

MALABAR TOWN COUNCIL REGULAR MEETING

November 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 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

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated for the record that also present is Malabar Fire Chief Dennis Covey. PW Dir Tom Miliore is on vacation and acting PW Mgr Chris Jones is here in his place.

C. ADDITIONS/DELETIONS/CHANGES: Mayor said Clerk asked to pull Item 5. Acquaviva asked to pull Item 7. No objections.

D. CONSENT AGENDA:

1.a. Approval of Minutes

Regular Town Council Meeting – 10/14/2011

Exhibit: Agenda Report No. 1.a.

1.b. Budget Adjustment (Reso 105-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2011-2012; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.b

1.c. Council Reappointment to Park Board (Reso 106-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF DICK KORN TO THE MALABAR PARK AND RECREATION ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1. c.

1.d. Council Reappointment to Park Board (Reso 107-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF MARYANNE MARSH TO THE MALABAR PARK AND RECREATION ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1. d.

1.e. Council Reappointment to Planning & Zoning Board (Reso 108-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF BOB WILBUR TO THE MALABAR PLANNING AND ZONING ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1. e.

1.f. Council Reappointment to Planning & Zoning Board (Reso 109-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF ELIZABETH RITTER TO THE MALABAR PLANNING AND ZONING ADVISORY BOARD; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.f.

1.g. Council Reappointment to Board of Adjustment (Reso 110-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REAPPOINTMENT OF CHARLES FRAZEE TO THE MALABAR BOARD OF ADJUSTMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.g.

Recommendation: Request Action on all

MOTION: Beatty / Acquaviva to approve the consent agenda. Mayor explained that there is no requirement to read resolutions by title. The Charter still requires a roll call vote on resolutions. There is a referendum question that will go to voters in 2012 asking if resolutions can be done by majority vote. Discussion: no other discussion

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

Motion carried 4 to 0.

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

Speaker's Card: Mr. Morris, Weber Road, referred to the garbage dumped on Weber Road, the carpet is still there but the tires are gone. It was all dumped in Weber Woods entrance area. He said Jeff McKnight saw it too. It is a continual thing. He said there is a guy on Hall Road that goes out and picks up rubbish on Saturday mornings. That is a nice guy. Mr. Morris is not going to do it as he has other obligations. The area across the street needs to be mowed down there. He has picked stuff out of ditches. He said things at the last meeting about his water issues and talked to Jeff McKnight and the PW Mgr. He also spoke with two neighbors of Richard Cameron: Richard Hammond and Richard ?? and they said he should have mentioned their names at the last meeting. He referred to Eng Morris Smith. He said the Town Administrator took his word instead of four other people that are unbiased regarding the drainage issues. He then said he wanted to relay a story the Town Administrator told him. She said there were people here that will help him. Mayor Tom Eschenberg and CM Jeff McKnight have helped. She told him Mr. Morris, you don't know who you picked a fight with. That person she referred to is the person next door. She also said she lived in Malabar and moved because she couldn't go to store and not be hounded by residents with problems. That tells a lot about her. That is why she moved away from Malabar. Water situation is till the same. No one has come by. He can't mow. He can't see any improvement.

F. ATTORNEY REPORT:

Bohne said the PB Atty Andrew Lannon is supposed to be getting back to us with a proposal to resolve the litigation. Bohne will call him tomorrow. Mayor asked if that will that require another executive session? Yes.

G. BREVARD COUNTY SHERIFF REPORT: none**H. PUBLIC HEARINGS: none****I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING****2. Recommendations from Park & Recreation Board**

- Authorize Malabar Boy Scout Troop 37 to camp out on 3/31/12 at Malabar Community Park to assist with night security for Springfest
- Authorize "Evening Under the Stars" on 3/31/12 for BS Troop 37 to Provide Scouting Education to Public
- Authorize Listed Special Events for Spring Fest

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor said this originated at Teen Council. He gave the issue to them for a 1 or 2 day event. And this was one of their discussions. Then Park Board met the next night and the scouts attended. Franklin added that the Spring Fest committee also had met and supported all their recommendations.

