

## MALABAR TOWN COUNCIL REGULAR MEETING

November 19, 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 Attorney Bohne. The prayer and pledge were led by Council Member District 3 Steve Rivet.

### B. ROLL CALL:

MAYOR

VICE-CHAIR:

COUNCIL MEMBERS:

CARL BEATTY

MARISA ACQUAVIVA

JIM MILUCKY

WAYNE ABARE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Franklin said for the record, Town's Asst Fire Chief Dan Welton is also present.

### C. SUNSHINE LAW PRESENTATION BY ATTORNEY BOHNE

Readers Digest version. For new council members, the FLC offers a seminar on these topics and he recommends it as a very beneficial course. The Sunshine Law means two members of a same board can't discuss business that may come before them for action in a private meeting. Can do it in public meeting only. You can discuss with one member of another board. Can't use a citizen as a conduit to discuss town business. Council is free to talk to members of other boards one on one. Can even attend other board meetings and discuss items as a citizen. Attorney also said they can't use any type of communicative device to communicate with other council members. Council can send a position statement out; that is ok. Attorney cautioned them not to respond to that council member's position paper.

Attorney stated that Public Records received in this way should be copied to Clerk as she is custodian of public business. Any transmission, twitter, email, text etc. If they left a msg then it is a public record. If you think it is a public record it probably is. Same with Sunshine Law, if you think it is, err on side of caution. Exercise due caution.

Occasionally you will sit as a quasi-judicial Board, Ex-parte communication. You will hear testimony and see evidence. Plat approvals, site plans, special exceptions, when those items come before them, the applicant has the right to have it heard by an unbiased Council. Refrain from discussions before or make a disclosure on when and who you talked about. It gives anyone in audience the right to ask further questions about that. Making a site visit, also make a disclosure on when you did it. Applicant has a right to a fair hearing. McKnight said ex parte discussions not allowed? No they are allowed but you need to make the disclosure. If you don't then maybe they could appeal and win. Abare asked about issue that was sent an email response regarding a possible fix to an issue on Coquina Point. If it becomes a voting issue, then make the disclosure.

Voting conflicts – if a matter coming before Board has a monetary gain or detriment to your business or your spouse's then that is a conflict and you would complete the Voting Conflict form.

Bohne said the 10% rule, it is what the AG has come up with, when in doubt ask Attorney. Abare said the FLUM that P&Z is working on may touch a lot of people. Abare mentioned the property within that area if you were an owner. Attorney said you might have a conflict; he would have to know more. He then described a circuit court opinion. Not a legal voting conflict under the statute but is a conflict.

Issue on Melbourne agenda and council member Pat Poole actively campaigned against it, and then she voted against it. Not a true conflict, but you were so unfair in your bias that you were not fair and

impartial. If it comes to that and you have a strong opinion that was overtly cast, going to P&Z and saying this is bad he would suggest that you can't be fair and impartial. That is it in a nutshell.

He again suggests they attend the FLC training that is offered. Send your public records copies to clerk. If you forward emails from another council member you should still send your email to the clerk for file.

There is absolutely nothing wrong with having a council member having a spouse serve on another board. AG has said that they can serve on same board.

Council member and P&Z member and the Attorney strongly urged the two not discuss matters or disclose them. Milucky, wife sits on P&Z – is there a different standard of disclosure for discussing issue with any other member of P&Z Board? Attorney said a member of this council talking to member of P&Z should be disclosed if it's quasi-judicial. Bohne said then make your disclosure that you had the private meeting.

Abare said Mayor Tom used to go to P&Z Board meeting and was much outspoken and after the meeting they continued the discussion in the parking lot. Bohne said the difference is the Mayor doesn't vote except in a tie and it should probably be disclosed.

Chair Rivet said Mayor discussion before and after the meeting but not during the open portion. If the matter has been voted on then you can discuss it. Milucky said the County Atty memo stating that most violations occur before and after meetings. Rivet said and also during breaks.

What is process? Attorney said if you strongly feel there is a violation have a criminal complaint filed. They will take a report and take it to State Attorney Office. Bohne said it is a criminal violation. Bohne said he doesn't know of any criminal prosecution of them in Brevard.

TA said it could also go through the Ethics Commission. Bohne said the Ethics Standard is less than the criminal violation. Rivet said a person here was found guilty of Ethics violation.

Beatty said 40 years ago the current Mayor and his wife won election for council.

Curing Sunshine Violations: if it occurs, the AG has said the issue can be cured if in a reasonable time you would bring it up. Not condoning action, but can cure it. Just don't do it. Abare said if you are not used to being a council member and are used to responding to comments, this may correct it? That would be the remedy.

Acquaviva said the IEMO (Institute of Elected Municipal Officials) is an excellent course and the training goes into great detail. Bohne said if there is a question, ask the Attorney or call down and talk to Debby; she is very up on all of this. Acquaviva also meets here with citizens. TA said she usually also meets with them and the Council Member.

