

MALABAR TOWN COUNCIL REGULAR MEETING

September 12, 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. Moment of silence for tragedy on September 11, 2001. Chair thanked Ben DuBose for bringing in the flags from New York for the moment of silence – New York City Fire Dept, Port Authority of NY, NJ Police Dept and New York City Police Dept.

B. ROLL CALL:

MAYOR/CHAIR (Interim)

VICE-CHAIR:

COUNCIL MEMBERS:

PHILLIP CREWS

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE, excused

STEVE RIVET

JEFF MCKNIGHT excused

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE, excused

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Franklin said for the record, Town's Engineer Morris Smith and Interim Fire Chief Robert Strandell are also 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 – 8/20/2012

Special Budget WS Council Meeting – 9/4/2012

Exhibit:

Agenda Report No. 1a.

MOTION: Rivet / Beatty to approve the consent agenda.

VOTE: All Ayes

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

F. ATTORNEY REPORT: none.

G. BREVARD CTY SHERIFF: none present. TA said she saw them working down south.

H. PUBLIC HEARINGS: 3 each Millage and Budget advertised in TRIM notice. SW Reso legally advertised 8/16/12 and 8/23/12.

2. Ordinance Setting Millage FY 2012/2013 (Ord 2012-58)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 1.6630 FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2012 THROUGH AND INCLUDING SEPTEMBER 30, 2013, PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Chair directed Clerk to read Ordinance by title only. Mayor read the Truth in Millage Statute requires a Public Hearing on the Millage rate Malabar intends to levy:

- 1) the proposed millage rate is 1.6630
- 2) a final levy of 1.6630 mills will result in a decrease from the rolled-back (forward) rate of 1.6746
- 3) the final millage rate of 1.6630 is to fund the expenses for the fiscal year commencing October 1, 2012 and ending September 30, 2013

Chair declared Public Hearing open – no public comment.

Chair declared **Public Hearing closed**

MOTION: Rivet / Acquaviva to approve Ord 2012-58.

Discussion: none

ROLL CALL VOTE: 1)Beatty, Aye; Rivet, Aye; McKnight, excused; Acquaviva, Aye; White excused. Motion carried 3 to 0. Chair explained to audience that the lack of discussion was because they had held workshops to discuss the millage and reached consensus.

3. Ordinance Setting Budget FY 2012/2013 (Ord 2012-59)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2012 THROUGH AND INCLUDING SEPTEMBER 30, 2013; PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1, The Town Council of Malabar in regular session duly assembled adopt the final budget of 1,861,349.00 for the proposed expenditures from October 1, 2012 through Sept 30, 2013, reflecting the general operating millage of 1.6630. This total budget is comprised of \$1,564,126.00 in the General Fund which includes \$250,000.00 in one-time revenue from the sale of the utility and \$297,223.00 in the Stormwater Fund.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Chair directed Clerk to read Ordinance title and Section 1 in full.

Chair declared **Public Hearing open** – no public comment.

Chair declared **Public Hearing closed**

MOTION: Beatty / Acquaviva to approve Ord 2012-59.

Discussion: none.

ROLL CALL VOTE: Beatty, Aye; 1)Rivet, Aye; McKnight, excused; Acquaviva, Aye; White excused. Motion carried 3 to 0.

4. Stormwater Assessment Roll 2012/2013 (Resolution 20-2012) A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Chair directed Clerk to read Resolution by title only.

Chair declared **Public Hearing open** – no public comment.

Chair declared **Public Hearing closed**

MOTION: Beatty / Rivet to approve Reso 20-2012.

Discussion: none

ROLL CALL VOTE: Beatty, Aye; Rivet, Aye; McKnight, excused; 1)Acquaviva, Aye; White excused. Motion carried 3 to 0.

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

5. Request Temporary Placement of Trailer During New Home Construction

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Chair passed gavel to Vice-Chair. Mayor gave background: He will pull a construction permit to build a home in Weber Woods and then park his RV there on lot while he constructs. He would like to leave the RV there throughout construction. This will give him legal residence if his home sells before the new home is complete.

MOTION: Beatty / Rivet to approve the temporary placement of trailer during construction of home.

Discussion: Rivet said it is in accordance with code and sees no reason not to approve it. Acquaviva agreed.

