

MALABAR TOWN COUNCIL REGULAR MEETING

May 16, 2011

7:30 PM

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. Mayor announced there was no quorum at 7:45PM. McKnight is out of town on business; White is helping his mother with medical related issues. Beatty is not present and has not answered the calls to him. Chair asked CM Rivet and Acquaviva if they wanted to have a general public meeting to discuss some of the items. If is proper, he asked attorney. They can take no action and have no votes. Chair said if Beatty arrived they could commence with regular meeting. Acquaviva agreed to the discussion and did propose adding an action item. Mayor said he also was going to mention that. Acquaviva stated it was unfair to those who were here on time to have to be delayed by late start. Mayor stated in reference to 1.d. Public Records policy, he had question about 4.a. and thought there should be a definition for extensive request. Franklin suggested a \$20.00 limit could be inserted there. If a request came in and was estimated to exceed \$20.00 then a deposit shall be required; that would be a lot of copies at .10 a copy. We collect that now using the F.S. Having this policy will provide the staff, at Town Hall and Fire Dept., the process for handling public records. It would also allow for collecting for media such as CDs and cassette tapes. We don't collect now because of lack of policy. We do not charge for scanned documents or faxed documents.

Chair then asked if BCSO Lt. Scott M had anything to report. (Franklin ask him on Tues about alleged pot bust at Lundy's old house for grow house on Sat – (pot 6' high according to Wilbur); nothing in paper or on TV.

Acquaviva asked about accident at Corey and Malabar Roads and Palm Bay police being first on scene; she understands that is procedure, correct. Yes. Then same day she saw a Palm Bay police west bound stop a car in front of Malabar Community Park. Could they issue a ticket? Lt said they could pursue into adjacent municipality. If she has question in such a case, she should call Palm Bay police. As he stated at last meeting, Council can call Palm Bay police and ask about such stops. Acquaviva stated Franklin has done that in past for Council.

Chair said regarding K.3., Fire Inspection Ordinance on agenda, there has been much discussion on this at the last meeting. The revised ordinance on this agenda does not provide for authorization of apartments private living quarters. This ordinance does not authorize fire inspections in rental apartments or multifamily units, except for common areas. Mayor pointed out there is a proposed project for assisted living facility that will not have any fire inspection because they would not be authorized in the apartments. Franklin stated to Chair for clarification, those would not be apartments; they are units of a facility. Chief Covey stated we should inspect all units of rental apartments and quoted from a recent news article where people died in an apartment fire in IL due to one apartment not having a smoke alarm.

At this time, 8:00PM, CM Carl Beatty arrived. Stated he had fallen asleep and the multiple calls woke him and he rushed here. Acquaviva asked if he was ok to go on with meeting. Yes. Mayor stated they could proceed with regular meeting.

A. CALL TO ORDER:

The meeting was called to order at 8:03 pm by Mayor. The prayer and pledge were led by Council Member District 3 Steve Rivet.

CM Rivet called a Point of Order to Chair. The Malabar requirement for a quorum is three Council Members. He asked Chair if it was for three sober members; Beatty appears to be inebriated. Chair asked Beatty to respond. Beatty said he had no response.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN ENGINEER

TOWN CLERK/TREASURER:

TOM ESCHENBERG

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE, excused

STEVE RIVET

JEFF MCKNIGHT, excused

BONILYN WILBANKS

KARL BOHNE

MORRIS SMITH

DEBBY FRANKLIN

Also present were Chief Covey and PW Mgr Tom Miliore

C. ADDITIONS/DELETIONS/CHANGES: CM Acquaviva wanted to add resolution to support Palm Bay request for reduced speed on US1 within Palm Bay city limits. It is added as Item 6.5.

Chair stated Council Members saw the email from CM McKnight asking to pull K. 3 and 4. from meeting and put on for June 6. Mayor supports pulling K. 3. until next meeting; he leaves K.4. to Council to decide. He did discuss it with Attorney; it is first reading. CM McKnight had said it was an important and controversial item. Acquaviva said the ordinance proposed on the agenda is from P&Z; drafted by attorney and reviewed by P&Z twice and included their recommendations. We are correcting something that needed correcting. She wants to leave it on the agenda. Rivet said it is important enough to have all five council members. Pulling it or move to discussion. Pull it.

D. PRESENTATIONS:

Mayor Presented Civics Appreciation Awards to Bill and Louise Arnaukas and Juliana Hirsch. Franklin took pictures. (Probably need to retake pix)

E. PROCLAMATIONS:

F. CONSENT AGENDA CONSENT AGENDA - To Be Approved as a Group with a Roll Call Vote on All Items (Any 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)

Chair wanted 1.d. pulled for discussion. Beatty wanted to pull 1.c.

1.a. Approval of Minutes

Regular Town Council Meeting – 05/02/2011

Exhibit: Agenda Report No. 1

Corrections: none.

