

MALABAR TOWN COUNCIL REGULAR MEETING

October 04, 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 Council District 5 Marisa Acquaviva.

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

B. **ADDITIONS/DELETIONS/CHANGES:** remove PW report from agenda under TA.

C. **PRESENTATION:**

E. **PROCLAMATIONS:** Florida City Govt Week Oct 17 – 23, 2010

F. **CONSENT AGENDA:**

1. **Approval of Minutes**

Regular Town Council Meeting – 9/20/2010

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Borton / Rivet to approve the Consent Agenda as corrected. Rivet wanted his displeasure with the bank vote and his sarcastic remark about Canadian fires included and wants it verbatim.

VOTE: All Ayes.

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

I. **STAFF REPORTS:**

ATTORNEY: PB will be having its first mtg on Thursday and they will appoint the council member and then can finalize a date for the mediation.

ADMINISTRATOR:

- RFP for recapping LaCourt and will be replacing the two culverts. She asked Morris Smith to do the scope of work. We learned during the ARRA projects how important this is.
- Also got spraying of fields taken out of the mowing contract and deal with them directly. We will coordinate with the teams on the spraying of the fields. The mowing will be bid out.

CLERK:

- SCLC dinner hosted by GV and Mel at the Rialto
- Candidate forum will be on Oct 21st so that there is not a conflict with the Teen Council on the 19th. We may have Florida Today at the Teen Council to cover for Fla City Govt Week.

- Mfg of canopy wants us to send it to them to determine if it can be replaced. Shipping one way will cost \$250. And local repair person will charge \$250 to repair here. We are evaluating because the mfg may replace. We are only in year 5 of a ten year warranty and we have had to get it repaired twice before already.

J. PUBLIC HEARINGS:

Are legally advertised for 7:30 PM or as soon thereafter as possible. Ad ran on August 5, 2010.

ORDINANCES: (0)

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

L. ACTIONS ITEMS:

ORDINANCE: First Reading – 0

RESOLUTIONS: 1

2. Resolution Regarding Lease Option on Used Gradall (Reso 58-2010)

Chair Read by title only

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO THE ACQUISITION OF A 2002 XL3100-3 GRADALL; AUTHORIZING THE TOWN TO 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. 2

Recommendation: Request Action

MOTION: Borton / Vail to approve Reso 58-2010 for lease purchase of the 2002 Gradall.

Discussion: TA gave background of meeting with Bill Arnauckas, Brian Vail, Tom Miliore and reps from Great Southern Equipment. She said it was Great Southern's idea to explain the repairs. Tom had made a list of what he knew needed to be repaired and that came to almost 100K. The Great So rep said they could sell the rental unit for 100K and it was a 2002. And they would fix the things on the rental 2002 unit that Tom Miliore had pointed out needed fixing and they will give us 4 new tires for rear of machine. Summary of how we got to this point. Both Bill Arnauckas and Brian Vail thought this was the way to go. TA said this is not the 100K you gave her permission to spend and that is why it is before Council in this form.

Chair said it on the agenda in this fashion and asked what staff recommended. TA said staff recommended the lease/purchase of the 2002 unit. How many hours are on the 2002 machine? 4500 hours. What about the needed bucket. Vail said they can look for grapple and water bucket and we will look at used ones from other cities that have moved on to other equipment. The hydraulic system has been reworked on the 2002 model and is much better. The centerpin assembly has been reworked. The technology is much better. Tom Miliore said he has no problem working with it. McKnight said he had asked staff to provide the number of hours we have used the rental and the hours show we have used it for 98 hours in 29 days.

Miliore said a big savings will be in the fuel as the fuel consumption on the 2002 is much less, by about a third than the 1997 one. Rivet asked Tom Miliore and Tom Miliore likes it. Vail asked about the warranty. Mayor said we could pay cash for it and save all the interest money. Vail asked if it was a 1 or 3 year warranty? It was \$5500.00 for the last one. That was for a new one. If the engine fails. On the breakdown, there was one for the drive train or one for the drive train and hydraulics. Vail asked TA to get the warranty included in the deal. He said it should be no problem to get one. If you would pay cash for the machine. Rivet said they could pay half this year and the other half next year. You save 6K in interest and can pay for the warranty. Make sure we are covered for a good period of time.