VOTE: All Ayes.

Vice-Chair passed gavel back to Chair.

6. Request from P&Z Board for Legal Review of Pond Code

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Chair explained that the agenda report states the request. They would like to have legal review before they make their recommendation.

MOTION: Beatty / Acquaviva to approve staff forwarding P&Z draft code to Attorney Bohne for review and drafting into ordinance for return to P&Z for review.

Discussion: Rivet said it is good to get competent legal council. P&Z Member LEEANNE SAYLORS said the Board thought it was prudent to ask Council to approve the expenditure.

VOTE: All Ayes.

J. ACTION ITEMS:

ORDINANCES: 1

7. Town Speed Limits (Ord 2012-57)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; CREATING NEW SECTION 13-1; PROVIDING FOR A TOWN SPEED LIMIT ON CERTAIN STREETS AND ROADS IN THE TOWN; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Chair directed Clerk to read by title only.

Brain Vail, 2700 Smith Lane, 20MPH is lowest we can go. People have requested council to go to 15. TA said what makes up the investigation is up to the town. 2) The east west speed on Malabar Road is the only one that is 55mph. TA said the speed study results supported the 55mph. When was the traffic study – what time of day was it done. TA didn't know. Vail said Grant Road is 45mph. Chair said 514 is a State Road and they will determine the speed. Vail said they are all 45 except this. TA said she tried to get it lowered but it failed. Marisa said it was a 3 to 2 vote.

MOTION: Rivet / Beatty to approve Ord 2012-57. Rivet said study was very thorough. We are ready to do it. Acquaviva said Atty said he had passed judgment on this.

ROLL CALL VOTE: 1)Beatty, Aye; White, excused; Rivet, Aye; McKnight, excused; Acquaviva, Aye. Motion carried 3 to 0.

RESOLUTIONS: 2

8. Award Bid for Repair of Country Cove Culverts (Reso 26-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM TRAMONETT ENTERPRISES, INC. FOR REPAIR OF COUNTRY COVE CULVERTS FOR \$104,850.00; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Chair asked for TA to lead off discussion. Bid opening on 9/6/12. Based on that info the Engineer recommended Tramonett. The low bid was hand held sprayer. Acquaviva asked if the guy that made the presentation is associated with this company. Yes. TA said they also got a strange email from one of the bidders and she sent it to Atty and Engineer. That took time to review to make certain that all bids were reviewed to same criteria. Chair directed Clerk to read by title only with blanks filled in.

MOTION: Beatty / Rivet to approve the lowest and best bid of Tramonett Enterprises, Inc. Reso 26-2012.

Discussion:

ROLL CALL VOTE: Beatty, Aye; White, excused; 1)Rivet, Aye; McKnight, excused; Acquaviva, Aye.
Motion carried 3 to 0.

9. Award Bid for Atz Road east of Weber Work (Reso 27-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM GOODSON PAVING FOR REPLACEMENT OF THE CULVERT PIPE UNDER ATZ ROAD EAST OF WEBER ROAD FOR \$31,716.61; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 9

Recommendation: Request Action

Chair directed Clerk to read by title only with blanks filled in.

MOTION: Rivet / Acquaviva to approve Reso 26-2012.

Discussion: This was the low bid and has the recommendation from the Engineer.

ROLL CALL VOTE: Beatty, Aye; White, excused; Rivet, Aye; McKnight, excused; 1)Acquaviva, Aye.
Motion carried 3 to 0.

MISCELLANEOUS:

10. Qualify Candidates for 2012 Election

Exhibit: Agenda Report No. 10

Recommendation: Request Action

Chair read thru list of candidates.

MOTION: Rivet / Beatty to approve candidates.

Discussion: Mayor said it was a good slate of candidates.

VOTE: All Ayes.

11. Approve Debris Removal Contract

Exhibit: Agenda Report No. 11

Recommendation: Request Action

TA said they want to piggy back on Palm Bay contract. This company is happy to work with us as well. FEMA said we need to engage with a company ahead of time so they can be certified. There will be another contract of our own that she will craft and that will come back to Council for approval.

MOTION: Beatty / Acquaviva to approve.

