

**MALABAR TOWN COUNCIL REGULAR MEETING**

**September 12, 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 1 Council Member Carl Beatty.

**B. ROLL CALL:**

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE, excused

STEVE RIVET

JEFF MCKNIGHT, excused

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 Malabar Fire Chief Dennis Covey.

**C. ADDITIONS/DELETIONS/CHANGES:** Pulling 1.b. until next meeting. Also changed Item 6 and new copies are at each seat and on overhead. No objections.

**D. PRESENTATIONS:**

**E. PROCLAMATIONS:**

**F. CONSENT AGENDA:**

**1.a. Approval of Minutes**

Regular Town Council Meeting – 08/15/2011

**Exhibit:**

Agenda Report No. 1.a.

2<sup>nd</sup> para, 2<sup>nd</sup> line, Mayor said – berms are not the way they are supposed to be. He doesn't think he said it. (Clerk checked record – and Mayor did say that as a paraphrased comment; 8/15 minutes clarified.).

**~~1.b. Budget Adjustment (Reso 99-2011) Pulled until next meeting.~~**

~~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.~~

**1.c. Approve Contractor to Repair PW Roof (Reso 98-2011) (Action under Consent Agenda)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM MCKINNEY COMMERCIAL CONSTRUCTION GROUP, INC. FOR ROOF REPAIRS TO THE PUBLIC WORKS BUILDING AT A FIXED COST OF \$5,640.00; PROVIDING AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No. 1.c. and 9

**1.d. Approve Repairs to Ladder Truck (Action under Consent Agenda)**

**Exhibit:**

Agenda Report No. 1.d. and 12

**Recommendation:** Request Action on All

Mayor read the Resolution 98-2011 by title only.

**MOTION:** Rivet / Acquaviva to approve the consent agenda. Discussion:

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

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

**H. STAFF REPORTS:**

ATTORNEY: He talked to Palm Bay Attorney and on Thurs he will call for an Exec Session and thinks they will have meeting towards end of month. Then Bohne will call for one so Malabar Council to discuss their proposal. Mayor asked if we are making any progress on Greer foreclosure. Bohne said the mortgage holder has no obligation at this time. Mayor asked about the threat about condemning the property. TA said they have changed companies. Then Mrs. Greer contacted us and she thought she was out of it since she declared bankruptcy. Acquaviva said she has talked to Mrs. Greer and she is willing to cut down swing. She is not the owner. Bohne said since she went bankrupt doesn't mean she doesn't own it. If bank owned it, it wouldn't make sense to continue with foreclosure. She probably still owns it that is why bank is pursuing foreclosure. Mayor reported tag to TA and she to BCSO and they thanked TA. No trespassing signs can be put up but then an affidavit would also have to be done by Greer. Mayor thinks no trespassing signs would be effective.

**ADMINISTRATOR:**

- Nothing. Mayor asked Chief to come up. TA asked if everyone got her email about the pipe on Rocky Pt that needs fixing. Bigger liability is on Huggins and that is what she will focus on. Mayor wants to ask him to do something – if council doesn't object, How was b-fast? Good cleared 150.00. Mayor said he put a little note of Craig's list. Chief also is getting word out to HOAs. The ladder truck is what Mayor wanted to talk about. Could he do a cost benefit analysis on the vehicle? Look at past costs we have on it and if repairs are out of line. Justify the Fire Dept keeping the ladder truck. Chief said for 250K we paid it is relatively inexpensive for such a piece of equipment. Chief can't tell us it is going to last for a guaranteed amount of time.

Mayor was major supporter of the truck. He would like to know he didn't make a mistake. If that report is done, then it can be handed out to anyone that questions it. Council can also have a copy of it. Mayor is looking for facts.

Chief said it is such a complex piece of equipment. It is a quint – does 5 jobs. It is a very good piece of equipment. Sutphen is a good piece of equipment. It has been sitting for long. Everybody forgot about the problems with the engine. That is the problem it is having now. Crack in cylinder head. When this is done, one it is done you will have a front line piece of equipment. Chief will only give his opinion. It is a complex used vehicle. He can do that. Mayor asked if Council objected to him doing it.

