

MALABAR TOWN COUNCIL REGULAR MEETING

November 1, 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 outgoing 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

TOWN ADMINISTRATOR:

MARISA ACQUAVIVA

TOWN ATTORNEY:

BONILYN WILBANKS

TOWN CLERK/TREASURER:

KARL BOHNE

DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: Clerk asked to add proclamation for Veterans Day

D. PRESENTATIONS: 3

1) Dist 3 Cty Com Trudi Infantini: request to work on a partnership with Brevard County on the old school house. It has come up for sale. It is her understanding that it abuts EEL property. You were supposed to get a learning center and you are in need of a community center. She would like some input and guidance. Are you all ok with that? She doesn't want to ask without interest of Council. Acquiviva said at the candidate forum it was mentioned that the EELs are defunct. Trudi said that they do have money. They are going to issue more bonds. They aren't going to be going out to purchase more land and they don't have staff to maintain the properties. County has the capital to purchase it but not the necessary funds to maintain it. Don't have funding to operate it. But we could form a partnership to help with the ongoing maintenance. McKnight said we don't have the capital to purchase it, but would love to restore it. Scouts were in here last month and would love to have it for a place to meet. Trudi said the Eagle scouts could do projects. And there are potential resources with grant money. It would be more of a one time thing. McKnight said they have a committee working on grants. Rivet said we don't have an open checkbook, but we have to be very careful with our resources. She gave ex of free car that still needs service and insurance. We can research the ongoing maintenance cost.

Mayor said they have an ongoing committee to review this. They will come up with a whole set of data for Council to consider. Council Chair suggested she stay in touch with the Committee Chair, Phil Crews. If we could work in conjunction with the EELs that would be good. Chair said we seem to have consensus.

Phil Crews had card, 2480 Johnston Avenue, he had spoken with all the County Commissioners about the potential of the old school house and got pretty good feedback from all of them and got good support. He had a meeting with EELs Mgr Mike Knight and learned that currently the EELs people have taken the learning center out of the plans for the Malabar Scrub Sanctuary. They only need enough space now to put their tractor. If they purchase the facility then we could not use it according to their bylaws. They can't share a facility. We will have full range of alternatives and methods to acquire the school house. They are strictly a fact finding committee. If that is Council direction to look at purchasing it, they can bring ideas on acquisition.

County Commissioner Trudi Infantini said she is confused, she thought the original plan was to share a building. The EELs are currently proposing to buy land from FPL. FPL actually went to the Property Appraiser's Office to ask that their value reduced. She thinks we should have 135K. She is not pleased with the response from Mike Knight.

Borton asked about the other committee. That was Liz Ritter for the Logue river property.

2) Mayor presented plaque to BW from IMCA recognizing her 30 years of public service. Mayor read the explanation; she is receiving her 30 year award. She did not go to conference where she would have received the award.

3) Mayor spoke and presented plaque to Brian Vail recognizing his six years of service and wishing him the best. Mayor recognized his dedication to the Town and said he is one of the best he has the pleasure to serve with. He said Vail doesn't get riled, always maintain good relations with everyone. Chair asked if Council wanted to add anything. Borton said they go back a few years. She said he has never been two-faced and never fabricated facts. You have been a fair guy and you will be missed. Acquaviva said it has been a pleasure to get to know him and found out they are neighbors and kids have been to each other houses. She has learned a lot. McKnight said he is a good guy; you are the same at home, business and up here. You will be missed and we have enjoyed working with him. Means that in the most sincere way and have added a lot to the council. Brian also volunteers at the fire dept. You don't get money for this. You are up here to keep Malabar the way it is. Vail said he started attending meetings and one time it was his time to serve. He did the best he could and keep everyone's interest in mind and to listen to all sides.

Chair recessed the meeting for cake and coffee for Brian Vail. Reconvened at 8pm

E. PROCLAMATIONS: Veterans Day November 11 – Mayor read

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 10/18/2010

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Vail to approve the Consent Agenda as corrected.

Acquaviva said the vote on Agenda Item 5 is wrong. She voted Aye. McKnight said he voted Nay. Clerk has corrected. **VOTE:** All Ayes.

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

Has card from Steve Morris, 2030 Weber Road. Thanks Town for taking care of Weber Wood. Has complaint about neighbor Don Foley. He had McKnight stop and look at it. The swale was supposed to sodded, seeded. His animals he was supposed to put a 1 foot berm and his animals try to get to his yard to eat the grass. Foley has a desert. If he is builder how is he required to follow the codes. He has a barn out there and he said it is 65-70 feet tall. There is a metal building on the other side of Foley's lot. That looks tremendous compared to what is at Foley's place.

