

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
NOVEMBER 20, 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 White 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
	DANNY WHITE
TOWN ADMINISTRATOR:	DOUGLAS HOYT
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the record, Malabar Fire Chief Mike Foley asked to be excused for not feeling well.

Chair wanted to move L.11. to this point of the meeting. Chair has 14 speaker cards on this issue. CM Korn objects and wants it pulled from agenda entirely. CM Mahoney wants it pulled also. CM White would agree but would want those present to be able to speak. Mayor said if it is pulled they can still speak under "Public". Chair asked for vote: Vote (pulling from agenda entirely): All Ayes.

At this point the Mayor called for the PUBLIC Comments under Agenda Item "I."

C. SUNSHINE MEMO AND REVIEW BY ATTORNEY

Attorney Bohne used the memo from last year and had Clerk print this out for Council. No statutory changes. The memo is not intended to be comprehensive. Have policy in the past if you have questions, please call. Council is subject to sunshine law. Don't use conduit.

Attorney said we are not required to record the meeting but if we do then it is a public record. You can vote to allow a council member to appear via phone. If you call him, he will bill. Quasi-judicial meetings – land use related and Council sits as judges.

CM Korn, asked about the abundance of calls he got and asked if they are public records. Not telephone calls, but recorded messages would be.

D. NOMINATIONS FOR CHAIR AND VICE CHAIR

CM Rivet / CM White nominate Mayor Reilly for Chair. No other nominations. Vote: All Ayes.
CM Ball / CM Korn nominate CM Rivet for Vice-Chair. No other nominations. Vote: All Ayes.

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

F. CONSENT AGENDA: Chair asked if any items

CM Mahoney asked to remove the 11/06/17 minutes from Consent Agenda.

1. Approve Regular Town Council Meeting Minutes 11/06/2017

- 2. Approve Special Town Council Meeting Minutes 11/09/2017**
- 3. Appointment of CM Danny White as Bill Reviewer 2017/2018**
- 4. Appointment of CM Grant Ball as Council Signatory 2017/2018**
- 5. Appointment of CM Dick Korn as SCLC Delegate 2017/2018**

6. **Appointment of Mayor Reilly as Alternate SCLC Delegate 2017/2018**
7. **Appointment of Matthew Stinnett as Malabar Representative for TPO/TAC 2017/2018**

MOTION: CM Rivet / CM Mahoney to approve the consent agenda items 2- 7 6. *(Item 7 removed after the vote and dealt with separately below.)*

Vote: Ayes, 5; Nays, 0. Motion carried: 5 to 0.

Chair explained that a speaker card is only permitted if an item is removed from consent agenda. Attorney said she should be allowed to speak.

Speaker Card: Liz Ritter asked why Matt Stinnett for #7. He is being paid and he is not a resident. CM Mahoney is only one on Council with no assignment. Representative should be a council member. Mayor said Mr. Krieger was not a member of council when he was representative.

Attorney said a Motion for reconsideration must be done at the same meeting by a person on prevailing side; a motion to rescind can be done by anyone at any meeting.

MOTION: CM Mahoney / CM Ball to reconsider. **Vote:** Ayes, 3; Nays, 2; (Rivet, Korn)

MOTION: CM Rivet / CM Korn to appoint Matt Stinnett as Malabar representative at TPO/TAC. CM Ball / CM White to appoint CM Mahoney as Malabar representative at TPO/TAC.

Vote for Stinnett: CM Rivet, CM White, CM Korn;

Vote for Mahoney: CM Ball, CM Mahoney.

Removed from Consent Agenda: Approve RTCM Minutes 11/06/2017

MOTION: CM Rivet / CM Ball to approve minutes of 11/06/17.

Discussion: CM Mahoney said the audio is not up on website from the 11/06/17 meeting.

Vote: Ayes, 4; Nay, 1 (CM Mahoney)

G. ATTORNEY REPORT: nothing.

H. STAFF REPORTS: ADMINISTRATOR: Nothing.

CM Mahoney requested TA contact the TPO regarding work on intersections at Weber and Corey (CM Mahoney comments attached)

CM Mahoney requested update on shade sails. TA said they are on order.

CM Mahoney asked for destination of material from Atz Road stormwater project. Ditch Spoil removed.

CM Mahoney suggested BS Troop 37 equipment be relocated to PW yard.

Mayor – put BS 37 equipment location on agenda for next meeting.

