

MALABAR TOWN COUNCIL REGULAR MEETING

March 7, 2011

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 7:35 pm by Chair Thomas Eschenberg. The prayer and pledge were led by District 5 Council Member Marisa Acquaviva.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE

STEVE RIVET, excused

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated for the record CM Steve Rivet called in and asked to be excused as he was sick with flu.

C. **ADDITIONS/DELETIONS/CHANGES:** Eagle Project is changed from concrete ramps to kiosk

- **PRESENTATIONS:** Carl Beatty – Mayor stated Beatty completed the Institute of Elected Municipal Officials for Elected Municipal Officials held in Gainesville January 21-23, 2011. He successfully completed the 18 hours of training sponsored by the John Scott Daley Florida Institute of Government and the Florida League of Cities. The 3-daycourse consisted of six sessions: Structure and function of Florida cities; Effective council member techniques; Taxes and other sources of revenue; Accounting and budgeting for cities; Intergovernmental challenges in Florida; Understanding Ethics and Sunshine Laws in Florida. Congratulations Carl Beatty

E. **PROCLAMATIONS:** Irish – American Month; Mayor read proclamation and presented to Malabar resident Bill Moroney. Moroney stated the Irish American Parade will be in Old Town in Melbourne on March 19 and he is Grand Marshal. Proclamation recognizing March as the American Red Cross Month was read and Clerk will mail it to organization.

F. **CONSENT AGENDA:**

1. **Approval of Minutes**

Regular Town Council Meeting – 2/7/2011

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: McKnight / White to approve the Consent Agenda as presented. **VOTE:** All Ayes.

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

Chair called speakers who had submitted cards for public comment.

Richard Cameron: has acreage and home at 650 Hall Road north to preserve owned by the Town. His property is on both sides of that vacated right-of-way and goes over to Weber Road. Each piece is 3 acres. Mr. Foley has project under const now oat 2000 Weber Road adjacent to his property and is building a barn to house his horses. Cameron has been having an issue with this and the way things are going there. The Building Official was there and two persons form County Animal Control this morning. He saw them there. There is a very large bull – 2000 – 2020 pounds on this property. With the cow and the bull walking on the berm there is not much berm left for the stormwater control. It has not held up. Barn is almost finished. Cameron's concern is the potential aggressiveness of the bull – he put his horns thru the fence. Would like Council to direct that Foley be told to bring a smaller 2yr old bull in there. He described injury if it just stepped on you or swung its head and hit you. There are five

strands of barbed wire on back fence. It is not a fence that would hold the animal and he would like to have Council to tell BO or Code Enf person before there is a problem with a human. Cameron does not feel animal is suited for where it is at. He has a lot of cows on his problem and if he has a cow. He can move a shed that is in his way. He will leave it in the hands of Council. Other issues with BO and water retention issues that will come back hopefully before the permit is finished.

CM Acquiviva asked if Mr. Cameron talked to animal control. No, and did not see the animal acting up.

Stephan Morris, 2030 Weber Road, is Mr. Foley's neighbor on the south side of Foley. He is the one with the issues with the bull. He has poked his horns thru the fence. He is aggressive. He has done nothing to bull. He called TA and called animal control. They walked fence line and saw where the bull has twisted up fence ball. He can't let granddaughters play with soccer ball, also can't let dog out. He has vendetta, put there for that purpose came 3 days after he spoke with TA. Other people at his house and get reports from people that care for his animals when he is in N Carolina. Can't believe he has to stand here and be told it is an animal control issue. He owns the bull and he is a bully. His daughter and son in law will be building a house and they seem ok. When the project is done, the berm has not been built; the drainage has not been corrected. David sees no problem with following up on berm and drainage. Jeff asked for detail on the flooding. Mr. Morris has pictures showing the flooding. Pond is a little bigger than 1/3 acre. The town eng looked at it and said it was acceptable. He does not think it is. He has had the water issue, the bull issue, the workers staying in a metal storage unit. Problems keep coming up. Appreciates what TA did and he thanked her. He hates to complain but with the bull tearing up the fence. And he was out there when the horns came thru the fence.

Richard Hammond rents a house from Mr. Cameron at 650 Hall Road. The situation was he was cutting grass. There is a feed shed and another shed for animals that stay there. When the bull came around the corner of the barn and came towards him. Came within 6 feet of him. He dropped week eater and ran. He had 550 acre farm; 90% black Angus and he has seen them walk through fences that are double the strength of what is up there now. They get up some speed they came come through about anything. He also has a grandson and he has a bike with a bell and he goes up and down that long driveway. If bull ever got out because he heard the bell he would kill the bull if he killed his grandson. It is dangerous and something has to be done about it.