Vail said if we lease, the warranty may be part of the agreement. Vail said he didn't know the full details but on most lease purchases they cover the warranty. Mayor asked Franklin if she got an amortization table on this proposal. Franklin said she had not but could get them once she gets the lengths. Mayor thought the lease proposed has probably a good 12K in interest. Vail was thinking about doing the purchase in two payments. We could pay 50K this year and balance in the next year. Save a lot of interest. Approve with conditions showing a payment of 50K and a long warranty. The five year warranty cost 6000 and if that is warranty. TA will work with Great Southern. If it has to come back. Nancy thanked Bill for his efforts in saving the Town money.

Amended MOTION approved by Borton / Vail to approve Reso 58-2010 for lease purchase of the 2002 Gradall with showing a reduced term and a long warranty.

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

Motion carried 5 to 0.

MISCELLANEOUS:

3. Council to Reconsider Donation of Right-of-Way to State (Borton)

Exhibit: Agenda Report No. 3

Recommendation: Request Action

MOTION: Borton / Vail to reconsider the motion to approve the transfer of property to FDOT.

Bohne said Constitution does not say rights-of-way have to be given. But he spoke with Mr. Clark with FDOT and read constitution to him. Mr. Clark said their policy states this. Bohne said in the spirit of cooperation he would encourage this. It is not the ROW for access to the area. He explained on the overheard the area that would be taken and used as part of the stormwater pond. We don't have anything out there developed.

Bohne said with new info Council may want to reconsider their softer approach and do we really need this ROW. Rivet has an issue with giving away anything. Borton said if we fight with them, we gain nothing. Franklin said Mr. Clark did offer to look at the traffic study data regarding the traffic light at Corey and Malabar Roads. We do work with them on many levels on many projects. Vail said we need to interact with them and he understands Rivets saying about empty promises but without working with them, we gain nothing. It is FDOT property on both sides of this ROW. They will use Eminent Domain and they will get it. Is it something we need? Acquaviva said land issues require 12-member jury. It is a tough decision. She referenced the unsafe intersection and if it is unsafe and they could help why not ask. Are we afraid of FDOT? Deal with them as equals for the benefit and the safety of the residents. Acquaviva asked how the traffic study is done that shows there is no need for a light at Corey. Chair stated they were getting off agenda.

Rivet said we have something they want and why should we give up anything. Borton said we should be working with other agencies instead of fighting with them. Rivet said we want a light at Corey Road and maybe they can't give us this but what else? Rivet said if we give up, it is guaranteed that we will get nothing. Borton said putting in the Interstate 95 improvements will help our constituents. Borton said the last TA caused us a lot of grief. Acquaviva asked attorney if they would negotiate it. Bohne said if they do a quick take they determine value and it may not have much value and it may be cheaper for them to just take it instead of discussing any alternatives. Acquaviva asked Attorney because they asked for it; would they be willing to negotiate in other areas? Bohne said we are using it for the stated purpose in the original dedication, for drainage. Negotiation is unlikely.

McKnight said they may not negotiate because it would set a precedent. Borton said the improvements for the residents are the improvements to I-95. Rivet said if we give them everything, we get nothing; we should negotiate. Borton said refusing destroys relationships. McKnight said by not giving them this then we are not being wise. If our refusals makes FDOT spend thousands of taxpayer dollars to fight this or take it to eminent domain then we are not serving our residents.

Attorney said TA Wilbanks had something to tell Council. TA Wilbanks stated that during the ARRA projects when the cost came in more than the allotment, the FDOT did not hesitate to support shifting other funds to pay for the \$2800.00 increase in the project costs.

Franklin showed on the overhead the email showing FDOT did invite the Mayor, Council and TA to the meetings where this could have been negotiated and no one from Malabar attended the meetings for the five years it was under discussion.

Borton called for the question.

VOTE: 4 Ayes; 1 Nay (Rivet)

Motion approved 4 to 1.

4. Allow Local Business Owners to Advertise on Town Website

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Rivet, point of order, need a motion in order to discuss. Chair said no, you need information before you can make the motion.

MOTION: Rivet / Borton to allow local businesses to advertise on our website.

TA introduced this by stating that this could help many local businesses by giving them an alternative location for getting the word out about their business. Cost to each business would be \$100.00. It would be hosted by E-City services, the company that does our website.

Rivet asked if there would be any restrictions on types of ads. Conditions could be Malabar resident or Malabar business. Attorney said that Rockledge restricted it to the businesses with the CRA.

