

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**  
**MARCH 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 Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. CM Ball led the prayer and pledge.

**B.     ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET, absent

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 is not present.

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

Chair asked if there were any: CM Mahoney stated that the agenda face sheet did not list the 1/3/18 minutes. Franklin said that failure to list on the agenda was an oversight.

**D.     CONSENT AGENDA:**

**1.   Regular Town Council Meeting Minutes 1/03/18**

**Regular Town Council Meeting Minutes 2/05/18**

**Exhibit:**                      Agenda Report No. 1

**Recommendation:**      Request Approval

**MOTION:** CM Ball / CM White to approve the 1/03/18 minutes as presented.

Discussion: CM Mahoney stated the 1/3/18 minutes included her District 2 report but there are 2 sheets that you can take out. They are in there twice.

**Vote:** Ayes, 3; Nay, 1.

**MOTION:** CM Korn / CM White to approve the 2/05/18 minutes with added report from Dist. 2 CM Mahoney 2.

Discussion: CM Mahoney stated the minutes once corrected should be notated as such and included in the original package. No consensus.

**Vote:** Ayes, 3; Nay, 1.

Mayor then made presentation to CM Danny White for completing 18 hours of training at the Institute of Elected Municipal Officials (IEMO) provided through the Florida League of Cities.

**E.     ATTORNEY REPORT:**

Save for medical marijuana dispensary (MMD) discussion.

**F.     BCSO REPORT:** none present

**H.     BOARD / COMMITTEE REPORTS:**

T&G – Drew Thompson – not present

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

Parks & Rec: Chair Eric Bienvien: will present at future meeting

Update on Fitness Course by Annelie Harvey:

The Request is to simply update council on the construction of the Fitness Course and the proposed placement of a bus stop type shelter for some of the equipment. The materials were donated and the labor to install is volunteer – they just want Council to approve the placement.

Started the fitness course – changed the storage idea to use a constructed three-sided shed with windows. She has already got some donations and has volunteers to construct and install. CM Mahoney questioned if Engineer should review. TA said it looks like a structure that would be adequate – and would be a benefit to the community. CM Mahoney asked Attorney if Engineer or permitting would be required. Franklin said it would be considered similar to landscaping – if a storm is approaching it would be moved into a secure area as it has no permanent anchoring. Also under F.S. such a structure does not meet size or dollar amount threshold for a building permit.

**MOTION:** CM White / CM Ball to approve the location for the open 3-sided structure for the Fitness Course use and for shelter from inclement weather. Diagram of structure and sketch of location is in packet. **Vote:** All Ayes. Motion carried 4 to 0.

#### I. STAFF REPORTS:

**ADMINISTRATOR:** ILA for 1 year to finish out year - cost share for the SW admin cost for the remaining period of less than a year. The interlocal agreement will have to be negotiated for next contract term. Eva Lane has been grade staked out – grading in the next 2 days and then bring in base rock and then paved.

Smith Lane, the residents have been actively trying to pave it. Working on process required to make that happen. Working on stormwater project at the west end of Hall and Flashy.

Completion of work on Atz Road drainage is about two months out. Delay due to property owner piping two sides of his property. CM Korn asked about water at Atz and Weber – that is next project – yes, due to failed culvert. CM Mahoney asked about when the project at the SE corner of Marie Street and Glatter Road would be scheduled. TA said after the above projects are done.

**FIRE CHIEF:** Not Present

**CLERK:** Springfest 2018 is set for April 21 – will be the 4th time partnering with Dolphin Auto presenting the car show. We will also be featuring a Bar-b-Q competition between Fire Departments. Smaller, more condensed event – keeping focus on front of park and fire department. CM White asked who was benefitting? Car show is self-sufficient and we enjoy having them utilize our venue. The Fire Dept. will benefit from the Bar-b-Q competition. CM Korn asked about pony rides – no pony rides planned as the focus is on the FD and the car show. The playground will provide a smaller Kidz Zone.

CM Mahoney appreciates the budget to actual that was provided but asked that it go on website so residents can see it. TA said the interim budget to actual is a fluid document and without great explanation, could lead some to misconstrue. The budget is front end loaded and although we are through ¼ of year, some payments and receipts are done once annually. He gave examples on annual payments or revenues opposed to monthly payments or receipts. All information is available and open for citizens coming in with their requests. For that reason, he thought it not a good idea to post these interim fluid reports. CM Mahoney suggested that if each quarter was posted to keep the public informed it will be less mysterious at budget time. CM White said he understands what TA is saying in the explanation. Posting the Budget to Actual without explanation could lead some people to suggest that some areas have over spent when they haven't. All the information and the explanations are available at any time here at town hall. Other Council and Mayor concurred. CM Mahoney said she doesn't see any reason for keeping it secret from the public.

