

## MALABAR TOWN COUNCIL REGULAR MEETING

June 21, 2010 7:30 PM

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

### A. CALL TO ORDER, PRAYER AND PLEDGE

### B. ROLL CALL

Town Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Jeffrey McKnight, excused
Council Member:	Nancy Borton
Council Member:	Brian Vail
Council Member:	Steven Rivet
Council Member:	Marisa Acquaviva
Certified Court Reporter:	King Reporting Service

### C. RECESS FOR CLOSED ATTORNEY-CLIENT SESSION

D. Pursuant to Florida Statute 286.011(8), the Town Council will hold a private attorney-client session, **which will not be open to the public**, with the Town Attorney, Karl W. Bohne to discuss pending litigation in Town of Malabar v. City of Palm Bay, Case No. [05-2009-CA-049231](#), filed in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida. The following persons will be present at said meeting:

Town Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Jeffrey McKnight, excused
Council Member:	Nancy Borton
Council Member:	Brian Vail
Council Member:	Steven Rivet
Council Member:	Marisa Acquaviva
Certified Court Reporter:	King Reporting Service

A verbatim transcript of this meeting shall be transcribed by King Reporting. The transcript will be filed with the Town Clerk and open to the public for inspection **after** the conclusion of the litigation.

### Reopen and announce termination of Closed Session

### 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 Mayor.

### B. ROLL CALL:

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	JEFF MCKNIGHT
COUNCIL MEMBERS:	NANCY BORTON
	BRIAN VAIL
	STEVE RIVET
	JEFF MCKNIGHT, excused
	MARISA ACQUAVIVA
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

### E. **ADDITIONS/DELETIONS/CHANGES:** With no objection: Added 2 items under Action: Request from Sheriff Parker for Town Support for Justice Assistance Grant funding for Sheriff

office will be #7 and the request from a resident with unanimous recommendation from P&Z for approval of fence higher than 54" will be #8. The Discussion item regarding the FD newsletter will be renumbered to Item 10.

**F. PRESENTATION:** Certificate to Tom Miliore for successful completion of FEMA Debris Removal Training

Next Presentation was from Ms. Trudi Infantini, Brevard County Commissioner for District 3. She does not have a lot of funding. She thanked Council for allowing her to attend meeting. Mayor said she has sent her assistant to attend previous meetings and he did not bring good news. She said she likes to have representation at meetings. She learned Malabar is interested in getting financial assistance from County to handle management of EELs properties. She explained that County does not have money to fund all the requests they get. There was discussion on the management of the additional lands acquired by EELs. She would like to see the EELs stop acquiring lands until they can get around to doing all the controlled burns, there is the chance for accidental burns. Borton said it is not just the fires; it is the stormwater drainage and the police. Borton learned from previous State legislator, that State can't help Malabar. Infantini said she does not understand why EELs is not maintaining them in such a fashion, but they do not report to her. They report to County Manager. County Commission can give direction through the County Manager. She gave example of her position on the public library system to spread out the staffing of the libraries and the way it was reported by Florida Today that she was trying to close down libraries. Back when she audited for Scott Ellis, Mike Knight said they don't have staff to do the management it needs. So she will vote against additional acquisitions. This request for the EELs to maintain the drainage she will take it back to County Commission. She thought it was more about the fire control. Rivet said it is mostly but it is also stormwater. She will go back to County Commission and that is part of their responsibility. Mayor asked TA to report what she learned from flooding issues with FDOT and that department saying the problem was up on the EELs land. Wilbanks said there were major drainage issues on north Marie with water sheet flowing across Marie from their land and that was before they adopted their management plan. She and Franklin had met with them and reviewed the wording and wanted wording added so they had to maintain proper drainage on the properties. The other issue is the drainage along Malabar Road where the water goes under the road but cannot flow north; it is this issue of properly maintaining drainage; she will get with Ms. Infantini to get the exact area that there are stormwater issues. Infantini said she will take that issue back, they do have funding left, and she would request that everything that we currently own is properly maintained.

Mayor asked her how the County budget meetings are going. She reported the County Manager will have a draft balanced budget to County Commission by or on July 15. She had offered to attend the meetings with staff and constitutional officers but he said he would prefer she not attend. The County Manager and his staff prepare the budget. It is not put together by Commission, it is approved by Commission; the County Commission sets the millage rate. Many items are preset and there is no negotiating over. Ms. Infantini referred to the way the newspaper covered her comments regarding the County libraries; she is not out to close the libraries or fire the library director. The County Commission does not have a lot of input on many line items. She is very careful with her wording.

