

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

January 23, 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 Rivet 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.

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: None.

D. APPROVAL OF THE MINUTES:

1. Regular Town Council Meeting Minutes 1/09/17

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Ball / CM Kohler to approve RTCM minutes of 1/09/17.

CM Mahoney said she did not say that fire chief should not get any severance. Clerk will check audio.

Vote: All Ayes.

E. BCSO REPORT: Deputy reported on Dec 2016. BCSO responded to 339 calls for service in Malabar. They are showing 20 traffic crashes in Dec on report. BCSO tech support is reviewing to clarify stats. Council thanked Deputy.

**F. CERTIFICATE OF APPRECIATION: Good Citizen Recognition to Ronald & Sharon Johnson
PROCLAMATION JAN 22-28, 2017 SCHOOL CHOICE WEEK**

G. ATTORNEY REPORT: Atty spoke of the severance provision in the Fire Chief contract approved by Council and said he had discovered a conflict in F.S. 215 which he found after the meeting. Terminating the existence of Fire Dept would effectively terminate the employment of the Fire Chief. That severance clause cannot exceed 20 weeks of pay. His recommendation is that the contract be renegotiated. CM Rivet asked if they could reword it to read that it would convert to a consulting contract. Atty said they need to change the language to state a maximum of 20 weeks of pay. TA said perhaps the labor attorney should review and weigh in. Council approved the contract by 3 to 2 vote. Based on the evidence presented at that meeting It is extremely unlikely Council would make this decision. TA urged them talking to labor attorney. Attorney Bohne said as it is written, it is not enforceable.

STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

Administrator: TA on accidents on Malabar Road – FD responded to 48 calls on Malabar Road up from 24.

Clerk – nothing

Fire Chief - nothing

- H. **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.

Sarah Marino, 1720 Benjamin, read statement into record about increased stormwater caused from construction and fill on south side of Benjamin Road. There is a greater volume of water and it is not flowing like it used to. Construction on south side of Benjamin that is causing it not to flow. Would like TA to speak to G-V TA and see what has been done.

Jose Marino, 1720 Benjamin Road, said he had asked the TA about it 1.5 years ago and still no action. CM Rivet spoke to this and would like to hold a presentation for the public. TA suggested they do it by given areas. CM Mahoney said she asked for graphs to be put on website but Clerk said she could not put them up.

(send email I sent to Laura to all of Council)

CM Mahoney spoke with another neighbor on Benjamin that grazes animals and he said there is more and more water standing and swales not being covered and water is not flowing.

- I. **PUBLIC HEARINGS/SPECIAL ORDERS: 1**
Moratorium Ordinance Related to Medical Marijuana (Ord 2017-01)
Public Hearing

2. 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.

Exhibit: Agenda Report No. 2

Recommendation: Approve Ord 2017-01

Chair directed Clerk to read by title only.

Public Hearing opened.

Mr. Ron Johnson, Homestead Lane, asked if this was in conflict with State law. No it just gives us time to create a zoning ordinance.

PH closed.

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

CM Rivet heard on NPR that there is at least one maybe up to three vendors looking at the Space Coast. Attorney said everyone is still waiting for DOH to put together the rules. Attorney said there are about 30 cities that have done moratoriums.

ROLL CALL VOTE: 1)CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Excused; CM Kohler, Aye. Carried 4 to 0.

- J. **UNFINISHED BUSINESS/GENERAL ORDERS**
ORDINANCES FOR FIRST READING: 0
RESOLUTIONS: 0
MISCELLANEOUS: 3

3. Detailed Progress Report on SpringFest 2017 from Events Committee Chair**Exhibit:** Agenda Report No. 3**Recommendation:** Action

Events Chair read her report. Attached.

Liz Ritter came to podium and said they have formed the Malabar Community Association and she then read the mission statement.

The Malabar Community Association promotes community engagement through events and activities that enhance and exemplify the spirit of the Town of Malabar.

The Malabar Community Association will work to foster community involvement and comradery among fellow residents who enjoy social, recreational and educational activities using the town's abundant parks and community resources.

Teresa said their association named her the Treasurer and she was looking to Council on what she could do as treasurer. CM Mahoney looked it up in the Charter that Debby is allowed to give up to 10K.

