

## MALABAR TOWN COUNCIL REGULAR MEETING

May 17, 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 3 Council Member Steve Rivet.

### B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

TOM ESCHENBERG

JEFF MCKNIGHT

NANCY BORTON

BRIAN VAIL

STEVE RIVET

MARISA ACQUAVIVA

BONILYN WILBANKS

KARL BOHNE

DEBBY FRANKLIN

### C. ADDITIONS/DELETIONS/CHANGES:

#### D. PRESENTATION: Marsh Menagerie

Mayor introduced the news clip from TV on the efforts of the Marsh Menagerie. Franklin showed news clip. Mayor then read Certificate of Appreciation and made presentation to Maryann Marsh for their efforts to help with the clean up of the oil spill in the Gulf of Mexico of the coast of Louisiana.

#### E. PROCLAMATIONS: PW Week – May 16 – 22, 2010

Mayor read proclamation into the record for Public Works and presented it to PW Manager Tom Miliore. **Whereas**, public works services provided in our community are an integral part of our citizens' everyday lives; and

**Whereas**, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewers, streets and highways, public buildings, solid waste collection, parks and canal maintenance; and

**Whereas**, the health, safety, and comfort of this community greatly depends on these facilities and services; and

**Whereas**, the quality and effectiveness of these facilities, as well as their planning, design, and construction, is vitally dependent upon the efforts and skill of public works officials; and

**Whereas**, the efficiency of the qualified and dedicated personnel, who staff public works departments, is materially influenced by the people's attitude and understanding of the importance of the work they perform.

**Whereas**, this year's theme "Public Works: Above, Below, & All Around You", is a tribute to the many positive improvements public works employees have made to our communities;

**Now, therefore**, the Town Council of the Town of Malabar, Florida does hereby proclaim the week of May 16<sup>th</sup> through May 22<sup>nd</sup>, 2010 as **NATIONAL PUBLIC WORKS WEEK** In the Town of Malabar, and calls upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

### F. CONSENT AGENDA:

#### 1. Approval of Minutes

Regular Town Council Meeting – 5/03/2010

Revised Town Council Meeting – 4/19/2010

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Rivet / Vail to approve the Consent Agenda consisting of the RTCM minutes of 5/03/2010 and revised RTCM minutes of 4/19/2010.

**VOTE:** All Ayes

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

Frank Montelione, Chief Legislative Aid for County Commissioner Trudi Infintani, reported that there would be no bus stop in Malabar from Space Coast Area Transit (SCAT). There were three (3) communities that asked for routes and none were approved due to budget constraints. The others were from Rockledge and Barefoot Bay. Hopefully next year will be better.

**H. STAFF REPORTS:**

**ATTORNEY:** Update on Palm Bay litigation. Mr. Stokes said they have agreed to have Rivet in the past wanted to attend the mediation. Need to coordinate dates when he is available. Still pursuing getting the information from Jason Yarborough. Wilbanks said the info had gone to Jon Lewis's desk last Monday. Attorney said the focus of the mediation is to have them take over the system. It is crunch time though as the make up of both councils could change in November. Getting the meeting scheduled and getting them to the table is necessary. Once we get those dates, we coordinate, we are still going to attempt this without mediation, but if not we will pursue a settlement. Then formalize what Council wants in this mediation. If there is going to be a final vote, it must be at a public meeting after the mediation. Would mediation discuss terms and conditions. Mayor said would it not be a good idea for each Council Member to contact the attorney and let him know how they feel and what terms and conditions they each want. Attorney can then convey that at the meeting. He won't name names but can express intent of Council. Attorney then reported that the Governor signed the red light camera legislation. Cocoa Beach has a red light ordinance and this Bill pretty much guts the Cocoa Beach ordinance. Mayor asked how that works for people that don't live in Cocoa Beach. Violation letter is sent to the registered owner of the vehicle. Camera catches if rear tires are over the stop bar. Pay fine or contest in front of Special Magistrate. Present evidence. It is a non-moving violation. With new legislation, you can't get a ticket for rolling through a right on red. McKnight asked about the front wheels crossing the stop bar. Cocoa Beach has made determination that if rear wheels have crossed the stop bar you are ok, if not, it is a violation. There is also an issue in Cocoa Beach regarding if a law enforcement officer is not a witness it is not enforceable. Franklin asked Chair if she could ask Attorney Bohne a question. Why the rush for cities to adopt the red light ordinances before this legislation was voted on? Bohne said the legislation just passed has provisions that grandfather in certain portions of the cities ordinance, but not the whole thing. The new State law caps the amount that can be charged and designates where a good portion shall be separated out and sent to many agencies.

