

MALABAR TOWN COUNCIL REGULAR MEETING

April 2, 2012

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 Chair Thomas Eschenberg. The prayer and pledge were led by Mayor Eschenberg.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

MARISA ACQUAVIVA, excused

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

BONILYN WILBANKS, excused

KARL BOHNE

DEBBY FRANKLIN, excused

CYNTHIA KELLEY

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

DEPUTY TOWN CLERK:

Clerk stated that Fire Chief Dennis Covey was also present.

C. ADDITIONS/DELETIONS/CHANGES: Acquaviva sent in email requesting item 7 to be pulled; Beatty concurred with that. He has a later issue; would like item #5 pulled and will speak with Korn about the wording of his item. Mayor stated that Council can wait to pull #5; Korn may be back and show up late to this meeting. May want to table it if he's not here or we can discuss it. Rivet stated we could delete it now. Consensus is to pull item 5 as well. White asked if we can or cannot put signs in. Mayor stated it was interpretation. Motion was rescinded; two totally different opinions, no evidence or proof to back it up; waiting for more information before discussing. Beatty stated that he had another one; the item for FIT graduate students. He feels that the Town Attorney should be here; should this be moved up He was confused and said #11. This is Rivet's Mayor asked him to look at #8; Beatty would like to have 8 pulled. #11 will be discussed with the attorney present.

D. **Approved with one Roll Call Vote on All Items**

(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)

1.a. **Approval of Minutes:** Regular Town Council Meeting – 3/19/2012

Exhibit: Agenda Report No. 1.a.

1b. **Budget Adjustment – SpringFest (Reso 9-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2011-2012; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1b.

1.c. **Acknowledge Receipt of January Financials**

1.d. **Approve FDEP Grant Application for Restrooms at Sand Hill Trailhead (Reso 8-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADDING THE CONSTRUCTION OF A RESTROOM AT THE SAND HILL TRAILHEAD FOR COMMUNITY ENHANCEMENT PURPOSES TO THE CURRENT FIVE YEAR PLAN OF THE CAPITAL IMPROVEMENT SCHEDULE; PROVIDING SUPPORT FOR OUR GRANT APPLICATION TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF GREENWAYS AND TRAILS FOR 80,000.00 TO COMPLETE THIS PROJECT; PROVIDING FOR THE ALLOCATION OF CONTRIBUTING FUNDS OF 20,000.00 IN IN-KIND SERVICES FROM MALABAR IN FISCAL BUDGET 2012-2013; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1d.

Recommendation: Request Action on all of the above with one motion and a roll call vote.

MOTION: Rivet / White to approve the consent agenda.

Discussion: None

ROLL CALL VOTE: 1)Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, excused.

Motion carried unanimously.

Mayor made an announcement regarding the Springfest. He wanted to publicly recognize the teen volunteers, Public Works Staff, Fire Department and Town Staff. He stated that Denine, Debby and Cindi went above and beyond the call of duty. Beatty stated that it was a good day on Saturday. He didn't see a lot of people in the food lines, felt it was not as busy this year. Kelley stated that we had a great volume of volunteers and we were able to keep the lines moving. Rivet stated that it was better managed this year.

E. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required
Speaker's Cards:

F. ATTORNEY REPORT:

Bohne stated he never looked at the manual with the issues that were brought to Council regarding the signs. He didn't receive direction from Council to review the manual. There are two to three sections that would pertain to the situation. With the placement of signs, he never gave an opinion. He needs direction from Council and then he will report at the next meeting. Council gave direction for him to review the manual.

Palm Bay is working on the agreement for the utility. Their attorney has drafted a proposal. It will be addressed when the time comes. Chair asked if it needs to come back to us at an executive session. Bohne stated he would review it and bring it to Council. Then, if all agree, it will be adopted by both Councils at their respective meetings.

G. BREVARD CTY SHERIFF:

Deputy Hammer stated that there is nothing to report; it's been quiet. Mayor stated he still sees the cars on Weber and Corey. They are still doing the patrols.