Chair asked TA. Town Engineer said Foley has complied. The building is within our regulations. He put in a septic system and Mr. Morris has a concern. Every step of the way he has. There is a double fence there. The bull is allowed in that zoning. She will go over the areas of concern.

McKnight asked about how to get a barn before the house. Franklin explained the Ag exemption and with advice of BO to get that exemption and the barn is in association of the farming of the land

Mr. Morris said the well that is shown as irrigation is indeed his drinking water. TA said the records from the County show it as irrigation. Town Engineer requested Foley to move it an additional two feet. The septic has not been put in yet. Mr. Morris said there was a one inch line that went to the house. He dug up 360' and there is now a 2" line there. Chair said maintain contact with TA and continue. Mr. Morris said she has been nice but there needs to be more done. TA said Eng Morris Smith has told her

that he has taken time to meet with Mr. Morris. Does council want to pay him to respond directly to Mr. Morris? Council said that the County Health Dept needs to verify that the drinking water well is sufficiently away from Foley's septic and Brevard Cty will respond better to TA than to Mr. Morris.

Bohne said a non residential farm buildings are exempt from building code requirements. There is an office space above the barn. There is going to be a small office above the barn. No toilet facilities there. The workers use the yard. There is a port a let. TA has told them to call BCSO.

McKnight said the berm is inconsistent and a small effort was made. TA will get pictures taken. Mr. Morris is calling Eng several times a day. McKnight said ~~Mr. Morris has no drainage~~ Mr. Foley has no retention. McKnight said he will do what he wants. TA said Foley is pushing the envelope. Does the code allow an office in barn? Bohne said yes. Franklin explained code and discrepancies. They discussed Gentile and his "right of farm act" They got him on the frontage. Bohne gave extreme examples from down south and the raising of horses and the building of horse tracks and they were allowed. The right to farm act in fl is very powerful statute. He has a problem with animals not being taken care of properly. He has three acres. Mayor wants to know about building height. Bohne gut says it is protected. TA will find out

Get general discussion for home occupational lic and Ag exemptions.

H. STAFF REPORTS:

ATTORNEY:

- Mediation meeting set for November 22, 2010. Franklin asked where the meeting would take place. Attorney said he will tell me where and what time to meet.

ADMINISTRATOR:

- Matthews Lane – recent grading after multiple complaints. Couldn't grade due to large boulders. He met with town eng and they met on Friday. To properly do it by wetting it down and use the vibratory roller. Eng called today and said that it is in pretty good shape. Eng spoke to Mike Obrien and the road was 6 years old and two other built at same time. She will keep them told.

CLERK:

- Candidate Forum Oct 21 was great – moderator David Sinton from League of Women Voters did an excellent job. Hope there is interest to do this with each election
- Special mtg after election will certify the unofficial results. Clerk will be at Election Office in Viera and will contact candidates if they provide cell phone numbers. Otherwise she will do it via email.
- Auditor would like to extend offer again this year to review audit report and answer questions at a workshop before the meeting when it is presented. He has tentatively set that date for December 20, 2010. If there is Council consensus, I will set agenda for workshop. Consensus to have him offer the workshop. McKnight will not be here. Rivet is ok with coming a half hour early. Borton said it is a good idea. Workshop on 12.20 at 7PM

I. PUBLIC HEARINGS:

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

ORDINANCES: (0)

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

2. Recommendation from Park & Recreation Board – Soccer Club Trailer**Exhibit:** Agenda Report No. 2**Recommendation:** Request Action

MOTION: Vail / Borton to approve the Malabar Soccer Club to put their trailer at Malabar Community Park during soccer season and then remove it at end of season and have those exact dates added to the agreement.

