

MALABAR TOWN COUNCIL REGULAR MEETING

August 15, 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 5 Council Member Marisa Acquaviva.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated for the record that also present is PW Dir Tom Miliore, and Morris Smith, Town Engineer. Malabar Fire Chief Dennis Covey is out of town on approved leave. Asst Chief Kevin Plunkett will be giving FD Report

- C. ADDITIONS/DELETIONS/CHANGES:** TA would like to add item to provide for bonus for employees. Need millage and bonus – what number to work with for budget workshop papers. Without objection it is added as Item 8A. Franklin asked to add Budget WS minutes of 8/9/2011 under consent agenda. No objections

D. PRESENTATIONS:

- E. PROCLAMATIONS:** Gary Dotson Plaque and Proclamation for Sand Hill Trail Head – Mayor read the proclamation and presented copy to widow. Plaque, proclamation and picture of Gary will be displayed at the Sand Hill Trail Head in recognition of the Bluegrass Music he brought to Malabar.

F. CONSENT AGENDA:

1.a. Approval of Minutes

Regular Town Council Meeting – 08/01/2011

Budget Workshop Council Meeting – 08/02/2011

Budget Workshop Council Meeting – 08/09/2011

Exhibit: Agenda Report No. 1.a.

1.b. Budget Adjustment (Reso 93-2011)

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

Mayor read the resolution by title only.

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

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

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

Chair called speakers who had submitted cards for public comment.

Speaker Card: Steve Morris, Weber Road, referred to hard rain we got yesterday and stated he was standing in 18 inches of water – in some places over 2' deep. He stated it is totally uncalled for and that the efforts of the adjacent property owner and the efforts of the Town Engineer are totally inadequate. He had his own engineering study done and it clearly shows water comes from Mr. Foley's property not Mr. Cameron property. Mayor stated Council is not trained in evaluating drainage drawings.

Mr. Steve Morris had questions: why was a pipe not put in at 2000 Weber Road. Next question – adjacent property owner hasn't completed water issue, what are plans to force him to do it? Mayor paraphrased that Mr. Morris feels the berms are not the way they are supposed to be. Why has this been allowed to go on for a year? Other builders take care of their issues. Another issue, Mr. Cameron and Mr. Hammond are his neighbors and they are very nice. He has pictures of berm Mr. Cameron put up at the back of his property. Issue of bull – it hasn't stopped getting agitated. 2 hours ago was called over to fence and heard the bull walk up to fence line and put his head over. Bull tried to gore his chihuahua dog. Bull is out of control. When they brought pallets of sod the bull tore them up. He has pictures on water issues.

White said that town did a topo and he thought the issue was resolved. Mr. Morris had his own engineer out there and the pitch is too much and land is too much for the berms. Yesterday had 5.5 inches of rain. Mayor asked if he talked to staff first or came straight to council. He spoke to Jeff McKnight.

Jeff McKnight said he was out there and saw the dye in the water and it was coming from the adjacent property.

White asked if the bull got out. Yes. White said he thought then council can do something once bull broke out. Did he ever complain to staff about the bull getting out? No. He told McKnight. McKnight said he did not lodge a formal complaint. TA said a man brought out food and the cow and the bull went back in. He then put a larger post in. BCSO stayed until fence was fixed. Mr. Morris said it was a passerby that stopped and helped.

Jeff McKnight said both of Mr. Morris' points are valid. He went by and saw the bull within 15 feet of open gate. He also said he never saw this much water when previous owner lived there – even with TS Fay. Weber Road was impassable. Mr. Morris said he contacted previous owner and she didn't have water from adjacent property. Mr. Morris thanked Mayor for coming out. One of the comments was – something must have happened there. Something did happen – Foley built a barn and brought in 200 loads. Mr. Morris said regarding CM David White's suggestion to put in berm around pond to protect his fish; he is not going to do that; that is not how this will be resolved. Mr. Morris said someone turned in Mr. Cameron in to EPA. Foley and Engineer have a vendetta. Mr. Morris said there is no way he is going to settle for anything less than for this to be taken care of by adjacent owner.