MOTION: Beatty / Rivet to approve all three Park Board recommendations.

Discussion: Acquaviva attended the Spring Fest committee meeting. She was initially concerned about having just them as the security but there will be adults and other security and she does not have trouble with it. It will be a memorable event for them and it is their park. McKnight felt the same concern at first but agrees that they should do it. Beatty said they can close the gates even if not locked. It would discourage most from entering. Mayor said simply having someone there will prevent incidents.

VOTE: All Ayes.

3. Recommendations from Planning & Zoning Board – Gaming Establishments

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.C. 3, LAND USE CLASSIFICATIONS; PROVIDING FOR GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR GAMING ESTABLISHMENTS; AMENDING ARTICLE XX RELATING TO LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Mayor said Atty drafted ord and sent it to PZ and they changed it. Atty did memo. They eliminated definition for gaming establishment. They instead grouped them together and referenced a F.S. Attorney Bohne said there is no definition for these internet gambling (electronic gaming establishments. Leaving as P&Z wants it would create an issue. He would recommend the definitions as he wrote stay in. Bohne said they also took out the correction to the table in Art VI. That needs to be in there as well as it is an amendment to the LDC. He had added it to correct another issue of a wrong street name in Table in Article VI. It was originally put in ordinance for ALF and he changed it to this ordinance to correct that other issue. It has been removed. When you do an ordinance to the LDC you can combine the amendments. Regarding electronic gambling, the State will eventually have to deal with these things and if the State determines how they will handle these strip mall casinos. But until then this will provide Malabar with coverage. McKnight wanted it to go back to P&Z. Franklin said that they could discuss it at P&Z on Wednesday. She can bring it up under old business or staff reports. Franklin also said that once Council approves the wording and directs it to be put in ordinance form, then the ordinance will go to P&Z for a Public Hearing before coming to Council for a first reading. Mayor asked if they could discuss this at next P&Z and then have for the 1st PH at their following meeting. Franklin said they will try and schedule a second meeting in November but not for PH. They could discuss and then it could go on for PH at their December meeting.

J. ACTIONS ITEMS:

ORDINANCES: First Reading:

RESOLUTIONS:

MISCELLANEOUS:

4 Approve Method of Banking Selection

Exhibit: Agenda Report No. 4

Recommendation: Request Action

TA said that following the last meeting she sent out request to all banks and asked what are the benefits of having a contract. She also had in depth discussions with BBT and SunTrust related to contract terms. BB&T and SunTrust both shared that the banking industry is in turmoil and things are changing regularly. TA said she also did this as a private person as well because she banks at BofA and changed to local community Credit Union. Acquaviva said she had talked to TA about this and also asked if they wanted to go forward with contracts and RFPs when there is an election next year and the banking industry is changing all the time. She doesn't want us to do a knee jerk decision. She said we did a knee jerk leaving Riverside. Unless there is a significant reason to change she is for leaving it as it is for time being. McKnight said they should allow staff to decide which one is the easiest to deal with and then support their recommendation. Rivet said as Franklin is the professional, start with whatever she is comfortable with. The fees are a consideration but not the whole thing. Franklin said there are issues. Beatty said that they discussed this before and the current fees are charged and then credited back the flowing month. Franklin said we for the record she did not move the money from Riverside as a knee jerk action but rather as a responsible decision to safeguard the Town's money when it was obvious that Riverside was going to be taken by Feds and having no knowledge or precedent on what would happen to public monies when such action was taken. She felt it was prudent to move the money to a secure bank that was not suffering from the collateral instability. From the time the change was made, she and TA have stated they wanted to shop the area banks for a permanent home. We know Wachovia was becoming part of Wells Fargo. We bought a small amount of checks for the two operating accounts. They discussed charges with the bank. We pay a charge for the scanner that provides remote deposits. Mayor asked about accuracy. Franklin said they do reconciliation with each deposit and the bank statement. She also compares to the IMS utility report. But there is a charge for machine. It is offset by the time that would be needed to manually write out a deposit slip and then carry to bank. And then there is the safety issue of employee carrying the checks to the bank. We still have to go to bank for deposits into the other two accounts: utility customer deposits and Section 125. Both of those have little regular activity. Beatty said we should hold off unless there is an obvious problem. There is a cost to changing banks and accounts and checks. He just got notice from TD Bank on new charges. All the banks will be going through this. B of A just reversed their decision to charge for debit card activity. Beatty said keep status quo for stabilization but watch it and stay informed. No sense to change and then find out we changed to a worse situation.