CM Mahoney asked about culvert project status on Marie Street and Weber Road. 2-3 weeks.

CM Mahoney asked about the park being closed for camping.

TA said per the Code he has authority to close the park areas. The Malabar Community Park was saturated with recent rain waters. The Sand Hill Trailhead was not only saturated with rain waters but was a construction area and is adjacent to a residential area.

What about the Marie Street culvert. TA said 2-3 weeks depending on vendor's schedule. What about PW fixing the DW culvert. CDM did that culvert at 2885 Weber Road. Daughter broke her ankle. CM Korn said there is a washout and the pick-up of the debris gouged out the area. TA said Public Works is addressing.

CM Mahoney also asked what about the records of what they are doing.

CLERK: no report

Chair asked for status of R/LC Comp Plan item – put on the next agenda for discussion

Also, the next Mailboat - make Dec 1 as the deadline for articles by anyone wishing to contribute. CM Mahoney asked for the financial report on FallFest.

The following comments were heard earlier in the meeting.

- 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.**

Phil Crews, 840 Whimsical Lane, inadvertent thing. The three acres across the street that has the issue – no other regulatory agencies regarding this. He suggested striking the language. That was his point. Ordinance appears to be ambiguous.

CM Korn said the irresponsible actions of animal's owners do not warrant changing the code.

Andrew Diaz, against anything that would change what is established.

Derek Ports, said there are two problems – neighbor problem and irresponsible animal owner. He could put 100 horses or cows on three acres with proper fencing and not have smells. He and Jeff Darby have gone out each time they get out. Animal control came out. Basically – have for their livelihood or for 4H and have had the before the town incorporated. Have ag exempts on 5 acres reduce the count they could lose the ag exemption. Don't push the number issue but the restraint or fencing issues. Work together and help each other out.

John Contoupe, His reason for being here agricultural been home for last 4 years – enjoy rural living. Limit or take away the limit of animals. This is how people get disheartened. Malabar looks great with its horses and chickens. The main priority. Respectfully thank you

Jeff and Colleen Darby – concerned with the zoning change. They maintain their animals. Lease 100 acres in Melbourne and they check the fence lines weekly. Been here 12 years.

Lisa Frazier agreed with what was already said.

Richard Whitworth, is in much agreement with what is said. Those people with more than 2.5 acres right now – speak against any additional restrictions. Responsible people would not over crowd.

Samantha Maribal – moved here specifically so they could have their animals – built home five years ago.

Jim Sheridan, Quarterman Lane, stated they have four acres and have horses, cattle and chickens – their pastures are lush – they care for them and have no stench.

Rachael Waldorff, they have 3.5 acres, thought the proposed change was poorly thought out. Did not want Malabar to become Palm Bay 2.0. Christina Waldorff passed.

Maridel Willer, Atz Road, moved here seven years ago, have a taste of country without living in the middle of nowhere. They have five plus acres and this would directly affect them. She also said an ordinance that uses number of animals is wrong – 40 lb. goat vs 1500 cow. People without animals like to drive through – keep language the same.

Holly Yolles, stated the rural community in Malabar and Grant-Valkaria keep five feed stores in business.

Lance Sprague, lots been said, people have moved here because they liked the lifestyle. The people have spoken. Focus on drainage in this town.

Mayor read the actual code. Then he explained the meaning if it was changed. That is the intent is to provide enough land for grazing animals.

Skip Hard, Hard Lane, read from a written statement (attached) regarding the 10/16/17 council meeting, stating violations of Sections (d) and (f) of Code of Conduct by TA, Mayor and CM Rivet.

Dawn Danielson, Hall Road, said her comments were not included in the 10/2/17 and 10/16/17 and submitted them again. She read and submitted comments about the Code of Conduct and political signage referring to the audio of the 10/16/17 meeting.

Debbie Kicinski, Ski Lane, stated since October she has called WM five times and only got garbage picked today because she called Town Hall and Denine interceded. She should not have to do that. She also referred to the ad in the paper that stated WM would make alternative pick up dates for Palm Bay and West Melbourne but in Malabar they must wait for next regular pick up day. Denine has done a wonderful job of getting the trash picked up.

CM Rivet agreed and said they have a big problem with WM and thinks they should terminate the contract and go with Waste Pro. CM Ball said he was very happy with WM but something has happened and maybe they need to meet with them. Mayor said the TA sent out an email today to WM regarding these issues.

