



REGULAR TOWN COUNCIL MEETING

Monday, August 5, 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 Regular Town Council Meeting Minutes of 07/15/2019

Exhibit: Agenda Report Number 1A

Recommendation: Approve Minutes

Attachments:

- Agenda Report 1A (TownCouncilMinutes0715_2019Draft.pdf)

b. Approve Town Council Workshop Meeting Minutes of 07/29/2019

Exhibit: Agenda Report 1B

Recommendation: Approve Minutes

Attachments:

- Agenda Report Item 2B (TownCouncilMinutes0729_2018road_Draft.pdf)

c. Approve Town Council Special Meeting Minutes of 07/29/2019

Exhibit: Agenda Report 1C

Recommendation: Approve Minutes

Attachments:

- Agenda Report Number 1C (TownCouncilMinutes0729_2019Dr420.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board

8. STAFF REPORTS
 - a. Administrator
 - b. Clerk
 - c. Fire Chief
 - d. Public Works Director

9. 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

10. PUBLIC HEARINGS (2) / SPECIAL ORDERS (0)

a. ORDINANCE 2019-09 Amending Chapter 11, Providing for Public Rights of Way

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

Exhibit: Agenda Report Number 2

Recommendation: Adopt Ordinance 209-09 on 2nd Reading

Attachments:

- Agenda Report Number 2 (Agenda_item_2_2019073014102527.pdf)

b. ORDINANCE 2019-10 Amending Section 2.03 of Charter Regarding Qualifying Period - 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ORDINANCE 2008-06 REGARDING THE CANDIDATE QUALIFYING PERIOD TO CONFORM WITH SENATE BILL 7066; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 3

Recommendation: Adopt Ordinance 2019-10 on 2nd Reading

Attachments:

- Agenda Report Number 3 (Agenda_Item_3_2019073014111194.pdf)

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES: 1

RESOLUTIONS: 0

MISCELLANEOUS:

a. ORDINANCE 2019-08 Land Use and Zoning Change for Stuart J. Borton and Nancy Tinio Borton Trust - 1st Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING LAND USE MAP AND ZONING MAP FOR THE .31 ACRES (+/-) ON THE EAST SIDE OF US HIGHWAY 1 IN TOWNSHIP 28S, RANGE 38E, SECTION 31, PARCEL 250.4, MALABAR, FLORIDA, FROM COASTAL PRESERVE (CP) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN LAND USE AND ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 4

Recommendation: Approve 1st Reading of Ordinance 2019-08

Attachments:

- Agenda Report Number 4 (Agenda_Item_4_LUZ_Ord.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

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

17. 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 individual 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)

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

JULY 15, 2019 7:30 PM

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

A. CALL TO ORDER:

Chair, Mayor Patrick 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:

3) STEVE RIVET

COUNCIL MEMBERS:

1) GRANT BALL

2) BRIAN VAIL

4) DICK KORN

5) DANNY WHITE

TOWN ADMINISTRATOR:

MATT STINNETT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Clerk asked to add Ord 2019-10 regarding qualifying period for 2019 ballot per SB 7066 which requires the Supervisor of Election to mail out ballots prior to primary and increased the time between the primary and the general election to eleven weeks. That means Malabar must submit their election information to SOE by August 16, 2019.

D. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting Minutes 7/01/19

MOTION: CM Vail / CM Rivet to approve the 7/1/19 regular meeting minutes as submitted.

Discussion: none. **Vote:** 5 Ayes

E. ATTORNEY REPORT: Nothing currently.

F. Sheriff Report: Issue with new program for reporting of three zones, Palm Shores, G-V and Malabar. Had stolen vehicle, with arrest. Corey Road and Benjamin and has written quite a few citations. CM Korn notice them on Weber. Glad to hear they are being aggressive. CM Ball asked about how PB police is pulling cars over within Malabar. Deputy said they can stop if running radar in Palm Bay. CM Ball said it has happened twice. Report of reckless driver could be coming from north or south. CM Vail said about vehicle burglaries on Howell Lane, unlocked vehicle.

