

MALABAR TOWN COUNCIL REGULAR MEETING

December 3, 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 Council Chair Steve Rivet. The prayer and pledge were led by Council Member District 5 Marisa Acquaviva.

B. ROLL CALL:

COUNCIL CHAIR

VICE-CHAIR/MAYOR:

COUNCIL MEMBERS:

STEVE RIVET

CARL BEATTY

JIM MILUCKY

WAYNE ABARE

JEFF MCKNIGHT

MARISA ACQUAVIVA

BONILYN WILBANKS

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

KARL BOHNE

DEBBY FRANKLIN

Franklin said for the record, Town's Fire Chief Bob Strandell, Asst Fire Chief Dan Welton and PW Dir Tom Miliore are also present.

C. ADDITIONS/DELETIONS/CHANGES: Clerk asked to add as Action Item 8 to approve application fee for minor modification of approved site plan. It is added under Miscellaneous as Item 8. No objections. Milucky had a question from the last meeting related to a public hearing on formal charge was made. He is not seeing it on agenda; can it be added or at another meeting? Looking for guidance. Rivet said to contact Clerk and ask for item to be added to future agenda so we have everything covered.

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**

Exhibit:

Regular Town Council Meeting – 11/19/2012

Agenda Report No. 1a.

MOTION: Acquaviva / Abare to approve the consent agenda. Abare said regarding page 6 of minutes he added clarification regarding absences regarding P&Z; they are recorded in the minutes as excused or unexcused as determined by Chair; not discussed, it is up to Chair. Milucky referenced minutes page 8, clarification on use of word "adore" related to Bob Wilbur; he highly admires him but doesn't adore. Franklin said that is the word that was used.

VOTE: All Ayes.

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

Carol Stallings lived in Malabar for 27 years. Lives on Lineberry Lane. Golf carts driven on road. Her husband has been stopped twice in last six months. Has seat belts and weighs 1500. The Deputy said last time that the husband could be arrested and vehicle impounded. He drives from Lineberry to Matthews Lane. There are three or four on her street and just about everyone on Quarterman Lane has one. Would like Council consideration to allow this like G-V does. Rivet said the council took this up at an earlier meeting. At that time Council did not wish to adopt an ordinance. Have as a discussion item for next meeting so their decisions don't have unintended consequences. McKnight asked Bohne about asking BCSO to not enforce. No, it is state law. G-V

passed an ordinance and posted signs. You have to go through formal process. Acquaviva said there are a fair number of people that have them. Bohne said the statute is easy to follow.

Abare what makes them legal? Having certain equipment. Bohne said you have to specifically name roads where they can be used. It is Town-wide in Grant Valkaria. There are age restrictions, equipment requirements, time restrictions. It is almost to the point of licensing. Bohne will send G-V ordinance to Clerk to copy out to Council if they want to put it on agenda. McKnight thinks that would be good. Put it on next agenda for discussion.

H. ATTORNEY REPORT: Staff wants Council to take a look at code related to Boards. Council to establish the start dates and end dates. Traditionally have waited until new council is seated. If Council doesn't get around to it, allow the sitting person to remain until appointed. Or do you want the alternate to step up. Establish duties and guide for T&G committee as well. Chair said just because we have done it that way. Bohne said right. Have for discussion item at next meeting. Abare said that they haven't determined if the term expired.

I. BREVARD CTY SHERIFF: Dep Hammer, AC unit stolen from home on Corey. Rivet asked about vehicle burglary in Malabar. Hammer said he wasn't aware of that. He spoke about golf carts and utility carts on roads. The speaker's husband was driving on Corey Road. He was the deputy that issued the citation. He explained the problem with utility vehicles. They are subject to arrest. You can't add utility vehicles to an ordinance to permit them. He is going round and round with State Attorney. Malabar used to have a 4-wheeler problem and it will come back if you consider adopting this type of ordinance. He suggests they consider that in their discussion. They are having problems in Grant Valkaria with this issue. Golf cart is battery powered. Utility carts are gas engine powered.