Frank Montilli, 2540 Sikes Lane, made comments on the code of conduct and said that it should be applied equally to speakers and council. He referred to earlier comments regarding CM Mahoney saying no one should feel discounted or disparaged. When you disparage her, you disparage each of the residents in her district. He requested a thorough investigation into her harassment. That is the only way to solve this problem. He made this a formal request.

J. PUBLIC HEARINGS/SPECIAL ORDERS: 1

8. Budget Amendment to FY 2016/2017 (Ord 2017-13) 2ND Reading

Exhibit:

Agenda Report No. 8

Recommendation: Data MCouncil Adoption of Ord 2017-13

MOTION: CM Korn / CM Rivet to adopt Ord 2017-13 after 2nd reading.

Discussion: CM Ball asked if this was for the FEC bill. Just went through the budget process and trimmed the budget and didn't put any into reserves. He felt this is a road issue and should have a negotiation. Chair asked Clerk. Clerk explained that the Town must close the books on previous year by the end of November. If not approved at this meeting it cannot be scheduled for December meeting. She did say that the unaudited financials are expected to show that our revenues came in higher than anticipated and the expenditures were less than budgeted and that difference could be applied towards the FEC payment so less would have to come from reserves. Normally that difference would go into reserves. CM Ball said he could support that if the amount from reserves did not exceed 50% of bill. CM Rivet said if 50% is not found in budget the difference should come from current budget. CM Ball would support that. CM Mahoney if not paid we will be sued. She can only think about closing that crossing down. The Attorney has looked at history of the agreement and found nothing that requires private businesses to share cost. Clerk said Harris had agreed to pay for the FEC repairs for a period of ten years and did until Data Management opened. Clerk also said the State mandated Malabar develop a land use plan and town fathers create this area off Jordan to be the Industrial Park intended for many industries to develop. Then the State later came in and purchased almost the entire area remaining for conservation land.

Mayor said he had contacted Data Management and they are willing to pay based on a per car basis.

CM Korn said pay now and then explore alternatives. It is going to continue to grow. CM Rivet – voted to approve this year's budget. He will vote for this as amended.

AMENDED MOTION: CM Korn / CM Rivet to adopt Ord 2017-13 after 2nd reading with condition that only 50% of FEC bill come from reserves and if remaining 50% is not left in 16/17 budget then difference shall come from current budget.

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

K. UNFINISHED BUSINESS/GENERAL ORDERS

ORDINANCES FOR FIRST READING: 0; RESOLUTIONS: 0; MISCELLANEOUS: 2

9. Recommendation from P&Z Board – Art. XIX – Sign Code

Exhibit: Agenda Report No. 9

Recommendation: Action

Liz Ritter, P&Z Board Chair spoke and said the Board had spent months on this and did clarifications, added language and changed the table. Anything that is in existence is grandfathered. If not, bring it up to code. Double sided sign is only counted on one side. The flashing sign changes no more often than 30 seconds.

CM Mahoney asked if there was a booklet to go with the chart. Liz said Denine will have a booklet to share with applicants.

CM Ball asked in general what the refresh rates in other cities. Liz said most did not allow streaming or flashing. They did not have a limit on the refresh rate. CM Ball said he could see that sign for 7-9 seconds. If other cities don't limit it why would should we. Liz said it can be adjusted by Council. Liz said the Power Point presentation they watched with different refresh rates showed more frequent refresh rates can be a distraction.

Attorney reminded his previous report of the Supreme Court decision regarding sign codes and said we can't regulate based on content. P&Z did a good job but he now must go through and check for conflict with the Supreme Court decision that stated local governments cannot regulate signs based on content. He will change or remove any content based regulations. Council had put off earlier action until other municipalities had addressed this.

MOTION: CM Rivet / CM White to move forward with directing the Attorney to draft the ordinance incorporating the P&Z Board recommendations and the Attorney's content language.

10. Code of Conduct for Council, Required Signature

Exhibit: Agenda Report No. 10

Recommendation: Action

Speaker Card: Liz Ritter asked the Attorney if a CM can be removed from dais by vote of Council. Attorney said no.

Mayor asked CM Mahoney why she did not sign it. CM Mahoney response was read (and is attached to the minutes.) The fact that everyone else has signed it is not a good reason. Also, specifically, there are many times when resident's concerns are voiced but they are not assisted.

