

MALABAR TOWN COUNCIL REGULAR MEETING

April 16, 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 District 1 CM Carl Beatty

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE, excused

STEVE RIVET, excused

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS, excused

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated that PW Dir Tom Miliore and Fire Chief Dennis Covey were also present.

C. ADDITIONS/DELETIONS/CHANGES: CM McKnight asked Chair about speaker card item brought up by CM Rivet. Chair had included it in the draft he wrote. It is for discussion only. CM Rivet also asked that Traffic Control Devices wait until he is here. Beatty said Mr. Korn is also not present. If someone comes to speak they should be allowed. Beatty will defer his item (J.8.) also until there is a full Council. Beatty will not be here for the May 7. CM Beatty said resident Mr. Korn is the only one that can withdraw it. CM McKnight said he thought Council could pull any item. Beatty said no. Pull it and carry it 2 meetings. Items 5 and 8 pulled. Mayor wanted to add an item under J. Action item. He is looking for support for this item. CM McKnight said not a problem with him. Added item regarding asking for 10K for Edward Byrne Grant for a replacement car for Eagle Patrol.

D. **CONSENT AGENDA: To Be Approved as a Group 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 – 4/2/2012

Exhibit: Agenda Report No. 1.a.

1b. **Budget Adjustment – SpringFest (Reso 10-2012) Pulled by CM Beatty and moved under Action - Resolutions**

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.

(CM Beatty requested pulling the resolution so they could have discussion. It is moved to 2nd item under action item.

PRESENTATIONS: Fire Chief Covey to Promote Grant Fuller to Lt and Bob Strandell to Assistant Chief Chief called them forward and asked if Mayor would like to pin them. Mayor said Chief should do it. Chief pinned Asst Chief Strandell and Lt Joseph Hooker pinned Lt. Grant Fuller who had been with Malabar Fire Department since Explorer Program. Strandell came from south Florida and joined Fire Dept last year.

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

F. ATTORNEY REPORT:

Bohne said he heard from Palm Bay and they are supposed to be getting a draft agreement this week. He sent MUTCD information to volunteer and she sent him info this afternoon.

Bohne also asked Council to think about consolidating Reso 5-97 with the proposed subsequent resolution. Reso 104-2011 only amended only Sec 4. He can combine it all easily.

G. BREVARD CTY SHERIFF: Deputy Hammer stated there was a burglary at a home. Bikes stolen from Enchanted Lakes and one was found and returned. Mayor said motorcycle guys were pretty busy last week. Mayor said it looks like they are doing a good job. It will be a referendum question to voters again this year. McKnight told Deputy that was a Malabar resident that invited BCSO to park on their property to observe speeders on Weber Road. They are on Weber, south of Atz Road. They said there are a couple of vehicles that go by 50-60 pretty regular. Deputy said send information to William.hammer@bcs.org

H. PUBLIC HEARINGS:

ORDINANCES: 3 – Ordinances were legally advertised.

2. Amend Chapter 8 of Code of Ordinances (Ord 2012- 51)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE II STANDARDS; AMENDING SECTION 8-32 RELATING TO FIRE INSPECTIONS; PROVIDING FOR REPEAL, SEVERABILITY AND INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor read by title only.

Public Hearing Opened: none

Closed Public Hearing.

MOTION: Beatty / McKnight to approve Ordinance 2012-51

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

Motion carried 3 to 0.

3. Submit Referendum Question to Voters (Ord 2012- 52)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD PURCHASE LAND FOR FUTURE TOWN PURPOSES USING AN ADDITIONAL MILLAGE COMMITTED TO SUCH PURCHASES; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Mayor read by title only.

Public Hearing Opened: none

Closed Public Hearing.

MOTION: Beatty / Acquaviva to approve Ordinance 2012-52

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

Motion carried 3 to 0.

4. Approve New Building Codes (Ord 2012- 53)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR

CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS;
PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Mayor read by title only.

Public Hearing Opened: none

Closed Public Hearing.

MOTION: Beatty / Acquaviva to approve Ordinance 2012-53

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

Motion carried 3 to 0.