Chair asked if council wanted to do anything. Do you want Atty to research it and put on next agenda. TA said it is in RR65 which allows it. The barbed wire is per the code. Beyond that she has no enforcement powers. David said you can't make them upgrade the fence. Karl said part of it is allows the right to farm act. Could you put an elephant on it? Perhaps if it grazes. The raising of elephants could be a right to farm act.

Attorney will look at other ways, like moving the feed shed from within the setback. The berm issue has to do with stormwater. That can wait to the last day. Can they restrict the bull off of the drainage berm? Karl did not think we could ban the bull. Carl said they have dedicated BCSO Agricultural Officers. TA said she has called the Ag people at BCSO and they have come and the bull was not doing anything; he was not breaking through fence. Karl said maybe you want to look at changing the future grazing of animals in RR65. McKnight asked if the fence belonged to Foley. Yes.

Mr. Morris said the bull did break out. They also left the gate open and he was wandering out on Weber Road. Mayor said we can legislate against it to mitigate the problem. What can we really do? Except for the berm there isn't any action we can take. Mr. Morris said before Foley had it, Mr. Cameron had cows and horses on it. Now he brought in 150 loads of fill.

Council did not make a decision since it does not appear there is anything that can be done. CM White asked Mr. Morris what he thought Council could do. Mr. Morris said he was there first.

H. STAFF REPORTS:

ATTORNEY: He has been contacted to ask for another meeting between Palm Bay Council and Malabar Council. They want to continue discussions in hopes of resolving the water issue. TA also stated she was contacted by Mr. Feldman to ask to get together. Mayor would like meeting of just the Councils and no Attorneys and no staff. CM McKnight liked the idea of no attorneys and no staff. CM Acquaviva and CM White also would not be opposed to that. No staff and no attorneys. CM Beatty had concerns with the rates. CM White said we are agreeing to have a discussion with Palm Bay. CM McKnight said we can have a executive session first. Attorney Bohne will call for an executive meeting after this joint meeting date is set.

ADMINISTRATOR:

- Condition of Kramer Lane. Will put in FYI

CLERK:

- The Space Coast League of Cities (SCLC) meeting for March is hosted by Cocoa and will be at the Cocoa Civic Center.

I. PUBLIC HEARINGS:

Quasi-judicial land use issue and was legally advertised for public hearings before the P&Z Board and Council for 7:30 PM *or as soon thereafter as possible*.

- 2. Site Plan and Conditional Use Permit Request** for a 48-unit Assisted Living Facility to be known as Sunrise Centre Assisted Living Facility, 725 Malabar Road; Applicant's Agent Mr. Ben Elliot, Plata Engineering, Inc.

Exhibit: Agenda Report No. 2

Recommendation: Action to Council

Mayor explained that issue involving land use are considered quasi –judicial and follow a certain process. He then asked for the applicant to present. After applicant he will open the Public Hearing. Then close Public Hearing and allow Council to discuss. He then will ask for motion:

Donald Foley, Painted Acres. Feels very fortunate they have selected Malabar for their first ALF. They came to us. They are asking for approval. The original plan was master planned. The front parcel designed for medical ofc building. They sized the lift station for the entire project, and the stormwater was designed for the entire project. This will be like a condo association with shared facilities. The Berri Patch is tax exempt. When the project is divided, they will be paying Ad Valorem taxes.

Mr. Elliott, the project is the final phase of the overall 5-acre parcel. He gave an overview: On Nov 24 2010 submitted to staff and met with staff for a pre-ap mtg on Dec 13. Submitted under group home per the town planner. Clerk asked for additional info re parking due to questions about parking. Subsequent discussions with staff said parking was adequate. P&Z meeting on Jan 26. The vote was unanimous. Correction: vote was 4 to 1. Acquaviva asked about the parking spaces for the residents. The parking does meet those requirements. She asked if the residents will be able to keep their cars. Based on industry standards only 5% will have cars. McKnight asked about visitors to ALF. If you have 96 residents and a third have their own cars how do have enough spaces. If you have two separate businesses and there would be parking for each business. The stipulation will run with the property in perpetuity. Mr. Elliott stated the criteria for parking was met. White said they have met all the requirements in our Code. Acquaviva is just trying to figure out the parking. White asked if they provided the as-built from St. Johns. Yes.

Chair stated to applicant that they were looking for a conditional use permit and there is nothing in our code for ALF. One is group and one is nursing. You want conditional use under a group home. By our definition a group home is a facility licensed under the state DFS. You don't qualify under our code.