Mr. Steffe, 2850 Weber Road, about drainage. He learned that a pipe in front of his house was replaced when he came in and spoke with Franklin this date. Said she was very helpful and informative. He had thought the Town installed a pipe in front of his house. Franklin showed him there was a pipe there that was replaced. A number of drainage issues throughout town where pipes were replaced. After rains yesterday he has 2.5 feet of rain in his yard. He has been there 3 years. The fall in the ditch is very inconsistent and there are pockets where the water stands. It doesn't just happen on Weber Road. If it rained for 12-15 hours, he thinks it would be in his house.

Chair asked TA to respond – the problems started when the previous Town Engineer allowed the natural water flow to change along Weber Road. There are inconsistencies in the level in the ditches and we have to go in with the Gradall. PW has been busy with replacing collapsed pipes. There is a pipe under one of the driveways that is too low/high and would have to be redone.

The certificate of completion was given to Foley since her meeting with Jeff McKnight. The 200 loads of dirt were considered as part of the drainage issue. This is an agricultural building not requiring a permit for structure, only for electric and plumbing. Septic is through county. Re: the bull, call the BCSO and when she gets a copy of the report maybe they can require a stronger fence. TA has been out there and the bull has given her no problem.

Permit is closed and drainage has met requirements. Staff is working on drainage project in the Hall Road and Weber Road area to allow the drainage to flow to the north.

Mayor said it seemed we have the conflict between two engineer reports. Permits were closed out. Can't do anything more at this time. The town has an open project on drainage in the area. When it accumulates it can't go anywhere. TA explained the issues in the area. From Hall north to Malabar all elevations from Hall north on Weber and from Weber on Hall to terminus to Tillman ditch. There are 6 or 7 pipes that are higher than Weber Road that won't allow water to go west to Melbourne Tillman ditch. Mayor said he wanted to know how we can get rid of that water at Mr. Steve Morris. Town Engineer Morris Smith said we can be proactive and open that ditch and draw it west. One of the driveways doesn't have a culvert under it.

TA said we have open ditch drainage system and after a heavy rain it could take 72 hours to percolate down. The rain happened yesterday. 72 hours has not passed. The system is based on that time period to percolate. We base a lot of efforts on problems after the water is still standing after 72 hours. Don't do knee jerk reaction. Kelly Lane pipe and Raulerson Lane pipe will both help in this same area. Put water over from north side of Hall to south side of Hall. Morris said the big picture – the water coming out of the triangle area and tries to work itself through town. If we can get that water to be diverted before it gets to Weber. Water south of Atz comes up Kelly and Hard and does come up to Hall. That ditch in the 17 acres also needs to reestablish the ditch and get flow going there as well also. May have to put fence up.

Richard E Cameron, 650 Hall Road, adjacent to const mentioned earlier. He said his paved DW keeps the water from coming to his house. Before his DW was put in his water would go to the east. Before he could watch the water go to the west. His driveway is only half a road. The water does run down the east side of DW to house facing hall road. Then goes thru vacant lot with hand dug ditch diagonally. When all this water comes into the front drainage system, goes west, to the 2/3 of his lot, under Malabar road and turns and goes thru Enchanted Lakes MHP and then drains into the wooded area. The dam is just to the right. If dam is open, you have no problem. He can show anyone who is interested. It is a ravine about 20 deep. There is no culvert under his entrance. The water from the house to his right and it goes east and other water goes east to Hall and Weber and drains down to east section line. The ditch has never been cleaned – don't know if you could get in there to clean it. Goes under Malabar road and hits open area. His water does not run from his property to Mr. Morris. The only thing that can go east is water east of his DW. It hits the berm and runs along it and then goes off on the vacant lot.

Mayor said is it his opinion that the water is coming off of agricultural land. Cameron said yes. See the difference in height of dirt from septic and barn was raised up 4 feet.

TA said she would like to get Eng Morris Smith and Cameron together.

