

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
NOVEMBER 06, 2017 7:30 PM

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

A. CALL TO ORDER:

Council Chair, Patrick T. Reilly called the meeting to order at 7:30 pm. CM Kohler 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, Malabar Fire Chief Mike Foley is not present.

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

Mayor removed #6 – Reso 25-2017 re: hard surfacing an improved road as requested by TA. Agreed. CM Mahoney change #4 to discussion; denied – it will remain under action.

D. APPROVAL

1. Regular Town Council Meeting Minutes 10/16/17

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Rivet / CM Ball to approve the 10/16/17 minutes as presented.

Discussion: CM Mahoney stated the previous minutes going back to December that have been “corrected” are not on the website. Clerk explained that after the Council directs any changes and they are made and then signed, scanned and posted on the Town’s website as the official record of the meeting under minutes; not under the agenda package. She further offered to meet with her during the day to explain the process. Chair called the meeting back to the agenda item. **Vote:** Ayes, 4; Nay, 1. (CM Mahoney) Motion carried 4 to 1.

E. ATTORNEY REPORT: nothing

F. BOARD/COMMITTEE REPORTS:

T&G – Drew Thompson gave brief update. He received the resignation from T&G Member Collette Buffaloe and that opens an additional seat on the Committee. Drew wanted to recognize her for her work on the committee and thank her family for working on projects. She provided the committee a perspective from the equestrian users and he wanted Council to acknowledge her years of service.

P&Z: no one present.

Parks & Rec: no one present.

G. STAFF REPORTS: ADMINISTRATOR: nothing; CLERK: nothing; FIRE CHIEF: excused

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.

Danny White, 1770 Atz Road, wanted to thank the town. Never ran for anything before. Has enjoyed meeting great people and learning – did find out that stormwater was the biggest concern

and work on Atz Road ditch is great. Also found out there are other car guys in the community. Said he has an even greater affection for the community now.

I. PUBLIC HEARINGS: 1 - Final Reading - Ord 2017-12

2. ORDINANCE 2017-12: REGULATIONS FOR WIRELESS INFRASTRUCTURE WITHIN MALABAR RIGHTS-OF-WAY

Clerk read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, TO IMPLEMENT THE REGULATORY AUTHORITY PROVIDED IN 2017 HOUSE BILL 687, THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; AMENDING CHAPTER 13 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CREATING ARTICLE IV SMALL WIRELESS FACILITIES IN RIGHT-OF-WAYS; PROVIDING FOR DEFINITIONS, AND PURPOSE, PENALTIES, EMERGENCY REPAIR OR REMOVAL; PROVIDING FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; PROVIDING FOR A PERMIT APPLICATION AND REVIEW PROCEDURE; PROVIDING FOR BONDING REQUIREMENTS, INDEMNIFICATION AND INSURANCE; PROVIDING FOR WAIVERS AND APPEALS; PROVIDING FOR ABANDONMENT, TERMINATION AND REMOVAL; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 2

Recommendation:

Adoption of Ord 2017-12

PH opened: nothing. PH closed.

Chair asked Staff – Atty said the law as written prevents local govts from governing if they don't adopt regulations by the end of year.

MOTION: CM Kohler / CM Rivet to adopt Ord 2017-12 after 2nd reading.

Discussion: CM Korn asked if there was consideration for larger facilities. Atty said the foot print of a ROW would be too small to allow towers. Mayor said he went through the ordinance for possible interference with ham radio users, etc. TA asked if other cities have received requests? Atty said they will probably wait until after the end of the year.

ROLLCALL Vote: 1)CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

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

ACTION ITEMS:

ORDINANCES FOR 1ST READING: 1

3. ORDINANCE 2017-13: BUDGET AMENDMENT FOR FY 2016/2017

Clerk read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2016/2017 TO PROVIDE FOR ADDITIONAL FUNDS REALLOCATED FROM SURPLUS FUNDS ON DEPOSIT; TO PROVIDE FOR THE ADDITIONAL EXPENDITURE FOR JORDAN BOULEVARD RAILROAD CROSSING SURFACE MAINTENANCE DONE BY FLORIDA EAST COAST RAILROAD; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report 3

Recommendation:

Adoption of Ord 2017-13

MOTION: CM Rivet / CM Kohler to approve Ord 2017-13 at 1st reading.