Frank Plata, Project Eng and managing partner stated the AHCA does licensing for congregate care. This facility is a complete separate operation from nursing. Mr. Elliott stated it is under the same licensing but the difference being the nursing homes are basically for bed ridden residents. This is for infirm. The driving part – only 5% will have cars. He was the eng of record for the group home for the project on US1. We obtained approval under the same criteria. Mayor doesn't have a problem with the

project he has problem with our code. How can council review criteria when there is nothing in the code to give them the criteria to review it by.

Marisa said sometimes a floor may be changed to nursing. Frank said they are licensed under one type or level and you can't transfer to another type. It is very limited. Regarding the parking, they used the national engineering criteria. They used the count based on beds and staff and that is what they are providing right now. Mayor said he did not think the US 1 project got approved.

Mayor asked about shared parking with Berri Patch. Will that go the other way also? They are two separate projects. He mentioned that the parking at Berri Patch at noon to pick up pre-k in the back building was over flowing into the vacant lot. You are going to use that particular land. That is why the reciprocal parking would be done. Each one stands on its own; they each have 2.5 acre site. The reference to 1.5 acre is the land available is for the building pad.

This is going to be done like a condo assc – own the buildings and the parking. The drainage will be governed by a separate agreement. Splitting the retention area for maintenance. The actual way it is laid out it is 50 - 50 percent. Mayor said it will be a subdivision. Frank Plata said yes the property will be split. There will not be a separate driveway. The retention was done all at once just like the driveway. The retention and the responsibilities will be transferred.

To make it short there is a lot of questions with the drainage and the permit is for the 5 acres. Acquaviva asked if they will pay taxes on this project. Yes, it will be a separate entity and will be taxed. Frank Plata said the existing fire hydrants on the east side were placed there and they are not technically to code and they will be relocated and become part of the three requirements. The existing one there will have to be retrofitted. In the plans submitted it will be addressed.

Acquaviva asked about impact fees. Franklin explained the will have to pay utility impact fees; both the pass through ones for Palm Bay and Malabar water and sewer impact fees. The transportation impact fee is collected by county and there is a moratorium on that. She is not sure of the status pm the other impact fees collected by the County. We just have to get a copy of the receipt showing they were paid.

Carl Beatty said the sheet shows existing dry retention. The 2nd page says do not disturb. The construction has already taken place. It says do not disturb. Plata explained that the work done will not be disturbed. They have no intention to disturb anything from the 2001 portion of the project. The legal part of who maintains what is the area. How do we relate to the property. The north 50 feet is the way it is going to be. It is preexisting. If they do, they will be in violation of the Town and the St. Johns. The easement document would be from 2001 project. That is preexisting. McKnight said the St. Johns permit is expired. Plata explained that once the construction is done then it goes to operating permit. They have 30 days after transfer of ownership.

Foley stated that Beatty question about the easement and he gave the Town a 15' easement. The pipes are for irrigation and are in the easement. It is a recorded easement. Beatty said the tap is by the hydrant and is within the 15-foot easement area.

Chair asked staff for comments. Both Engineer Morris Smith and Building Official Roger Cloutier said the project met all the Code criteria. Engineer Morris Smith said the intent is there to meet our code. Get explicit, when you are doing reviews, 1-7.2, Karl said there are many different types of housing for housing groups. Malabar only provides for nursing home in the parking. This ALF falls within the other facility section. That applies to the parking only. The Mayor's point is if you look at the other CUP requirements and it specifies setbacks.

Public Hearing open

Martin Lamb, working in advisory position on interior design. High quality project with reasonable cost. He doesn't have anything to do with the foot print or site plan. It could be a huge benefit to the employment of the area. And also wants to support this higher quality project.

Pat Reilly, 1985 Howell Lane, Vice-Chair of P&Z Board, stated that the OI Zoning in District Provisions is what we use for the setbacks and the requirement. P&Z main concern was parking and have the attorney write the conditional use. At the P&Z board asked if the property could be split and they said no and now he is hearing that it can be split. He thought about the density of the project after the meeting. OI does not allow residents. This is OI zoning. He also wanted to mention the licensing requirement states the number of staff required based on resident count. At P&Z Board presentation they said there would only be 2 or 3 staff and he wants Council to challenge. The project is too intense – there is not much area for people to go. The original site plan from 2001 showed an 18K sf building and this one shows a 20k

Bud Ryan, Howell Lane, P&Z Board, stated his concern at P&Z was the evacuation and his question was the emergency generator and he asked if it would support the elevator and they said no.

Wayne Abare, Rocky Point Road, Alternate on P&Z, the density allowable. The Paladin Condo project was going to put in development with six units per acre and this is going to have 96 persons (48 units) on 1.5 acres. They are proposing 48 units, with 36 parking spacing. They said they would have 5 or 6 spaces for staff. At holidays and weekends there would be a lot of people converging on the place.