Attorney said they can organize this group and the Council can then hire them to run the event. That would be one way to do it. Give them \$6,500.00. TA said then we give them revenue then there will be no new revenue come in. CM Ball said we could write a contract to pay the town a certain percentage of the take. Would need to negotiate if we give \$6,500.00 we get \$7,200 in return.

Mayor asked how many volunteers are signed up to help. CM Mahoney said they have 8 people.

CM Rivet – technically in violation of the Charter having CM Mahoney run the Events Committee and sit on Council. Atty said he has spoken to this before – dual office holding.

Atty said they are trying to change the function of this. He has issued this opinion in writing and they need to move forward on this sooner rather than later.

Liz Ritter said we are not getting anywhere – referred to G-V: they have people on the Council and on the committee that will volunteer to do this. Malabar Community Association will be formed in the next day or two. Mayor said the solution is to not have Laura be the Chair. Teresa can be the liaison.

CM Ball said since we are going down this road, the powers to be on both sides need to start looking at what the contract should look like. Can it be done before the next council meeting. He needs to know the what the number are. He wants to see what the contract will look like – wants to see it ahead for time – not for profit. CM Ball asked the difference between non-profit and not for profit. There is a big difference between tax exempt and nonprofit.

4. R/LC and Land Use Maps – Set Workshop Dates**Exhibit:** Agenda Report No. 4**Recommendation:** Action

Workshop set for 7:30 for next Monday. Chair said he will go through the slides at the beginning and see if there is support for the overview and the reasoning behind why P&Z came up with this. He recommends first going over the R/LC definition first. Since the recent Comp Plan now allows R/LC along Malabar Road and Babcock Street the P&Z Board is proposing amended definitions. Jan 30 and then at that meeting they will schedule the next meeting.

5. Discuss Possible Purchase of Billie/Durak Property 2715 Malabar**Exhibit:** Agenda Report No. 5**Recommendation:** Action

Liz Ritter – had question on this – if we can't make money and can't afford ... why is this on agenda to purchase. CM Vail supported this and CM Ball asked for this to be on for discussion. CM Kohler asked if TA had update on the possible co-location on EELs property. TA gave update on the last meeting – proposed together or separate maybe with a breezeway. Will get back together at end of Feb. Put city hall closer to center of residents homes.

CM Ball asked for this – not that he is for buying this. He is in favor to have TH closer to center of the town. The Post Office moved from by railroad to center of town; the Fire Dept also moved from railroad to more central location. This would still be by the railroad and it is not a good place; needs to be more central.

CM Rivet is in complete agreement to have Town Hall located with the Fire Dept. Does not support purchase of the property next door for Town Hall or for any reason.

Chair said the Brevard County Property Appraiser's website will give list the market value. He suggested that in support of the purchase of this property – it could be a town investment to sell when we are ready, but we are not into land speculation.

Consensus that there is no interest to purchase.

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

K. DISCUSSION/POSSIBLE ACTION:**6. Discuss Possible Sale or Lease of Huggins Park Land****Exhibit:** Agenda Report No. 5**Recommendation:** Discussion and Direction

CM Mahoney asked what the two ideas that had been mentioned. TA said the soccer field could be moved temporarily while soccer field rehab. Also a resident is interested in buying it. Another group of residents are interested in leasing it. County is looking at the reverter clause so we could sell it with clear title.

CM Rivet said we have reduced out reserves and he could support selling it if we would put 100% of the net profits back into reserves.

CM Ball asked if the recreational formula of "x" population per five acres included EELs land. Clerk said no the formula is only for recreational land that is owned or managed by Malabar.

Who would be the listing agent? TA said ask Atty how to proceed with that. His idea is assuming we get the free and clear title would be a sealed bid.

Chair said TA should give Council those options in writing; sell it or lease it.

L. PUBLIC COMMENTS: General Items (Speaker Card Required)**N. REPORTS – MAYOR AND COUNCIL MEMBERS**

Mayor – nothing

- 1) CM Ball – move forward with getting SpringFest lined up
- 2) CM Mahoney – referred to her report. She does think the idea to use Huggins Park for interim period while soccer field rehabs.
- 3) CM Rivet – there is a least one CM asking town employees to get things done. It is the most efficient and respectful way to follow chain of command which is through

Administrator and Clerk. That is an issue. Anyone else have comments. CM Kohler said to follow the chain of command. TA and Clerk have been cut out of chain of command.