MOTION: Table until Franklin gets more information and provides a recommendation.

Franklin and TA thought they could have something for first meeting in December.

———— **5. ~~Approve 2012 Calendar of Meetings~~ PULLED**

6. Nominate Elected Official for Possible Election to FMIT Board

Recommendation: Request Action

Exhibit: Agenda Report No. 6

TA served on the PMFG in Clewiston. She was on it in 2001. It was interesting and important how it affected small communities. She said they met quarterly in Lakeland. She didn't know how often FMIT met but probably the same. Franklin said that having the formal endorsement of the elected local Board, a nominee's resume and application would go to Orlando for the FMIT to use to fill vacancy on the FMIT Board. Being nominated by local Council did not ensure an appointment to the FMIT Board. Beatty is not interested.

Mayor volunteered. He said he did not think they would pick him. McKnight said he would have also volunteered for same reason. It looks like you are doing something.

MOTION: Rivet / Beatty to nominate Tom Eschenberg as candidate for the FMIT Board.

Discussion:

VOTE: All Ayes.

(No Recess – Attorney Excused shortly after 8PM)

K. PRESENTATIONS:

L. PROCLAMATION: Veterans Day – Mayor read. Franklin said she did research on this before crafting the proclamation last year and it was so good she used it again this year. She said the proclamation will be posted out front and also on the website. She also copied an article from recent paper on things you could do to recognize and help a veteran.

M. STAFF REPORTS:

ADMINISTRATOR:

- She said she has added to the website a posting to help with the scouting for food drive. They can bring it here and we will collect and turn over to Scouts.

- Yard Waste piles because of the recent rain storms; WM asked to put a roll off on our property at park to allow their trucks to empty and get back to collections. It will help with a speedier clean up and then will be taken out.

- Eagle Corp vehicle is at Reasonable Auto for repairs and it will need between \$700.00 to \$1000.

- She will be off from Nov 18-28 – but will be here for mtg on 21st and is available by phone at all times.

- Wanted Council to know about complaint about a visibility problem at Hall and Weber on east side. Sent letter to resident to clear the brush so drivers could see traffic. Mayor said that resident also stopped him and Dave while on patrol and pointed it out. If you stop at stop strip you can't see up and down the road. Other intersections are the same. You have to move up beyond the stop strips. TA said this person has been in 3 or 4 times and he thinks someone will get hurt at this intersection because of the lack of clear visibility. McKnight got a complaint at SE corner at Malabar and Weber. She will send letter to property owner. Acquaviva also said when you stop at painted stop strips the cars come whipping around and then you take the chance of getting plowed by them if you pull forward. Mayor said there are at least 50 intersections in Town that you have to pull up to see clearly.

- Resident at Lineberry Lane and Atz felt there was issue with branches in our row. She has gotten a quote from a contractor and then is waiting on another. Then she has to get locates. If they are called that is why she is not out there right away. She'll cut what is in Town ditch but if the survey shows it is on his property then she will help him but will not spend town resources to cut the trees.

- Re: Mr. Morris reference to dumped carpet and tires – they don't do proactive code enf. WM does not take tires. Re: needing the grass cut at Weber Woods, she has sent a letter and it was returned. Weber Woods lots are privately owned. Franklin explained the issues before with the overgrowth and the broken valve on a spring on one of the lots. It took over 180 days. Town notified the County and St. Johns and the owner. It caused drainage issues on Weber as well as flooding the property and wasting water. The developer was very helpful initially but once they were out of the picture they have had little success. Town used the remainder maintenance bond money to do the mowing the last time there was an issue. Franklin explained how the project engineer refused to dedicate the access road for road right-of-way but rather identified it as an easement so it could be considered part of each lot so they would meet the 1.5 acre requirement. They have issues with the way it was drawn and recorded. Property Appraiser still has issues. There are parts of the Town's row that is showing as part of one of the lots. There is part of SR514 showing as part of the row. TA said they sent the letter to the address on PA site. McKnight said she can look it up under Sunbiz.com. There are multiple owners of the lots. One of the owners is an attorney at Karl Bohne's firm.

