

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY MARCH 21, 2016
7:30 PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

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 3/07/16**
 - Exhibit:** Agenda Report No. 1
 - Recommendation:** Request Approval
- E. SHERIFF REPORT:**
- F. ATTORNEY REPORT:**
- G. STAFF REPORTS:**
 - ADMINISTRATOR:**
 - CLERK:**
- 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) **Five (5) Minute Limit per Speaker.**
- I. PUBLIC HEARINGS/SPECIAL ORDERS:**
- J. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)**
 - 2. Recommendation from P&Z Board: Amend Ord 2014-01 re: ALF in OI**
 - Exhibit:** Agenda Report No. 2
 - Recommendation:** Request Action
- K. ACTION ITEMS:**
 - ORDINANCES FOR FIRST READING: 0**
 - RESOLUTIONS: 0**
 - MISCELLANEOUS:**
 - 3. Discuss and Revise Council Procedures**
 - Exhibit:** Agenda Report No. 3
 - Recommendation:** Request Action
 - 4. Discuss and Create Policy Guidelines for Working with Developers**
 - Exhibit:** Agenda Report No. 4
 - Recommendation:** Request Action
 - 5. Reschedule Workshop Date for Recreational/Limited Commercial Discussion**
 - Exhibit:** Agenda Report No. 5
 - Recommendation:** Request Action

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

L. DISCUSSION/POSSIBLE ACTION:

6. Discuss Memorial Options for past Mayor Carl Beatty

Exhibit: Agenda Report No. 6

Recommendation: Request Action

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

N. REPORTS – MAYOR AND COUNCIL MEMBERS

O. ANNOUNCEMENTS:

- (2) Vacancies on the Board of Adjustment;
- (3) Vacancies on the Park and Recreation Board;
- (1) Vacancy on the Planning & Zoning Board

P. 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 21, 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 Chair Mayor Phil Crews. Vice-Chair CM Vail led the prayer and pledge.

B. ROLL CALL:

COUNCIL CHAIR:	Mayor PHIL CREWS
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 KORN – take item on BP fees off table for action. Vote: All Ayes; add as J.3.

CM Korn re: Typo on Agenda Sec K.5. – Residential not recreational. No minutes.

MOTION: CM Korn / CM Ball approve agenda as amended. **VOTE:** 4 Ayes; 1 Nay (Krieger)

D. APPROVE MINUTES – postponed until next meeting

E. SHERIFF'S REPORT: no one present

F. ATTORNEY REPORT: none

G. STAFF REPORTS: ADMINISTRATOR:

TA briefed Council on status of ongoing projects. **CLERK:** 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) **Five (5) Minute Limit per Speaker.**

Skip Hard, Hard Lane, wanted to know how these storm water projects got approved. Who authorized the expenditures and did Council know about it. CM Vail said give staff a chance to research.

CM Krieger said he had talked to TA about this and asked TA to speak to Council.

TA said he came on after this was started. The contractor did exactly what he was asked to do. He has stopped further work on the tree farm property until he gets easement from property owner so they can maintain it. In the meantime, he has a draft for an easement with D&D and once he gets positive response from the property owner he will run the resolution by the attorney.

TA said he got the water flows last week and intends to get back to FDOT regarding the sheet flow coming off of I-95. The water travels across two properties on south side on Atz Road and goes right into the ditch and culvert on D&D ranch. He has also contacted both of those property owners on the south side and had conversations and may be able to get easements so water can go due north directly into Melbourne Tillman canal.

CM Krieger, we are talking different issues. Since the 1980's, they don't run storm water through private property. He wants to know how that project happened. He doesn't know what piggy back means. Any project should be brought to Council attention. CM Vail contradicts that. The project had priority to relieve the storm water from I-95. That was the resolve. If swales were maintained they would connect.

