

REGULAR TOWN COUNCIL MEETING

Monday, July 15, 2019 at 7:30 pm

- 1. CALL TO ORDER, PRAYER AND PLEDGE
- 2. ROLL CALL
- 3. APPROVAL OF AGENDA ADDITIONS/DELETIONS/CHANGES
- 4. CONSENT AGENDA
 - a. Approve Minutes

Approve Minutes of July 1st Regular Town Council Meeting

Exhibit: Agenda Report Number 1

Recommendation: Approve Minutes

Attachments:

- Agenda Report Number 1 (TownCouncilMinutes0701_2019Draft.pdf)
- 5. ATTORNEY REPORT
- 6. STAFF REPORTS
 - a. Administrator
 - b. Clerk
- 7. 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

- 8. PUBLIC HEARINGS / SPECIAL ORDERS
- 9. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

10. ACTION ITEMS

ORDINANCES: 1

RESOLUTIONS: 0

MISCELLANEOUS: 0

 a. Amend Chapter 11, Section 11.8 (a) Providing for Public Rights of Way (Ordinance 2019-09)

Ordinance for First Reading

Exhibit: Agenda Report Number 2

Recommendation: Action - Approve First Reading of Ord 2019-09

Attachments:

Agenda Report Number 2 (2019_Ord_09Amend_Chapter_11__v2_.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

11. DISCUSSION/POSSIBLE ACTION

a. Petition to Remove Stop Sign at Corey Road and Benjamin Road

Exhibit: Agenda Report Number 3a and Agenda Report Number 3b

Recommendation: Discussion and Direction to Staff

Attachments:

- Agenda Report Number 3 (a) (TOWN_OF_MALABAR.pdf)
- Agenda Report Number 3 (b) (Petitions.pdf)

12. PUBLIC COMMENTS

General Items (Speaker Card Required)

13. REPORTS - MAYOR AND COUNCIL MEMBERS

14. ANNOUNCEMENTS

(2) Vacancies on the Board of Adjustments; (2) Vacancies on the Park and Recreation Board

15. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any

matter considered at this meeting, a verbatim transcript may be required, and the invididual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764)

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 1 Meeting Date: July 15, 2019

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meeting(s):

• Town Council Regular Meeting – 7/1/2019

The minutes are the official record of the actions taken by Council.

ATTACHMENTS:

Draft Minutes of 7/1/19

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES JULY 01, 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 Ball led P&P.

B. ROLL CALL:

CHAIR: MAYOR PATRICK T. REILLY STEVE RIVET

COUNCIL MEMBERS: GRANT BALL BRIAN VAIL

DICK KORN, excused DANNY WHITE

TOWN ADMINISTRATOR: MATT STINNETT
TOWN ATTORNEY: KARL BOHNE
TOWN CLERK/TREASURER: DEBBY FRANKLIN

Clerk said for the record the Fire Chief Mike Foley and PW Dir Tom Miliore were also present.

- C. APPROVAL OF AGENDA ADDITIONS/DELETIONS/CHANGES: none
- D. CONSENT AGENDA: Chair asked for a motion on the consent Agenda -
 - 1. Approval of Council Minutes:

Exhibit: Agenda Report 1
Recommendation: Approval of Minutes

- Regular Town Council Meeting Minutes 6/17/19.
- Workshop Council Meeting Minutes 6/24/19

MOTION: CM Rivet / CM Vail to approve the regular meeting 6/17/19 minutes as presented. **Vote**: All Ayes.

MOTION: CM White / CM Ball to approve the Workshop meeting 6/24/19 minutes as presented. Vote: All Ayes.

E. ATTORNEY REPORT: nothingF. BCSO REPORT: was not present

G. BOARD / COMMITTEE REPORTS:

Drew Thompson, Chair, T&G Com: Not Present – CM White stated that Palm Bay CM Kenny Johnson wants to discuss projects with the T&G Committee.