Bob Wilbur, 2500 Glatter Road, P&Z Chair. The P&Z Board asked a lot of questions, and one of them was what age – 55 and up. He asked if it would be staged and they explained the three stages. They said in the 55-65 age group 1/3 would be driving. Later in presentation it then went down to only 5% of the residents would have cars.

Chair Closed the public hearing.

Chair asked Council to make disclosures. No disclosures from any members.

Chair recommended tabling this until they do a code change. David White thought that was a good idea. Jeff McKnight also had some concerns.

MOTION: White / McKnight to table until code is developed for this kind of facility.

Mr. Frank Plata asked the time period - 60 days minimum. What they have put together is for this type of facility and they do not use half of the parking. It is only as good as the operator. The exterior that they have done is just. On any other site the restrictions are based on the zoning. Also the building went from a 18K building plus a 7K building for total of 25K and was replaced by one 21K building. Plata said when you do a nursing home it is only a requirement for 2 acres; they have 2.5 acres. Plata said there are no short cuts here. They have the project on US 1 and it is too expensive. Follow the same criteria. The difference is the zoning. This one is adjacent to hospital. McKnight also said he has seen the problem with the 20-30 cars lined up at noon at Berri Patch and they park on the dirt lot and you are sharing the driveway. You can't combine the projects and separate the projects when it is convenient.

VOTE: All Ayes.

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

3.a. Recommendation from Park & Recreation Board – Fire Ring Eagle Project

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Council watched the Power point presentation from Eagle Scout candidate Conner Mahoney on his project to construct a fire ring adjacent to the flag pole at the Malabar Community Park. Presentation is in the agenda package and includes estimate of costs. Mahoney stated if Town can't fund entire

project he can do fund raiser for part of expense. Also, material costs may be reduced as many suppliers give discounts to Scouts for their projects.

MOTION: Acquaviva / Beatty to approve Eagle Scout Candidate Conner Mahoney proposed project for a permanent fire ring with signage at Malabar Community Park.

Discussion. Price includes wood to build benches like the ones at the Sand Hill trail Head. McKnight asked about the sand in his proposal and said he can donate sand from the river front. Conner said you want it to drain properly. They will sink the benches and not use concrete. Acquaviva asked about allowing fires by public. Fire Chief stated there are no open fires allowed in the county at this time. TA said it is a public park and if there is a fire ring people will use it. McKnight said no one is allowed in park after dark and theoretically, this will only be for the scouts. Eagle Scout Candidate Conner Mahoney said he wanted to build the fire ring for all of citizens of Malabar.

CM Beatty said there is an existing fire ring at trail head and have had no issues. He said in the past he knew Troop 37 had come in to the park in the past and dug the hole and had their fires and then buried them. They had their cross over ceremonies at the Malabar Community Park at this location. Any concerns can be dealt with. TA said the park is rented out to general public. Beatty said we haven't had a problem with fire ring overnight.

Bob Wilbur said the original fire rings were built for the placement at Malabar Community Park and the Sand Hill Trailhead. These are perfect locations. Just add sign stating that fires are by permission only. Wilbur stated the Scouts used the fire ring at the Malabar Community Park for their rituals until a town contractor took the fire ring out without direction from Council.

Acquaviva directs \$50.00 from her discretionary fund to be used towards cost of construction. Mayor makes a similar allocation of \$50.00 from his discretionary funds. The remaining cost will come from the developer recreational fee fund.

VOTE: All Ayes.

3.b. Recommendations from Park Board – Kiosk Eagle Project

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Eagle Scout Candidate Kevin Pagliarulo wants to build a kiosk for the Malabar Community Park. His previous project was for concrete ramps at the bridge over the lake, but after meeting with the Building Official he learned that there was already a ramp there and the Town Administrator stated the kiosk had been requested by many park users.

Eagle Scout Candidate Kevin Pagliarulo showed the Power Point presentation of the type of kiosk which would be similar to the one at Disc Golf Park. He went over the details of the construction. He suggested you can put info on the park and maybe a map of the area. He didn't know if the Council would pay for it. Scouts can get discounts, so the proposed costs could be reduced. Mr. Don Crowell and his dad, Mr. Pagliarulo are both carpenters and have built similar projects.

Mayor asked where it would be located – inside the park area. TA said it would be in the front area after you pull off Malabar Road safely and before you drive all the way back to the park. McKnight asked for the estimation of costs. Kevin said \$350.00. TA said the idea is to have the kiosks all uniform at all locations. Kevin said the one at the Sand Hill Trailhead was done by a business and his will be the same but the costs are only for materials.