CM Carl Beatty said his knowledge on this is that the Town paid Bo Sanders to put in the 4 foot culvert on the property. A later developer reversed the water flow. Water sheet flowed across Cameron. When Raulerson Lane was put in, water come in slew and ditch was put in a crossing put in under Hall Road. The water on east side of Raulerson was diverted that added to mix going north when pipe was deleted. Cameron said the 5 acres of wetlands is still draining into ditch.

Mayor said water is coming from Ag property to Morris property and has no place to go. He would like to get an answer to that.

TA repeated the request. Cameron said it can be worked out. Mayor said what is the real situation on Weber Road? Forget about Raulerson and all other roads. What will move the water?

H. STAFF REPORTS:

ATTORNEY: Stated that he and TA will meet with Palm Bay Atty and City Manager on Wed at 3PM to discuss the water issue. They will also discuss the issue about the rates and components of the rates and is Malabar getting the full service of those rates.

At last meeting, the Greer property came up and he did research. It is owned by Greer and it is in foreclosure. There may be some things we can do and he forwarded some info to TA and it needs Roger's assistance to get unsafe notice and if they can do that then they will put the bank on that notice. Threat of complaint. TA thought she sent report to Atty on Friday. She said Building Official went into house through open door and the sunken LR does have mold. Door was open and roof is leaking. Marisa said aren't they also swimming in a pond on property. That should be reason alone for posting a notice. Notice also needs to go to the bank for potential liability issue.

ADMINISTRATOR:

- Fire Dept Report – Asst Chief Kevin Plunkett presented the report. Reported that the ladder truck is at Ringpower for evaluation. There were some hoses dry rotted. Mayor said also had a water pump problem. Plunkett said also had some hydraulic leaks. TA stated that they thought there was also a problem with a piston. Chief will make report.

- BCSO – recent rash of network fraud (phone) calling and posing as bank persons and several elderly people have fallen. They are saturating the south end of county. Minor burglaries and have been taken care of. Still telling people, lock your sheds at night – there have been some theft. Acquaviva, Rivet and White all asked Chair to gavel audience to order as there were multiple conversations over the Deputy. Acquaviva thanked Deputy for sending the storm info and she appreciated it. BCSO said they will be keeping that up. Opening up new communications. That way they can share with the residents. He will forward a small report on the status of the incidents. She also thanked them for getting the camp at the north end of Corey Road. Fast response.

CLERK:

- Candidate Qualifying began on August 10, 2011 – runs thru the 24th. There are only two forms that need to be signed before gathering signatures – the statement of candidate; wording has been changed to say that access to FS 106 has been provided. The other requirement is to name the campaign treasurer and depository. Both requirements come from FS 106. The Campaign treasurer can be changed down the road by submitting such change in writing. After the candidates submit their paperwork, Council will formally “qualify” the candidates at the Council meeting on Sept 12.

- Budget workshop is set for August 23, 2011 – is it for 7 or 7:30? Date is not good for Rivet or McKnight. Consensus to change date to August 29, 2011 at 7PM

- I will be on vacation between the first and second public hearings on the budget – Ohio for family reunion from 9/15-24.

- Have contacted bank on Gradall payoff and there will be no savings since the final payment is due in December.

- Am still waiting on the lease payoff on fire vehicles. Staff will prepare an ordinance for first reading on Sept 12 for Council consideration to amend the budget or authorize the paying off of the vehicles. (deficit spending) I am checking with the auditor on the preferred method.

I. PUBLIC HEARINGS: advertised on June 23, 2011. First reading on Aug 1, 2011

2. Amendment to Code Related to Firearms (Ord 2011-43)

AN ORDINANCE OF THE TOWN OF MALABAR BREVARD COUNTY, FLORIDA RELATING TO FIREARMS REGULATIONS; REPEALING PROVISIONS OF THE TOWN'S CODE OF ORDINANCES INCONSISTENT WITH 2011-109, LAWS OF FLORIDA; REPEALING PORTIONS OF SECTIONS 11-13, 12.5-1 AND 12.5-43 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor read the ordinance by title only.

