

**MALABAR TOWN COUNCIL  
SPECIAL MEETING MINUTES  
JANUARY 24, 2022, 6:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

**1. CALL TO ORDER:**

Council Chair, Mayor Patrick T. Reilly called meeting to order at 6:30 pm. Mayor led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

TOWN MANAGER:

MATT STINNETT

SPECIAL PROJECTS MANAGER

LISA MORRELL

TOWN ATTORNEY:

KARL BOHNE, by phone

TOWN CLERK/TREASURER:

DEB FRANKLIN, arrived 6:37

DEPUTY TOWN CLERK/TREASURER:

RICHARD W. KOHLER

**3. ACTION ITEMS:**

**3.a. Discuss Possible Changes to Code dealing with Conservation Lands**

**Exhibit:**

**Agenda Report 3.a.**

Mayor asked TM Matt to open.

TM Matt Council had directed staff look at possible additional language to address conservation land and he went through options in Palm Beach County, Gainesville, and Sarasota County. He referenced the contract language regarding the timber sales settlement of 80% for Brevard County and 20% for FDACS. Typo in agenda report stated \$5.50 per ton is actually \$5.05 per ton. Focus of changes to code was for development, not conservation. We may want to make some changes to that and have included several potential motions.

ITM Morrell states the county has not applied for a new permit.

Skyler Degarg, concerned about the project. He has contacted several professionals at FI Tech, and one EELs employee to learn more. A mixed use might be reasonable. Shade around the water ways would be excellent, as it is a different environment. Most of the land can be used for the intended purpose but can find a middle ground. Mayor states that is also his intent.

Sue Hann appreciates staff and Council for all of their hard work. Would like to see the Town and County work together. Recommends Staff or Council attend County Commission meeting; important to work together.

Murray Hann, he has proposed a trail centric compromise with the SMC, it wasn't shot down and is provided for agenda item 3b. Drew Thompson has mathematically shown that their compromise meets their 1-2 trees per acre. Probably arguing over 100 trees. Program estimates 10,000 trees in MSS (Malabar Scrub Sanctuary) removed. Were talking about 1% of the project, that can't be enough to affect the project. Were working towards reaching a consensus. They have signed contracts with a lumber contractor. The EELs program, not the contractor, pulled the permit. He encourages Council to send a representative to tomorrow's meeting.

Discussion: CM Acquaviva states that the Town has been working on strengthening the tree protection ordinance long before this issue came up. This is another opportunity to work on it. The

EELs program makes up 20% of our land, so we should send it to Planning & Zoning Board and the Attorney.

CM Scardino is concerned with timing. If we wait by sending it to P&Z, they may just cut the trees. We need to make some choices to head this thing off. CM Vail asks TM Stinnett what the time frame is on this? TM Stinnett states 2-3 months minimum if it goes to P&Z.

CM Scardino asked how much money they will make from the logging sale? ITM Morrell states we don't know how many trees they will be removing. Without a tree survey, we won't know.

CM Hofmeister asked is there have been any permits applied for? TM stated no. CM Hofmeister stated she attended the last G-V meeting and Mr. Mike Knight stated they are done in G-V and Micco areas.

ITM Morrell states that the density in tree removal is very different between the different areas.

TM Stinnett stated the County could have applied for a permit or come to Council and requested a special exception. They have done neither. We are looking at ways to make this process smoother. The ball is in their court.

CM Rivet stated this comes down to them not wanting to pay, and us not wanting to lose oak trees. There is room to compromise. We can be proud of ourselves for saving the 1% discussed by Mr. Murray.

CM Vail states Mr. Knight told him that only 1 % of the trees were oaks. He can not see how 1% of the trees will save the scrub jays. We are trying to do what's right for Malabar, passive recreation, and conservation, and we pay for it on our tax roll. To this point, no proposals have been well received. We want to work with the County.

Mayor states the goal for tonight's action is proposed amendments to update the Code regarding conservation land.

CM Vail stated we have been improving the conservation efforts in our Town, and this is the next step. We should send this item to P&Z Bd and ask them to expedite the review. If they can do it in their next meeting, he would be in favor of this.

Mayor stated that you can't put this specific incident into Code. TM Stinnett reminded Council there is a permit process on the books they can apply for. CM Scardino states he wants them to follow our rules. Scrub Jay birds live all around the State.

CM Rivet stated that he lives here because he wants to be among nature, and is in favor of preserving Scrub Jay habitat, but that can't be the only thing they focus on.

CM Acquaviva stated the land has been maintained by EELs for 30 years, and they haven't saved the Scrub Jays. Our neighbors do a lot to care for the area. We want a compromise.

CM Scardino doesn't believe they will proceed without a permit. They did the Jordan project without telling us and without a permit. CM Vail believes that a meeting that directly effects the Town should have notice sent to the Town.

CM Scardino stated he would really like to see how much money they are going to make from the logging process. CM Hofmeister stated that from March 1<sup>st</sup> to June 30<sup>th</sup> they cannot work due to nesting/breeding season. Can the EEL program do all that before March?

TM Stinnett proposed a Council motion for TM Stinnett and the T&GC to negotiate the application of the compromise and a permit, and for PZ to alter the Code to keep this from happening.

Atty states the Council should focus on the agenda item provided by amending the code. He doesn't believe it can be done in 2-3 months, especially with it being a Comp Plan change. If Staff is to move quickly, we need to know now. Mr. Knight has admitted that his lack of communication is why we're here today. He supports moving ahead with the suggested motions from the agenda.

