

MALABAR TOWN COUNCIL REGULAR MEETING

August 2, 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 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, excused

DEPUTY TOWN CLERK

CYNTHIA KELLEY

C. ADDITIONS/DELETIONS/CHANGES: None

D. PRESENTATION:

Amy Kneessy, District 3 Brevard County School Board, came forward and addressed Council. She apologized for missing the last meeting and thanked them for allowing her some time at this meeting to give an update on what has taken place with the budget for Brevard County schools. \$18 million in cuts were made; these cuts involve this coming school year and next year. Next year will have more cuts. They are looking at a 12% decrease; back to where they were in 2003 and 2004. With their first budget workshop, another \$700,000 had to be cut. They took almost \$1 million from the capital improvements and \$609,992 in operating costs. Voters should see a decrease in the school taxes on their tax bills this year. She went through the power point presentation that was used at the budget workshop to show where the cuts were made and how they came about. Mrs. Kneessy asked that the voters support the ¼ mill and support the class size that will be on the ballot in November. There was a short question/answer period with Council. Rivet asked how they could greatly improve the rigor of education; seems the students are not ready for college when they get there. Mrs. Kneessy stated that minimum standards for each student are expected; primary education is very important. Mayor stated the hardest part will be to get the voters to understand the ¼ mill.

E. PROCLAMATIONS: None

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 7/19/2010

Budget Workshop Meeting – 7/27/2010

Exhibit:

Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Acquaviva to approve the Consent Agenda as corrected. List corrections: Rivet reported under Mayor/Council reports for Mayor on page 10, #6, starting with "Spoke on feedback regarding the plan", I think you were talking about the long range transportation plan. It should be noted as such. Someone reading these minutes would not know what that is about. McKnight reported item number 8 on page 8, under motion of last paragraph. McKnight said he doesn't have a problem with this; nor did Vail. Should read McKnight is not going to fly through this at this time.

VOTE: All Ayes.

- G. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required**
Bud Ryan- 1985 Howell Lane; the road in question is Briar Creek Boulevard. This road runs through the EELs property and would dump into Brook Hollow. Would it be possible for Council to consider this to be a through road to access Brook Hollow for emergency purposes? It would save response time considerably for fire responses as well as life/death situations. Mayor Eschenberg stated this could be a discussion item for the near future; have the Fire Department give an estimate of what equipment they could get through there. With the budget hearing at Palm Bay, it sounds like they will no longer be first responders to Brook Hollow.

H. STAFF REPORTS:

ATTORNEY: Reported the letter of opinion has been filed with Attorney General as instructed from last RTCM. Mayor asked what the status of the Conflict Resolution is; Bohne reported that a pre-hearing is coming up.

ADMINISTRATOR:

- Commander Ambrose replaced Steve Salvo as South Precinct. Introduced himself, since 1977, very familiar with south of the county. Holds people accountable and also himself. Harry Bermudez gave a brief overview of what is happening out and around Malabar. Some fraud things that is a concern. With Sheriff's Office just over 7 years. Last time here, spoke of credit card fraud. Monitor your accounts; over 30 days, the banks frown on giving your funds back to you. Gave a brief overview of fraud scam.
- PW Manager Report: Tom Miliore reported on the work done on Rocky Point – show pictures of before and after.
- Showed pictures of new walk over at Malabar Community Park
- All trees have been trimmed at Rocky Point; new signs a Disc Golf Park. Water at park is not drinkable; this was tested by the County. Signs are posted in the bathrooms at the park. Requested by Mr. Korn that the signs posted in the bathrooms say "Don't drink the water"; would make it easier for the children to understand.

CLERK:

- Memos part of minutes
- Next Budget workshop is set for August 10, 2010.
- Qualifying dates are August 4 – 18, 2010 Franklin will be available to qualify candidates on August 9.
- TA reported that the adjusted budget pages will be to Council soon; was hoping to have out tonight but it looks like it will be Wednesday.

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

K. ACTIONS ITEMS:

ORDINANCE: First Reading – 2

- 2. Ordinance Regarding Clarifying Ballot Question (Ord 33-2010)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; AMENDING BALLOT QUESTION 1 IN ORDINANCE NUMBER 2008-16; PROVIDING FOR CONFLICTS AND A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

MOTION: Borton / Vail I to approve Ord 33-2010 as presented.