MOTION: Beatty / Acquaviva to approve the kiosk at Malabar Community Park.

Discussion. Acquaviva directs \$50.00 from her discretionary fund to be used towards cost of construction. Mayor makes a similar allocation of \$50.00 from his discretionary funds. The remaining cost will come from the developer recreational fee fund.

Acquaviva stated she thinks it is amazing and great that so many scouts have achieved Eagle rank from Malabar. She knows many of them and knows it is a rare thing. Kevin stated that only 2% of boy scouts become eagle scouts. In Troop 37 the percentage is over 50%.

CM Beatty thought the kiosk at Malabar Community Park should be 4 x 8 feet and be in the center of the boulevard. Chair asked Beatty to allow staff to provide direction to allow it to mimic the kiosk at the Golf Disc Park.

VOTE: All Ayes.

K. ACTIONS ITEMS:

ORDINANCE: First Reading – 0

RESOLUTIONS: 4

4. Support Pension Reform (Reso 77-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING POLICE OFFICER AND FIRE FIGHTER PENSION PLAN REFORMS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

MOTION: Acquaviva / McKnight to approve Reso 77-2011 regarding supporting pension reforms.

Discussion: none

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

MISCELLANEOUS:

5. Consider Purchase of Old School House, 1490 Marie Street

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Chair has 2 cards – Maryann Marsh, 2170 Arnold Lane, Malabar, said the Council discussed the proposed ALF for a long period. She would like to have the same amount of discussion on the old school house. She did work as wedding projects and it is a lot of work. You are thinking big and wants to help and there are many many concerns and it is going to cost a lot of money. It is a wonderful building. Doesn't know if it is the right time. Go big, why not get the property next door. She is available to help review. She has concerns.

Bud Ryan, Howell Lane, the report that was done was outstanding. His comments are not ready, will be ready at next meeting. The glaring omission is that there is nothing negative on this project. His negatives will be on the next council agenda. Don't make any decisions until he can make his presentation. Some are the cost and some are suitability. In the best interest of the citizens of Malabar. He will present at next mtg. Don't make decision tonight.

Bob Wilbur, Glatter, is in favor of the purchase of the school house. The town is in desperate need of a community center. It is there and already functioning. They did a business plan and they believe it can be profitable. The town has many other options and pokers in the fire and can put them all together. Good purchase adjacent to trail head. It will revitalize the area. It can attract art studios. The timing is perfect; the market values are down now. If we don't act, we could lose this. Having a facility where we can have a farmers market; we have many hobby farms. Encouraged Council to look at this with an open mind.

Wayne Abare, 2530 Rocky Pt Road. It is a neat building but he has concerns, the lead paint and the asbestos mitigation. Were they done satisfactorily? The point is if it is not done properly then it could be an issue if they try to resale. The current owner got rid of termites. Is there a transferable termite bond. Will there be an inspection by a professional. They can come up with a whole list of things. The other thing is the bank may have other requirements also. Example he gave was the re-do the electric

- he said his daughter bought a home this old and could not get insurance. The AC is another issue. Commercial buildings have huge AC. This building was not designed for 50-60 people and it is not going to work. You would have to put an elevator in to reach 2nd floor. Those are the things he would be concerned about.

Bud Ryan, Howell Lane, P&Z Board said his concerns in addition to heating and AC are the revenues proposed are not realistic. The kitchen is not adequately sized for any kind of use. Not ADA and the upstairs is not finished. Building new is a viable option. He strongly suggested they get a professional appraisal. It was well done presentation, but they need to see the other side. He can have a presentation on the negative side by next meeting. He is not prepared tonight. He hopes they table it.

Mia Crews, 2480 Johnston Ave, was on the committee, they were not an advisory committee, they did not look on the negative, they looked at everything. The issue before the council, do you want it, then you negotiate. When you purchase a property, you have to have inspections. This is what every person goes through whether it is commercial or residential. You have to know, do you want to preserve the only historic structure left. As for second floor access, elevator, grants are available. 1.6mil dollars not counting the land to build that building in today's dollars. Do you want to preserve Malabar's history?

Chair stated the Teen Council liked it and they recommended unanimously to purchase.

MOTION: Beatty / _____ until next agenda to come up with the negatives to this purchase.

Marisa wants to table.

Start verbatim:

Mayor passed the gavel to the Vice-Chair Marisa Acquaviva. She asked why he is doing this. He stated he wants to make a motion since Beatty's never got seconded.

Mayor: I move that the Council direct the Town Administrator to negotiate with the owner of the old school house on terms and conditions and bring a proposal back to the Council.

