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**TOWN COUNCIL MEETING  
THURSDAY, DECEMBER 19, 2011  
7:00 P.M. AND CLOSED ATTORNEY-CLIENT SESSION  
TO COMMENCE AT 7:00 P.M. OR AS SOON THEREAFTER AS POSSIBLE  
MALABAR COUNCIL CHAMBERS  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. Chair Eschenberg called the meeting to order and lead in the Prayer and Pledge.

**A. CALL TO ORDER, PRAYER AND PLEDGE**

**B. ROLL CALL**

Town Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Marisa Acquaviva
Council Member:	Carl Beatty
Council Member:	David White
Council Member:	Steven Rivet
Council Member:	Jeffrey McKnight
Town Clerk/Treasurer	Debby K. Franklin
Certified Court Reporter:	King Reporting Service

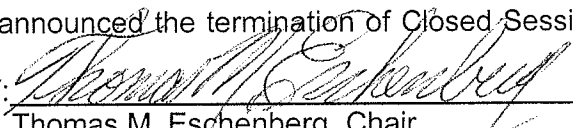
**C. RECESS FOR CLOSED ATTORNEY-CLIENT SESSION**

Pursuant to Florida Statute 286.011(8), the Town Council will hold a private attorney-client session, **which will not be open to the public**, with the Town Attorney, Karl W. Bohne to discuss pending litigation in Town of Malabar v. City of Palm Bay, Case No. 05-2009-CA-049231, filed in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida. The following persons will be present at said meeting:

Town Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Marisa Acquaviva
Council Member:	Carl Beatty
Council Member:	David White
Council Member:	Steven Rivet
Council Member:	Jeffrey McKnight
Certified Court Reporter:	King Reporting Service

A verbatim transcript of this meeting shall be transcribed by King Reporting. The transcript will be filed with the Town Clerk and open to the public for inspection **after** the conclusion of the litigation.

There being no further business to discuss the Chair announced the termination of Closed Session at 7:30PM.

BY:   
Thomas M. Eschenberg, Chair

ATTEST BY:  
  
Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 1/23/2012

**MALABAR TOWN COUNCIL REGULAR MEETING**

**December 19, 2011**

**7:00 PM (following Executive Session)**

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 7:00 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

**C. RECESS FOR EXECUTIVE SESSION (Separate minutes) back in session at 7:42pm.**

**D. ADDITIONS/DELETIONS/CHANGES:** Need to add K.5. to set a January Council Meeting. Also have info on Briar Creek Boulevard bridge repair.

**E. CONSENT AGENDA:**

**1.a. Approval of Minutes**

Regular Town Council Meeting – 12/05/2011

**Exhibit:** Agenda Report No. 1.a.

**Recommendation:** Action on minutes

**1b. Budget Adjustment (Reso 112-2011)**

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. 1b.

**1.c. Approve NIMS Brevard County Coordinator (Reso 113-2011)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS); PROVIDING FOR APPROVAL OF THE BREVARD COUNTY EMERGENCY MANAGEMENT DEPARTMENT AS THE NIMS IMPLEMENTATION COORDINATOR; PROVIDING FOR MALABAR COMPLIANCE TO THE NATIONAL INCIDENT MANAGEMENT PLAN; 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. Acknowledgement of Receipt of Monthly Financials for October, 2011**

**1.e. Support FLC Advocacy for Police and Fire Pension Reforms (Reso 114-2011)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING POLICE OFFICER AND FIREFIGHTER PENSION PLAN AND DISABILITY PRESUMPTION REFORMS TO MAKE THE PLANS SUSTAINABLE, SOUND AND SECURE FOR CURRENT AND FUTURE POLICE OFFICERS AND FIREFIGHTERS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 1.e.

**Recommendation:** Request Action on all

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

Discussion: Chair asked if Council had anything they wanted to pull. None.

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

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

Speaker's Cards:

Chair stated he would use the 3-minute rule.

- Bridget Ports: 1340 Hall Road, in reference to 11/11/2011, fire incident on Marshall Drive. She handed out copies of irrefutable evidence to conflict with Chief's report. She also had copies of statements from everyone involved but only had six (6) CD discs. Chair said for Clerk to keep his copy so she could make copies.

McKnight referenced the complaint that had been made about him and asked her if he is classified as her friend and has he ever been to her house over past two years? No. He represents the residents and is not carrying a torch for anyone. Acquaviva said that Ports stated she felt threatened and asked if she had called BCSO on those occasions.