J. PUBLIC HEARINGS: 1

2. Amend Article V, Section 1-5.27 re: Water Bodies (Ord 2012-60)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTION 1-5.27 RELATING TO PONDS; CREATING STANDARDS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DESIGN CONSIDERATIONS FOR DECORATIVE WATER FEATURES OR PONDS; PROVIDING FOR A REVIEW PROCESS AND PERFORMANCE STANDARDS; PROVIDING FOR THE COMPLETION OF DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR STANDARDS FOR FILL ACTIVITIES; PROVIDING FOR PENALTIES AND AN APPEAL PROCESS; PROVIDING FOR REPEAL, SEVERABILITY, INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Chair read Ordinance by title only.

Chair declared **Public Hearing open** –

Pat Reilly, 1985 Howell Lane, Vice-Chair of P&Z. He explained why they wanted to do create designation for water bodies with under 1000sf, making them Decorative Water Features (DWF); over that was a pond. Spent six months on this. Created process for each, DWF and pond. Reilly said Abare created a list of highlighted changes. Milucky asked about if you went to Home Depot and bought a \$50.00 small plastic pool would a permit be required. Yes. Reilly said the Board also created a checklist for each. Drawing would be required for DWF, more detailed site plan for ponds.

Chair declared **Public Hearing closed**

MOTION: Beatty / Abare to approve Ordinance 2012-60.

Discussion: Milucky asked about definitions. Reilly explained. Abare worked on this currently you could put in a ¼ acre pond with not permit. You could put in the wetlands and oak trees could come down and town doesn't know about it. It may seem wordy, but they covered all questions.

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

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

ORDINANCES: First reading – 0

RESOLUTIONS: 3**3. Reappoint Board Members: Reso 37-2012 – Don Krieger to P&Z
Tabled from 11/19/12 meeting**

Abare asked if it needed a motion since it was tabled to a time certain. Attorney said yes.

MOTION: Acquaviva / Abare to remove from table. Vote: Ayes: 4; Nay: 1 (Milucky)

Speakers Cards:

Pat Reilly, Howell Lane, Vice-Chair of Planning and Zoning Board. He read a letter from P&Z Board Member Liz Ritter. Attached to minutes.

Reilly also says ditto to letter. Get past political agendas and reappoint Don Krieger.

Bud Ryan, Déjà vu. This mirrors situation he was in two years ago. Next meeting when things calmed down he was reappointed. It is not fair to Krieger, not fair to residents, not fair to P&Z. Experience matters. Can't discount that experience. In the Charter it says they should be selected based on qualifications. He personally can see no valid reason to not reappoint Don Krieger. Election is over. He is the best for town. Pleasure to work with. Hope to keep working with him.

Bob Wilbur, he would highly recommend this reappointment. He stated they don't share the same opinion, but he values his insight; he gives Board balance. Brings out lots of points we would not think about. He doesn't know how it came about. No reason to not reappoint. Wilbur explained that issues that come before P&Z Board are under discussion for long periods of time. Members have to be versed in Comp Plan and code and land use. It is important because we don't have planner, rarely have attorney, only have engineer when an applicant brings one. He would like P&Z to look at applicants and have an input in the process.

Mrs. Hirsch, 1035 Malabar Road, Also recommend Krieger to be reappointed. Consider reappointing him. Like to leave things the way they are.

Mr. Hard, 2560 Hard Lane, has known and worked together with Krieger for 30 years and he will do good work for the town.

Chair read Resolution 37-2012 by title only.

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: Milucky / Rivet to deny the reappointment. Atty Bohne states Rivet, as Chair can't second motion. Motion died for lack of a second.

MOTION: Abare / McKnight to reappoint Don Krieger to P&Z Board.

Discussion: Abare stated he was on the Board for two years. Krieger is high energy and you are better off hearing his input. Acquaviva said she moved to table it at last meeting to get more info. There was no political motivation or judgment on her part. There was an allegation made and she was uncomfortable going forward. She asked Bohne is it ok to go forward with this when there is this allegation. She felt that Krieger wasn't represented. Question about having a hearing. Allegation against someone. You can think what you want. Bohne said Council has the authority to remove any Board member after notice and a hearing.

Abare, would it be appropriate to discuss the allegation. Bohne said it would be inappropriate to discuss this without giving him due process. Give him notice and an opportunity to respond. Rivet said there is no liability to appoint or not appoint.