Discussion: Mayor stated he should pick someone from the audience and read the question to make sure they had understanding of the question but decided this was not the time to do so.

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

Motion carried 5 to 0.

3. Ordinance Regarding Moratorium on Pain Clinics (Ord 32-2010)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO PAIN CLINICS, PAIN MANAGEMENT CLINICS, AND CASH ONLY PHARMACIES, ENACTING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR THE OPERATION OF "PAIN CLINICS, PAIN MANAGEMENT CLINICS AND CASH ONLY PHARMACIES" IN THE TOWN OF MALABAR FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

MOTION: Rivet / Borton to approve Ord 32-2010 as presented.

Discussion: Bohne reported there was an article in the newspaper that Brevard County is pursuing the same; we need to go forward with the moratorium and opt in to their ordinance regarding pain management clinics. Acquaviva stated they are having an emergency meeting; keep an eye on the regulation. Bohne stated if Malabar opts out, we would need to do our own ordinance; we would save the legal ad fees by opting in when they adopted their ordinance.

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

Motion carried 5 to 0.

RESOLUTIONS:

4. Resolution Regarding Acquisition of Gradall (Reso 58-2010)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO THE ACQUISITION OF A 2010 GRADALL XL3100-3; AUTHORIZING THE TOWN ENTER INTO A MUNICIPAL LEASE AGREEMENT WITH LEASING 2, INC. TO PROVIDE THE FUNDS REQUIRED TO SECURE THIS ACQUISITION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Bud Ryan of 1985 Howell came forward and addressed Council. There is no question that the equipment needs to be replaced. It has 5,308 hours on it. He suggested to Council to have someone look into the possibility of a used Gradall. With the economy the way it is, we may be able to get one for a better savings. The John Deere tractor has over 6,000 hours on it; it will need to be replaced soon also. Mayor stated he had done some research; it's premature to spend the funds at this time. Have we ever had a quote to repair the hydraulics; he also likes Mr. Ryan's suggestion. He would like some quotes from other companies that make this piece of equipment to be able to compare. He believes we could do better. We ought to try to save money and do bids and hard negotiations. He stated that Rivet has experience with negotiations and maybe he could assist with this. The timing may be good to buy a new or used one. Rivet stated he is not opposed but it's not the time to do this. The budget is not set at this time. Mayor stated he possibly identified a \$50,000 downfall while looking at the budget. We could contract out some of the work until we know the best way to go. Vail is in agreement with Mayor. We don't want another piece of equipment like we have now. It's a very critical piece of equipment but it's our job to do the best we can. We could pay \$7,000/monthly to rent the machine. TA stated, if we purchase, we could save another \$5,000 in interest by making one payment a year. Mayor stated this needs to be researched more. Acquaviva questions the lease; after the fifth year, they will pick up the equipment and give us a new one? The lease to own is a higher payment. The question was asked what the hours were on the machine when it was purchased. Miliore stated there were over 1,000 miles on it but was not sure of the total

hours. TA asked Council to table this until the research could be done. Borton felt we need to do something so it's not too hard on the Public Works crew. If she could, she would re-do the purchase of the ladder truck for the Fire Department. TA stated that some of the equipment can't be manipulated down the narrow roads. Vail stated the equipment must be able to do the work. Rivet stated this should be tabled but he does not want to leave the discussion this way. Miliore stated it cost \$17,000 they hydraulic leak where it started; the interior of the cab will have to be replaced because it is filled with hydraulic fluid. It is a specific piece of equipment for this type of work; most companies don't make it. There are also restrictions on how far you can drive the equipment. After a certain amount of time, they tend to over-heat. Borton asked how long this piece of equipment has been used. Miliore stated it is 17 years old. Mayor stated to, for starters, go to the internet and look up Caterpillar and John Deere. McKnight stated he would like to see multiple options from several companies to be able to compare; it needs to be a competitive bid. It is the general consensus of Council to bring this back to the next meeting for discussion.

MOTION: Rivet / Vail to table this discussion to the next RTCM of August 16, 2010. **VOTE:** All Ayes.

