

MALABAR TOWN COUNCIL REGULAR MEETING

June 18, 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 acting Chair Marisa Acquaviva. The prayer and pledge were led by District 1 CM Carl Beatty.

B. ROLL CALL:

MAYOR/	Vacant
VICE-CHAIR:	MARISA ACQUAVIVA
COUNCIL MEMBERS:	CARL BEATTY
	DAVID WHITE
	STEVE RIVET
	JEFF MCKNIGHT
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

C. **ADDITIONS/DELETIONS/CHANGES:** Beatty asked to add topic of Fire Chief. TA said it involves a personnel matter and it should not be discussed in a public meeting. Rivet moved to leave agenda as it stands. He can add it to his report or under TA report. Chair would like to move proclamation to this point in agenda and read into record. No objections. Acquaviva read into record.

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) McKnight asked to have items 1d, e, f and g moved from consent agenda. They will be placed after J.8. as items 9, 10, 11 and 12.

1a. **Approval of Minutes:** Regular Town Council Meeting 5/21/12 & Special Mtg 5/21/12

1b. **Budget Adjustment: Reso 13-2012**

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.

1c. **Acknowledge Receipt of Financials for April 2012**

MOTION: Rivet / Acquaviva to approve revised consent agenda.

Discussion: no changes to minutes. Franklin read resolution by title only.

ROLLCALL VOTE: 1) Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

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

Steve Morris, 2030 Weber Road, regarding drainage in his area; some things done but not enough. During recent rains, he put a bucket out there and got 5.5 inches of rain. He can't mow yard next to Foleys and his mower sinks down into ground.

Entrance where it goes into Weber Road ditch the water would move freely and drain out of there but there is a tree. He thinks it is high time something gets done. He is not going to go away. Came in a year ago. Cameron put in a swale but that did not take care of the situation.

F. **ATTORNEY REPORT:** nothing

G. **BREVARD CTY SHERIFF:** Dep Hammer, speed board is up in Brook Hollow now and TA would like it moved to Rocky Point next. She will put in request.

H. **PUBLIC HEARINGS:**

- H. PUBLIC HEARINGS:
I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN
BOARDS/COMMITTEES PRESENT AT MEETING
2. **Appoint Interim Mayor**
Exhibit: Agenda Report No. 2
Recommendation: Request Action

Acting Chair asked Attorney Bohne to speak.

Intro by Attorney: email handed out to each Council Person on two suggested methods of making appointment. Bohne said the Charter says it is clear that we need to appoint an interim Mayor. Hard job is on Council and must have full Council to do this. The Attorney narrowed it down to two possible scenarios for their consideration. First scenario presumes they are all nominees and Council would move to appoint and the first one to get 3 votes is Mayor. Or 2nd process is nomination process and Council can nominate a person, and then Council can nominate another person. Rivet suggests each will get a vote that way. At most it would go to three nominees. Bohne said there is no guidance in Charter for them and the method is up to them. McKnight disclosed he solicited previous Mayor Phil Crews as he has been a previous Mayor and he spoke to several residents that thought he would be a good interim.

Beatty said he asked Crews and he was not interested. He was told by Pat Reilly that he was interested.

Rivet would like to hear from each of them.

Patricia Dezman: Sat on Council for six years for District 5 after filling in for Bob Rossman. She put her name in because she felt strongly for Tom Eschenberg and the teen council and the eagle patrol and would like to see them continued. She also wanted Council to think about Susan Kabana who worked here for 14 years and was stricken; Mayor Eschenberg who served for 10 years here and was stricken and now the TA who has worked here five years and is stricken. Look into sick building issue.

- Bridget Ports, 1340 Hall Road, didn't plan to speak. She ran in last Mayoral election and lost by not very much. She would bring to Town a new look. Improve in some areas and hopes to be able to do that.
- Pat Reilly: 1985 Howell Lane, serves on P&Z and has for 11 years, seven as Vice-Chair. He was approached by Tom Eschenberg three years ago to run for Mayor. He is happy to serve.
- Phil Crews said he is retired. Tom Eschenberg was a good friend and attended every CivMil together. He would be honored to fill in for a few months. Leadership styles are similar.

Acting Chair Acquaviva thanked them all for their willingness to serve. McKnight said another reason he solicited Crews was Crews has no motivation to run for office in November.

MOTION: White / McKnight to appoint Crews to fill vacancy as interim Mayor for rest of term.

Discussion: Acquaviva said either Crews or Dezman would be helpful as they have been through budget process. White would like to leave Reilly where he is on P&Z. McKnight and Acquaviva both stated they had wanted to leave the position vacant until the election. Bohne said the Mayor has veto power and power to break ties so he may have a function so position must be filled.