Chair directed Clerk to pass out a memo he had requested before the meeting. Rivet said the memo addresses the lack of fire inspections at his business for the last nine years. It should be one of the things they consider. McKnight said his business is operating and his insurance checks for fire safety equipment is current. McKnight asked Bohne if Krieger was breaking the law. Rivet said he is in violation of Malabar Code requiring fire inspection. Acquaviva said it is State statutes. Bohne said they had many meetings on this. McKnight said as a point of order if you are going to put something like this out it should be shared with the rest of council.

Milucky, the reason it was tabled the last time was there was an issue on the table. It clouds the whole issue. Several things to point out. He resents what someone said about not having right to make input if you haven't been here for uppity ump years. He also takes issue with the first come first serve. You say you want qualified candidates but you don't want to ask them to attend a meeting or submit a resume. There are several members on P&Z that are or have been members of a philanthropic group in Town of which Mr. Krieger is a member. He makes full disclosure. His resume is posted on the internet so he resents the implication. The reason for tabling was to give Council the opportunity to bring the applicant.

Milucky said Ryan said he was vindicated because he was voted after three votes. His attendance record at meetings; he doesn't consider someone to speak on behalf of someone else when his own attendance is poor. A formal charge has been made and Mr. Krieger should be invited to attend a public meeting to respond. Not fair to continue this process until he has that opportunity. One of the people that spoke on his behalf is one of the people included in the allegation. It is still muddy. He can't support it tonight. He didn't say he wouldn't support it. He appreciates Wilbur's input on Krieger being valuable.

Years ago he recommended to Council they not have term limits. Respect long term commitments to the town. He was elected and responsible to citizens of Malabar to appoint the best people to the boards. There is a question at this time in his mind that they may not have the best people if we reappoint.

McKnight asked Bohne about allegation. They found no problem with what he was doing. McKnight said regarding the fire inspection. Bohne said the fire inspection thing. Periodic fire inspections without the ok of the owner would not be allowed. McKnight restated question to Bohne: under current code, is he required to have a fire inspection? Bohne said under our code he is not required to have fire inspections.

Beatty said the town would comply with certain regulations. Other businesses would not have to have fire inspections. Did this six months ago. The State requires fire inspections for businesses open to the public. McKnight is upset and they are trying to crucify.

Rivet asked Bohne if Krieger Publishing was required to have fire inspections per statute.

TA said for clarification the new Chief did not know he could train the paid Lt. to do the fire inspections and she gave him the legal opinion and brought him up to speed. Bohne said the legal opinion related to having private fire inspector do inspection instead of Fire Marshal. McKnight knows that because he has had several conversations about this and he does have someone come in and check his equipment once a year. Acquaviva asked McKnight if he even considered all aspects of the allegations about this or just thought he was being crucified. McKnight said he is innocent until proven guilty. McKnight said this is exactly the same thing that happened two years ago to Bud Ryan. It was very political and had no bearing. Acquaviva said it is different; Ryan had written something. Council is held to a higher standard, your life is now public and they should take care in these board appointments. McKnight said he is not different than the people in the audience. Acquaviva said everything they write and do is public. If you take the time to do this now there won't be problems later. Nobody is crucifying anyone. McKnight said yes they are.

Abare does not like to be broadsided. About to vote on this and cannot do research. Inappropriate to receive this memo just before meeting. He has heard the Attorney state there was no violation of the ordinance. He just heard Carl Beatty say the same thing. That issue has gone away. Abare said the Chair was out of place to bring it up. McKnight seconds that. He said at last meeting Franklin said if anything is asked by one, it is disseminated to all of council. Obviously this was not disseminated to council it was only given to Rivet. McKnight said he thinks that is wrong. Rivet said it was requested today. Franklin said she just did it before the meeting.

Acquaviva said he didn't submit his newsletter article so they could all review it. She does not want to be yelled at. McKnight said he wasn't yelling and they can talk about the newsletter later. McKnight sees what is going on here and thinks it is despicable.