H. PUBLIC HEARINGS:
ORDINANCES: 2

2. Amend Land Use Designation on Future Land Use Map (Ord 2012- 49)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING COMPREHENSIVE PLAN AMENDMENT NO. 2012-1 (SSA); AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE TOWN FROM OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC) LYING ON THE NORTH SIDE OF MALABAR ROAD, ON PROPERTY LOCATED IN TOWNSHIP 28, RANGE 38, SECTION 31, SUBDIVISION 54, PARCEL 00002.0-0037.00, ALSO KNOWN AS 2540 MALABAR ROAD, LOCATED IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Open Mayor read by title only.

Public Hearing: none
Closed Public Hearing.

MOTION: Rivet / White to approve Ordinance 2012-49

ROLL CALL VOTE: Beatty, Aye; 1)White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, excused.
Motion carried unanimously.

3. Amend Zoning Map (Ord 2012- 50)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REZONING THE PROPERTY AS FOLLOWS: A PARCEL OF LAND LYING ON THE NORTH SIDE OF MALABAR ROAD, LOCATED IN TOWNSHIP 28, RANGE 38, SECTION 31, SUBDIVISION 54, PARCEL 00002.0-0037.00, ALSO KNOWN AS 2540 MALABAR ROAD, IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; FROM OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Open Mayor read by title only.

Public Hearing Opened: none
Closed Public Hearing.

MOTION: Beatty / Rivet to approve Ordinance 2012-50

Discussion: White asked who wants this change. Nana's House; they want to put a thrift shop in the building.

ROLL CALL VOTE: Beatty, Aye; White, Aye; 1)Rivet, Aye; McKnight, Aye; Acquaviva, excused.
Motion carried unanimously.

At this time, item #6 was heard to Mr. Warmus could drive back to Orlando.

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

4. Recommendation from P&Z Board re: Malabar LDC Article V, Section 1-5.15

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Discussion: Chair gave a brief overview of what is happening with P&Z. They came up with something different; he had questions and concerns and sent them to Bohne, who responded. This looks muddy to him now. There is a 48 hour zone for parking cars? Who will enforce this. Bohne stated that would prohibit anyone from parking their vehicle for more than 48 hours. Unless someone is sitting there and monitoring this, it cannot be enforced. Chair asked for a general opinion from Bohne on this. Bohne suggested, the way the code is written now, it controls the parking of major recreation equipment and it defines what it is. He doesn't think Council wants to make it as broad as what P&Z has made it. If we leave what is there as major recreational equipment, there shouldn't be much change to the code. White asked if people had been complaining about this. Rivet stated that there have been some complaints. Chair stated that the problem he sees with this is a different council coming in who may say we need proactive code enforcement. There are a lot of code violations right now. White stated he had experienced this with Palm Bay; doesn't want that to happen to the town.

Chair stated that P&Z has allowed an unlimited amount of vehicles to be parked in the front yard. There is Mayor gave a brief overview of what is happening with P&Z. P&Z came up with something another ordinance, Chapter 11.26, Nuisance Ordinance, which doesn't allow anything. Bohne stated that there is some tweaking needed to the code. McKnight stated that we cannot ignore the different zonings; P&Z is doing this. Bohne stated that the HOAs can restrict this. Rivet stated that both Council and P&Z are pretty far apart on this. He asked Council if they want to have a joint meeting with P&Z on

this. Chair stated that Council may want to do this. He also stated that they may want to throw tractor trailers into the mix on this as well. McKnight stated it looks like this information was copied and pasted from Palm Bay's ordinance; he doesn't want that. Chair stated that in P&Z's defense, it wasn't Rivet made the suggestion to have a joint meeting; wait until the next meeting to set the date. It is the general consensus of Council to have a joint meeting in May at P&Z's first meeting. White stated that Wednesdays are not good for him. Rivet stated that Thursdays are not good for him. Beatty will be out of town for the first P&Z meeting in May; could we make it the second meeting? White stated he would not be able to be there. Chair stated that all the minutes would be available to him and he would be able to see what was discussed at the meetings. Council and P&Z are to have a joint meeting for the second meeting of May regarding this issue. Rivet stated that this could be talked about for at least two hours and maybe longer. No vote was taken as it is the general consensus of Council to hold a joint meeting at the second P&Z meeting of May, 2012.