Bohne said public records law also applies to private email, so if you get town business related emails on your private email, send it to Debby.

Acquaviva asked about the news email she gets from her HOA that have come from Jeff. It has his positions. Don't respond to Jeff or to the HOA. Jeff is mailing out public business. Bohne said Acquaviva should also send her email to Debby.

Abare said his email to Rocky Pt HOA has to do with his right as a citizen. If it relates to public business then copy it.

Rivet also asked him to talk about disclosure of discussion with staff. Your discussion with staff is not under Sunshine Law. But if you are talking about an upcoming site plan, you should technically disclose it. TA said if she is asked to do research on something she also gives info to all of the Council when one asks for it. She will do it via her FYI, an email or a call.

Bohne said Council discussions with the Attorney are not privileged. You can talk to me about something he may have a duty to disclose it at a public meeting. You can talk to Debby about budget all day long. The only time it is confidential in an Executive Session. Bohne said if there is a situation that all of council needs to know, he will tell them. He also said the First Amendment Foundation puts out the Sunshine Manual yearly. Franklin said she has given each a current copy.

#### **D. NOMINATIONS FOR CHAIR AND VICE-CHAIR FOR 2012/2013**

Vice-Chair Acquaviva called for nominations for Chair.

Abare nominated Beatty for Chair

Milucky nominated Rivet

Nominations closed.

Discussion:

Beatty said he feels he has astronomical experience in the Town of Malabar and would be a good person for the job. Abare said he has been Mayor, Council Member and PW Director. Acquaviva said you have to be a good facilitator to run the meetings. She pointed out the difference between Mayor Crews and Mayor Tom.

Milucky: has 2 questions for both of them: their stance on attendance at council meetings and their take on Roberts Rules of Order.

McKnight asked Milucky a question about his question on attendance: what does that have to being chair of the meeting? What is rationale behind question? Milucky said if you are the Chair then activity and attendance is important.

Abare said you can ask Debby if you want real data on who attended the most meetings last year. Milucky said he has asked his question.

Beatty said he was on council for two years and went to IEMO 1 and 2 and any other classes offered to better himself. A lot he did not put in mileage. Done a lot of outside work. Was on the Board of Directors for the League for two years and went to those meetings. Also he is joining the League of Mayors.

Rivet said he has been on Council for 10 years, Town Administrator selection committee, was the Council representative for the negotiations with Palm Bay that resulted in the sale of the water utility; is familiar with Roberts Rules of Order, runs many meetings at work and believes in letting everyone have an equal chance to have their say. He said he would be a good council chair.

Acquaviva said as Vice-Chair she hasn't had much experience with running the meeting but stated again it is very important for the Chair to be a good facilitator of the meeting. To make sure everyone is heard and the meeting runs smoothly. That is a big part of being a chair besides setting the agenda. Everyone has their different styles. Having someone who would know how to move through items quickly and smoothly, who knows when to hold them and fold them; that is important to her.

Abare said the Chair has some influence and is the facilitator and he likes the idea of having the non-voting person in that position. Acquaviva said a good chair holds back on his opinion until the council discussion is over. Abare said you knew how Mayor Tom felt on an item before Council voted. Acquaviva said he would hold back until Council discussion was over. McKnight said on most items Mayor Tom did not give his opinion unless it was important to him; that is why he likes the idea of the

Mayor being the Chair. He did not get involved unless things went awry. Acquaviva said a Council Member in that position could do the same thing. Rivet said originally the Chair was chosen from Council. Charter was amended to provide that the Mayor or any Council Member could be Chair. Acquaviva said that is why it is up for nomination: any of them could be Chair.

**Vote** for Chair:

Beatty: Ayes, McKnight, Abare

Rivet: Ayes, Acquaviva, Milucky, Rivet

Acquaviva passed gavel to new Chair Mr. Rivet

Chair Rivet called for nominations for Vice-Chair.

Milucky nominated Beatty

No other nominations, nominations closed

**Vote:** All Ayes

**E. ADDITIONS/DELETIONS/CHANGES:** Acquaviva asked to add as Action Item 9 the newsletter. It is added under Miscellaneous as Item 9. No objections

**F. 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 – 11/05/2012

Special Town Council Meeting – 11/08/2012

**Exhibit:**

Agenda Report No. 1a.

**1b. Budget Adjustment – Reso 34-2012**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2012-2013; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No. 1b.

**Milucky has question**

Chair directs Clerk to read Resolution by title only.

**MOTION:** Milucky / Acquaviva to approve the consent agenda. Correct RTCM pg 2, after the word my last name Milucky, for "use" sb "years" of service.

