

OMALABAR TOWN COUNCIL REGULAR MEETING

July 18, 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 Mayor Tom Eschenberg.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE

STEVE RIVET, excused

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

For the record CM Steve Rivet is traveling for work and will be out of town from July 18-30, 2011. Also present is Fire Chief Dennis Covey and PW Mgr Tom Miliore.

- C. **ADDITIONS/DELETIONS/CHANGES:** Mayor stated Franklin had brought up that an error had occurred in the calculations on the forms used to determine the maximum millage possible voted on at last meeting. Mayor stated that Council could put this back on the agenda for further action on the maximum millage calculation. If you consider the new numbers Council could vote to increase the tentative maximum millage. The difference according to the Clerk is about 43,000.00 from the percentage Council approved at last meeting on wrong calculations. No direction from Council to add this onto agenda for action. Chair stated Franklin will make statement under Clerk's report regarding this.

D. **PRESENTATIONS -**

- POW/MIA Flags by Bob Cooper, President of Rolling Thunder

Mr. Cooper explained the purpose of Rolling Thunder; supporting the intent to keep public focus on the prisoners of war/missing in action (POW MIA) and continue looking for vets missing from all wars – how many? Over 88,000 are still missing. They are missing over 200 from cold war, 8K from Korea, also from Vietnam and Iraq and Afghanistan.

He has brought two POW/MIA flags to donate to Malabar to fly at city hall and fire station.

People see that and become conscious of that and work with their elected officials to keep focus on the importance of bringing them home. Mayor said not much hope on WWII and Korea era. Cooper said they occasionally get remains back from WWII. Also have sightings from Laos and Cambodia. They want them to come home and rest on our soil.

E. **PROCLAMATION:**

F. **CONSENT AGENDA**

1.a. **Approval of Minutes**

Regular Town Council Meeting – 07/07/2011

Exhibit: Agenda Report No. 1.a.

1.b. **Budget Adjustment (Reso 92-2011) Mayor read the resolution 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 on Both

MOTION: McKnight / White to approve the consent agenda as presented.

No corrections to minutes.

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

Mayor said he had spoken to Clerk and the Charter specifies that resolutions and ordinances must be done by roll call vote. Council will consider later on suggestion to remove roll call requirement for resolutions in Charter. Council could then address in their Council procedure resolution that resolutions that don't require discussion could put handled with voice vote.

G. PUBLIC COMMENTS: General Items not related to agenda items (Speaker Card Required)

H. STAFF REPORTS:

ATTORNEY: Bohne, effective Oct 1, HB 45, State controls firearms and ammunition. That has always been in the law, but now there are penalties for jurisdiction or local official who violate state law. Penalties up to 5K. It also imposes potential civil liability. It prevents the public body for paying to defend the local official. Also deals with attorney fees. Actual damages up to 100K. Leon Cty has repealed all local codes in conflict. Recent memo should be sent to council. The overlapping local code would be a violation of state law. Mostly because of penalties. Whether it is the Code Enf Officer, the Spec Master. Those penalties aren't worth the risk. Between now and Oct 1 he hopes they will reconsider. IHB was considering getting an AGO. We don't really have much in Malabar Code other than discharge.

McKnight asked how enforcement takes place - ATF? Local defendant could contact the state or sue. Small town with limited resources are susceptible to a challenged by NRA. If they prevail, you have to pay attorney fees. Small municipalities are vulnerable. Ordinance would be effective Oct 1 also.

Farming: If you issue a dev order, to a property that abuts an Ag property, go through a process where the non-ag property owner signs in a recordable form that they are next to a "farm" so they can't complain. An existing farm and then new people move in and complain. It better defines what a farm tractor is and that he doesn't have to have a DL to drive.

