

## MALABAR TOWN COUNCIL REGULAR MEETING

July 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 7:32 pm by Interim Mayor/Chair Phil Crews. The prayer and pledge were led by Mayor Crews.

### B. ROLL CALL:

MAYOR/CHAIR (Interim)

VICE-CHAIR:

COUNCIL MEMBERS:

PHILLIP CREWS

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS excused

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Franklin said for the record, Town Engineer Morris Smith, Town PW Dir Tom Miliore and Interim Fire Chief Bob Strandell are present.

### C. ADDITIONS/DELETIONS/CHANGES: None

### 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 – 7/2/2012

Budget WS Meeting – 7/10/12

#### Exhibit:

Agenda Report No. 1a.

#### 1c. Acknowledge Receipt of June Financials

MOTION: Rivet / White to approve the consent agenda.

Discussion: none.

VOTE: All Ayes.

### E. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required None

### F. ATTORNEY REPORT: Staff is working on gathering up the easement documents going thru four plats and getting language for easements. One step closer. That is all.

### G. BREVARD CTY SHERIFF: Dep. Hammer – two burglaries, Cason, by family member and Atz Road, not occupied most of the year. Otherwise, normal traffic stuff – nothing significant.

### H. PUBLIC HEARINGS: 1 – Ordinance legally advertised 7/5/12

#### 2. 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. 2

Recommendation: Request Action

Franklin read by title only.

**Public Hearing Opened:**

Brian Vail: 2700 Smith Lane, about town participating in the cost of the project. Town will be doing less maintenance and will be seeing the 2<sup>nd</sup> note is the value of lots will increase by being on a paved road. Town will see increased revenues. Town should share part of the cost as they will be saving money and making money. Please consider that.

**Closed Public Hearing.**

**MOTION:** Rivet / White to approve Ordinance 2012-54

Discussion: none

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

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

**3. Repair Options for Failing Culverts under Country Cove Circle**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**MOTION:** Acquaviva/Rivet to remove item from the table for discussion. **VOTE:** All Ayes.

Chair asked for speakers: He called Juliana Hirsch. She would like to hear the outcome before speaking. Chris Norton, 1611 Country Cove Circle, there is a lot of options that you are looking at for this and we appreciate all the hard work it takes to make the decision. He doesn't represent the group. They would like to reserve their comments to after the discussion by Council and the Engineer. Chair said, without objection, speakers would be heard after Council discussion.

Beatty stated that when this was put on the table, McKnight raised some questions; he wanted to know what the minimum size pipe could be to maintain the hydraulic flow. Beatty said he didn't know if he got the answer to the question; Beatty hadn't seen it. Beatty asked about inverts; at the time he explained to the Town Engineer where the outfall was because that's a factor for the pipe and it needs to be looked at. A repair could be done but you can't cancel out a lot of things. To date, he has not heard what the invert was or the invert of the outfall is. He doesn't know if McKnight got the information he requested; Beatty wasn't copied on it.

Beatty stated that the issue was will a 2 or 3 foot size pipe handle the hydraulics and what was above that. One of the proposals we had at that time was spinning concrete in existing pipe; there was another one to replace the whole thing with a wooden structure and there are issues there. If you do that, you expose the water line or if it's down below, we would have issues with the water and the power going through there. That was a part of that and whether or not we would have to take up the cost; that was another issue there. We had those 3 proposals and only one of them succeeded in being brought to Council. Things came up and at that point in time, Council tabled it. We never looked at the other 2 proposals because of the questions that we had and so, to date, we haven't gotten the answers back.

Acquaviva stated it is unfortunate that the TA couldn't be here this evening. She had some questions for the TA as well. She felt it was frustrating because Council didn't get to hear the entire presentation; felt it was not fair to not let it go on. After being tabled, she couldn't speak to this issue.

McKnight stated that the path that was being followed was not an acceptable path as far as his outlook on the project; we were going to try to replace it exactly the way it was and not repair it at a utilitarian factor but repair it to the way it was built which was for more of an amenity structure than a utilitarian structure because if there was a utilitarian factor involved, it would be the minimum size pipe or possibly no pipe at all. These are stand alone retention ponds and they are there to collect the runoff.

Acquaviva stated she didn't know where he got that information that it is a stand-alone retention pond? They are not.