H. STAFF REPORTS:

ADMINISTRATOR: TA stated re: TPO/TAC mtg – working a development action plan to reduce fatalities. Approved the long-range goals. Looked at short range plan. 1.7 mil for next year at intersections. 4.4 mil in 2022, and another 1 mil in 2023 for widening project. We are #5 on priority list. Re: 528 doing SW improvements, had an interesting item, instead of buying up tracts of lands for SW ponds, they are taking the money to do septic to sewer conversions and believe that will have a bigger impact on improving the water quality of the IRL.

CLERK: Stated that we are working diligently on a records management / retention project that ultimately will provide all permanent records access via Laserfiche program stored on the cloud. There will also be an online portal for citizens to access public records. We will be using an affiliate of the Municode Corp that codifies our ordinances. This has become necessary because we are running out of physical space at Town Hall and in our storage unit. This will be a budgeted item in the next budget year as there will be an annual subscription and support cost of approximately \$3,600.00. The initial work will be funded from the surplus in the Administrative account and the Building Department restricted reserves on deposit.

I attended the BCCCA meeting today to get the updated election information. Supervisor of Elections Lori Scott and two of her staff spoke at the meeting. They informed us that FS 100.061 changed the primary dates by pushing them out 11 weeks before the general election. That makes our deadline to provide her office with candidate and referendum information outside the current timeline. Our deadline is 8/16/19 to have our election information to the SOE. That means we have to adopt an ordinance that will change our qualifying period to one week; from 8/7/19 – 8/14/19.

We had to do this in 2008 when the legislature changed the date for the primary. In that case the Legislature approved the bill in 2007 to go into effect in 2008. This time the Legislature approved the bill in the 2019 session and it went into effect on July 1, 2019. Most cities in Brevard that hold elections every year only have a one-week qualifying period.

This also means that if we are going to put a referendum question on the ballot to increase the millage by 1 mil for the 20/21 FY we must have it on the next agenda. We would propose to provide a draft ordinance increasing the millage by 1 mil for your review at a workshop to be held after the road workshop on 7/29/19. Then we could have the first reading on 8/5 and the 2nd reading at a special mtg on 8/12/19 and have it to the SOE before the deadline of 8/16/19.

No objection to add Ord 2019-10 to agenda as item 2.A changing the qualifying period.

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. NONE

J. PUBLIC HEARINGS/SPECIAL ORDERS:

K. UNFINISHED BUSINESS/GENERAL ORDERS

L. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

2. Amend Chapter 11, Section 11.8 (a) Providing for Public ROW (Ord 2019-09)

Exhibit: Agenda Report No. 2

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

Ordinance read by title only.

MOTION: CM Vail / CM White to approve 1st reading of Ordinance 2019-09.

Discussion: CM Ball said he read this and had a couple of calls – we continue to be reactive – not proactive; would this make it more reactive. The wording states it will be kept litter free. Does this mean if there is trash on curb for WM pick up, there is a violation? CM Rivet said we have been talking about encouraging the mowing of ROW. He is opposed to that. CM Korn said that we currently keep the mowing done between edge of property and roadway. CM White said we put this to rest at the last meeting; gave direction to staff to not make language more restrictive to property owners. There are times when tires and treated lumber are hauled out and that material will not be picked up. CM Vail is not for proactive code enforcement, but when somebody does complain, is the code adequate to react? His understanding is this is a housekeeping issue.

Roll Call VOTE: CM Ball, Nay; CM Vail, Aye; CM Rivet, Nay; CM Korn, Aye; CM White, Aye. Motion carried 3 to 2.

2.A. Ord 2019-10 (added at beginning of meeting)

Ordinance is read by title only.

MOTION: CM Rivet / CM Ball to approve Ordinance 2019-10 to Aug 7 to 14. CM Vail and Rivet would like it to include two weekends. Franklin explained if they add an additional week then it would start on 7/31/19 – before the ordinance was adopted on 8/5/19.

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.
Motion carried 5 to 0.

RESOLUTIONS: 0

MISCELLANEOUS: 0

Chair excused the Attorney at this time.

