

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MAY 06, 2019

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 T. Reilly called the meeting to order at 7:30 pm. CM White led P&P.

B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR/ACTING CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN, excused

DANNY WHITE

TOWN ADMINISTRATOR:

MATT STINNETT, excused

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk said the PW Director Tom Miliore was also present.

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

CM White spoke about his reluctance to sign off on a bill and asked if Council could add Agenda Item 8a to appoint an alternate bill reviewer. Agreed.

D. CONSENT AGENDA: Chair asked for a motion on the consent Agenda -

- Regular Town Council Meeting Minutes 4/15/19
- Town Council Workshop Meeting Minutes 4/29/19

MOTION: CM Rivet / CM Vail to approve the regular meeting 4/15/19 minutes. Discussion: CM White said in reference to what Lt. Hooker said about part-time FF does not affect the ISO rating. Clerk said she would clarify the statement. Vote: 4 Ayes.

MOTION: CM Vail / CM Rivet to approve the 4/29/19 workshop minutes. Discussion: none. Vote: 4 Ayes.

E. ATTORNEY REPORT: nothing

F. BCSO REPORT: was present but had no stats to report due to software issue.

G. BOARD / COMMITTEE REPORTS:

Drew Thompson, Chair, T&G Com: Not Present

Eric Bienvenu, Chair Park & Rec Board: not present

Wayne Abare, Chair, P&Z Board: not present

H. STAFF REPORTS:

ADMINISTRATOR: TA is excused.

PW DIRECTOR: Tom Miliore, provided May calendar of scheduled projects and a package including roads graded, ditches cleaned, and projects completed in April. He also showed Council a picture of the catch basin they custom made for the Reef stormwater project.

FIRE CHIEF: April 1 to May 2 went over stats. Ladder truck is going. Was shift sensor. Prisoners will be out pressure wash and paint building.

CLERK: Reported that she is still needing articles for the MailBoat in July; deadline is mid-May.

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) Five (5) Minute Limit per Speaker. Speaker Card:

NONE.

J. PUBLIC HEARINGS/SPECIAL ORDERS: 0

K. UNFINISHED BUSINESS/GENERAL ORDERS

2. Request Malabar Declare Sand Hill Cranes a Protected Species

Resident Lloyd Behrendt – Agenda Request Form

Exhibit: Agenda Request Form 2

Recommendation: Direction to Staff

Lloyd Behrendt bought in 1985 there were two nests and now they are everywhere. Referenced the recent deaths by drivers on Malabar Road. He proposes Council take action regarding the Florida Sandhill crane. Regarding being hit by drivers; it would be difficult to catch the drivers, but maybe if there were something official done by Council, drivers would be more attentive. Also told Council that people are not supposed to intentionally feed the Florida Sandhill cranes, as it can kill them. We need to do an information campaign - do article for newsletter. Have a resolution passed by the Council saying this is a sanctuary Town for the Florida Sandhill cranes. Put up signs to alert drivers of the cranes. Also, ask G-V if they want to join in on the resolution, since they have a similar environment. Channel 13 and Channel 6 are following this issue. Mayor is willing to do a proclamation. CM Ball said we could make it the official Town bird. Franklin said a resolution could reference the Council's intent to encourage additional attention to the Florida Sandhill Crane and to name it the official bird of the Town. CM White said the information and education policy on these birds is important. He is aware that people may be feeding them intentionally or not know the harm it could cause. He will work with Lloyd on signage.

MOTION: CM Ball / CM White to direct a resolution be drafted regarding naming the Florida Sandhill Crane as the designated official Town bird and declaring that Malabar is a sanctuary for these birds. **Vote:** All Ayes

PRESENTATION:

3. Henry Morin on Proposed Land Use Designation to CG for Parcel 568 at NE Corner of Babcock and Osage Street

Exhibit: Agenda Report No. 3

Recommendation: Action – direction to Applicant

Speakers:

Mr. Smutco, Lett Lane, doesn't feel part of this Town. Is against the commercial development. He lives on a dirt road. He opposed Council's management of this Town.

David Scardino, Lett Lane, represented many other residents of Lett Lane in the audience; they are objecting to this proposal to change to CG at Osage and Babcock. He was a city planner. Residents on Lett Lane are opposed to putting industrial development in this area. He said if it is changed to allow commercial, then the other parcels to the north will also change and before long there will be industrial development. It is a slippery slope.

Presentation by Mr. Henry Morin, Palm Bay, the agent for this parcel and the proposed change. He has been a commercial real estate broker for 40 years. It is currently designation as "OI" (office institutional) and the regulations will allow a building of 12K sq. ft. The same setbacks apply to the current zoning. He explained in the 1980's, this was a BU-2 commercial classification when the Town used the county's designation. The property to the south is in G-V and has a Town Commercial Land use, which is similar to BU-2 and further south has a lighter commercial density. The homes to the north and east of this parcel can keep the residential land use. Palm Bay hasn't changed their Future Land Use map, the City's Economic Development Coordinator said the city intends to change it to multiple family/commercial. Babcock Street is one of the highest traffic roadways in county. Osage Road is going to have an opening with the upcoming 4-lane widening project. This presentation was to test the water.

