

## MALABAR TOWN COUNCIL REGULAR MEETING

September 24, 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 2 David White.

### B. ROLL CALL:

MAYOR/CHAIR (Interim)

PHILLIP CREWS

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE

STEVE RIVET, excused

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Franklin said for the record, Town's PW Dir Tom Miliore and Interim Fire Chief Robert Strandell and Lt. Hooker 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 – 9/12/2012

Exhibit:

Agenda Report No. 1a.

#### 1b. Budget Adjustment – Reso 28-2012

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.

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

Exhibit:

Previously Distributed.

Recommendation:

To Be Approved as a Group with one Roll Call Vote on All

Chair directs Clerk to read Resolution by title only.

MOTION: White / McKnight to approve the consent agenda.

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

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

Bromley Ball, regarding MSTU we pay 1.6mil in county taxes to fund the sheriff services and then they are asking us to give an additional 1.3 mil with the MSTU. Does anyone get this? TA said the MSTU pays for patrols. We pay 1.6mil for general county tax. Then the MSTU asks us to give an additional 1.3mil. What do we get for that? TA said we would get an additional four deputies for south area. Malabar is 1/10 of the south precinct.

McKnight agreed with that whole heartedly. The year the MSTU went into affect we got 4 new deputies. Then in the following year we heard that they were lost to normal attrition of 4 officers. That is a lot of money going for a little service. Do we continue this or not. He addressed the audience. Does everyone pay the MSTU?

TA said we were the only town that was not paying. The other cities that don't pay have their own police depts.

Chair said when he was Mayor, this was an issue. The State statute requires the sheriff. Cape Canaveral was paying the MSTU and stopped when they got their own police dept. Then they got rid of their police dept and now they have to do the contract with BCSO for services.

TA said the general fund taxes pay for jail services and those types of expenses. TA did verify that they still have four bodies in the south precinct area.

McKnight said the website showed that the south precinct was identical to what they are providing Malabar. There is no control over the millage rate. It has gone up.

TA said she could ask Cmdr Ambrose to come to next meeting and speak to this issue.

Bud Ryan, MSTU, since this referendum came up and he has talked to trash men, anybody, post office, telephone guy, Eagle Patrol lady. They have all said they rarely see BCSO in Town. He questions what we are getting for the money we are paying. The Eagle Patrol is down to one day a week, on Tuesday.

Mayor said if you reject the MSTU then you have to provide your own policing.

Bohne said the constitution requires the sheriff to provide law enforcement. You will eventually get a law enforcement response to incidents and criminal law. They will not enforce local law and they won't be here to run radar.

TA said they are out at Corey, is due to the new 4-way stop. McKnight said that was on Weber.

McKnight said the Statement of Work listed that they provide the citizen patrol. TA said they did offer and former Mayor Tom wanted our own patrol.

Bud Ryan asked when they are going to resume the taping of council meetings. Council replied that this was discussed at a recent council meeting. The taping creates public records issues when they have to be duplicated. The recent lawsuit tapes had to be copied in real time. A better method has to be found. TA will be bringing proposal from vendor that does our website.

Ryan asked - bottom line, what would happen if they don't approve MSTU. Bohne said they will still enforce criminal law.

Beatty said look at an MSBU, "benefit area", we control the millage rate and then structure what kind of coverage we want. He suggested having a meeting with sheriff.

Brain Vail, if you don't have the MSTU deputies he said you will get general fund officers. They would not be easily available. If you want quick response you need to pay the MSTU. That is the difference. The actual guys on the roads are paid by the MSTU dollars.

Acquaviva said we have a sub-station, do we get any for that. TA said using this substation allows the deputy to get back on the road quicker. McKnight said he brought that up before. They are taking our space for free and we are in need of more space. McKnight said another thing that bothered him was the parking spaces. There are a lot of cars here tonight and many of the spaces are taken by patrol cars. TA said there are three cars that park here at end of lot. Tonight was an unusual situation with a call finishing up from this afternoon.

#### **F. ATTORNEY REPORT:**

Atty said he will be on vacation on Oct 15 mtg. As for litigation the legal counsel is moving along.

**G. BREVARD CTY SHERIFF:**

Dep Hammer asked TA to report that up to tonight it was quiet.

