

MALABAR TOWN COUNCIL REGULAR MEETING

July 19, 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 District 1 Council Member Nancy Borton.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

JEFF MCKNIGHT

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

STEVE RIVET

JEFF MCKNIGHT

MARISA ACQUAVIVA, excused

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

- A. ADDITIONS/DELETIONS/CHANGES:** Franklin asked to add a proclamation ABATES asked us to have. Each municipality is taking a month of the year and recognizing it as their "motorcycle safety awareness" month. All of the proclamations will be sent to Tallahassee. No objection to add. Franklin then said the attention having Item 12 on the agenda has created interest in the BOA and we now have heard from three applicants that want to apply. Council may want to delete the item or may wish to discuss. Consensus to leave on agenda for discussion.

- B. PRESENTATION:** Certificate to Scott Prasse for his project at Fern Creek Crossing Mayor read and presented. When the national approval is complete he will be an Eagle Scout.

Brevard County School Board Member Amy Kneessy – update – move to later in meeting if she shows up.

- F. PROCLAMATIONS:** August is Malabar Motorcycle Awareness Month - ABATE Mayor read and presented to Gail. Gail thanked Council and Mayor for their support in encouraging ABATE safety program. The training teaches how to share the road. Safety flyers in the back. Abatetreasurecoast@yahoo.com.

G. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 6/21/2010

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Borton to approve the Consent Agenda consisting of the corrected RTCM minutes of 6/21/2010: Mayor said page 7 of packet states the meeting recessed and the following persons were present and then it does not list them. Franklin said the court reporter would have that in her recording. Atty Bohne said Franklin should add the names present for the executive meeting. On page 6 of minutes: the MOTION to send a formal letter to MVFD that the Council is "NOT" renewing. On page 8, under Mayors report in middle, he has an ally in Chris Chinault. Name spelling.

VOTE: All Ayes.

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

Two Speakers Cards – Don LaFontaine, current President of Brook Hollow HOA, referred to a letter sent from TA Bonnie Wilbanks and mowing maintenance within Brook Hollow. It concerned him that there may be problem with the working relation with the Town. Brook Hollow is very happy with service they are getting from the Town. For the last 18-19 years have had a good working relationship. For the record, Gary Sampson does not represent the Brook Hollow HOA or subdivision.

Gary Sampson lives in Brook Hollow and his property backs up onto Briar Creek Boulevard. He has letters going back from 2008 stating that the mowing would be done every 4 weeks. He has been there for 15 years. He cuts his landscaped lawn every week. The Town has now mowed across his landscaping and scalped his grass bare. He thinks there is a vendetta. Wherever the buck stops should be on top of this. He offered the copies of letters and he has an email from Cindi Kelley saying Town does not mow County Cove and that conflicts with letter he has from 2008.

Mayor suggested to Mr. Sampson that when you have a complaint, contact your Council member. He has brought it to her when she attended a HOA meeting. Mayor said ask for the meeting with his Council Person and the Town Administrator. Then if he is not satisfied, the next step is to fill out the council agenda form. Mr. Sampson said he is speaking on his own behalf. He understands now that there is something in the works to not have to mow it at all. Somebody dropped the ball. He will set up an appointment.

I. STAFF REPORTS:

ATTORNEY: He referenced a recent Florida District Court of Appeals case. What the court ruled in a quasi judicial case is a little different from our policy. We have a quasi-judicial procedure and any person can cross examine a party. This case said only the applicant and the town can cross examine. This was in Seminole County. Bohne said that we can change our procedure or leave it as is. We don't have that much controversy. The last controversial issue was the Gentile issue. In that instance, residents could have gotten up and cross-examined Mr. Gentile. He understands in bigger cities every one could ask bunch of questions that may not even be relevant. In the Seminole county case, the county ruled in favor of the developer and the citizens appealed and the Appeals Court affirmed the county's decision. Rivet asked if the questioning was not allowed. We do not have to grant that we can afford more due process we can't take it away. Balance the rights of the applicants and the developer. McKnight said we have control over the amount of questions asked.

