

**TOWN OF MALABAR  
REGULAR TOWN COUNCIL MEETING  
MONDAY MARCH 7, 2016  
7:30 PM  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
- D. APPROVAL OF THE MINUTES:**
  - 1. Regular Council Mtg of 2/01/16**
    - Exhibit:** Agenda Report No. 1
    - Recommendation:** Request Approval
- E. SHERIFF'S REPORT:**
- F. ATTORNEY REPORT:**
- G. 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) **Five (5) Minute Limit per Speaker.**
- H. PUBLIC HEARINGS: 1**
  - 2. Review Site Plan for Commercial Development & Consider Recommendation from P&Z Board:** Parcel 28-38-31-00-00750- aka 1300 Highway 1, Malabar, FL 32950; Route One Motor Sports- Applicant: KellWill, LLC, represented by Mr. William Carmine & Mr. Vaheed Teimouri, Engineer
    - Exhibit:** Agenda Report No. 2
    - Recommendation:** Request Action
- I. ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS/COMMITTEE; RESIDENT GRIEVANCES; HOA REQUESTS)**
  - 3. Appoint Interim Mayor**
    - Exhibit:** Agenda Report No. 3
    - Recommendation:** Request Action
  - 4. Recommendation from P&Z Board: amend LDC to require 500' radius Notification**
    - Exhibit:** Agenda Report No. 4
    - Recommendation:** Request Action
  - 5. Recommendation from P&Z Board: Amend Ordinance 2014-01 re: ALF in OI**
    - Exhibit:** Agenda Report No. 5
    - Recommendation:** Request Action
- J. ACTION ITEMS:**
  - ORDINANCES FOR FIRST READING: 0**
  - RESOLUTIONS: 1**

6. **RESOLUTION 02-2016** - A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR REVISION OF RESOLUTION 04-2011 REGARDING PERMIT FEES FOR NEW RESIDENTIAL AND COMMERCIAL CONSTRUCTION; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 6  
Recommendation: Adoption of Reso 02-2016

**MISCELLANEOUS:**

7. **Set Next Workshop Date for Council re: FLUM & R/LC**

Exhibit: Agenda Report No. 7  
Recommendation: Request Action

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

K. **BOARD & COMMITTEE MONTHLY STATUS REPORTS:**

P&Z Chair Pat Reilly  
T&G Chair Drew Thompson  
Park Chair Hans Kemmler

L. **DISCUSSION/POSSIBLE ACTION:**

M. **STAFF REPORTS:**  
ADMINISTRATOR:  
CLERK:

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

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

P. **ANNOUNCEMENTS:**  
(2) Vacancies on the Board of Adjustment;  
(4) Vacancies on the Park and Recreation Board;  
(1) Vacancy on the Planning & Zoning Board

Q. **ADJOURNMENT:**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**March 7, 2016                      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 Council Vice Chair Brian Vall. CM Korn led the prayer and pledge.

**B. ROLL CALL:**

COUNCIL CHAIR:	VACANT
VICE-CHAIR:	BRIAN VAIL
COUNCIL MEMBERS:	GRANT BALL
	DON KRIEGER
	DICK KORN
	RICHARD KOHLER
TOWN ADMINISTRATOR:	DOUGLAS HOYT
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the Record, the Fire Chief Christopher Robinson is also present.

**C. APPROVE AGENDA - ADDITIONS/DELETIONS/CHANGES** – CM Krieger asked that item I.3. Selection of Interim Mayor be moved to the top of the agenda. No objections. Add an item to select a council chair and a vice chair if needed. Acting Chair Vail asked – no response. **MOTION:** CM Korn / CM Ball approve agenda as amended. **VOTE:** All Ayes

This item moved from **I.3.** per agenda change, above.

### 3. Appoint Interim Mayor

**Exhibit:** Agenda Report No. 3  
**Recommendation:** Request Action

**MOTION:** CM Krieger/ CM Korn to appoint former Mayor Crews as interim Mayor until after election November 8, 2016. CM Krieger said he filled the need in the past.

### Speaker Cards:

Marisa Acquaviva, 1120 Baywood Court, said as she stated in the letter she submitted, she would fill this opening to help the Town. She said she would totally support and respect the Council decision.