5. Resolution Appointing Members to Board of Adjustment (Reso 59-2010)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPOINTMENT OF JOANNE M. KORN, DAVID SOWARDS, WILLIAM ARNAUCKAS AND JIM CLEVENGER TO SERVE ON THE BOARD OF ADJUSTMENT BOARD; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

MOTION: Borton / Vail to approve Reso 59-2010 as presented.

Discussion: Borton had a concern of Mrs. Korn being on this board while her husband is serving on another board. Leave the order to the Board. Bohne stated this would not be a conflict.

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

Motion carried 5 to 0.

MISCELLANEOUS:

6. Rental of Fire Station by GEOS Fire Training

Exhibit: Agenda Report No. 6

Recommendation: Discussion

Discussion: Mayor asked Chief to come forward and address Council on this. Chief advised Council the person making the request is his son Anthony Gianantonio, who is available to answer questions and make presentation. Gianantonio stated he would like to rent the upstairs training room at the Fire Department for training purposes. The classes would be for those who missed out on the training given earlier in the year. The rental fee would be \$65/week based on the amount of electric that would be consumed. Rivet asked Bohne if there would be any restrictions in renting to an outside entity. Bohne stated it would not; need to have a lease drawn up between the Town and Gianantonio with the terms and make sure that there is liability clause in lease for the room and any equipment that would be used during the training sessions. Mayor asked what equipment would be used; Gianantonio stated that we would use fuel, saws, light unit contingency for vehicle extrication trainings, he would use one of the three pieces of equipment. Acquaviva asked if these sessions would be open to the public; what about theft deterrents. Vail asked if, within the class training, will Malabar personnel be using the equipment. Gianantonio stated he would like to take the equipment portion of the agreement out and just rent the upstairs room. He will not do anything but the classroom work due to the liability. Acquaviva asked how long the course is. Gianantonio stated it would depend on the size of the class; if a small class, then not too long. A larger class would take more time. He would only be renting the training room at \$65/week to pay for the electricity. Mayor asked what

the benefit is to the Town; Gianantonio stated that the electric would be paid for, the Malabar fire fighters get a reduced rate for the class and it gives them the opportunity to better prepare and train for their careers. This is, more or less, for the outside entities at this time. The training would be Monday through Friday at least one week a month. McKnight stated he had a concern with the possibility of this being looked at as an impropriety for the son of the Fire Chief to rent out the training room. If it was the Chief's class, he would not have an issue. He would not be able to support it as it is being presented. Rivet stated he didn't think there was any impropriety. McKnight stated he said it could look like impropriety. Rivet doesn't see this as an issue. Acquaviva had an issue with the use of the equipment; the cost of a lease being drawn up. Gianantonio is withdrawing the offer of the equipment rental; no equipment will be used for the training classes.

MOTION: Rivet / Vail to approve request with an acceptable lease being drawn up.

Mayor asked Deputy Clerk to call the vote by roll:

1) Borton Nay; Vail, Aye; Rivet, Aye; McKnight, Nay; Acquaviva, Nay.

Motion fails 3 to 2.

L. DISCUSSION ITEMS:

7. Possible Purchase of Old School House

Exhibit: Agenda Report No. 7

Recommendation: Discussion

Discussion: James Noble, owner of old school house, came forward and addressed Council. He stated the property has been for sale for some time and would like to offer the Town the opportunity to purchase it. Mayor stated that the Town looked at this some time ago; there were issues with lead paint and asbestos. Noble stated that there is no asbestos in the building and the building has been re-painted. There are some cracks in the walls; the building is 87 years old. It is 98% renovated; no termites or leaks. The main structure is the focal point of the property. He has always felt this building should be a focal point for the Town; use it as a community center or Town Hall. He would like the Town to re-visit the possibility of purchasing the property. He would re-locate Brevard Hardwoods to a small venue. He has been using the shed for the most part. It is 2.4 acres for \$350,000; no realtor involved in the transaction. Mayor stated that Council needs to decide if we want to do some investigation for grants. Is there enough interest? Borton stated it would cost more to bring it up to code. Vail stated that whoever does the research needs to investigate the cost of bringing it to code. TA stated with grants, there is research done to see what is in the building and what it would cost to take care and get it to code. Mr. Noble stated there are no ground issues. The EELs came in after the Town and drug their feet and didn't want to pursue it. This was not recent; it was ten years ago. Mr. Noble felt this was a good time and wanted to give Council the opportunity to make the purchase.