- Re: the phone call Mr. Morris referenced, it did not happen nor would it happen. It is another elaboration.

McKnight said he would like to look at the resident's surveys. Franklin has them now and he is welcome to look at them. She has included the survey questions and answers in the newsletter since they had a large edition. The comments will still be done separately and be available on website and paper copies at Town Hall.

BW thanked resident Dawn Danielson who helped with the survey figures.

CLERK:

- Reso on Council Procedures left out the presentations and proclamations that were originally approved to be done after the recess when the Attorney leaves. I have inserted them and handled it as a scrivener's error.
- Want to publicly thank the Portuguese Corner Store & Bakery for providing the wonderful selection. Also want to thank Brian Vail for his contributions for the candy in
- I will have a utility rate reso on next agenda to correct an error on the rates in Exhibit B of Reso 97-2011. Since it involves fees Attorney felt it should be redone as repeal and replace.
- Reason I pulled Item 5. Had wanted Council action on changing meeting dates in Jan and Feb. Rest of calendar was just for information and planning purposes. Several Council Members have thanked me for providing the meeting dates. I realized the proposed date's conflict with the SCLC meetings. I will revise the memo with the regular Jan and Feb meeting dates and distribute to Council.
- Nominations for Chair and V-Chair will be done at 11/21 mtg if there is a full Council.
- Special mtg on Thursday at 7PM. – TA will ask to be excused.

N. DISCUSSION ITEMS:

~~7. Deterioration of Country Cove Bridges~~ PULLED

8. Hunter Lane and Candy Lane Drainage

Exhibit: Agenda Report No. 8

Recommendation: Discussion and Direction

Mayor said there are four people now on Candy Ln that flood that never flooded before. Memo from Morris Smith. TA said this has been going on since before the issues with persons on Hunter. They have met the DEP requirements but have not been provided to town. TA needs to meet with Tom and go over this. Another project coming up that will need to take a priority. Mayor said what would be nice is to send a letter to the four residents on Candy land and here is what the town proposes to do about it. And give them a timeframe. Talk to tom about it first. TA said there are other projects. Mayor so they know town is responsive to their. McKnight said there used to be a drainage committee. Rivet said there are a lot of people that have history but if you have 6 different opinions. Then maybe have the engineer look over. Professional eng should make the final decisions.

The residents would have to have some facts.

Acquaviva said there are people that have quick fix ideas and have no experience. Want to be careful. McKnight is referring to those that are interested in correcting the problem. Mayor said there are a few people in town that have historical knowledge of the flow of water. It may help put reference to what is needed today to correct the situation. What was in place in past may not work now.

Put on for action on next agenda. Drainage committee.

O. REPORTS - MAYOR AND COUNCIL MEMBERS:

- 1) Beatty: SCLC for Dec meeting is only canned goods - no money spent. Carl has extremely lot of history. He was here when someone took 10 acres on west side and town dug ditches. Part and parcel for the subdivision. They were under water the day they saw them. The new development went in. Candy lane was a half road. Everyone it rained and. Mayor said he had knowledge of drainage. He started off driving around with the drainage committee way back when. Marisa said it is interesting to read it all.
- 2) White: excused
- 3) Rivet: nothing
- 4) McKnight: nothing
- 5) Acquaviva: She explained that the Discussion Item 8 was pulled because there has been a meeting at Town Hall with the HOA President, the Country Cove Mgnt Company rep, former Council Member Bob Rossman and Town staff and Eng Morris Smith just this date. Country Cove subdivision has had erosion issues and for about a year the attention has been focused on it. It was erosion under and around the culverts under road Country Cove Circle. There are also holes but was overgrown and