ADMINISTRATOR:

- Fire Dept Report on May and June – (May was pulled from last meeting) Chief Gianantonio reported on last two months on overhead.
- PW Manager Report: Tom Miliore reported on the typical work week for the PW Dept made of five members. One employee picks up litter and treats the ants at the park and performs small maintenance. Once a month the meters are read. Mondays and Fridays the water is tested for chlorine. He also does the maintenance on vehicles. The Town is broken into 15 sections. Atz, Hall, Corey and Weber are mowed twice a month. Regarding the ditch cleaning, Glatter Road and Corey Road, west side were cleaned until the Gradall went down. The flat mowing was done until that equipment broke.
- Also done, the culvert on north Corey Road was redone. New street signs, signs on Rocky Point. Other signs were put up and some signs were taken down at Huggins Park. The mowing at the Golf Disc Park is now up to 8 hours. Trees have been cut down and the entrance repaired there also. There was also a new water service put in, the steps at the fire station were welded. The Gradall was repaired again. At Rocky Point, the catch basin poured. Problem at park bathroom was investigated. The floor was chipped out at water shed at the fire station. The bridge on Briar Creek Boulevard was cleaned and maintenance done by FDOT. The Rocky Point catch basin was

completed. Slope mower was repaired. Sink stands were installed at Malabar Community Park. There were 162 man hours expended which is the equivalent of keeping one man in the shop for an entire month. There were 40 hours of lost man hours due to 16 hours of class training, 32 hours of vacation and sick time. That is why they could not mow Brook Hollow exactly at four weeks. This is all done with five (5) employees. In 2008, you had six PW crew and two people mowing. Today you have a five person crew and only one person mowing. TA Wilbanks said we do not mow within the Country Cove subdivision or the Stillwater subdivision. They showed the pictures of the Briar Creek Boulevard area on the overhead.

Mayor said in this situation, Mr. Sampson believes if he comes in and complains it will get mowed. TA Wilbanks said per the subdivision covenants we don't have the requirement to do the mowing. TA Wilbanks asked Council if they wanted this as an agenda item for next meeting to give direction. Now that we know that we don't have a requirement to mow the area, other subdivisions may ask for the same type of consideration. Mayor said the reason he wanted them to have the meeting is he expects he will not be satisfied and he will then come to Council. Mayor wanted the Council Member to be able to fully brief Council on what was said at meeting. TA said she will make arrangements for the meeting. She asked if she was to tell him they will continue to mow or not and after discussion with Mayor said she would tell him at meeting that we do not have a requirement to mow the area. Mayor said that is what the Council Person will report on.

TA Wilbanks said from Miliore's report Council can see how much the PW Dept do on a daily basis. He referred to the welding done at the fire station by a qualified welder now employed by the Town. The TA wanted Council to know how much money Tom Miliore and PW has saved the Town by doing so much in house. The savings in what they did at Rocky Point Road with the new catch basin was estimated by Engineer to be almost 100K. McKnight wanted to have the mowing issue on the agenda as an action item after the meeting. It is his opinion, where a resident living in a house, we should not be mowing the ROWs. Vail said aren't property owners responsible for maintenance of area between property line and edge of road? He understands vacant land is not. Tom Miliore said the employee that most recently mowed Brook Hollow was new and the cut was done straight in line with the ROW line; it was not a personal vendetta. Mr. Sampson's landscaping actually encroaches into the Town's ROW. Vail said there is a difference in mowing Bahia and Floritan as for height adjustments. TA Wilbanks also said the Gradall is dead. She will let Clerk explain as she has been out.

- Tom Miliore reported that Great Southern was in to repair it and when the pressure was put on, the centerpin on the Gradall blew and the two valve bodies in the two cabs went and we had a 50 gallon plus hydraulic spill in our yard that has been cleaned up. Franklin said they plan on putting a replacement Gradall in the upcoming budget.