**H. PUBLIC HEARINGS: 3 each** Millage and Budget advertised in Florida Today 9/21/12. Ordinance 2012-57 advertised 9/14/12.**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:** Beatty / Acquaviva to approve Ord 2012-58.

Discussion: Mayor said they held several workshops to work out these ordinances.

**ROLL CALL VOTE:** Beatty, Aye; 1)White, Aye; Rivet, Excused; McKnight, Aye; Acquaviva, Aye.  
Motion carried 4 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 ADJUSTMENTS, AMENDMENTS AND 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 / White to approve Ord 2012-59.

Discussion: none.

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

**4. 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. 4

**Recommendation:** Request Action

Chair directed Clerk to read by title only.

Chair declared Public Hearing open – Question from audience on purpose of this ordinance. She asked if this is to keep it the same. Mayor explained that on certain streets some speed limits may be reduced. It was first requested by residents in Brook Hollow for Briar Creek blvd. Atty Bohne added that it authorizes Council to order the reduction of speed in all residential areas. This gives town authority to do so.

Chair declared Public Hearing closed

MOTION: Acquaviva / Beatty to approve Ord 2012-57.

Discussion: McKnight said we are reacting to a group of people and we need to be careful. Evidently this is not a complete community consensus. We have complaints coming in about the speed humps. Acquaviva said you will never get 100% support and they had brought in lots of people to support their request. Mayor said this is a closed community. He said if you go to any military base it is 15mph in the residential areas.

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

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

**5. Rationale from P&Z Board on their Recommendation re: R/LC (tabled 8/20/12 to this date)**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Bromley Ball, US 1, you are proposing reducing land use in areas on property he owns. Initially looked at it and if he wants to sell it to someone to put on townhomes on the buyer couldn't put six per acre; only four. He said he had been paying taxes on this land based on the land use permitting developing at six per acre. Will his taxes go down? Is there any provision in there - any grandfather clause. Seems to be taking away some right we have already have. Mayor said zoning changes always do that. Acquaviva said we brought this up at other discussions.

McKnight said could we add in a clause to allow the current property owners. Bohne said the question becomes what are you grandfathering. You have to figure out who owns what and specify it in the ordinance. It could be done. He did something like this in W Melb years ago and it is conceivable. Create a grandfathering clause to do so. McKnight asked Reilly to come up.

McKnight asked P&Z Vice Chair Reilly about grandfathering; could Board consider that? Reilly said the rest of the ordinance needs to be done, the changes to the definitions and wording in the code. Council could approve the recommendation and strike the one issue of reducing density from six to four. The Engineer or Franklin did a map and there was no way they could do six per acre with the other requirements anyhow. That is the way more than half the Board felt. Don't send it back to P&Z; they have been on it for a year. The drawing they had reviewed showed how much building area you could have with the other requirement and you can't do six per acre.

Juliana Hirsch, 1035 Malabar Road, said she did not support the reduction in density. The dimension requirements will take care of the development allowed. She said the idea of reducing the density to four was an off the cuff remark by one of the P&Z Members and it went from there. It has been six for all of this time and we have had no problem. She would like to request it to remain at six. If they can't do it then do a smaller development. All agree.

Brain Vail, relayed a situation in Palm Bay, was multi family, assessed for water, per unit of what the zoning was in area. The building department would not give permit to build 10 per acre. That is a potential problem and gave them food for thought.

McKnight explained to Ms. Hirsch about the change in policy to allow comments from the audience once recognized by a Council Member.

Consensus of Council to approve the P&Z recommendation on R/LC but striking the change to the reduction in density from six to four.

**6. Recommendations by Park Board: re:**

- **Pavilion at Disc Golf Park**
- **Swimming at Malabar Community Park**
- **Donation of Batting Cage by Scott McLachlan**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Chair asked if Park Board representative would like to address Council. Dick Korn addressed the batting cage. He challenged where it would be placed. They said that was not a problem. Recommendation was unanimously made by Park Board, Scott will install and it will be used by existing league and future leagues. It is a generous donation. Accept his generous donation. Council approves.

Huggins Park – move gazebo from here where it is not being used much and Park Board is working on changing it into senior citizen attractions. To that end we will apply for grants and may get a new one or pavilion as part of the retro. The gazebo is not being used. Hans Kemmler is very involved with Disc Golf Park and the gazebo would be used by members and players. Hans has done research and cost is \$350.00 to have it professionally moved. Thinks this is a worthwhile expense.