Mayor: Is there a second?

Acquaviva: Is there a second? Is there a second?

McKnight: I will second it. But with a caveat; with another option I want for her to negotiate is a lease type option; a lease for one year with an option to buy. I am on the fence with this thing; it scares me and I have concerns and I think that one of the safest ways for the Town, and I've talked to both sides of it virulently and I; my head tells me don't spend any money because I'm a conservative but my heart tells me that this is their last piece of property; we need to save it. And I am truly on the fence and have concerns about it but I think if we lease this property for a year with an option to buy at the end of that year that gives an opportunity to discover problems, to discover opportunities; discover whether it's a fit.

Mayor: Ok, I made the motion; that's acceptable. **Acquaviva:** Are you seconding that **McKnight:** I tell you with a caveat. **Mayor:** That's acceptable to include that in the motion. **Acquaviva:** So can we discuss? **McKnight:** If that's okay with you since you made the original motion.

Mayor: Yes; Marisa he wants to modify the original motion and add something on. **Acquaviva:** Okay

Mayor: Since I was the original motion maker, I accepted what he offered. **Bohne:** it's now been modified. **Acquaviva:** Now it's up for discussion? **Bohne:** it's up for discussion. **Mayor:** it's still under discussion.

Franklin: do you want me to read it back; what I have to make sure I've captured it right?

Mayor: yes, including what Jeff said

Franklin: MOTION: Mayor made the motion and Jeff seconded it to direct the Town Administrator to negotiate with the owner of the old school house for a lease option for one year and bring a proposal back to Council. **Mayor:** well also terms and conditions for purchase; terms and conditions for purchase along with what Jeff recommended. In other words, the Administrator would talk to the owners and say if we purchase; this. Also, would you be willing; this which is the lease option. It will all be brought back to Council. **Acquaviva:** Right

Mayor: for Council to decide which way they want to go if both; the other option is acceptable to the owner, which you don't know at this time.

Wilbanks: are you expecting as part of this that I would find out the answers to all these things that, like different people; I made notes of the different issues that were brought up. **Mayor:** that was brought up tonight? No. **Wilbanks:** the negatives. Do you want those presented to with the.. **Mayor:** No. **Wilbanks:** I mean, as an example, **Mayor:** yeah, well. **Wilbanks:** as an example, money for state historical grants as if there State designated. This building is not State designated; it's County designated. So do you want to know what it would take to get it State designated?

Mayor: Anything that you; any information that you could easily get and bring to Council I would think would be good. Also, especially the points that Wayne brought up; I thought those were all excellent.

Acquaviva: okay, I have a question that you brought up if this is up for discussion, which I believe it is

Mayor: we are in discussion

Acquaviva: we are in discussion mode. You bring up we had 6 weeks to; I mean, to be bullied into a decision tonight when we had true concerns here by Towns people and we've had concerns. We haven't had a chance to really; yeah we got to have it all presented to us in a positive light. I understand we had a great search committee. Just as we gave all that to the nursing home, why, I mean we didn't just approve it because it was a public hearing. There was, so we tabled it just to get our bearings to listen to some other sides of it. I don't believe that we had all this time and it's now like; I kind of take offense to that in that sense. Like you said, my heart says yeah I would love that little school house and whatever. But there are major concerns with it and that doesn't mean that because we had that presentation; I heard some compelling arguments tonight and that's all I'm saying.

Mayor: Well let me put it this way. This will come back in 2 weeks

Acquaviva: Okay. **Mayor:** this will come back in 2 weeks. **Acquaviva:** So the reason for you doing this. **Mayor:** to beat all around again. Now during those 2 weeks, you ought to be able to determine in your own mind if this and this and this is true, I'm for it; if this and this and this is true, then I'm against it. **Acquaviva:** So why aren't we tabling it? **Mayor:** You ought to be able to determine that in 2 weeks

Acquaviva: yeah but why. **Mayor:** based on what comes back because maybe you'll like that lease/purchase option. **Acquaviva:** I believe he was trying to table it is what; and I actually brought up

Mayor: he didn't make a motion to table it. **Acquaviva:** I brought it up but anyway to say that we didn't think about this for 6 weeks and we; yeah I heard a lot of it and I understand this committee has done great work and nobody is undermining that. I wouldn't take it personally and I think a little bit of this is because, just as I would love a nursing home in my town, there are a lot of things that we have to be consider for people who live in Malabar and what they want as well. So I'm a little miffed by this

Mayor: let me ask you this. First off, I'm not pushing for or against this by the way. What I'm pushing for is a decision. Okay?