difficult to see. The HOA was contacting the Town Administrator and handling that and she was getting copied on the emails. Everything went to the lawyer. There was a difference of opinion between the HOA and Administrator on who was responsible to make the repairs and it was her idea to have a meeting with some of the people involved. She explained she understood that the Town Administrator was going with her gut in her opinion of who was responsible to do the repair. But once the research was done by Franklin and herself and given to the Administrator, it showed that the Town accepted the roads in Country Cove subdivision. The TA and Engineer had only looked at the plat. The research looked at the subsequent minutes and Engineer reports showed that the roads in Country Cove subdivision were approved by Malabar Council. Franklin also found the construction drawings that changed the concrete to metal oversized culverts. The memo in minutes showed the Town Engineer stated that St. Johns had approved the change. Acquaviva said that the meeting got all that squared away. It is a safety issue and needs attention. The HOA and residents all recognize the issue with the budget. Mr. Rossman also sat on TBRB and knows the budget issues. She wanted to recognize Franklin for her research ability and Denine who stayed late and helped with the research and also said she took some old minutes home and read them and actually found where Council approved the roads in Country Cove.

TA then said she found a 2006 memo from former Town Engineer Bill Stephenson to former TA Ed Booth. It addressed the erosion problems and the culvert repairs. TA said that Bob Rossman was on Council then and had asked Booth to be copied on memos related to the repairs. He never got any. TA said if it had been fixed in 2006 it wouldn't be this big of an issue now.

TA said she has the Town Eng Morris Smith developing the scope of what has to be done. Then she will get prices, RFQ or FRP. Eng may propose to sleeve it with a 36" pipe and then fill in with concrete. That will stabilize it. Or it may be another method. She is hoping to have for next meeting. That expenditure was not budgeted. Acquaviva said everyone is aware of the budget – Mr. Rossman actually sat on the TBRB. It was getting to be a safety concern. There are some heavy vehicles that cross over it. The water looks low and dark. She said the meeting was so good. She talked to the management lady and they were going to get a lawyer. She thought it was only common sense to have a meeting. Acquaviva said she didn't care how it turned out; it just needed to be resolved.

TA said one of the problems we have here is lack of documents in project files. Everything requires research. This has been the only town she has worked in with zero information for the new Administrator. There was nothing from Mr. Booth. She got a notebook from Mr. Stephenson but nothing in it on Country Cove.

Acquaviva also stated she went to Spring Fest committee meeting and it was exciting to see the enthusiasm. Totally everyone is in to it. She and Scott McLaughlin will be doing outreach to get sponsors and underwriters. Everyone has committee chair and she will attend the meetings and report back to Council.

- 6) Mayor: how was b-fast. Good turnout. Made a few dollars. Back to situation. Weber Woods thing. It does make it easy to dump from that hidden road. As code enf if they only mow the fronts you may not get in trouble tell them it is creating problems, drag racing, dumping. If she can get a body. There is an attorney in Karl's office that owns 4 of them. Try and see if Jeff's suggestion. Supposed to have a meeting. The meeting is set for the 9th. Jeff has been out of town. Mr. Morris will find out what happens after that.

Mr. Morris has hired an engineer.

Marisa asked if he would supply a copy of the engineer's report. Did he supply it to the Town? No. A copy of his engineers report would be useful. If there are discrepancies.

Teen council is coming up again. He did call hometown news. Interesting article on Palm Bay. The reporter called back and has promised to come to the next teen council. He will also do an article on an

issue that council may be voting on after P&Z are done with it. Teens will deal with: School Board had a TBRB and the superintendent dismissed them. He used TA in his example. One about having wild life for pets. Little girl on Weber road had lemonade stand. Can you help that little girl?

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

Q. ADJOURNMENT:

There being no further business to discuss, **MOTION:** McKnight White / Beatty to adjourn this meeting.
VOTE: All Ayes. The meeting adjourned at 9:10 PM.

BY: Thomas Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

Date Approved: as corrected 11/21/2011