Eric Bienvenu, Chair Park & Rec Board: Not Present

Wayne Abare, Chair, P&Z Board: Not Present

H. STAFF REPORTS:

ADMINISTRATOR:

Spoke with SW Master Plan vendors and they can move the schedule up, but it will be a 10-15% cost increase. Council consensus to stay with TA's proposals. The PW July schedule is before Council. FDOT plan for Malabar at Corey and Weber – construction is as planned for those intersections.

PW DIRECTOR: Tom Miliore, went over the report. Got both tractors back and up and running. Slope mower operational, Gradall removed 1400 yards of spoilage from ditches; 17 citizens contacts were resolved. Finished up sprinkler system at park and removed trees at Allen Street. CM White said he liked the way they resolved a recent issue.

FIRE CHIEF: Went over May stats – 34 calls in May, 2 car accidents with injuries and 27 calls in June. Fire Station will be painted by prisoners on July 11. Thanked PW for the great job they do by taking care of property around fire station. Also wanted to thank Scott MacLauchlan for his donation of the use of the man lift required to paint the building.

CLERK: Reported that the Mailboat issue has been mailed. It is also available on website and in the Hometown News monthly issue of Malabar News. There is also a new tab for the upcoming election information. Candidate qualifying for 2019 Dist. 4 and 5 is Weds Aug 7 at 8:30AM until 8/21/19 at 4:30PM.

The upcoming July 4th Federal holiday is this Thursday. The office staff at Town Hall all plan to use accrued vacation time and take the next day, July 5th off and enjoy a 4-day weekend. Does Council have any objection to this plan?

We would like to schedule the road workshop for July and are looking at Monday July 29, 2019 during the day, at 2 pm. That way we can have Attorney Bohne attend. This is the workshop to discuss the undersized ROW. If I can get consensus, I will add it to the calendar. Consensus of Council granted.

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: 2

2. ORDINANCE 2019-07 Lane Use and Zoning Change for Kellwill LLC – 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING LAND USE MAP AND ZONING MAP FOR THE .82 ACRE (+/-) AT THE NORTHEAST CORNER OF MALABAR ROAD AND EAST RAILROAD AVENUE ADJACENT TO THE FLORIDA EAST COAST RAILROAD IN TOWNSHIP 28, RANGE 38, SECTION 31, SD 54, LOTS D-1, D-2 AND D-12, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED

COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN LAND USE AND ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Adopt Ord 2019-07 on 2nd Reading

Ordinance read by title only.

PH OPEN: none PH CLOSED:

MOTION: CM Vail / CM White to adopt Ordinance 2019-07 with the condition that the applicant provide the recorded unity of title.

Discussion:

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Excused; CM White, Aye. Motion carried 4 to 0.

3. ORDINANCE 2019-06 Amending the Sign Regulations in Article XIX – 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE TOWN; AMENDING IN FULL ARTICLE XIX; AMENDING DEFINITIONS; AMENDING SECTIONS RELATING TO EXEMPTIONS; PROVIDING FOR REGULATIONS OF TEMPORARY SIGNS; PROVIDING FOR PROHIBITED SIGNS AND EXCEPTIONS; PROVIDING FOR SIGN REGULATIONS FOR ALL ZONING DISTRICTS; PROVIDING FOR SIGNS EXEMPT FROM PERMITTING; PROVIDING FOR PROHIBITED SIGNS AND EXEMPTIONS; PROVIDING FOR ADMINISTRATION; PROVIDING FOR APPEALS AND VARIANCE; PROVIDING FOR REGULATIONS OF NONCONFORMING SIGNS; PROVIDING REGULATIONS CONCERNING HAZARDOUS SIGNS; PROVIDING FOR PERMITS; PROVIDING FOR GENERAL SIGN REGULATIONS; AMENDING TABLE 1-19.18; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Adopt Ord 2019-06 on 2nd Reading

Ordinance read by title only.

PH OPEN: none PH CLOSED:

MOTION: CM Ball / CM Rivet to adopt Ordinance 2019-06.

Discussion:

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Excused; CM White,

Aye. Motion carried 4 to 0.

