

MALABAR TOWN COUNCIL REGULAR MEETING

May 03, 2010

7:30 PM

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

A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Chair Thomas Eschenberg. The prayer and pledge were led by Seat 2 Council Member Brian Vail.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

JEFF MCKNIGHT

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

STEVE RIVET

MARISA ACQUAVIVA

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

- C. **ADDITIONS/DELETIONS/CHANGES:** Nancy Borton requested Council remove Agenda Item #6 or table it in the hopes of giving them more time to work on this. Chair asked if there were any objections from removing #6 from agenda. No objections.

D. **PRESENTATION:**

E. **PROCLAMATIONS: Paul Marpil and Bill Moroney**

Mayor read proclamation into the record for Paul Marpil and stated that the Proclamation was presented to Paul on April 23 as he and his wife were leaving on the 24th. He had just submitted his resignation to BOA on the 20th.

Whereas, Paul Marpil has served on the Malabar Board of Adjustment for over 20 years; and

Whereas, Paul Marpil was nominated for BOA Chair in 1991 by his fellow Board Members and has been re-nominated to that position each year since; and

Whereas, Paul Marpil has served his community well by his efforts on the BOA by attempting to assist property owners while abiding by the Malabar Code of Ordinances and Land Development regulations; and

Whereas, on April 20, 2010, Paul Marpil tendered his resignation to the Board of Adjustment and stated he would be leaving on April 24, 2010 to begin a travel odyssey to the American West with his wife; and

Whereas, the Town of Malabar has been well served by Paul's efforts and would like to recognize his contributions.

NOW, THEREFORE, I, Thomas Eschenberg, Mayor of the Town of Malabar, along with the Town Council, do recognize *Paul Marpil* for his contributions and years of dedicated service on the Board of Adjustment. We wish you a safe and successful sojourn and look forward to your return.

Mayor read proclamation to Bill Moroney for his services to the Town and his community as an Eagle Patrol volunteer, BOA member and Trash Bash volunteer. As we get more members involved in the Eagle Patrol, we hope he will come back. He did state he would fill in if someone needed a partner.

Whereas, Bill Moroney has served on the Malabar Eagle Patrol since 2002 to provide service to his community; and

Whereas, Bill Moroney has served on the Board of Adjustment for many years providing thoughtful consideration; and

Whereas, Bill Moroney has assisted as a volunteer worker during many of the Town's spring events like Malabar Day and Springfest; and

Whereas, Bill Moroney has assisted for many years as a volunteer during the Town's participation in the Keep Brevard Beautiful Trash Bash event in April; and

Whereas, on April 20, Bill Moroney tendered his resignation to the Eagle Patrol, but stated he would be available to fill in if a shift needed a partner; and

Whereas, the Town of Malabar has been well served by Bill's efforts and would like to recognize his contributions.

NOW, THEREFORE, I, Thomas Eschenberg, Mayor of the Town of Malabar, along with the Town Council, do recognize **Bill Moroney** for his contributions and years of dedicated service to the Town of Malabar. We wish you a happy retirement until such time as we have more members of the Eagle Patrol and can get you back to patrolling within our community.

Mayor presented the framed Proclamation to Bill Moroney. Mayor stated there were ten original members. Now there are two. Richard Kovak asked to speak. He had pleasure of riding with Bill Moroney and thanked him for keeping him politically correct. He stated that every morning Bill puts his American flag up and every evening he lowers it. He is a true patriot.

Chair recessed the meeting for cake and coffee in honor of Bill Moroney. Reconvened at 7:45

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 4/19/2010

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

1A. Approve ARRA Supplemental Agreement with FDOT (Reso 52-2010)

Exhibit: Agenda Report No. 1A

Recommendation: Motion to Approve

Regarding minutes, Rivet wanted his statements regarding talking to people provided in package and speaking to other people; he wanted his statements in the minutes. Franklin will listen to tape and add them.

MOTION: Rivet / Borton to approve the Consent Agenda consisting of the RTCM minutes of 4/19/2010 and per Chair, there was a roll call vote on resolution: 1) Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye.
Motion carried 5 to 0.

G. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required

H. STAFF REPORTS:

ATTORNEY: Attorney has nothing. Rivet asked about status on water issue. They are waiting to hear from Palm Bay's Jason Yarborough.

ADMINISTRATOR:

- Employee Reviews will be pushed out one month from April to May. If not ready for the next May meeting, it may not be until the June meeting.
- EELs called about a broken pipe in Jordan Scrub. We went out to investigate and found this water flow. Vail said it could be an old artesian well. Wilbanks will follow up with St. Johns and the EELs. She is concerned about the condition of the gate that is at the end of the paved section of Jordan Boulevard. Wilbanks asked if any of Council was familiar with history of how the gate was installed. If it is a Town gate, we need to repair it. If not put in by Town we need to remove it. Mayor offered to contact Carl Beatty and ask him about the gate.