M. DISCUSSION/POSSIBLE ACTION:

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

Exhibit: Agenda Report No. 3

Recommendation: Discussion and Direction to Staff

They have been addressing it from the motor unit. He doesn't have issues. He has had them going up to 55mph. He asked his opinion, based on the traffic, he thought it needed to be there. It is slowing down the traffic. CM Ball with the noise. The screeching is from the people not paying attention.

Deputy said you could add speed bump. Have an opinion of the motor vehicle - CM Korn said he did homework on this today. Many of these addresses are not in Malabar. Beverly is a resident. 6 on first page are registered voters, pg. 2 and 3 no registered voters and the homes are in G-V. Last page are two registered voters. He believes in traffic control. Corey is as bad as Weber. There are advanced signs on all the stop signs. We've got animals, children and driveways, we got reckless and careless drivers. He is an advocate for public safety.

MOTION: Korn / Rivet to leave the stop sign up and get more enforcement. CM Vail said they have addressed it and are working it aggressively. Let the sheriff do their job. CM White was there this morning and he was priming the posts. We do have the advance signage. All the vehicles that he witnessed stopped properly.

Vote: All Ayes.

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

Jose Merino, 1720 Benjamin road. He read the statement he handed out to all of Council. He asked why the Mayor made the comments to come in and record. If you made this recording available, you may get more participation.

Mayor responded that he had asked him on a couple of occasions where he posts these videos. He was told they are on youtube and he can't find them. CM Korn said Jose should be commended for what he has been doing. CM Vail said thank you for what you have been doing. The Town can't afford to do the retention portion. CM Rivet also thanked him. CM Ball thanked him, and he is not on social media. Jose said it is on youtube under Malabar meetings and on Malabar next-door.

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: nothing

CM Vail: nothing

CM Rivet: Mentioned the continued presence of junk boats near him on vacant land. TA said he brought in a trailer to take out boat tower. He hasn't checked today.

CM White: Will be attending the FLC Advocacy mtg this Friday in Kissimmee. The SCLC has proposed six visits to Tallahassee, funded by the SCLC at no cost to the cities. If he goes he can promote SCLC and FLC actions – not Malabar issues. Regarding a ballot issue, he would propose it for an even year; not on the odd year when there is a much lower turnout. If we ask the people of Malabar, we should wait until we have more input from voters.

CM Korn: Let the people know the issues that will be on the ballot. He will be contacting the sheriff and thank him for the increased enforcement and remind him to continue.

Mayor: nothing.

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

Q. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 8:30 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/5/2019

DRAFT

MALABAR COUNCIL WORKSHOP MEETING
July 29, 2019 2:00 PM

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

A. CALL TO ORDER:

The meeting was called to order at 2:00 pm with P&P led by Chair Mayor Reilly.

B. COUNCIL:

COUNCIL CHAIR:	MAYOR PATRICK T. REILLY
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN, excused
	DANNY WHITE
ADMINISTRATOR	MATT STINNETT
ATTORNEY:	KARL BOHNE
CLERK/TREASURER:	DEBBY FRANKLIN

Also present Engineer Morris Smith (arrived 2:20PM).

C. ROAD WORKSHOP FOR 19/20 Fiscal Year

Chair asked Attorney to describe his findings. Atty Bohne has done case law update since the lawsuit in 1991 that the Town lost significantly related to a right-of-way dedication request. Atty explained that “exactions” as illegal unless they pass the three-part test referred to in his memo. The rough proportionality test must be able to be argued if we are again challenged.

Attorney suggested Council consider a review and possible reclassification of road types, widths and definitions of the reasons for the improvements. The improvements do have a value. The requirement for the dedication must be able to stand in court that it is tied to that public improvement.

Clerk has focused on six sections south of Malabar Road for this workshop. The agenda report describes the history of how some of these ROW’s were created before the LDC and road improvement language were adopted but these undersized ROW were never officially dealt with as being “grandfathered” or conditional or whatever.