Chair opened the Public Hearing:

Richard Cameron, Hall Road asked what that meant. Atty explained what the penalties could mean to town official. Ordinance is a result of the new leg in SB 2011-109

Chair closed the Public Hearing.

MOTION: Rivet / Acquaviva to approve Ord 2011-43.

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

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. Frank Plata Elliot, Plata Engineering, Inc.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Chair said there has been the proper advertising to allow the public to speak again. Chair explained the project had been before Council on March 7, 2011. Council will consider under the existing code. Chair called on applicant to present.

Frank Plata, representing himself, working with the developer Tricon Development of Merritt Island, the property owner and the other parties and has been working patiently to answer any questions Town may have. Still have to work with property owners and pay the impact fees. First year will probably only be paying the Palm Bay impact fees. First introduced this under group home under current code Under 1990 rules. We know there were many changes since them. Some group homes began offering extended services. Then new State requirements for separate licenses for extended care. Less intensity but more control so it required a different name. Per the density from the American Planning Assc (APA) in 1990 we could call it a group home. We believed we answered all questioned of staff. We are back at group homes and only have two issues – the parking and trip count. The ratio is lower than that of a nursing home.

This project is an institutional use. The states and the Feds wanted to make sure there was no discrimination. The loads require separation of 1000 feet from another similar use in a residential area. You are protected that way. Tried to answer all the questions. Never heard anyone talk in favor of any development. We had to look at the positive side. He went over the handouts he had provided showing the parking and trips – they are only at 65% on the day care center.

If they put in another school or a nursing home it would require 680 trips per day. The ALF only requires 180 trips. This use protects the town by keeping the traffic trip count down. This project represents no impact on Malabar Road.

He went over the trip comparison on the local existing business on north side of Malabar Road – hospital and MIMA. The ALF on the south side only has 248 trips.

It is a logical use for this land. There is a saturation of medical offices. This will bring back business to local area. He then went back to page one and discussed density. Institutional use is only for this size project. Residential type of use for group homes for 5 people. The density part is simple because the state regulates the limits. At this size, they are under by 20% under the requirement for the town's current density.

This will meet the requirements of the use with this environment. The St. Johns permit is totally valid. The road is already widened from project across the street. It is already zoned correctly. There is no other thing to do on this property that would be better.

They are back to the old code and only have the same question they had as back in Jan 2011. They have had a chance to review this. They have been doing this and are trying to see they are satisfied. They are looking at a vacant land that is ready to develop. The question about the water main protection and access has been addressed. There is no single question they have not answered. They are more than willing to continue to look at ways to improve as far as the master planning. Going back to original concept of group homes and nursing homes. Now don't have to worry about what type of use – it is governed under the licensing. They are happy to submit any info they need.

Chair asked if there were any questions from Council. CM Carl Beatty said the plan says it is on a five acre parcel. Frank Plata said you can do that as long as you meet the code for each one of those. He said the unity of title will be given based on an approved site plan. You can split it. It was meant to be master planned. The best example would be under RLC where you allow the vertical or stacking of different uses. Here you are dividing each area with their parking. All we have to comply with is the maximum impervious and that is master planned. We wouldn't be looking at this if we didn't think it was the right use. The binding site plan only allows for one driveway. The site plan the town approves will be the law for Malabar. That will regulate the parcel. You can't technically split the property. Mayor had same question. APA standards are for current code. The OI rules and the footprint match those requirements. They were able to reduce from both the APA and the IES requirements and doubled the parking.

Mayor asked if this would be a for profit or non-profit. It will be a for profit project. You can put it as a requirement. They are not looking for any handouts.

Mayor asked if facility will be required to be licensed. Yes, under HRS successor agencies. The Health Dept has to permit the dimensions of the bldg and the license is under ACCA (?) that controls these facilities under annual requirements. There is very little to deviate from that type of facility. They want to have that – there are no short cuts on this type of business.