Add a statement/disclaimer that Town is not held responsible. Do we censor the ads? When you click on them it would take you to their website. E-City said it would not be labor intensive to staff. Acquaviva said with the current economy this would be a way to get the word out. Vail said it is the hub for our website and would want to make sure nothing inappropriate could be accessed from our website. Rivet said if it is a risqué ad that would be legal. Wilbanks said she could get more info from E-City services for next meeting.

MOTION: Borton / Rivet to table to next meeting. **VOTE:** All Ayes

5. Form Committee to Consider Purchase of Logue Property

Exhibit: Agenda Report No. 5

Recommendation: Request Action

MOTION: Borton / Rivet to form a committee and appoint Mrs. Liz Ritter as Chair and allow her to recruit the rest of the committee.

Borton said Mrs. Ritter would be a good person to look into the possibility of this purchase. Acquaviva said the letter received was very thoughtful, timely and was very good. Let Liz be Chairwoman and let her get the other members. Rivet pointed out the email was from Canada.

VOTE: All Ayes.

M. DISCUSSION ITEMS:

6. Review of Article for Newsletter Regarding Referendum Questions

Exhibit: Agenda Report No. 6

Recommendation: Discussion

Does anyone have any objections to written explanations given for the residents? None.

N. MAYOR AND COUNCIL REPORTS:

1) Borton – She addressed the Chair and stated: Mr. Mayor, I have sat on this Council for almost six years. In the last four years, I have watched you be disrespectful and condescending to Council Members. And I've brought this up to you in the past. I don't think it's fair, that when you have a Council Member that wants to talk about something that you don't support, you cut them off. I know that it is your job as Chair to maintain order in the meeting, but I also think, it's only when it's convenient for you, and otherwise you cut discussion off. I think it's time that it was said to you, whether I come back here next term or I don't; it's not fair how you treat people and that's my opinion and I'm entitled to it. And I wanted to share that with you. Mayor replied he conducts the meeting according to Roberts Rules and when discussion gets away from the motion, it is the Chair's job to bring it back to the motion. Borton said she understands Roberts Rules and her point was that he does use or not use Roberts Rules when it's convenient to his position or when he wants to get a point across or something that he wants to push through as an agenda item, he lets speakers go ahead. She stated it is not fair. Borton stated if he watches his cam recording of this meeting he may get a different approach looking at it from the other side because it's very disheartening when you, as a Councilperson have an opinion, you don't let it be said. Mayor said if you catch him straying from the agenda item that we're talking about, call point of order right away and let him know that he is straying off that agenda item because he may accidentally do it too.

2) Vail – In light of the discussion on committees, he doesn't want the Billie property purchase to fall off the table. Add it for discussion for next meeting. Regarding the rumors about the light at the Valkaria Airport; it has blinders so it can only be seen from the air. It is a rotating beacon. Regarding paving, what about cold pave process? It is supposed to be cheaper. Council and TA discussed roads done in this process. Thought LaCourt was also cold pave. Franklin will check road file. Vail said west Hall was also cold pave. Vail said it is an option. Rivet said LaCourt needs repair and Eva needs to be paved. The cold patch is holding up really well.

3) Rivet – Ask about drainage and wetlands on Hunter. TA Wilbanks said Mrs. Gerena called today and asked to speak to Roger Cloutier, Building Official. They have to do the work required by DEP and that work will require use of equipment. They will do what they were told they have to do. They have not submitted a revised site plan to the town. There has been no action on the destruction of the wetlands. Rivet said they destroyed the wetlands. TA said you can get a specialist to verify that there were trees buried. TA Wilbanks will get price on this testing and bring back to Council.

4) McKnight – He thanked Bill Arnauckas for his help regarding the Gradall and then thanked McKnight wished more people were more involved. Many are complacent.

5) Acquaviva – She confirmed the date for the Candidate Forum is Oct 21st. Yes. She stated she had asked for a workshop a while ago to discuss the personnel issues and she doesn't want things to get pushed to the side and forgotten. Council was to give TA and Clerk their evaluations. She asked if everyone had done the reviews on TA and Clerk. Rivet said he had committed to doing his before the election. Only Borton and Acquaviva have given evaluations.