Beatty said at the last meeting they had five persons to be reappointed. Two people got reappointed with little or no discussion like it was done in the past. Then third name comes up and we have new rules and have to have DNA testing and want a resume from person. He has problem with changing the rules mid stream. Acquaviva said they did have people speak about the first two. When there is an allegation they need to at least look at it before they make a rash decision. Two people didn't have allegations against them. She doesn't think it is political. She said it is not different rules; there are no rules. Rivet said that Council appoints board members and if council wants more information that is a reasonable request. If there is already enough information about appointees, then fine they don't need more information. McKnight said it is very clear to him that it is a political attack. The last meeting was orchestrated; it was planned out. Milucky called point of order. This entire discussion is about appointment of Don Krieger. If the Councilman wishes to adjourn this part of the meeting and conduct another meeting he would support that. If that is the kind of allegation you are going to make get it out in the open. Adjourn you seat and stand at podium like a citizen and make your allegations on what you think are factually true. Tread very carefully. One is being sued in this town and one is not.

ROLL CALL VOTE: Milucky, Nay; 1)Abare, Aye; Rivet, Nay; McKnight, Aye; Acquaviva, Aye. Motion carried 3 to 2.

4. Appoint Collette Buffaloe to Trails & Greenways Committee (Reso 40-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPOINTMENT OF COLLETTE BUFFALOE TO THE TRAILS AND GREENWAYS COMMITTEE; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Chair to read Resolution by title only.

Franklin stated to Council Chair that T&G Committee Chair Drew Thompson was present to speak to this item. Mr. Thompson stated he doesn't personally know her yet, but they have exchanged

emails and she appears interested in participating on the committee. She has experience as a participant with Cameron Volunteers for the construction of the trails and the Sand Hill Trailhead. She will balance the committee well with the equestrian insight and would recommend her appointment.

Collette Buffaloe, 1280 Corey Road. Her submittal indicated her interest in serving and she and her sons have spent much time on the trails. Beatty has talked to her husband and he was very positive about the Town. Beatty also worked on the trails on the Gradall lifting beams and may have worked with her.

MOTION: McKnight / Abare to approve the appointment.

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

5. Appoint New Member Planning & Zoning Board (Reso 41-2012)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPOINTMENT OF BROMLEY GRANT BALL TO THE PLANNING AND ZONING ADVISORY BOARD; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Speaker's cards:

Pat Reilly, 1985 Howell Lane, P&Z Vice-Chair stated that the P&Z Board had made a motion to table. At the last meeting they had two names in front of them for their recommendation for a replacement alternate but they tabled it to make sure they just needed one alternate or two based on your decision on Don Krieger. And now there are more alternate candidates. He would like to recommend they send it back to P&Z and let them bring to you the two names for the alternates for the next term. There could be two. Acquaviva said it is Council decision to appoint. Chair said they can go ahead or they can wait for recommendation. Abare said typically they recommend and Council approves. Attorney said there is no normal process. Beatty said they have taken recommendations and he said the best way is for them to go back and set their board up and come up with names.

Dick Korn, Weber Road, is one of the two applicants. Is on Parks and Rec Board. Until the rules were changed at last meeting it was based on first come first serve based on qualifications. Grant Ball's application was submitted first. He asked Council to hold his application in abeyance and appoint Grant Ball. Ball is willing to serve and is not currently serving on a Board and he recommends they appoint Grant Ball to P&Z. He is happy on Park and Rec Board but he would like to move to P&Z Board, but keep him in mind for a future appointment.

Grant Ball, 1190 Highway 1. He said listening to some of the speakers you would need 100 years of experience before you come to the P&Z Board. Has been here since 6th grade. He has lived in Enchanted Lakes, Rocky Point, First Street and now Highway 1. The rural character of Malabar needs to be continued and he wants to help do that. The previous talk about golf carts shows that the rural lifestyle is possibly slipping away. He is in support of making decisions to preserve that rural character.

Beatty has known him for years. Has known since they were young. He has the heart of Malabar first. Mayor said he has maritime credentials, Coast Guard, Navy and sailing; he knows his way around. He highly recommends Mr. Ball.

Chair read Resolution by title only with Bromley G. Ball's name inserted.

MOTION: Milucky / Abare to approve resolution for the appointment of Mr. Ball to P&Z.

Discussion: Abare said Mr. Ball doesn't have an agenda; he doesn't do anything halfway; he will throw his whole body in anything he participates in at 120%.