CM Korn said he and CM White are the only two members required to sign because they are the newly elected members. For the rest of you not applicable. That answer comes from a Superior Judge that is a customer of his. You are not required to sign. Most of the

municipalities have a similar code but do not have a requirement of a signature. The Boards serve at the pleasure of the council.

Chair called Clerk and asked if Board Member renewal had been signed per the Council motion and was told yes. He then asked if all of Council had signed. Clerk had signed copies from all but CM Mahoney. That is why he wanted it on the agenda.

CM Korn said there is nothing in the code that he doesn't agree with - show respect for each other. CM Korn would suggest they change it to make it a guideline on how to behave ourselves. You must abide by it. Attorney said take a look at the penalties. Council can remove Board members but do give them due process.

Mayor said that if three CM voted for an item on agenda but two voted against it, as a CM you have an obligation to support it within the community. That is his point.

CM Korn said that you must support the prevailing vote on the motion.

CM Ball said he didn't vote for the budget but stated that "we, the Council" voted for the budget. He supported the motion.

L. DISCUSSION/POSSIBLE ACTION:

11. Amend Art. V. Regulations related to Calculating Acreage for Grazing Animals

Exhibit:

Agenda Report No. 11

Recommendation:

Discussion and Direction

Item pulled.

M. PUBLIC COMMENTS: General Items (Speaker Card Required) - none

N. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Went to FallFest and it was well attended. Thanked everyone that participated.

CM Mahoney: Suggest a citizens stormwater board. (Written report attached to minutes.)

CM Rivet: nothing

CM Korn: Learned something this time. Completely affect the lifestyle of this town. Whatever the investment – financial or lifestyle we are going to get an awful lot of emotions.

CM White: Also liked the FallFest and his wife made Crawfish Etouffe and they collected donations that they gave to Fire Department. He would like to go back to two festivals a year.

Mayor: Thanked Debby and staff for FallFest efforts. It was a good event and well attended.

O. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 9:45 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: 12/04/2017

MEMORANDUM

To: Town Council, Mayor Reilly
From: Karl W. Bohne, Jr.
Date: November 1, 2016
Re: Sunshine Law/Public Records Law/Quasi-Judicial Proceedings/Voting Conflicts

I. The Florida Sunshine Law is contained in Chapter 286 of the Florida Statutes.

A. What public agencies are covered by the Sunshine Law?

The courts have expressed a view that the legislature intended to extend the application of the Sunshine Law so as to bind every board or commission of the state or of any county or political subdivision over which it has dominion and control. This means that the Sunshine Law is applicable to any government at the municipal as well as the state and county levels. The Sunshine Law applies to the Town Council

1. What is meeting subject to the Sunshine Law?

The Sunshine Law extends to the **discussions** and **deliberations** as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to the Sunshine Law.

Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission. The Sunshine Law covers every thought, affirmative act and the entire decision making process.

2. Can the Sunshine Law apply to a single individual or a situation where two members are not actually present?

While ordinarily Florida Statutes 286.011 is applicable to two or more members of the same board or commission, certain factual situations have arisen where the presence of two individuals may not always be necessary in order for a violation of law to occur. Courts have expressed a view that the Statute should be construed so as to frustrate all evasive devices.

In one case, the use of memoranda to conduct city business was held to be subject to the Sunshine Law. A member of a city commission initiated a memorandum reflecting his thoughts on a given subject, and appended to this memo a writing space for other members to concur or disapprove

in the position taken. The originator of the memorandum then placed it in a receptacle at the offices of the public body. It was determined that this was a violation of the Sunshine Law and constituted a meeting between two or more members.

A meeting between individuals who are members of different boards is not subject to the Sunshine Law unless one or more of the individuals has been delegated the authority to act on behalf of his respective board. For example, an individual town council member may meet privately with an individual member of the code enforcement board to discuss town issues. Since two or more members of either board are not present, there was no violation because no delegation of the decision making authority had been made and neither member was not acting as a liaison between members of the respective boards.

Additionally the use of non-members as liaisons between board members of the same board is a violation of the Sunshine Law. These generally create *de facto* meetings in violation of the sunshine law.

B. To what agency actions or activities is the Sunshine Law directed?

1. Does the term "meeting" include such things as briefing sessions, workshop meetings, informal discussions and other meetings of the public body where no formal vote is taken?