Discussion: It is prudent to do it. Acquaviva said

VOTE: All Ayes.

K. PRESENTATIONS: none

L. PROCLAMATION: John Barrymore Day will be presented to Bill Moroney and Pat Reilly. We do every year.

M. STAFF REPORTS:

ADMINISTRATOR: Ladder truck is back on line. Small accident with fire truck and bldg. Palm Bay fleet services is repairing. TA said building will be repaired next week.

Painted the first and second floor of fire department. Also wanted to thank Reasonable Auto for fixing the Squad. It was a difficult issue and it is fixed. Acquaviva asked about the Pancake Breakfast. Are we going to pick that up? Chief said we don't have the facility for it. Lots of flies. Need a commercial style kitchen and maybe need special certification. Most of members want to do a spaghetti dinner at Camelot and a car wash and a boot drive. They don't mind doing fund raising. Acquaviva thought it was picking up steam. She wanted to hear his thoughts. Don't have the facility to do it and it was not popular with the memberships. Acquaviva said it was more of a friend raiser, community outreach. Bob said they could do a spaghetti dinner at fire station. Past Mayor was a regular attendee. Carl said they did have a commercial range but took it out. Before they jump in let them see what is there. TA said that was all checked out by Nancy and Stuart. If that is what is being

passed around. They fed tons of people through the fires in 2008. Carl said he was there mopping and they had the big commercial range. Acquaviva said it does build the community.

TA attended the Space Coast TPO Technical Advisory Committee meeting. She handed out the projects list that have been selected to go forward. Malabar Road widening from Babcock to Highway 1 has been approved for study called PD&E (project development and environmental) study. Mayor said if you bid on the feasibility then you can't bid on the design. Acquaviva said this makes her think of Mayor Eschenberg. TA said they are going to move forward with it. TA said they mentioned that it had been on list before. Mayor said Council at the time did not want it. The Mayor said getting on the list again could mean we are still ten years away from seeing this. Beatty said this study was already done in about 1986. They had Malabar Road planned out as a 4-lane roadway with a median and sidewalks. Mayor said the FDOT has different standards for highways; the section of Highway 1 in Melbourne has narrower roadways and no medians and has a lessor standard and south of that you have wider roads and medians. Beatty said he was here and they had public hearings and the public wanted a flyover over the railroad tracks. He was here. They agreed and they had it designed in and that is what they were going to do until Council told them adamantly no. Beatty said it is the same process and they had to have the special meetings to explain to Council that the meetings had to be here because this is where the traffic was. Beatty said he was familiar with what they did here so Council would know what they were doing. They couldn't do it with the flyover because of the height of the dirt and he is familiar with what they did and will do again; go through the same steps. Franklin said the process the bidders will go through will take several months and then the firm that is awarded the project to do the study will take six to eight or nine months to do the study. It will involve them speaking to Malabar and inviting the public in to get their input. There are many changes since the 1980's. There is conservation land along much of the north side of Malabar Road and it has high value in this process. Also they have also had many of the power poles replaced on the north side of the road; that will be a consideration. There are wetlands and areas will be needed for ponds. Many of the firms interested in submitting proposals have come in to get information.

TA also handed out flyer on a trail ride event that will happen on 9/29/12. Meet at entrance to Malabar Scrub Sanctuary. It will go through sanctuary, Cameron Preserve and Turkey Creek.

CLERK: Is Council interested in having a candidate forum? We did one in 2010 and we could ask the same moderator – he is a member of the LWV. She will have it on agenda for action at next meeting so they can secure a date if Council is interested.

Does Council want to have another newsletter before the election to provide more election information and an article from each candidate? The articles would have to be just for information and not to influence a vote. She will have that on for action at next meeting.

Rev Dr. Pauline Borland of the GHHCC on Marie St will be promoted to Bishop on Nov 3 at 10AM at the church and she has sent out an invitation to Council and the Mayor to attend. It requires an RSVP. If you want to go let me know and I will respond.

The P&Z item for the next meeting is their recommendation on R/LC reduction of density. Council had postponed this item until meeting of 9/24/12 so we could information to property owners. We put a summary of the information on the website after the Aug 20 meeting and then sent letters to all the property owners that currently have R/LC designated parcels inviting them to attend the Sept 24 meeting. The letter explains that even if Council supports the P&Z recommendation, there will be public hearings held at P&Z and Council to solicit public input and they will be sent notification of those hearings.