Acquaviva said hearing the Board talk about the level of experience and knowledge and apprenticeship that was interesting and would like to discuss the intent of that. Running for election is also a steep curve. Someone new can learn that too and should be welcomed to the Board. It sounded like the members on the Board wanted a lot of experience. Abare said if you are energetic and get into it you will be fine.

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

Abare said for clarification that Ball took Abare's previous position as Alternate 1. Milucky did not agree with that. He would like to ask staff to look at and hash that out at next meeting. Abare read from the agenda report behind tab 5: P&Z Board has one opening with the election of Wayne Abare to Council. If there was an absence of regular member, Abare voted. If there were two regular members out the Ms. Saylor's also voted.

Chair said if we go with the way they have done it, Ms. Saylor's would be Alternate 1. Milucky asked Chair for clarification from staff. Reilly said the Board decides who is alternate 1 and 2. He explained that it is not first come first serve or who has more experience. He referenced a previous member who was here only part of the year and missed a lot of the process and the Board made her Alternate 2. The Board had the discretion to choose who is Alternate 1 and 2. They will do that at the next meeting.

TA said in the past we have always had a resolution that stated alternate as part of the title. TA said the resolution should be corrected to state alternate. McKnight said that is correct. Rivet said we can't do that because there is no opening for a regular member.

Chair asked if was Council's intent that they were voting on an alternate position. Yes. Resolution to be corrected to read Alternate. Franklin said then what is done when alternate moves up to regular position? TA said if it means another resolution to move from alternate to regular then that is what needs to be done. Beatty said Council just passed the resolution as read and there should be a motion to amend.

MOTION: Milucky / Acquaviva to amend Resolution 41-2012 to add alternate. **Vote:** All Ayes.

Bohne said how you appoint alternate 1 and 2; he will research and come up with something. TA said this is like the expiration date; it has been done so long you thought it was a procedure. Now is time to lay it out so in future they will know how to get to that point.

MISCELLANEOUS:

6. Newsletter Policy re: Council Approval before Publishing

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Acquaviva said she brought this back; there is no animosity here. She actually pulled all the minutes out and copied them. Everyone submitted their articles except McKnight. Franklin got his the next day and sent it out. She did her article so it was timely. She wrote it for right after the election. Now the newsletter is not out. She called Bohne and asked if Council was supposed to approve it and he said absolutely not. She thought they were working together to make a nice newsletter and then to not be able to read his. His was late and he had made a point about being late. She understood that things come up. Acquaviva doesn't want to micromanage their job on the Mailboat. It was a good idea but she did not think he did it in good faith.

The other issue is the approval of the newsletter. You are going to review this and either approve this as submitted or what. Rivet said if you are going to approve it it has to be in an open meeting.

Bohne said there had been some concern that there was outside polling. That is not what was happening. Acquaviva said Franklin was not asking our approval. It was never a polling. Bohne said no one was accusing anyone. Franklin was not asking for approval; she submitted what she had to council and then forwarded McKnight's; both were done for review.

Abare thinks when he got the newsletter before he was on Board or Council, he thought it was from the town. He thinks for this body to look at the newsletter it is a good idea. If someone is late getting an article in then that puts a burden on Franklin and she is busy enough. But he thinks Council should look at it; that is reasonable.

McKnight said this is because his was late. He was resigned to know he would not have a submittal but it was not sent out with the agenda package. It was waiting on our desk. He was not going to read the newsletter and edit it at our desk. He was expecting to receive a pdf in our packet so they could review it and then come to council and discuss it but that is not the way it happened. He said he would have his comments the next day and so did Rivet. He felt since he was submitting his comments he could submit an article. Franklin sent out an email saying she had only received article from Acquaviva and he was out of town and resigned to fact that he would not have article but had a second chance and took it. Abare said Franklin sent email to all of them.

McKnight said it is still not out. TA said it is on the website. Milucky said he could not find it. McKnight said it should be just like other agenda items and go out to them for review on Wednesday and discuss it on Monday. Not on their desk.