Discussion: CM Korn – was told by someone recently that they understand that at one time access to Harris Corp property could have come off Valkaria Road. Same access could

have served Data Management. Thinks Council should look at alternatives. It is not fair to charge Malabar residents for this expense. Clerk Franklin explained that the Town fathers planned this area for the industrial park and there would have been more parties sharing in the expense but the State bought the land up for conservation. That usurped the Town's Land Use Plan. The Mayor said look at 1983 agreement. We must pay this. Clerk Franklin stated that Attorney Paul Gougelman addressed the FEC maintenance issue for the City of Melbourne and as the legal rep for the Space Coast League of Cities; this is not an agreement open for Malabar to negotiate – Melbourne has 20+ crossings. This is an agreement at the federal level. The Malabar area off Jordan Boulevard was planned by the forefathers for an Industrial Park where all would share in this maintenance cost. The State coming in and buying the large parcels zoned for Industrial use and designating them conservation totally adversely affected this plan. CM Ball asked TA if the maintenance was budgeted and he said originally it was budgeted at 70K for last year. He is going to ask for assistance from Harris and Data Mgmt. at future meetings he has planned with those companies.

CM Mahoney asked how the Town can get out of the contract. Why do the residents of Malabar have to pay for this? She said many people have driven over there and they don't see what was done for that amount of money. She said it was unwise to pay what an entity wants to charge without having a voice – seems kind of suspicious. He other thought was to improve Marie Street south to Atz Road and let them access those businesses from there.

TA said it would cost over one million to develop road through wetlands. Clerk Franklin said that the forefathers did not want commercial traffic accessing through rural residential neighborhoods.

CM Mahoney asked if Attorney could look at the contract. Consensus to allow Attorney to review going forward.

ROLLCALL Vote: CM Ball, Aye; 1)CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

RESOLUTIONS: 8

4. RESOLUTION 23-2017:

Clerk read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF PROPOSAL FROM JAMES MOORE, CPA FOR AUDITING SERVICES FOR THE TOWN OF MALABAR FOR FY 16/17, 17/18, 18/19 AND 19/20; PROVIDING FOR REMEDIES; PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report 4

Recommendation:

Adoption of Reso 23-2017

MOTION: CM Rivet / CM Ball to adopt Reso 23-2017 selecting James Moore CPA for auditing services. Discussion: CM Mahoney liked the transmittal letter done by CRI. Would like time to mull it over. Chair asked Mayor Crews to speak as the Chair of the committee appointed to address the item. Crews said there were three areas they addressed and they all agreed the experience and methodology was pretty much the same. He looked at James Moore under the question of the items that would be looked at 40 transactions and it was higher than the others. And they deal in Six Sigma, a quality improvement process used by Fortune 500 firms. Guide us through quality improvements. Standard is to get down to 3.4 defects out of a million deficiencies and they were the lowest price. CM Mahoney: asked about the sharpening of the pencil. Price cannot be the overriding determination. TA said if you call for sealed bids and then ask for revised. CM Korn asked if they all are doing the same thing. Atty Bohne said he had not reviewed the engagement letter but notice it said arbitration would be held in Alachua County.

Mayor Crews defended all the audits in his previous employment and is familiar with the requirements. Chair asked rep from James Moore, CPA to speak; his name is Zach Chalifer. Change to Brevard County from Alachua. The engagement letter is a letter of understanding. And Exhibit "A" is a starting place. Atty said Council can approve conditional of him going through Exhibit "A" of the engagement letter.

ROLLCALL Vote: CM Ball, Aye; CM Mahoney, Aye; 1)CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

5. RESOLUTION 24-2017:

Clerk read by title only

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL RECOGNITION OF THE FIRE SAFETY AND LIFE SUPPORT SERVICES PAID FOR BY THE TOWN AND PROVIDED BY THE COMBO DEPARTMENT KNOWN AS THE MALABAR FIRE/RESCUE DEPARTMENT; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report 5

Recommendation: Adoption of Reso 24-2017

MOTION: CM Kohler / CM Ball to adopt Reso 24-2017 recognizing the Malabar Fire Department.

Discussion: CM Kohler commended FD on the grant. CM Rivet also commended the FD better service for less money. CM Korn also said they provide Fire Service classes and some of the attendees were from other cities offsetting the training costs. City of Melb gave FD two brush trucks. Malabar has excellent reputation. Combo department means there is paid leadership. Our Chief gets 41K and a Capt. in Hollywood gets 90K. Quality is good and the average response time is 5min. Encourage more local participation. CM Ball stated this resolution will help us to get that 100% paid grant for SCBA. CM Mahoney said it is great. Looking at ways to save money. She questions the fire rescue wording in the Resolution since we don't send out the ambulance. Wants Atty to look at it. Clerk Franklin said the monthly reports that are submitted to Council and then over viewed by the Chief state clearly the number of fire calls and the number of rescue calls. Atty stated the Reso needs Section 2 reads Section 4 and needs correcting. CM Korn said they do more than fires.