Beatty asked if it would also show down time. If it is down 80% of the time. Chief said when he got here in Feb and it was sitting until June and aerial was fixed and now the cylinder head is needing repair and waiting on council approval. Beatty said there was some type of refurb done on it prior to purchase. Beatty said a Dyno test of the motor should be required as part of the refurb. Beatty is asking if Mayor also wants to have Chief show down time. TA said on the refurb part we should have a warranty. The problems they are having have not been covered under warranty. Beatty said that the ladder truck Cocoa got was with a grant; he read the article in paper. Chief said yes, his point was that such a vehicle costs about 900,000.00. The TA said we don't have the population or the call count to go after such a grant. Chief shared with Council that they are pursuing two grants:

- SBCA and cascade system – appx 150K with 5% match - 7,500.00 -
- Safer grant – manpower – no match

TA asked Council if they would support the grants as there may be a match required on each. There was no objection from Council.

Mayor asked if could have report by next meeting. Chief said once budget is done, he can focus on it. TA said she can put it out with FYI.

CLERK: nothing.

**I. PUBLIC HEARINGS:** Truth in Millage Notices Mailed to property taxpayers.

**2. Ordinance Setting Millage FY 2011/2012 (Ord 2011-45)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 1.6630 FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2011 THROUGH AND INCLUDING SEPTEMBER 30, 2012, PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

Mayor read the ordinance by title only and read his millage statement.

Chair opened the Public Hearing:

None

Chair closed the Public Hearing.

**MOTION:** Rivet / Beatty to approve Ord 2011-45, setting the millage at at 1.6630 for FY 2011/2012.

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

Motion carried 3 to 0.

**3. Ordinance Setting Budget FY 2011/2012 (Ord 2011-46)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2011 THROUGH AND INCLUDING SEPTEMBER 30, 2012; PROVIDING FOR REPEAL AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Mayor read the ordinance by title only. Also read full Section 1.

Chair opened the Public Hearing:

None

Chair closed the Public Hearing.

**MOTION:** Beatty / Acquaviva to approve Ord 2011-46, adopting the budget for FY 2011/2012.

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

Motion carried 3 to 0.

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

**4. Recommendation from P&Z Board – Setbacks in RR-65 Zoning**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Chair asked Council to send back to P&Z. His oversight, he missed something. Look at table - only looked at RR65. Ask them to look at all other residential classifications. Consensus of Council to do so.

**5. Recommendations (2) from Park and Recreation Board –**

- **Spring Fest Event**
- **Use of Volunteers and Donations to Rehab Huggins Park**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Acquaviva said her understanding was that there would be one set up for a two-day event. She is confused about why this is coming back for two events with two set up costs. It was Council consensus to have a two-day event for this Spring Fest as it is the 50<sup>th</sup> anniversary of incorporation. Council only wanted Park Board to realize that we needed more volunteers. Beatty said he attended the meeting

and told them that staff would only work one day and they would have to volunteer for the other and they would also need night security and that is when they started considering a one day event with a second smaller event later in the year for mostly the recognition of the anniversary – one tent and some free popcorn. Franklin said that staff was only to have to work one day unless they wanted to work both days. She thought the direction to Park Board was to ask them to recruit more volunteers. Franklin explained that both Bunnie Knudson and Maryann Marsh have been very enthusiastic about a two day event and also about recruiting volunteers to help. Mayor said security could be Eagle Patrol. Mayor will sit out there for a three (3) hour shift. Acquaviva said we could also ask BCSO to do drive throughs. She thought Council had agreed it would be a two day event this year, we can get more vendors with a two day event and we spend 8-10 K on a one day event now. How we could do a two day event with the same budget is not realistic.

**MOTION:** Acquaviva / Rivet to tell Park Bd that Council is not interested in a 2<sup>nd</sup> event later in the year and they strongly encourage them that it be a two-day event in the Spring.

Discussion: Beatty said he only told them the Town is looking for volunteers. Also it gets dark early on Friday. Franklin said they have determined March 31 and April 1 would have fewest conflicts. Acquaviva said we should work together on it. Beatty said he would support a two day event.

**VOTE:** All Ayes.

Regarding second recommendation from Park Board: TA said the Park Board Member that volunteered to write the grant has resigned from Board and that the rest of the board does not know that. They think she is working on it. Franklin said that the Park Board was told by Secretary the requirements of the FRDAP grant that there was no funding in this cycle for 2011/2012 and that the next year's application cycle closed in early September for the 2012/2013 cycle. If they apply for FRDAP grant in next year it will be for funding cycle of FY 2013/14. Mayor questioned how that can be when they are not in the fiscal year yet. Franklin explained that they review and rank the projects for funding and then however much money is funded pays for as many on approved ranked list until funds run out. The unfunded projects can reapply for the next year funding.