He said it is very common to have higher commercial density at intersections. He referenced the new WA-WA and Cumberland Farms are a higher intensity commercial than the interior parcels. He also opposes the slippery slope comment. There are regulations that clearly state the requirements, setbacks, lot size and maximum coverage. There are standards. Chair thanked Mr. Morin for coming in.

L. ACTION ITEMS:

ORDINANCES FOR FIRST READING: 0

RESOLUTIONS: 2

4. Support Brevard County Ordinance to Require Signage to Sell Fertilizer in Summer Reso 06-2019)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE SUPPORT OF BREVARD COUNTY'S ORDINANCE TO REQUIRE SIGNAGE AT VENDORS SELLING FERTILIZER BETWEEN JUNE AND SEPTEMBER TO ALERT CONSUMERS TO THE IMPORTANCE OF REDUCING TMDL IN THE IRL; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Adopt Reso 06-2019

Reso read by title only.

MOTION: CM Rivet / CM Vail to approve Reso 06-2019. **Rollcall vote.**

CM Ball, Aye; CM Vail, Aye; CM Korn, excused; CM White, Aye; CM Rivet, Aye. Approved 4 to 0.

5. Amend Administrative Fees (Reso 07-2019)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR APPLICATION FEE TO NAME A NEW STREET; PROVIDING FOR APPLICATION FEE WHEN REQUESTING LAND USE DECISIONS NOT OTHERWISE COVERED; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Approve Reso 07-2019

Reso read by title only.

MOTION: CM Vail / CM Rivet to approve Reso 07-2019. **Rollcall vote.**

CM Ball, Aye; CM Vail, Aye; CM Korn, excused; CM White, Aye; CM Rivet, Aye. Approved 4 to 0.

MISCELLANEOUS: 3

6. Proposed Depth of Six Parcels on the south side of Malabar Road for both R/LC and OI Land Use Designations on FLUM before final adoption

Exhibit: Agenda Report No. 6

Recommendation: Action – direction to staff

Speakers:

Mr. Jack Kirshenbaum, Attorney representing the 25-acre site east of Weber Road. His clients submitted letters to Town and State opposing the proposed land use designation change to OI and to the depth issue. They have already submitted for a subdivision development under the current land use and zoning and wanted confirmation that it will be considered under the existing regulations.

Jack Hessey, Whimsical Lane. He commented that half of the six owners of the properties are from out of state. He thinks Council is being over generous to the out of town speculators.

Bruce Moia, MBV Associates, representing 25-acre piece. They have been here a couple of times. The owners are not in favor of the change. He is the owner of MBV and they recently submitted for a subdivision development.

Attorney Bohne told Council the applicants submitted a subdivision package for preliminary plat review. It will be reviewed under the current land use and zoning designation of RR (rural residential).

MOTION: CM Rivet / CM Vail to keep the depth to 660 feet - for discussion.

Discussion: CM Rivet understands we support commercial development. He supports that unless it negatively impacts the rural residential community. Putting commercial land use next to residential at the depth of 1,320 feet is too far into RR land use. Splitting the land use for these deep lots will protect the rural development. If we are serious about keeping Malabar rural, we would oppose a deeper depth.

CM Ball does not agree. To take a whole property and divide it could hurt both values. CM Rivet said the alternative is keeping it all the same. Keep it rural.

CM White said 660" is a lot of depth. He understands the resident's concerns, but a 660-foot buffer is extreme. He agrees with CM Vail.

CM Vail said splitting the land would create access problems. CM Vail said he thinks we can provide adequate buffer between the two land use designations so that the existing RR uses will not be adversely affected. We have a very limited commercial development especially due to the State purchase of land in the Industrial Park. We have to use the commercial we have. Residential tax base will not support the Town.

CM Ball said the key is to leave commercial development along the main corridors to support the rural residential development.

CM Vail keep it a whole property. The downside is the 660' buffer will be worthless. CM Vail said there are already regulations on buffer requirements in the code and if necessary, they can amend those to make it more restrictive.

Juliana Hirsch, 1035 Malabar Road. If we move to keep it half and half, then you will still need a buffer between the commercial and the residential. CM Rivet's argument doesn't stand. There is a larger buffer requirement whenever commercial abuts residential so if the land use change is at 1,320 feet or 660 feet, there will be a more restrictive setback. If Council changes the separation line to 660 feet, there is still a setback requirement due to the land use change. She stated she was asked personally during the P&Z discussion and the early Council discussions and does not see an additional protection to land owners, but rather an additional burden/restriction. If the land use designation goes back 1320 or 660 you will still have Commercial abutting residential. Whether you move the line. It is still abutting – she is totally against this. She stated that the wetland people have looked at her property and said that most of it is wetlands.