Acquaviva: okay well I didn't make a decision tonight on a nursing home because it was very thoughtful and I needed some questions answered.

Mayor: this is not a nursing home. **Acquaviva:** well I had a lot of time to read it and

Mayor: this is not the same thing. **Acquaviva:** well it's purchasing and spending a lot of money.

Mayor: no; it's totally different subject. **McKnight:** we're not approving anything tonight.

Mayor: you are not approving anything tonight; all you're really

Acquaviva: but to table it to get more information is not saying that we didn't think about it for 6 weeks

Mayor: how much information would you need to make a decision?

Acquaviva: I think some of the information that was brought up were major concerns that were brought up tonight that I wasn't able to sit with my fellow Council people and discuss and talk about possibly tabling it. That's all I'm saying. That's my concern with it. We had an unbelievably great presentation but there were some major concerns brought up about it.

Mayor: even if you approve; vote to approve my motion tonight, you'll still get 2 more weeks to go through all those concerns and discuss them all over at the next meeting. **Acquaviva:** what was the difference with it tabling? **Mayor:** because we're getting some more information in the mean time.

McKnight: I agree with Mr. Beatty. **Wilbanks:** we need to focus on.. **McKnight:** and I agree with Mr. Ryan that there are some concerns that need to be brought out into the open but there's no reason they can't be discussed in 2 weeks. **Mayor:** where are you going to get the information? Assuming this motion passes, **Acquaviva:** well if it's being presented to us. **Mayor:** during the next 2 weeks, how are

you going to resolve these concerns over the next 2 weeks? **Wilbanks:** Mr. Mayor, we need a motion to extend. **Acquaviva:** Would that be you or me? **Mayor:** it's you; just ask for a motion to extend. **Wilbanks:** Vice-Mayor will you get a motion to extend? **Acquaviva:** I would need a motion; we need a motion to extend; it's 11:00 **Mayor:** 11:30; **I move we extend to 11:30.** We can return before. **Acquaviva:** Is there a second on 11:30? **McKnight:** **I will second it.** **Franklin:** who made the motion? **Acquaviva:** the Mayor made the motion to go to 11:30. **Mayor:** we have to call for the vote. **Acquaviva:** are we done discussing. **Bohne:** on the motion to extend. **Acquaviva:** I call second to extend. **Mayor:** call for the motion to extend. **Acquaviva:** all in favor? **All Ayes.** It's my first time with the gavel and I wasn't ready for this. I talk with my hands; I'm Italian. This could be flinging; I'm tired. **Wilbanks:** staff, if you want to go; go. **Mayor:** I call for the question on the motion **Franklin:** somebody filled out a speaker's card. **Acquaviva:** and she didn't have her 3 minutes **Mayor:** go ahead, you're the Chair. **Acquaviva:** yes please come up and speak **Maryann Marsh:** I would be more than happy to take the next 2 weeks and pull out 3 ½ years of the Grand Affair, which is exactly what we paid electric every month for our functions; plumbing every month for our functions; cleaning every month for our functions so at least on that end of the spectrum where the positive is coming in for the building of how much money you're going to make every month. This will give you an opportunity to find out how much electric you're going to use every month on a regular basis for four functions a month and for whatever else you're going to be doing during the week. This should give you a much more clear idea of what those functions are going to cost you every month and how much money you're going to be bringing in and taking out. Over 3 ½ years at the Port Malabar Country Club and I will cut it in half. We actually had a facility for 200 people. They're saying this facility is for 100 people; this gives you a much more open clear objective to that end of what we want to do with the building. And we can also put together a committee for the other side of it. I sure we can do that within the next two weeks so that we can at least we'll get every avenue of the other side of the coin. I would; I'm sure we can get some people to do that if we table and give us 2 weeks to be able to do that. **Acquaviva:** any questions? Mrs. Crews? **Mia Crews:** I would just like to invite the two members who did not see the presentation to come and actually see it and hear it. Some called, which was very nice and someone else, didn't call about it. I think that's good. The public should come to. We did have 2 public notices for people to come and see the presentation and I want that to be on the record. The other thing I would like to address to the attorney. People do not understand what table means in Robert's Rules of Order. Table means that you put it aside and you don't bring it back because you have to have the time set to bring it back or it just goes away. Table is used as a ploy to make things go away. Doing what you're doing here as far as bringing it back to another Council is the proper way to do it. And the proper way you're doing it now; discussing it, I would like to commend you for putting a motion on the floor and then discussing it like you're supposed to do according to our charter and Robert's Rules of Order. So I'd like something; I'd like something from the attorney. Could you please explain this to the Council. They don't seem to understand what tabling means. It's to put things aside and never bring them back. Yes you have to bring it back. When you said time for 2 weeks. **Bohne:** Madam Chair, I would like to respond if Council would like me to. **Acquaviva:** I would like you to explain what tabling is; I've been turned down with that before when I brought it up. **Bohne:** You can move to postpone something indefinitely and that kills it forever; it's gone. If you table something you don't set it for a time certain or for a time to come back, it'll stay out there in limbo until someone removes it from the table. But if it's removed from the table and not on the agenda then you have the whole definition. So it's very important when you table something to make sure you table it to a time certain. **Mia Crews:** Thank you. **Bohne:** but that's something Council did on this particular issue. **Wilbanks:** you didn't table it. **Bohne:** no. **Acquaviva:** no. **Mia Crews:** he asked to have it tabled. **Bohne:** the motion before Council is... **Acquaviva:** he made a motion; he said it was not to table. **Bohne:** I will not repeat it; it's too long. But it's not a motion to table. **Acquaviva:** okay any other discussion items for this. Call for the question. **Mayor:** I'll request that the Clerk read the motion again just so we're clear on it. **Acquaviva:** yeah, could we hear what the motion is that we're going to vote on. **Franklin:** **MOTION: Mayor made the motion and McKnight seconded it to direct the TA to negotiate with the owners of the old school house for a lease option of one year and bring a proposal back to Council for terms and conditions for purchase.**

