

## MALABAR TOWN COUNCIL REGULAR MEETING

August 6, 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 Council Member District 1 Carl Beatty.

### B. ROLL CALL:

MAYOR/CHAIR (Interim)

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

PHILLIP CREWS

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE, excused

STEVE RIVET

JEFF MCKNIGHT

BONILYN WILBANKS

KARL BOHNE

DEBBY FRANKLIN

Franklin said for the record, Town Fire Chief Bob Strandell was also present.

**C. ADDITIONS/DELETIONS/CHANGES:** Chair said Franklin had asked to pull Item 10 (town participate in cost of road hardening). Franklin said hopefully they will have the information to discuss this on August 20.

**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 – 7/16/2012

**Exhibit:** Agenda Report No. 1a.

No corrections

#### 1b. **Budget Adjustment – Reso 21-2012**

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.

**Recommendation:** Action on All with one MOTION and with reading of resolution.

**MOTION:** Rivet / McKnight to approve the consent agenda.

Franklin read reso by title only. Discussion: none.

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

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

**F. ATTORNEY REPORT:** Update on settlement- Franklin will be meeting with PB staff to verify easements tomorrow. Spoke with Dan Roberts of the PB Utility Dept and we are all trying to get it all done before Sept 30, 2012.

**G. BREVARD CTY SHERIFF:** TA met with Dep. Hammer in parking lot – no major crimes.

**H. PUBLIC HEARINGS:** none

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

**2. Rationale on Recommendations from P&Z Board re: Setbacks (on table)****Exhibit:** Agenda Report No. 2**Recommendation:** Request Action

Pat Reilly, V-Chair of P&Z, explained their Board was asked to look at setback requirements. The idea was to look at giving relief to property owners. The Board provided their rationale for why they would consider a lesser setback for accessory structures only and only in RR-65 zoning. The Board also rewrote Article III, Section E, and fixed scrivener's errors in Table E of same Article. Reilly said they had many long discussions on why we should keep table E. Diagram in packet by Franklin and Reilly shows why we need both Tables. He explained why they allowed it only in RR65.

Speaker Card: Juliana Hirsch, 1035 Malabar Road, not prepared for this. What are they trying to change? Reduce side and rear setbacks only, for accessory structures only, and only in RR-65 zoning. Front setback stays the same at 40 in RR-65. Setbacks remain unchanged for principal structures. She has no objection to this.

**MOTION:** McKnight / Beatty to approve P&Z recommendation regarding setbacks as presented.

**VOTE:** All Ayes.

Franklin explained that P&Z had made two recommendations that council sent back for their rationale. The other one will be on next Council agenda. The first time they were presented together and it got very confusing in the discussions.

**3. Recommendation from Park Board re: Memorial for Mayor Eschenberg at Malabar Community Park****Exhibit:** Agenda Report No. 3**Recommendation:** Request Action

Rivet said he was sure Tom would not want to spend a lot of money on this. Beatty was at Park Board meeting and spoke to them about this item. He suggested they make a memorial section in the park. In the interim make it similar to John Kelvington plaque mounted to coquina rock. Consensus of Council to support this recommendation but ask Park Board for price range on type of plaque (bronze or equivalent metal) and put more specifics and scope of project together. This item was not tabled.

**4. Recommendation from Park Board re: Culvert for 17-acre FCT Parcel on Weber Road****Exhibit:** Agenda Report No. 4**Recommendation:** Request Action

Beatty said they wanted to get access to the property. Mayor said that there are bike enthusiasts that now park on Whimsical Lane in Weber Woods and once homes start building there, this would give them an alternative place to meet.

