

## MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

January 9, 2017

7:30 PM

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

### A. CALL TO ORDER:

Chair, Mayor Pat Reilly called the meeting to order at 7:30 pm. CM Mahoney led the prayer and pledge.

### B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

LAURA MAHONEY

DICK KORN

RICHARD KOHLER

TOWN ADMINISTRATOR:

DOUGLAS HOYT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

For the record, Fire Chief Leonard Thomassen was also in attendance with a large portion of the Malabar Fire Department.

### C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Discussion.

**MOTION:** CM Korn / CM Kohler to accept agenda as presented. **Vote:** All Ayes.

### D. APPROVAL OF THE MINUTES:

#### 1. Regular Town Council Meeting Minutes 12/05/16

**Exhibit:** Agenda Report No. 1

**Recommendation:** Request Approval

**MOTION:** CM Rivet / CM Ball to approve RTCM minutes of 12/05/16.

CM Mahoney would like to add her comments. Minutes should not show bias and some comments should not be in print ex: "twisting Massey's arm".

CM Korn said this has been discussed before. He was not in favor of abbreviating the minutes but was ok since there was audio. Attorney stated there is no requirement for audio. The written minutes are the official record of the meeting.

**Vote:** All Ayes.

### E. BCSO REPORT: no one from BCSO

### F. ATTORNEY REPORT: Nothing at this time

### G. BOARD/COMMITTEE REPORTS:

Drew Thompson, Chair T&G – Thanked TA for the ADA restroom. He has pictures but since there is a pretty heavy agenda, he will defer. Starting on a storm shelter in Cameron Preserve. Will be showing some pictures in the future. They expect to be done by late Spring. CM Mahoney asked where that was. Thompson described follow the green trail within the Cameron Preserve, below the circular trail that connects the Malabar Scrub with Malabar West Sanctuary.

### H. STAFF REPORTS:

Administrator:

- First item was that each CM has received a copy of the "Budget to Actual" for quarter ending December 31, which is the end of the 1<sup>st</sup> quarter of the Fiscal Year and said the Town is in black for this first quarter of this FY. (CM have also received on monthly basis the "Budget to Actual" at end of each month (Oct-Dec).

Signage for new stop sign at Corey and Benjamin is up and stop sign should be up at end of this month. New stop signs on Corey and Weber are a positive aspect to the traffic.

ADA restroom at trailhead is in good shape; almost complete; painted ADA striping today.

Huggins Park – in early 2000's it was brought to Council that it was not being used and should be closed. The swing set was scrapped; the pagoda went to Disc Park. Currently have two people interested in the property. In either case if, the town wanted to get rid of it. Brevard County is also getting rid of surplus park property. There is one issue clouding the title. There is a reverter clause. Suspect they will issue a letter to clear it up. There is interest by someone that wants to build a home on it and there is someone interested in a 99-year lease to preserve the natural land.

CM Rivet: put on for Discussion item for next meeting. CM Korn said park was closed by TA not by Council. CM Korn said Council should continue the remembrance. Take the name Huggins and apply it to something else. Do not forget the descendants.

TA said Stormwater drainage is next topic. Gave background and then narrated a video of Atz Road ditch issues; on private land, too deep in places and nonexistent in places; not functioning. Then Eng Morris Smith went over a Power Point describing the test to prove the purpose of TA drainage plan. Have the Stormwater on north side of Atz Road east of Candy flow to the east into existing ponds. Stormwater flowing west from Candy Lane would proceed west to Corey and flow north to Turkey Creek. The stormwater drainage system needs to be within the Town's ROW for maintenance purposes. It can no longer be expected to work while going through private property the town can't maintain.

TA said another benefit of the improvements at the east end of Atz Road would allow an alternative method to cross the FEC railroad crossing if necessary.

CM Ball asked about hydrology – Engineer explained once ground is saturated it will not hold any more water.

CM Korn said this project area of Candy Lane east is a sample site to show residents what can be done but there are areas west of Weber that are more impacted. Would not want people to think that you are picking this project because it was easy. TA said this is a stormwater project that can be done within our budget that will have positive impact on a large area. The stormwater project proposed on the west side of Weber to direct stormwater into the Melbourne Tillman is estimated to cost millions and will require funding assistance, which we are pursuing.

CM Rivet has talked to many residents and stormwater is number 1 issue. It is said how do you eat an elephant – one bite at a time. This is a project that can be done and see the results. Then move on to the next doable project.

Start a grid and set up a schedule of projects.

Chair asked if they have enough info to go out to bid. Engineer said not yet, he has to make actual surveying.

CM Mahoney asked if it is the both sides. It is on the north side. She said they need to get the information out to residents. Agreed with CM Korn that Weber Road has major it drainage issues.

