

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
FEBRUARY 05, 2018 7:30 PM

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

A. CALL TO ORDER:

Council Vice Chair, Steve Rivet called the meeting to order at 7:30 pm. CM Rivet led the prayer and pledge.

B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY, excused

VICE CHAIR: ACTING CHAIR

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

LAURA MAHONEY

DICK KORN

DANNY WHITE

DOUGLAS HOYT

KARL BOHNE

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

For the record, Malabar Fire Chief Mike Foley is also present.

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

Chair asked if there were any: none

D. CONSENT AGENDA:

1. Regular Town Council Meeting Minutes 1/03/18 – not ready

Workshop Minutes 1/22/18

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Korn / CM White to approve the 1/22/18 workshop minutes as presented.

Discussion: CM Mahoney stated the minutes state that the Town of Malabar will never mandate water hook-up and it should say Palm Bay. CM White stated the emphasis was that water hook-up would not be mandatory if a waterline was extended. Correct. Chair asked Clerk to check and correct if necessary.

Vote: Ayes, 5; Nay, 0.

E. ATTORNEY REPORT: 2 items: medical marijuana dispensary (MMD) moratorium ordinance expires next month. The regulations adopted by Malabar don't conform to the FS as amended (SB 8A). Malabar can change the ordinance to comply however – the regulations have to be consistent with what we do with pharmacies. Council choice is to: Do nothing, change Ord 2017-02 or SB8A allows us to ban them from the municipality. Satellite Beach allows them, Rockledge allows them, Melbourne bans them, Palm Bay bans. Atty thinks it would be difficult to regulate. He and staff needs guidance. CM Korn said if the will of Council is to not allow them we should authorize Atty to draft Ord to ban it. CM White would be against a ban. Representing the Town of Malabar, the majority of voters - the will of the people on that ballot issue. The banning would only be the dispensing. CM Ball agrees and said the will of the people. Easy road is to say no if that is an option. Do they have to make decision now? No. Atty said the Ord 2017-02 would be more restrictive than allowed by passage of SB 8A. CM Ball would like it on the agenda. Get info from Indian Harbour Beach Manager Mark Ryan on Med Marijuana Dispensaries (MMD). Put on the agenda for 3/5/2018. CM Mahoney has been to P&Z meetings.

Attorney then advised Council that the Town had been notified by law firm representing person at 2885 Weber Road that Town may be financially liable for injuries. At this point they are just seeking information on our insurance carrier. Attorney stated when a culvert is damaged, it is the

responsibility of the homeowners. For some reason the town got involved in the fast forward in 2017 a visitor got an injury and a claim will be made.

CM Korn said we didn't have obligation to get involved but we did. Attorney stated the demand is for our insurance information and then it will go from there.

CM Mahoney then asked Attorney about water/sewer utility sale agreement sent out by Clerk after last meeting, on page 9: A person can request water line to be extended and asked if all others would be required to hook up – attorney stated no mandatory requirement to hook up to water.

CM Mahoney asked about FLUM update: if they just had to update the conservation lands – asked Attorney if that would be enough. Franklin restated what the State Dept. of Economic Opportunity would be reviewing and it consisted of much more than just reclassifying the conservation lands.

CM Mahoney then asked what Council could do about the yellow flyer that went out before the election – she said it is very important to get to the bottom of this. She believes it was illegal. Atty said there was a certain requirement that deal with PACs. If you don't know who did it then it would be hard to pursue. She doesn't think Council should support it. CM White asked her what FS is being violated. She said it wasn't registered. Atty said there are a bunch of laws that apply to this. TA said what are the penalties? Atty said if you don't know who did it, how can you pursue.

F. BCSO REPORT: none present

G. FDOT Presentation – SR514 Widening – FDOT and Consultant Victor Poteat (attached)

CM Ball asked about difference between 3 and 5 class – distance between openings

CM Korn asked about width of lane 11' to Weber and 12' to Corey and the bottleneck between Corey and Marie Streets.

Victor Poteat said they developed this plan because of Malabar Reso sent in 2016 (Reso 06-2016) the preference was to go with shared lane and a lot had to do with the undeveloped conservation land.

TA asked for traffic decrease. Victor said it drops off from Babcock to Weber to Corey and has extended it out 5 years further. The results showed they couldn't make a case to impact EELs based on traffic.

CM Rivet said that this addresses CM Korn concerns about right turns

CM White asked about the timeline. Poteat said this timeline with approval June and design in 2022. FDOT said it is ranked #6 in the Space Coast TPO list. Poteat said the acquisition and construction have not been funded.