The answer to this question is probably "yes". The law is applicable to any gathering where the members deal with some matter on which foreseeable actions will be taken by the board. The attorney general has determined that gatherings such as workshop meetings, conference sessions or meetings, conciliation conferences, fact finding decisions, executive work sessions, and courtesy meetings are all subject to the commands of the Sunshine Law. Additionally, the law is applicable to all deliberations of the public body.

C. May public officials meet together at luncheon meetings, social gatherings, and inspection trips?

Luncheon meetings, social gatherings and the like would not be subject to the Sunshine Law merely because of the presence of two or more members of a board or commission IF there was no discussion among the public officials relating to public business or foreseeable action which would be taken by the board.

1. Are telephone conversations within the scope of the Sunshine Law?

Telephone conversations between members of a public body are illegal if the conversation is held to discuss public business in a place inaccessible to members of the public and press for the specific purpose of avoiding public scrutiny.

2. Are the uses of computers subject to the Sunshine Law?
The use of computers or in any case any type of electronic medium, emails twitter, Facebook, etc., to carry out public business, by members of a public board or commission to communicate amongst themselves on issues pending before the board is subject to the Sunshine Law.
3. Are consultations with legal counsel subject to the Sunshine Law?
 - (a) A governmental body may meet in private with its attorney to discuss pending litigation to which the entity is presently a party for a court or administrative agency, provided that the following conditions are met:
 - i. The entity's attorney shall advise the entity at a public meeting that he desires advice concerning litigation.
 - ii. The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
 - iii. The entire session shall be recorded by a certified court reporter. Thereafter, the court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
 - iv. The entity shall give reasonable public notice of the time and date of the attorney/client session and the names of persons who will be attending the session.
 - v. The transcript shall be made part of the public records upon conclusion of the litigation.
4. Inaudible discussions.
A violation of the sunshine law may occur if, during the meeting or during a recess, board members discuss issues before the board in a manner not generally audible to the public attending the meeting. Discussions of public business which are audible to a select few at the dais may violate the openness requirements of the law.

D. Appearance at Council meeting via telephone

Based on several Attorney General Opinions a Council member who is unable to attend a Council Meeting due to illness or physical disability or with a finding of extra-ordinary circumstances by the respective board may do so via telephone and may also cast a vote via telephone. It has been determined that an absence due to illness or physical disability is an "extraordinary circumstance" which justifies such attendance via telephone. But those are not the only 2 circumstances which constitute extra-ordinary circumstances. The attendance via telephone cannot be used to establish a quorum. So there must be a quorum present (in our case 3 members). If the quorum is present then the telephone appearance is acceptable. The Council member appearing by phone must be

able to hear the meeting and must be able to be heard by the public. The minutes must reflect that the Council member is appearing via telephone due to illness or physical disability or other extra-ordinary circumstances, as the case may be.

E. Curing Violations

It has long been held that Sunshine law violations can be cured by independent, final action done completely in the sunshine. However, such meetings must be more than a perfunctory or ceremonial ratification. Based on numerous cases discussing the ability to cure a violation it has been the thought that if you "cure" the matter the violation no longer exists.

When a violation of the sunshine law occurs the act taken is void. The "act" can be cured at a subsequent meeting. The curing of the act does not absolve the public body of its responsibility for violating the sunshine law. The "cure" merely is a way to salvage a void act by reconsidering it in the sunshine. This seems to mean that the criminal and non-criminal sanctions may still apply to the violators.

II. Florida's Public Records Law is contained in Chapter 119 of the Florida Statutes.

A. Materials of Public Records

In 119.011(1) of the Florida Statutes defines Public Records to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Therefore, any material regardless of form which is used to perpetuate or communicate or formalize knowledge and is received by and agency in connection with official business is a public record.

Any documentation an individual member receives from any source and the documentation is for the purpose of communicating public business this document must be a public record and given to the clerk of the Town. This applies to records received by a member at Town hall or anywhere else. So long as the record is intended to communicate official business it must be maintained as a public record.

Any communication that can be saved in a hard format would also be a public record. This includes emails, twitter messages, texted messages, Facebook postings, or any similar type of communications. The fact that you may have received such a communication on a private account does not exempt it from being a public record. If the contact relates to public business then it is a public record. Purely private matters are not public records.

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet"

"E-mail" messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of an exemption.

The nature of information--that is, that it is electronically generated and transferred--has been determined not to alter its character as a public record under the Public Records Act. Thus, the e-mail communication of factual background information and position papers from one official to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. *Id.* Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or blind recipients and their e-mail addresses.