McKnight stated that Morris Smith can clarify this. Smith stated the ponds are interconnected and they talk to each other. They are required to be connected; the runoff from the drainage basin to the west pond is designed to drain into the ponds. The north pond swash back and forth into the south pond; the south pond exit the site with the control structure. So there is a requirement to keep them sloshing. McKnight asked if they are self-contained to that subdivision. Smith stated there is an outfall that goes out to the west connection and eventually Turkey Creek.

Acquaviva stated that she has read all the information from the 1980s when Council approved and accepted the roads in Country Cove. She said you seem to think that it's just for us to canoe through and it doesn't have to be that big. The price of the land and homes was priced to have those bridges; she bought a lake-front lot. She is speaking for herself. She spent \$40,000 on the lot; would it have been that if it was just a retention pond that wasn't moving forward? The idea that it was accepted as a rustic neighborhood/subdivision that all these tax payers paid money for, that is what was accepted and now to talk about the ponds are not needed and can be dammed up, that's not what we bought; she is speaking as a homeowner now. Somebody who is confused by the thinking on this and to not even listen to the rest of the presentation, it is frustrating.

McKnight stated that based on what you have, if your homeowner association wanted responsibility for it that is one thing. When you turn something over to the Town, as a Town Council person representing the people of this Town, your responsibility is to repair something safely and at minimum costs because you can't go into some neighborhoods and spend \$60,000 on a culvert and go into another neighborhood and spend \$5,000 on a culvert just because that's the way it was before. You have to do a utilitarian type analysis to see what is needed.

Acquaviva stated that she is representing everyone in the Town. Acquaviva stated that Council didn't even get through the rest of the presentation, so you cut it at the knees to even say that. She said she will be prudent with her judgment on the fact that the HOA may have to pay some money for that. But to say just close it in with dirt, those are structural things and she thought it was unfair to not let him explain it in that way.

McKnight stated that he did not have all the data at that time; that's the reason we tabled it. Acquaviva stated that she would love to hear from Mr. Smith. McKnight stated that one question that was discussed offline; he said there is a possibility that it could be filled in if those individual ponds could handle the runoff from the area surrounding it.

Morris Smith said it would be required to do an engineering study to do that. When McKnight said a 36" pipe and the price was not significantly less. To replace existing with a smaller pipe the road has to be dug up and regraded and the slope has to be changed and the extra fill material and the repaving the road. Because you are rebuilding a roadway from the subgrade to the asphalt, it did not change that much in price.

Rivet said we have a responsible expectation that when we replace it should be the same. White asked how much the spin casting was. Mayor asked if there were 3 options. He is getting the crux of issue. Is it appropriate to retain the aesthetic which is to allow the canoes? Acquaviva said the Town already approved the road and the subdivision in the 1980's.

McKnight said we are not required to provide amenities. Morris Smith said when he went back and looked at the design plans, the original designer had a span of bridge to accommodate this subdivision. There was some intent to travel between ponds. He imagines that when the costs were compared and the developer made a decision to still allow access to the ponds with the arch pipe. The change was approved and permitted by St. Johns. Why would you go from a concrete bridge to arch pipe. Beatty

said it is obvious; it is cheaper. He is not arguing that point. Rivet said we accepted the bridge as it is now. It is incumbent on us to fix it as it was. McKnight disagreed. Acquaviva said we pay more taxes to have those amenities. They are not on dirt roads that need regular maintenance and they do have lake front lots and the tax base is higher there. Acquaviva said this isn't the only subdivision that is going to have issues. McKnight said the amenities are not open to the public. Acquaviva said it is not doing something special; it is to maintain what is there and what was approved.

Mayor asked question to attorney. If it was a single strand expansion bridge; is there any requirement to retain the artistic design? Attorney said he is not aware of any precedent. It is the Town's responsibility to repair and has discretion on how to repair. Whatever they do has to be in line with what St. Johns permitted as well and must take that into consideration as the water bodies are connected.

Morris Smith said you would need to have a control structure so the northern pond could get to the southern pond or have a pipe under Corey Road from the northern pond.

Mayor restated basic issue: the community desires to keep the attributes and the Town desires to do it cheaper.

Rivet said the second option was the spinning concrete and that is the best price. Rivet said the 36" pipe was the cheapest and Option E is the spun concrete. Confusion is the over the error in Morris Smith memo on the bridge. Mayor said did McKnight say his discussion with Morris that a 36" pipe would be a cheaper alternative? Now that it is almost the same price. Morris Smith said you have to tear out the 11' pipe plus 20' of road for a total of 33 feet of road.