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

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

Penny Dalton, Brook Hollow gave Council her congratulations to the new members and thanked them all for their dedication. Said it is an honor to again speak to them. She stated that in a public meeting last week of the Brook Hollow HOA, a statement was made that the last term's council was mislead and would never again make a similar decision regarding safety on the streets in their neighborhood. She is here tonight to reassure Council that there were no attempts to misconstrue concerns of their citizens for the safety of their streets. As a result of two traffic accidents, a heightened sense of what can we do to make sure. Came to TA seeking ideas. She was the HOA President during this time. She showed the dated newsletter. She received nothing back from residents. She also showed the Nov 2011 minutes from annual meeting when possible solutions were discussed. She gave all residents opportunity to participate. Those two public things happened. Then this concerned group came to Council. They had three past Presidents and the current President. All streets except two were represented in the audience. They sought Council advice on how to make things safe. The next public thing that happened was the BCSO electronic speed machine. So when they stood before Council they

felt pretty sure that they had done their due diligence. They were asked to form a committee. No concerns were raised.

Dalton, then per Florida Statute, the ordinance was approved after it had two public readings. Numerous occasions were provided. Not one single complaint. When they presented they asked for speed humps at each stop signs. Council came back with reasonable solutions. Town selected the location for the speed hump, appropriately placed, between the stop signs and near the picnic area in the commons area. The safety committee that was formed will probably give Council a formal report on what the improvements have shown. She could give her opinion but would not want to have her comments misconstrued. She wanted to clear up that reference that she may have done something to get something with having done due diligence. She holds herself to high standards of ethical behavior.

**H. ATTORNEY REPORT:** Status on litigation. There was supposed to be a hearing on the Town's motion to dismiss for McKnight and Reilly and scheduling mix up prevented that. The judicial assistant failed to put it on the judge's calendar. McKnight said some proposals were made. FLC counsel will provide written communication to Town if anything occurs. The less that is discussed publicly the better.

**I. BREVARD CTY SHERIFF:** no representative present

**J. PUBLIC HEARINGS:** 0.

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

Ben DuBose, 950 Falls Trail, not representing the Brook Hollow HOA. He along with Drew Thompson are new HOA Board Members. Drew has not been sworn in yet. He drove around with Drew and looked at cracked and raised sidewalks and some of the heights are as high as 2". Not cracked, please look at them get back to the HOA. If the roots are there and resident is willing to tear it up and go around the tree can they do it? So they can save the tree. They are looking for advice and guidance. If there is only a couple of inches, can they bolster it up. Get in touch with Ben or Drew as they are on the 2013 Board. Also they know the painting of the cross walks is in the works. He thanked Mayor Beatty for his work during the 2004 hurricanes, keeping the generator working on the lift station. Beatty said PW went in there before when there was an issue of sidewalks and they had elevated some of the slabs to even them out. It is going to take a multi-faceted approach. It is a liability, he volunteered to go up and gather information and report back to Council. Ben will work very close with Town.

TA said no letters have gone out from her office. She has to determine who owns the sidewalks? The FLC has a whole inspection process; the first step is the finding who owns them. In the past, we started doing maintenance on things without checking the Town's responsibility. She appreciates what Beatty is saying but that is her job and she will be reporting back to FLC and report her findings to Council.

Ben said that the sidewalks had to be put in by each homeowner and then they would become town property. TA said this is what she needs to find out.

Abare said if the sidewalks are in the subdivision are they not in the right of way. They are within the 25' of the centerline.

Chair said set this for discussion at first meeting in January.

**L. ACTION ITEMS:**  
**ORDINANCES:** First reading – 0

**RESOLUTIONS:** 5

## 2. Reappoint Board Members: Reso 35-2012 – Vicki Thomas to Park Board

### Speakers Card:

Leeann Saylors, 1280 Highway 1, is an alternate on P&Z Board. She read a statement about incident at the last P&Z mtg on Nov 14, 2012. It is attached to the minutes.

Milucky makes a disclosure that he had talked to her about this. Regarding the Board members that are up for renewal. He listened to P&Z Board tapes. He got feeling The Board thinks that seats are filled on a first come first serve basis. He has read the Charter and talked to staff and there is nothing in Charter or any resolution that states that appointments are first come first serve or that Council needs to receive a recommendation from Board on who should be appointed. What he read was that it is Council's responsibility to appoint members to those Boards. It comes from here at Council and goes to the Board. Rivet said that he is correct, Council appoints but he said in the past they have made the recommendation. Milucky said P&Z thinks it should be first come first served and he doesn't think that is a very good way to fill a Board opening. He doesn't think there was any notice and he doesn't know how people in the town know there is going to be an opening on the Board. It may be on the website but unless they come in throughout the year and submit applications, how do they know of openings. He can affirm to you that there are residents out there interested and willing to serve.