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

5. Recommendation from P&Z Board re:

- **Setbacks in Residential Zones**
- **R/LC Expansion and Reduction in Density**

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Speaker's Card: Pat Reilly, 1985 Howell Lane, and Vice-Chair of P&Z Board.

Stated that the agenda report explained the Board's thinking on their recommendations. He went of the recommendation related to RLC and gave break down on residential and commercial. He referred to the Mayor's memo, and said in reality it can never be more than 4. The Board's recommendation in changing maximum density from 6 to 4 in R/LC, they focused on Malabar being a residential community with much rural. Their goal was to reduce the density. For LC (light commercial) development there is a cap of 4000 sf allowed and for multi-family residential the density can be 4 per acre. Reilly said if you go to Table 1-3.3.A, under MIXED USE, for R/LC it will show that for single family development the density is 4 now. They added horizontal lines to separate the uses. The next use is Multiple Family and they are recommending increasing the size of a 1-bedroom unit to 900 (from 500) and reducing the density in the last column to 4 (from 6). The next listing is for Commercial Development. The current code provides for a minimum area of 900 and a maximum area of 4000 square feet and only 20 percent of lot can be covered (maximum building coverage MBC) The Board proposed adding *Not Applicable* (N/A) in last column to clarify that the development is governed by the lot size, building square footage, and MBC.

Reilly said the increase for 1-bedroom unit of a multiple-family development from 500 to 900 sf is only a 25 x 20 space and that is a small size. 900 is a more normal size for a multiple family unit. McKnight said that there are beach side efficiencies that are only 500sf. He doesn't want to restrict a property owner. For a single family home the requirement is only 1200sf.

Setbacks: Reilly said in addressing Mayor's comments that Table 1-3.3A is for *principal structures*. Board wanted to only reduce side and rear setback in the RR-65. The other residential zonings; RS 21, 15 and 10 are much smaller and they wanted to keep space between homes. Left them alone also to allow utility and fire equipment in to the yard area.

Mayor wants to delete Table 1.3.3.E. He said it had an error. He suggested they send it back to Board to fix that.

McKnight asked if Board asked Reilly to come. Reilly said yes, Board wanted a representative here.

Speaker card, Juliana Hirsch, 1035 Malabar Road, She is against the density reduction from 6 to 4. If they meet the other requirements in the Table it is reasonable to allow 6 per acre in R/LC.

She also asked about on R/LC, does that mean they have to mix or can you have either? Do you have to mix on every acre? It will mean that there will be no development if it is required to be mixed. Not feasible financially.

Chair asked Council to be indulged. He respectively disagreed with P&Z Board Vice-Chair Reilly. How many commercial units can you have on an acre? He claims you can only have 2. Mayor wanted to comment for Ms. Hirsch. P&Z has had vision from Marie St to the RR tracks as a mini-downtown. Shops downstairs and home upstairs. To encourage that type of development. Mayor agrees with that. As far as changing 6 to 4 he agrees with Mrs. Hirsch, if it is commercially feasible. The increase from 500 to 900 would prevent someone from building small efficiency. It takes away property rights. Don't make it more restrictive.

Discussion: on RLC,

Acquaviva wasn't at last meeting; she read that Council wanted to have joint mtg. She feels the P&Z Board is doing their job and she questions why Council wants to send it back. They are following the procedure. We asked them to do something and then we don't want to follow it.

Mayor asked about the density reduction from 6 to 4. McKnight is in agreement with Mayor. If they think they can develop or sell property as potential of 6/per acre; we shouldn't add this restriction. Mayor said for a 2 bedroom apartment it would be 1020sf (900+120). McKnight said 500 sf is not that small. They are like a studio apts. Acquaviva asked why Board felt strongly about this? If it is not broke. Reilly can't answer the 500 to 900.

Reilly explained their thinking about the reduction in density from 6 to 4. (It deals with multiple families) The maximum size is 4000sf (for commercial). And if you have 6 then you could put total of 24,000sf. The MBC is 20% and would allow building coverage on one acre of 8712sf. McKnight said he agrees with Acquaviva, if it is not broken. Reilly said the Board discussed this when it was brought up and convinced the rest to go along with it. Acquaviva takes their recommendation seriously. It is not her intent to tear it apart.