Wilbanks asked Ms. Infantini if there was going to be another roundtable with the County Manager and City Managers and Mayors. She is not aware of such a meeting. The County Commission has to vote on the millage rates. She can make suggestions to County Manager where there could be some changes, but the County Manager puts the budget together; it is about a 1000 page document. There is some negotiation. Borton asked about Sheriff Office budget. She gave an example of the BCSO budget. Borton asked what the role is for the County Commission. With the BCSO budget, they set the millage for the MSTU to pay for the road deputies and the rest of the budget comes out of the general fund. If that is not enough for the Sheriff, he can go to the Governor and get more. County Commission does have control over EELs, because more is going out than is coming in. Rivet said they do have ultimate authority over budget in that if majority of County Commission is not happy with

the budget; they can replace the County Manager. Infantini said the County Manager is new and is trying to do a good job in bad situation. They gave him direction to not raise taxes. Mayor asked what the vote was on that. Infantini said only three voted to give that direction. Council thanked Commissioner Infantini.

Wilbanks asked if BCSO report could go next as they need to get back on street. No Council objections. BCSO representative reported they have gotten convictions on the recent burglaries – Anthony Thayer got eight years in prison and Casey Keith got ten years in prison and that will get them off the streets for some years. He reported there was nothing else is going on in the area. The GHCC church vandalism is still being worked. He and Commander met with TA Wilbanks last week regarding some of the citizen input. There are complaints coming in but they are not coming from the residents. People love to talk to the Mayor and their Council or County Commissioner or state reps but not directly to the police or sheriff about their complaints. He gave example of a speeding complaint on Atz that came through someone other than citizen. This was brought to Mayor's attention and he told TA who called BCSO. There is no record of the original complaint. Sheriff Parker is adamant about being accountable to the citizens. If they don't call, there is no record. Please tell them to call and get the record going. He explained that under court decisions if the reporting of a crime was by a Council Person, then they will be getting the subpoena. Plus, by the time it gets to them, much time has elapsed. Put it in the next news bulletin or email, to encourage citizens to call BCSO directly. Mayor said there are some residents that absolutely don't want to call BCSO; they want to call Council or Mayor to handle it. If you tell them to call BCSO, you just get them mad at you, because that is your job. You can encourage them to call, but if they are adamant, then you must call. BCSO said then to take their name and phone number and call BCSO and pass it along so they can call resident. Vail asked if 633-7162 was a good number to call. Yes. He explained that they have a missing endangered person down south of Malabar and he needs to get to the search.

Rivet asked about the damage to mailboxes. There are three on Marie Street, one on Hall and one on LaCourt and many on others. BCSO said that most of this is done by bored teenagers during summer.

Next presentation is Eligre Strategies with Mat Dupre and Mitch Needleman. (handout attached to minutes)

Needleman gave update on State budget shortage. This was a good year for Malabar regarding the plan he put together for Malabar on the Tabor issue. The other issue was putting legal notices on email basis. Needleman spent much time on speaking to legislators. The change will exclude the cities and counties with a certain population from the Tabor bill, as they are now. Because others also lead in this area. Matt Dupre sat with Mike Haridopolis, and Workman and other members of the delegation. Went in with one clear message and stayed on point. Palm Bay doesn't think they are affected by this.

Senator Mike Bennet is a very big Tabor supporter. Rep Workman said he supports Tabor as it applies to the State but not the cities. Dupre does not know next years plan for Tabor.

The other issue was with DCA and unfunded mandates. Build out plans, school plans. Define "small cities" – population based of 15K or less or maybe 8K and less. Would allow small cities an exemption to EAR requirements dealing with water plans if they haven't changed more than 5%, then simply bypass. If there are no schools being built or city agrees with the County School Board plan, that is it. The last issue is the public notice requirement. The county spends a million in legal ads. The plan was aggressive – remove the bill. Their plea was to make an amendment to bill. If a paper goes out of business, you can go to email for citizen notification of legal ads. If you have alternative mechanism for notification, then start emailing them the minutes or ordinances, and we are duplicating this process. Whatever means possible. This is the year to go after getting things removed such as mandates.

Franklin asked about State selling surplus lands. It is possible that a State committee, comprised of equal numbers of Democrats and Republicans were tasked to look at this. There are no bills brought

forward for any sales of public land. Not all conservation land is conservation. During the year it is going to be tough year and they will be looking for revenue everywhere.