CLERK:

- SCLC dinner meeting is May 10 at Crowne Plaza in Indialantic and is hosted by Melbourne and Indialantic

McKnight asked TA or Clerk to check out area across the street from 2355 Weber Road – large trash pile – Wilbanks will check into it.

I. **PUBLIC HEARINGS:**

Are legally advertised for 7:30 PM *or as soon thereafter as possible.*

ORDINANCES: (0)

J. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**L. **ACTIONS ITEMS:**

ORDINANCE: First Reading – 0

RESOLUTIONS: 2**2. Resolution Regarding Roadway Exhibits (Reso 48-2010)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE EXHIBITS OF CHAPTER 13 KNOWN AS THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; PROVIDING FOR AN EXHIBIT “B-5” and “B-6”; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor read by title only.

MOTION: Borton / Rivet to approve Reso. 48-2010 as presented.

Discussion: No discussion. Mayor asked about this if someone owns a lot with 300' of frontage, if they could do this. Franklin said yes, if they followed the other specs for width, depth, compaction and drainage. They would still have to improve to the furthest point of their parcel. This would only apply on lanes that had a slim to no chance of connecting between other roads, had little traffic and few homes. The examples would be north end of Howell Lane, Kelly and Ivey lanes. Acquaviva pointed out the resolution has the wrong name for District 3. Franklin will correct.

Change name on resolution to show Steve instead of Chuck. Also on the next one.

VOTE: Borton, Aye; 1) Vail, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye.

Motion carried 5 to 0.

3. Resolution Regarding Travel Expenses and Rates (Reso 50-2010)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE EMPLOYEE MANUAL; PROVIDING FOR A CORRECTION TO TRAVEL PER DIEM AND EXPENSE LANGUAGE AND RATES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY;

AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Mayor read by title only.

MOTION: Borton / Vail to approve Reso. 50-2010 as presented.

Discussion: Change Dist 3 name on this one also. Mayor asked if someone on Council goes to conference and meal or meals are included, this would be double dipping. He asked about FLC conference as an example. Wilbanks stated the resolution puts us in compliance with Florida Statutes. Council could do what she does and not take the money for the per diem.

VOTE: Borton, Aye; Vail, Aye; 1) Rivet, Aye; McKnight, Aye; Acquaviva, Aye.

Motion carried 5 to 0.

4. Resolution Regarding Town Credit Card (Reso 51-2010)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR UPDATE OF MALABAR CUSTODIAN AND OFFICERS SIGNATURES FOR THE TOWN CREDIT CARD WITH SUNTRUST BANK; PROVIDING FOR COPIES, SIGNATURES, AND CERTIFICATIONS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Mayor read by title only.

MOTION: Borton / Acquaviva to approve Reso. 51-2010 as presented.

Discussion:

VOTE: Borton, Aye; Vail, Aye; Rivet, Aye; 1) McKnight, Aye; Acquaviva, Aye.

Motion carried 5 to 0.

MISCELLANEOUS:

5. Approve Street light on FDOT ROW – Hwy 1

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Borton disclosed that she will abstain from vote as she owns the Yellow Dog Café that is north of where the light is requested. She stated she believed the light is necessary for public safety but does not want to give the appearance of anything improper. She has filled out the conflict form.

MOTION: Rivet / Vail to approve street light on Highway 1 across from Riverview Drive.

Discussion: Rivet wants light to be properly shielded per our lighting ordinance. McKnight said the light will encourage crossing the Highway 1. There are others along Highway 1. McKnight asked who else we have done this for. Rivet said we have done it for other requests, at least one while he was on council. Acquaviva said it is Highway 1 and it is not a residential street. There are people that go down there to fish; her neighbor goes down there to fish. McKnight said that happens all along US 1. Acquaviva said it is US1 and it should be lit up. If there is a pole there it is wise for safety sake for Malabarians, to put light on it. Rivet said we have to make this decision for safety issue. Vail said the difference is the Town would not be paying for this light. Franklin said that is not the case. We will be paying the electric. Wilbanks explained that the original request was for the Town to not object and the Bortons would pay for the light, but FPL cannot allow this arrangement on an FDOT roadway. There is a light there now at the SW corner of Riverview and Highway 1. Vail said what we do for one we have to do for all. We have had other requests for street lights that have been denied. Wilbanks said the only other request during her tenure was for Waring Lane for the benefit of one homeowner. She told that person they could contact FPL and get a security light for their property. This is Highway 1. You have set precedent because you have a whole row of lights along Jordan Boulevard and they only benefit the employees. McKnight asked about the residents who have river front property – can they be coming to us to request lights? Wilbanks said they can only put them so many feet apart. Vail said he is not against this. Can we apply this same standard to other requests?