Mayor asked how long the wooden bridge would last. Morris Smith said wood bridge would have a 50-75 year life span.

Beatty said if you tear out the road it won't have to be that high and wouldn't need any of that since you would be only 2 feet above the invert. If you go from a big pipe to a small pipe why do you have to tear out the endwalls? Morris said when you shore up the ends, the weight of the flowable fill. When you sleeve the existing pipe you have to shore up the ends it must withstand 5000pounds. Then when you get to item D.- eliminating all of it and rebuilding the 33 feet of the road. These are his order of magnitude numbers based on not a full engineering design. Any of these can be tweaked. They have a quote for the spin casting and a quote for the bridge.

Attorney Bohne said he looked at all the material last November and provided a memo with a timeline and clearly the intent was to dedicate the improvements to the Town and for the Town to accept them. Attorney said Town put off accepting the improvements and the recording of a subsequent document wasn't done. There are two ways to prove acceptance; one is actual recorded documents and the other is taking the action of maintaining the improvements. We accepted the dedication and have done maintenance on them. At the end of his memo he said show him other documents and he will review.

McKnight said clearly said it wasn't done right before so that is not the way to do it. That is his point. He is trying to be responsible. Acquaviva said she does feel he has an issue here against them; she does not want to change the aesthetics that they bought. McKnight said we can agree to disagree.

The least expensive method allows the canoes to travel back and forth between. She is not a canoer. It wasn't; a retention pond, it was a moving body of water. It has fish.

McKnight said his job is for saving money. Acquaviva said it is also to do things for safety of residents. Rivet said part of their job is to listen to residents. Beatty said it should be paid from Stormwater fees not from the general fund. Mayor said was it advertised as recreational ponds. Yes.

The cheapest alternative maintains the aesthetics. White said can we make a recommendation to do that? Morris Smith said the arch pipe is the most expensive or slip lining is the most expensive. Morris Smith has talked about this with Tom and no matter what size pipe you have to slide them together with consideration force. If you do this you have to assembly them all together and then put them on a pontoon boat. It is a major construction project. That is the overview.

White said then spin casting is his recommendation. There is no destruction of original roadway; no disruption to community. The work foot print is very tiny. No major traffic disruption. White said for the money it is the most efficient. White has dealt with spin casting and is very impressed with that.

White asked if McKnight had enough information to vote or if he wanted to do more research. McKnight is still upset that the prices are still so high. McKnight asked Morris Smith if there was no other significant way to do it cheaper. Morris Smith said no; he was not thinking of what all has to happen to put in a smaller pipe - digging up the pipe is a very large expense.

Acquaviva said she can make a motion if discussion is done. Beatty said he did pursue the FIND grant money and part could be paid with stormwater money. Acquaviva asked Franklin about this at budget workshop. Franklin said that stormwater money was available.

Beatty said he never got his invert information. Morris Smith said the inverts would not change.

McKnight said he thought it was prudent to postpone at earlier meeting to get this information.

#### Speaker's Cards:

Alan Wollard, 1623 Country Cove Circle, thanks Council for bringing us up to speed. The spin casting is the only sensible alternative. By walking through the neighborhood. Inverts are the bottom of the pipe. The storm drain in his yard goes to the north lake and then flows to the south lake and if they dammed up the flow for Tropical Storm Fay in 2008 or the hurricanes in 2004 they could have had a flooding issue for each of the ponds. Morris Smith asked how high the water was in the pipe. There was 15' 16" of water in pipe. The outflow under Corey Road was really pumping. Thank you

Rick Merrick, 1737 Country Cove Circle, add to what Alan talked about. The whole system is actually one body of water and it ebbs and flows continuously. If you dam it up it is not the road to go down. The fix of the concrete sounds like the best way to go, you are leaving the road and headwalls intact. You are just shoring up the pipe. That is his opinion. This has gone on long enough. It started in 2006, let's get it done.