Fences are exempt from Florida Building Code for farming purposes. That does not affect the upcoming fence ordinance. It also now includes both temporary and permanent farm buildings as exempt from Fla Bldg Code. Also allows farms to burn materials. Carl Beatty said they can burn the plastic after strawberry plantings. Karl Bohne will get details. Acquaviva said buildings not intended to be used as residence. If it has a kitchen, and bath then it is not. Zoning still applies. TA also said the electric and plumbing also would still require a permit.

Mayor said with the firearm issue, has Attorney looked at code. Thinks getting it off the books is the way to go. That is the general consensus of Council. Yes put it on for next agenda. Don't be a test case.

ADMINISTRATOR:

- Sent out FYI via email. If you can't read it let her know.
- For next meeting will have a budget transfer showing a new computer from clerk's dept to TA dept. Her computer has the click of death.
- Fire Dept Report – Chief went over the report for the month of June. Also will check on ladder truck – bad water pump; also getting filters and fluids changed. Discussed at last meeting about the monthly breakfast and they are having a banner made. He is working on regular issues. Mayor asked about ladder truck. It is the water pump. Vendor EVR will put in new filters, etc. changing fluids. Had ladders tested and had a couple fail but

are in process of getting them repaired. Acquaviva said she got his letter. Made her sad. You came up here and apologized. Appreciates his frankness. He is working with his supervisor, the TA. Referencing his letter that asks what direction does Council want him to go. State it in an open meeting in the public, not through emails. TA said Chief has been putting something together for where he would like to see how the fire dept develops. Should have for next meeting. Acquaviva will speak up and say she is sorry he has been treated that way. Keep communications open and above board. We are a small community. The emails are unbelievable. She doesn't think Malabar is like that for the most part. She asked if other Council had any comments. No other comments. Mayor said the Chief is at the fire dept during the week. If you don't want to ask in a public venue, stop by the fire station

CLERK:

- Explained the error in the calculation for the roll back rate. At last meeting she stated the rollback rate was 2.1926. The correct number is 2.0651 for the roll back rate. The correct number will be placed on the DR-420 for submittal.

I. **PUBLIC HEARINGS:** none

J. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING:** none

K. **ACTIONS ITEMS:**

ORDINANCE: First Reading

2. Fence Ordinance – Amending Article V (Ord 2011-44)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO FENCES, WALLS, GATES, ENTRANCEWAYS AND RELATED STRUCTURES; PROVIDING FOR DEFINITIONS, HEIGHT RESTRICTIONS, MAINTENANCE, MATERIALS AND DESIGN; PROVIDING FOR A PERMIT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor read the ordinance by title only.

MOTION: Acquaviva / McKnight to approve Ordinance 2011-44 as presented.

Discussion: Comment that this was a long time in coming.

ROLLCALL VOTE: Beatty, Aye; 1) White, Aye; Rivet, excused; McKnight, Aye; Acquaviva, Aye.

Motion carried 4 to 0.

RESOLUTIONS: none

MISCELLANEOUS:

- 3. ~~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.

APPLICANT REQUESTED POSTPONEMENT OF ITEM 3 UNTIL AUGUST 15, 2011. THIS WILL BE A PUBLIC HEARING ON AUGUST 15, 2011

Quasi-judicial land use issue that was legally advertised for public hearings before the P&Z Board on January 26, 2011 and before Council on March 7, 2011. Item was tabled after Public Hearing was closed.

- 4. Reschedule First Budget Workshop – August 2, 2011**

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Chair stated that originally Council had proposed July 26th. There will be two Council Members unavailable. What was suggested as an alternative is August 2, 2011. McKnight is scheduled to be out of town for business but his customer may change dates so he is not going to say he can't make August 2 at this time. Mayor suggested they should at least have four of the five Council Members. Franklin stated Rivet will be back in Town then. Consensus of Council to move the first Budget Workshop to August 2, 2011. Clerk asked Council to contact her with their selection of resident to serve on the TBRB so she can send out the agenda and a copy of the budget prior to the first Budget Workshop. Beatty asked about when they meet. Mayor explained that the TBRB attends the first Budget Workshop and then they, the TBRB sets a date for them to meet. Then they bring recommendations back to Council. The TBRB is a Sunshine Board.