**F. PROCLAMATIONS:**

**G. CONSENT AGENDA:**

**1. Approval of Minutes**

Regular Town Council Meeting – 6/21/2010

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Borton / Rivet to approve the Consent Agenda consisting of the corrected RTCM minutes of 6/7/2010: Rivet said Micro managing is Poor management on page 6 3<sup>rd</sup> para, pg 9 2<sup>nd</sup> to last para, first line – Fire Marshal and did NOT find suspicious. Pg 12, last para, line 6, Rivet asked about putting it on eBay, not email.

**VOTE: All Ayes**

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

**I. STAFF REPORTS:**

**ATTORNEY:** No difference to donating to Town or Fire Dept Inc. – the are both tax deductible. As long as it is for a public purpose.

**ADMINISTRATOR:**

- Fire Dept Report on May – pulled because the Fire Dept Staff has been on mutual aid to County for fire near Fountainhead Memorial. Rivet said he met with Chief Joe Gianantonio and Asst Chief Dan Welton and had discussion about better coverage and faster response for Malabar residents. Acquaviva asked about the \$1100.00 item missing. Wilbanks said it has been turned over to BCSO. It is under investigation by their office.
- Stimulus Projects status. Wilbanks handed out a status of the six stimulus projects. Since FDOT requested daily inspections, Town Engineer Morris Smith has done these reports. Bill Stephenson is still the Eng of record. The contractor has submitted invoices for progress payments on each of the six projects. Engineer Morris Smith agreed with Bill Stephenson's assessment of the percentage of task completion. Wilbanks went through the audit with FDOT with flying colors. There is a revised schedule. FDOT has suggested Wilbanks send out delinquent notices. The contractor has also not used any required FDOT MORs and they were working at Weber and Malabar Roads. FDOT was adamant that we don't issue a stop work order. It has been a complaint by the residents that they have not been given advance notice before the road is closed. Mayor said people should know about it ahead of time. The weekly status will allow Council to inform residents when they call and ask about the projects. Bill Stephenson knew this company well and recommended them for the projects. We don't know if contractor also is doing other stimulus projects for other municipalities; they appear stretched with their manpower. The contractor has fired two persons regarding the quality of work on our projects. We have had some light rain, and the erosion at the job sites is terrible. FDOT's quality assurance people have been out there and will continue to monitor.

**CLERK:**

- Reminder that there is no second Council meeting in July – there will be a budget workshop on July 27 and we hope to have draft budgets by July 15<sup>th</sup>.
- Qualifying dates and packages – August 4 – 18, 2010.

**J. PUBLIC HEARINGS:**

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

**ORDINANCES: (0)****K. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING****L. ACTIONS ITEMS:****ORDINANCE: First Reading – 1****2. Budget Amendment (Ord 2010-31)**

Without objection Mayor read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA AMENDING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2009 THROUGH AND INCLUDING SEPTEMBER 30, 2010; PROVIDING FOR A REPEAL, SEVERABILITY AND AN EFFECTIVE DATE

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action on Reso. No. 2010-31

**MOTION:** Borton / Rivet to approve Ord 2010-31 as presented.

Discussion: Chair explained the reason for the ordinance not a resolution. Rivet asked how much stimulus money was spent on large signs. Wilbanks said the signage is a federal requirement on the contractor.

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

Motion carried 4 to 0.

**RESOLUTIONS: 0****MISCELLANEOUS:****3. Contract with Malabar Volunteer Fire Dept Inc.**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Action

Rivet does not feel we need a corporation. Could be run by same management or by an appointee of the Chief. Why have an entity that does not appear to be necessary. Acquaviva says they don't want to do anything. Rivet said they missed the contract deadline to request continuing the contract. They have not been an effective force. Vail has mixed feelings. He feels the corporation has done good things – fund raising but over the last couple years, it has conflicted with the FD. They have authority to raise money and spend it as they fit. Mayor said this was on the agenda a couple of weeks ago and for tonight to decide if Council even wants a contract. They could have come forth in the last couple of weeks. Acquaviva said if they have not contacted us, then why do we need to consider this. Vail has seen the good from the corporation; let's see what we can do. It is not always been the best intent. It has to have the same goals as FD. Acquaviva says why not just have that with "friends of the FD". Rivet does not feel they are necessary. If corporation is going to exist, then we have to have an agreement. Rivet said only if it is completely under the control of the Fire Chief. Vail asked attorney if that presents legal problems – how can you do that. Mayor said corporations are run by a Board of Directors. Would cause more turmoil. Acquaviva said it should be more supportive. TA Wilbanks said couldn't they require the corporation members to be only support staff, and not be fire fighters. Like in Micco, pancake breakfasts, and rummage sales, then there is no competition. The personnel then get off on the wrong foot. Acquaviva said that is what the newsletter is about. You see the donations when there are fires. It seems to be redundant to have fire fighters in corporation.