TA did a very rough estimate of how to get the water west of Weber to go west and it was 2-4 Million. TA said this one is very visible and would not break the bank.

TA said they plan to go house to house and explain the project to the people.

Chair asked what he is asking from Council. To continue working on biddable documents. Looking for approval to proceed.

**MOTION:** Rivet / Kohler to approve continued activity to get biddable documents. Vote: all Ayes.

Clerk: Planner's Training opportunity is highly recommended for P&Z Members, Council and staff. We have eight persons signed up. The American Planning Association offers this training annually at a very reasonable cost.

Fire Chief: Apologized for having to leave earlier – had a bad accident on SR514. FF Blanch was here from up north to support him and he helped with the bad accident. He then went over the yearend type of numbers: response times and numbers of volunteer hours and types of mutual aid given. Upward trend in calls for service up 24% from 2014. Fire Fighter 1 class going on at station currently. He referenced the revenue brought in for these classes. They offer these classes to Malabar volunteer fire fighters for free if they commit to give us one year of service. Bringing new truck up to standards at no cost to residents.

- I. **PUBLIC COMMENTS:** Comments at this point may address items **NOT** on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Three (3) Minute Limit per Speaker.

Bill Withers, Candy Lane said Huggins Park was used by 2-5 years of age. Roads are the only commonality among Malabar residents. This town is never going to grow unless you raise the taxes. He would be willing to pay double of his Malabar taxes. There is a way to figure out which roads are hard surfaced first. Mayor Beatty said we should set aside 2 mil a year. Why shouldn't we do that? Length of road times the numbers of driveways. The streets with the most houses would be done first. He then referred to the new stop signs and read from Chap 2B, stop signs guidance – they should not be used to control speed. Not on major street unless a traffic engineering study has been done.

- J. **PUBLIC HEARINGS/SPECIAL ORDERS: 0**  
K. **UNFINISHED BUSINESS/GENERAL ORDERS**  
**ORDINANCES FOR FIRST READING: 1**

2. **Moratorium Ordinance Related to Medical Marijuana** (Ord 2017-01)  
AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND ISSUANCE OF LOCAL BUSINESS TAX RECEIPTS OR LAND USE PERMITS, DEVELOPMENT ORDERS, MODIFICATIONS OR APPROVALS FOR MARIJUANA DISPENSING ORGANIZATIONS OR MEDICAL MARIJUANA TREATMENT CENTERS AND RELATED FACILITIES AND ESTABLISHMENTS FOR A PERIOD SPECIFIED; PROVIDING FOR LEGISLATIVE FINDINGS; THE GEOGRAPHIC AREA COVERED; REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Chair directed Clerk to read by title only.

**MOTION:** CM Rivet / CM Kohler to approve Ord 2017-01. Discussion:

Attorney Bohne said several years ago Legislature adopted FS 381, allowing for low THC provision for some medical treatments. At that time he had asked Council if they wanted to adopt an ordinance – no interest. The recently passed Amendment II flat out prohibits banning them. We have already had inquiries. Health Department has six months to make rules. His recommendation is to do this and then adopt ordinance establishing zoning regulations.

He has done three of them now. They have put them in industrial areas, with distances from residences, schools etc. This is not an anti-medical marijuana ordinance. Without this ordinance, we have no protection. There will be legal challenges if you try and prohibit them by zoning. Do similar to what we did with adult entertainment. Security procedures must also be included. CM Ball said P&Z should start working on this. Atty will provide a draft to get it started and give to P&Z Board.

**ROLL CALL VOTE:** 1)CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Carried 5 to 0.

## **RESOLUTIONS: 1**

### **3. (Reso 01-2017)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPROVAL OF CONTRACT FOR FIRE CHIEF LEONARD THOMASSEN; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3  
**Recommendation:** Approve Reso 01-2017

Chair directed Clerk to read by title only.

**MOTION:** CM Kohler / CM Korn to approve Reso 01-2017. Discussion:

CM Mahoney has no problem with Fire Chief Thomassen but is I do not want it to be a resolution; I'm uncomfortable with the resolution. Multiple whys. CM Mahoney said one thing; the severance if the Town Council dissolves the Malabar Fire Rescue Department is the payout of \$50,000.00; and, also I think the public has questions. I am not opposed to the Fire Department but a regular employment without a resolution would be a wiser choice. Attorney stated the only thing the resolution does is adopt the contract. He asked her if she thought there should not be a contract. CM Mahoney said no, she thought he should have a written contract. She does not believe there should be severance. CM Ball has same problem that CM Mahoney has, not with the resolution, with the severance payout. That would not be normal in most employment. That is his issue. Atty said Chief proposed this contract clause; that is his offer to Council. Council can renegotiate. Chair recognized TA who spoke regarding this. There is no severance for cause, only if Council dissolves the fire department during his three year tenure. Malabar had 21,000 volunteer hours. If you were to pay them the average salary of 23.00/hr plus 23% for benefits there is no way we could afford this. There is no way that Brevard County can provide this level of service and response. He then went over statistics about cost to residents for County. CM Ball said the severance clause does not make sense to him; can't see tying future council's hands.