VOTE: All Ayes. (Roll call vote was taken.)

Acting Chair then brought up the issue of Chair. She is acting Chair now. If Council wants to select another she is ok with that. Crews would be happy to be chair. Beatty said first Acquaviva has to declare on tape that she wants to step down. Acquaviva agreed. Beatty said then they can make motion to appoint. Bohne restated that they would need to do motion to appoint formally. Acquaviva stated on tape she will keep her position as Vice-Chair and step down as Interim Chair.

MOTION: Rivet / Beatty to appoint Crews as Chair for remainder of term.

VOTE: All Ayes.

3. Recommendation from Park Board re: Waste Mgmt Rolloffs at Malabar Community Park

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Speaker card: Milo Zonka, gave some history. This process was a result of meetings between WM Route Mgr and Town Administration to get yards picked up faster. They are able to unload into boxes at park instead of driving to Sarno with each load. End result, is faster pick up. They stay within the contractual requirements. They are happy with whatever they are allowed to do. The intent was to expedite the removal of material from the roadsides.

Zonka said regarding Tom Eschenberg, he didn't agree with most things but he was great advocate for citizens in south Brevard. He was a friend.

Yard waste boxes, we will do what you tell us. McKnight said the Park Board suggested using the Town dump. Zonka said it is not that they couldn't do it. They consider the opportunity for mistakes in their operations and would prefer to pull the boxes rather than use that site. TA said PW would not be able to maneuver Town trucks if WM boxes were there. She did talk to Zonka about this and he has offered to reduce boxes to one and remove it as soon as it is empty. She stated again we have had no calls or complaints from Park users or residents. She would get at least two complaints a week during growing season from residents about yard waste on roadsides and in ditches. McKnight does not want to ignore the Park Board but also doesn't want to slow down process.

Beatty wanted to add facts: during hurricanes, they had tractor trailers hauling in there and they also put in a tub shredder and then there were dump trucks and small trailers hauling in material. They hauled a tremendous amount of material. He suggested looking at rearranging the area. Beatty said a benefit in putting the debris in that area is they could just dump the material in yard and then having the Fire Dept burn it. Beatty said you have commercial vehicles driving down into the park.

Chair asked if the road was stabilized. It is maintained by the Town but needs improvement. Beatty said it was accepted by the Town. Zonka said there is a difference between normal operations and emergency operations. The opportunity to have an accident is increased in using the south Marie Street site. They can reduce to one box at the park site.

White asked if there was another place they could be place. There is an area down the dirt road to the soccer field. McKnight wanted to have Park Board provide input. Zonka will work with staff. Chair said so Marie Street location is less than ideal. Zonka is not saying it is safe or not safe; he will pull the boxes rather than use that site. Chair asked if there was a consensus to have Park Board to look at the alternate sites.

MOTION: White / Acquaviva to send back to Park Board for alternate locations.

Discussion: no further discussion.

VOTE: All Ayes.

J. ACTIONS ITEMS:

ORDINANCES:

4. Amend Chapter 13 of Code (Ord 2012- 54)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING SECTION 13-52; REVISING THE PROCEDURES FOR REQUESTING ROAD OR STREET IMPROVEMENTS BY OWNERS OF LAND ABUTTING SAID ROAD OR STREET; PROVIDING FOR CODIFICATION, CONFLICTS; AND SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Franklin read reso by title.

MOTION: Rivet / White to approve the first reading of Ord 2012-54.

Discussion: none

ROLLCALL VOTE: Beatty, Aye; White, Aye; Rivet, Aye; 1)McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

RESOLUTIONS:

5. Approve Sale of Malabar Utility to Palm Bay and Authorize Administrator to Sign Agreement (Resolution 14-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE TERMS AND CONDITIONS OF THE AGREEMENT OF PURCHASE AND SALE OF WATER AND WASTEWATER SYSTEM TOWN OF MALABAR AND CITY OF PALM BAY, BILL OF SALE AND GRANT OF EXCLUSIVE CITY SERVICES EASEMENT ALL OF WHICH ARE ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Franklin read resolution by title.

Chair said this issue was discussed at executive sessions and as part of litigation strategy. Bohne said the sale of the utility must be handled at a public meeting.

MOTION: McKnight / Rivet to approve Reso 14-2012.

Discussion: Bohne said the City of Palm Bay staff is in audience and they are here at our request to answer any questions Council may have. Bohne said we have gone back and forth and have 99% of a fair agreement. They have discussed various pay-off plans. Malabar offered multiple year payback plan with interest and Palm Bay rejected those plans. Malabar offered a two year pay-off plan with no interest; half paid by 9/30/12 and remainder by 9/30/13. Palm Bay staff will still have to take it to their Council.