MOTION: McKnight / Vail to have P&Z do research on the property. **VOTE:** All Ayes.

Motion carried 5 to 0.

8. Conflict Between Clerk/Treasurer and Administrator Job Responsibilities

Exhibit: Agenda Report No. 8

Recommendation: Discussion

Discussion: Mayor asked this to be placed on the agenda. While sitting at Council meetings, he has noticed some tension been TA and TC/T. Council needs to define the duties of each position; it has not been done. We have an ordinance for the TA; he received a job description from Town Hall a while ago for TC/T. Franklin advised Mayor that she had not seen this description; she is in the process of writing her job description. She said this is a good base to start with. Mayor stated the budget should be done by the TA with the TC/T providing a budget to TA. When it comes to the counting and recording of the

expenses, this should be the job of the TC/T. Does Council agree with what he is saying and have Franklin continue with the writing of the job description? He thought there was a conflict in the ordinance. Item #7 states that TA is to submit the finances; this should be taken out and let the Treasurer report on this and TA on budget. Acquaviva asked Bohne about this. We have not job description that has been accepted by Council. Bohne's first reaction is the ordinance takes precedence over the job description. It's going to have to be changed by an ordinance for the TA. Borton stated she doesn't feel this should be discussed without TC/T being here. McKnight stated he feels it's a conflict between the jobs and not the persons. TA asked Franklin why it was added to the agenda while she is not in attendance. To answer the mystery of the job description; TA needed this for when Kabana was out on short/long term disability. The insurance company requires a copy of the job description. This is where it came from. Bohne stated the Charter has the Clerk's position in it but it is not very expansive. Mayor, again, stated the budget and forecasting should be the responsibility of the TA. The previous two administrators didn't want to do the budget that is why the TC/T did it; then gave it to them to present to Council. Mayor read the two documents and saw conflicts. When Franklin returns, it will come before Council to compare and make sure conflicts are not there. The Charter is very basic for the Clerk. TA stated she only has a few job descriptions that have been put together as she has needed them; new hires and for insurance purposes. TA gave a brief overview of the melding of jobs due to the smallness of the staff for the Town.

M. MAYOR AND COUNCIL REPORTS:

1) Borton – nothing

2) Vail – nothing

5) Rivet – would like an update on the Garena and Foley properties. TA gave a brief report on these two properties. Kelley stated that Mr. Morris was here prior to the start of the meeting wanting to speak. Unfortunately, his family is here and he was not able to stay. McKnight stated that he is not happy and is now saying Channel 13 News is going to be invited out to his property over the issues he has with Mr. Foley. Mr. Morris stated that the workers are using the tree line as a place to relief themselves. Mr. Morris wants port-o-lets placed on the property for this as his grandchildren don't need to see this happening. TA stated that this is not the normal construction site. Rivet asked if there are any codes that are being violated with the construction happening. TA stated that no codes are in violation at this time and her hands are tied at this point regarding port-o-lets. The ditch does not have to be done until the structure is complete.

3) McKnight – the mowing of the right-of-ways needs to be brought back to Council. It was recommended that the Council person have a meeting with Mr. Sampson and the TA. TA stated that she is waiting for a response to an email sent to him about a meeting date. She is waiting to hear if the 6th is good.

4) Acquaviva – nothing

) Mayor – some times statements are made; Mayor would like the Chief to supply a maintenance/cost sheet for the ladder truck showing all funds spent since the Town purchased the truck. He would like to have it for the next Council meeting.

O. PUBLIC – speaker card required

P. ADJOURNMENT

There being no further business to discuss, **MOTION:** Borton / Rivet to adjourn this meeting.
VOTE: All Ayes. The meeting adjourned at 9:45 PM.

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

MINUTES BY:

Cynthia Kelley
Cynthia Kelley, Deputy Town Clerk

ATTEST BY:

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

10/16/10
Date Approved