Carlene Conroy, Alexander Drive, supported Phil Crews as he has the best interests of Town in mind and since he is not planning to run in November. Others are planning to run and this appointment could provide unfair advantage.

CM Korn called for the question: **Vote: All Ayes.** Mayor Crews accepts appointment and is sworn in by Clerk.

**MOTION:** CM Krieger / CM Korn to appoint Phil Crews to position of Chair for remainder of term.  
**Vote:** All Ayes. Mayor Crews accepts appointment and is seated and gavel is passed. CM Vail remains as Vice-Chair.

**D. APPROVE MINUTES – Meeting of 11/16/15**

- 1. Approval of Minutes** Regular Council Minutes – 2/1/16  
**Exhibit:** Agenda Report No. 1  
**Recommendation:** Request Approval of Minutes

**MOTION:** CM Vail / CM Krieger moved to approve the minutes from February 1, 2016 as amended. CM Krieger, 1<sup>st</sup> para, sentence fragment. Needs completion. CM Korn pg 4 item 9, said when Jeff was here we need to start a little earlier. Start the budget process earlier – that is what he meant. Krieger, pg 2, 'did not have no' beer.- double negative; another one on pg 5. Pg 3, confusion – wants to leave it on the table. Look at verbatim and correct it. CM Ball said it needs clarification. Mayor Beatty was a regular attendee of CivMil (Civilian/Military organization). Clerk to make noted changes/clarifications. **VOTE: All Ayes.**

**E. SHERIFF'S REPORT:** no one here

**F. ATTORNEY REPORT:** nothing at this time. CM Korn asked about Painted Acres and Attorney said there is no agreement.

**G. 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)  
**Five (5) Minute Limit per Speaker.**

Skip Hard, Hard Lane, wanted to commend Clerk for the abbreviated minutes.

**H. PUBLIC HEARINGS: 1**

- 2. Review Site Plan for Commercial Development & Consider Recommendation from P&Z Board:** Parcel 28-38-31-00-00750- aka 1300 Highway 1, Malabar, FL 32950; Route One Motor Sports- Applicant: KellWill, LLC, represented by Mr. William Carmine & Mr. Vaheed Teimouri, Engineer  
**Exhibit:** Agenda Report No. 2  
**Recommendation:** Request Action

Applicant was asked to the podium to summarize his request.

Vaheed Teimouri Engineering, representing owner. Said they have been working on this project for a long time. The project grew as they put it together. They have met all the town's requirements. Obtained all outside permits except FDOT. FDOT requires town approval first, before submittal. There were some concerns regarding access. They went to poured concrete walls and fire separation between the repair area and the showroom. To bring water / sewer from Palm Bay is not feasible or necessary. Use will easily be accommodated by septic tank and well. The fire requirements for the NFPA do not require building to be sprinkled, but to get 3000psi for a 3-hour period they must have three 8" wells.

Access for delivery / off-loading of product meet/exceed code. There is adequate parking for employees, and longer parking spaces for customers with trailers.

Mr. Teimouri stated P&Z Board Member Bud Ryan voted against it at P&Z meeting. Mr. Teimouri asked Ryan after the meeting what he objected to or wanted added and he got no response.

Mr. Teimouri stated any commercial development done in the county where the proposed access is 24 feet wide is in excess of the required 20 feet. With a requirement of 30 feet access the potential to block access is more so than with a 24 foot access even with striping and signage. It all comes down to planning, setting rules, training employees and enforcement of those rules by employees. Mr. Teimouri has done 1,200 commercial projects in Brevard County

in the last 30 years. In some instances they don't even take the fire truck onto the property. He is not a fireman, but confers with them countywide on his projects to ensure safety. If you require access to be 30 feet, even with striping, there is more probability of illegal parking in that area.

They also agreed to put "no parking" signs on the side of the driveway. The building is accessed from the rear and most of the deliveries will be in the back. The showroom vehicles have no gas or batteries. There are fire rated walls between showroom and repair area.