**ADMINISTRATOR:**

- BCSO Salvo introduces Dep Hannagin, does want to share some of his experiences. Has been here two years and considers it his neighborhood. Report that the suspects from burglaries have been sentenced. Rivet wanted to know what they were sentenced to. Deputy will find out. McKnight asked about red light camera issue. BCSO looked at Palm Bay ordinance. The way Palm Bay drafted their ordinance it is a violation of their city code to run red lights. They have a private vendor manage the cameras and \$45.00 from each fine goes to vendor. They also have a law enforcement officer look at every single video to verify there is a violation. Once the determination is made, the ordinance allows for a hearing. Not a traffic hearing, but set up by city ordinance. Regarding where to stop, they are taught in the academy you must get through the intersection before the light turns red. A lot is up to officer discretion to fairly judge. Borton reported that they have had someone come to restaurant and say they have car problems and need help and ask for money, but it is a scam. When he was turned down, he walked to his car and drove off. It is not really against the law, but is unethical. It is not panhandling, just asking for money. Deputy said it is worth a conversation for the

individual. It may lead to something. Acquaviva asked about an alert about a man in a white van offering a young girl a ride. Is there any follow-up? Commander Salvo said if you think you should call, then call. The more information they could get about a topic, the better. Vail asked about pulling out from Corey onto Malabar Road. Cars are passing on left and right. You had to wait for the stopped car and a stream going around on both sides. That happens all the time at that intersection. Salvo said that is very frustrating. BW called FDOT about this and they said they could not put a sign up that says no passing on right since the extra pavement was put there. Vail said that is the most dangerous intersection. BCSO will monitor. You have to pull up in front of the phone boxes in order to see. McKnight asked about the merge lanes on Malabar Road from Babcock heading east to Malabar; the area turns into a racetrack. Is there anything illegal about that? Yes, the solid white line describes that cars can't change lanes. Getting pulled over is not happening a lot. Vail said he has seen PB police and BCSO. Salvo said that few tickets are probably written for that. McKnight said it is very frustrating.

- Showed pictures from Elaine Lane pipe replacement and stated there is great coordination with new Town Engineer and PW on fixing the pipes. The replacements are going on with many pipes by PW and saving money. If there is another TS Fay event, the drainage will be better now.
- Fire Dept Report for April – they are maintaining the below 7 minutes for response. They have been requested to do a lot of mutual aid from Brevard Cty and Palm Bay. They have added a new box on reports for our missed calls. At times when they can't respond, if they don't have someone close by and they get a tone out, by the time they can get to a truck response would be too late. Brevard County responds and Malabar is cancelled and it is counted as a missed run. This was implemented on 4/17/2010. They have had 405 hours of training in house. We are in brush fire season and if we don't get rain will have much fuel for fire. The cut backs in Palm Bay are going to cause a mass exodus from their fire department. He referred to articles in paper over weekend about budget problems, overtime etc. Gianantonio said the overtime cost is driven by State requirements. NFPA 1710 deals with professional paid firefighters. Residents are paying for fire service and it must be maintained at certain levels for each shift. NFPA 1720 states our requirements. Joe has eight (8) people that are eligible for a paid department. He would recommend all of them since they have served us well. Then we will have a mass exodus. Looking at the report. Someone spreading rumor that the trucks are not operational. The only other issue is waiting for a part to be installed. Went in to Mauldren last Friday. People need to talk to Chief and he will explain. The truck can still work, even with a broken valve; there are six valves. Same with water tanker leak. It is a third run truck not a 1<sup>st</sup> run. They look at what they need now and what they can fix as money becomes available. Borton asked if they could put up a wall within the annex with a locked area to store what is currently at the mini-storage place in order to save money. Chief will look at. Chief needs to have it centrally located area. He doesn't think he has the room in the annex. It is a metal building and putting up a wall would breach the integrity of the metal building. Borton asked what is stored at the mini-storage place – what is there? Chief said lots of water, and tables and chairs. Chief has inventory list. The water will be rotated. He says they will look at the suggestion to add a locked area at the annex. Borton said it could be a caged area with a lock. Chief said fire department has also done an outreach with GHCC and explaining fire safety to at risk youth. They will offer the fire extinguisher course to PW and employees and any citizens interested. It is a 1.5 hour course. BCSO said the MFD also helps with diver wash down and providing truck driver training at BCC driving course in Palm Bay.