Chair recognized Bridget Ports, Secretary of MVFD Corporation. At last meeting she did not know that the corporation was on the agenda. The members of the corporation are either past fire department members or terminated fire department members and they can't come on the property. There has been a power struggle between the groups. We can't do pancake breakfast because of the liability; we can't take equipment out because it might get rained on. The corporation has tried to do the inventory.

She can't even go there. Where do we go from here? Borton asked where the money comes from. The money comes from donations from residents and others. There is about a 5K balance in the bank account. TA Wilbanks asked Ports how much restitution had been paid back to the bank account from the missing money. Ports said none; she was unaware of the restitution agreement. There was approximately 10K missing.

The corporation President is Curtis Setty, v-chair is \_\_\_\_\_ and Ports is the secretary. Mayor asked if current officers belong to the fire dept. Some. Wilbanks said on the record that these kinds of requests for fundraising events have not come to her. Mayor said terminated persons shouldn't be allowed back on Town property. They may come for a meeting and they are not in a separate room. Ports suggested having the corporation meetings here at town hall.

Acquaviva asked how many members were in corporation – only about 7 active members. She asked where did they recruit from. From the Fire Dept. They get voted in by the corporation. They try to recruit outside and to Malabar residents and ask for donations.

Wilbanks referenced a meeting with the Ports and Council Member McKnight and the outcome was a letter to residents was going to be drafted to send out. TA Wilbanks said the letter has yet to be seen. Ports replied that the letter has been drafted and the Vice-president of corporation was not able to get to meeting and there were not enough members to have a quorum.

Ports said they could dissolve the corporation and vote on how the money should go to – charities of choice. Rivet said that money would have to go to the FD or it is fraud.

Rivet said no further action is necessary. We don't have a new contract. Vail said if the corporation wants to bring something forward. Contract said if you want to continue this you must start 180 days prior and he knows it was an oversight and if they would work hand in hand with the FD it could be considered.

Mayor said corporation could bring a new contract to Council. Rivet said recent events – embezzled nearly 10K, no criminal charges because the accounting was so horrible. More recently, the deadline for the contract. Rivet said Ports at last meeting said the Chief and Asst and Chief should be fired. Rivet said the relationship should end.

**MOTION:** Rivet / Borton to send formal letter to corporation that Council is not renewing. **VOTE:** All Ayes.

#### **4. Policies and Procedures for Fire Department**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Vail asked Attorney if they approve what is here and is each one tailored to the dept? Bohne explained that much of the other material is operational and that is not what is before you here. There was also unclear policies. They said a bunch of stuff and then stopped. This is a substantial change. TA Wilbanks was directed to review the policy, and remove the contradicting clauses and from that we asked attorney to review it. Mayor asked if Chief and V-Chief had worked on that. Acquaviva said TA said she worked on it with Chief, Asst Chief and the Attorney and it mirrors the Town Employee Manual. Mayor asked if it conflicts with the ordinance allowing the Chief to fire for cause.

**MOTION:** Rivet / Borton to approve these Fire Dept policies and procedures. Acquaviva asked about the ride along – she likes that – do we have it in place. There was interest and that is why they added it. Vail asked if this was for all Fire Fighters or just the volunteers. He did not see any distinction. Vail asked if they follow the same rules. For the most part they mirror Town policies per Attorney; for most part they are identical. **VOTE:** All Ayes

#### **5. Political Signs - Enforcing F.S. 479 by Town Personnel**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Action

In Attorney's opinion we could enforce the State prohibition of signs within the State Road rights-of-way. Rivet bias is to allow for free expression unless there is a safety issue. If it blocks visibility, or if it is abutting the pavement that is a clear violation. Chair suggests unless there is a complaint we should not respond. For signs that are a visibility issue have staff take it out. Acquaviva said packet is on website. Previous policy was to do hand's off during political season.