- ~~5. Request 4-way Stop at Weber and Atz Roads—Resident Dick Korn – PULLED~~
~~Exhibit:~~ Agenda Report No. 5
~~Recommendation:~~ Request Action

J. ACTIONS ITEMS:

ORDINANCES: First Reading: none

RESOLUTIONS:

6. Approval of Audit for FY 2010/2011 (Reso 6-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2010/2011 BY THE AUDIT FIRM OF AVERETT WARMUS DURKEE OSBURN HENNING; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Rivet / White to approve Resolution 6-2012

Warmus made two comments; he felt it was a bold move for the Town to pay off all the debt regarding the town's equipment. Secondly, the utility is showing a loss and he knows that Council is working this issue.

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

MISCELLANEOUS:

- ~~7. Authorize Placement of Traffic Control Devices (Beatty) PULLED~~
~~Exhibit:~~ Agenda Report No. 8
~~Recommendation:~~ Request Action

- ~~8. Utilize FIT Graduate Students for Various Town Projects (Beatty) PULLED~~
~~Exhibit:~~ Agenda Report No. 8
~~Recommendation:~~ Request Action

- 9. Council Procedures on Absences (Eschenberg)**
Exhibit: Agenda Report No. 9
Recommendation: Request Action

Discussion: Chair stated that he wrote this up. This came from Bud Ryan; if they have procedures for the Boards, we have to have Council procedures in place. McKnight stated that notification should be enough; don't need to give the reason as to why you are missing the meeting. It is written in the Charter for the reason. Chair stated if there is a reason you don't want known, let it be unexcused; takes 3 in a row to be called up. McKnight stated he does not want unexcused absences on his record.

Rivet was in agreement with this. Chair stated that it could be stated as a personal matter that needs to attend to. If no one objects, you are excused. If someone objects, then Council will vote. What if they are late? Need to write how late. Charter states regularly scheduled; Mayor put in all meetings. If comes in late without notification, the Chair will announce to have the clerk change to excused from unexcused. If no one objects, then it will be changed. Chair will have this formalized and brought back to the next Council meeting for review.

(No Recess – Attorney Excused)

K. PRESENTATIONS:

L. PROCLAMATION:

M. STAFF REPORTS:

ADMINISTRATOR:

CLERK:

- SCLC April dinner is April 9 and the host is Cape Canaveral.
- SpringFest was great. Kelley gave a brief overview of the monies taken in and spent. Staff will be looking at a storage shed for staging of future events. It was a great event and the Cow Bell 5K was successful.

N: DISCUSSION ITEMS:

10. Volunteer Services Offered to Town (Rivet)

Exhibit: Agenda Report No. 10

Recommendation: Request Action

Rivet stated he received an email from Julie Perry and asked her to come and address Council. Ms. Perry stated she grew up in Malabar and she and her husband have moved back to the area. She is offering her services on a volunteer basis. She can work from home or here at Town Hall. She is offering her services for whatever may be needed; law or otherwise. Beatty asked Bohne about having someone else come in and work on legal issues. Bohne stated the Town needs to be careful about this; anything that she works on needs to come back to him for review. Beatty thanked her for volunteering. Chair stated that the Town could possibly have some good free legal research done for the Town. Bohne stated that there is good opportunity here; but need to be careful where that service goes. If offered in a limited capacity, we would need to look at it. Ms. Perry stated that she had not worked since graduating law school. She is a stay at home mother. She had worked with Orange County in the past with drafting ordinances and has a lot of experience doing research. She also worked with Brevard County School Board before law school. Bohne would assign the work to her and is more than willing to work with her. Rivet stated this is a win/win situation. Beatty made a suggestion that maybe she could transcribe the minutes of the P&Z meeting. Rivet stated that we should use her in the capacity of which she is trained. McKnight stated that P&Z has stated that they don't have legal representation; not that she could give advice but she could go and get her feet wet. Bohne stated he would call her in the morning and discuss what she could help assist with; he may have her review the manual for the placing of the road signs. This would be a big help to him. Again, all work performed would come back to Bohne for his review.