CLERK:

- Refers to memo on miscellaneous items, if anyone has questions, please ask.
- We have received the annual contract to receive the Transportation Impact fees. We have proposed projects, as the northbound right turn lane on Corey Road onto eastbound Malabar Road, improvements to Centre Street, improvements to Marie Street south from Hall to our property, and the flashing light at the fire station. Once the Mayor signs the disbursement agreement, the County Commission will approve and we will receive funds of \$127,000.00. The County has extended the moratorium on the collection of the transportation impact fees.
- Regarding the flashing light in front of the Fire Station, if Council wants to pursue this we can enter into an Interlocal Agreement with the County to have this installed. The money approved for the design and engineering has not been spent and we have an

additional 28,246.57 in the County coffers for this project. I will bring it to Council for formal action once I have the total cost.

- I had our Utility software company, IMS; compute the utility rates for our customers without the 10% surcharge for a typical month of water usage. The savings to them collectively would be just under \$1,200.00.
- We had a contractor come to do a pump out of our septic system at Town Hall and learned that the intake side of the tank is under a slab that was pored later. We also learned that because of the continued voids being created around the septic tank, more than likely, when the semi drove over it and broke the lid, it also cracked the walls and the tank is taking in dirt. We will monitor the situation and at some point in the next two years, we will need to replace it. TA Wilbanks said he also told us not to fill the voids because all we are doing is filling the tank. It is going into the sides. She actually fell into one of these voids up to her shin. We have a fence around it now. Franklin said he said we have capacity but should not fill the voids.
- We also learned when the well failed at the Fire Station, that there was never a permit pulled for the first one nor were any tests ever performed. The new well is permitted and will be tested quarterly for water quality. Of course this comes with an annual permit cost and quarterly water testing expenses.
- I will be on vacation from August 2 through the 6th. I realize I just had a vacation from May 25 through June 3, 2010 but my son invited me on a cruise with his family. Cindi will take minutes at the RTCM on August 2, 2010. The candidate qualifying handbooks will be prepared before I go and be available at next Council meeting and I can qualify the candidates when I return on the 9th.
- I asked for an insurance quote from FMIT for our employee health, vision and dental coverage. FMIT does not work with insurance brokers. They are non-profit. FMIT handles all of our other insurance coverage, property, liability, workers comp, auto, etc. Last year, I went through a very extensive comparison with the other insurance carrier that provides municipal coverage in order to ensure we had the best deal. The Town of Grant Valkaria uses them for their coverage. TA Wilbanks did not want me to pursue because we have a broker and also because we have fewer than 10 employees and they needed a health affidavit filled out on each person to be insured. She thought the questions were in violation of HIPPA and I have not gone forward. She wanted to get a legal opinion from the labor attorney and I asked her not to as the cost for the legal opinion would offset any savings we may realize. TA Wilbanks said FMIT did not want to deal with the broker because they are the broker and they want to get their commission. They make it sound like they don't deal with brokers because they do it themselves, but that is how they get their money and that is what they do. The form that they were asking to be filled out also included a question about life insurance if you were turned down or your fee was readjusted. She did send form to her broker who has 35 years in the insurance business and has not seen the level of the questions that were in there. Also, we don't have less than ten, as we have two new employees who will be on insurance as of August 1. Franklin said we will go from seven to nine when the two come off of probation. Also, the dental was never covered under the health. The dental was covered under the long term, short term and life insurance and we are getting those required. Last year she had to put in a 14% increase since that was a fair estimate for the increase and it was actually only an 8% increase. She does that because she puts budget out before she gets the numbers. Borton wants us to get quote with FLC and asked Atty Bohne about liability and the form. TA Wilbanks said there may be a liability issue regarding the questions asked. Franklin said she contacted the State Insurance Office and sent the form to them and they said they saw no issue with HIPPA over the questions. She wanted Franklin to continue with the request for quote with FLC. TA Wilbanks said she is Human Resources and she should be getting it, not the Finance Department. Borton asked Atty Bohne about the question about the health questions and HIPPA. Franklin said the dental is bundled with the long and short term disability