Verbatim per direction given at RTCM 10/18/10:

Acquaviva: ok, I just never heard anything back about it or if it was written. And I just have one thing to follow up on. When I, in the summer we did the little workshop or whatever, because I can't talk to you all, I can't talk to you all because of the sunshine and everything, I just want to make sure that everyone has reviewed the TA and the Town Clerk and I didn't know if that was happening like if anybody

Rivet: I still have the forms and I committed that I would get that done before the election so the clock is running.

Acquaviva: ok I just wanted to remind people that for not in vain and sometimes I think we move on to new things a lot of times; that was important. Just for your working relationship as well that something good would come out of that as well.

Rivet: I agree

Acquaviva: and Tom, I just, I'm real sad tonight as well. This is our only forum; it is a strong Council form of government, and I feel that you being Chairman I understand you follow the rules but I do, I will have to agree, I have this written down before you ever said anything, it's really sad to me that when the only way that I can speak with the discussions that we have are so important in decision making that, and I do have to agree, last week we did have an hour discussion on dirt. We can beat certain things and then when something important comes up like a question that was in the flow of conversation, and it does seem to be with women, I don't know if that's whatever, but I think being facilitator to this Council as a Chairman, yes we can get off tangents, I do understand that, but it was not a stupid question to ask and sometimes it's belittled that way. I hope it's not with that intent.

Mayor: let me suggest to you. There is a resolution; Debby can probably get it for you that defines Council procedures. Why don't you look at that and see if there's anything you want to change. I intend to follow the rules whatever they are.

Acquaviva: but you're the Chairman and you're leading the meeting. You are the Chairman of this meeting and you are following Robert's Rules; telling me to go back and read and look. I read and look and I do

Mayor: no no no,

Acquaviva: and I understand but what I'm saying is you're facilitating a Council in decisions and very important decision and when some questions are asked, it is rude and condescending at times. It really made me sad tonight that it comes down to that.

Mayor: you can't get off on a different subject when you have a motion on the table, imagine it tonight, you can't go off on a different subject; it's not allowed and that's why I'm suggesting

Acquaviva: that we call you when you do that

Mayor: absolutely, call me if I do it, if I get off the subject. But this resolution that I'm talking about, I'm suggesting you look at it and you may want to change it. Maybe you don't want to follow Robert's Rules of Order. You can certainly change it and not have to follow that. We follow them very loosely by the way.

Rivet: sometimes, yes; other times, very few.

Acquaviva: it's up for discussion; it's been a year that I've been on Council and sometimes I do feel that it comes off as a condescending way to shut up something you don't like. I don't mean to say that but that was a very good flow of conversation that Council does need to talk to each other. This is the only place we have to talk.

Mayor: and we are in that part of the meeting right now where you have that opportunity. That's what this part of the meeting is for.

Acquaviva: right; that's why I'm bringing it up.

Rivet: and I think the argument in this case was the traffic light discussion relevant to the motion that was on the table. I believe it was.

Acquaviva: yeah

Rivet: I don't think it was appropriate to cut off debate on that particular subject. I think it was relevant to the question before.

Mayor: any Council member can challenge the Chair at any time.

Borton: when it's convenient for you Tom, you don't cut it off. I'm sorry to say that. I have a lot of respect for you and I know Robert's Rule

Mayor: you can challenge the Chair at any time.

Borton: and I really don't think this can go any further because I'm going to say something that's not polite and I don't want to go to that level; I'm not that kind of person. But you just really don't see it and it's very sad because you think we're the only ones; you're the only one that does anything for this Town. We work for free; we come up here and do everything the same way you do. I just think you're rude, condescending and disrespectful to us. Whether it's to a woman or a man, I don't know. But I just think you are and when it's convenient for you, you let go on what you want to go on.

Vail: can I ask a question?

Mayor: yeah

Vail: we are sitting here and the consensus is we should have stayed on that topic. At that point in the meeting and Robert's Rules and you said we needn't discuss this we need to move on, at that time you said we can challenge the Chair

Mayor: yeah you can raise a point of order

Vail: raise a point of order

Mayor: you can take a vote

Vail: you can call Council's vote

Acquaviva: this is a strong Council form of government and I think sometimes, I know that you're chairing the meeting, but sometimes I feel that I'm looking to you for direction when actually we are having good discussion for our decision making on certain items; sometimes I feel it goes the way; you're chairing this meeting, you should facilitate this group of Council members to interact in such a way. Yeah we were talking about something, giving and getting, it was the flow of the conversation and it was an intelligent question that was like. And so those things that could come off that way and it seems to be that way sometimes and it gets frustrating.