CM Korn, White and the Mayor stated that the budget and finance papers are all here and available to the public at any time. The budget is posted on the website and has been for years.

Franklin said the caution the TA is referring to is due to the fact that the Quick Books working reports and not audited financial reports. Franklin has no reservations about the use of these reports but understands how publishing them could cause some to misconstrue and misinterpret on social

media. She and Staff are here every day and are available to answer questions and explain but do not go out on social media to do so.

CM Mahoney said she has asked for things and it has been months before getting. She referenced the FallFest financials. Franklin said the event was in November and after all the expenditures were received and paid and reconciled the report was provided to Council in February. Malabar is very open to public requests and has always strived to be transparent in all activities. CM Mahoney said it should be posted for public.

**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: John Contoupe – appreciates this time and resides in Malabar next to Huggins Park. The area has scrub jays and sand hill cranes. Two passions are children and animals and preservation of wildlife. Resided there for four plus years. It is a natural habitat to turkeys, turtles and provide nature. He read from a statement (attached) and identified as “J”

CM Korn has known about his dream for quite some time now. He knows the Town has determined that they maintain huge amounts of open space and this was a neighborhood park. The County gave it to the Town and the Town named it after early residents – the Huggins family. The playground equipment was removed years ago and selling it would eliminate one area of maintenance.

Mayor said it is not zoned for grazing animals or a petting zoo. It is zoned OI.

CM While – said Council will have to address the price. He asked Attorney about the possibility of restricting the land as part of the sale. Attorney said they can write deed restrictions and attached them to those parcels. Or you can create the same restrictions in an ordinance. Put on the second April meeting agenda for further information.

Speaker Card: Skip Hard, Hard Lane, read from a statement and submitted a packet with a request to make it part of the record. He asked that Mayor Reilly to apologize.

CM Korn asked to speak – he paid the fine. He stated that the complaint was filed by Bud Ryan and Skip Hard. It is petty and the election is over. CM Mahoney and CM Korn exchanged comments.

**K. PUBLIC HEARINGS/SPECIAL ORDERS: 0**  
**L. UNFINISHED BUSINESS/GENERAL ORDERS**  
**ORDINANCES FOR FIRST READING: 1;**  
**2. Building Codes Adopted (Ord 2018-01)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report 2

**Recommendation:** Request Approval of 1<sup>st</sup> reading of Ord 2018-01

Ordinance read by title only.

**MOTION:** CM Mahoney / CM Korn to approve Ord 2018-01 on 1<sup>st</sup> Reading.

Discussion: housekeeping item.

**ROLLCALL** Vote: CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Absent; CM Korn, Aye; CM White, Aye. Motion Carried 4 to 0.

**RESOLUTIONS: 0;**

**MISCELLANEOUS: 1**

**3. Approve Temp Placement of RV while Home is Constructed – 2325 Quarterman Ln**

**Exhibit:** Agenda Report 3

**Recommendation:** Approve 6-Mo Placement of Temporary Trailer

**MOTION:** CM Korn / CM Ball to approve temporary 6-mo trailer placement while SFR is constructed for refundable cash bond of \$500.

Discussion: CM Mahoney asked if it went to P&Z Board as the boards keep an eye on the process. Chair stated no it was under Building in Code. Attorney concurred. CM Mahoney said her concern that there be no additional adverse stormwater development. CM White questioned what stormwater had to do with the request before council – applicants are requesting to live in RV while home is constructed. Chair said the rest is governed through the Building Department. CM Mahoney said there were several homes allowed to be built in the last five years that caused stormwater hardship to neighbors because their stormwater was not contained on their property. Some discussion about the requirement to retain the first inch of rainwater on a parcel before being directed to the town's stormwater system. CM White said his stormwater goes to ditch.

**Vote:** Ayes, 4; Nay, 0.

**M. DISCUSSION/POSSIBLE ACTION:**

**4. Discuss Medical Marijuana Regulations or Prohibition**

**Exhibit:** Agenda Report 4

**Recommendation:** Discussion and Direction

Discussion:

Attorney said the agenda package is comprehensive. Regulations Malabar adopted were pre-SB 8A and are more restrictive than what is allowed in SB 8A. Could be subject of lawsuit. Repeal the current regulations or ban – it doesn't mean they can't have it delivered here, prescribed here or used here.