Mayor: that sounds pretty good

Acquaviva: so will you call for the question

Mayor: Bonnie, you have the idea. You would find out if the owner would be willing to go the lease purchase route; that would be one option and the other option would be the purchase option. You would probably kind of negotiate the price and any inspections that would take place that would affect the price or the purchase; something like that. Sort of a general understanding that you could bring back to Council. Can you do that? No problem.

Wilbanks: yeah, are we not going to do the negatives like we talked about

Acquaviva: Mr. Carl Beatty

Mayor: that's not part of the motion but you'd want to do the negatives too.

Wilbanks: should we make it a part of the motion?

Mayor: No just do it.

Bohne: the issues that they are bringing up; a lot of this can be addressed in the due diligence clause. You are going to have to perform your due diligence for termites, ADA, asbestos. That's all covered; I'm not down-playing the importance of that stuff but cover that in your due diligence clause to make sure that it complies with all government regulations and stuff like that. So, again, it's not like you're buying it, you're just starting the process and if they would agree with a lease with an option; the option would of purchase contain a due diligence clause or if they don't want an option to purchase they want a straight out purchase, it would contain a due diligence clause. But I still think it's important to find out what those negatives are in the interim.

Acquaviva: right

McKnight: I agree; it's just entertaining the idea while we are researching further.

Acquaviva: exactly.

Mayor: that's it; that's all it is.

Acquaviva: Do you want to call

Wilbanks: We will do a consensus vote: All Ayes

Wilbanks: anybody opposed?

Acquaviva: Am I allowed to vote?

Bohne: yes you can still vote

Mayor: I can't vote

Franklin: you say "any opposed"

Acquaviva: any opposed? I didn't hear your Aye

White: I was telling her; I was recommending to her what the next line is

Acquaviva: there is a saturation point; I'm sorry, I've been here since 6:30.

Mayor: would you like to give the gavel back?

Acquaviva: yes I would like to pass the gavel back to the Chair

6. Set Joint Workshop Date for 5-Year Plan

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Mayor proposed March 23, 2011, the second P&Z Board meeting of the month. TA asked for more time as she will be busy with school house issue. Mayor suggested the 1st P&Z Board meeting in April, April 13, 2011. OK with Council.

L. DISCUSSION ITEMS:

M. MAYOR AND COUNCIL REPORTS:

1) Beatty – he attempted to salvage to the old mission church and lost out. And sold the old school house for 35.00 and they were tearing it down. There have been some bad decisions. He will put his concerns in writing.

2) White – no

) Rivet – excused

3) McKnight – asked about soccer fields at Huggins. Would town get involved if MMA started cutting up the abandoned boats. If we did it could we get permission from town and assistance from WM. Not pressing.

- 4) Acquaviva – comment – she wasn't one of the one that saw the original presentation. And she called Mayor Crews and came to town hall and reviewed entire presentation with staff.
- 5) Mayor – week from tomorrow is teen council. If they pass it, it will go to Governor, and State Legislature to pass a resolution.

N. PUBLIC – speaker card required

O. ADJOURNMENT

There being no further business to discuss, **MOTION:** McKnight / Acquaviva to adjourn this meeting.
VOTE: All Ayes. The meeting adjourned at 11:30PM.

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

Date Approved: 3/21/2011