The Florida Supreme Court has ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' . . . private documents cannot be deemed public records solely by virtue of their placement on an agency- owned computer." The Court cautioned, however, that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers."

B. Response to Request.

Any person requesting the examination/copying of a public record need not disclose their identity. Furthermore, a request can be anonymous. The request does not have to be written. The motivation behind the request is not relevant. Production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself. A custodian, however, may request information which will facilitate the receipt or delivery of copies of public records if such information has not been provided. For example, if hard copies of documents are requested, the custodian may inquire how such copies should be provided or if a deposit is required for the production and copying of public records, the custodian may inquire how such information may be communicated to the requestor.

Also, a records request cannot be denied because it is "overbroad". Section 119.07(1)(c), Florida Statutes (2013), requires both prompt acknowledgement of the request and a prompt good faith response: "A custodian of public records must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith." Section 119.07(1) provides that a delay in making public records available is only permissible under limited circumstances. Section 119.07(1)(c) permits a delay for a records custodian to determine whether the records exist; however, unjustified delay in making non-exempt public records available violates Florida's public records law... An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1). It is not only the length of the delay, but also whether the delay was

unreasonable or excused under Chapter 119.

C. Redaction.

The plain language of the statute does not require the agency to state the basis of the exemption applicable to "each redaction." Instead, the statute simply requires the agency to "state the basis of the exemption that [the agency] contends is applicable to the record" and to provide a statutory citation for the exemption. § 119.07(1)(e), Fla. Stat. (2014) (emphasis added). Thus, section 119.07(1)(e) plainly requires only record-by-record not redaction-by-redaction identification of the exemptions authorizing the redactions in each record.

D. Attorney Fees.

The Florida Supreme Court has stated that if the actions of the public body were unlawful then the attorney fees provision of the statute applies. There is no requirement that the public body acted unreasonably or in bad faith.

III. Quasi Judicial Proceedings

The Town Council will be asked on occasions, to decide matters that come before it as a quasi-judicial body. The council sits as the Judge of the evidence and makes its determination based on competent substantial evidence. An example of matters that are considered as quasi-judicial, include, but are not limited to, site plan decisions, subdivision plat decisions, permitting decisions, special exceptions, certain rezonings, etc.

The evidence that meets this standard is more than mere opinion. It must be fact based opinion. This usually comes in the form of expert testimony. Unsupported opinions do not rise to the level of competent substantial evidence. Put another way, opinions that are not based on facts are generally not regarded as competent substantial evidence.

Furthermore, as a fact finding body you must abide by certain rules. You cannot prejudge a matter. You must hear all the evidence before you come to a conclusion. You should refrain from ex parte communication. This means you should refrain from viewing property, talking to witnesses, or receiving documents outside the public hearing. If you are presented with an ex parte communication such communication should be revealed and disclosed at the beginning of the quasi-judicial hearing. This gives all interested parties notice of the communication and a chance to further inquire.

Your decision must be based on what the code states. You must refrain from interjecting your opinions on the wisdom of what a code prescribes. Your opinions are irrelevant. Furthermore, the opinions of others on the wisdom of a code are equally irrelevant. Ambiguities in a code must be interpreted in favor of a property owner and construed against the Town.

IV. Voting Conflicts

A voting conflict arises when an official is called upon to vote on:

any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

If a voting conflict exists and the appointed local official will not participate in the measure then the official must:

- a. Abstain from voting;
- b. Before the vote, publically state the nature of the conflict; and
- c. Within 15 days of the vote, file a voting conflict memorandum.

If the official desires to participate in the discussions then the official must:

- a. Abstain;
- b. File the voting conflict memorandum prior to the meeting in which case a copy must be provided to the other members and it must be read at the next meeting after the filing; or
- c. If the disclosure is not made prior to the meeting or the conflict was unknown prior to the meeting; the official must make the disclosure prior to participating followed by the memorandum within 15 days after the disclosure which shall be given to the other members and read at the next meeting.

If you are faced with a situation that involved a quasi-judicial matter and you are so biased that you can not be fair an objective you should abstain from voting. This is not a true voting conflict under Florida's Voting conflict law but it is a matter of Due Process for an applicant. As I previously stated an applicant who presents a quasi-judicial matter to the Council is entitled to have the matter reviewed by a fair and impartial council. If a council member is biased against a matter then they should not vote on it.