Franklin said the entire storm water management was left to go through private properties and old drainage ditches and old farming ditches for crops. Further she said the ditch running through the tree farm was put in place by PW with verbal approval from the caretaker in the 1980s. But it wasn't put in to connect to the Melbourne Tillman canal. This project was rated A2 in priority by Council. When the property owner needed to have access to have his trucks turn around and couldn't because of the ditches put in by the town, the owner asked the town to pipe the ditch. Previous TA did not prioritize this and subsequently the owner placed 18" pipes through his property to carry Town storm water to the Melbourne Tillman canal. Chair said perhaps TA and Eng could get a presentation together to present to Council at a later date. TA agreed with CM Krieger – but vendor did exactly what he was asked to do. CM Krieger would like this on the next agenda - what is piggy backing.

TA re: piggy backing – whether it is allowed by local or State law, he feels it is contrary to best interest of the town. His position is we should always go out for 3 bids. It keeps everyone honest. CM Ball asked TA to contact property owner re: easement. TA said it is already in the works but wants the engineering done. CM Korn agrees with everything that is said. Allow enough time to put complete package together. This was approved same time north side of Hall Road at the same time. He doesn't remember any precise price. This was done to benefit the residents not the private property owner. He does remember the conversations. CM Korn said TA to continue to work with those people. CM Vail asked if TA could have information on the 1st meeting of May, 2016 agenda.

Clerk will produce the minutes and the plans from the engineer. CM Vail said Council is getting off topic. CM Krieger stated that things have not been done properly. CM Krieger asked if Mr. Hard could speak again. Hard said there are no check or balances.

I. PUBLIC HEARINGS: 0

J. UNFINISHED BUSINESS / GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS/COMMITTEE; RESIDENT GRIEVANCES; HOA REQUESTS)

2. Recommendation from P&Z Board: Amend Ordinance 2014-01 re: ALF in OI (Postponed at 3/7/16 meeting to get legal opinion.)

Exhibit: Agenda Report No. 2

Recommendation: Request Action

MOTION: CM Vail / CM Korn to approve. **Vote:** Ayes, 0; Nays, 5.

Discussion: CM Vail said the cost to town to respond to a non-profit ALF facility would be paid for by the residents of the town. Is there a price per call that can be charged by the Town for FD/EMS response to these facilities? The Town has to grow and the financial aspect is not being covered.

CM Korn – prisons, nursing homes, etc are institutional. CM Korn asked Chief if there is a charge sent by MFD to respond to these facilities. Chief said no, but the county does. What benefit we would have by not allowing it in institutional. CM Vail said the other thing is if it is a residence, if they use it as an independent living place. That is not institutional. Someone that

needs assisted care. If it was in institutional then it should only be for assisted living. Take the fully independent living out of it.

CM Korn said his mother-in-law lived at The Fountains. She could cook her own meals or go to dining hall to eat. His point is, if they are capable of independent living, they should not be in an ALF. CM Korn's point is that if council is going to use "rural residential" as a condition we should elaborate on requirements. Brook Hollow SD and the Country Cove SD do not comply with Rural Residential but they are approved. CM Ball asked when we differentiate between assisted and ambulatory care. CM Korn asked Chair said this is allowed in RM4 and RM6. Yes. CM Vail would support that. Not right to have it in OI.

Atty said there is still some dependency with checking if residents are taking their medicines. It will take more time for him to look at this. CM Vail asked if we could put in the code that certain levels of care will be allowed in OI. Attorney thinks yes but it could very difficult to determine who is who.

CM Krieger, his example, living in Glenbrook facility. First got a 2-bedroom apt with a garage. She was entirely on her own.

CM Korn, you can have hospitals in OI. CM Vail said he would limit ALF it to a max of 17 persons. Why are we bending over to allow these in rural residential. Atty said he would have to look at statutes. Atty said some of these things – some are specifically authorized in any zoning. CM asked if they can be looked at by density. Attorney said he thinks yes but must look at statutes.

CM Korn said if they need assistance, then it is ALF; if not, it is independent. At the meeting on 3/7/16 Council asked the Attorney to review the revised ordinance and provide comments. He has done that. CM Ball has a concern if they are 'residents'.

MOTION: CM Krieger / CM Kohler to postpone indefinitely. Vote: Ayes, 0; Nays, 5.