Vail: we have to function as a group; whatever it takes to keep this group functioning than this is

Acquaviva: yeah very good

Vail: it's very good that you are bringing these feelings forward because otherwise you're going to sit here and stew on it and that's why I'm asking the questions the way I'm asking. How do we get around; and you just answered my question.

Rivet: it's the Chair's responsibility to make some judgment calls. If we disagree with those, it's our responsibility to stand up and say so.

Mayor: that's right

Vail: I'm going to vote to continue on this

Mayor: I'm not a dictator

Acquaviva: I do find that I defer to you as the Chairman and I want to show you that respect; sometimes the respect is not, you're leading this group and we're actually, the group should be leading this meeting more.

Rivet: it's okay to respectfully disagree.

Acquaviva: oh sure, but your having a discussion be cut off like that; it's happened before.

Rivet: Ok let's talk about that. So what it is, it's up to us when any one of us feels the discussion is being improperly limited; bring the point up, bring a point of order,

Acquaviva: I will. Well, I think because he's chairing the meeting and I'm not used to Robert's and he says we need to move on, we're off the subject and boom it's done. I guess,

Vail: I've been here six years and point of order; I might have heard it I can probably count on both hands that I've heard point of order.

Mayor: you can say point of order, I challenge the ruling of the Chair.

Rivet: he has to address it.

Acquaviva: what about him being Co-Chair; can he say no let's leave this

Mayor: no, you challenge the ruling of the Chair and let the 5 Council members decide whether it was a proper ruling or not.

Acquaviva: that's fair

Mayor: that's the way it's supposed to work

Acquaviva: not with anything that Nancy; I was really interested in that and I think with the next Council changing, I think we all should; this is our only forum to discuss that are very important. We weren't getting on tangent with telling jokes which we've done before. That was a very important question.

McKnight: I have to agree with one thing; I do believe we were getting off the subject because we were not discussing the exchange of the traffic; they were discussing how traffic light data was taken and that was straying away, that has nothing to do with

Acquaviva: we were talking about

Mayor: no point in arguing about what we were talking about cause everyone is going to have the opportunity to go back and look and see exactly what we were talking about this time.

Acquaviva: we were talking about working with FDOT

Borton: maybe that wasn't a perfect example of when you do cut people off. Maybe it's all blown, but I'm sorry, you do that and you do that a lot. Sometimes it makes us feel like idiots or maybe not. Just, I don't know, you play us off like we're idiots. I'm not an idiot and I don't like when you play us off like that; Robert's Rule or not, it's just the way you are sometimes and it's the only time I can tell you. And I

wanted to do it in open forum in case I don't come back. Don't keep doing it to people; it's not fair. Our time is free to.

6) Mayor – webstreaming – the audio was not very good. McKnight said he could understand it because he had heard it. Mayor said the website they are using is fliesforsale.com for the testing.

Regarding the traffic light at Corey that Rivet brought up. He has been opposed to it. He has done his own study. When he pulls out from Weber and he timed how long he had to wait. Just over two minutes. What bothers him is this. He is afraid if they put in a light at Corey and Malabar Road, it will mess up the timing of the traffic and he would not be able to get out within two minutes. If the Town ever wanted to put in a light then do traffic study. Acquaviva said she knows of many residents within Country Cove that have been victims of accidents at Corey and Malabar and it is a safety issue.

Teen council report. They voted that it was OK for homeless guys to have signs at US1, but did not want a homeless center across from fire dept. Regarding the Fire Chief's son that wanted to use the FD building for \$65 a week and they all said yes. Regarding allowing Mayor to throw out an unruly member at a council meeting – they didn't want Mayor to do it. Have someone else do it. Get a volunteer to act as Sgt of Arms. Voted down 3 to 2. Wait until they have a problem. Next issue will be baggy pants.

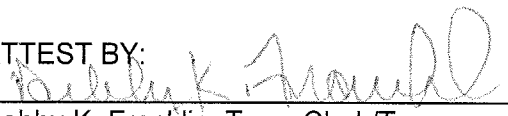
O. PUBLIC – speaker card required

P. ADJOURNMENT

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

VOTE: All Ayes. The meeting adjourned at 9:05 PM.

ATTEST BY:


Debby K. Franklin, Town Clerk/Treasurer

BY:


Mayor Thomas M. Eschenberg, Chair

Date Approved: 10/18/2010