1.b. Budget Adjustment (Reso 82-2011)

Mayor read by title only:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2010-2011; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.b.

Recommendation: Request Action

MOTION: Rivet / Acquaviva to approve the consent agenda as amended (minutes and reso 82-2011).

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

Pulled from consent agenda:

1.c. Approve Bid/Contractor for LaCourt Resurfacing (Reso 83-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF BID FROM GOODSON PAVING, INC., FOR LACOURT LANE RESURFACING PROJECT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.c.

Recommendation: Request Action

Beatty wanted to ask some questions. Specs call for pulling out material at potholes and redoing. Are you aware of what is there? Town Engineer Morris Smith said yes and the bidders are; 4" of cold patch, 4" of base. Beatty said there is appx 3" or more of actual bed rock. Engineer is aware of that, he did profiles for specs. That was put in over and above. Then there are the two turnaround areas; the approaches on each end; he means aprons. There is no marl under those. They were paved over dirt. Beatty wants those portions to be brought up to the other part of the road. Town Engineer stated we could write that up as an addendum to the contract if necessary. TA said now you are changing the scope of work on something that has already been bid. Engineer Smith stated Town could do a change order to the contract to be awarded but it would increase everyone's bid proportionately. TA asked Attorney if we can approve the bid and then do a change order. Town Engineer Morris Smith stated after conferring with PW Mgr Tom Miliore that the recent pipe replacements at each end of LaCourt did upgrade the base under that area and finished with the cold patch and the asphalt. What was done previously is what we did on those projects. Mayor asked Beatty if he was satisfied. Beatty didn't want us to have to pay for 8" on a pot whole repair. TA said the scope of work was prepared by the Town Engineer. Beatty had personal information because he did the work. Acquaviva asked when he did it. Beatty couldn't remember.

MOTION: Rivet / Acquaviva to approve Reso 83-2011 selecting Goodson Paving.

VOTE: Beatty, Nay; White, excused 1) Rivet, Aye; McKnight, excused; Acquaviva, Aye. Motion carried 2 to 1.

Pulled from consent agenda:

1.d. Approve Public Records Policy (Reso 84-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR PUBLIC RECORDS POLICY; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.d.

Recommendation: Request Action

Mayor again referenced pg 6, for 4.a. change to read if a request is expected to exceed \$20.00 And b. Fees collected in BD and Utility shall be "recorded" instead of deposited. Beatty said he went through it and didn't see where it provided for copies requested by Council and Boards were exempt. Doesn't need clarification; if it pertains to town business not charge will be required. If it a separate public records request not related to town business, then fee will apply. TA said Franklin has gone out of her way to provide records requests at limited costs. If scanned or faxed not charge.

MOTION: Rivet / Acquaviva to approve Resolution 84-2011 with changes as specified earlier.

VOTE: Beatty, Nay; White, excused; Rivet, Aye; McKnight, excused; 1)Acquaviva, Aye. Motion carried 2 to 1.

G. PUBLIC COMMENTS: General Items not related to agenda items (Speaker Card Required)
Speaker card: Julie Kinzer, is a new resident; moved in this week. She lived in Melb Bch for 20 years. Bought property sight unseen and fell in love with it after two days. She has encountered such gracious people; from Clerk's office to Building Department to neighbors and fellow residents. It is dream come true. She has also sat on Board for Melb Beach and said Malabar meetings are more sophisticated meetings. She looks forward to coming to more. She is happy to be here. Mayor asked if she knew Mayor Stacy; yes. He will tell him about his former resident liking Malabar. She has cleaned up her new property and people are stopping to comment. CM Acquaviva thanked her and said it is nice to hear thanks. Ms. Kinzer is a nurse/paramedic and knows and understands what a good word does.

H. STAFF REPORTS:

ATTORNEY: hearing scheduled for having surcharges deposited. Hearing is set for August.

ADMINISTRATOR:

- She wanted to recognize Chief and FD for recent event at Malabar Community Park. Scouts were set to stay there for a crossover ceremony and got rained out. She thanked FD for helping them finish by opening up their bays for the cross over for scouts. FD helped them out.
- BCSO – Lt Scott Molyneaux – no crime to report for April.
- TA showed pictures from the PW cleaning of the Town's drainage pipe from the FEMA project and stated the pipe is flowing and overgrowth is cleaned out at pipe. Carl Beatty said we can't reach far enough in to clear the blockage. There is a built in weir from the material thrown in at earlier times. TA thought that is what they dug out. In the past they hired a "menzie muck" machine and they could not even reach this blockage. TA will find out with estimate from local contractor provided by Bob Wilbur and bring that back to Council. TA asked how long this has been. Beatty said it was a long time. TA will bring back to Council what she finds out. The TS Fay didn't flood anyone. We can't break the bank if we can't afford to clear the area CM Beatty is referring to. That is the blockage. They will meet tomorrow. PW Mgr Tom Miliore asked where the blockage is. Beatty said 50-60 feet back. It is road material thrown off; can't do it with a shovel. He referred to a lawsuit and a court agreement between FEC and Mr. Glatter and they did pay Mr. Glatter for crop loss. TA said we may not be talking about the same area. Mayor said could Beatty could get with Tom Miliore and show him. Yes.