K. UNFINISHED BUSINESS/GENERAL ORDERS - 0

L. ACTION ITEMS:

ORDINANCES FOR FIRST READING: 0

RESOLUTIONS: 1

4. Appoint new Member to the Planning and Zoning Board (Reso 12-2019) A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF Susan Shortman TO THE MALABAR PLANNING AND ZONING BOARD AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE of July 3, 2019. Change section 1.

Exhibit: Agenda Report No. 4 **Recommendation:** Approve Reso 12-2019

Resolution read by title only.

MOTION: CM Rivet / CM Vail to approve Resolution 12-2019 with the effective date in Section 1 be added as July 3, 2019.

Discussion:

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Excused; CM White, Aye. Motion carried 4 to 0.

MISCELLANEOUS: 2

5. Accept 400 feet of Linrose Lane Road Improvement

Exhibit: Agenda Report No. 5

Recommendation: Approve 400' of Linrose Lane

MOTION: CM Rivet / CM Vail to accept the 400' of improved ROW on Linrose Lane as recommended by Town Engineer Morris Smith. Vote: All Ayes.

6. Approve Contract with Bill Barrett for Services

Exhibit: Agenda Report No. 6 **Recommendation:** Action – Approve Contract

MOTION: CM Ball / CM Vail to approve Contract and prepare a Budget Amendment

to fund from reserves. Vote: All Ayes.

M. DISCUSSION/POSSIBLE ACTION:

7. Mowing area between roadway and property line

Exhibit: Agenda Report No. 7

Recommendation: Discussion – Direction to Staff

CM Vail has requested this. It is very hard for PW to keep up with their tasks. Historically Council has been back and forth on this issue. He would like clarification. It is the obligation of the property owners to maintain. Try to encourage the property owners to understand the requirement, if it can be done with normal residential maintenance equipment. Doesn't want to make it harder on people or create problems.

Rivet said he supports encouraging requesting maintenance, but he does not support requiring it.

CM White said most of the developed properties do take care of the property. Perhaps talking to those with improved property and a flat area outside the property line; maybe there is another reason preventing them from maintaining. He also supports requesting but not requiring.

Jim Roulston explained he reduced the slope on the banks of the ditch in front of his property, so he can mow them and get in there with a week Wacker. It is our ROW and our ditches and for those that are deep, maybe we can get the slope mower and lesson the slope and mow the front area. He also suggested reminding property owners to get the house number on the front of the house or fence or mailbox for emergency response purposes.

CM Vail said with standard mowing equipment. If we do come up with areas that are flat, and they are not adjacent by property owner. He has tried to reinforce it from council and as a person – help us help you. If the town mows it with a flail mower about three months. CM Ball said we need to stay with the way we are doing things

Susan Shortman has noticed the debris that WM is leaving. That makes the Town looks bad. They don't come every week and there are piles left regularly. Everything they can't pick up quickly gets left. That makes it hard to mow the ROW.

Mayor asked if they wanted the proposed language to change the section in Chapter 11 on for first reading at the next meeting. Consensus of Council to take no further action. Leave it at staff to encourage it. Attorney said the current section of code does not refer to public ROW. CM White said he googled real property.

Dorthea White, asked if a neighbor volunteered to work around a neighbor's ditch and fell in, would the Town be held liable?

Consensus to change code to add public ROW but no other additions.

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

O. REPORTS - MAYOR AND COUNCIL MEMBERS

CM Ball: its hurricane season and he is hardening up his properties. He is getting his palm trees trimmed.

CM Vail: nothing

CM Rivet: week old email on continuation of replumbing of ditch on Flashy – do we have any idea of the schedule. TA said that cleaning of that ditch is on calendar this month.

CM Korn: excused

CM White: Wanted it in minutes that paint on the dais looks great. Dorthea has painted the sign for Public Works site. Once PW gets the posts, he will paint them.

Mayor: nothing.

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 8:25 PM.