Malabar Soccer Club would be responsible for the wind tie downs. Chair said they could write general agreement and hold harmless. Then just add in about removing it at end of season. McKnight not in favor of paying attorney for drafting agreement. Chair said TA could write agreement with hold harmless. CM Vail said he would provide a tie down for the trailer. Chair said a hitching post with a lock should be sufficient. McKnight said they have hitch locks. McKnight said if we have a storm, the town is going to be liable if the Town puts in anchors. The trailer will hold soccer team equipment. The goals stay on the field. Vail said the trailer could also be stored at member's house. The strapping and anchoring could be done but agreed with McKnight. TA said the issue may be the storing of the trailer in the PW yard. The PW yard is not a stagnant place. We had boy scouts there because we sponsored them. We are still storing their trailers. Vail said if the Malabar Soccer Club trailer is a problem it can stay at his house if that resolves the issue. **VOTE: All Ayes.** Paul Yolles, 2365 Corey Road. The understanding that there is a shed. Dick Korn said the property is the towns. The existing shed. Park Board didn't know it was there. They came to them asking if they could build a small building. He suggested they get a 14' or 16' trailer.

3. Recommendation from Park & Recreation Board – Malabar Soccer Club Season End Party at Malabar Community Park**Exhibit:** Agenda Report No. 3**Recommendation:** Request Action

Chair has a card on this.

Paul Yolles, the season end party. The fees went from \$60.00, with a \$40 deposit and \$5.00 elec and went to \$475. The largest fee was the port a lets. They are not prepared to pay that. Park Bd recommended they be grandfathered in and are a youth league. Borton is not sure what he is asking. Yolles said they want the same they paid last time. Chair said how long have they had these picnics and what do they use the electric for? The bounce houses. Yolles thinks Council understands In the pasd they have paid \$65.and they would like to pay 65 again. The electric was questioned. TA wanted Franklin to explain it. Franklin explained the past uses of the par and the corresponding electric bills. She gave the Pop Warners Special Activity permit with FPL bill and the last Malabar Soccer Club application and FPL bill. Staff has tried to collect the fees from users to cover the anticipated costs.

Council discussed the usage of the restrooms. A table was used for determination of port-a-lets needed. Yolles feels they are different that the Pop Warner group and should be given consideration since they pay \$350 a year for a lease. Vail said budgetarily this is what they planned on and maybe it should be used for this use and then increased. Council members discussed the FPL bill and the amount of electricity the bounce house blowers use. They think they are only 4 amps. They discussed cost of amps. Asked how long they are there. Yolles said three hours. Going off topic. Borton asked why we are spending money on attorney to write ordinances to cover special events and then not using them.

Mayor said he could not find anything to authorize the Town to charge for port a potties and electric. With rules and regulations. We can't just authorize. TA said we never documented where that came from. We were collecting it before she started and not. We don't have anything that said what. Mayor could only find the \$100.00 charge. Borton said she only wants the fee to be paid. Yolles said they would clean the bathrooms. Chair said he will let Yolles speak after Council to discuss it. The special event for Haitian Day and Council said they had to have parking and police. TA said the question never came up. Three hours use at 10.00 and 50.00 deposit for cleaning and the special event activity

100.00. Vail said we have apples and oranges in our ordinance. We have a past relationship and discovering our problems with the code are not his problem. After that we can come up with revised rules.

McKnight said he is ok with the charges the Mayor suggested. Vail said we should charge as they had budgeted. This needs to be resolved and we have to review and update the fees.

MOTION: Vail / --- to allow them to use it. Died for lack of second.

MOTION: Rivet / Vail to let Malabar Soccer club to use park for fee of \$100.00 and a refundable \$50.00 cleaning deposit. Amended to state Borton would pay for fee from her discretionary fund.

Acquaviva said we need to specify for a special event.

Paul Yolles, confirmed that it is 100.00 for this season but next season it could go up? Yes. Chair said if the Council increases the fees, he will be notified. Borton said it is not fair to charge him more than he was charge last time. Each group is treated fairly as well. That is for the future. Paul said they are a small athletic group with only 150 members. They have no intention of renting port-a-pots. They are expecting 300 people, same as last year.

Dick Korn, chairman of Park and Rec Board. He thanks Rivet for his suggestion. It is as a good. He wanted Council to consider this is a Malabar youth soccer group and not Pop Warner. Mr. Whitworth from Malabar Baptist is waiting to see how Council directs before they offer their facility. Korn said the Code allow for the fee to be waived by town Council. They do need to revisit this. Keep personal feelings out of it and with everyone's interest in mind. This group can be frustrating but they are serving our kids. Otherwise the kids could be out on the street doing other things. Borton is willing to pay for the 100.00 from her discretionary fund. TA said as a response to the parting comment. Please don't infer that town staff has positions on this; it is Council policy they are following. Staff is looking out for the Town and that is their job.

VOTE: All Ayes.

McKnight asked to bring this to next agenda for discussion. Use of park, special activity permit.