Following that Acquaviva said thanks to PW for their good work on the Golf Disc Park also. The good work will be a benefit to all for a small inconvenience to some. The overall project looks good when she drives by and she knows they will appreciate it.

CLERK:

- is working with census data to verify if we need to redistrict. Any deviation of 10% from on district to another requires redistricting. We have had 168 new SFR homes in decade from 2000-2010.
- I will be out the week of 5/23 – 5/29 for eye surgery.

I. **PUBLIC HEARINGS:** Are legally advertised for 7:30 PM *or as soon thereafter as possible*.
ORDINANCES: 0 RESOLUTIONS: 0

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

2. **Recommendations from Planning & Zoning Board – Pain Clinic, Internet Cafes**
Exhibit: Agenda Report No. 2
Recommendation: Request Action

Consensus of Council to direct staff to draft ordinance to extend moratorium on pain clinics. Rivet said he wants info on internet cafes; wants discussion first. It will be on next council agenda for discussion.

K. **ACTIONS ITEMS:**
ORDINANCE: First Reading

Pulled from agenda.

~~3. Amendment to Chapter 8, Fire Inspections (Ord 2011-37)~~

~~AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE II STANDARDS; AMENDING SECTION 8-32 RELATING TO FIRE INSPECTIONS; PROVIDING FOR REPEAL, SEVERABILITY AND INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.~~

Pulled from agenda.

~~4. Amend Code to Provide Current Regulations For Adult Care Facility (Ord 2011-38)~~

~~AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.~~

MISCELLANEOUS:

5. Five-Year Capital Improvement Plan**Exhibit:** Agenda Report No. 5**Recommendation:** Request Action

Mayor said he took council input and flagged it.

MOTION: Rivet / Acquaviva to approve the CIP proposed by Mayor

VOTE: 3 Ayes; 0 Nays. Motion passed 3 to 0.

6. Decision on Utility Tax on Water Sales**Exhibit:** Agenda Report No. 6**Recommendation:** Request Action

Mayor stated he asked for this. Acquaviva asked for this to be discussed with full Council present. The item deals with deciding to collect the 10% or delete/repeal it from code. Rivet agreed.

L. DISCUSSION ITEMS:**7. Referendum Questions on Ballot re: Charter****Exhibit:** Agenda Report No. 7**Recommendation:** Request Discussion and Direction

Franklin explained that we have been making electronic payments to the state for over ten years. We are also paying some of our recurring expenses via electronic checks. As we evolve our accounting policies we will pay more expenses via EFTs or P-cards. Our Charter needs to be updated to provide for this.

Mayor said we should just delete it.

The Charter used to require all candidates to provide a petition. During an amendment in the 1990s it was amended and Council and Mayor were separated and the petition requirement was left out for the Mayor.

The other request is to add a sentence to the Charter to clarify when elected officials take their seat. The Charter deals with election and terms and should state when they take office.

Also want to mention redistricting. Council consensus for Clerk to draft the ordinance.

Added Action Item: # 6.5, Resolution 88-2011 to Support the City of Palm Bay's request to FDOT to reduce speed on US1. Mayor read resolution

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO SUPPORT A REQUEST BY THE CITY OF PALM BAY TO THE FLORIDA DEPARTMENT OF TRANSPORTATION TO REDUCE THE SPEED ON SR 5, U.S. HIGHWAY 1 TO 45 MPH WITHIN THE JURISDICTION OF THE CITY OF PALM BAY; PROVIDING FOR DISTRIBUTION OF REQUEST; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Rivet / Acquaviva to approve. Beatty said this was already considered by Council. Chair said this is different. This is giving support to Palm Bay on their request.

Change Section 1 and 2 to add "within Palm Bay jurisdiction"

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

M. MAYOR AND COUNCIL REPORTS: (number indicates the order in which they spoke.)

6.) Mayor: final teen mtg tomorrow night. They have some really good ones.

- 1.) Beatty: nothing.
- 2.) White: excused
- 3.) Rivet: nothing.
- 4.) McKnight: excused
- 5.) Acquaviva: She is going to give plug to FD. Breakfast on June 5. Rivet will volunteer. She appreciates Chief following through with this – she tried to get them to do it before.

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

O. ADJOURNMENT

There being no further business to discuss, **MOTION:** Rivet / Acquaviva to adjourn this meeting.

VOTE: All Ayes. The meeting adjourned 9:15 PM.

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: 6/6/11