CM Korn, asked about the end of the packet. (3<sup>rd</sup> Party reviewer) Brian Foster asked if there would be enough room in the cul-d-sac for delivery vehicles. Have all the questions been addressed to the satisfaction of the reviewers.

PH opened:

Skip Hard, went on the town website, and it announced the building would be a 10,000 sf building – referred to the advertisement, it has now become a larger project. He asked if there was an issue with the conflict. Chair said current notice does not mention the size. Attorney said all notices have been and are compliant.

Liz Ritter, Vice Chair, Planning and Zoning Board, said they had all these questions at their meeting and resolved those questions properly. They are proposing preformed concrete walls, stairs in the front and primary access at the south west end of building, with protection to the neighbors on north side. They went over everything on the plans, got answers and submitted their recommendation for council approval.

CM Krieger stated the back building does not have walls. Teimouri said it does now; the project has evolved. CM Krieger said he did the math on the MBC and came up with .205, which is a little more than the maximum the code allows. CM Korn has no problem with the walls for security and weather; they do not have an impact on the impervious surface runoff. CM Vail said what he is hearing as concerns is the landscaping on the property lines and the width of the access which should be under FDOT jurisdiction and the floor area ratio. The Engineer will determine the maximum building coverage and FDOT will determine width of access so only issue is tree location. CM Ball thought the issue was the 30 foot wide access the fire reviewer wanted. Attorney said that the NFPA requires 20 feet, and there is wiggle room if there are obstacles but they are providing 24 feet. Chair said the code requires 20 feet and they are proposing 24 feet and someone is suggesting the optimal of 30 feet. Chair said it is up to Council to require the optimal or accept the proposed. CM Krieger asked if there was a liability if you ask for an independent review and then don't follow his recommendation and then something goes wrong. Attorney said no because they followed code.

CM Krieger asked if it was normal for the some professional opinions to be reviewed but not followed. He said the legal ad with two meetings implies that it will be accepted at first meeting. He has tried to do his due diligence. The minutes weren't available until this morning. CM Krieger said that is where he is at. When this first presented to the public. Franklin said about the 20% is gross lot size, the Code provides in Article III District Provisions Table 1-3.3.A., Footnote 1 the applicant may use half of the adjacent road right of way in determining the gross lot size. In this case, half of East Railroad Avenue and half of Highway 1.

Milucky, 1280 Highway 1, last time he spoke in front of this body, he was against the proposed land use change and still thinks Council acted in error. He came to this meeting to support his neighbor to the south who is going to build an absolutely beautiful building. The only one to be

affected would be him and he has no problem with it. He supports it and said there are already trees on the property line and Louise Smith's fence that has been there for 30 years. So if the people that are most likely to be affected don't have any issues.... He appreciates all the due diligence that Council has done, but asked for approval and not punt this football down the road. This is a good solid project. He had someone, an attorney in his office, vet this project and every one of his concerns has been answered. He has seen what Mr. Carmine has done with the site down in Grant and has every confidence that this will be even better. And its additional property tax.

No other speakers. Questions?

PH closed.

**MOTION:** CM Korn / CM Kohler to approve site plan as recommended by P&Z Board with the additional requirement to widen driveway an additional six feet to 30 feet or cut an access from East Railroad Avenue.

Discussion: CM Vail asked to hear from the Chief

Chief said you have already set precedence with the church on Malabar Road, by requiring them to widen their driveway to 30 feet. It only takes one broken down or parked vehicle to impede fire access on a 24 foot wide access. Chief read from the NFPA code Section 18.2.3.3 and 18.2.3.1.4, the AHJ (agency having jurisdiction) can require multiple access roads if single access could impede their access. FS 633.266 states when there is a conflict between, the AHJ can refer plans to the State Fire Marshal. Even though the building is non-combustible, with a limited 24' road, if there is anything going on that could worst case scenario prevent them from accessing. He needs to have someone sit with him to make this alternative plan. Chief said you have already set precedent. Future access from the back of the property. He suggested they set a meeting so this can be worked out. P&Z reviews and recommends. Someone needs to talk to him. CM Krieger asked Attorney if we are liable. Attorney said no, not if it is per code. If we are not going to agree then it is going to have to go to the State Fire Marshal.