MOTION: CM Vail / CM Korn to revisit this at Council level at the 1st meeting in May, 2016. Atty Bohne said he has to revisit each type of use. He said council can have a separation requirement, more open space, etc... Based on rural character you can limit number within a certain area. CM Krieger did some checking a couple of months ago, and there were 35 of these facilities within 5 miles.

K. ACTION ITEMS:
ORDINANCES FOR FIRST READING: 0
RESOLUTIONS: 1:

Added Reso 02-2016
Chair read by title only.

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.

MOTION CM Korn / CM Vail to approve Reso 02-2016 as presented.

Discussion: CM Korn said a lot of homework has gone into this. The last table got what other neighboring charges and he is satisfied. CM Kohler, more important that the BD fees should be covering the costs. CM Ball would like to increase minimum to 5K. We don't want to burden the current residents who may see the BP fee and decide not to even pull a BP. He understands covering the Bldg Dept expenses.

TA said year to date thru Jan, 1 quarter. In that 4-month period we have lost 11K. Even with new costs we still be over but only by 1100. This dept is not supposed to make money but not lose money. Ball said we are charging. Maybe we should address impact fees. Vail is in favor of the impact fee. If they increase to 5k the town would lose only about Cost is admission to town. To maintain infrastructure. Korn relates back to a personal experience. Need a building permit. Building Insp said you need one more screw. Korn asked TA to change the document. How much would be lost. 20. Asked TA how many projects between 2500 and 5K. If we make it easy, maybe they will be more likely to get permit. Vail said it is not a deal breaker. He wants to consider implementing an impact fee. CM Krieger objects. He hasn't seen this document. He has seen consistently throughout the process. Bottom of page one says value, sb cost. Franklin explained the ICC table of valuation. Vail explained his cost vs value on his house. Franklin said

Speaker card: Skip Hard, trying to get money back for having building official to recoup the money to do the inspection. When you do it by value. If the house with less wiring would cost less money.

MOTION: CM Korn / CM Vail to call for the question. Vote: Ayes, 3; Nays, 2 (Vail, Krieger). Super majority required. Motion failed. Discussion continues. CM Vail said compared to the old reso that was very complicated. Less room for people to contest. There are so many variables in the last reso. Keep it simple. CM Ball said trying to utilize the old fee structure was time consuming. It took a lot of time. But the revision would save staff time. TA said take out the subjective and make it more objective.

MOTION CM Korn / CM Vail to approve Reso 02-2016 as amended to increase minimum project value to 5K.

ROLL CALL Vote: CM Ball, Aye; CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Kohler, Aye. Motion carried 4 to 1.

MISCELLANEOUS

3. Discuss and revise Council Procedures

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Chair requested this item. The resolution currently being used is in conflict with Charter and Roberts rules; the reso should not conflict with either.

Discussion: CM Vail said it should still be a guide. Chair said Council can do almost anything they want with unanimous consent. The Atty said the Charter says you "shall" follow Robert's Rules. Regarding submitting a Speaker card in middle of discussion is still allowed. Chair said he will follow the rules, but you can suspend the rules during the meeting with super majority or unanimous consent. CM Korn said he has gone to other cities meetings and we are looser even compared to Palm Shores. CM Korn stated when he makes a request it goes to the chair with a copy to town clerk. The Chair is ultimately responsible for the agenda. At the beginning of each meeting they have approval of agenda – add, delete and change. Chair said when council approves the agenda it is then set.

Chair said the four major items on this agenda were a result of the last meeting. Chair said Council can fix the next agenda at end of this meeting. If someone asks for something to be added then at the beginning of the meeting council can approve to add the items. Chair said the other items on general rules, such as setting the time of the meeting are appropriate in the

resolution because those type of procedural guidelines Pg 2 Sec 2.A. CM Vail This Chair would use his discretion. Chair said they can discuss such items as they come up. Adding items without notice was a concern. Chair said the Clerk is well aware of the advertising requirements. Attorney said at some point he is concerned about sunshine. By sending requests to the Clerk that would be avoided.