Saylors said P&Z Board had a discussion and some said it should be first come, first served. Chair Wilbur didn't agree and said they should consider the experience of the applicants can bring to the Board. Saylors said you create a situation when members can telegraph that information about a possible opening and as an example, one application they got was submitted the day before the election, presuming to be first. There has not been any public notice of an opening for the Board that she could find. She also commented that In any of the appointments the absences should be considered. If a member is not going to attend regularly or misses a certain percentage then maybe you should step down and allow someone else who would like to serve their community. Further she stated that it is the Chair's job to vet whether an absence is excused and in all the meetings she has attended she has not heard of any vetting of absences by the Chair. She said there are members on Boards that are absent 20% of time or more.

Abare asked Franklin if she put notice in past newsletters that asked those interested in serving on Boards to apply. Franklin said yes. Abare said they do try and get people involved. People on the Board recommend to others that may be interested.

Saylors said they have a pending situation with Board members that were in violation of Sunshine Law discussing Board business.

McKnight said that Attorney stated earlier as far as the complaint about Sunshine Law violation, that is not a Council action and if she wants to pursue criminal action that she needs to do that with Sheriff's Office. Saylors said she would also be filing complaint with Ethics Commission.

Saylors said before they rubber stamp reappointments, shouldn't they offer the opportunity serve to others in the community?

Abare asked Franklin if absences are discussed and decided if they are excused. Franklin said no. Abare said regarding her comment about rubber stamping. The Council people all had to run for office and it is a lot of work to get this appointment. Once on, they vote on whether Board members stay or not. It is not a rubber stamp.

Acquaviva said two years ago when they voted to not reappoint Bud Ryan, it was brought back before Council and they voted two times before he got back on Board. There were literally people shouting from the audience on how to get the vote done. She thought that was fishy and not kosher to have to

have three votes to get someone back in. She thinks the process should be more transparent. It is the same people over and over.

Saylor said that Bob Wilbur said it would be nice if they could review the applicant's qualifications and see what kind of experience they bring to the Board; he did not think it should be first come, first served.

Acquaviva said regarding attendance, she does look at that and there are a lot of absences by some members. Saylor said she did ask for some attendance records and Ms. Wilbanks let everyone know they had asked for those records. One of the P&Z Members had called twice to say he would not be attending and because of her request they were at meeting and they were very ugly about it.

McKnight made motion to approve all. Chair stated they had to be read and voted on separately.

**Chair directs Clerk to read Reso 35-2012 – Vicki Thomas to Park Board**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF VICKI THOMAS TO THE MALABAR PARK AND RECREATION ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**MOTION:** Acquaviva / Abare to approve the Resolution 35-2012. They all know Vicki Thomas.

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

**Reappoint Board Members: Reso 36-2012 – Bunnie Knudson to Park Board**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF BERNADETTE "BUNNIE" KNUDSON TO THE MALABAR PARK AND RECREATION ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**MOTION:** Acquaviva / Abare to approve the Resolution 36-2012. Discussion: Abare knows Vicki and doesn't know Bunnie. Acquaviva can speak for her. TA said she has put her heart and soul on the revamping of Huggins Park. She is a champion of the Disc Golf Park. Works great with her. Acquaviva worked with her a SpringFest. She is a doer.

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

**Reappoint Board Members: Reso 37-2012 – Don Krieger to P&Z**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF DON KRIEGER TO THE MALABAR PLANNING AND ZONING ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE

**MOTION:** Abare / McKnight to approve the Resolution 37-2012. Discussion: Abare has worked with him for almost two years. He was also a council member many years ago. Every Tuesday he was here a couple hours a day so residents could meet with him. He is a very smart guy. He is a good balance on that Board. McKnight said he does his homework. Beatty has known him forever. Every bone in his body is there for the protection of the rights of the people. That is where he comes from. He doesn't want to spend any more money than we have to, he is positive. Relative to some allegations that came in at this point in time they are unfounded. He doesn't believe they should take that into consideration because we would be prejudging. Beatty said it was like when Bud Ryan was there and the attorney showed up and at later meetings it turned out that there was another email sent in the middle of that mess which threw everything out. Beatty said they should go on the merit of the person they know and trust.

Acquaviva said she does not take her concerns lightly. She thinks there should be an investigation. Acquaviva agreed they have the right to reappoint someone, but to do that when they have been accused of something without looking further. Bohne said he is not saying the accusations are false or true but they are accusations. Unless and until there has been a determination it may weigh on your mind but just because they have been accused of something does not mean they are guilty. He suggested they should have other reasons. Acquaviva said saying they are unfounded is the opposite.

Milucky, there is nothing in packet that requires them to appoint or reappoint anyone this night. There is not sense of urgency, there may be a sense of railroad. There is a full board in place. There are other applications on file that can be vetted. He also stated that no one had come forward to speak on the reappointment or appointment of anyone. The P&Z Board tabled pending the investigation into whether Leeanne could continue to serve. They tabled a recommendation; having two candidate's applications on file. He said it would be irresponsible to reappoint someone for three years. Any person can be removed from office by Town council by written cause and public hearing. At this point in time there has been a written charge. The accused has a right to be heard at public hearing. They can bring it back to council at next meeting to decide. This is not to disparage anyone that has served this town for many years but it is intended to allow this council to review the application and seek out other people that we may like to see on P&Z who would also like to serve and are excluded from serving because they continue to reappoint. This was his argument when Mr. Cameron was here; this is his argument with Mr. Wilbur who he absolutely adores; that as long as you continue to do this you get what you get.