McKnight said there is a property owner that says this will it will be a restriction. More profit from 6 units than 4 units.

Karl Bohne said from their discussions if appeared if she has an RLC parcel she has to develop it with a mixed use. Mayor said no must be mixed. Bohne said if Council has intent to require the mix it has to be clearer. Attorney said if he had to interpret current code it allows either or both.

Bohne said Table column under min *living* area needs to be reworded to account for commercial development. The column title should be renamed to include that.

Send back to PZ with these specific comments:

If intent of PZ to dev RLC with both a residential and commercial component then code needs to specifically say that. Right now it allows either or both. Mayor said they can do either. Council said that is not what he said earlier.

Reilly said the original intent of RLC was to allow the people on US 1 to turn their houses into businesses. Present code is 6. So 3 is the max they could have. So 0 com and 1 res is legal. That is the intent of those bullets. Reilly said they created definitions for commercial unit.

Chair asked Council to ask P&Z for their rationale behind the change from 6 to 4 and the increase from 500 to 900. There has to be more than that behind it.

Acquaviva said she appreciates the feeling from P&Z that Malabar should encourage low density. She asked if they were thinking about the ALF in their decision. No, that is different zoning.

Mrs. Hirsch asked for clarification, is based on one story? It will have to go up. She built 38 units on 3 acres. It can't go flat. The setbacks will govern automatically. She said they are going back to 50 years ago and that is not going to happen. Council is responsible to do something realistic. It is not for her. To downgrade to 4 units makes no sense. She said one person on PZ came up with that and she said to her they don't want to be so crowded. RLC doesn't make a whole lot of sense in this day and age with that kind of low density.

Setbacks: Mayor refers to Table 1-3.3.A., page 1. The change is for *accessory structures* only and only in RR65. He felt all residents should have that same consideration. So they can set their storage shed within 15 feet from 20. His point was if you give RR65 a break you should also give the others.

Table 1.3.3.E. He talked to P&Z and he said it was confusing. He said the Comp Plan is not up to date. Mayor said it came from the EAR (evaluation and appraisal report.) Franklin and Reilly tried to clarify it was from the new Comp Plan. Chair said this needs more research.

MOTION: McKnight / Beatty to table. **VOTE:** All Ayes.

6. Request 4-way Stop at Weber and Atz Roads – Resident Dick Korn – PULLED
Exhibit: Agenda Report No. 6

7. Recommendation from Park & Recreation Board re:

• Move Fence at Disc Golf Park

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Mr. Joe Robinson (Disc Golf player) was in attendance and offered to answer any questions Council had. He explained the project involved moving the existing fence to the west to allow for six more parking spaces. The work would be done by the Disc Golf users and would probably occur in May. He said there would be no expense or material needs to the Town. Council Member Beatty suggested moving Cabbage Palms in order to make it even bigger. Council Member McKnight asked if the neighbor on the west side of the park had any issues with the proposed plan. Robinson said they would check with him.

Council Member Beatty again suggested they look at moving trees. Mr. Robinson explained that there are no trees in the proposed fence area. Council Member Beatty suggested taking some of the Cabbage Palms and moving them to other locations in the Town.

Franklin did state that this land was purchased for conservation of the natural resources and the exotics are the only thing the Town should be removing as part of our management requirements. I also suggested Mr. Robinson check with the Building Department to see if a building permit was required.

MOTION: Acquaviva / McKnight to approve the Park and Recreation Board recommendation to allow the Disc Golf users to move the fence to the west to allow for six more parking spaces.

Discussion:

Beatty said to look for better way. Seen things done piece meal in the past and if it would enhance it to move the trees, he asked that they please look into that. Chair said they could look at it in the future.

Beatty said cabbage palm they are very mobile.

VOTE: All Ayes.

