

MALABAR TOWN COUNCIL REGULAR MEETING

July 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 7:30 pm by Chair Thomas Eschenberg. The prayer and pledge were led by District 2 Council Member David White.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE, excused

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated for the record that Atty Bohne had called late this afternoon with family emergency. He did say he may be available via cell phone if something comes up.

Also present are Malabar Fire Chief Dennis Covey, PW Mgr Tom Miliore.

C. **ADDITIONS/DELETIONS/CHANGES:** TBRB for 2011 approval was added as Agenda Item 9, without objection.

D. **PRESENTATIONS:**

E. **PROCLAMATIONS:**

F. **CONSENT AGENDA:**

1.a. **Approval of Minutes**

Regular Town Council Meeting – 06/20/2011

Town Council Meeting – 06/23/2011

Exhibit: Agenda Report No. 1

1.b. **Budget Adjustment (Reso 91-2011)**

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 on Both

MOTION: Rivet / McKnight to approve the consent agenda. Discussion:

Acquaviva stated she wanted minutes to reflect that Mr. Krieger came into meeting and handed papers to Chair during a Council discussion of the fire inspection ordinance. Chair deferred to Clerk. Acquaviva said he did not use a speaker card nor was he recognized but he did present papers during a council meeting. Franklin said she checked the tape. Franklin suggested adding language that acknowledged Mr. Krieger came in and handed Chair papers and left. Acquaviva stated it was something that happened during the meeting. McKnight wanted to know what was handed in. Mayor said it was the inspection warrant and affidavit. He stated we had it here. Franklin said we didn't have

a copy. She got it from our attorney to satisfy the public record request the following day. Attach copy to minutes.

Beatty said on page 1 of minutes of June 20; under C. change the words to read: the water tax affects the fuel tax. Then under MISC Item 5, the second sentence is not what he said – listen to tape.

Mayor asked McKnight about the motion made on Pg 5; it is worded as a question to P&Z rather than direction. McKnight stated he did first use direction then changed it to question. Mayor stated the other thing is the last statement in that section; it states that the Atty directed clerk to put on agenda. Franklin stated he said at the end of discussion, for the record, he did give direction to the Clerk. Mayor did not think the attorney would want that in minutes that he gave direction. Franklin stated it was for clarification after your introduction of the item; how it was on the agenda and then off the agenda. Listen to tape. They don't think Attorney would direct Clerk to put anything on the agenda.

Mayor read the resolution by title only.

ROLLCALL VOTE: 1.) Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

G. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required
Chair called speakers who had submitted cards for public comment.

H. STAFF REPORTS:

ATTORNEY: Excused

ADMINISTRATOR:

- TA stated we have received two payments on the stimulus projects. More coming as we go. One project is still outstanding. We are in dispute with FDOT. They used consultants to do close outs and they determined the close-out date should be July and our paperwork showed August 31. FDOT would not allow us to go forward without deducting the 8K. We showed the timeline and we will be cutting a check to contractor and then get our reimbursement.

- She noted that PW fixed all the loose and hanging wiring under dais and podium that had caused a safety issue but was also unsightly. She also stated we got kudos from the contractor regarding the condition of the soccer field – showed picture showing the greening of the field. They had paid for extensive weed killing and fertilizing and it has paid off.

- Will go forward with kiosk as an Eagle Scout project. Acquaviva stated she was asked by someone in Country Cove who did our kiosk because they liked it so much. Mayor said Jim Noble of Brevard Hardwoods did the first one. They can contact him.

CLERK:

- Election Office will be here for two hours on July 13 to hold a voter registration drive. They will be holding similar events in every area of the County.

- Candidate qualifying will be from August 10-24, 2011. We hope to have packets ready by first week of August. The candidate packages will have the required signature lines completed before the candidate leaves with the packet so they can go straight out to gather signatures on the 10th.

- The Septic Tank inspection portion of SB 2002 was ultimately left in but a moratorium was put on the inspections for one year from date of law going into effect – July 1.

- CM Carl Beatty will be only one attending the July SLCL meeting next Monday hosted by IHB and held at Eau Gallie Yacht Club.

- Will be doing a RFP for banking services and bringing results back to Council for action.
- We are working on a newsletter and would also like to ask Council to ask their constituents to volunteer for the Eagle Corp.
- RE: new bill signed into law on firearms, we have drafted an ordinance amending our code in order to comply and have made the effective date Oct 1, 2011. It will be on August 1 agenda.
- The other Legislative Update I sent out to Council related to the FCC plan to propose regulatory changes to the way localities are permitted to collect compensation for use of the rights-of-way. This could lead to further erosion of local government revenue. We will be bringing something back for council action on this also.
- TBRB was used for the last two years. She handed out packets so Council could see the guidelines they came up with in 2009. Also list of participants in 2009 and 2010. Each council Member selected 2 members and the Mayor selects 1 for a total of 11.