White commented that just like McKnight's previous comments, once Council agrees to move it we may still get complaints from others that want it to remain. Mayor said he could speak to this item as Huggins Park is next to his home. It had been a children's park but before that it was used for prostitution. The gazebo gets almost no use. Korn said Dep Hammer is grandson of Huggins and he has no problem. Disc Gold is so popular. Hans explained that it would be near the front of park on the back side of the fence.

Council approves.

Original FRDAP grant included a sandy beach and it has not been maintained. But it could be used for swimming.

Board felt they did not want to include a lot of do not and no not. They would like the information posted.

Mayor said the cases of amoeba are much less than the number of deaths by drowning.

Bohne said the issue is the liability if they don't put the no swimming signs up and you have the signs warning of the dangers.

Korn said Park Board's two concerns – health is addressed with the sign  
2<sup>nd</sup> is swimming at your own risk – per Bohne

McKnight said less risk by doing nothing. Bohne agreed. Nothing is better than something in this case.

Ben DuBose, 950 Falls Trail, this is the sign at Veterans Park. He was at Park Board meeting. Franklin explained they do also have other signage at Veterans Park that says no swimming. We did not show that at Park Board meeting.

**Consensus to table this part until Council meeting on November 1, 2012.**

TA said she will have information on this for this meeting.

**J. ACTION ITEMS:**  
**ORDINANCES: First reading - 0**

**RESOLUTIONS: 3**

**7. Resolution to Appoint and Name Drew Thompson as Chair of Trails & Greenways Volunteer Committee (Reso 29-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPOINTMENT OF ANDREW "DREW" THOMPSON TO THE REACTIVATED TRAILS AND GREENWAYS COMMITTEE AND NAMING HIM CHAIR AND AUTHORIZING HIM TO RECRUIT OTHER COMMITTEE MEMBER APPLICANTS AND VOLUNTEERS; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

Chair directed Clerk to read by title only.

Chair asked for motion.

**MOTION:** Acquaviva / McKnight to approve Reso 29-2012 to appoint Drew Thompson to Trails and Greenways Committee and name him Chair.

Discussion: Beatty said this is not against him but rather: 1) we already have one person working on bikeways. And the Trailhead has been put under the control of Park Board. Need to have council define what you are going to have them do. 2) First need to reactivate the Trails and Greenways Committee and 3) this resolution would appoint him Chair and that is not done.

McKnight met him at TBRB and is all for it. To work on this at any level possible.

Dick Korn thanked Franklin for doing research on the reactivation of the committee. They reactivated it as a committee not a board. We never had a meeting. The committee exists and is dormant. He pushed it at the time. Appoint someone to be Chair of this committee.

As long as it is not a fact finding. Franklin then explained the need for two groups.

Marisa asked about difference on the SpringFest Committee, sometimes it is sunshine and sometimes not. It depends on what they are doing.

Drew Thompson, basically his perception, there was a budget allocation. Town's needs a great trail plan. Sense of desire to get involved. Bring together aspects the committee could also be on the work party. They want to be presenting to council when decisions are warranted and then volunteers, could be both. Further in the woods those decisions, are not sunshine, minimize the recommendation and get more. Mr. Thompson. Separately we had right to pull the right people together. Committee would be a recognized. Those same 2 or 3 or 1 persons could be working a tree. Don't mean to beleaguer it. Change language in body, to match title, subject to council approval. Acquaviva applauds him for being willing to do this.

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

**8. Resolution to Appoint Malabar Fire Chief (Reso 30-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF ROBERT STRANDELL TO SERVE AS THE FIRE CHIEF FOR THE MALABAR FIRE DEPARTMENT FOR AN ANNUAL STIPEND OF \$9,162.92; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

Chair directed Clerk to read by title only.

**MOTION:** Beatty / McKnight to approve Reso 30-2012 to appoint Robert Strandell as Fire Chief.

Discussion: TA asked to have opportunity to watch him. She feels the structure has been more beneficial and in talking with others they also feel morale has improved. Acquaviva said the Council approved the \$500 in start up funds for the community breakfast. Strandell will address fund raising.

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

**9. Resolution to Approve Interlocal Agreement with Palm Bay for IT Services (Reso 31-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE INTERLOCAL AGREEMENT WITH THE CITY OF PALM BAY FOR IT SERVICES ON AN AS NEEDED BASIS FOR THE TOWN OF MALABAR; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 9

**Recommendation:** Request Action

Chair directed Clerk to read by title only.