CM Korn said it makes perfect sense to him. When Chief Robinson came in then it got in line. His insurance was just renewed and he saved 500 because the ISO rating improved. Because of the progress this fire dept has done. He spoke with TA and he said they would be ok. They have a good good good Fire Dept. We are doing in house training that they used to have to get from outside agencies. The point is the severance. He said there is a bad history for support of the fire dept. He said the Chief is staking the next three years of his life on this town and wants some level of support. CM Kohler said he agrees with CM Korn.

Chair called for a vote on Item 7; if it does not have the support then they can possibly make an amendment.

CM Kohler asked Chief to speak. Chief said that time and time again there has been talk of getting rid of FD. If the Council supports the Chief, then the Lts and the members can be calm and know they are supported. You are giving a vote of confidence, saying yes we are behind our Fire Dept.

CM Mahoney problem is that Council has ignored the citizens. She had problem with citizens not being heard.

CM Korn – if you take the salary and the 50K and you still don't reach the amount that his relative is making as a Captain at a fire dept in south Florida.

**Vote** on Item 7: Aye, 3; Nay, 2 (Ball, Mahoney).

**ROLL CALL VOTE** (on Reso 01-2017): CM Ball, Nay; 1)CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Carried 3 to 2.

**MISCELLANEOUS: 2**

**4. Cancel RTCM 2/20/17** (Postpone to 1<sup>st</sup> mtg of Feb)

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Approval

**5. Approve Park and Recreation Board Recommendation for a Memorial to Mayor Carl Beatty**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Approval

**MOTION:** CM Korn / CM Kohler to approve Carl Beatty PW Complex with a metal sign.

CM Mahoney design something that would have several like

CM Ball had strong and weak points – make it the Carl Beatty PW Complex. **Vote:** All Ayes.

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**L. DISCUSSION/POSSIBLE ACTION: 2**

**6. R/LC and Land Use Workshop Status**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Discussion

Chair asked what is the status. He suggested Council read the packet that was prepared for them and put on agenda for next meeting to set workshop date.

**7. Allowing Volunteers to Maintain Soccer Field**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Approval

CM Korn asked Bill Withers to speak. He took the Dept of Agriculture Pesticide Public Applicator License course when he maintained the park and paid for it himself; thought it was \$85.00. Problem recently is over use. Originally had special grass on it known as 417 that requires special care. It comes in from Tampa. Go out to Lesco and get weed and feed. Then close it and let it rest. Huggins Park would make a good volleyball place.

CM Mahoney said they have had volunteer help. The Boy Scouts have done a tremendous amount of work. CM Ball asked if it only costs \$85 and takes one day, someone from PW should hold that certificate. Consensus to accept volunteer work.

**M. PUBLIC COMMENTS: General Items (Speaker Card Required)**

Brain Vail, potential of selling Huggins Park. Propose Billie property to be improve town's complex. Put on the next agenda. Money received from the sale of park can be put towards the purchase.

**N. REPORTS – MAYOR AND COUNCIL MEMBERS**

Mayor – nothing

1) CM Ball – nothing

2) CM Mahoney – document roads being worked on. Figure out where the edges of the roads need fixing. Then work on publishing the maintenance schedule.

3) CM Rivet – Concerns with preparations for SpringFest. He has not heard anything.

Would like an update. CM Mahoney said the committee decided to move right into a

private entity and will have the flyers out soon. They are going to have to meet every week.

- 4) CM Korn – SCLC next meeting will formalize their legislative priority list. When Legislature goes back into session then the Advocacy committee speaks to those priorities. Tomorrow's County Commission meeting will discuss Mr. Tobia's agenda item that would require anyone speaking on behalf of any group would have to be registered as a lobbyist. SCLC did not vote on this but no one spoke in support of it.
- 5) CM Kohler – nothing

Staff items for future agendas: possible purchase of Billie property (2715 Malabar Road)  
possible sale or lease of Huggins Park  
set date for workshop on R/LC and FLUM

**O. ANNOUNCEMENTS:**

(1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board.

**P. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 10:00PM.

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

ATTEST:

Debby K. Franklin

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

Date Approved: 1/23/2017