5. Edward Byrne Grant – Support Recommendation**Exhibit:** Agenda Report No. 5**Recommendation:** Request Action

Mayor explained this – he has been asked to sign it. He has found out maybe they can do something in a future request. The money comes from the State. Brevard County gets to administer this grant as they are the largest agency. It is always about this amount of money and they use it for prisoner transportation. He doesn't know where that fits in program and strategy His point is why doesn't Malabar get a cut to support our Eagle Patrol. He has read through the Program and Strategies in the package he got from FDLE and he thinks our Eagle Patrol qualifies. Mayor stated if we get our request in in time there is a chance we can get some money. He has spoken to Clerk about this. It would fit under the crime prevention part of that. TA explained that when you have the van pick up prisoner, it allows the arresting officer to go back to patrol. Otherwise to you have to drive the prisoner to the facility. Chair said that no Council action is required. He wanted Council to know that next year we will try and get a little bit. McKnight stated that nothing ventured, nothing gained. Consensus of support.

L. DISCUSSION ITEMS:**6. Internet Café Zoning – Conditional Use in CG per P&Z Board****Exhibit:** Agenda Report No. 6**Recommendation:** Request Discussion and Direction

Mayor was at that P&Z meeting and they interpret the Code to say it fits in CG, but should have a conditional use permit restriction. Mayor thinks it is a permitted use in CG.

Council discussed directing the Attorney to draft an ordinance and send it back to P&Z for review. McKnight said a CUP would give us the protection we need for the gambling types of these uses. Mayor said this is the gambling type of use. Attorney said gambling is illegal in Florida and that Internet Cafes are legal under amusement - technically not gambling. Attorney said not a whole lot we can do from a CUP standpoint. Their machines will comply with State requirements. Do you want to create a different BTR category for them, if it can even be done to address the coin operated machine? Clerk Franklin stated our ordinance already provides for that. Clerk Franklin stated a CUP condition could be to not allow next to residential uses, etc. Mayor said then they would be imposing special exceptions. Mayor stated the conditions in Code for CUP refer to Code. Attorney suggested definitions could call it electronic gaming establishments and list the rules for operation. Bohne will work on it if Council directs. They ask the difference in cost to amend Code vs. Land Development Code. LDC ordinances have a public hearing at P&Z and then another at Council. Possible cost to run public hearing ad for P&Z and Council. Consensus of Council to have Attorney Bohne to add Electronic Gaming Establishments and list requirements to the Definitions section of LDC.

7. Purchase Land for Future Development – Polling Electors**Exhibit:** Agenda Report No. 7**Recommendation:** Request Discussion and Direction

Mayor said if you put it on ballot; also ask them if they want to pay more tax to buy it. If you just ask do you want to buy they will say yes, but if you follow with would you pay for it, you will get another answer. McKnight said he would ask Attorney to word question in the most impartial way possible. Acquaviva asked if the question is posed would it state the lands for purchase would be for parks and river front, etc. McKnight said his objection to the binding referendum question is that it would require Council to take action on it if it passed. McKnight said the question should quantify the exact amount Council is wanting, such as \$200,000.00 and how much this would mean to a typical taxpayer on their tax bill. Attorney Bohne says he has a limit to the number of characters or words to use to explain the question on the ballot. TA said they would educate with the newsletter and website. Attorney said he will try and do it if the Council directs. McKnight doesn't see need for binding. Mayor said if we don't have it binding then we don't have the authority to collect in the next cycle. If it is approved the money wouldn't be accessed until next year. Beatty said when Council passed the millage rate to build the fire station; they set the amount but then didn't have enough money to finish the building. Beatty said you have to know how much money you have in mind for what purchases. Then propose to the voters and be clear on how much this would mean to them. Beatty would want the language on referendum question to be clear. McKnight said if we had specific language. Mayor said the question would include list of potential purchases. But then also ask if they would you be willing to pay an extra tax on your property to purchase this additional land. Acquaviva said first find out if there is an interest; possibly with a non-binding question. TA suggested putting out a survey and get it back from them. Be very specific in the survey. Put it out with a self addressed envelope. If you just want the information. The questions must include are they willing to pay for this will special tax. The cost of the mail out? The value of the information. TA will put something together. McKnight said if there are other questions, bring them forward to add to survey, but don't make a booklet.