Acquaviva said at last meeting they were discussing paying \$400.00 to ship used fire gear to a company to send it to a third world country, but tonight we don't want to spend \$15/month on a street light for a highway in our own community. Borton said many people use the riverfront and cross the highway there. McKnight asked what side of the road would light be placed. Borton stated on the existing pole on the east side. McKnight said more people cross Highway 1 at Camelot. Acquaviva wasn't aware of the Camelot requesting a light. Vail said to be prepared for all subsequent requestors and if it is a legitimate safety issue, we better be ready to say yes. Rivet said we are not bound to approve any more lights than the one in this particular instance. We should weigh the merits if it makes sense in this instance and then as Council decide. Rivet stated this is not setting a precedent. If other requests come in, we will make those proper decisions as they come forward after weighing their merits. Mayor asked if there was an installation charge. Franklin said there is a fee, but we don't bear it. The \$15.48 represents an estimate for the monthly cost plus anchor wire cost. McKnight said he agreed with Rivet on analyzing the request on its merit but when it includes a council person in the request, we have to be very careful about the appearance of impropriety and we have to be sure we are not being partial. McKnight said about the bunker gear, he was against that too because this is not our money. We can't say we want to donate to a charity because it is what "we" feel; we have to represent the people in this community and there are a lot of people in this community that would not want their money going to charities. Borton said there are a lot of people in this community that use that highway; that go up and down the riverfront, whether they own it or not, whether they cross the highway or not. Vail said the proposed site is on the SE corner. Borton said yes, it is on the riverside as you come north at the curve. McKnight would think many would want a light on riverside. Borton said then they can go to FDOT and request one for safety issue and then come to Council. If they could they would have, but they can't because of FDOT right-of-way.

VOTE: Ayes, Vail, Acquaviva, Rivet; Borton abstains, McKnight, Nay. Motion carried 3 to 1.

6. Fire Department Issues

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Deleted from agenda at top of meeting.

M. DISCUSSION ITEMS:

N. MAYOR AND COUNCIL REPORTS:

5) Borton – Report that last Wednesday residents on Rocky Pt Road left car unlocked in driveway and lost a set of expensive golf clubs. Reminder to lock car doors.

4) Vail – nothing

1) Rivet – Requested for more information from DEP representative regarding the proposed redirection of a ditch in someone's back yard on Hunter Lane. It looks like there will be an adverse impact on drainage. Bonnie will get his contact information. She has had out Engineer look at it and the proposed work was for a small pond and that doesn't require a permit. When the project expanded to the ditch, the Town Engineer must look at it and a site plan must be submitted showing the drainage. Franklin said Engineer Smith did math on their site plan and the proposed redirection did not have the same capacity as the original ditch. They must redo the engineering so the redirection hold at least as much capacity as the original ditch. Their relocation is not ok. Can't be 90 degree turns. Rivet said it looks like it will restrict drainage in that area. It also looks like it is too close to the property line. Wilbanks explained that the small pond turned into a re-diversion of the ditch and required a site plan. Franklin said it is not just this property. We are dealing with similar issues on two other properties as well. Rivet asked that when we do the street light, we make sure FPL is aware of our site lighting restriction. Franklin said the typical cobrahead street light is what would be ordered, similar to what is along Highway 1 now. Rivet said there may be an issue with that. If there is a small extra cost to shield it Rivet is willing to pay from his discretionary fund.

2) McKnight – nothing

3) Acquaviva – Stated she had received complaints from Country Cove and Stillwater subdivision residents that someone is selling cars, and even a trailer with a boat on the NW corner of Corey and Malabar. Wilbanks saw it last week-end. If you are pulling out from Corey it is a hazard, is hard to see and looks bad. Wilbanks had a concern with it by the hydrant.

Corey and Malabar Road on NW corner. Looks bad and visual hazard. It is also too close to hydrant.

6) Mayor - Relayed the teen council meeting to discuss the MSTU. Next mtg is a week from tomorrow. Cautioned them to contact Sam and try and convince him to vote your way. Mayor said regarding the vote on the street light, he listened to what McKnight said, and he is right, perception means a lot. Be prepared to speak about it if someone calls and complains that they don't want their tax dollars to pay for a street light at the Yellow Dog. Borton said it is not at Yellow Dog. Mayor said it is perception. He knows it is not at Yellow Dog, it is south of there, it is on DOT property, but you know how the story gets going. Think about how you are going to respond

O. PUBLIC – speaker card required

P. ADJOURNMENT

There being no further business to discuss, **MOTION: Rivet / Vail to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 8:30 PM.

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 5/17/2010