Milucky stated that the P&Z Board was charged with reviewing the Comp Plan ten years ago. They are still struggling with the comp Plan. Not that they haven't worked hard. He listened to the tape from the last meeting and he understands why they are struggling.

**MOTION:** Acquaviva / Milucky to table until the next meeting.

McKnight said there was already a motion on floor. Chair said motion to table takes priority. Attorney confirmed. There is no discussion on a motion to table. If his term expired on October 31, 2012, he is not a P&Z Member right now. If you table or do nothing, it is vacant. McKnight wanted to make one point, the alternate which is Ms. Saylor will be promoted to a board member. Chair said there is no discussion on motion to table. McKnight was he has opposition to Milucky voting as his wife can gain from this. Chair restated motion to table does not permit discussion.

**Vote:** Ayes: Acquaviva, Milucky, Rivet. Nays: McKnight, Abare.

Abare said point of order and asked if there was a conflict. Attorney stated it is not a conflict. It does not result in any financial gain or detriment. It is a legislation action of this board. Chair stated it will be on agenda for next meeting. McKnight said he will come back as an alternate.

**Reappoint Board Members: Reso 38-2012 – Barry Alexander to BOA**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF BARRY ALEXANDER TO THE MALABAR BOARD OF ADJUSTMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Chair stated they could discuss before a motion is made. Abare asked if anyone could speak for Alexander. Franklin said it was two years ago when she brought to Council the proposal that they become the BOA due to lack of membership. Council went out and got members and they now have a full Board and Alexander is the Chair and does a very good job when there is a meeting. Beatty has known him for many many years and he represents the town as well as anyone on the Board. Abare said he did not know how they could have the background on an issue that may come before them. The P&Z Board would spend months on an ordinance and that seemed odd to him that the variance request would go to another Board that didn't have the benefit of their process used in creating land.



TA said again she can speak for this person. She has seen him come in and have a very detailed discussion with Denine on agenda for meeting. She witnessed this dialog and knows he does not take the position lightly.

Beatty said they are supposed to look at facts; they get information from Town and hear from applicant and make their decision like a jury. That is why they can't get involved. They look at information from Town and Applicant and make a decision based on that.

Franklin clarified that the variance request does not first go to P&Z. The BOA does not get information from P&Z. The variance request is either to a code adopted by Council or a decision made by the Building Official and is submitted by the applicant. The Town puts a position package together and those items are given to the members of the BOA. They literally act like a judge and review the evidence, can take testimony from witnesses. Town Attorney attends for the Town. The BOA listens to both sides and then renders a decision.

Milucky doesn't know Barry and not enough of them know Barry. Could we ask him to stop in at the next meeting?

**MOTION:** Milucky / Abare to ask staff to invite Barry Alexander to next meeting before they take this vote.

McKnight said if his term is done and he is reappointed to Board is an alternate these people are going to get upset. He stated that Malabar does not get a lot of volunteers. He can be reappointed to the Board as a regular member. Milucky said if Council reappoints him to his seat. Rivet said it has been the practice of Council to move alternates up and appoint new members as alternates but it does not have to be that way.

TA said in the past, they were directed that if there was an application coming in they were to have a resume and have person attend the meeting. Since you don't know these people she feels bad not speaking for all of these people since they all pass through the back door. If direction is given that we follow the previous direction to have a resume and have applicant in attendance. TA said prior to coming here that is how it was always done.

Rivet said even if there is only one applicant, Council may decide that it is better to have an opening than appoint the applicant.

Acquaviva said it is same as doing it at next meeting; Council doesn't have to fill the vacancy at this meeting. Attorney said technically no; the difference is the Code says if the unexpired term creates a vacancy then Council shall fill that vacancy within 30 days. That time frame will be elapsed by next meeting. If there is no business coming before P&Z in December it may not be issue. Attorney also said the alternate does not automatically jump into that spot, that is job of Council to fill. He said if council does not make an appointment within the 30 days, there is no penalty. Rivet said it has been some of the Board's policy that the alternate fill the spot. Attorney said it is solely up to Council.

Acquaviva said she does not dislike or not like anyone here. She would like to see more people here too. It might be slim pickins but we might have more people here. In light of this she would like more people to be here.

Chair repeated motion to invite Barry Alexander to next meeting and to provide a resume so they can consider his appointment to the Board.

Acquaviva would like his resume so they can read about him if he can't come to meeting. TA said if Council directs, all these reappointments will be appointments. Attorney said they will be to fill the vacant terms. Abare agreed he would like to see the person and see the resume too.