Franklin said the recommendation was intended to ask for Council support to go forward with renovations on Huggins Park using volunteers and donations and town resources, such as fill and manpower. TA said that there is too much for PW to do now to keep up without adding renovation efforts. Any fill we have in the yard is for roads. She asked that council give a motion so it doesn't sound like it is coming from her only.

**MOTION:** Rivet / Beatty to inform Park Bd that Town staff cannot be spared to work on Huggins Park and we have no suitable fill available.

Discussion: PW Mgr Tom Miliore said they are too extended now keeping up with mowing and pipe replacements. TA said resources we have are for roads. They can't have materials in yard and can't have Town staff to assist. She asked Council to let them know that. TA said maybe Council needs to tell them that they don't have resources or staff.

**VOTE:** All Ayes

#### K. ACTIONS ITEMS:

##### **ORDINANCE: First Reading**

##### **6. Approve Budget Amendment to FY 2010/2011 Budget (Ord 2011-47)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2010/2011 TO PAY OFF CAPITAL LEASES WITH RESERVED FUNDS ON DEPOSIT TO SAVE THE INTEREST ON LEASES; PROVIDING FOR FUNDS NECESSARY TO REPAIR THE ROOF OF THE PUBLIC WORKS BUILDING; PROVIDING FOR FUNDS NECESSARY TO REPAIR THE SUTPHEN LADDER TRUCK; PROVIDING FOR ADDITIONAL REVENUES; PROVIDING FOR ADDITIONAL EXPENDITURES; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Mayor explained that there are new sheets that change the Exhibit A to clearly show what is being paid off and that it is council intent to repay the reserved funds over multiple years. It was actually added to the ordinance.

Mayor read by title only and then read the whereas clause and the Therefore clause that explained that the Fire Dept will repay reserves over four years the equivalent of the payoff. The PW Dept will repay reserves over a period of five years.

**MOTION:** Rivet / Beatty to approve Ord 2011-47, adopting the Budget Amendment for FY 2010/2011.

Discussion: none

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

Motion carried 3 to 0.

**RESOLUTIONS:**

**7. Approve one-year Extension to Interlocal Agreement with Brevard County Dept of Natural Resources – Stormwater (Reso 96-2011)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE ONE-YEAR EXTENSION OF THE INTERLOCAL AGREEMENT WITH BREVARD COUNTY FOR STORMWATER PROGRAM ADMINISTRATION AND MANAGEMENT; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

Mayor read by title only.

**MOTION:** Rivet / Beatty to approve Reso 96-2011.

Discussion:

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

Motion carried 3 to 0.

**8. Approve Utility Rates for FY 2011/2012 (Reso 97-2011)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO WATER AND SEWER UTILITY RATES FOR FY 2011/2012; PROVIDING FOR AN INCREASE IN WATER AND SEWER UTILITY RATES IN THE TOWN; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

Mayor read by title only.

**MOTION:** Acquaviva / Beatty to approve Reso 97-100.

Discussion: Franklin said Palm Bay is considering a deferral of the impact fee increase for one year. If this is approved, we will come back to you to see if Malabar Council also wants to offer this.

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

Motion carried 3 to 0.

**9. ~~Approve Contractor to Repair PW Roof (Reso 98-2011) (Action under Consent Agenda)~~**

**10. Approve Interlocal Agreement with Brevard County – Cost Share with County and Municipalities for TMDL Study (Reso 100-2011)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE COLLECTIVE AGREEMENT TO SHARE IN THE COST OF THE STUDY TO REVISE THE TOTAL MAXIMUM DAILY LOAD (TMDL) FOR THE INDIAN RIVER LAGOON (IRL) IN THE AMOUNT OF \$2,238.00; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 10

**Recommendation:** Request Action

Mayor read by title only.

**MOTION:** Rivet / Beatty to approve Reso 100-2011.

Discussion: Beatty assumes it is just our portion and based on our population. TA said yes. She said the feds gave such unbelievable mandates to State and the IRL has proven that the grasses that live there could not exist if the conditions were that bad. She said it would cost the cities a fortune to maintain it to the levels they are proposing. She is glad to see Council support it.