CLERK:

- Franklin had many items to discuss with Council but will put them in memo to Council. One item was:

- Trash Bash we won for our category against three other cities following the rules, without taking in paints, and other liquids considered hazardous and construction debris and tires. There will be an awards celebration at Sidney Fischer Park in Cocoa Beach on May 22 for all participants. Recognition will be at next SCLC. Cash awards for overall this year instead of in each of the four categories.

**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: 1**

Before item was discussed, the Mayor asked Council to table item until next meeting. He wants to meet with TA. Overall, expenses are under control.

**2. Resolution for Budget Adjustment (Reso 53-2010)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING A BUDGET ADJUSTMENT FOR 2009/2010 BUDGET AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

Discussion without motion:

He is going to save it for next meeting. He would suggest an independent accounting firm come in here and see how the accounting is being done. All this is causing a lot of problems. The accounting fees could be reduced (now at 20K) He will get a quote for an independent CPA. If we could improve the process. TA asked to explain the difference the Mayor is referring to. Chair said they will debate it at next meeting.

McKnight, for the next meeting, asked Mayor to provide an excel spreadsheet. Mayor said he took the last column from the March 31 financial and wrote down the numbers that were different. McKnight would prefer excel spreadsheet. Rivet said it sounded like a job for a forensic accounting specialist.

**MISCELLANEOUS:**

**3. Council Opinion on EEL Purchase**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Does have a card from EELs first.

Mike Knight Program Manager for the EELs Program. Received the willing seller from Oakmont. Thought it was already in conservation as part of the development. The process is to bring it to Malabar and see what the Council position is before bringing it to County Commission. They have not gone through the appraisal process yet.

Mayor asked why they are interested. It is scrub habitat with one family of scrub jays living there. The property is developable. They did not do mitigation. They set it aside for no development. They did relocate the turtles. If they wanted to develop in the future they could do offsite mitigation. Vail said the 32 acres was set aside by developer with no conservation easement. However, in the letter from EELs it also mentions the donation of the wetlands within the Oakmont Preserve Subdivision as well. He is in support of the 32 acres; but as far as the wetlands they should remain as part of the approved

development and as such be under the jurisdiction of Malabar. Knight said the scattering of wetlands are in the northern part. Vail does not think it is good to take the wetlands out of the development. McKnight said he is in support of the 32 acres. He would need more information on the wetlands. McKnight said he does not problem with willing seller and willing buyer. Imagine Malabar in 100 years without all the development the other cities have done. Vail said everyone has good intent. Taking the bits and pieces of wetlands from within the approved subdivision is not a good idea. The developer should be responsible to the Town for the drainage and stormwater within the subdivision. Chair asked if anyone had any problem with the request. Borton asked Knight about the easement given to the Town along Marie when they purchased the Coastal Jewel property. Franklin said the signed easement paperwork was picked up by EELs but we never got a copy back. Knight will check on the status of that and get back to Council.

Juliana Hirsch, 1035 Malabar Road, it is not up to her to decide. She is not against of preserving the land. It is real easy for developers to call the EELs in this economic downturn and ask them to buy their land. She doesn't agree that it is better to have 100 acres. The EELs do not take care of the properties. When they have rain the properties cause flooding. The EELs own the property across the street and nothing could be done because the EELs own the land and aren't going to do anything. FDOT can clean it out the pipes and the water still has nowhere to go. Regarding the EELs purchase, there is only one house in the Oakmont Preserve subdivision, the developer is Pence and with only one house, it is easy to see why he is selling the land. Malabar will be here for 100 years. One scrub jay family, they can be moved. The Town will not benefit from it. No one can ride a bike through it. Think beyond today.

Borton wants to go on record that she does not want to take away anyone's right to sell and buy their land. But have the EELs helped us with the fire and police and stormwater issues? She asked if they would come to table with something, with an offer of money to help us with these issues. McKnight is not against asking the County Commission for help. Borton said you need police, fire and drainage on the land. If our population stays the same. Vail said we should have Interlocal, if we are impacted adversely then we should expect their help. Consensus was to do a separate resolution to develop the concerns voiced by Borton and ask County Commission for help. Keep it separate from this issue.