Mayor asked about his previous problems he had voiced – code said HRS and successor agencies. Lack of minimum lot size in order to evaluate the site plan. Mayor said what standard size did they go by to determine the minimum lot size. Plata said if it is commercial you go by the zoning rules first and then the open space and green space. That is why the state doesn't tell you over all how much. It tells you per person requirements. This type of facility can be in residential and says it must be at least 1000 feet apart. The State is not going to tell you the minimum size. That part comes from the town zoning. Mayor asked what they used for setbacks if code has NA on the setbacks. The NA is for the CUP. The setbacks are from the zoning and setbacks in District Provisions. This facility is not that intrusive. It takes that CU for that zoning district.

Plata said you are looking at items that are changing every two years. This avoids possible discrimination. NA is the best option. He doesn't see any confusion.

Chair opened the Public Hearing:

Rick Steffe, 2840 Weber Road, would like to see the financial impact on the town short term and going out 5-10 years.

Pat Reilly, Howell Lane, has done some research. Went over his concerns. He goes over his findings in a Power Point presentation. Mayor asked if he wanted his presentation included as part of the record. Yes. Packet has become part of this set of minutes.

No other public.

Chair closed the Public Hearing.

Plata responded to the presentation – too many false statements. Everything over 16 persons, it is not residential. It is also for nursing homes. It is never a happy day. These are not for places for living. The place in Merritt Island started as independent living. These people can't get beyond the door without assistance. This is one step from a nursing home. The business for over 16 units is OI. The amenities they are providing are for the interior of the building. You have to go back to 1989 to review that. Everything fit between those things. There is no way to compare. The parcel we are talking about is institutional. We are not intending to put residential at all on property. If looking to put town homes then it would be residences.

Chair then asked Council to make disclosures. CM Marisa Acquaviva made disclosure that she met with Plata persons here at town hall. Rivet also spoke with them. McKnight had an email but declined. Mayor said he had meeting with the three principles of the project back in March. They wanted to hear his concerns. Then had a brief meeting with Plata in parking lot after a P&Z meeting. No other disclosures.

Acquaviva said she has met with attorney and is also disclosing that she is abstaining from the vote due to conflict of interest with her business. Her vote could result in a financial deterrent or gain to her livelihood.

MOTION: Rivet / **none** to approve Site Plan and CUP application for a 48-unit Assisted Living Facility to be known as Sunrise Centre Assisted Living Facility, 725 Malabar Road. **DIED FOR LACK OF SECOND.**

MOTION: White / McKnight to not approve the Site Plan and CUP application for a 48-unit Assisted Living Facility to be known as Sunrise Centre Assisted Living Facility, 725 Malabar Road.

Discussion: McKnight said he supported Reilly's presentation. He also had concerns with lack of open space. White said most of Reilly's points are right and he agrees with McKnight.

Rivet said an aye vote would be against approving. Chair said this is why they like to pose the motion in the affirmative. A vote of nay prevailing would not mean it is approved.

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

4. Stormwater Assessment Roll 2011/2012 (Resolution 94-2011) A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Mayor read the resolution by title only. Franklin said it was advertised on 7/28 and 8/4 for Public Hearing.

MOTION: Rivet / White to approve Reso 94-2011.

Chair opened the Public Hearing:

Mr. Steffe asked if the Chair could explain this. Chair said it is the annual assessment by the property appraiser office on parcels in Malabar for stormwater projects. Chair said it is the 36 dollars for the non ad valorem section of the tax bill.

No other speakers -

Chair closed the Public Hearing.

ROLLCALL VOTE: Beatty, Aye; White, Aye; Rivet, Aye; 1)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

K. ACTIONS ITEMS:

ORDINANCE: First Reading - 0.

RESOLUTIONS:**MISCELLANEOUS:****5. Fire Inspection Criteria for Periodic Inspections****Exhibit:** Agenda Report No. 5**Recommendation:** Request Action

Attorney said the current version of NFPA 101 is not available online. He wanted to know what the FD does for fire code compliance on typical fire inspections. There are other things in the Code but these are the ones that the FD would do on a periodic inspection of a typical business. He is not referring to the other agencies like schools and ALF and that require additional inspection criteria. He got this information from the Fire Chief. Chief point out in his opinion for fire protection systems, you could not retroactively require someone to install, unless you could prove that there is a safety. You could not require a retrofit for such a business.