**6. Malabar Taxpayer Budget Review Board**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Action

Mayor brought this back to see if this can be done again. Rivet thought it was a wonderful exercise in civics. Acquaviva would like two people not already on other Boards. Mayor explained that last year he recommended not picking former Council persons as they may have a built in bias. Rivet said use your best judgment in selecting your two persons and let Franklin know. They will attend the first Budget Workshop on July 27, 2010.

**7. Contribute to Melbourne Fireworks Display**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

Palm Bay was rained out last year and the event was insured so the event will be paid for this year. That is why they did not ask us for a donation. Melbourne has historically held the fireworks display and the parade for many years. It is for a public purpose, celebrating America's Independence with July 4 celebration. Borton said she will give \$200.00. Vail said he gives 50.00. McKnight has no more in his discretionary. Rivet will give \$50.00. Mayor said if 10 Malabar residents attend Melbourne event at 5 bucks a head, he could see Town donating like that; something nominal. Acquaviva said it is a good event and she will donate \$100.00. Mayor was thinking more like \$50 each. Acquaviva will give 100.00. Vail for 50. Mayor pulls his donation back. Wanted it only to be token.

Total of 400.00. Nothing from McKnight or Mayor.

**(Added) 8. Justice Assistance Grant – Sheriff Parker Request for Support**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

This is done every year. Mayor wanted Council support, since letter states Malabar supports the expenditure. Mayor wanted Council to understand. No Council objections. Mayor will sign it.

**(Added) 9. Request for fence higher than 54" in RR-65 – Unanimous Recommendation from P&Z for Council Approval**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Request Action

Franklin said this was a staff oversight that recommendation wasn't provided in time for agenda package and staff did not want to adversely affect resident by making him wait until July 19<sup>th</sup> to get permit if Council approved request. She said he is in audience if Council wants him to answer any questions. Chair apologized for not adding him at top of meeting under Public, Residents but asked if he enjoyed watching the proceedings. Mr. Maggio, Linrose Lane, he tipped his hat to Council for their efforts but he has enough going on with own life. **MOTION: Borton / Acquaviva to approve.** **Vote:** All Ayes.

**M. DISCUSSION ITEMS:**

**10. Newsletter for Fire Department**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Acquaviva said she remembers during the fires in 2008 the wonderful feelings towards the fire department that were going on. She mentioned it to Chief Gianantonio and he mentioned it to Asst Chief and this is what he put together as a sample. She thought it was a great, positive, if there is a fundraiser, this could be an avenue for communication. Mayor thinks it is a great idea. This was done on Publisher and could put on website and TA has a blast resident email list that goes out. It wouldn't need to go out more than quarterly – let them know they are there and what is going on in their fire department. Let residents participate in a positive way and keep them informed on what they have been going through. Asst Chief Dan Welton seemed very willing to head this up. Rivet said we do need PR for the FD. Acquaviva said a lot of people would help. Make it a “friend/fund raising” tool for community events. Rivet said if they can save money on their insurance. Consensus from Council to do a quarterly newsletter. Franklin said it costs about \$435.00 to do a mass mail out which covers part of the Grant-Valkaria area. Acquaviva said we could keep it positive. Put it in the budget. TA will talk about it to Asst Chief Dan Welton and get back to Council. Mayor will be willing to give from his discretionary fund. It is a great idea.

**N. MAYOR AND COUNCIL REPORTS:**

- 1) Borton – Had Franklin give out copies of her email with County regarding the fire dept. We do a lot of mutual aid.
  - ) Vail – nothing
  - ) Rivet – nothing
  - ) McKnight – excused
- 2) Acquaviva – She is interested in going to FLC conference and will let Franklin know.
- 3) Mayor – He attended another long range transportation meeting in Viera today. They are looking out to the year 2035 re: county transportation needs. He does not have faith in computer models, this sheet is bottom line. Listed the roads that would be over capacity and where the funding could be used to relieve the congestion. Malabar Road was on the list for 4-laning, but the model set priorities. The funding dollars got less. We are on the list for the need, but not for the funding. He has an ally in City Manager Chris Chinault. He is his ally to get possible funding. He asked about the projection of spending on 61 million on an express bus service from Port Canaveral to Orlando that was on the funding list. Much criticism on this. It is a draft. Franklin said we were on 5-year list in 1985 for widening Malabar Road because there was a need; now we barely make the list but new projects have taken priority. They do have deadline of January to get final list to FDOT.

**O. PUBLIC – speaker card required**

**P. ADJOURNMENT**

There being no further business to discuss, **MOTION: Rivet / Borton to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 9:50 PM.

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

ATTEST BY:

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 7/19/2010 as corrected