**VOTE:** All Ayes

**Reappoint Board Members: Reso 39-2012 – Donna Hanna to BOA**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF DONNA HANNA TO THE MALABAR BOARD OF ADJUSTMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibits:** Agenda Report No. 2

**Recommendation:** Request Action

**MOTION:** Milucky / Abare to invite her to next meeting for the same reasons they just stated for Mr. Alexander.

**VOTE:** All Ayes

Abare asked Chair for clarification for the P&Z Board for their next meeting since he is gone. Milucky said it would be no different than when Leeanne votes in absence of member Bud Ryan. Attorney said the alternate votes in the absence of a member. This is not an absence this is a vacancy. He is going to opine that a vacancy is not an absence. He suggests Council work on this code to clear it up.

**MISCELLANEOUS:****3. Approve Expenditure to Repair Security Equipment at Fire Dept and Park**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Discussion: TA invites Brian Morrell, President of Secure Point to podium. TA had shared the last meeting minutes with him so he knew of the concerns. TA recommended approval of Plan "B" the purchase of the DVRs for Fire Dept and Park and getting them in place. Then work on cameras that were not able to function properly. He is here to answer Council's questions. Chair asked McKnight to proceed. McKnight said he is good. He wanted more detail and it was provided. Abare asked if this was 24/7 surveillance? TA said there are 2 DVRs, 15 cameras at FD and one outside the restroom at Malabar Community Park. If it was monitored properly. That was the only party that could do that. One of the concerns was that we can web in and she can monitor the cameras. Also put a policy in place that they would be doing some monitoring of that since there is a Lt. on duty on every shift at Fire Dept. She has discussed this with Chief Strandell and he agrees with this. They will also train the people so they know how to go back and download portions to a CD if needed by BCSO. It will re-record over every 30 days. Milucky is the requirement to have the cameras but if we have them they have to be monitored and recorded. TA said the need to have cameras was determined many years ago by Council. Acquaviva said if no one is monitoring them then you don't know when they stop working. Mr. Morrell said with the new units they will be able to view them from here as he will put them on the network and if there is a camera or DVR failure they can see it here, they don't have to rely on Fire Dept. Milucky asked if these broadcasts were over the internet. No they are hardwired and broadcast over a local area network and it is restricted with password.

TA said there are cameras showing the annex building as well as the front building. They have a lot of equipment there. They also have homeless people living near there and they were coming in. TA said at some point in 2005 or 2006 Council determined the need. In her tenure they have had issues and when the cameras were working and there had been an issue, they couldn't download from the DVR. She had asked the vendor to train more personnel and also asked for a maintenance program. He also wouldn't train more than one person and it was cumbersome to download. We did have a crime. We had a bus back into the building and we couldn't get it on the cameras.

Abare asked about the cameras at night. Mr. Morrell said they have built in infrared lights can see about 85' at night.

Beatty said one DVR will be at Fire Dept and the other at the restroom? Mr. Morrell stated it will be in the utility room but they are looking at a way to relocate it back to the fire station. He is working with IT to come up with an alternative. As it stands now it would be in utility room. Beatty said the downside it

the possible intrusion of water softeners, salt, chlorine there could be problem with corrosives. TA said the utility room is also very hot. Beatty said he was able to manipulate the cameras on the old system and follow cars and the like. He asked if these units would be compatible with existing cameras. Mr. Morrell said yes they would be and the ones replaced with attrition would be the latest cameras; not five year old cameras. They will be the same cameras used in PB Police Dept.

Abare asked about condensation. They have blower units in them and are water resistant. Beatty said the DVR was plugged in to the outlet in the storage area with a ground fault and if it is tripped then the DVR will go out. Mr. Morrell said he is proposing to put in a locked box with a cooler. Ones in Melb Beach work and they are right on the beach. Abare said unless it is military it won't last two years. Mr. Morrell said the manufacturer will warranty the DVR for 5 years if maintenance plan is included and they are installed by a preferred vendor and his company is an preferred vendor. If you are 4.5 years into it and it stops working you will get a new one. Mr. Morrell said the only thing not covered is lightening. Abare said the lightening issue is a big one. Yes but if it goes through your electric then the insurance will cover your loss. Abare asked if we had to compete this since it was \$10,000.00? TA said the item for Council consideration is for Plan B for \$3,000.00.

Speaker Card, Dan Welton, 2635 Hunter Lane, historical data about the cameras, Brandy Hall went missing in 2005. Last known video of her was camera at FD. Through the years, had experience with other FD. He felt the fire fighters should have a reasonable expectation of privacy. He said the fire fighters live there, that is their home, for 24 or 48 hours and in certain areas a fire fighter has an expectation of privacy and gave example of camera by washing machine and that is just outside of bathroom. He asked Council to think about it. Outside cameras absolutely, but consider where they will be placed inside.