K. ACTIONS ITEMS:

ORDINANCE: First Reading – 0

RESOLUTIONS: 1

4. Budget Adjustment (Reso 68-2010) Mayor read by title only

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2010-2011; 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

MOTION: Borton / Vail to approve Reso 68-2010

ROLL CALL Vote: 1) Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye.

MISCELLANEOUS:

5. Boy Scout Camping at Malabar Community Park

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Mayor said he asked for this to be on the agenda so Council could set a standard, establishing a rule, something so that when our scouts want to camp they have to notify the TA on where and when and they don't have to continually come back to Council. Make it easy for them.

MOTION: Vail / Rivet for Council to allow Scout Troop 37 to use the Malabar Community Park or Sand Hill Trail Head for camping; conditioned on they fill out the form with where and when they plan to camp, with a minimum notice of 15 days, and the fee will be waived.

Discussion: Acquaviva asked if there were other groups that would be qualified. We are talking about "our" soccer group and scout troop. Vail said it should be if they notify. TA said she would like them to fill out the paperwork when they use the park or trailhead. She has learned that in the past they were camping and it was all verbal and there was no record. Borton said sometimes they do want a camp fire. Deal with fires on case by case basis. TA can put conditions into the agreement. **VOTE:** All Ayes

- 6. Billie Property 2715 Malabar Road**
Exhibit: Agenda Report No. 6
Recommendation: Request Action

Mayor said there was additional information at each seat. it is a lot of data and he got info today from Vicki Thomas. Is it worth keeping the buildings and moving them someplace? The range is 41 – 82K. If there is asbestos and you need to tear it down. Vail said the ground we are sitting on right now. If we ever plan on expanding this building, or if we build a new town hall and want to use this for something else. It is a great purchase and a great complement. Even though money is tight. This would make us conforming. Acquaviva said how big is it? Bill Stephenson made a sketch with a 10Ksf building and parking and stormwater. Mayor thought we don't need a new town hall. When our population grows and some council in the future may be thankful we looked to the future and planned ahead. You have to look 15 – 20 years into the future. Can't do anything until you inspect for hazardous materials. If you do demolition, then you have additional expenses to consider and their disposal fees.

MOTION: Vail / Borton to form a committee to investigate the purchase of the Billie property. The suggestion is to have Brian Vail appointed as Chair. Can't have a committee without a chair. **VOTE:** All Ayes

L. DISCUSSION ITEMS: none

M. MAYOR AND COUNCIL REPORTS:

- 1) Borton – Great working with Vail. Can't wait to get back to work. Wishes Steve luck.
 - 2) Vail – It has been a pleasure working with everyone. There is a lot of stuff that comes at them. Thinks they all do a good job. Good luck to everyone.
 - 3) Rivet – Any luck on taking core sample. TA explained that before it would decompose it would be many years. Instead the Engineer is proposing to put the onus on the owner by stating the issue in a letter and putting it in the property file. Then they would have to disclose it to new owner.
- Culvert under BeeKeeper Lane has collapsed. Also the ditches need to be cleaned south of Atz. TA said they had to do an emergency pipe collapse. When they did the milling they should have looked at pipe. It is unfortunate. She will get it in the FYI.
- 4) McKnight – ..pothole on Weber and Malabar Road. Thanks for fixing it. If we can't get the agenda out on time, then we should suspend the Council meeting. Getting it late does not give enough time to research the council packet. There is nothing on it that can't wait. Many times they have to contact businesses and residents. Acquaviva said she can read it on Sundays and ask staff if there are questions. Franklin said she is going to go to conference and it will be late again for next meeting.

Move to table items that they don't have enough time to review. Consensus not in favor of cancelling meeting if package delivery is late.

5) Acquaviva – says farewell and thanks Brian again.

6) Mayor – Since tomorrow is voting day. Teen Council said no to Amendment 4, yes to 5 and 6 and on 8 they said yes.

Mayor said regarding the candidate forum the three people attending got nailed with questions. Wayne did a good job. It was really good. He had an issue with two answers Rivet gave. As a Libitarian he did not answer as such. Mayor was referring to Yes or No questions on discharging firearms. Let him know that. Rivet said he is not a pure one.

N. PUBLIC – speaker card required

O. ADJOURNMENT

There being no further business to discuss, **MOTION:** Borton / Rivet to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 9:40 PM.

BY: Thomas M. Eschenberg

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin

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

Date Approved: 11/15/10