CM Vail said it is a very good project. And has been drug out far too long. Chief said his job is to reduce liability and protect the public.

Attorney said if you make it contingent on approval of Fire Chief and then there is no approval, then what – Attorney said the applicant and Fire Chief need to talk and postponing is his recommendation. Chair said you could postpone until there is an agreement and then Chair could call a special meeting to hear only this item.

Chair asked Chief how much time is needed. Chief said could be next day or the next. CM Vail wanted to hear from Chief. Engineer Teimouri also asked to speak again; perhaps they can work it out tonight. Chair said they could call a recess. CM Korn spoke of the good qualities of the existing Route 1 Motorsports business.

Chair called a 10 min recess at 8:40pm.

Chair called the meeting back to order 8:55pm. Chair asked if they had reached an agreement. Chief said yes. Chair asked one of them to come to podium and tell Council what they had agreed to. Engineer Vaheed Teimouri stated the applicant has agreed to either do the 30' opening or cut the secondary access, either / or and the Chief agreed. Teimouri then said they didn't have a choice – either make a 30-foot driveway or open East Railroad Avenue. If they do not do one or the other then basically, they do not have a project. They submitted in December, before Christmas. Malabar had 60 days, January and February, to review the plans. And then always at the 11<sup>th</sup> hour, Malabar Fire Dept says do this or your project won't go through. He

referred to the church project he had done on Babcock Street in 2013. Got all the way to construction and then the Fire Dept said it must be sprinkled and it shut down the project for two years. It is an opinion, a suggestion, not a requirement. That is not the way to do business. He is not just making money, he is licensed to read and interpret the code and follow that code when designing these projects with public safety in mind. CM Korn, do we have an agreement. Chair said yes, they will do either the widening or the second access. Teimouri said they would have to see which is more economically feasible.

**ROLL CALL VOTE:**

1)CM Ball, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye; CM Vail, Aye. Motion carried 5 to 0.

**I. ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS/COMMITTEE; RESIDENT GRIEVANCES; HOA REQUESTS)**

#3 moved to top of agenda.

**4. Recommendation from P&Z Board:** amend LDC to require 500' radius notification for land use and 1000 feet for vacate and abandonment.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** CM Vail / CM Korn to direct staff to draft an ordinance expanding the radius for notification purposes before public hearing on land use items as recommended by P&Z.

Discussion:

CM Krieger "all affected" what does that mean? Ritter explained the abandoned and vacate and the public utilities could affect more than just the people within the radius. Put the responsibility on the Building Department to make someone responsibility. 500' of the perimeter not the center.

**ROLL CALL VOTE:**

CM Ball, Aye; 1)CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye; CM Vail, Aye. Motion carried 5 to 0.

**5. Recommendation from P&Z Board: Amend Ordinance 2014-01 re: ALF in OI**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

**MOTION:** CM Vail / CM Kohler to direct staff to draft an ordinance prohibiting ALF construction in OI Zoning.

Discussion: Council asked P&Z Vice Chair Liz Ritter to speak. When they first did the ALF regulations they used the Florida Statute and it has since changed and now it is allowed in a lot of zoning classifications. They want to limit the OI to defer to the preamble of the Charter. The definition of OI accommodate only non-residential. Since this was adopted ALF. No residential uses in OI. CM Krieger hasn't had enough time to read all of these. CM Krieger– the directive they got from council when he was on zoning board, was to prohibit "residency" in OI zoning. Ritter explained they have changed the statutes in the last two years. If we state we are rural residential and the statute conflicts with our preamble, we would like to defer to the Charter. CM Vail asked Atty to look at and get back to council. Chair asked Attorney how much time he would need. Attorney said by next meeting. Chair entertained a motion to postpone until next meeting. CM Krieger referred to the motion on the floor. Chair said then they could do a motion to table.

**MOTION:** CM Korn / CM Kohler to table until next meeting. **Vote:** All Ayes.

**J. ACTION ITEMS:**

**ORDINANCES FOR FIRST READING: 0**  
**RESOLUTIONS: 0**

(No action on this as it was improperly put on agenda. Once an item is tabled, it remains off the agenda until a motion is made and seconded and has a majority vote to take from table. It can then be acted on.)