I. PUBLIC HEARINGS: advertised on June 23, 2011.

2. Ordinance 2011-39 – Extend Moratorium on Pain Clinics

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO PAIN CLINICS, PAIN MANAGEMENT CLINICS, AND CASH ONLY PHARMACIES, EXTENDING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR THE OPERATION OF "PAIN CLINICS, PAIN MANAGEMENT CLINICS AND CASH ONLY PHARMACIES" IN THE TOWN OF MALABAR FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor read the resolution by title only. Ordinance was advertised on June 23, 2011.

MOTION: Rivet / Beatty to approve Ord 2011-39.

Chair opened the Public Hearing: no speakers

Chair closed the Public Hearing.

ROLLCALL VOTE: Beatty, Aye; 1) White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

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

3. Two Recommendations from Park Board – 1) Additional Kiosk as Malabar Community Park, 2) Additional Concrete "T's" at Golf Disc Park.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

TA stated that she had informed Mr. Kemmler that the State had approved the use of the concrete pads for the "T's".

MOTION: Beatty / Acquaviva to approve recommendations from Park Board.

Discussion. Rivet said that the downside would be that if we have to remove them. It would be minimal as they are using 2x4s for framing them. Also they are paying for the materials and doing the work. The kiosk can be an Eagle project.

VOTE: All Ayes.

K. ACTIONS ITEMS:

ORDINANCE: First Reading – 3.

Note: if these are approved, the 2nd reading and Public Hearing will be held on August 1, 2011 in order to meet requirement of advertising for 10 days before public hearing.

4. Amendment to Charter, Referendum Questions (Ord 2011-42)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A REFERENDUM ELECTION TO DETERMINE IF THE TOWN CHARTER, SECTION 2.03 RELATING TO QUALIFICATION FOR COUNCIL SEAT, SECTION 2.04 (b), RELATING TO THE QUALIFICATIONS AND DUTIES OF THE MAYOR AND SECTION 4.01 RELATING TO PUBLIC MONIES SHOULD BE AMENDED; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Mayor read the ordinance by title only.

MOTION: Rivet / Acquaviva to approve Ord 2011-38 as presented.

Discussion. Beatty thought it also dealt with terms. Franklin explained that that change had already gone to voters last year. This one dealt with petition requirement for candidates for Mayor. Also requires petition to be signed by registered voters and not just residents. The electronic payments addition is to reflect how we have been paying some bills for years. Mayor questioned the process of payroll since we outsourced. Franklin said we have had automatic or direct deposit of employee pay for years before Paychex came online. Franklin explained that each time card or sheet is approved by department head and then reviewed and signed off by TA. Franklin also gets a leave slip for any time off and it is attached to time card or slip. The payroll is done by a third party and then reviewed by Clerk. TA stated that the Clerk verifies that any time off is on the books before being used. Mayor still has concern about this type of payment without any review by Council or sign off by Council. He suggested asking the Attorney if perhaps another question is needed regarding the Charter. He asked what the deadline is. Franklin stated that we are required to run ad within 30 days before qualifying and it is set to run July 9 and will announce possible election, possible referendum questions and states the qualifying period.

Franklin will ask Attorney to review and if a fourth question is needed we can add it at the second reading and still have the public hearing and adoption. The ad will run this Thursday.

ROLLCALL VOTE: Beatty, Aye; White, Aye; **1**) Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

5. Amend Chapter 6, Building Codes, Require Road Repair (Ord 2011-40)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RELATING TO BUILDING CODES AND PERMIT FEES; AMENDING CHAPTER 6, SECTION 6-4 OF THE CODE OF ORDINANCES OF THE TOWN BY ADDING A NEW SUBSECTION (f); PROVIDING FOR THE REPAIR OF PUBLIC RIGHT-OF WAYS DAMAGED DURING CONSTRUCTION RELATED ACTIVITIES; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Mayor read the ordinance by title only.

MOTION: Rivet / Acquaviva to approve Ord 2011-40 as presented.

Discussion. If you tear up the road you have to fix it. TA said we had to pay 2800 to fix Glatter Road.

ROLLCALL VOTE: Beatty, Aye; White, Aye; Rivet, Aye; **1**) McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

6. Amend Chapter 14, Public Service Taxation, (Ord 2011-41)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO TAXATION; AMENDING CHAPTER 14, SECTION 14-72 (a) OF THE CODE OF

ORDINANCES OF THE TOWN BY DELETING REFERENCES TO "WATER" FROM THE TEN PERCENT (10%) TAX IMPOSED BY SAID SECTION; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Mayor read the ordinance by title only.

MOTION: Acquaviva / Rivet to approve Ord 2011-41.

Discussion: Beatty is still against deleting the water tax. He has discussed this with the Attorney. By deleting the water tax we lose the fuel tax. He would advocate for keeping the water utility tax, dedicating it to the utility fund and then decreasing the water rate increase we have on each customer's bill. He proposes if we reinstate it and collect it we will also get the fuel tax. If we eliminate it now it is gone. The fuel tax is also eliminated. It would be easy to add the 10% to the customer bill and then reduce the 15% increase we currently impose.

McKnight stated he doesn't understand the connection between the fuel tax and the water tax. Beatty said the fuel oil is a portion of the water. He said he showed it to Attorney but he is not here.