Rivet continued - Because of Sunshine law we are limiting the use of social media. We are prohibited from using social media as a tool to communicate with other council members. He asked if they should all refrain from discussion of town business on social networks. If one council member gets out there first and puts their own spin on things and the other Council members don't want to appear to using the social site to exchange communications. Free to post on their own websites. He would not like to see any of them face a possible sunshine violation.

CM Mahoney said you said you should encourage people to engage. CM Ball said they need the Atty to go over it again. CM Rivet is concerned that one of them may inadvertently violate the sunshine.

- 4) CM Korn – excused
- 5) CM Kohler – re: Billie property: he said that the agenda package indicated the Town has discussed this with the Billie family for ten years. He said Town should send a letter to family thanking them for offering it first to us so they can move forward. Clerk said she would prepare letter for Mayor to sign.

Staff items for future agendas:

- TA said if so we should contact the immediate neighbors to Huggins Park to see if using it temporarily for soccer would create a problem.
- Social Media Refresher by Atty Bohne
- TA to provide written options for disposition or use of Huggins Park
- Provide Rev/Exp sheets from past SpringFest and Volunteer list and vendor commitment dates. This isn't supposed to be a competition – CM Ball was just trying to encourage more residents to participate.
- Stature, Code and Charter info related to bid requirements/thresholds
- Flood maps and codes for Benjamin current and historical.

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 8:50PM.

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: 2/6/2017



Debby Franklin

From: Debby Franklin
Sent: Tuesday, February 07, 2017 9:46 AM
To: Laura Mahoney
Cc: Grant Ball; Steve Rivet; Dick Korn; Richard Kohler; Pat Reilly; Pat Reilly; 'kbohne@fla-lawyers.com'; Douglas C. Hoyt (dhoyt@townofmalabar.org)
Subject: RE: Agenda Package

You did not read it into the record and that is why it was not attached to the minutes. Unless an item is read at a council meeting or referred to specifically and requested to be made a part of the minutes it is not part of the minutes. That is the proper way to prepare the minutes.

Your suggestion that it was an over sight on my part is incorrect. Since your request to have it added was not objected to, I will attach your report to the 1/23/17 minutes.

Debby K. Franklin
Certified Municipal Clerk
Town Clerk Treasurer
townclerk@townofmalabar.org



Town of Malabar
2725 Malabar Road
Malabar, FL 32950
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Malabar, FL 32950
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From: Laura Mahoney
Sent: Friday, February 03, 2017 4:34 PM
To: Debby Franklin <townclerk@townofmalabar.org>; Grant Ball <cmdist1@townofmalabar.org>; Steve Rivet <cmdist3@townofmalabar.org>; Dick Korn <cmdist4@townofmalabar.org>; Richard Kohler <cmdist5@townofmalabar.org>; Pat Reilly <mayer@townofmalabar.org>
Cc: kbohne@fla-lawyers.com
Subject: Re: Agenda Package

You forgot to add my Dist. 2 report to the minutes. Please add to the minutes and to the packet on the town site as well.

Thank you,
Laura Mahoney

District 2 report:

Laura Mahoney (01/2017)

1. Request: Public Records Spread Sheet of all occupied positions in the town including all contracts, salaries and benefits.

2. Revenue/loss: One man's dirt, may be another man's gold. Citizens noted/cited many large trucks moving dirt from Marie Street to Benjamin and further to properties in Grant-Valkaria. We might want to think about securing our public assets and allowing Council to be made aware before potential possible loss of revenue.

3. Drainage: Although I explained our TA and engineer's possible solution for drainage, citizens have requested to continue to "Cut with big tractor and weed whacked by culverts" (citizen's quote) as it was somewhat effective when it was done and this is the season to do it. > **Propose:** we post a loose schedule on the town's website and continue this upkeep as we work on a better solution.

4. Problem: Grant-Valkaria's buildup of land on the South side of Benjamin slowed and blocked water flow from the Malabar North side of Benjamin this past year's (2016) rainy season. The recent increase in dirt will cause more problems for those Malabar residents. > contact Grant-Valkaria to keep swales on their end.