Bohne wanted to high light some issues he dealt with on the documents. They struck the indemnification stuff which benefits the Town. He accepts the language that is in there. We have to give customer deposits to City and they will be transferred over. There will be no mandatory hook-ups unless required by State law. City will give Town all the water we need. City will not be liable if there is some interruption beyond their control. The City will not be discriminatory. Town can impose the franchise fee. Those are the points on the agreement. Regarding Easement document, no issues and Bill of Sale was clarified to show the 250K and with 2 payments.

Rivet said we are good. Beatty said the issue he had was access to fire hydrants. TA said that is automatic it is State law. Bohne asked Sue Hann, City Mgr, and she has no objection to adding that language to Agreement. Beatty said he will offer his assistance to City as he has extensive knowledge of where stuff should be.

Sue Hann said they want to work with us. Rivet also wanted to add that since she has worked with us as equal parties instead of adversaries it has gone better and thanked her for that consideration.

ROLLCALL VOTE: Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; 1)Acquaviva, Aye. Motion carried 5 to 0. Bohne said our agreement will be changed for signature. Thanks to all.

MISCELLANEOUS:

6. Approve Speed Humps and Reduced Speed for Briar Creek Blvd.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Rivet had a meeting with members of Brook Hollow. Rivet would like to make these requests happen. Beatty said we need to do a resolution to reduce the speed limit. White asked if Brook Hollow plans to pay for it.

Acquaviva said signage should be under taxpayers for public safety. When subdivision was laid out it was estimated to be at that speed. McKnight has no objections with adding the stop signs. He agrees with TA that we don't set precedence with the other signage and humps. White agreed to share the cost with HOA.

Council called Drew Thompson to podium. He said they have been looking at ways to stop people at the stop signs. TA said speed bumps at stop signs are not good so they are not asking for those any longer. They are asking for permission for Town to pay for hump in Town area. They will withdraw the request for the bumps at stop signs. Do want the extra two stop signs and the reduced speed to 20mph.

Bohne said he submitted email regarding reducing the speed to 20. Per his email, the Florida Statute requires an investigation to determine the speed should be reduced. He does not know what the investigation entails. Beatty said we do this in a generic investigation. Bohne said have the volunteer Julie review the MUTCD for what is required in this investigation.

MOTION: White / Acquaviva to approve the two stop signs and one hump with signage.

Discussion: McKnight is concerned about this and when residents in other areas ask for signs.

Chair said he would look at it when there are denser developments. Rivet said the difference is it is a no outlet street and a dense residential area. White said to have Julie investigate or ask Palm Bay.

VOTE: Ayes: 4; Nays: 1 (McKnight). Motion carried 4 to 1.

7. Award of Bid for Culvert Replacement under Weber south of Atz Road (RFP 2012-03) (Tabled 5/21/12)

Exhibit: Agenda Report No. 7

Recommendation: Request Action

TA said this was presented initially with RFP 2012-02 thinking they could save on a single mobilization but the pipe is failing and Mayor Eschenberg asked for this one to go forward. The other one will be rebid. This one can go forward and save money as they have signage out now because of the weight restriction.

Beatty said this was directed to be rebid. TA explained the difference in the other RFP. In most places if you had a bid that didn't comply they don't automatically reject. Sometimes this works to our benefit. This is not the bid Council had question about. It was the other project that McKnight had asked if another method could be used to save money. This is a straight forward pipe collapse under Weber and is getting worse.

MOTION: Rivet / White to accept the Goodson Paving bid.

Discussion: TA said they were sub on ARRA projects and also did LaCourt. **VOTE:** All Ayes.

8. Approve Expenditure up to \$9,500.00 for Mower for Public Works Dept

Exhibit: Agenda Report No. 8

Recommendation: Request Action

TA presented – they have rebuilt one of them last fiscal year. Put more money into them. Are in heaviest growing season and definitely. Had a payback of the Gradall and also purchased a mower and we have not made that payback yet. That is where the money would come from. If sale comes through then we would have 125 K to spend. Beatty said agenda report stated a John Deere is not preferred equipment because of location for repairs but there are local providers; there are also state bids. TA said the estimate they have is the state bid price. If they can get it cheaper then they will.

MOTION: Acquaviva / Rivet to approve purchase up to \$9,500.00 for new mower. **VOTE:** All Ayes.

The following were moved from Consent Agenda:

1d. Approve \$50.00 for Melbourne Fire Works Display**Exhibit:** Agenda Report No. 1d.