Bob Rossman, 1635 Country Cove Circle was first home in subdivision and the only kayak belongs to Alan. The issue is the safety of the road. Town is definitely responsible. He would find the spin casting acceptable. He knows what it takes for Council to make these decisions. He said Council doesn't want to raise taxes and he understands. Town has been out there to do repairs before. Regarding their discussion of what a bridge is, if it goes over a body of water and it is used to get from one side to another, it is a bridge. It is used by more than just the other homes in the subdivision. It has gone on too long, before 2006. One of those people goes over the bridge and has a big truck. He finds the spin casting of concrete option completely acceptable.

Pat Dezman, 1670 Country Cove Circle, so you understand the history she sat on council 2006-2009. Going on longer than that. Sent Carl Beatty out to the west bridge. And then back to the entrance bridge. Fixed under Rossman's term see how much money on the fix. There are 42 houses out there. Her house pulls from pond for irrigation. But it comes from the lake on Corey Road. Her concerns are safety issues. McKnight we have fixed individual culverts after the hurricanes. She thinks the spin casting is the way to do it and sooner than later.

Vicki Merrick, 1737 Country Cove Circle, thanks Council. She is the HOA President and represents the other residents that could not make it to this meeting. They are in agreement with Option C, very little destruction to road or traffic disturbance. Wants to thank them for their consideration.

Beatty said Rossman brought up repairs. It was erosion control. That being said the pipes were put in there after the fact and it broke in around the headwall. Rossman sent a letter in regarding the repairs with two maybe three people and he did not see him because he was down below and tamp them all. Then Champion Const came in and did repair. NE corner on structure 2. They were told to do that. And the next thing they knew, the landscaping guys were edging along the concrete. If they line the pipe they will still have the erosion problem. Maybe they need to reshape the slopes to eliminate that problem. The flumes will be washed out.

Morris Smith said that the washouts are from sand from washouts. Beatty said it is a different issue.

It appears that the funding is so close then. Morris said back in Nov when he met with them the spin casting vendor was scheduled to be in Town to speak to them since he was there to talk to other cities. He doesn't know the final answer on that but he is willing to ask. If they time it properly they could see a reduction in cost.

**MOTION:** Rivet / Acquaviva to proceed with the spin casting method for the repair to Country Cove culverts. **Vote:** All Ayes.

**J. ACTIONS ITEMS:**  
**ORDINANCES:** none  
**RESOLUTIONS:** 1

**MOTION:** Rivet / White to remove from table. **Vote:** All Ayes

**4. Approval of Speed Reduction on Briar Creek Blvd. (Reso 19-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ACKNOWLEDGING THE SAFETY CONCERNS OF THE RESIDENTS OF BROOK HOLLOW SUBDIVISION; SUPPORTING THE SPEED REDUCTION ALONG BRIAR CREEK BOULEVARD WITHIN MALABAR JURISDICTION; REQUESTING PALM BAY TO ALSO REDUCE THE SPEED ALONG BRIAR CREEK IN THEIR JURISDICTION; PROVIDING DIRECTION TO STAFF TO INSTALL 20MPH SPEED LIMIT SIGNS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Franklin read resolution by title.

**MOTION:** Rivet / Beatty to approve Reso 19-2012.

Discussion: Atty said he previously sent out memo to Council re: FS316 to allow municipalities to enact speed limits of 20 or 25mph. Have to conduct an investigation to justify the reduced speed. It was his opinion to go through this process. What does that take? It doesn't say you have to do engineering study. Perhaps someone to speak to volume of traffic, type of traffic, garbage traffic, something more formal and put into statement. Beatty asked if they could do a sub-committee. Atty said we could ask Palm Bay to do it. Beatty said the little he understands of this, have a committee that comes up with facts and put that together in a formal statement. Based on the request, from then on, we can reduce speed. Beatty said the residents on Quarterman wanted 15mph. Atty said Town can't approve 15mph. McKnight asked where the 15mph signs went that were on Quarterman. Tom Miliore said he did not put any such signs up. Beatty said he will volunteer to be on it. Atty said it needs to be more formal; said have a committee of three. Atty posed a scenario. BCSO pulled someone over for speeding on road posted with a 20mph; reason for stop was a violation of speed zone, and was found DUI. If his attorney does investigation and speed sign not valid, then the DUI walks free. It is about enforcement later on. Mayor said you could ask engineer to do study. He has some knowledge of these things. Atty said he could do it. We have dirt roads. We have thorough fares in the town that are being

abused by non town residents. Atty said you are not going to change the signs tomorrow because you adopted this resolution.