TA said in response to that comment, although camera may be right by a washing machine there should be no privacy issues. This is a co-ed department with shared quarters and there should be no privacy issues or the next thing she will be dealing with is sexual harassment complaints. She is not saying the cameras should be aimed at bathrooms, but the laundry facilities are in the open bay area.

Drew Thompson, 940 Holloway Trail, mention the camera capacity, on behalf of Trails & Greenways Committee. If the issue with the DVR placement at restroom is resolved with a satellite unit and the adjacent Malabar Scrub Sanctuary, if they could have a camera trained down the trail also. TA said the expansion could be planned at a future date, she is just trying to get us up and running.

Abare asked Mr. Morrell if they could add another camera. Yes, the one they are proposing for the restroom area gives them three additional slots for three more cameras. TA said they are piggy backing on the Palm Bay contract to get the best pricing.

Milucky asked staff about money is money in budget. TA said yes she is taking it from each department. Expenditures under \$5,000.00 she does not have to bring to Council but she knows they are very tight in the budget and there may be a need for a budget adjustment by year end. She is using repair and maintenance line item. She always wants to be transparent so they are fully aware.

**MOTION:** Milucky / Abare to approve purchase DVRs for FD and the Park restroom with understanding that as cameras die they will replace the cameras.

Discussion: none

**VOTE:** All Ayes

#### **4. Approve Signage for Damon-Arnold Lake at Malabar Community Park**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Discussion: TA said she was dealing with this via email with Atty Bohne and has since met with FLC Risk Management representative and he went out to the park and said his recommendation is that they

post a no swimming sign and it agrees with what Atty Bohne had said. There is already one no swimming sign there and he said they should post three more so it is viewable from all sides. He did not think we needed to put the informational sign about the ameba but it is not necessary. Four is being recommended. There was already a no swimming sign up there.

Bohne said leave it at no swimming – he agrees with risk manager. By order of Council. McKnight said he prefers no signage. TA said risk manager relayed story where the ability to sue was taken away because of signage. It was a lake in Oakland Park where she used to work. In one area a problem at night. Put up a no swimming sign. The sign stayed up. Two young kids playing ball and the ball went in and a kid went in and kid drowned. There was the posted sign and that is why they couldn't sue.

McKnight said at last meeting attorney said no signs. He did not disagree with FLC risk manager. Bohne said he thought they could get away with no signs. Acquaviva said what about enforcement. TA said the BCSO would enforce. Abare said put up Swim at your own risk. No. Abare said FLC says put up signs and they are the insurance carrier. Beatty said the no diving or no jumping signs can then come down. TA discussed this with risk manager and with the bridge you have a Public invite to jump that is why you have a liability and you need the signs. McKnight said don't post anything you are not going to enforce. Abare said there is a liability issue but he would agree none or four.

**MOTION:** McKnight / Acquaviva to remove sign that is there that says no swimming and put up no other signs.

Discussion:

**VOTE:** Ayes: Abare, McKnight, Acquaviva; Nays (Milucky, Rivet)

Attorney left at 10:10. Break for 5 minutes. Back at 10:16PM

## **5. Approve Roads for Micro-Surfacing**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Discussion: TA said her second page. Vendor ranked them from worst to best and then she gave dollar values from the original proposal. Plus he has a 2K mobilization. Rivet said we could be Atz Benj and Booth. McKnight said they brought this back because the original proposal was for 53K for all of the roads listed and they wanted options. Abare wanted to know how many miles. They didn't have distance. Beatty said the methods are different and so the price is different. Based on the different levels of deterioration not mileage. Catch some now. Is it repaving? It is more like sealing. Abare said if you pave over how much – 3 times? If you spend this much and it doesn't hold up. Abare said how long can the roads last. He thought you could repave for 50K a mile. TA said that LaCourt repaving was more than that. Beatty thought it was 60K for ½ mile of LaCourt. TA said total cost was 87K for LaCourt. Also LaCourt wasn't a true two lane width. Cost depends on condition of road. Beatty said that this is good process. This is not a overlay; this is a treatment to a cold paving. Abare asked Beatty if this was good for the price. Beatty said yes, this will stop the deterioration. They have other roads that have issues. Beatty said Council should come up with a program to decide what they are going to do with their roads. Abare said unless you are measuring what they are putting down. It is a different process. Beatty said in Brook Hollow it was determined that they needed to cap the roads. Beatty said they didn't. The roads were cracked and they thought the roads were bad. He tried to explain to them that they were soil cement roads shouldn't cap them but coat them. But they capped it. Now we have issues with it that we will have to deal with. This method makes it better. Acquaviva has a question to Beatty since he did the leg work on this. Do we pull money from other places to do all of these roads now? The other point was what the cost was to bring vendor back if they are not done all at the same time. Beatty said the ones in front of them for the 40K. It is not that the others are not needed, but they are the least worst. Rivet asked if they could wait until next year to do others. Beatty said they are going to be talking about other roads deteriorating before next year. Beatty said he would go out and do an inventory himself. Rivet said they have 40K in budget, do they want to spend that or do they want to spend more and do them all for the 53K.