O: DISCUSSION ITEMS:**12. Town Administrator Attendance (Acquaviva)****Exhibit:** Agenda Report No. 12**Recommendation:** Discussion

Chair asked Acquaviva to open. Acquaviva wanted to know how the TA is doing on her attendance. She is concerned with her health but this discussion is not about that. It is about attendance. When Acquaviva comes in to Town Hall there is many times that the lights are off in the back office. Acquaviva asked how the TA was feeling about her attendance. How is that working for the Town?

TA responded that when she got the report on her cancer, she contacted each council member and explained the process she would be going through. She then said had chemo then had complications. The sessions ended on July 26. She had been off on Fridays and for a half day on Monday. She had explained this to Council and unfortunately Acquaviva didn't want to bring her concerns directly to TA.

Acquaviva said this was not about her illness it was about her attendance. Acquaviva said she is not asking about that. TA went into detail about her health issues and said she has to leave here at 3:30 to be there at 4PM for radiation. She has been able to work on Fridays now. The herceptin is still on Fridays for 2 hours but she can come in on Fridays afterwards. She has been back. She went to the MPO meeting yesterday and went to the water meeting with Palm Bay today. Her time while out was documented. Acquaviva again said her concern is how Town Hall is being run while she was out. She is doing it in a public way; the only way she can – to discuss with other Council. The Town desires to have a well oiled operation. She thinks leadership starts with being here. She can't talk to other Council Members outside a public meeting about this.

Chair said there is no personal animosity here. He has seen this issue. He was HR Director for ten years and had to deal with similar situations. It is a shortcoming in our personnel manual. There is a point that kicks in and you have to deal with short term coverage for key personnel. Those are the things you have to wrestle with as Council. He felt that is what Acquaviva was alluding to; to help Council deal with these situations in the future.

Acquaviva said what happens to those here at Town Hall and the residents needs when TA is not here. When the TA is not here everyone else picks up the slack. Acquaviva question is not to TA but for Council to discuss in moving forward, are you going to take a leave of absence. It is nothing personal. The Town has been very understanding. She can't talk to her fellow Council and will not apologize for bringing this to Council in a public forum.

Mayor suggests TA review the employee manual. What triggers the short term and long term. TA said in the first situation Susan couldn't function. TA said she could function. You can't write that into a policy. TA said they do have a carrier for this coverage.

Mayor said a general policy isn't enough. You may need different category for different persons. Acquaviva said all the time off is the face time you are missing with the residents. You can't do that part of your job from home; when the office is dark.

Rivet said what could we have done differently. TA was a trouper and did much more than they should have expected. He doesn't know why this is being brought up as an issue. In this case he does not think we have a problem. He is uncomfortable with discussing this. Rivet was supportive of reviewing the employee manual. Consensus to have TA do it and bring back to Council.

TA said Debby went above and beyond. Issues did not come from that. She said they didn't skip a beat when she was out. She thinks looking at policy is good idea. She could have taken a short term leave of absence. It was the reason she came in. Acquaviva said that was the reason she was concerned. You still have a lot to go. She will bring it up in a public forum and she doesn't apologize.

She left here at 3:30 and if she needs to come in early she will. Mayor said exempt employees in Florida are all at will. It has to be done in this forum.

TA said to Crews since he was not in Mayor position when her issue started, that she did keep Council all abreast of her situation.

P. REPORTS - MAYOR AND COUNCIL MEMBERS:

- 3) Beatty: nothing.
- x) White: excused.
- 2) Rivet: nothing.
- x) McKnight: excused
- 1) Acquaviva: Attended the FLC Conf in Hollywood and it was energizing. Got some good ideas.
- 4) Interim Mayor: He wasn't able to attend FLC but has in the past and agreed it is good to attend.

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

R. ADJOURNMENT:

There being no further business to discuss, Chair stated that without objection the meeting was adjourned. The meeting adjourned at 8:42PM

BY:



Mayor Phillip R. Crews, Council Chair

ATTEST BY:



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

Date Approved: 9/24/12
as presented