- Joseph Hooker, Lt at Fire Dept., he personally has never been harassed or intimidated while working here.
- Paul Aliano, officer with Fire Dept., he has not been harassed or intimidated by anyone at Fire Dept or Town.
- Aaron Collins, Lt with FD, said the Town has given him great experience, started with Malabar fresh out of fire school, it has allowed him to gain a lot more experience and make him more marketable. He has not been harassed or intimidated, and had not witnessed any harassment or intimidation of others. He reiterated that he had not experienced any or witnessed any.
- Kevin Plunkett, is the Volunteer Asst. Chief. He watched the last Council meeting hearing about a lot of complaints and he wanted to say he has never been harassed or intimidated at the fire department but he has been subjected to harassing calls from others outside of the fire dept. He and the other volunteers give their life for this community. He has never seen any of that stated at last meeting. He said to Council to feel free to come in and talk. Chief Covey and Asst Chief will also talk to anyone. They all feel the same way. Felt we had to come here tonight to say that tonight. He said we need to see in the light who is saying this stuff. There is harassment towards the fire dept.

CM David White asked TA if anyone had submitted harassment statements or reports since the last meeting. No. TA said she had also handed out harassment policy for Town employees and FD personnel and had them each sign for it. She also asked them to come forward if they had a problem. No one did and no statements have come forward. They have stated there were numerous complaints that went on over many years, but nothing has been received.

- Steve Morris, Weber Road, over water damage coming into his pond and killing his fish. Wants to know if there has been an inspection done since the last meeting. Mr. Morris said PW Dir Miliore was out there. Tom said he only took pictures. Morris said the barbed wire Foley put out there has done nothing - the cows have gone under it. Where all the water is at is his property. He sent pix down the dais showing the cows have trampled down the swale. Work that was done recently. Last picture shows the fence is 4 foot tall. Last 2 pix are Richard Cameron putting a swale in. Building a berm and Town Eng doesn't know water doesn't go uphill. There was an effort and he put one strand of barbed wire up and the cows go underneath it. Mayor asked what he wants town to do. Make him do what his eng said should be done - mirror the swales on Mr. Morris property. Not the town eng. The town needs to tell him to manage the first inch of rainfall.

Mayor asked what staff had done. TA said they held their meeting, that morning they received the memo from the Town Eng. Draft a letter to Mr. Foley based on what Atty Bohne advised. The meeting after from the last complaint, got a call that Mr. Foley had already mowed the grass. Tom was taking pictures behind the fence. How soon will this happen. She will draft it and send to Bohne. Could happen this week.

G. **ATTORNEY REPORT:** nothing

H. **BREVARD CTY SHERIFF:** Sheriff Deputy spoke – vehicle burglaries on Hall Road, 2 or 3. Also one on Lett Lane, all cars were unlocked. That is all he knows about. Rivet asked if they had any leads.

I. **PUBLIC HEARINGS:** none

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

K. **ACTIONS ITEMS:**

**ORDINANCES: First Reading:**

**2. Amendment to Code Related to Gaming Establishments (Ord 2011- 48)**

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 ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; ESTABLISHING ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AND ALSO AMENDING REFERENCES IN TABLE 1-6.1 (B) IN THE "ACCESS REQUIRED TO STREET" COLUMN FROM "WESTLAND" TO "WEST RAILROAD AVENUE"; 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. 2

**Recommendation:** Request Action

Chair read the ordinance by title only.

**MOTION:** McKnight / Rivet to approve Ord 2011-48, dealing with Electronic Gaming.

Discussion: McKnight thought being more detailed was better in this case. Attorney said the P&Z Board had a question about the language in ordinance not referencing less than 50 units. Attorney changed wording to state less than 50 units are not allowed as a permitted use or as a conditional use.

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

**RESOLUTIONS:**

**MISCELLANEOUS:**

**3. ~~Approve Repair to Bridge on Briar Creek Boulevard~~ — PULLED**

**4. Employee Holiday Schedule**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** White / Rivet to approve the additional half day for Christmas Eve and New Year's Eve.

Discussion:

**VOTE:** All Ayes.

**5. Set January Council Meeting**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Discussion: Mayor said Jan 4<sup>th</sup> could be an option. Mayor said the 4<sup>th</sup> and 23<sup>rd</sup>. McKnight said just do one. Not a lot happens over the holidays. They decided on 23<sup>rd</sup>.