5. Minutes: continue to show bias. (A statement on severance that was never made.)

6. Severance: It took some time but I found Florida law that shows the \$50,000 council agreed to pay the fire chief excessively violates Florida Law.

The 2016 Florida Statutes

Title XIV

TAXATION AND FINANCE Chapter 215

FINANCIAL MATTERS: GENERAL PROVISIONS

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that **severance pay provided may not exceed an amount greater than 20 weeks of compensation.**

7. Soccer Field. > Until we decide what to do, we could use Huggins Park for soccer while giving our "real" soccer field rest. Also, could we use Mr. Wither's professional assessment for "free" volunteer to lead the public works department and/or volunteers? I think we would agree that his advice comes from education and may prove more suitable to the turf than our lawn service.

8. Memorial: Propose to continue to get ideas from the public as to a community memorial for our town legacy/ history/people of importance.

DETAILED PROGRESS REPORT ON SPRINGFEST 2017 prepared by Laura Mahoney

The first Springfest meeting for 2016 met around this time last year.

For 2017 we are far ahead of previous committees. Flyers will be completed at the January 19th meeting! I'll bring them to council Monday after final review tonight.

In previous years put forth by Cindy Kelly, the packet was released mid-late January and vendors were on a first come first serve basis. So it would be quite unlikely to have these answers this soon but we already had most of these posted in our monthly minutes before becoming an official committee by resolution.

What bands selected: Have canvased a few particularly from Malabar Mo's and Palm Bay Friday Fest.

What food vendors have been selected: Need Flyers first but always favor Malabar community

Hours and date of event: March 25th 10am-6pm

Who is doing the car show: Bad Boys has given a verbal agreement.

Will there be an MC: Volunteer community people and committee members

The community has been well prepped in advance as all the veterans events were canvased in November. The festivals and markets have been canvassed. The date has been well published in advance. I'll include map to show flow this year.

Subject: Duplex Outlet (communication between Hans & Doug)

The cost to install a Duplex Outlet with two 20 amp 120 volt weather resistant plug ins is \$189.00 as quoted by Commercial Electric. The location would be adjacent to the main breaker panel at the north end of the Malabar Community Park.

(This is for possible borrowed stage to move main band near parking lot.)

ARTICLE IV. ORDINANCE ADOPTION PROCEDURE*

Secs. 2-76—2-100. Reserved.

ARTICLE V. PURCHASING†

Sec. 2-101. Competitive bids.

No contract for any purpose, when the stipulated consideration thereunder to be paid by the town shall exceed ten thousand dollars (\$10,000.00), shall be let by the town council or under its authority without first soliciting bids from at least three (3) reputable bidders, or advertising a request for bids online calling for bids upon the work to be done, or upon the goods, supplies or materials to be furnished and in each case such contract shall be awarded, if at all, to the lowest and best bidder; provided, that nothing in this section shall be held to apply to contracts for personal services. In cases of articles or goods manufactured exclusively by one maker, the council may declare by resolution, if such is the case, that no other or similar articles or goods will properly serve the purpose intended, whereupon such articles or goods may be purchased from the sole maker thereof direct or from the sole agent of such sole maker authorized to sell in the territory in which the town lies.

The town administrator is authorized to piggy back contracts for any purpose where the stipulated consideration thereunder to be paid by the town exceeds two thousand dollars (\$2,000.00) awarded by any other governmental entity so long as the bidding process utilized by the other governmental entity in awarding such contract is consistent with the competitive bid procedures outlined in this section.

(Ord. No. 18-68, § 1, 5-27-68; Ord. No. 88-25, § 1, 6-7-88; Ord. No. 04-03, § 2, 4-5-04; Ord. No. 03-06, § 1, 9-8-03; Ord. No. 09-23, § 1, 5-4-09)

Secs. 2-102—2-125. Reserved.

ARTICLE VI. EMPLOYEE BENEFITS

DIVISION 1. GENERALLY

Secs. 2-126—2-150. Reserved.

*Charter reference—Ordinances, § 2.16.

Cross reference—Procedures for adopting, supplementing or amending the Land Development Code, § 1-12.5, Land Development Code, Vol. II.

State law reference—Procedure for adoption of ordinances, F.S. § 166.041.

†State law references—Consultants Competitive Negotiations Act, F.S. § 287.055; insurance, competitive bids, F.S. § 112.08.