CM Rivet stated we can waive some or all of the fees if they give us a favorable agreement to save the oaks. CM Scardino stated we should try this first. Let TM Stinnett negotiate, and if it doesn't work, then apply our code to its extent allowed. Then we should amend the Code. CM Acquaviva states we should get P&Z Bd working on this now so in the future it is in Code. Mayor stated tomorrow evening is the County Commission Meeting. We should move forward with amending our ordinance.

Clerk Franklin was recognized by Chair and stated the County Commission Meeting is at 9 AM. She reiterated TM's suggestion that Council direct TM Stinnett to attend with T&G rep and present the compromise plan tomorrow and/or ask County Commission to meet and negotiate a compromise. Secondly, make a separate motion encompassing "Option 2" in the Agenda Report, to direct staff to send draft ordinance and other municipal code examples to the P&Z Bd to consider and submit recommendation to Council on potential Comp Plan and Code amendments to address conservation land. It will likely take closer to a year, as it has to be done as a text amendment to the Comp Plan which requires review and comments from five State agencies and final review by the State DEO. As the property is owned by the State the State would have to be contacted for their input and position on the amendments first. That is part of the newly adopted "Property Rights Element" all municipalities in the State had to adopt to ensure property rights of persons possibly affected by proposed changes to land use conditions within a jurisdiction are considered. Apparently, the same law doesn't apply to the County.

Atty states he agrees having someone go to tomorrow's meeting to request a meeting to compromise. Concurred with what Clerk stated.

**MOTION:** CM Rivet / CM Vail to direct TM Stinnett and the T&GC Chair Thompson and Vice-Chair Hann attend the Brevard County Commission meeting at 9:00AM tomorrow and request an opportunity to meet with County leaders and discuss/negotiate a compromise on the work proposed on the restoration and the permit fees currently in the system for a tree removal application. **VOTE:** All Ayes. Motion approved 5 to 0.

Chair recognized Mark Britt. He stated he was in the Malabar Scrub Sanctuary today and talked to people there with a large drone and they said they were doing aerial photography of the trees for the upcoming work in the Sanctuary by the EELs.

Mayor then recognized Deputy Clerk Kohler. He stated he also spoke with those folks and was told they were just testing the drone for upcoming water quality projects in the area.

**MOTION:** CM Acquaviva / CM Hofmeister to approve Option 2: Send Action to Staff to draft ordinance to amend the Malabar Comprehensive Plan to include a Land Use Designation of "Conservation" and amend the Land Development Code, Article XV to include a permit type, submission requirements and criteria for approval for land management for clearing and tree removal for preservation and conservation activities for a valid and current land management plan for governing agencies and with a corresponding fee resolution adding costs. This option would include legal advertisements to the property owner, legal ads in the paper, Public Hearings before P&Z, Council and ultimately review by the State Dept of Economic Opportunity and their findings of compliance.

Discussion: CM Rivet thought we should wait to see if the County applies for a permit under current code. CM Acquaviva believed we should act now with this motion as time is of the

essence. CM Vail stated we should move forward to prevent issues, and we have a permit they can apply for. What other community can say that 20% of their area is conservation?

**VOTE:** All Ayes. Motion approved 5 to 0.

### **3.b. Discuss Trails and Greenways Committee Recommendations**

#### **Exhibit:**

#### **Agenda Report 3.b.**

Mayor asked Drew Thompson to open. Went through the Power Point presentation presented at an earlier meeting providing timeline and history of the referendum to voters. The EELs have seemed to have drifted from its original mission. Referenced the referendum ballot questions in the 1990's and 2004. People that lived here and moved here for the woods and have enjoyed decades of natural resources. The conservation land purchased and managed due to the referendum have become an urban forest. Is it really appropriate at this stage of the program, it sunsets in 2024 unless the referendum is approved to continue funding. This area is unique in Brevard for promoting passive recreation. If not approved to continue in 2024, the funding goes away. T&G Committee of Malabar and all the many thousands of users and interested parties want to come up with an alternative. What we have to represent to public – not what they voted for. 60K in 2004/ look at how it is done, and the voters were not the ones changing the rules. Is it all about scrub jays? SMC (selection and management committee) – they don't rule the world. There is more to conservation than just scrub jays. Cut grind and burn. Takes 4.5 year for an acorn to come back out after being burned. Concept to go to optimal habitat. Treeless zone before the scrub jays to give them comfort zone. It is split in half with Briar Creek 100' ROW owned by the Town and exempt from this project. We think we are ready to present to EEL with the formula they are using. The 100' ROW belongs to Town. It is a not a 4-month project. You can't work in scrub jay area in April. April is not open to grinding the trees. He went over excel numbers. This is how he came up with 1000 trees. Predator birds are still needed. Where it is most significant. Critical area of passive recreation. Brevard County Board of County Commission needs to listen to the voters, user groups and the affected residents and property owners. Drew thinks they have a very clean plan. Corners are critical. They did deduct. And 1000 would be left.

Drew asked if they wanted to see the revised PP that Murray had done. It has been posted and distributed.

CM Acquaviva asked if when there are prescribed burns are the residents and Town notified with sufficient notice so they can avoid the smoke issue – when they burn are we getting proper notification – need notification before the smoke becomes an issue. CM Vail stated – all the concerned persons here tonight should attend the County Commission meeting tomorrow. Mayor thanked all the residents for coming and asked them to also attend the County Commission meeting in the morning.

- 4. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 7:30 P.M.

BY: \_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 02/07/2022