Roundabouts reduce the number of contact points. CM White asked if this is the same presentation they will show on 2/28? Yes, but the Public Hearing will be longer.

CM White then asked why the Public Hearing is being held in Palm Bay. Poteat said they did not think there was a place Malabar could have held it. CM White said there are several locations that would have worked but understands the advertising and mail outs have gone out.

Jim Ralston, has 30 years of driving tractor trailers. He stated without a break in the traffic, you will not be getting vehicles in to the roundabout. Roundabouts do not work. They are being taken out. If you do not get a break in the traffic, without traffic control devices like stop lights to allow the break you will not merge. He has driven over four million miles without an accident and he said they do not work.

H. BOARD / COMMITTEE REPORTS:

T&G – Drew Thompson – he will be brief – had some major TAC for Bike – he heard the similar plan at that meeting from Victor and impressed with the change. Encouraged with the possibility of the potential with the EEL coordination. Then the royal flush major event and great participation and attendance. DEP Cristine Small let them know – the concept of ecotourism – some of the potential is a Florida trail town. They are then connecting do other communities. He looked at the application. No obligation to see if there is potential for recognition. Thursday – tremendous event in Titusville – combo of high tech and the eco trails systems. Borrowed bike program- huge presentation. DC to Antarctica. Used mass transit and he got there. With a little tweaking – importance of planning for connectivity. Atz and Marie potential for another trailhead. Got a great place here and most of it is planning – next week's meeting they will be moving forward with it. Fla trail town concept. Participating with that. Local businesses may be interested in participating instead of using taxpayers.

Chair Rivet asked if there was any financial commitment required if they pursue the Florida Trail Town project? Drew said no, it is not a grant per se. The application would be filled out and then presented to the Town. FDEP referenced Dunedin as the example. Future paved paths between neighborhoods and HOAs. The State is looking to towns to spearhead this project.

CM Rivet asked Council if they would support this future approach. Council supports that.

CM Korn asked about growth to the north. Drew talked about the FPL power line. They have added the equestrian crossing at Marie Street on the FDOT widening plan.

CM Korn said when he moved here they were talking about the linear trail system. Drew stated that we are part of the South Brevard linear trail. Cape Canaveral is working on bike overpasses. PB is very close to getting to the Grapefruit Trail via the improvement at Babcock.

P&Z: Chair Liz Ritter: no one present.

Parks & Rec: Chair Hans Kemmler:

I. STAFF REPORTS:**ADMINISTRATOR:** Ribbon Cutting at Trailhead

TA thanked Barry Proctor and Kenny Dreer for helping to get elevations around the Town. CM Rivet thanked them for getting started on that. Locations with latitude and longitude will be posted to google earth. Equipment rental costs \$250 so it is still very valuable.

CM Mahoney read from paper re: ribbon cutting and asked about the total costs expended on the restroom project. She suggests connecting the ditches. TA said they are working on that right now. She had received questions from citizen on Quarterman ditches. She will connect the person with the TA. CM Mahoney asked where the dirt from Eva Lane project went.

CM White said Barry and Kenny took about 8 hours of their lives. They will be doing more in the future. Applause.

FIRE CHIEF: Chief went through pictures from the Fire House Subs Grant Award of 30K for Hurst extraction tools held last week. Thanks Council and residents for attending. Chief said the 50/50 grant from VFA provided gear for the fire fighters and they will also be getting Scott Pacs via grant that will cost the Town nothing.

Chief said that Hollywood's Gary Sinise also has a foundation that provides grant funds for fire departments as well as veterans issues. He mentioned possible HUD grant funds that may also be available for hardening the fire station / new city hall. Their goal is 2mil in grant for this year.

Any objections. None.

Chief got confirmation that the department also qualified for grant to provide decontamination kits to remove the cancer-causing carcinogens from fire fighters after being exposed in a fire scene. Got notice of approval just today for seven kits.

CM Mahoney thanked the Chief for doing a written report and for the department staff volunteer efforts in looking for and applying for grants.

Chief then went over the Fire Dept. activity report by the week and then the year to date statistics.

CM White – asked about Firehouse Subs donation. They raised \$4.5 million in the State of Florida. Support their restaurant.

CLERK: Fallfest Reconciliation showed expenses exceeded revenues but not by much and some of the expenses were for items that can be used at future events.

CM Mahoney stated the accounting did not include the employee cost to prepare for, work the event and clean up and citizens wanted that information.

J. 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.**

Speaker Card: Brain Vail, Smith Lane: Asked if Council could ask the voters if they want dispensaries in their backyards. Can they extend the moratorium out and ask the voters in November? Atty said at some point the moratorium comes to a point of being unrealistic. Vail would like it to go to the voters.