and life insurance with United Cordobia and they are not renewing in October. She will have memo on possible savings for the Budget Workshop. Vail wanted the costs compared. TA Wilbanks said she does get prices every year. Borton said for TA to lose the agent and save the money and get a quote from FLC. TA Wilbanks said she does not pay an agent. She said the FLC is the only company that doesn't deal with brokers because they are the broker and they are working for the commission. She has no problem getting quote with FMIT. But she wanted them to know if they go on FMIT insurance and they don't like it, or if you have problems with them and want to cancel, you must give them a one-year notice. Any other insurance company, if you have a problem, you can drop them and pick up another policy; you can't do that with FLC. So if you are in the 9th month and get bad service you are stuck until you give them one year notice. This is why people have not jumped on FLC insurance. They don't want cities our size. West Park tried to pull out. That is when it got exposed. They only had six employees. They could get no service. Those are the other issues. She goes with FLC in her cities, but not with the health insurance. Borton said have Franklin pursue quote with FLC. Vail agreed. Borton said she learned a lot when she went out for health insurance quotes. TA Wilbanks said this is a HR activity. TA Wilbanks said this isn't something that Finance should get into. Borton wants TA Wilbanks to get a quote then without the broker. Borton asked who Franklin talked to regarding the health affidavit. Franklin called the Insurance Commission in Tallahassee. Karl Bohne said he is not up on this. Borton asked Bonnie to call the Insurance Commission

- The Charter Review Committee voted 12-1 to put the question on the ballot regarding future Brevard County Charter changes that affect county wide issues must also be voted on by each municipality.
- Budget workshop is set for July 27, 2010.
- Qualifying dates are August 4 – 18, 2010 and packages will be available for pick up on August 2, 2010. I will be available to qualify candidates on August 8.

McKnight asked that Clerk let candidates know that there are pages that need to be completed and submitted before signatures can be gathered. Franklin acknowledged that she does emphasize this and that every year we improve the candidate package.

J. PUBLIC HEARINGS:

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

ORDINANCES: (1) and RESOLUTION (1)

Without objection, the Chair read by title only.

2. Budget Amendment Ordinance 2010-31 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.

Exhibit: Agenda Report No. 2

Recommendation: Action on Ord. No. 2010-31

Public Hearing opened:

None

Public Hearing closed.

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

Discussion: none.

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

Motion carried 4 to 0.

RESOLUTIONS: 1

Without objection, the Chair read by title only.

3. Land Inventory for State re: Affordable Housing Resolution 55-2010 A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY,

FLORIDA, PROVIDING FOR ADOPTION OF INVENTORY OR REAL PROPERTY OWNED THAT IS APPROPRIATE FOR AFFORDABLE HOUSING; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Action on Reso. No. 55-2010

Public Hearing opened:

None.

Public Hearing closed.

MOTION: Rivet / Vail to approve Reso 55-2010.

Discussion: none

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

Motion carried 4 to 0.

K. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

4. Recommendation from Planning & Zoning Board – Pain Clinics

Exhibit: Agenda Report No. 4

Recommendation: Request Action

MOTION: Vail / Rivet to direct staff to draft ordinance imposing a six-month moratorium on Business Tax Receipts for those businesses known as pain clinics. BTRs can be denied using the “pending ordinance doctrine”. **VOTE:** All Ayes.

Discussion: Wilbanks said urgent care also addresses pain management. The pill mill actually fills the prescription right there for cash. That is the difference. Consensus of Council to have a moratorium on this for next meeting. Does not have to be an emergency moratorium. Karl Bohne talked about Satellite Beach ordinance on regulations. He was of the opinion that you have to do this first (land use at P&Z). Titusville issued moratorium on BTRs. Moratorium must be adopted by ordinance. Rivet said his concern is that we don't deny legitimate pain management. Bohne said these pain clinics are cash only and they do the dispensing. Bohne said Titusville did it as an emergency. Discuss where and when. Then we don't get it in a big hurry and can see how the State rules work. Vail said there is the State legislation that goes into effect on October 1. Bohne said he would want to see Titusville's back up material. Franklin will request Titusville's back up material.