ROLLCALL Vote: CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; 1)CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

6. RESOLUTION 25-2017: Pulled from agenda per Administrator

~~A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE EXHIBITS OF CHAPTER 13 KNOWN AS THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; PROVIDING FOR AN EXHIBIT "B-7"; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.~~

7. RESOLUTIONS FOR BOARD/COMMITTEE APPOINTMENTS

Reso 18-2017 Murray Hann to T&G Committee - Kohler and Ball

Reso 19-2017 Hans Kemmler to Parks & Rec Board – Korn and Ball

Reso 20-2017 Charles Frazee to BOA - Rivet and Ball

Reso 21-2017 Wayne Abare to P&Z – Ball and Kohler

Reso 22-2017 Liz Ritter to P&Z - Rivet and Korn

Clerk read each resolution by title only:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF _____ TO THE MALABAR _____ AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report 7

Recommendation:

Approved individually below

MOTION: CM Kohler / CM Ball to approve Resolution 18-2017 for Murray Hann.

Discussion: none

ROLLCALL Vote: 1)CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

MOTION: CM Korn / CM Ball to approve Resolution 19-2017 for Hans Kemmler.

Discussion: none

ROLLCALL Vote: CM Ball, Aye; 1)CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

MOTION: CM Rivet / CM Ball to approve Resolution 20-2017 for Charles Frazee.

Discussion: none

ROLLCALL Vote: CM Ball, Aye; CM Mahoney, Aye; 1)CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

MOTION: CM Ball / CM Kohler to approve Resolution 21-2017 for Wayne Abare.

Discussion: none

ROLLCALL Vote: CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; 1)CM Korn, Aye; CM Kohler, Aye. Motion carried: 5 to 0.

MOTION: CM Rivet / CM Korn to approve Reso 22-2017 contingent on receipt of balance of documents signed by applicant.

Discussion: none

ROLLCALL Vote: CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; 1)CM Kohler, Aye. Motion carried: 5 to 0

K. DISCUSSION/POSSIBLE ACTION:

8. Update on FallFest 2017

Clerk said it is set for the 18th from 10AM to 4PM at Malabar Community Park. John Quinlivan has been retained as MC and entertainment; Bar-b-Q and hamburgers, etc. by Fire Dept and other volunteers, drinks by Town, bounce house, kidz zone, clown and train for kids, BCSO canine demo, FD demo, First Flight, American Indian Cultural presentation, novelty vendors for coffee drinks and smoothies. Pony & horse rides were added with assistance from Dick Korn. A bike safety rodeo is planned from 11-1pm. Brevard County Humane Society will be offering dog adoptions. Also, will have local businesses and craft vendors and a huge car show.

CM Mahoney asked how many vendors – Clerk did not know.

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

Steve Morris – Weber Road, said he called Mr. Korn and he was combative and hung up on him. CM Korn said he had not received call from him and would not hang up on a resident.

Morris said the real issue is Foley's property – it was supposedly sold and the bull there has gotten out five (5) times in last few months posing dangers but also endangering him and his property and he showed two pictures showing poo and hoof marks in grass. CM Korn asked TA if letter was sent out. TA said BCSO has responded to all calls and they can impound the animal. Letter was sent and should have been received this date. Morris said it has been an ongoing problem. Owner is responsible – bull jumps over the 4-foot fence. People have stopped him and said they are not being fed enough. Morris said he spent a 5K on a berm but water is standing on 2000 Weber. You can't stand it in his back-yard due to smell. Chair thanked him. He wants to see some action.

M. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Money needs to go back into contingency. TA said they should also set aside for replacement costs for vehicles/equipment.

CM Mahoney: Culverts – asked for status on Marie Street replacements and on Weber Road.

CM Rivet: Flashy Lane project – waiting on water to recede. Culvert on Walker to replace.

CM Korn: Addressed CM Kohler as it is his last regular meeting because we took his district away. He appreciates his participation and thanked him for his service. CM Korn knows the cows have been out and maybe the fence needs to be taller. They have had a lot of rain. At recent meeting with Cocoa Mayor, they stated even with their paved roads, gutters and storm sewers they had roads under water.

CM Kohler: Wanted to thank Council and Administrator and Clerk for their assistance and stated he has become a better person and thanked them all.

Mayor: Wanted to thank Richard Kohler also. It was fun watching him grow as a municipal official and wishes him the best as he goes further in his role as a government person.

N. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:45 PM.

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: 11/20/2017