They would check for emer lights, exit lights, smoke detectors, not blocking egress. Exterior finish. Fire barriers, fire walls, exposed wiring, too many ext cords. Those are the min things we inspect for. His reading of national codes .NFPA 101 the Fla Fire Code and life safety code and shall be deem adopted by each municipality.

Under 633.025 it becomes a law. We can't loosen it up. McKnight said he has a problem with NFPA 101 not being available to public. It is available if you buy it.

Acquaviva asked if smoking regulations were enforced by fire inspectors. No they check for the signage to be up. McKnight said he was reading in statute that fire fighters are not allowed to use tobacco products and must sign paper that they have not used for one year before their service began. Acquaviva asked about sprinkler systems. Yes required for new construction but not for existing structures you can't make them get one. Can your fire chief go and look at that. McKnight said a fire fighter can do the inspections under direction of another. Discussion changed to employment status of Chief. Mayor said they paid Chief Chuck a stipend to offset his business loss. Rivet said it was changed before Chief Chuck left. Chief Joe was hired with a salary. McKnight said the definition of a fire fighter is a full time employee of the town.

TA said Chief Covey was a Fire Marshal in New Hampshire. She said the Fire Chief is a salaried employee. His dept head designation makes it a fulltime status. Even with that when we call the State there was certain training that had to be done to qualify to do inspection– not reciprocal.

McKnight considers him a volunteer that gets a stipend. He works enough hours to be fulltime employee. There are two definitions for employees – they are different for FT and PT.

McKnight said he is not being paid enough to be an employee. Rivet said the amount does not matter – the adequacy of wages is not a determination. Atty Bohne will look into this. TA said they have the form that the new chief put out with the items to be inspected. That will be sent to them 3-4 weeks before they show up to do the inspection. McKnight said as far as commercial entities – then they will do Home occupancies. TA said that is not the case.

Mayor said here is the form that we will use and put it in a resolution, get it 4 weeks ahead of time, have very concise, there is no question. Atty said he could have written a novel. He said he can reference the sections. Any sections that are referenced should be available in full to read. Jeff questions the fact that these requirements are not available to public. Atty pointed out that they are available for a subscription just as the Florida Statutes used to be.

Acquaviva said some of this was very telling that the FM didn't do the through job on the inspections and it is our responsibility to follow thru. It is going to be up to them to make sure they get it done. TA said the FM refused to provide the info she asked for. Franklin said it needs to be an ordinance to

amend Chap 8 and then a resolution to provide the criteria. TA said the Chief is not qualified to do inspections. Two of the Lt have been trained. TA said no inspections have been done since this issue came up. Define periodic when they do the ordinance.

MOTION: Rivet / McKnight to extend to 11PM

Discussion: none

VOTE: All Ayes

6. Approve Closing South End of Bridge

Exhibit: Agenda Report No. 6

Recommendation: Request Action

TA said they discussed this at previous meeting on the problems this is causing to the adjacent property owner. They are proposing to allow access to bridge but can't go beyond the gate. Mayor said she should make it harder to get through. Rivet said it is a good gesture; make it as difficult as possible. McKnight said it is looking very old. If it weren't for the fact that they didn't have a problem before the bridge. They have people going over there to trespass on private property. TA said she will do her best effort. Design it so it is vertical. Beatty said to add signage "no trespassing" beyond this point. Jeff said to add no trespassing signs on the fence at property line. Rivet said we could put sign on our side of property and then BCSO could enforce.

MOTION: Rivet / Acquaviva to barricade south end of bridge and put up no trespassing signage.

Discussion: TA said this came up when Park Board Member tried to direct staff to mow the area and TA and PW Dir got involved because of the terrain and access and then they heard from the family and learned of the problems.