K. PUBLIC HEARINGS/SPECIAL ORDERS: 0

L. UNFINISHED BUSINESS/GENERAL ORDERS

ORDINANCES FOR FIRST READING: 0; RESOLUTIONS: 0; MISCELLANEOUS: 1

2. Approve State Acquisition of 1.1 Acre Fern Creek Crossing for SR514 Widening

Exhibit: Agenda Report 2

Recommendation: Action

TA introduced and explained the flooding problem. He explained the spillway for flood waters to continue under SR514 to ultimately reach Turkey Creek.

MOTION: CM White / CM Korn to approve Option 2.

Discussion: **Vote:** Ayes, 5; Nay, 0.

3. Request to Designate Parcel 29370200253 as R/LC as Recommended by P&Z 12/7/15

Exhibit: Agenda Report 3

Recommendation: Action

Jack Kirschenbaum – requesting the land use designation be changed to R/LC for the full depth to have a unified land use designation.

CM Ball spoke – if other citizens spoke against it – then he would not support this.

Chair passed the gavel to CM Ball stating the Robert's Rules of Order prohibit him from debating item as Chair. He will reclaim gavel after this item. CM Rivet said he had two residents that came in and spoke against and they do not want commercial property. CM Mahoney said continuous use then use it as RR. CM Korn said Malabar being a major corridor there should be commercial land use but protecting the rural residential area behind that is critical. He reiterated they are not changing any zoning; they are proposing to change

the picture of the future development. It was not exactly what everyone wanted but it protects the residents and increases the value significantly. Reasonable compromise.

Council consensus to leave it as it currently is and not revert it to R/LC or change the depth. CM Ball returns gavel to Chair.

4. Request Council Support on Appeal to NPDES Permit Requirement

Exhibit:

Agenda Report 4

Recommendation:

Action

TA gave overview and history going back to 1927 of the Federal Clean Water regulations created the National Pollutant Discharge Elimination System and how in Florida those regulations are enforced by the State and the State charges for the 5-year permit. Malabar has paid over 15K in permit fees since 2007. He has not determined how Malabar has benefited by having the permit. Malabar has no source point pollution industries that discharge into the waters of the State. He showed the stickers Malabar staff attached to all outfalls draining into the Indian River Lagoon that were provided as part of the permittee requirements. He detailed the extensive reports that are required to be completed with back up material that take huge amounts of time to complete. The TA read from a statement listing the reasons he felt his research supported the appeal to the State for the Town's cessation from the NPDES permit requirement.

TA stated he is traveling to Tallahassee to meet with the Department Head and present his findings at a meeting on Wednesday. He will formally make the request to terminate the requirement for Malabar to renew the NPDES permit. The TA's findings show that Malabar does not meet the criteria for urbanized development. Report attached.

TA gave overview and history going back to 1927.

Paid over 15K since 2007. Plus, we have had to complete reports. He didn't believe we met criteria for urbanized development. Report attached.

CM Ball does not support unfunded mandates.

MOTION: CM Ball / CM White to support appeal to DEP for NPDES Permit Requirement withdrawal. Discussion:

Vote: Ayes, 5; Nay, 0.

Attorney leaves

M. DISCUSSION/POSSIBLE ACTION:

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

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Thanked the Fire Chief for all he had done. Looks like he had pulled it for them. Chief is happy to do it for the residents.

CM Mahoney: CM Mahoney read her report and discussed items as referenced in attached report. She appreciates the increase in citizen participation.

CM Rivet: Appleby Lane situation – several years ago added fill to this road and it was full of metal. At one point they scraped up a lot of the metal but more of the metal is working its way back to the surface. If this was his road it would be very upset. Do we support studying this problem? CM Korn talked about a yard dog – magnetic rod. CM Ball said this is the wire mesh that was left after concrete is crushed.

Rivet said he walks his dog down there and has seen the problem. Can put a layer of fill. CM Rivet asked for Council consensus. CM White asked if we have a yard dog. TA said yes.

TA said 3 possibilities: do nothing, add road material or pave it.

CM White said it is not responsible of them to do nothing. Consensus to spend to \$1,200 to get the road filled.

CM Korn: He has been away for 2 weeks from royal flush to the firehouse subs. That is great. Great for people of Malabar.

CM White: Drew brought up the bike beach and bus event in Cape Canaveral. Kiosk that has set up for bike rentals and uses an app on their phone. Did it there with grant funds from the State. It is still all about drainage. Today they started working on Gradall on the Hall Road project. More emphasis on the cleaning of the ditches instead of the mowing.