Franklin asked if without a moratorium, would be possible for such a clinic to apply for a BTR and receive it now? Dr. Leedy has an available office suite in her building. The request we received was from a law firm representing these type of dispensing physicians. Bohne said no and explained the “pending ordinance doctrine.”

5. Recommendation from Planning & Zoning Board – Land Use Changes

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Discussion: Pat Reilly, Vice-Chair of P&Z Board explained that the maps in the package are not the final draft. There is updated material on the land use. The other issue is the density. He asked Council to send it back to P&Z so they can prepare a better package. Then Council can look at it for next meeting.

MOTION: Rivet / McKnight to send this item back to P&Z to be updated. **VOTE:** All Ayes.

L. ACTIONS ITEMS:

ORDINANCE: First Reading – 0

RESOLUTIONS:

6. Resolution Regarding Hurricane Preparedness (Reso 56-2010)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; REGARDING FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PUBLIC ASSISTANCE FOR BUILDING SAFETY INSPECTIONS SUPPORTING EMERGENCY WORK IN THE EVENT OF A DECLARED DISASTER; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Borton / Vail to approve Res 56-2010 as presented.

Discussion: Franklin said the FMIT has done a tremendous amount of work to benefit their clients and save money overall. She will be bringing more resolutions to future meetings to improve our claims processes.

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

Motion carried 4 to 0.

7. **Approve Contract Renewal with Averett Warmus for Auditing Services (Reso 57-2010)** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF RENEWAL OF CONTRACT WITH AVERETT WARMUS DURKEE FOR AUDITING SERVICES FOR THE TOWN OF MALABAR FOR FY 10/11, 11/12 AND 12/13; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 7

Recommendation: Request Action

MOTION: Borton / Rivet to approve Res 57-2010 as presented.

Discussion: Franklin explained that Council can renew for one, two or three years. Averett Warmus has been doing a good job and Franklin recommends Council approve this renewal. Vail said the bid process was pretty well researched when it was done. Chair is not impressed with these particular auditors. Vail was impressed; they pointed out areas we had improved in and pointed out areas we need to work on. It was well presented with constructive criticism. Mayor said he asked for a restatement of the report so it would be easier to read. He never got it. They have to do the annual report in that format for the State requirements. They can do a simpler form that would be easier to understand. TA Wilbanks will check on that. Both she and Franklin thought such a report was sent to the Mayor. McKnight said the extra start-up cost to learn the system. That is his concern. TA Wilbanks said after six years you should go out for bid and change your auditors. You don't want them to get too comfortable with you.

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

Motion carried 4 to 0.

MISCELLANEOUS:

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

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Discussion: Chair wants this in two separate motions. He has comments on millage. He asked Franklin to explain item. Franklin explained the process of setting the tentative maximum millage for the next year and the date for the first public hearing. That information is sent to the tax office and they include it in the TRIM notice that is sent to every property owner in late August. In order to collect the same amount of ad valorem taxes as Malabar received last year, we must calculate the percentage necessary. The percent has increased because the property values have decreased. That percent is called the rollback rate. For the last three years, that percent has actually been a larger number because of the falling property values. We are then allowed to propose up to a ten percent increase. Understanding how conservative Council is, Franklin recommended going with 1.9800 as the tentative maximum millage. The full ten percent increase would be 2.0715. The percentage can be lowered during the budget workshop process. If it is set too low initially and advertised in the TRIM notice and then Council

determines we need to raise it, we must send individual notices to all property owners of this intent and it can be quite costly. Regarding the date, the first public hearing date can't be on our regular meeting date as that is Labor Day. It also can not be set on the same date the County Commission or the County School Board is holding their public hearings. Tuesday, September 7 does not conflict with their public hearing dates.

MOTION: Rivet / Borton to set September 7, 2010 as the first Public Hearing and the second reading on the regular meeting on September 20, 2010. **VOTE:** All Ayes.

Mayor said by going with the recommendation in the agenda report of 1.9800 he did the math and using the recommended millage of 1.9800 would mean a 17% tax increase to the property owners. Because of the save our home process, some home owners would pay more.