November 20, 2017 Dist. 2 Report

Laura Mahoney

E. Agenda (Remove L. 11)

F. Consent Agenda: #1 removed (11/6/2017 Minutes) No audio available. Believe the "D" the discussion reaching some in meaning. I do appreciate having the minutes early to review. I also believe we should review the corrected minutes before accepting them since history seems to be rewritten in the official documents.

Staff reports: say "none" At a past council direction from the mayor, I was asked to keep the discussions with staff at their reports not on my district report. Now those items are not reported for the official public record.

To TA:

Can we please contact the TPO to work in accordance with their road project happening this year to simultaneously work on our town road's Intersections at Weber and Corey? This should save us money and immediately improve these intersections beginning in 2018. This has been brought up many times.

What is the update on the sail panels?

Where did the soil from the Atz Storm water project go to? Is it going to be processed? Why do the citizens of Malabar have to pay for it, yet a citizen in Grant Valkaria got to receive it for free? – Attorney question – is it possible for the town to legally mine by naming the dirt "muck" I took pictures just after the hurricane of the property where the 2 weeks of all day loads of this sort of soil was taken and this particular property was flood free.

I am suggesting our Malabar BSA Troop 37 be moving back to their rightful storage area this month Their equipment has been displaced because an employee saw the opportunity with a new TA to take advantage yet council unanimously agreed to keep the Scouts. The Scouts have always complied with the rules of the town and always assisted when needed. And recently a representative of the boy scouts let me know, I was supposed to make this happen according to the mayor.

Also, I have been told by BSA Riverside district representatives, that the Town of Malabar is no longer allowing camping at the Malabar Community Park. This was news to me. Who authorized the staff of Malabar to make such a decision?

I was also alerted that the Malabar Troop was denied access to camping at the Trailhead because the bathrooms were only allowed to be unlocked once a month. Again, since when did staff get this authority? It has long been established that the boys have access to camping in Malabar whenever they wished. They built much of the park and have labored all over our community. Why is staff making things difficult for them?

Culverts: It has been pointed out that the 10/16/17 RTCM audio clearly states the culverts would be taken care of in the next 2 weeks. Those minutes are not posted on the townofmalabar.org site. Our legally approved copy includes no discussion from the town administrator or to the town clerk.

I was quite amazed at the speed and ability to start and complete the Glatter (Wilbur) culvert, yet the simple Weber culvert need is growing into a bigger problem. What has public works been doing? I am very concerned for the town as someone could file suite. The one on Marie was said to need hired out. What time frame has CDM Trucking given for this? *(2 to 3 weeks)*

Clerk:

Thank you for getting the packet out on Wednesday. I valued the time to get ready for tonight's meeting and it is so much easier than Friday night. Of course if we had a week it would even be better.

I have heard from people attending Fallfest, they had a great time. I talked to some participants at the Fest. They were enjoying the time and the weather was perfect. I'd like to request the financial report. Thank you.

Budget Amendment:

Let's keep up with reviewing Jordan BLVD railroad contract. First, I am curious what Harris's suggestion or offer to the TA will be as well as the other business.

Also, it does seem curious that the railroad has no limitations on their fees to charge us. Seems we should be legally allowed some sort of negotiation.

Code of Conduct for Board members:

Are already under oath and their terms have not expired. It appears the threat to immediately sign was not decided by Council but one member is imposing his own agenda on board members. Also, I wonder if it is legal to suddenly impose an additional restriction and make up more rules so to speak, after their oath of office and before they are termed out? It would appear the Code of Conduct's true intention is to keep the public less informed than they already are.

District 2 report:

Read Quarterman Lane item 1261437 from St. John's River Water Management

I'd like to suggest we develop a citizen storm water committee by electing 2 citizens from each district for starters to solve some simple solutions and protect our citizen's properties.

I signed up for the Florida Public Sector Digital Engagement Day.

November 20, 2017

Code of Conduct Response

CMDist2 Laura Mahoney

I take very seriously the oath I took a year ago to serve the people of Malabar.

If signing an ordinance that adds to the oath I swore to, in any way shape or form may hinder the representation of the people of Malabar then I need to stand for the people.

The pressure that everybody else is doing it, other cities and towns, is not a good reason. (Besides the fact that the town we are said to have copied looks nothing like our code of conduct,) The fact that everyone else has signed, is not a good reason.

The Ordinance instructs council to withhold "privileged" information. Again, the personal information or legal information is already covered (HIPA, SS#'s, lawsuit info.) Therefore, I can only believe the intent of the Ordinance called the "Code of Conduct" intended purpose is to further hinder citizens from receiving information.