VOTE: All Ayes

7. Nominate/Endorse a Malabar Elected Official for FMIT Board Candidate

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Beatty asked about the requirements. Franklin said he needed to submit a resume that she could send to FMIT. The Board is made up of elected officials from the members of the Trust. Each year they ask for local elected officials to be endorsed by their government body. Then the FMIT will select the candidates for the Board. TA said she participated on a similar Board in south Florida and it was helpful to have someone from a small community on the Board. Mayor said FLC doesn't like independent thinkers. Carl said he would be interested and willing.

MOTION: Acquaviva / McKnight to endorse Council Member Carl Beatty for a nominee for FMIT Board. Discussion: Franklin said we will need a resume. **VOTE:** All Ayes.

8. Surplus Material

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Mayor said this was about the dome. Vail said we could donate to a local school. Beatty said it was offered to our schools first and they didn't want it. Staff said they previous discussion was to scrap it for cash. That is why nothing was in next budget for surplus – they planned to get rid of it this year. More discussion on possible users. Rivet can promote it on a couple of websites. Mayor said they could offer it on Craig's list and reference the government site TA said that it must use. Once it is designated as surplus by Council, then they can dispose of either by sale or disposal. Other item is the old van in yard. Also desks, filing cabinets and boxes of stuff from previous Fire Chief Gianantonio. Some has no value and can be thrown away. Other stuff will require a sealed bid.

MOTION: Rivet / Acquaviva to declare material surplus so staff can move to sell or scrap the stuff.

PW Dir said they have a buyer for the van. TA said it had to be advertised for a sealed bid. Beatty said the crates of stuff are all junk. **VOTE:** All Ayes

8.a. Millage and Bonus for Employees (added)

Exhibit: Agenda Report No. 8.a.

Recommendation: Request Action

TA said per last workshop, she was asked to take back to 1.6630 mil in budget. She is asking for Council to provide a millage rate and bonus percentage so she can finish the budget sheets for next workshop. This was to offset the 3% FRS withholding the Legislature approved. She stated in the Mayor's budget package he had used 1.76 mil. She used 1.6630, 1.7000 and 1.7600.

With all the cuts we made we came up with 12K and it will be moved into contingency. If you gave a 3% you would still be short 1700. She did an in between and went to 1.7000. If you used that you would have no negative, if you went to 3.5% you would need to take more. The 1.76 was from the Mayors showed the numbers. Acquaviva said that the discussion supported this. McKnight said if this is one time take from reserves. White would support that. Is there a consensus. On the one item she will show 1700 from reserves for 1.6630 and 3%

L. DISCUSSION ITEMS:

8. Provide Method for Citizens to Get Initiatives on Ballots (Rivet)

Exhibit: Agenda Report No. 8

Recommendation: Request Discussion and Direction

Rivet said he understood most of what they provided for us. He is reading in circles. How to get a non-charter item on the ballot. Atty Karl Bohne went over the signature process for initiatives. On referendums, Council has a certain time frame to act. If Council acts by adopting the ordinance that action would prevent it from going to voters. If Council doesn't act, then it can go to the voters.

Example can be an Initiative to adopt adult care facility rules. If Council doesn't act on it, it would go to ballot. Council cannot block anything that voters want to get on the ballot. It is the percentage of registered voters. Council can approve it and it won't go to voters, or deny it or not act on it and it would go to the voters. Rivet is satisfied. Karl Bohne said they keep lumping initiative and referendum in the same part of the Charter and it is hard to follow requirements.

M. MAYOR AND COUNCIL REPORTS:

- 1) Beatty – nothing
- 2) White – nothing
- 3) Rivet – nothing
- 4) McKnight – nothing
- 5) Acquaviva – nothing
- 6) Mayor – Teen Council starts tomorrow night. Just started school.

MOTION: Rivet / McKnight to extend 15 minutes **Vote:** All Ayes.

N. PUBLIC – speaker card required

Brian Vail, Smith Lane, encourages Council to change the code to address ALF because more will come.

O. ADJOURNMENT

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

VOTE: All Ayes. The meeting adjourned at 11:15 PM.

BY: _____
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

Date Approved w/ clarification 9/12/2011