**MOTION:** Beatty / Acquaviva to approve Park Board recommendation. **VOTE:** All Ayes.

**J. ACTIONS ITEMS:****ORDINANCES: 2****5. Franchise Fee (Ord 2012-55)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA GRANTING TO THE CITY OF PALM BAY, ITS SUCCESSORS AND ASSIGNS, A WATER AND SEWER UTILITY FRANCHISE TO USE THE PUBLIC PLACES OF THE TOWN OF MALABAR; PROVIDING AUTHORITY; SERVICE AREA; FRANCHISE GRANT; SCOPE OF GRANTS; EXCLUSIVITY; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF MALABAR; PROVIDING THAT THE GRANTOR SHALL NOT BE LIABLE FOR CERTAIN ACCIDENTS AND DAMAGES; PROVIDING THE FRANCHISEE'S RATE; SPECIFYING THE CONSIDERATION FOR THE FRANCHISE; PROVIDING FOR TERMINATION OF THE FRANCHISE AGREEMENT; PROVIDING FOR AN EXAMINATION OF THE FRANCHISEE'S RECORDS; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

**MOTION:** Rivet / Beatty to approve first reading of Ord 2012-55.

Franklin read reso by title only. Discussion: Bohne said it imposing the fee and Palm Bay reviewed it and they are on board with this. Wanted to get it in place now before closing.

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

**6. Flood Plain Management (Ord 2012-56)**

AN ORDINANCE OF THE TOWN OF MALABAR AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES OF THE TOWN; REPEALING SAID CHAPTER 9 IN ITS ENTIRETY; ADOPTING A NEW CHAPTER 9; ADOPTING FLOOD HAZARD MAPS; DESIGNATING A FLOODPLAIN ADMINISTRATOR; ADOPTING PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS; PROVIDING FOR DEFINITIONS; ADOPTING LOCAL ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODE; AMENDING SECTION 6-1 OF THE CODE OF ORDINANCES; PROVIDING FOR REPEAL, INCLUSION IN THE CODE OF ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action Mayor explained and Bohne said it affects insurance rates and coverage under the FEMA

Inclusion typo in ordinance.

Bohne said he will provide what the changes are from the current code.

**MOTION:** Rivet / McKnight to approve first reading of Ord 2012-56.

Franklin read reso by title only. Discussion: McKnight couldn't tell what was being changed. Bohne said he would have the areas highlighted that are changed for the next reading. Franklin said Chapter 9 is original code. Bohne said it is dated 1988. Franklin said this will help with NPDES requirements. Bohne said this will have affect on insurance rates also.

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

**RESOLUTIONS: 1**

**7. Interlocal Agreement Renewal with Department of Natural Resources for Stormwater Management (Reso 22-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE THREE-YEAR INTERLOCAL AGREEMENT WITH BREVARD COUNTY FOR STORMWATER PROGRAM ADMINISTRATION AND MANAGEMENT; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**MOTION:** McKnight / Acquiviva to approve Reso 22-2012.

Franklin read reso by title only. Discussion: McKnight has not been feeling like they are getting there monies worth. TA said they are getting better and they are updating. They got an inventory of all our pipes in notebooks and now as they replace pipes they are keeping the books up so we have historical knowledge.

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

**8. Council Approval of 450' of Lett Lane and Payback Rate (Reso 23-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ACCEPTING 450' OF ROAD IMPROVEMENTS ON LETT LANE; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

**MOTION:** Rivet / McKnight to approve Reso 23-2012.

Franklin read reso by title only. Discussion: Mayor pointed out in the 3<sup>rd</sup> "whereas" there was a wording problem. Franklin said to delete "is the process"

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

**MISCELLANEOUS:****9. Approve Erosion Control Corrections to Country Cove Bridges (Beatty)**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Request Action

Erosion issues are still there, slabs have fallen down and voids need filling. Should correct now. Pump fill under slabs so water runs into road. Need to shoot elevations.

TA said she is going to report. Chair asked if they wanted to table. No. Consensus that this is separate issue. TA will go over the problems with the Engineer. Rivet said we need to stabilize bridge and we will get the erosions issues resolved.