	BY: Mayor Patrick T. Reilly, Council Chair
ATTEST:	
Debby Franklin, C.M.C. Town Clerk/Treasurer	Date Approved: <u>7/15/2019</u>

ORDINANCE 2019-09

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 11, SECTIONS 11-8 (a) OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE MAINTENANCE OF PROPERTY; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED, by the Town Council of the Town of Malabar, Brevard County, Florida, that:

SECTION 1. Section 11-8 (a) of Chapter 11 of the Code of Ordinances of the Town, is hereby amended in full as follows:

"Sec. 11-8. Residential requirements.

- (a) Maintenance of private property. All owners and/or tenants, agents, lessors, lessees or occupants of property within the town shall maintain their property in a clean and litter free condition, including sidewalks, grass strips, and contiguous alleys, curbs and <u>public or private</u> right-of-ways abutting their property to the edge of pavement of a paved road or to the edge of the road surface for an unpaved road, including easements."
- <u>SECTION 2.</u> Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.
- **SECTION 3.** Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.
- <u>SECTION 4.</u> Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Effective Date. This ordinance shall take effect upon adoption.

SECTION 6. The foregoing Ordinance was moved for adoption by Council	l Member
The motion was seconded by Council Member	and, upon
being put to a vote, the vote was as follows:	
Council Member Grant Ball	
Council Member Brian Vail	
Council Member Steve Rivet	

Council Member Dick Korn Council Member Danny White Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this ____ day of _____, 2019. **TOWN OF MALABAR** By: _____ Mayor Patrick T. Reilly, Council Chair ATTEST: Debby K. Franklin, CMC Town Clerk/Treasurer (seal) Approved as to form and content: Karl W. Bohne, Jr.

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Ordinance 2019-09

Town Attorney

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: <u>3</u> Meeting Date: <u>July 15, 2019</u>

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Petition to Remove Stop Sign at Corey and Benjamin Roads

BACKGROUND/HISTORY:

This was added to the June 3, 2019 Council meeting and Council consensus was to bring this back for further discussion at this meeting. CM Korn felt the BCSO should be informed of these petitions and for the need for monitoring of this intersection to enforce the traffic rules in Malabar.

ATTACHMENTS:

Petitions

Portion of minutes from 6/3/19 meeting

ACTION OPTIONS:

Discussion and Direction to Staff

Portion of minutes from 6/3/19 meeting:

3. Petition to Remove Stop Sign at Benjamin and Corey Roads.

CM Korn wanted this to be discussion. Need to get sheriff involved. CM White said we should hear from the other residents. Perhaps put something in the newsletter. CM Korn said the stop sign is a traffic control device and if drivers are not obeying then we need to let BCSO know so they can do enforcement. Put on for Discussion at July 15 meeting.

Speaker: Susan Shortman, Ivey Lane. Came to an abrupt stop at that intersection. Thinks it is true for a lot of people that travel on Corey and Weber to avoid Babcock. The people new to that road are not expecting a stop sign. Maybe a "stop ahead" sign to alert.

PETITION TO REMOVE STOP SIGN AT COREY ROAD AND BENJAMIN WE THE UNDER SIGNED REQUEST REMOVAL OF THIS STOP SIGN

Sign Name	Print Name	Address	Date
Bellilian	BILL VITACIANS	3280 COREY ROAD	3/24/2019
Self mcCom	Jeff McCoun	1725 Benjamin Rd.	3/29/20
Cindy Landon	CINDY TAYLOR	1920 BANJ: RO	3-29-1
Harry Theylor	HEURY TAYMA	1920 BENT, Ro.	3-29-19
Monda	Withe School	2 1070 57714M st	30%
NAMER DAN	Welt Il Sail	1965 Benjania Rd	3/24/19
Som Courty	Jona	3523 GOUNN AUG	3/24/19
Skarm Couch	Charcon Circl	3523 Sovan Que	3/24/19
Tarry Dams	Larry Javis	2053 Berjamin Rd	3/24/19
Mary Davis	MARIE DAVIS	2055 Benjamin Rd	3/24/19
11 Colors	VICTOR DOHENS	3255 FRAYER LV.	3/24/19
Did Johny	Dinne Doherty	3255 Krameria.	3/24/19
gho of	Janathan Aspara	2060 Benjamin Rd	3-24-19
main	Moriah Alspaugh	20100 Benjamin Rd	3/24/9
Beverly Vetalin	BEVETLY VITALIAN	3280 Corey Rd	3/24/19

321-725-1063

Petition Circulator Boverly Vitaliano 3280 Corey Rd Malakar, 7/ 32950

MAY 30 2019 9:39

This petilion is because of moise. Cans that do stop are great however many do a stop or rolling stop then screech out. This goes on day & night even; 2, 3, oclock in the morning help. Many we spoke to also are disturbed by the smaller to check with them. Many former have fences & gates so we were thow the sign.