TA said she keeps hearing that this is Franklin's newsletter and the fact is she is the Administrator. Acquaviva did not say that. TA said everyone is referencing Franklin is overworked. The fact is she should be included in this and at that point she will be happy to make sure it gets out to Council, not as part of the agenda but like she does other information, in the FYI. McKnight said is she saying that she is not included in the review? TA said she has been skipped over in the editing. TA said that Franklin is the editor and TA resents that she does not get to oversee the articles that go into it. This keeps slipping more and more away. Maybe Mr. Booth didn't want to be but she wants to be. McKnight supports her on that. TA said the Clerk does not replace the Administrator. It may come from past practice. She is not faulting Franklin. She is having the discussion on the newsletter and it is time to bring it back to the Administrator to oversee too. TA spoke to Sue Hann and she reviews theirs. It is the way it is done.

Franklin stated for the record that she has given the TA every newsletter for review before it goes to Sally for layout. She has opportunity to review every article and story that goes into newsletter; it goes to her first. Acquaviva said they send to Franklin because she is the Clerk. TA said this puts Franklin in the line of fire that she doesn't need to be in. It is very easy to remedy it.

Milucky does not see a good way to have both ways. It is hard to have a town newsletter and have positive articles with positive influence. And still have as diverse group as this council is and have them put things into the newsletter that are not news. What is news to me may not be news to someone else. He does not support having the council edit, review or analyzing the newsletter. He likes taking the political aspect out. He would like to write an article to residents but doesn't know how to do that without controlling what the content is. Catch 22. He likes the way it used to be with articles on the Fire Dept, roads and parks and what is going on and he looked forward to it. However we used to do it before this. Now we are in this quagmire.

He ran on accountability and transparency but he didn't think it included the newsletter. If he doesn't like what someone wrote or if it is something we disagreed on. He would like Council to back up a little. Now we have conspiracy theories. He said they haven't had a fiery meeting like this since 2003. It is exciting but is not productive.

Acquaviva said in theory it is a good thing. She has written it early because she knew she was going out of the country. If you are late and it doesn't get submitted then it can be misconstrued. Rivet said this was the first time they were asked to submit. Rivet said if the opinion is that it is not a good idea, they don't need to continue. Bohne said if they are going to want to look at it then they should have an approval process in an open meeting. Abare said Franklin and Wilbanks know this town and what should go into the newsletter and he applauds it. Abare said they work for us and we work for the citizens. He doesn't want something to go out and then he gets 100 phone calls. He thinks it is polite to have them approve the newsletter. Have it on agenda just like the minutes. Abare said 99% of the time they will get complements on what a nice job you did on newsletter.

TA said it is her predecessor that has laid a lot of the groundwork she has had to turn around. He was here for three years and she can't find five pieces of paper that he generated. She has been here five years. Now you have someone that wants to be involved. This will take a lot of work off of Franklin, helping to put it together and get it out maybe a little faster. TA asked if they want to do an article for each quarterly newsletter. Yes. McKnight said keep it like it is but have it on agenda for approval. Abare said put on agenda for approval. If there is an issue on an article, then they can vote on it. Rivet asked if there was council consensus.

Milucky said he does not agree to have Council approve the content of the newsletter. If I get to review and vote on another's submittal, that gets into rights to free speech. If you want me to submit an article that is fine. But if you want them to review and edit and vote on it, that adds another thing to keep up with. Acquaviva said we are editing each other's stuff? McKnight said at an open meeting they can discuss it. Abare said they haven't agreed they are going to submit articles. Just that they want to review the newsletter. Abare said if someone submits a wacky article, they will vote on it if. Acquaviva said it will come down to personalities. Bohne said he is not disagreeing with the free speech statement. There is a question about a municipal newsletter meets the free speech. Rivet said it is paid for by taxpayer money. Bohne said if someone writes something wacky, they face election. Spending taxpayer money on the newsletter.

MOTION: Abare / McKnight have newsletter as agenda item for approval.

Vote::Aye, 3 (Abare, Rivet, McKnight); Nay, 2 (Acquaviva and Milucky)

7. Employee Holiday Schedule

Exhibit: Agenda Report No. 7

Recommendation: Request Action

TA explained the way the holidays fall; employees get the second half of Monday off and then Tuesday. .

MOTION: Acquaviva / Abare to approve additional half day on December 24 and 31, 2012 for employees.

Discussion:

VOTE: All Ayes

8. Request to Set Application Fee for Minor Modification to Site Plan

Exhibit: Agenda Report No. 8

Recommendation: Request Action

MOTION: McKnight / Acquaviva to approve application fee of \$150.00.