~~**10. Town Participation in Cost of Hard Surfacing Local Roads**~~~~**Exhibit:** Agenda Report No. 10~~~~PULLED~~**11. Reschedule Budget Workshop to August 14, 2012**

**Exhibit:** Agenda Report No. 11

**Recommendation:** Request Action

Franklin said she realized this conflicts with SCLC dinner meeting, but Beatty has said he will not attend that meeting so it is not necessary to change date. Does Council want to start at 7PM or 7:30PM? Consensus to keep it on the 13<sup>th</sup> and start at 7PM

Chair asked Atty Bohne to comment on a speaker's card they had received before he departed. Attorney said the Town has been served with a lawsuit. He has not read it yet. It is by Painted Acres, and this will be turned over to the FLC to defend. He is advising the Town to not speak about any issues related to these issues. Anyone has right to speak but please do not respond.

Atty Bohne left 8:15

**K. PRESENTATIONS:**

**L. PROCLAMATION:** Recognizing Volunteer Residents and Businesses that Beautified the front yard of Town Hall. Read by Mayor. Supported by Council.

**M. STAFF REPORTS:**

**ADMINISTRATOR:** On Friday she will be putting out the RFP again for the pipe under Atz Road, east of Weber Road project. She got the minutes from Franklin regarding the pipe repair in Country Cove and did check with the vendor and we can't piggy back on any open contract for spinning contract. She will also be putting this out this Friday and it is her policy to keep it out there 30 days. She understands that Council wanted this done in this budget year and if both these projects are started in this budget year the dollars will come from this year's budget. In reference to Weber Road stormwater project and the ATT fiber optics cables in the ditch that would require hand digging by out PW crew for a distance of 1/2 mile. The upper level engineer said we should have brought this up when they first put it in. That is the delay. She reported that PW did get the Coquina Terrace pipe; is done from the broken manhole to the next manhole. Will be starting pipe replacement on Howell Lane tomorrow.

TA Thanked Council, they have been very tolerant, very supportive. She has had her last chemo treatment and that phase is over. She appreciates Council's support.

CLERK: Elections – Qualifying starts Wednesday 8/8 and runs through 8/22.

Newsletter – map had errors as the district lines were not bolded. When she learned of this she scanned in a color map showing each district in a different color and had TA put it on website. She has begun the process to redistrict due to variances in the districts and will be bringing proposals to Council later in 2013. Hope to have the new lines by election time in 2013.

Last year we were criticized for not having election signs out early enough. This year we are criticized for having them out so long that they are becoming eyesores when they fall over.

The other issue is her suggestion to add two non-binding questions on the ballot to clarify the binding question related to the 1 mil to purchase land for town purpose stated in CIP. Will have resolution on next agenda. TA also said we can do a flyer with info for the website. Get it to each HOA. Explain the questions.

**O: DISCUSSION ITEMS:**

McKnight said it is important for each Council Member to have input. Mayor said the biggest problem is having them meet the deadline. What to do in the case when someone doesn't meet deadline. McKnight said she should put line in that District X had no submittal. Franklin did not think that would be well received.

Beatty has firsthand knowledge of the ditch TA referenced regarding the ATT fiber optics. He suggests if you are forced to dig use the prisoners. Council did not think that was a good idea. Franklin said we have already been told by ATT that repairs to fiber optics cuts start at \$100,000.00.

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

- 1) Beatty: none
- 2) White: excused.
- 3) Rivet: Has received final draft of speed investigation and should be able to move forward at next meeting.
- 4) McKnight: nothing
- 5) Acquaviva: nothing

Interim Mayor: nothing

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

Steve Morris thanked Mayor for stopping by his place. Shed a lot of light on subject. Thanks McKnight as well. Most of Board has been cooperative. Heard about fiber optics discussion. Not in his ditch. They were outside of it. That is what he saw. Question of how deep it is in the ground. That is it.

**R. ADJOURNMENT:**

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

**VOTE:** All Ayes. The meeting adjourned at 8:40 PM.

BY: 

Mayor Phillip R. Crews, Council Chair

ATTEST BY:



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

Date Approved: 8/20/12

AS submitted