When the sign. Please help?

PETITION TO REMOVE STOP SIGN AT COREY ROAD AND BENJAMIN WE THE UNDER SIGNED REQUEST REMOVAL OF THIS STOP SIGN

Sign Name	Print Name	Address	Date
125W/HARRIS	DONK HARRIS	51459.US1GRAWT	3/24/19
Them		514 Dow You was Missey	3-2+19
TUNK	TOOD ZAUTNER	1650 BENTAMIN RO.	4-28-19
freglet of	HEATHER ZAUTHE	N 1650 DAWTAMIN RO	4-28-19
Janin Light	Jimmy Lister	3515 COREYRD	05-10-19
Bety Lister	Betty Lister	3515 COREY RD.	05-10-19
Level Late	Dercek Lister	3515 COREY RO. 3515 Corey Rd. 0 1500 Chang Ave	05-10-19
Very Utali	- DouG Vitalian	o 1500 Chang Ave	05-14-19
Kemberley Vitaliano	Kimberley Vitaliano	1500 Chana Ave	05-14-19
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Petition Circulator William Vilalians

MAY 30 2019 9:39

PETITION TO REMOVE STOP SIGN AT COREY ROAD AND BENJAMIN WE THE UNDER SIGNED REQUEST REMOVAL OF THIS STOP SIGN

Sign Name	Print Name	Address	Date
Tolland man	KELLY M. HONLEY	3425 COREY RD	4-11-19
ford	Say Huly	(()
Garl M. Harly	PAUL W. HUPLEY	3425 COREY RD	4-11-19
Tree Sept	JEAN BRUTUS	3705 COREY Ry	4-11-19
Claus tergeorel	L' Klaw Pergeorelis	3365 Corey Rd	4-11-19
Els Pergenil	Ellen Regeorely	/ ~ -	4-11-19
Charlety	CHARLES RROGH	3405 COREYRO	4-11-19
Mari Peri	MARION RICE	3330 COLEY &D	4/10/19
Amoceui	Heather Innocenti	3455 COREY ROAD	4/11/19
Chuck Smeet	Chuck INNOCENT	3455 COREY ROAD	4/11/19
Virginia my	Vircinia PugH	3405 COREY ROAL	4/11/19
Eilean Mroz	Eleen Mroz	4475 Covey Road	4-13-19
Wayne forBou	er Wayne to Com	3757 HOFBAUERL	ang 4-13-1
Explina Blevins	Evelyn Blellus	7210 Blue Shore Rd	4-13-19
Wall of	Paul Hallovan	3665 Laurens Ave	4/13/19

Petition Circulator

KELLY HURLEY

MAY 30 2019 9:39

PITITION TO REMOVE STOP SIGN AT COREY ROAD AND BENJAMIN WE THE UNDER SIGNED REQUEST REMOVAL OF THIS STOP SIGN

Sign Name	Print Name	Address	Date
Harry Yusi	Gary Gasperny	4520 Serna Avr. Valkaria	4319
July Dag	Judy Gasparini	A N H N	h
B. Maily.	B Mailey	1245 Ranblebrook St	
Ding Hungle	Gina Hunter	4710 Corey Rd	6(
an directly all	Condice Proval	4600 Cores Rd	4/3/9
Probat Many More	Peter Minapole	460 Cory RO	4/3/19
Nour	Trisha Harris	2020 Benjamin Rd	4/13/19
	Justin Harris	2020 Benjamin Rd	41319
		0	
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Petition Circulator

KELLY HURLEY

MAY 30 2019 9:39