8. Charter Amendment Ordinance Wording on Question on Public Monies and deleting roll call requirement from resolution in the Charter

Exhibit: Agenda Report No. 8

Recommendation: Request Discussion and Direction

Old question 3 is now question 4. McKnight has no problem with the proposal to delete requirement for roll call vote on resolutions from the Charter but stated it needs more information and education to voters. Bohne said the exhibit shows the explanation in more depth. Attorney Bohne said it is very unusual to have a roll call on a resolution. By resolution Council can dictate requirements for voting procedure for resolutions. McKnight suggested adding "consent agenda resolutions" on the end of the question. Mayor said any council Member can request a roll call vote on any item, all the time. McKnight said he doesn't want them to appear that we are being less transparent.

9. Clarification on Utility Taxes and Specifically Fuel Utility Tax

Exhibit: Agenda Report No. 9

Recommendation: Request Discussion and Direction

Attorney stated that our Code reads exactly like the Florida Statute reads. He called up DOR regarding this and we have to fill out a form if we change any of our Public Service Taxes. He confirmed you could also have different rates for each type of public service tax, water, propane, etc. But the Statute and our Code also provides a formula for calculation purposes. Bohne said it is academic, because according to Clerk we don't take in any revenue from fuel tax.

Mayor said to strike in Section a – fuel tax. Beatty said why spend money to change an ordinance. Beatty said we need to go back and redo the water rates. Attorney Bohne will delete fuel oil and add it to the title of ordinance.

Mayor said he added all the taxes he pays to Malabar on his phone and electric etc and they are more than he pays in ad valorem.

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

6.) Mayor: Do something with front of town hall. Budget workshop is coming up and it could use some improvement. McKnight said an Eagle Scout project. Marisa said about closing in. Carl said it would be minimal expense on concrete walls on existing slab. Also chop the tree down since it is growing into the lines. It is also tearing up the flag. A long time ago the scouts were going to replant it but it didn't have it. Then we could put seal. There were left over materials. Talking about two walls and double doors. Mayor asked him to come up with estimates for work before the budget workshop. Get donations to cover the costs.

1.) Beatty: SCLC endorses Mayor McCormick for 2VP and they are asking us to support her by writing a letter endorsing her. They get all the letters together. He thinks we should endorse her. She is campaigning. Carl will endorse her if there are no objections. Mayor said Georgia Phillips ran the last two years and did not work. Only success in Brevard Cty was Larry Schultz about 8 years ago. Mayor said they are kind of funny. The nominating committee figures it out. He doesn't like it. When he was with the local Jaycees, it was not like that. Mayor suggested if you know Mayor McCormick, contact the nominating committee. She is a hard worker locally. He said once the nominating committee picks you for a candidate you eventually will be President. Acquaviva asked if he means a Council endorsement instead of an individual. Mayor said if you know her. Mayor will contact the nominating committee and give his voice. He will also contact them at FLC conference – Meehan from Melbourne is on the nominating committee. She will be the voice for McCormick. Beatty will generate letter.

2.) White: nothing

3.) Rivet: excused

4.) McKnight: nothing.

5.) Acquaviva: brings up the email that was sent to Council and is saddened by the act. She thinks the email is not appropriate. Thinks staff works very hard and this was directed at Clerk. We are a small Town and we can act better than this.

N. PUBLIC COMMENT: General Items related or not to agenda items (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 9:07 PM.

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

ATTEST BY:

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

Date Approved: 8/1/11