Also, specifically the idea that council acts collectively should certainly be defined more clearly, as the citizens want representation, transparency and authenticity. There are many times this year alone, where the public that voices their concerns are not represented by the rest of council nor the staff. In fact when a person voices an opinion at a council meeting they should be acknowledged. There should be effort made to address their issues and concerns. And there should be real solutions proposed or reasons citing the impossibility to address the issue as presented or if needed a good counter to assist the citizen to understand the full scope of the issue.

Besides, I am not here to run for the next election or make friends with the elect. I am here to represent the people of Malabar to the best of my ability.

ToM (Town of Malabar) RTCM November 20, 2017

Agenda I. Public Comments

1. As the 10/2 and 10/16 Minutes have been approved, yet have not been published, it is impossible for me to see that my Public Comments are, in fact, attached. In those 10/2 Minutes submitted for approval, it clearly states that my comments are attached, yet they are *not* in the package submitted for approval. I hearwith re-submit my Public Comments for both 10/2 and 10/16 and ask, no, *insist*, that they be included with the minutes when published on the ToM website or these of tonight.
2. Regarding paragraph five of the Code of Conduct, in which one agrees to "refrain from statements that are..." disparaging" or "mean-spirited" I wish to cite the following and file Notice that both Town Council and Staff are ignoring the Code themselves; to wit:
 - At 17:46 into the 10/16 RTCM, TA Doug Hoyt said to District 2 Councilwoman Laura Mahoney, "As usual you're behind the curve". This is both disparaging and mean spirited. For one thing, TA Hoyt was not only dismissive but also incorrect in this case, as the residents concerned did NOT agree with Mr. Hoyt, but truly felt that Mr. Hoyt was telling them it was 'his way...or the highway'. Leaving residents feeling that way is not to be considered a 'resolved' situation... and is a poor understanding of the actual real situation by TA Hoyt. Ms Mahoney is NOT to be disparaged because Mr. Hoyt has misunderstood the agreement he has foisted onto an innocent resident.
 - At 1:02:25 to 1:03:12 into the 10/16 RTCM, Mayor Reilly, referring to Ms Mahoney's noting that some political campaign signs a) do not have the appropriate verbiage at the bottom and b) are attached to Stop signs (by tie wraps) calls her comments "Petty" and says that "The pettiness has to stop". This is also disparaging and mean spirited. These words by Mayor Reilly were, in fact, uncalled-for and unnecessary. In FACT, contrary to Mayor Reilly's belief, The Florida Statute 106.143(1)(a) 1-2 is EXPLICITLY clear as to the verbiage that is required on political advertisements. Further it is against Florida Statutes to attach political advertisements to directional signs such as a STOP sign.

Similar abuse of Councilwoman Mahoney has been heard, observed and recorded in prior meetings as well. You are on notice: IT MUST STOP, effective immediately.

I submit these notes for inclusion into the minutes of this meeting.

— Submitted at RTCM 11/06/17 by —
Dawn Danielson

William (Skip) Hard, Jr.
2560 Hard Lane
Malabar, Florida
32950

Public:

321-693-8004

Date: 11-20-2017

Mr. Hoyt, you violated para (d) ridicule, of Ordinance 2017-06, during RTCM of 10-16-2017, @17:45, when he spoke to CM Mahoney saying, "as usual, you're behind the curve."

Mayor Riley, you violated para (d) intimidation & ridicule of fellow members of the town council of Ordinance 2017-06, when you remarked at that same RTCM @ 1:03:08, "petty, petty" regarding council member Mahoney's honest questions concerning election signs at the 2017-10-16 council meeting.

Mr. Rivet, you also violated paragraphs (d) ridicule and (e) disparaging, of ordinance 2017-06 when you offered the following comments about Mayor Carl Beatty on Nextdoor Malabar: "He was severely incapacitated by his health problems, he was unable to run a meeting, and when he tried to represent the town to external agencies, he embarrassed us."

Gentlemen, I have shown that if this ordinance were to be enforced, it would deny YOUR fundamental right to FREE SPEECH, and I strongly recommend that you delete sections D and E.

I am submitting a copy and ask that my words be made a permanent part of the minutes of tonight's meeting.

Respectfully,

William H. (Skip) Hard, Jr.
2560 Hard Lane
Malabar, FL