11. Resident Process for Road Assessment (Eschenberg)

Exhibit: Agenda Report No. 11

Recommendation: Request Action

Chair stated that the Town needs to get quotes so that the residents can be notified of the cost involved. Kelley advised Council that the compaction testing has been started. Chair stated he wants the quoting process started as well. Need to offer options to the residents. The code states that if the Town gets enough signatures on the petition, we need to pave the road. Chair asked Council about how far out to give the residents to pay. We may need to go for bond money. Rivet stated we could have the residents start paying for it now. Chair asked about ten years. Rivet stated that is too long; he suggested three years as five years is also too long. Chair asked about interest. Rivet stated that if

only two years, it wouldn't make a difference. McKnight stated he doesn't want to get the town in a bind with having too many roads to do at the same time. Two years is the consensus of Council to pay back the money. The Town is putting out a loan for two to three years. Rivet stated it should be two years. Chair stated that the code would have to be changed to specify the payment terms. This will be on the next agenda as an action item.

12. Council Procedures Re: Public Speaker Cards (Rivet)

Exhibit: Agenda Report No. 12

Recommendation: Request Action

This was put on the agenda by Council Member Rivet. Robert's Rules of Order states that one of Council member who has the floor can yield to any member of the public. You must wait until the person speaking is done, than you can speak at that time. McKnight stated it should be addressed to the Chair and then have the Chair address the resident. Chair will volunteer to write for Council procedures; he has more time than Rivet.

O. REPORTS - MAYOR AND COUNCIL MEMBERS:

- 4) Beatty: nothing
- 3) White: nothing
- 2) Rivet: Springfest was good
- 1) McKnight: nothing
- 5) Acquaviva: excused.
- 6) Mayor: his son won the 2nd place for cake contest, grandson won award for running in the 5K. Mayor stated that he was to go around at the car show and pick the car he liked the best. He knew two of the people in the show. He sent a surrogate in to choose. Darien Mahoney from Teen Council, to look at the cars and pick out her favorite and tell him the number. She chose #22; it was the Mayor's brother who won the Mayor's choice.

P. PUBLIC COMMENT: General Items related or not to agenda items (Speaker Card Required)

Penny Dalton of Brook Hollow came forward and addressed Council. She complimented staff on the great job they did for the Springfest and the professionalism they displayed. She wanted Council to know the great staff they have here at Town Hall. The event was magnificent and she and her husband have signed up to be volunteers for next year's event. She wanted to let Council know that they appreciate the event and Council's support for it.

Mrs. Dalton also gave kudos to Debby Franklin for helping her with her leadership skills and providing information to her. She would like to compliment and commend the staff here at Town Hall.

Brian Vail- 2700 Smith Lane, also gave kudos on Springfest. It was an easy-going day on Sunday, not crazy.

With regards to paving Smith Lane, he was asked how to go about it. He would be in favor of this. As far as the pay back process, he doesn't have a problem paying interest as they are pulling the funds from an interest bearing account. He felt that three years would be a good time frame to pay back the Town. It would be fully contingent upon the quotes coming in for the work being done. It will impact everyone differently. Council needs to be a little more flexible on this. If agreed to pay interest, it should be three years. He does understand the concept of everyone coming into Town Hall at the same time.

Sheila Eschenberg, 2835 Beran Lane, stated that the Fire Department did a great job at the pancake breakfast. The Explorer group is a very quiet group but they do a great job. They worked through the whole Springfest and were very cooperative. The 5K race was a huge success and thinks the Town should keep this event. Everyone thought the track was great. Kelley stated that this was a given, the 5K will be continued.

Chair stated that the Town song was played both days for the event. He read the Certificate of Appreciation on Sunday as Rick and Chris Rakauskas were able to be there. Kelley advised Council they are very involved in their church and couldn't make it on Saturday.

Q. ADJOURNMENT:

There being no further business to discuss, **MOTION:** Rivet / White to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 9:05 PM.

BY:


Mayor Thomas M. Eschenberg, Chair

TRANSCRIBED BY:


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

ATTEST BY:


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

Date Approved: 4/16/12