MOTION: Rivet / Borton to set the tentative maximum millage at 2.0715 %. ~~McKnight said he doesn't have a problem with this, nor did Vail.~~ **McKnight said he is not going to fly through this at this time.** Mayor said the increase is actually a 19% increase.

VOTE: All Ayes.

9. Request for Attorney General Opinion, Public Records

Exhibit: Agenda Report No. 9

Recommendation: Request Action

Speakers Card: Bud Ryan, he did not ask for the Attorney General Opinion but is glad for it. He referred to Section 2 in Administration regarding the Town Administrator. He is only asking for prior addresses to determine if she has complied with code. It is part of the Town's requirement to determine the TA address. He also said that TA Wilbanks is not a registered voter in Brevard. She must be in the other county where she is claiming homestead. He is available for the TBRB.

Chair said there is no cost to obtain the Attorney General Opinion. The cost is for Atty Bohne to draft the question. Bohne said the person we are talking about is the current Code Enforcement Officer and as such the address is exempt. He wants the former addresses. Bohne could find nothing that addresses the "addresses" What does address mean? As opposed to his earlier opinion. Do addresses mean current or former addresses? For sure, current address of current Code Enforcement is exempt from public records. The addresses of former law enforcement officers are exempt. It says that a former law enforcement. Subsection 2, is the custodian of the information and not the employer. It doesn't say the "employer" and the Town Administrator is currently employed by the Town. That person does not have to request that the address be exempt.

Bohne said assume we had a police dept. Every address, kids, wife would be exempt. Same statute applies to Code Enforcement officer. Former officer now working for Palm Bay would have to ask Malabar to exempt the address.

This is one of the few times he is not comfortable. Are the former addresses protected? For current Code Enforcement Officer, the current address is a given but is former addresses?

Bohne called AG office and had a lengthy discussion with them. He thought it would be wise to go forward with this. Rivet said the danger is greater to disclose it. You can reverse a non-disclosure, not the other way around.

No objections from Council to have Attorney submit the question to the Attorney General Office for an opinion.

10 Purchase Advertisement at Palm Bay Chamber

Exhibit: Agenda Report No. 10

Recommendation: Request Action

Borton would rather we don't spend this kind of money. Consensus of Council that we don't need a picture up there to advertise the area. The realtors take care of this. No interest in this.

M. DISCUSSION ITEMS:

11. Amending Ord 2008-16 to add referendum question – Changing Council Terms and Limits, Eliminating Odd year elections

Exhibit: Agenda Report No. 11

Recommendation: Discussion

Discussion about this. McKnight said that just because this is done in other cities we don't have to do it. He thought that if we had council members with a 4-year term they may be less connected to residents than with a two-year term. Borton doesn't think we should do this. McKnight said if he would change it he would propose the Mayor be in the odd year in order to encourage voter turn out. But he is not proposing any changes.

Mayor said his comment is that there was \$3500.00 that was budgeted and it could have been used if needed. Assuming there is no money budgeted. There will be no savings, because the \$3500.00 would be put somewhere else, not saved. McKnight said if it was not budgeted in the odd years, it would not be spent. Mayor said it would be spent on something else.

No interest from Council to do this.

Mayor said the questions that will be on the ballot were in the agenda package and his wife did not understand question 1. Franklin said there will be an article in the newsletter explaining the questions on the ballot. McKnight asked that the article be sent to Council via email for review before we put the article out. Mayor is asking about Section 2.09 of the Charter. The question does not explain what that is. The way the Mayor read the question, it would also apply to special elections, not just appointments. If a council member resigns and there is a special election and the new person would serve for 1.5 years then it would not count as a term. The intent was to have this only apply to appointments of less than one year. Rivet asked Attorney Bohne if he could rephrase the question in plain language. Bohne said yes, he will amend the ordinance and have it for the next meeting.

Karl said he can put in the clarification. Apply only for appointment dealing with less than one year. Does not apply to special elections.