TA stated she understood what Beatty was proposing but she explained that the utility tax authorized on sale of water is for the general fund. If you impose the tax that money will go into the general fund. The 15% increase we have on each rate in the utility system goes towards the upkeep and repair of the water system in the Enterprise Fund. The governing body has the authority to designate the money to go to the Enterprise Fund. White said the Attorney said it was his recommendation to eliminate the tax if they were not going to impose it. Mayor wanted to know where it is in the ordinance. Franklin said that the utility taxes are authorized by Statute for local governments to collect to fund the expenses of operating the general government. McKnight said he had question for Attorney regarding this item and maybe we should table it until they can ask him.

MOTION: Beatty / McKnight to table.

VOTE: All Ayes. Chair asked Clerk to send the question regarding the fuel and water tax to Attorney before next meeting.

RESOLUTIONS:

MISCELLANEOUS:

7. Form DR-420 – Tentative Maximum Millage and Public Hearing Date

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Mayor explained the tentative millage. Historically, the Council has sent in the maximum and that gives Council the entire range to work with during budget discussions.

MOTION: Acquaviva / Rivet to set tentative maximum millage at 2.4119% and set the First public hearing for September 12, 2011.

Discussion: Rivet said this will set the upward boundary for millage. McKnight has fought this battle in the past and will again.

VOTE: Ayes, 3; Nays 2 (McKnight and Beatty) Motion carried 3 to 2.

Acquaviva stated she may have conflict with first Budget Workshop date of July 26, 2011. She is leaving on 19th.and is not certain of return date. Consensus is for her to notify Clerk if 26th is good for workshop. Clerk will then confirm with Council that workshop is set for 26th. If it is not, then Clerk will put on July 18 RTCM agenda for action.

8. Approve Roof Repairs on PW Building

Exhibit: Agenda Report No. 8

Recommendation: Request Action

TA explained the repairs. She did not go out for a second quote since they had worked on this roof and had experience with the construction. White would recommend getting another quote or two. He will

send two names to her to contact from the contractors they deal with. She will get quotes. White also agrees with using people you know and trust but for this amount of money it would be a good idea to get two more quotes.

Acquaviva asked how bad the leak is. Beatty said there are drawings that show the screw patterns that can be used to help with this repair. He asked if they were going to do touch up paint as you go. TA said now since she will get formal quote, she will ask for some type of corrosion control, i.e. painting screws after replacement. She will get a detailed scope of work. Acquaviva asked how to prioritize – how bad is leak. It is in the shop area/bay area. White will get TA names of contractors. TA will have back on agenda for August 1, 2011.

9. (ADDED) Approve Taxpayer Budget Review board (TBRB) for 2011 / 2012

Exhibit: Agenda Report No. 9

Recommendation: Request Action

MOTION: Beatty / McKnight to have TBRB for 2011/2012 with TC selecting two members each and Mayor having one. Discussion: You can select them from all over town.

VOTE: All Ayes.

Let them know what their job is: attend the first Budget WS, have a meeting of their own and then present it to next WS. Acquaviva said they need to know it is for whole town – not just his area. McKnight got similar feedback. Acquaviva said if they are coming for personal not good. What is best for whole Town.

L. DISCUSSION ITEMS:

M. MAYOR AND COUNCIL REPORTS:

5) Beatty – nothing

4) White – nothing.

3) Rivet – LaCourt – will start on the 11th. She sent out door hangers and will post on website. They will not have to close the road. They are a nice company. They were the subcontractor for CMA. They had the pre-con mtg. Rivet said he will help at next Pancake b-fast.

2) McKnight – asked about formal report about old school house. Staff will follow up. McKnight missed the exec session and totally forgot about it. He apologized. The last regular town meeting he made some comments that were out of character and he apologized.

1) Acquaviva – was away for July 4 but wanted to know how pancake breakfast went. Chief said small turnout. Made a profit of 2.00. Mayor suggested the banner is kind of busy. Put it on the marquee. TA said there is a marquee at Micco fire by Barefoot Bay Blvd. Put flyer on website. They will advertise better. Add simple sign stating pancake b-fast with arrow.

6) Mayor – ustream link to past meetings not on website – Franklin said now they are. Thanks staff. Also resident on Duncil was robbed. Even had their sink stolen. Had wanted to get report from BCSO.

Legislature changed the growth mgnt has changed. He asked if Franklin can do summary but also stated he would be attending the FLC conference that they usually do a legislative summary. Mayor will present summary of Growth Mgnt changes.

N. PUBLIC – speaker card required

Brain Vail, 2700 Smith Lane, idea on acquiring land. Not to be developed now but buy and hold. Land is cheap, money is cheap. When the economy turns we don't have money to purchase. He would like to see it on referendum to see how residents feel. When things improve we can develop. He asked Council to poll their constituents.

It would benefit to already have the land. Just acquire, not develop it. Mayor said that is a good point. If you ask constituents – would you be willing to pay half a mil for some fixed amount of time years to pay for it.

O. ADJOURNMENT

There being no further business to discuss, **MOTION:** Beatty / Rivet to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 9:00 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: 7/18/11