**MOTION: Vail / Rivet to support the EEL purchase of the 32 acres and not the donation of the wetlands within the Oakmont subdivision. Amend the motion to approve the 32 acre purchase only.**

Discussion: Vail said we need to maintain the control over the wetlands and stormwater within the subdivision. If the maintenance goes to EELs then our issues must go through another agency to meet our requirements. It should remain under our jurisdiction.

Mike Knight said the wetlands are a separate issue. They are mitigated for conservation. The wetlands within the platted subdivision and stormwater ponds are addressed on the recorded plat. Vail said to leave them under our jurisdiction rather than be handed over to another agency for maintenance.

Rivet said we have a willing giver and receiver. There are more cases of HOA not doing the maintenance. His position has been if there is a willing seller and buyer. Chair said It is the County Commission that makes the final decision on the purchase, not the EELs. McKnight said it is a separate issue. Drainage issues can be included in the resolution.

Rivet said the major progress is the County Commission wants to hear from us. One of the management plan points was added that they will work with us on drainage issues. Language has changed in the management plan. It doesn't cover fire and police but we can work together with EELs. Knight said we can come back to Council for separate action regarding the wetlands. Vail said this is the only forum we can discuss these issues. McKnight asked if we can charge the county a millage for fire and police protection. Bohne said the county doesn't pay millage. Bohne said there was a case that Malabar tried to bring action regarding EELs and it did not go well. Imposing a fee for fire and police protection is not going to happen. There was a push to establish fire fees and those types of fees can be imposed, but unless they are willing to pay them. Borton asked if we pay percentages for

things they do. We need to pursue an interlocal agreement. Vail said we have a County Commission now that will listen. Mayor said the ILA each party gets something. Vail said bring the concerns forward. Borton said the concerns are the burden on the constituents for the cost of these items. Vail said how can we draft resolution.

Intent is not to make a complaint to County Commission, but to ask for their help. It is their issue, not a EELs issue. Borton will meet with Infantini and her legislative aid. \

**VOTE: All Ayes.**

**4. PW Bldg Repair**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** Rivet / Vail to approve the repair.

Discussion: No problem with it. **Vote:** All Ayes.

**M. DISCUSSION ITEMS:**

**5. Utility Discussion (McKnight)**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

McKnight asked for this. We are losing money on this utility. We are not paying for it. We are also required to not lose money. McKnight is tired of paying for this water. Rivet said the only thing we can address now is to increase the utility rates. Even if we get the reduced rates from Palm Bay, it is not going to help. BW said we need a fee analysis to determine the amount we need to charge customers in order to get back on track. Chair said he also glanced at the April 2009 financial and the utility fund and we lost 19K and in the April 2010 financial, we lost 21K. There is no cash flow problem yet. McKnight asked if we can contact HOA members and tell them we will need to increase rates. Rivet said It is poor timing to do it before the issue with Palm Bay is resolved. Bohne agreed with Rivet. End discussion until after issue is resolved. Vail said drop it until other issue is resolved.

**N. MAYOR AND COUNCIL REPORTS:**

1) Borton – found out today that clerk buys snacks. Can we take turns? Borton will start next meeting. Council agreed to rotate 1-5 and Mayor.

2) Vail – nothing

3) Rivet –

4) McKnight – thanks TA for taking care of powerline issue

5) Acquaviva – will be working with Franklin for the upcoming meeting.

6) Mayor – Teen council voted down the MSTU. They talked about raising speed on Corey to 45mph and that got voted down. Pool alarms mandatory for new and old pools. Curfew for kids under 18. That got voted down. He will add another discussion item to next meeting. Fire Dept Corp. McKnight asked about FD issue Borton asked to wait for two weeks. Not the same issue. Borton was going to give TA 2 weeks to work it out with Fire Department. Wilbanks said she has been working the issues with the Ports. They have even ordered him a special chair for him to use. He hasn't been back in. She was going to address the issues Ports identified as the most important. From the meeting it was equipment, all of the things pointed out as critical, those are the items addressed by Chief in his report. Thought there was more to it. Borton addressed issues with Chief and TA.

Mayor said there are two separate issues: Fire Department issues and the other is Fire Department Inc issues. McKnight said you can't talk about one with out the other. Mayor said the corporation doesn't have anything to do with the Fire Department. What is length of time left on contract? Wilbanks will find out.

**O. PUBLIC – speaker card required**

**P. ADJOURNMENT**

There being no further business to discuss, **MOTION:** Borton / Vail to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 9:30 PM.

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

ATTEST BY:

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

Date Approved: 06/07/2010 as corrected