~~6. **RESOLUTION 02-2016** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR REVISION OF RESOLUTION 04-2014 REGARDING PERMIT FEES FOR NEW RESIDENTIAL AND COMMERCIAL CONSTRUCTION; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.~~

**MISCELLANEOUS:**

**7. Set Next Workshop Date for Council re: FLUM & R/LC**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**MOTION:** CM Korn / CM Kohler to recommend workshop on Mar 31, 2016 to discuss the R/LC.

**Vote:** Ayes, 4; Nay, 1 (Krieger)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**K. BOARD & COMMITTEE MONTHLY STATUS REPORTS:**

P&Z Vice-Chair Liz Ritter had left

T&G Chair Drew Thompson gave PP presentation: Kohler recognized Drew and his group for the great work they are doing. Ball is out early in the morning and has come across walkers and another cyclist. Vail asked if EELP would help with lightning strike shelters. One on each side of Cameron. Build it once with minimal maintenance. Krieger asked if he had contacted FIND. Krieger is interested in the land beyond the ROW.

Park Chair Hans Kemmler – not present

**L. DISCUSSION/POSSIBLE ACTION:**

**M. STAFF REPORTS:**

ADMINISTRATOR: before you there are proposed articles for the newsletter. Sand Hill Trailhead restroom, the delay of the ADA restroom project is the potable water for the water fountain. 4 choices: do away with it. Put in water treatment, use the old school house, or put in a cooler and deliver the 5 gal jug. Krieger asked about a vending machine. The FD opens and closes the restroom. Trailhead will close and open automatically. To get this off of dead center, he would strongly recommend the alternative. Item 4 is very doable.

Drew said when the committee was working on grant, they anticipated having ADA users, people without water or they ran out of water. They wanted to encourage people that are not experts using the trails to get out and use them. Doug opposes the initial expense but also the monthly maintenance.

Doug, the fence around the ball park is falling down, been there over 20 years, he sent the breakdown to get it replaced. 6100.00 He would like to move ahead with this project. Korn said he saw it and it was in bad shape. He has contacted WM and other local businesses that will participate in donations toward this expenditure.

**MOTION:** CM Korn / CM Vail to extend 15 minutes

**MOTION:** CM Korn / CM Kohler to suspend the rules and approve the expenditure.

**Vote:** All Ayes

Doug frontend loader, needs brakes, council was furnished with all this information. Need to get this fixed. It took awhile to get this all pulled together. Called 8 vendors. Maudlin International, said they



would take it apart. You are looking at 10K to fix frontend loader or spend 5,500 for a 30 day rental of equipment. He personally looked at the equipment. The emergency brake was locked. CM Krieger said this is Deja vu. It is a large expenditure. CM Korn said it is parked at Maudlin.

**CLERK:** nothing

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

1)CM Ball – Ball would like more information on agenda for the front end loader. One of the things is where is the money coming from.

2)CM Vail –

3)CM Krieger – discuss the order of the agenda reports.

4)CM Korn – next door, bit of discussion to a memorial to the former mayor.

5)CM Kohler – welcome and thanks to Phil

Interim Mayor - Crews said the ways we work the agenda, kick around the way you put the agenda together. This will give everyone 2 weeks to work on it. The Chair will help watch for this. It is really coming from you.

CM Vail said the resolution will be removed from table at next meeting. CM Vail said a good point brought up today. We have him cornered. Bring this information to developer before it comes to Council. Maybe have it as an agenda item to discuss and how it came to Council before it was resolved.

Chair will work with Clerk. CM Korn has addressed items to chair and a copying the clerk.

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

**P. ANNOUNCEMENTS:**

(2) Vacancies on the Board of Adjustment;

(3) Vacancies on the Park and Recreation Board;

(1) Vacancy on the Planning & Zoning Board

**Q. ADJOURNMENT:**

There being no further business to discuss, Chair asked for a motion.

**MOTION:** CM Korn / CM Korn to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:30 PM.

BY:   
Mayor Phil Crews, Council Chair

(seal)

ATTEST:



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

Date Approved: 4/4/2016