Vote: Ayes, 1 (CM Rivet); Nay, 3

MOTION: CM Vail / CM Ball to reset the depth to 1,320 feet for land use designation.

Vote: 3 Ayes; 1 Nay (CM Rivet)

7. Proposed Access to 20-acre parcel from unnamed ROW adjacent to Beekeeper/Old Mission Road – Request from Chris Thomas

Exhibit: Agenda Report No. 7

Recommendation: Action – direction to staff

Request deals with access maintaining the current roadway. Without impacting wetlands. If he has to build the mitigation credit cost of 160K so wife and he can build a road.

Atty said years ago we had a variance procedure. No mechanism to deal with this. Bringing back the variance procedures will be part of the road workshop. Build the road and that would be an extreme hardship. We will cover this in our workshop.

Mayor asked what the solution. Use the existing roadway.

CM Ball said what about eminent domain. Can't we buy the Alabama ROW that Council vacated back? Could be very expensive.

CM Vail said he was opposed to variance procedures because that burden is place on the next parcel owner. He said there are too many short roads. The road workshop we are going to talk about and how we are going to deal with these unique situations.

Obligation to develop for the future. We are making decisions that will impact people in the future. Atty would rather table it until after the workshop.

MOTION: CM Vail / CM White to table it. **Vote:** Ayes, 4; Nay, 0

8. Waive Building Permit Fees for 2125 Howell Lane Reconst after house fire

Exhibit: Agenda Report No. 8

Recommendation: Action – direction to staff

MOTION: CM Ball / CM White to waive the fees. **Vote:** Ayes, 4; Nay, 0

8.a. Alternate for bill reviewer.

MOTION: CM White / CM Ball to appoint CM Vail as the alternate bill reviewer. **Vote:** All Ayes

M. DISCUSSION/POSSIBLE ACTION: 2

9. Discussion on Special Assessment (SA)

Atty thanked Chief for getting the Cocoa info. Use the Special Assessment process. Must do the ordinance, and fee resolution, case law is clear on fire protection being a proper reason for a special assessment.

CM White wants to do it through the millage route. He knows the situation the Town is in – if we do look at raising additional revenue he wants it presented to the people of the Town that it is to address the budgetary needs for the whole Town.

CM Ball asked why the SA can't be millage based and can't be based on property value. Atty said it is based on the benefit received.

CM White has heard people say that pay property taxes for roads and drainage and got a FD instead.

CM Rivet supports Special Assessment.

CM White supports voted millage - show as much care for the other needs of the Town.

Franklin explained the roll back rate. That is the percentage that will get you the same amount of ad valorem as you got the preceding year. The Special Law 74-430 restricts cities in Brevard County from increasing their ad valorem more than ten percent over the amount they received the preceding year. So, if your ad valorem is \$470,000.00, ten percent is \$47,000.00. That will not go far into funding the capital improvements we have identified such as repaving Rocky Point Road, Corey Road, Weber Road, Briar Creek Boulevard or funding a large stormwater project at Corey Road.

CM Vail said if you don't change your oil eventually you will need an engine - CM Vail as a Council you need to inform the community there will be expedient costs associated with replacing instead of maintaining.

CM Ball said the millage rate is the way to go. That is where this should be coming from. If you lay it out to the voters and then it is up to them. The SA is a little cumbersome.

CM Rivet – if we do it on millage rate – doesn't reflect adequately what the town does.
CM White, you don't go around them. They will vote on something they understand.

Straw vote by Council to only ask for one or the other.

Increase Millage: CM White, CM Ball and CM Vail
Propose SA: CM Rivet

CM White said he understands it is easier to get SA passed. We have greater needs, that is why he says millage.

Council direction to staff is to start the process to draft the referendum question to increase the millage.

10. Discussion on Possible Ordinance regarding Public Notices

CM Rivet had a resident – as long as we get it posted. We don't need to do an ordinance.

PUBLIC COMMENTS: General Items (Speaker Card Required) none

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Took a bike ride and the ditches look cleaner. And water flowing. Really do like the information on the calendar.

CM Vail: nothing

CM Rivet: driving around town and looking at ditches. We are making significant improvements.

CM Korn: excused

CM White: Thanked CM Ball again.

Mayor: Mayor's Breakfast is this Friday. All 16 cities.

P. ANNOUNCEMENTS: Openings on Bd of Adjustment and Park and Recreation Bd.

Q. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 10 PM.

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

ATTEST:

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

Date Approved: 5/20/2019