CM White – medical marijuana – it is not an adult bookstore. Simple thing to do is to treat it the same as a pharmacy. CM White said to tell Malabar residents they have to go elsewhere even if there is one 15 miles away – is not an acceptable answer. Voters approved this in Malabar by considerable number.

CM Ball said we need to make up our mind. Dealing with how many and suggested if we are too small then we don't need to have one.

CM Korn suggested developing an ordinance that says the medical marijuana dispensing pharmacy is the same as regular pharmacy. That is the safest way for us. CM Ball said it needs to be in CL. Mayor said five of the smaller cities have banned them.

Consensus of Council is to direct Attorney to draft an ordinance to include pharmacies into the medical marijuana regulations.

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

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

CM Ball: nothing.

CM Mahoney: Invited public to the Malabar Community Association every 3<sup>rd</sup> Saturday of month from 1-5 farmers market. Live entertainment. She also wants a PW report on the Mar 19 meeting.

CM Rivet: absent

CM Korn: week from tonight – SCLC dinner Malabar is host – Sheriff Ivey will be speaker for program.

CM White: Stated he attended the FDOT public hearing on the SR514 widening that was held at Palm Bay council chambers and the presentation was discouraging. He then mentioned the copyright license fees required to show free movies at the park and said that Deputy Clerk/Treasurer Matt Stinnett is looking into alternatives. He is excited to hear about SpringFest 2018.

Mayor: Mayor is finishing up the FLUM map drawing. Harris will not support the maintenance of the RR crossing. Data Management had already agreed to a per car calculation.

**P. ANNOUNCEMENTS:**

**Q. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:50PM.

BY: Patrick T. Reilly  
Mayor Patrick Reilly, Council Chair

ATTEST:

Debby K. Franklin

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

Date Approved: 3/19/2018

**Skip Hard**

**Subject:**

Final Florida Elections Commission

Public J,  
3/5/18  
Skip Hard

Mayor Riley, since making the claim at the RTCM of 2017-10-16 that, "it does not state exactly how the wording is supposed to be on the bottom of the sign," your statement has been PROVEN FALSE by the Florida Elections Commission.

I have here a CONSENT ORDER from the State of Florida Elections Commission. This order states that DICK KORN "did not include proper disclaimers, as alleged in the complaint." It further states, "Respondent shall remit to the Commission a civil penalty in the amount of \$250, inclusive of fees and costs."

Now, Mayor Riley, it is time for YOU to publicly apologize to Councilmember Laura Mahoney for issuing FALSE statements about the wording on our election signs, but MOST of all for the way that you responded to her honest attempts to serve this town by referring to her questions as "petty, petty."

Mayor Riley, you WILL be held accountable.

Accountability & Transparency

Sincerely,

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



**FLORIDA ELECTIONS COMMISSION**

107 W. Gaines Street,  
Suite 224 Collins Building  
Tallahassee, Florida 32399-1050  
Telephone: (850) 922-4539  
Fax: (850) 921-0783

December 12, 2017

Dick Korn  
3115 Weber Road  
Malabar, FL 32950

**RE: Case No.: FEC 17-296; Respondent: Dick Korn**

Dear Mr. Korn:

The Florida Elections Commission at its last regularly scheduled meeting considered the above referenced case and executed the consent order that is enclosed. This case is now closed.

Please let me know if you have any questions.

Sincerely,

*Deanna D. Malphurs*

Agency Clerk

/dam

Enclosure: Consent Order

cc: William H. Hard Jr., Complainant w enclosures

FILED

17 DEC -7 AM 11:09

STATE OF FLORIDA  
ELECTIONS COMMISSION

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**In Re: Dick Korn**

**Case No.: FEC 17-296**

**F.O. No.: FOFEC 17-355 W**

**CONSENT ORDER**

Respondent, **Dick Korn**, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

**FINDINGS OF FACT**

1. Respondent is a candidate for re-election to the Malabar Town Council, District 4, in the November 7, 2017 election.

2. On September 13, 2017, the Commission received a sworn complaint alleging that Respondent violated the following section of The Florida Election Code:

**Section 106.143(1)(a), Florida Statutes** Respondent, a 2017 candidate for re-election to the Malabar Town Council, District 4, paid for and distributed political advertisements that contained express advocacy but did not include proper disclaimers, as alleged in the complaint

3. No other legally sufficient violation of Chapter 104 or 106, Florida Statutes, was alleged in the complaint.



### CONCLUSIONS OF LAW

4. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

5. The Commission considers the allegations contained in the complaint a minor violation, pursuant to Rule 2B-1.003, Florida Administrative Code.