Rivet said if it is \$50 it is not significant and should be zero. Acquaviva said it is a symbol. McKnight said we have persons coming in asking for contributions and this is the same thing. He doesn't think the residents would want him to give it away. Acquaviva said the voters elected him to make those decisions.

MOTION: Rivet / McKnight to reject the donation. **VOTE:** All Ayes.

1e. Approve \$150.00 for Teen Council Representatives to Attend FLC Conf**Exhibit:** Agenda Report No. 1e.

Rivet said he is in favor this.

MOTION: Rivet / Acquaviva to approve expenditure. **VOTE:** 4 Ayes; 1 Nay (McKnight).

1f. Set Budget Workshop Dates**Exhibit:** Agenda Report No. 1f.

All of Council except Rivet is good with July 10 for first budget workshop.

MOTION: Acquaviva / Rivet to approve dates for budget workshops. **VOTE:** All Ayes.

TA said we can make copy of meeting tape for Rivet if he wants it.

1g. Approve Use of Residents for Taxpayer Budget Review Board**Exhibit:** Agenda Report No. 1g.

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

White and Rivet thought it was good to use the TBRB. Acquaviva agreed. McKnight said it is good but some feedback was negative because Council didn't use all their recommendations. Chair said that sometimes happens.

MOTION: Rivet / Acquaviva to use the same selection criteria as last year. **VOTE:** All Ayes.

(No Recess – Attorney Excused)

K. PRESENTATIONS:

L. PROCLAMATION: Prepared for Tom Eschenberg family (Read above)

M. STAFF REPORTS:

ADMINISTRATOR: TA gave report on drainage project proposed for Weber and Hall area. Meeting with Engineer showed the west side of road would only require one driveway to drop. They are finishing up with getting that information from Engineer tomorrow. TA said they have not begun digging there and they will be doing that at one time.

Fire Chief, after discussion they came to terms that he will resign as of 7/1/12. She spoke with Asst Chief and would like to use him as an interim so she can see him in the decision making process. In the past, she gives people one chance and then another chance but when they put the Town in liable position she must act. She will welcome discussion with Council one on one on any further information.

CLERK:

- Council has received the packet for the FLC annual conference in their mail. It will be held in Hollywood on Aug 23-25, 2012. On the next agenda will be an action item to appoint the voting delegate for the conference.
- If anyone is interested in being a candidate for consideration for the FMIT Board, a pooled self-insurance program. Only elected municipal officials can be nominated. It will be on next agenda for action as the local governing entity must endorse the nominee.
- We will be having a thank you party for the volunteers that did work in the front yard. Once we set the date we will send out the thank you notes to the volunteers.

O: DISCUSSION ITEMS:**P. REPORTS - MAYOR AND COUNCIL MEMBERS:**

- 1) Beatty: Stated our website did not recognize the Mayor's death. Talked with Mrs. Crews and asked her to work up a web page. Beatty called the State and if the Chief is not certified. If you don't qualify it is a liability issue. TA said as of Mar 7 he was certified. Same problem with Chief Gianantonio as he would go in to the fire. He had discussion of having FF 2 syllabus for his FF2 status. When she discussed this with Tallahassee and the state told her exactly what she had to do. Current interim chief has both as he comes from south Florida.
- 2) White: none.
- 3) Rivet: Express his admiration for Tom Eschenberg. Disagreed with him more often than not. He was a valuable ally or a worthy adversary. Fought for what he believed in.
- 4) McKnight: Publicly thank the family of Tom Eschenberg for sharing him with us.
- 5) Acquaviva: openly expressed her condolences to Eschenberg family. Also thanks Crews for stepping in. She also wants to know about culvert situation on Country Cove. TA has met with Engineer Morris Smith but can't think what the status is and will get back to her. Acquaviva also mentioned she googled Malabar Matters after being asked about it by a resident. She asked if others had heard of it. It is not town sponsored site. It comes up high under Google list. It has a lot of negative content. Other Council had heard of it. It is not sponsored by Town.
- 6) Interim Mayor: Thanks for the endorsement. Also express condolences to Eschenberg family.

Q. PUBLIC COMMENT: General Items related or not to agenda items (Speaker Card Required)
Speaker card, Mr. Steve Morris,

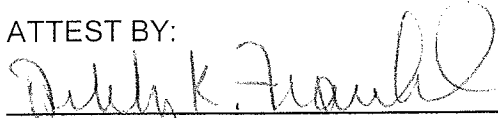
R. ADJOURNMENT:

There being no further business to discuss, without objection the Chair adjourns the meeting. The meeting adjourned at 9:30PM.

BY: 

Mayor Phillip R. Crews, Council Chair

ATTEST BY:



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

Date Approved: 7/2/2012