Discussion: Franklin explained that the request is for a modification to an approved and complete site plan. The applicant wants to change something that is done on his property. It is provided for in the Code but our fee resolution does not provide a fee. She proposed \$150.00 to cover two hours of review by Engineer and whatever administrative costs are for mail outs.

VOTE: All Ayes.

Attorney left at 9:30pm.

M. PRESENTATIONS:

N. PROCLAMATION:

O. STAFF REPORTS:

ADMINISTRATOR:

Bios for website please send to TA. She is going to add it under the pictures.

Abare said they all sent bios to Fla Today. TA sent out financials and sent out comparisons. She will also provide paper copies if anyone wants. TA said they had a meeting with EELs. Franklin and T&G Chair Drew Thompson also attended. The EELs have a candidate for Eagle Scout that wants to build a trailhead on EEL property. The proposed location is south on Marie Street near the Town property. The EELs will be meeting with Morris on culvert to access property. It will be visible and accessible from Marie Street. She is telling Council as they may hear about it. They are working with them. She goes to SMC meetings once a month.

Abare said he went on Brevard Property Appraiser website and Town owns like 150 acres. TA said they worked on a joint meeting. They were supposed to put in an educational facility. They discussed using half for town hall and the other half for their educational center. She thinks it is a signed agreement. Abare said that Krieger mentioned that there may be possibility of letting us use some of those 130 acres. No one knew of this. That is why there were questions at the last election. Rivet said they have asked EELs to dedicate some of their land for a town hall many times. TA said the EELs can't give back State property. Abare said would they let us put a building on it? TA said that is where the agreement came in, they would be happy to go along with it. Acquaviva was not aware of such an agreement.

Milucky said the Town does have someone that sits on EEL committee. And they do have the money; have \$773,000.00 to build the educational facility. EELs have been waiting for Town of Malabar to decide if they want to do this. Or they will take their money and do it somewhere else. It has been earmarked. The county has the money. He will be glad to contact them at Council direction or provide name of person to speak with. TA will send this person the agreement. County had to approve it also. McKnight said he met with TA and Mike Knight many times and to his knowledge they have made no further contact with the town regarding this. TA said she didn't pursue it because the Town did not have money for their part. Their interest was that as part of town hall they would have staff there. The education facility would function with educational recordings so they would not need a staff person but they would need someone to lock the door. Abare said it could be a win-win. It sounds like a real opportunity. If they have 700K maybe we don't have to put money in. Rivet said we wouldn't get it for free.

Milucky said he will contact the EEL representative get the dialogue started again. He will work with TA and have them come back. TA said their entire attitude has turned around regarding the town. They were included in the Al Tuttle trail development; they took our input. SMC are primarily biologists and they were willing to listen to why they wanted asphalt in preserve area.

CLERK: nothing to report.

Chair Rivet said the second meeting in December is usually cancelled. Any objections? Abare thinks it is wonderful idea. Consensus to cancel December 17, 2012 meeting. Next meeting will be January

P. DISCUSSION ITEMS:

Q. REPORTS - MAYOR AND COUNCIL MEMBERS:

) Milucky: to McKnight, you only have a year left to endure him on Council. There really isn't a back yard conspiracy. How the thing with P&Z and Leeann got out of hand. He said in the Continental Congress there were spirited debates. With that spirit he is looking forward. He is not going to hold onto it.

) Abare: nothing

) Rivet: nothing

) McKnight: McKnight has talked to Bonnie and Debby on several occasions and he thinks there is a little bit of conflict. He doesn't know what they can do to help that situation. He suspects there are responsibilities that are not completely clarified. If Council can help clarify who is responsible for what, he is willing to help TA with that but it has to be a Council effort. He has talked privately with TA but can't talk to Council without bringing it up in public. He asked TA if that would help.

TA said the issues that come up she has brought to Council. She points out items the way she thinks they should be adjusted. TA said the way the Town's staffing levels are set up they have to share a lot of things that would not normally fall under the Town Clerk. Likewise, TA shares a lot of what she does so if she is not here. It is her management style so there is a continuation that goes on if something should happen. That is how she feels; maybe Franklin thinks something needs to be defined.