He doesn't want to micro manage the PW but would like to get a report so Council knows what they have done and what they plan to do in the future. He thinks most of their time is spent on putting out fires. Just thinking about this now. Focus on drainage.

Mayor: excused

P. ANNOUNCEMENTS:

Q. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 9:30 PM.

BY: 

Steve Rivet, Council Vice-Chair

ATTEST:



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

Date Approved: 3/05/2018

D.1

Remove minutes from consent Agenda

1/03/2018 Minutes not available by 5pm today (2/05)

1/22/2018 one thing, the concern is not "The Town of Malabar will never require or mandate hook-up to water or sewer by any property owner". As, the Town does not own the water-rights.

E. Attorney Report:

Question:

From our Agreement of Purchase and Sale of Water and Wastewater System Specifically Page 9 where Debby directed us to with a purple arrow.

This is how I'm reading this please advise:

So the property owner or developer can go to the City (Palm Bay the owner of the water rights) and ask (request) to hook up and they can ask that all other property owners must hook up and it was never put into writing that they could not do this.

And on the above number (3.) page 9 "Serve Future Customers"

And the "Town" shall not be responsible for any costs associated.....

but not the citizens nor their rural lifestyle nor their out of pocket expenses

-It is the citizens mostly and the Preamble that they were trusting us to protect that are greatly affected and hindered from being protected at this time. The language benefits future customers over residents who were banking on their Charter agreement.

If this is so, could we possibly control what we send in to the authorities concerning our FLUM? That may help protect our citizens for a little longer? I'm suggesting, is it possible to have a bare minimum of change yet we would keep the rest of our FLUM to ourselves for our planned future?

Also, it is always stated that we are not changing zoning and if anyone wants to, they can even keep or sell their property under the old zoning. Is this true?

Yellow Flyer (Anonymous)

At the January meeting, it appeared that only I believed this was an illegal flyer and that it is very important to get to the bottom of this. We cannot have this kind of corruption happening and being approved by Council. Please give your legal advice.

I. Staff Reports:

Fire Chief:

Thank you for always giving a report in writing. It would be nice to see all the departments do this as well. I especially liked the way Lt. Dan Barkley and Firehouse Subs Manager Manik worked this out the Grant for the new equipment over a period of time. This was done really well and the way I believe we should be working with our community instead of using taxpayer's funds except for the bare minimum. Thank You.

Administrator:

The Ribbon Cutting at Sandhill Trailhead #1 was done very nicely. You could not have asked for better weather. It was also nice to see so many from all around our community in support of our trails. We will need to make public the cost. I understand this is not always a popular but is important to keep the public informed.

Also, Is Public Works working on Stormwater this winter season? Do they have a plan? I'd like to suggest we start connecting the ditches. There are ditches that are not contiguous. This would be a simple beginning. Do you think we could put together a citizen action committee for this? I believe we have much interest for this.

Just a reminder, the culvert at Marie Street and Glatter needs attention.

Question from citizens:

Would you kindly ask Doug how a (last RTCM) discussion about maintaining Malabar infrastructure (Quarterman ditches) turned into a dissertation by him about \$350k-\$450k wetland mitigation?

Directly ask if there is an actual existing issue that prevents Malabar from maintaining its' existing ditches?

Where did the dirt from Eva ditches go?

Clerk:

Fallfest 2017:

Thank you for getting the accounting for this to us.

I would like to point out that there is no accounting for employee hours and time spent preparing for, working event, nor clean-up. These are always questions that the citizens want to know and be informed of.

Thank you again.

Miscellaneous: 1

2. Fern Creek Crossing- much more popular spot than we knew about.

Apparently a great place for meditation and the bridge is a photo hot spot.

Also, at this time, our drainage does go through here, so until we have a sure plan of drainage protected from the new owners and we are sure we will have at least as good of drainage as already exists, I do not think we can afford to let go of the entire park.

Let's negotiate, get a contract in writing with a plan, with a completion date before just giving it away....

3. Request to designate Parcel 29370200253 as RLC as recommended by P&Z on 12/7/15

Question? Did any other residents come in giving any other reasons affecting their property? Otherwise, I'm inclined to grant this.

4. Request of Council support to Appeal to NPDES Permit Requirement.

Need more information. I am inclined to ask for time and citizen input before making decisions. It is better to be cautious and see how our decisions may affect everyone.

Council Report:

I do appreciate the increase in citizen involvement. I'd like us to consider digitizing our records in order to relieve our staff and keep our citizens well informed. Thank you all.