**(No Recess – Attorney Excused)**

**K. PRESENTATIONS:**

Mayor read Jack Little's and Scott McLachlan's. They were not present. CM White said he would give Scott his. Clerk's office will give Jack his certificate.  
Mayor read one for CM Beatty for Ethics.

**L. PROCLAMATION:**

**M. STAFF REPORTS:**

**ADMINISTRATOR:**

- Chief reported on the Fire Dept – good response to December Sunday breakfast – biggest yet.
- Had live fire training – went very well. Also had aerial operation course and it is starting to get some use. They are going to take their time getting used to it.
- They do have Christmas ornaments for sale as fund raiser.
- He told Council he didn't tell anyone to come here tonight to speak. After last Council meeting he had meeting with FD personnel and reiterated the Fire Dept and the Town's harassment policy. He has an open door policy. All five officers, to the man, spoke tonight and said they were not harassed. Chief wanted that out there.
- Chief asked Council if the additional half day for Christmas Eve and New Year's Eve could also be given to his secretary. She works part time and works very hard. He couldn't do his job without her. She also hasn't had a raise. He would like her to also get those half days off with pay. Council agreed.

**CLERK:**

- We will need to do a budget amendment that would increase the bottom line of the budget. The reason is three fold: We have no money in budget to cover the adding of a spouse to health insurance; cost is 11,400.00. We will need funds to cover repairs to bridge on Briar Creek Boulevard, price TBD and repairs to Country Cove culvert, price TBD.
- Rec'd first flag design entry.
- FDOT will have speed study results within 60 days. 45mph may have been appropriate in prior years but subsequent improvements may have resulted in increased speed.
- Have been working on banking services and would like to present a resolution under consent agenda at next meeting to move banking operations to BB&T. Council consensus was to allow me to choose the bank that I felt provided the best services for Malabar. I believe that to be BB&T. They already handle our investment banking. They were not involved in the sub-prime mortgage issue. They have reviewed what we pay Wells Fargo in service charges and can reduce that by 50%. I would like to get a consensus now to place it on the consent agenda at next meeting. Otherwise I will place it under Resolutions on the agenda if you feel there is discussion needed.
- Auditors were here Dec 5, 7, 8 and 9<sup>th</sup>. Having audit at this time reduced the number of post yearend adjustments. They found some areas we needed improvements on; errors again in utility reports and a couple in AP. In defense, the requirements are the same for accounting and reporting whether you are small like Malabar or large like Palm Bay. We have very limited staff and handle multiple jobs during any given day. We have adequate checks and balances but do make mistakes. Part time Accounting
- Completed the required eight (8) hours of investment training through seminar conducted in Cocoa by Cutwater Management. It was an excellent seminar.

**N. DISCUSSION ITEMS:****REPORTS - MAYOR AND COUNCIL MEMBERS:**

- 1) Beatty: referenced the memo that was hand delivered and the person that alleged that he was friends with the Ports. He has never socialized with them. The friendship issue is an example of why he wanted an outside investigator. Now that it is public he may have questions after he reads through everything. He has only received four emails on this issue and three of them were from TA.

TA said she was also accused of mishandling the situation and being unprofessional. It would normally not be on an agenda. She was not rude to that employee. She works for Council and they had the item on the agenda.

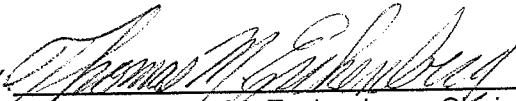
- 2) White: nothing
- 3) Rivet: nothing
- 4) McKnight: hopes everyone has a happy holiday. Asked Tom about the hole at Atz and Weber. He also said he has a borescope camera. It has 7/16" and 18 in long. It was Engineer Morris Smith that mentioned it.
- 5) Acquaviva: Out front looks nice and inside. Thought staff did a good job of decorating.
- 6) Mayor: regarding the Fire Dept Christmas ornament. This is the first year issue for the ornament. Everyone should get one. It will become a collector's item.

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

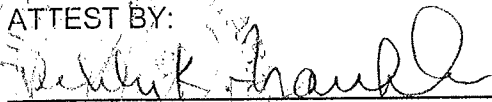
There being no further business to discuss, **MOTION:** Acquaviva / White to adjourn this meeting.

**VOTE:** All Ayes. The meeting adjourned at 8:35 PM.

BY:

  
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Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

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

Date Approved w/ corrections: 1/23/2012