweak it as necessary. Chair asked Attorney. Are we forced to require the two property owners to move the stuff out of the Town ROW? Marisa has heard all this. She said when they built their building in Palm Bay and St Johns and the City both told them there was water line under road and it wasn't and it was their burden to relocate and the cost was on them.

Dick is disappointed; Town does have some liability. If the surveyor screwed up, the Town screwed up and now the owner has to pay to have it moved. Their encroachment has been going on for 40 years. We made a mistake. We don't have a right to force them. Jim made motion to limit discussion.

**MOTION:** Dick / none to adopt the concept of the ROW agreement to be effective until such time it is changed. It will come back for approval. Dies for lack of second. Jim said Council gave direction to staff. Atty said we are still going in that direction. Jim said the comments by TA and council member are wrong and the Town has no culpability. He does not believe the Town has done anything wrong. TA said she said the Town signed off on fence permit.

Chair said move 1<sup>st</sup> reading to January and cancelling the second meeting in Dec.  
Atty

K. **PRESENTATIONS:** Chair presented cert to Wayne.

(No Recess – Attorney Excused)

L. **PROCLAMATIONS:**

M. **STAFF REPORTS:**

**ADMINISTRATOR:**

**CLERK:**

The FLC Legislative Committees that the Mayor, TA and I served on has completed their work. The priorities selected by each Committee have been assembled and were sent out with the agenda

packages. I have extras available if anyone is interested. These are the priorities that the FLC will follow and offer either support or opposition to during the upcoming legislative session.

Want to recognize Cindi for decorating the TH.

The AAA Storage facility across the street was approved for eight buildings as shown on their site plan. An area was also designated as a stabilized area meaning it was not impervious. The Building Official approved that area to be paved with footers similar to the slabs under the other buildings. When the owner submitted his plans for the 8<sup>th</sup> building it was for that slab. The proposed building is larger than the one shown on the site plan. The total building coverage exceeds the MBC 20% cap by 2,297 sf. Because this was an administrative error by the Town the Attorney suggested the cure was to have the applicant proceed with an administrative appeal. So I will be scheduling a BOA meeting very soon.

Tree Lighting, recognized Fire Dept for their help with this. Will be doing this a little earlier. The Mayor will speak before he flips the switch. It will be on the south side of the tree like it was two years ago.

**P. DISCUSSION ITEMS:**

**4. CM Abare's Findings re: Fire Department Options**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Discussion and Direction

Discussion: CM Abare related who he spoke to. They have Lt and Chief only part of the time. Put 3 Lt on 40 hours and have one there every day. We have an undermanned fire station. Need to have Lt. 4<sup>th</sup> Lt would fill in for the Lt that can't make that shift. It is possible that we can do that with existing.

Jim complements Wayne. Marisa does also.

Jim asked what the budget/total cost today

Total cost for going with County. That will give us a delta

Then do the incremental by adding cost for adding more salary for Lt, benefits cost, etc.

Then council can decide or they can put it to the Malabar residents. He is going to be very supportive.

He does not want to disrespect Fire personnel.

Wayne explained there is an additional cost because there is a fire assessment cost based on size of house. TA said remember what happened with MSTU. Mayor also complemented Wayne. He feels Chief should weigh in.

Chief got thru first week. He read the minutes before the interview. They are there to look at how to make it work for the Town. If you give away the Dept. then you won't have any volunteers.

Mayor said there is a whole list of things in the report and provide answers.

Mayor said the 3<sup>rd</sup> thing is the inventory of vehicles. Chief said he will be amazed at what will be coming to them soon. The reports will be coming forward. Mayor said a brush truck that needs front tires.

Chief said the Council hasn't been given all the information. We are not selling what we do. You will see a vast difference.

Marisa thanked Wayne again. We do get bits of information in the past. The idea of a workshop to hash it out. TA suggested a workshop between Jan and Feb. What happened to the pancake breakfast. Chief said he will stop the revolving door.

Wayne said he met with Chief this morning and had a great meeting. Wayne said Asst Fire Chief Dan handled a structure fire on Rocky Point and Dan went to call mutual aid right away. Commend him on that. Did exactly the right thing. TA said CM Wayne was a great asset on the panel.

Steve asked if he got with Palm Bay. No, Larry Collins said he didn't want to go into competition with the City.

Dick seems like we have gone beyond the volunteer fire dept. FD is extremely important part of the community. Rescue the cats. Dick said TA mentioned Clewiston was country. But they have school. All we have is the FD. Others have asked him if he has considered the real cost. The cost the first year will not be the cost on the 6<sup>th</sup> year.

His report said only one was operational. Was that unusual? Yes. Wayne encouraged the other Council to go see and talk to the Lts. and volunteers. Need to be. Chief said the renovations were done by the FF and funds were from fund raising.

Dick said what is the best for the Town, not just money, but morale. Marisa said can we make consensus to have a workshop. Chair said yes. Council consensus.

Chief will meet with officers and put together several options. Wayne said please do prioritize them.

#### **5. ALF Ord – Recommendations from P&Z Board**

Speaker Card: Mr. Paladin, Pres Black Swan Consultants, plan to build an ALF. He has worked closely with P&Z and also has been here before Council. He said the P&Z Board is tough. They insist on facts. They have taken the time. He found it very enjoyable. His plans are the guinea pig. Thanked P&Z and Council.

Pat Reilly, Chair of P&Z. Updated Council on process they used. They started this 3 years ago but focused on it for the last year. He went over the changes paragraph by paragraph. He explained why they moved items under new title of Public Health. FS is referenced.

Under B they had to come up with a factor to determine the maximum density. This will tell a developer how many beds/residents they can put per acre.

MOTION: Jim / Marisa to send to Attorney to draft an ordinance incorporating all of these changes and authorize communication with Pat Reilly.

Vote: All Ayes

#### **Q. REPORTS – MAYOR AND COUNCIL MEMBERS**

4) Jim Milucky: nothing

3) Wayne: nothing

6) Steve: 2<sup>nd</sup> Dec mtg has traditionally been cancelled.

MOTION: Jim / Marisa to cancel 2<sup>nd</sup> mtg. Vote: All Ayes.

MOTION: Dick / Wayne to hold the next meeting.

Steve said Council should be much more careful about selecting the next candidate for P&Z. It is his concern that this board has become autonomous.

2) Dick: spent some time on this at P&Z. They work very hard. Would like Weber and Corey Roads on agenda for discussion. He has been in touch with State District 5 FDOT. Also with the

County TPO. Re: restricting traffic on either or both of those roads. GV Council will be discussing this at an upcoming meeting. It is not to punish anyone but to preserve the roadway. He went to their groundbreaking last week.

1) Marisa: nothing

5) Mayor: Talk to people about dredging the Intercoastal Waterway. Take the fill and fill the holes in the river down by Grant. Mayor's Roundtable talked about health of springs. Mayor recommended a phrase Help Florida Spring Back and it was selected.

When the trains come you will be surprised.

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

**S. 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

**T. ADJOURNMENT:**

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

**MOTION:** Marisa / Jim to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:25PM.

BY: Carl A Beatty  
Mayor Carl Beatty

ATTEST BY:

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

Date Approved: 1/6/14

(seal)