**MOTION:** Acquaviva / White to approve Reso 31-2012 to approve the ILA with Palm Bay for IT services.

Discussion: Bohne had his partner look at this and he thought it was a very competitive price. Acquaviva likes to see the two towns working together and pooling resources. Mayor said it is a win win.

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

**MISCELLANEOUS:**

**10. Approve Special Edition of Newsletter for Candidates and Malabar Amendments and Florida Amendment 4.**

**Exhibit:** Agenda Report No. 10

**Recommendation:** Request Action

Discussion: Acquaviva said reading through the packet, using the newsletter for your campaign and it is paid by taxpayer money. After reading the packet, she felt different. Beatty agreed with Marisa. White said it is a tool for residents to use. Bohne said if the expenditure has a public benefit. Town is not promoting one candidate over another. Decide if you want to pay. Special edition because it is election time. If they have a link on the website that would also be helpful.

McKnight said by putting information on ballot question, unless you define all the pros and cons you will still be biased. Franklin does a good job. For instance, it gives the stats on the last two times. He thinks it should also state that we do not have to do this.

White doesn't see a problem with this. They introduce themselves. Acquaviva said you have to be accountable. Mayor said without the resource of having your own paper, this may be a method.

McKnight is on the fence. He doesn't think it will be unbiased.

**VOTE:** 1 Aye (White); 3 Nays (McKnight, Acquaviva, Beatty)

**11. Approve Malabar Candidate Forum using Professional Moderator**

**Exhibit:** Agenda Report No. 11

**Recommendation:** Request Action

**MOTION:** Acquaviva / McKnight to approve holding a candidate forum.

Discussion: Beatty talked to Tom Eschenberg about the one in 2010. Beatty had declined the invitation. Acquaviva attended and thought it was a good experience. White said if the Town wants to do it why not do the newsletter. Beatty would like to have link on town website. If someone is

interested they can click on link. McKnight said if only 10 people are in audience then you may have won those ten.

Candidate Ben DuBose likes the website link idea.

**VOTE:** Ayes 2 (Acquaviva, White); Nays 2 (Beatty, McKnight) Mayor votes to break tie – Mayor votes Aye. Motion approved.

McKnight said if we have a day advertised on sign to be at pavilion. TA will get a schedule from candidates and put it on the website.

Acquaviva asked if Beatty was invited to participate in candidate forum in 2010. Yes, but declined.

**12. Confirm Council Intent of Water Franchise Charges**

**Exhibit:** Agenda Report No. 12

**Recommendation:** Request Action

**MOTION:** Beatty / McKnight to confirm the intent of Council meaning that there will be no franchise fee on wastewater charge, NSF. Returned check charge, temporary turn-on and turn-off charges, credit card charges.

Discussion:

**VOTE:** All Ayes.

**K. PRESENTATIONS:** Certificate of Appreciation – Dwayne Vitaliano, Melva Howell  
Certificate of Appreciation – Town Hall Front Yard Beautification Project  
Certificate of Distinction from FLC – Teens and Parents attending FLC Annual Conference

**L. PROCLAMATION:**

**M. STAFF REPORTS:**

ADMINISTRATOR: TA called on Fire Chief Bob Strandell to report on Fire Dept.

Chief thanked everyone for their support. His hats off to the people who are paid and volunteer. He retired after 30 years from down south. Started 9 months ago. Announced they did form a committee headed up by Asst Chief Dan Welton to do fund raising.

Regarding the earlier discussion on MSTU, they had two trauma calls today. One was in the middle of the road. If the response had not been in the 2-3 minutes it could have ended differently. And in two more minutes there were two more units and then when they left there were five units. He referred to the prostitution issue as one thing they deal with but BCSO has also been call to respond to the so have homeless in the woods. He just wanted them to know that.

CLERK: No report

**O: DISCUSSION ITEMS:**

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

- ) Beatty: nothing
- ) White: nothing
- ) Rivet: excused
- ) McKnight: nothing
- ) Acquaviva: Proud of everyone that steps up and volunteers in a short amount of time.
- ) Interim Mayor: Results are stunning and thank you again to all.

**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 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: 10/15/12 as presented