Perhaps it is time to consider reclassification of some of the roadways. Staff recommends reinserting the ability to request a variance. For those ROW that do not have 60 feet available should allow consideration of other situations.

Staff went through six examples of either undersized improvements on an “accepted ROW width, or a undersized “travelway” within a undersized ROW or a perfectly legal “lack of dedication” maneuver as shown in the workshop.

After the examples were displayed by Denine Sherear on the overhead, Council summarized that there are four issues for Council action: reevaluate the road widths, reclassify the road types, revised language for a variance request, and how will the language be amended in the Comprehensive Plan to support these changes.

The Engineer suggested a bond or fee be paid to cover the cost to repair a road to the pre-construction condition. The fee would include the required a pre- and post-construction inspection and an estimated cost based on road frontage, conditions and distance.

Council directed staff to amend the variance language to eliminate wetland mitigation from the "payback" formula; Council did not feel that was a relevant "hardship".

Council also directed staff to develop a recommendation on the classifications and widths.

Chair Reilly, without objection, adjourned the workshop meeting at 3:48pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: 8/05/2019

MALABAR TOWN COUNCIL SPECIAL MEETING MINUTES

JULY 29, 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 and led P&P.

B. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN
	DANNY WHITE
TOWN ADMINISTRATOR:	MATT STINNETT
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: none

D. 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.**

Jim Roulston, 2480 Malabar Road said Council had mentioned storm shutters for town hall and he wanted to show the material he had used in his windows. You can set it inside the window frame and secure it with angle iron. It lets light in and could be used year around; asked they consider it as an option. Chair confirmed we had received a quote from a shutter firm for storm shutters and asked TA to look into the cost for these panels to compare. Thanks Jim

E. MISCELLANEOUS: 2

1. Form DR-420 – Tentative Maximum Millage and Public Hearing Date

Exhibit: Agenda Report No. 2

Recommendation: Request Approval

The information required by the Truth in Millage or TRIM notice is due to their office by August 4, 2019. Council determines the maximum millage to consider during budget workshop discussions and set the date for the first Public Hearing on the millage and budget. The information we send to the tax office is the following:

Last year's millage rate was 2.1582

The current year's rollback rate is 2.0615

The proposed maximum millage for discussion purposes is 2.2680

The date of 9/9/19 does not conflict with the school board or the county commission mtgs.

MOTION: CM Vail / CM Rivet to set date for first Public Hearing on 9/9/19 and the tentative maximum millage at 2.2680. **Vote:** All Ayes.

We plan to have the draft budget to you before the workshop on August 12.

2. Certify the assessment roll for stormwater non-advalorem collection and approve the estimate provided by the County. (Reso 13-2019)

Exhibit: Agenda Report No. 2

Recommendation: Certify the assessment roll and approve the estimate.

Resolution was read by title only.

MOTION: CM Rivet / CM White to certify the assessment roll and approve the estimate provided by the County. **Roll Call Vote was All Ayes.**

DISCUSSION/POSSIBLE ACTION: none

PUBLIC COMMENTS: General Items (Speaker Card Required) none

F. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Asked if derelict boats that are tagged being removed – does council have any authority? Mayor said only the State has the authority to tag and direct removal. CM Ball asked if the State has any duty or right to cut the pepper trees down along the riverfront.

Speaker: Jim Roulston, has heard that they have released a “bug” that is supposed to eat and kill/remove/eradicate the pepper trees. Question is what will the honey bees use next for pollination?

CM Vail: mowing the trees in the past – town paid for brontosaurus. North of here the banks along river are clear of pepper tree. Is Palm bay maintaining that? CM Ball said that the Town’s river drive is unique and special. CM Ball keeps his mowed. We should press whoever to maintain that view of the river.

CM Rivet: Asked about parked boats on Hall Rd property. TA said the tower had been removed and the permit has been applied for the culvert for access.

CM Korn: He stated there were some animal deaths shortly after spraying defoliant along Glatter and asked there was any connections. None.

CM White: when they start the budget process – the items they funded in the last budget will be first to pay back.

Mayor: nothing.

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

H. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 7:50 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/5/2019