Money would be from stormwater fund in current fiscal year. Acquaviva asked Attorney about his other cites – IHB and G-V will support it. Palm Shores will probably support it. Everyone is in support of this. Mayor said Melb Village and West Melb may object because they are not on river.

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

Motion carried 3 to 0.

**MISCELLANEOUS:**

**11. Qualify Candidates for 2011 Election**

**Exhibit:** Agenda Report No. 11

**Recommendation:** Request Action

**MOTION:** Acquaviva / Rivet to qualify candidates.

Discussion:

**VOTE:** All Ayes; Nay, none.

**~~12. Approve Repairs to Ladder Truck (Action under Consent Agenda)~~**

**13. Parking of Trailers in Residential**

**Exhibit:** Agenda Report No. 13

**Recommendation:** Request Action to Planning & Zoning Board

Another one of the Mayor's. Not the parking of RV but similar. Go together. He thinks it should also go to P&Z. They do have a problem with this particular section of code. Person called him and asked for letter saying it was allowed. Works for company in Orlando and company is concerned if he doesn't have letter Town may tow trailer. Mayor knows we won't do that. TA said he also called her and wanted a letter saying it was legal to park his trailer in his yard. He parks both his tractor and trailer in yard. TA said there have been complaints. TA said this gentleman is not the only one we have had complaints about. We have other tractor trailers being parked and they are taking out our culverts and ditches. They are breaking them off. It is not just cosmetics. There is a lot more to this. There are issues about the drainage that are also a concern. Consensus to send this to P&Z. TA also said there are EPA issues. These trucks do leak and the fluids do go into the ground. Council agrees that this should go to P&Z.

**L. DISCUSSION ITEMS:**

**14. Adopt 'The Little Town of Malabar' song by Rick and Chris Rakauskas as Official Town Song**

**Exhibit:** Agenda Report No. 14

**Recommendation:** Request Discussion and Direction

**MOTION:** Rivet / Acquaviva to direct staff to draft resolution to adopt this as the Town song and have Rick and Chris Rakauskas give permission to use the song.

**VOTE:** All Ayes; Nay, none

**15. Council Procedures**

**Exhibit:** Agenda Report No. 15

**Recommendation:** Request Discussion and Direction

Mayor said this is a result of budget workshops. Council wanted to cut the Attorney loose early in the meeting. Attorney said we could start at 7PM. Mayor said some council Members need til 7:30PM to get here. Mayor has a couple of suggestions to the proposed changes:

After #6 insert Attorney Report

TA asked if we can also do BCSO report after attorney. Acquaviva asked about the 3-minute limit. This chair does not use this limit. Chair said it is his prerogative. Leave it at 3 minute and then he is lenient with residents. Non-residents or contentious public, he may want to utilize it.

Mayor said swap #8 and #9.

#13 – remove 15 minute limit and change to 3 minute. Change to general public comment. Then for both 6 and 13 – Council may not respond or may. Normally you don't respond. It depends on the situation. If they are ranting, then don't engage them. But if they have a legitimate concern then you may want to respond. Leave it up to each Council Member. Especially if it is a resident. Rivet said the point is don't have to respond but you reserve the right to. Mayor said yes. Ask Chair if you can ask question.

Acquaviva asked about Attorney attendance. There was discussion to cut his time but he still comes to every meeting. This will allow him to get out early. There was discussion to have him at only one meeting but there was no consensus. Beatty said some cities use one meeting as a workshop and then one meeting to do actions from the workshop. We are making it more efficient. He would advocate having the public to speak after the Attorney leaves. Council consensus is no; keep public before Attorney.

Clerk will put in resolution form and bring it back for action.

**M. MAYOR AND COUNCIL REPORTS:**

- 1) Beatty – no;
- 2) White – excused
- 3) Rivet – no
- 4) McKnight – excused
- 5) Acquaviva – no
- 6) Mayor – no

**N. PUBLIC – speaker card required**

**O. ADJOURNMENT**

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

**VOTE:** All Ayes. The meeting adjourned at 8:50 PM.

BY: Thomas Eschenberg  
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

Date Approved with corrections: 9/26/11