J. ACTIONS ITEMS:

ORDINANCES: First Reading: none

MISCELLANEOUS:

8. Authorize Placement of Traffic Control Devices (Beatty) PULLED**Exhibit:** Agenda Report No. 8**Recommendation:** Request Action**8.1. ADDED Ed Bryne Grant application****Exhibit:** Agenda Report No. 8.1**Recommendation:** Request Action

Mayor explained the federal grant to state to county. It is a lot less this year than it has been in the past. Someone at county takes charge of what to do with the money. 165K this year. In the past it has gone to BCSO for prisoner transport. He questioned why the cities don't get it directly. Last year was too late to do anything about it. If he can get Council consensus to send letters to Police Chiefs and City Mayors to ask for support in the request for 10K to get another Eagle Patrol vehicle. Nothing ventured nothing gained. Council said pursue it and all agreed.

This item Moved from consent agenda.

1b. Budget Adjustment – SpringFest (Reso 10-2012)

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.

Beatty wanted to pull this resolution. It is the second time a budget adjustment for SpringFest has been before them. At last meeting it was for \$1,300. At same meeting Dep Clerk stated that the Town made \$2,400 and that they wanted to spend the money on a shed to use at Park. Now they are making another request for a final accounting for the Spring Fest. He wants to review last year's expenses. Beatty said in past they used a tent from Dick Korn and tables and chairs from the Fire Dept. Now he saw bill for rental of same.

Franklin explained the budget adjustments should be done before the payments are made. That is why they have this before them. Each budget adjustment has the explanation for the reasons. Mayor read what the last budget adjustment was for and what this one is for. Franklin said that they have fewer staff to put the event on and they have rented the tent and tables and chairs for last two years. Additional cost this year because it is a 2-day event. Also had ponies for two days. Also had a wine tasting event this year. Also had two stages and more bands.

Beatty wants a copy of the final accounting. He saw bill for fire ant treatment for \$1,200.00 for SpringFest and he used to have to go around and apply it himself. Franklin said the bill he is referring to was not for ant killer for SpringFest it is a bill for pest control for the soccer field and softball field and has nothing to do with SpringFest.

McKnight supported Beatty in request for full accounting of SpringFest expenses. Beatty wants to also see last year's accounting. Franklin will provide for next meeting.

MOTION: Beatty / McKnight to table. VOTE: All Ayes.

Beatty asked Bohne about something. He will be in DC on the 7th but could be available via teleconference. Bohne said Beatty can appear by phone in the case of illness. It has never been determined if an absence such as his is extraordinary. Acquaviva said what is his concern? That he will miss something? She referenced some of the items that they have delayed per request by a Council Member. Same would be done for him. Chair said recommend they do it on a case by case basis. Atty Bohne said you can't use the teleconference to constitute a quorum. Should authorization be that night or can it be tonight?

Beatty said his understanding is once he gets the agenda package he can ask for an item to be pulled until he can be there or they can allow him to appear by phone. Bohne said he gets the agenda package. Do it on a case by case basis. Extraordinary condition has not been defined. He is giving Beatty a conditional approval to participate via phone. McKnight said they have been a supportive council when a member is out. Beatty said he doesn't know what is on the agenda at this time. Bohne said such participation is usually allowed for sickness. Is a scheduling conflict considered an extraordinary absence? He doesn't know.

(No Recess – Attorney Excused) 9:10PM

K. PRESENTATIONS:

L. PROCLAMATION: Mayoral Proclamation – Mayor read.

M. STAFF REPORTS:

ADMINISTRATOR: excused

CLERK:

- Memo from P&Z re: Proposed Joint Workshop – Mayor has also done memo. Mayor said they saw the first memo from TC. PZ doesn't recommend the WS. PZ wants Council to either say yes or no or why are you rejecting the recommendation. Who is the PZ person who did this? Don Krieger. This seems a lot cleaner. Mayor would like to see this go to the Atty and then Council. Marisa asked if P&Z Vice-Chair Pat Reilly had seen this. Yes, it was an alternate version. Mayor will go thru it and then get the attorneys response and compare it to the other one. And then you can give PZ feedback. Another P&Z person's version. Marisa asked why they are getting special treatment, why not from the whole board. Pat said the growing process. Liz Ritter had a way of doing it, Don had a way and at the very end and the two pieces of paper came together. It was very difficult to keep the Sec 15 and 16 separate. They found it was easier to put them together and put them as 15 and 16 would be for hire and for commercial. Marisa said it is helpful that he is here. There are going to be difference of opinions. Pat has been on it for 11 years. When they get them back and try and figure out what they were thinking.
Reilly said they would prefer bullet items on Council thoughts regarding their recommendations. He is trying to get it bulletized and not coming across that way. Some of these items have been discussed for eight month and it is hard to put all that into bullets.
- The Engineer on contract with the County has also contacted us to ask if we are going forward with the eng and design for the flashing light at Fire Dept. Their estimate was for a full light with ability to activate the red. We could ask for just a simple flashing light that you can't activate. We have it as yr 3 item. Need price on turn lane at Corey. Mayor hoped everyone read memo from Atty Bohne regarding. Which one has higher priority?

N: DISCUSSION ITEMS:

9. Amend Council Procedures (Reso 11-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 4 OF RESOLUTION 01-2009, COUNCIL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 9

Recommendation: Discussion and Direction

On for discussion. Mayor wrote this up. Rivet had issue with people raising their hands and under current procedures that is really not allowed. If you look at the new language he added. He read new language. He also added the exception. McKnight asked about making a motion and then doing discussion. Most anytime there is a person that wants to speak after the motion has already been made. Acquaviva said the Chair. Chair is supposed to recognize or not recognize. McKnight said they

are more informal. The unfairness of that is someone gets to speak and others don't. Need to be fair. Formalize this more. Strike the part about not allowing public to speak after motion has been made. It is ultimately the Chair's responsibility. Chair said suppose it is a controversial issue. P&Z rec can't park comm. vehicles on residential property. Motion to approve and second. 12-15 speakers and council starts discussing it. Then 8-10 more want to speak. The power goes back to the Chair anyway. The time limit is not being used. McKnight wants to keep it informal without breaking the rules. If you are going to recognize one then recognize them all. If we follow the strict rules then we could not allow Mr. Reilly to speak again.

Mayor said then on page 3 he did absence procedures and he added if someone comes in late. Also people leaving early. That doesn't change their status. Acquaviva said she needs to ask for a point of personal privilege. Is the leave early to be excused or not. I am a professional and volunteer his time and if council. White left early and only told the Chair. Then add the item 10. If they leave, clerk to note in minutes and if there is a vote then the clerk notates in vote.

McKnight said he is concerned that if they go strictly by the rules then they will hurt someone feelings. Acquaviva is interested in being informal then let's have it for everyone so it is fair. Mayor said they have to operate by Robert's Rules unless it is written in their own rules. It appears like favoritism. We are people that care.

10. Amend Chapter 13 of Code with Ordinance and Resolution re: Road Assessment Process

Exhibit: Agenda Report No. 10

Recommendation: Discussion and Direction

Mayor did this also. He got a memo and a response from Karl Bohne. There is one thing that bothers Mayor about ordinance itself. Specify opt out procedure. The opt out procedure was for the signing of the petition. Make it clear in our ordinance that the signing of petition will not lock you in. If enough people do that then let the people have that option. He listened to Brian Vail. Some people have a lot of frontage. It could be a financial burden. He would like them to consider the options. Use the same formulas on up to 10 years.

O. REPORTS - MAYOR AND COUNCIL MEMBERS:

- 1) Beatty: none
- 2) White: excused
- 3) Rivet: excused
- 4) McKnight: none
- 5) Acquaviva: none.
- 6) Mayor: none

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

Q. ADJOURNMENT:

There being no further business to discuss, **MOTION:** Beatty / McKnight to adjourn this meeting.

VOTE: All Ayes. The meeting adjourned at 10:15 PM.

BY:


Mayor Thomas M. Eschenberg, Chair

ATTEST BY:


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

Date Approved: as submitted 5/7/12