Rivet said he has met with residents there and the resolution stands as it is and he will meet with and explain why the speed signs will not go up tomorrow to the residents. Rivet asked if Council consensus to allow him to meet with residents and do investigation so Town does not have to pay engineer. Yes.

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

**MISCELLANEOUS:**

**5. Form DR-420 – Tentative Maximum Millage and Public Hearing Date**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Chair asked Franklin to explain. Franklin stated that the setting of the maximum millage to be used in the budget discussions is set and then conveyed to Property Appraiser's office and that is advertised in the TRIM (truth in millage) Notice that is mailed to all property owners in Malabar. There is a special law that restricts Brevard County to a 10% increase and that number is 1.8421. That same notice includes the date for the first Public Hearing. Residents are then mailed the TRIM Notice and can make arrangements to attend the Public Hearing and participate in the process. If Council elects to set the maximum at the same millage levied last year then finds they must raise additional advalorem during the budget discussions, the Town would be responsible to notify by first class mail each property owner and that gets very expensive. The setting of the maximum limit does not commit Council.

**MOTION:** McKnight / Beatty to approve 1.6746. **Vote:** Ayes, 2 (McKnight, Beatty) Nays (Marisa, White, Rivet. Motion failed.

**MOTION:** White / Acquaviva to set the tentative maximum millage at 1.8421.

**Vote:** Ayes, 3 (Rivet, Acquaviva, White) Nays, 2 (Beatty, McKnight) Motion carried.

**MOTION:** McKnight / Beatty to set first Public Hearing on Millage and Budget on Sept 12, 2012 at 7:30PM.

Discussion:

**VOTE:** All Ayes

**K. PRESENTATIONS:**

**L. PROCLAMATION:**

**M. STAFF REPORTS:**

ADMINISTRATOR:

CLERK:

Fire Chief Report: handout from last mtg.

Ladder Truck, had a rebuilt head in Boca, then blew, then put another on and then it was replaced under warranty. They are waiting on that to get it back in service. Delayed getting repairs on Engine until ladder is back. It needs AC and small hydraulic leaks. Referred to one of the brush trucks. We have 11 members certified in Wildland Fire training. One of those classes put together with Chief Joe Gianantonio and his son. They will be putting on five classes.

McKnight, asked about AC repair, can't take to normal AC place. Normally take to a large vehicle place. Got the bushing and pins replaced, but learned frame was bent as it was in an accident 6 years ago.

They had to give number from chassis to put a compressor similar. Parts are available through a normal AC repair shop. He was still researching that.

**O: DISCUSSION ITEMS:**

**P. REPORTS - MAYOR AND COUNCIL MEMBERS:**

- 1) Beatty: issue he has is not to only do pipes under country Cove Circle, but also address the erosion problems that had nothing to do with the pipe. While you are there, jack up the sidewalks so they slope the other way. He is proposing sloping the sidewalks.  
Put on as an agenda item. Slope of sidewalks.
- 2) White: nothing.
- 3) Rivet: nothing
- 4) McKnight: Wanted to state that this was in no way a criticism of Clerk's actions on the newsletters. Should not be all of staff's responsibility to develop. There should be a paragraph from each Council member. Make it an agenda item for next meeting. Proposing for discussion, input from residents. Also something from boards. Also would want the town flag to be behind the dais.
- 5) Acquaviva: Talking to Debby, would like to thank the volunteers that did all the work. Be it a proclamation or letter and a thank you. Do a proclamation. Did not cost the Town a dollar.

Beatty brought up another aspect, WM supplies on what we can put in recycle. Put WM flyer in with newsletter. This last Sat WM did not pick up. He was riding the roads and trying to figure out what the truck was picking up. Appeared same truck picked up trash and yard waste or recycles. Said we could also put WM information in Hometown News.

Interim Mayor: none

**Q. PUBLIC COMMENT:** General Items related or not to agenda items (Speaker Card Required)  
Brian Vail would like Council to discuss cost share on road improvements. He would like this on as an agenda item relative to participation by the town in the cost of improvements.

Put on for next agenda under Discussion: Town participation in pay process for road surface hardening.

**R. ADJOURNMENT:**

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

BY:

Phillip R. Crews  
Mayor Phillip R. Crews, Council Chair

ATTEST BY:

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

Date Approved: 8/6/12 as submitted