12. Amending LDC Have Council Act as Board of Adjustment

Exhibit: Agenda Report No. 12

Recommendation: Discussion

Chair wanted to discuss this. Vail said he didn't think legislative body should not be making decisions on this. McKnight said in case of emergency let Council fill in. Amend it with an ordinance. McKnight does not want to replace the Board. Vail said this situation; something needs to be resolved in a timely manner. Only when there is a pressing issue and we can't get a quorum. Have Council appoint from amongst them. McKnight encouraged three persons. There could not be selected members of Council sit on the Board. The entire Council would have to sit as the BOA in those cases when you could not get a quorum from the Board. It would require a code change. The discussion is moot as we have had several people come forward and offer to sit on the Board. No action at this time.

Mayor has not been happy with the decisions' of the BOA. That is a separate discussion.

N. MAYOR AND COUNCIL REPORTS:

4) Borton – nothing

3) Vail – nothing

2) Rivet – Gerena property. Filling in a wetland and filling in a ditch, burying clearing debris. He sees the updates she sends him. They appear to be using delay tactics. They are creating flooding problem. They have ignored stop work orders. We have a violation, burying debris. TA said that is part of the building department. She has asked him for a memo from him and why he is not responsive regarding this one and the Foley property. If the Town Engineer has told them to do no more activity til new site plan is submitted. Brian West is stiff with his responses. She will contact Morris in morning.

1) McKnight – Stated it is not our responsibility to mow the area between road and property line on developed properties. He referred to Weber Woods subdivision. Lots of people use it for a park. We have no responsibility to it. Mayor said he called Jason Steele and within two weeks, it was cut. Franklin said that when we contacted him he certainly did not respond nor did the developer. Staff asked Mayor to contact Jason Steele and we will hope he has it mowed. McKnight asked if there is construction on north Marie where stakes are. No, that was staked for a visual for a meeting with the EELs on the drainage issues. County Commissioner Infantini also attended the meeting. Dave Abernathy visited a business and gave out citations and had his son with him. Did not call first. That was the complaint with Mr. Ball. Borton said the fire inspection is like the health department inspections; they are not announced. Calling ahead is not done. TA Wilbanks will check on the issue of doing the inspection with his son. You can hide the violation if they know you are coming.

5) Acquaviva – excused

6) Mayor – Spoke on feedback he gave regarding ~~the plan~~ the long range transportation plan. He suggested eliminating three projects – bus routes were one. He found two projects to be added – 4-laning of Malabar Road. And 6-laning of Babcock from Palm Bay Road to Malabar Road. His son is well versed in computers and offered to look into doing live streaming of video and audio of council meetings if there is interest. Not a problem and would not be too expensive. Cost would be in good camera and good mike. Would not cost anything. There are sites out there that will do it at no charge. His son will investigate it if there is interest. You could also store it. Vail said it is a great idea. McKnight said it is good idea if it is cheap. There is also the savings on CD instead of tapes. He would also like people to have lapel mikes; just a straight replacement. It would help on all the meetings. Also McKnight asked about the CD recorder. Franklin said she has not forgotten and still has the information from him. TA Wilbanks offered to order the system while Franklin is on vacation. Mayor asked McKnight to check on lapel mikes.

O. PUBLIC – speaker card required

He is not here to beat up us for not going with that ad. The chamber is a good organization and it does help a lot in Brevard County. They bring businesses and people into the county and facilitate. He would like the Town to become a paying member. The charity memberships will be full paying member of 350.00. It is a small fee. Mayor asked what the benefit is to the town. They try to bring businesses into the area. Gives job to our people.

Mayor said isn't that what EDC does. The chamber does more in south Brevard County. We would still do it even if we don't pay. The first Wednesday of the month they do a luncheon and he would like to invite all of Council. This coming month it will be the second Wednesday of the month.

P. ADJOURNMENT

There being no further business to discuss, **MOTION: Borton / Rivet to adjourn this meeting.**

VOTE: All Ayes. The meeting adjourned at 10:00 PM.

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

ATTEST BY:

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

Date Approved: 08/02/10