CM Korn said he would rather have it on and if three member's people don't want then it goes away. Chair said or Council may want to put on the next agenda with additional background. CM Korn said if it is an item that requires substantial background research. Give the clerk fair opportunity to provide background. CM Ball said Robert's Rules says you can add any item the night of the meeting. Yes. Chair will do whatever Council wants. CM Vail said he would like to keep the ability to have council add items. CM Krieger, we got five pages and we are dancing around and can we go through procedure page by page. He went on website and tried to get the previous procedures and got stopped going back passed 2012 because the resolutions are not on the website. CM Krieger notes:

Pg 1 no problem

Pg 2 j. leave at majority. Do not change to unanimous

Any resident – leave as is.pg #3. Delete. Vail said stick to the 10 day rule.

4. Why is it deleted? Redundant

5. Does no harm

Pg 4

CM Krieger wants whole page deleted. Clerk should be last to notify. Franklin said she is Clerk of Council and a Charter officer. Attorney said go through staff. Clerk can copy to rest of council.

Sec 2.08c of charter – excusal goes thru staff, clerk and is approved by council.

The reason for excusal is not public. You can phone in and participate in the meeting. Chair and Attorney prefer the calls to go through staff. They are always here and it gets recorded. Attorney said if Council has called the Mayor and then they have to vote on the excuse there is potential for sunshine. Per Attorney Bohne, keep 1, 2 and 3 and the reason for absence is not required – just the notice.

Krieger said delete 4, 5, 6 and 7 and 8 and 9 become 4 and 5.

MOTION: CM Krieger / CM Kohler to approve amendment as stated... **Vote:** All Ayes

MOTION: CM Vail / CM Kohler to approve Resolution 04-2016 as amended.

ROLL CALL Vote: CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye.

Motion carried 5 to 0.

4. **Discuss and Create Policy Guidelines for Working with Developers**

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Franklin explained the process staff goes through for site plan approval. With what we have learned, we have modified the process so once each reviewer (Eng, planner, Atty, Bldg. Official, and Fire Review they will sign off on the stamped area on the plans. So by the time it goes to P&Z Board it will have all the reviewing staff initials. CM Vail said he would like to have staff emphasize the disclaimer to applicants that even if the conceptual plan is favorably supported, it does not guarantee a project will be approved. CM Vail said

MOTION: CM Vail / CM Korn to postpone until the next meeting. Chair said it would be a Special Order.

Vote: All Ayes.

5. Reschedule Workshop Date for R/LC Discussion**Exhibit:** Agenda Report No. 5**Recommendation:** Request Action

Consensus will be enough. CM Krieger said the substance is important. He has made notes and thinks if we can have a 30 min mtg before the RTCM on April 4, 2016. They won't solve it in 30 minutes because they also need to consider the densities. Chair asked if April 25, 2016 was good. Yes.

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

L. DISCUSSION/POSSIBLE ACTION:**Moved to next agenda****6.** Discuss Memorial Options for past Mayor Carl Beatty**M. PUBLIC COMMENTS: General Items (Speaker Card Required)****N. REPORTS – MAYOR AND COUNCIL MEMBERS**

1)CM Ball –

2)CM Vail – review code on Malabar vernacular on next mtg.

3)CM Krieger – agenda items re: population in every district. Check parity. Franklin explained. Had rain and would like TA to check wash outs on Atz Road. He was surprised at how quickly the water in the ditches receded.

4)CM Korn – gen comments memorial mtg for May meeting

5)CM Kohler – nothing

Interim Mayor - is still working on the procedures and methods so they can get through these meetings a little quicker. Chair stated we have three things for next agenda: any others?

Franklin said if she gets the information from Engineer there may be Acceptance of Fins Lane on next agenda.

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:

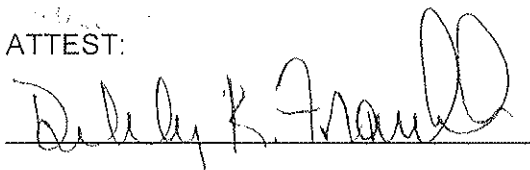
There being no further business to discuss, Chair stated without objection the meeting is adjourned. The meeting adjourned at 10:30 PM.

BY: 

Council Chair

(seal)

ATTEST:



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

Date Approved: 4/04/2016