Question do you want to spend more now or stay in budget.

**MOTION:** Milucky / Acquaviva to accept the proposal for west Atz for 23672 and 250.00, Benjamin for 14,203 and 250.00, and Booth Road for 1760 for a total of 40,135.00.

Discussion: Abare wanted Beatty to oversee projects. TA said with every road or drainage project we have Town Engineer inspect and provide reports. She will put together the ones from the Atz and Weber project and email them to Abare so he can get a comfort level on the oversight. Abare asked Beatty if the Engineer is the right guy to oversee this? Beatty said the Engineer understands all these things.

MOTION: McKnight / Acquaviva Motion to extend for 15 minutes. Approved.

**VOTE:** All Ayes.

**6. Appoint Malabar Bill Reviewer for Nov-Nov period**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Beatty would like Abare to be the bill reviewer. He said Abare will learn so much. It is twice a month you come in and spend about an hour going through the bills. You see all the money being spent.

**Abare will be bill reviewer.**

**7. Appoint Malabar Council Check Signatory for Nov-Nov period**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**Acquaviva will do it.**

**8. Appoint Delegate and Alternate for SCLC**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

**Beatty volunteered to be delegate. Milucky to be alternate**

TA said she will sit between them. Milucky wants to ride share. Beatty said the voting delegate goes earlier. TA said Milucky can ride with her.

**Item 9.**

Marisa, brought up for action. McKnight had asked for this to come to Council. McKnight just wanted a pdf sent to them before it went out. Franklin said everyone got it tonight at their place. Acquaviva read it before the meeting and her point was everyone put their stuff together. It is timely and it needs to be going out. It won't make sense if it doesn't get to residents in timely manner. TA asked how long should staff wait to send it out. Acquaviva said don't wait. McKnight said it was not hinging on him, he just wanted it to come to Council before it went out. If Council doesn't want to review it then fine. McKnight said it can be like an FYI thing. Acquaviva asked Franklin why it wasn't going out and she said she waiting on Council approval and that is why she brought it up.

Acquaviva said is that going to be a procedure now to have Council read the newsletter before it goes out? McKnight, Rivet and Abare thought it was a good idea.

TA said if they see glaring mistakes please contact Franklin in morning. She will send it out for layout tomorrow afternoon.

**M. PRESENTATIONS:**

**N. PROCLAMATION:**

**O. STAFF REPORTS:**

**ADMINISTRATOR:**

Risk consultant pointed out the bridge at Fern Creek Park should be taken out. It is a nuisance. If you haven't seen it. It was an Eagle Project. The bridge was built and then homeless were crossing

it and trespassing on private property. Town blocked it over. We use it for a vista or viewing platform. McKnight said if we move it, put at park at soccer field you could put it at the low area by soccer field. It fills up when it rains. TA knows exactly where he is talking about. Beatty said without looking at drainage issue at park, you may just need a pipe. Beatty said the bridge was approved by Council. The fence was also an Eagle project and approved by Council. He suggested changing out the fence to a 4' high fence. He would like to look at it. McKnight said his recommendation is not to remove it, but if it is removed, put it at Park. Beatty said reevaluate it. TA said this came from property and liability insurance representative.

Beatty said then we have the same issue at the bridge at Malabar Community Park. TA said no, that bridge serves a purpose and has proper signage against jumping from it.

Motion to extend for 15 minutes. Approved.

TA said Atz and Weber pipe project is finished.

Asst Fire Chief Report: went over report. His previous comments were his own. Abare asked about dialing 911 what is FD response. They send the EMS truck. Some calls they do rotate the trucks. If they have a full engine crew they will run engine to EMS call. Abare said in Melb and they had an ambulance, rescue truck and the ladder. Abare sees it as an unnecessary expense. Welton sees it differently. The brush trucks sit when it is not wildfire season. Beatty said when you get a call you don't know what the issue is. Welton said on a good night they will keep the big truck back. They will take the larger truck if they get toned out.

CLERK: Franklin The Tree Lighting is set for Dec 1, 2012. The Auditors will be here the week of Dec 3. A resident has asked if Council was interested in allowing golf carts on public roads similar to Grant Valkaria. Council did discuss it and their decision was to do nothing. If people wanted to drive golf carts on roads they could still get ticketed by BCSO.

**P: DISCUSSION ITEMS:**

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

- ) Milucky: nothing
- ) Abare: nothing
- ) Rivet: nothing
- ) McKnight: welcome to new members
- ) Acquaviva: nothing
- ) Mayor: nothing

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

**S. ADJOURNMENT:**

There being no further business to discuss, Chair stated that without objection the meeting was adjourned. The meeting adjourned at 11:00PM

BY: Carl A. Beatty  
Mayor Carl Beatty

ATTEST BY:

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

Date Approved: 12/3/12 as submitted