Franklin said she agreed with TA. It was tough when she was out and it was incredibly stressful and an incredible workload. TA said she has to tell her she is back. For the time when she wasn't 100% it made it difficult when she did come back. TA said that in these situations when someone is out, there is the issue with the person not wanting to give that up when that person comes back. TA said when there is a situation like that she has told Franklin to let her take it back. More involved in the agenda again now because Franklin is buried under the agenda time line. She is back to asking to review the agenda and see what Franklin wants her to write. TA thought we were back to where we were before where we can share. McKnight did not want to bring up when she was feeling poorly and she seems better now and is glad she is feeling better.

Acquaviva said that is exactly why she brought this up before. She did not mean to come off as uncaring about her illness but when she wasn't here a lot and people came in and others had to pick up slack and answer questions that should be handled by TA. It was stressful here with her out and even when she came back. She was concerned.

TA said that is one of the things they monitor for with cancer when she came back was the stress. Her doctor is on top of that. She is back to full speed. She has a lot of time to do a lot of work. TA appreciates that McKnight is willing to help. She would like to review the agenda with each Council member. She offers to do that for the new council as well as the existing. She is here and is a phone call away.

) Acquaviva: nothing

) Mayor: nothing

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

Juliana Hirsch, situation with EELs and Town Hall. Someone has to stay on this. You don't have to buy the property. She has also been sick. Stay on it. That would be perfect. Those acres the EELs have are off our tax rolls. Good night.

Vail, when he was on council. There was discussion on building it as EOC and shelter.

TA said they are also applying for local mitigation grant. She put in for it for the hardening of this building. The windows and shutters. She will be delivering and speaking to it on Thursday. They also have a safety grant and have a contact with someone who will put it in. The whole cost could be reimbursed. The carpet is a health issue.

S. ADJOURNMENT:

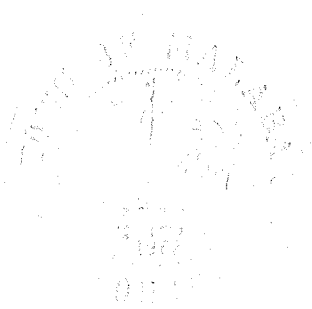
There being no further business to discuss, Chair stated that without objection the meeting was adjourned. The meeting adjourned at 9:50PM

BY: Carl A Beatty
Mayor Carl Beatty

ATTEST BY:

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

Date Approved: 1/07/2013
as corrected



12/3/12
Agenda Item
#3

This letter is written by Liz Ritter of 2860 Orange Ave; Malabar, FL 32950

As I am unable to attend, I would like my letter regarding Mr. Krieger read into the record for the Town Council Meeting of Monday Dec. 3rd, 2012. Thank You

I highly recommend Mr. Krieger's reappointment to the Planning & Zoning Board. Mr. Krieger is an asset to the board, as he brings his historical & professional perspective to the board. He believes in the rights of individual's, but also in what's in the best interest of the Town of Malabar and for all of its residents. He has no personal agenda and tries to foresee any problems that changes may bring. When we board members have varied opinions, it helps cover the variety of situations that may come with the changes we propose. We have to envision what may come in the future, while not causing problems with the rules from the past that are currently in use. As we on P&Z work together we rely on each other's strengths, whether they are toward details, researching, clarifying, envisioning, or challenging each others thought processes for a simple understandable solution. Mr. Krieger is not afraid to ask the hard questions. I feel the current P&Z board works well together; our perspectives may differ, but we all agree to do our best for Malabar's residents.

Some say, "We need new people, with fresh ideas." I say we need old people who understand the town and its residents. From there you can help it evolve into where it needs to go. We are, have been, and hope to remain a 'Rural Residential' Town, which is the reason most of its residents came here. There is nothing 'fresh' about that, but while Malabar's character should remain, it does need to progress into a more complete community for the benefit of the Town and for its residents. Mr. Krieger and the P&Z Board understand this; we want progress that compliments and enhances Malabar's character. Mr. Krieger is a Malabar resident, who is a Malabar business owner, who always strives to do what's best for its residents and the Town.

I hope the Town Council will see the benefit of renewing Mr. Krieger for a member of the Planning and Zoning Board. Thank You. Liz Ritter, current P&Z Board member.