6. Respondent neither admits nor denies that he violated Section 106.143(1)(a), Florida Statutes.

### ORDER

7. Respondent and the staff of the Commission have entered into this Consent Order freely and voluntarily.

8. Respondent shall bear his own attorney's fees and costs that are in any way associated with this case.

9. Respondent understands that before the Consent Order is final agency action, it must be approved by the Commission. The Commission will consider this Consent Order at its next available meeting.

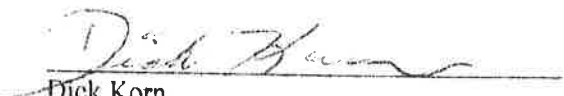
10. Respondent voluntarily waives confidentiality upon approval of the Consent Order by the Commission, the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

11. Respondent will carefully review Chapter 106, Florida Statutes, and avoid any future violation of the chapter.


12. Respondent agrees to correct immediately, if feasible, the violations alleged in the complaint.

13. Respondent shall remit to the Commission a civil penalty in the amount of **\$250**, inclusive of fees and costs. The civil penalty shall be paid by cashier's check, money order, good for at least 120 days, or attorney trust account check. The civil penalty shall be made payable to the Florida Elections Commission and sent to 107 West Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.


Respondent hereby agrees and consents to the terms of this Consent Order on November 2, 2017.

  
Dick Korn  
3115 Weber Road  
Malabar, Florida 32950

Commission staff hereby agrees and consents to the terms of this Consent Order on November 2, 2017.

  
Eric M. Lipman  
General Counsel  
Florida Elections Commission  
107 West Gaines Street  
The Collins Building, Suite 224  
Tallahassee, Florida 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on November 2, in Tallahassee, Florida.

  
M. Scott Thomas, Chairman  
Florida Elections Commission

Copies furnished to:  
Eric M. Lipman, General Counsel  
Dick Korn, Respondent  
William H. Hard, Jr., Complainant

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD UP TO LIGHT TO VIEW

# OFFICIAL CHECK

1000522049

68-236/514

ISSUING BRANCH 8530202-BREVARD - PALM BAY

DATE November 02, 2017

PAY TO THE  
ORDER OF FLORIDA ELECTIONS COMMISSION

\$250.00

Two Hundred Fifty and 00/100ths Dollars

**BB&T**

\$250.00

MEMO/PURCHASER DICK KORN

AUTHORIZED SIGNATURE

*Dan Bible*

Security Features Included. Details on Back.

March 5, 2018

District 2 Report

Laura Mahoney

**D. 1 Consent Agenda**

page1

> There are 2 sets of minutes in the packet

January 3 meeting minutes: a couple of pages to be taken out. (I will explain)

My request would be all corrections be listed within the actual date of the minutes being corrected.

I guess another option would be a "notice" that corrections would be in the next Council meeting minutes.

**I. Staff Reports:  
Administrator:**

Do we have an estimated date of addressing the Southeast Marie and Glatter culvert?

**Clerk:**

Please put the Budget vs. Actual reports on Town website on a quarterly basis. Thank you.

**K. 2. Building Codes Adopted**

How often do building codes change?

**3. Approve temporary placement of RV while Home constructed.**

>Did this go before planning and Zoning?

> Do not want to prevent this process. I do love our committee system that protects our community by keeping more eyes on the process.

> Biggest concern on Quarterman is a good Storm water drainage plan that does not bring hurt to neighboring properties.

#### **M. 4. Medical Marijuana regulations or prohibition**

***Pg. 2 "a municipality that choose to allow them cannot limit the number of dispensaries within their boundaries."***

>We need to be sure to protect our town charter and rural nature.

>Does our existing Code provide needed protection for property owner's rural nature?

#### **O. Reports**

##### **District 2:**

I'd like to thank the public for your involvement. I'd like to add that the Malabar Community Association's every 3<sup>rd</sup> Saturday of the month 1-5pm Farmer's Flea market is on the 17<sup>th</sup> of this month and has live entertainment so bring a blanket or chair and enjoy your neighbors! It's \$5 a space if you register online. You can go to the town site under town news to find past flyers.

Public Works,

The public would be pleased to have a report such as work completed for the month. The taxpayers should be informed.

I'd like to add this to the next RTCM agenda, March 19<sup>th</sup>.

Again. I do appreciate the public staying in touch and the strong community Nextdoor.com has created as well.

Thank you!!!