

MALABAR TOWN COUNCIL REGULAR MEETING
March 16, 2009 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, Mayor Eschenberg. The prayer and pledge were led by District 3 Steve Rivet.

B. ROLL CALL:

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

- C. ADDITIONS/DELETIONS/CHANGES:** Mayor/Chair reported #2 is deleted as it deals with land development code and must go to P&Z first. Addition of Presentation by Malabar Fire Department Asst Fire Dan Welton; Mayor asked that Item #6 be pulled and BWF does not object so he could speak to BWF about it first. Dezman wants to leave it on. Council will vote on it. Pull Item #10 as BCSO Commander Salvo wanted to participate and can't make this meeting. Item 6 needs vote:

- **MOTION:** Rivet / McKnight to pull item 6. **Vote:** Aye, 1 (McKnight); Nay (4).

Motion failed 4 to 1. Item 6 remains on agenda.

Council consensus to accept agenda as changed.

- D. PRESENTATIONS:** Malabar Fire Department Asst Fire Chief Dan Welton reported that on Feb 18, 2009 the MFD was called out for unconscious person on US1. Gentleman slumped over steering wheel. No pulse, not breathing. They started CPR and awaited Rescue 88 to arrive. The female Doctor at hospital stated the fast actions of the MFD personnel brought this man back to life. When you save someone's life this is a big deal. He and Chief Joe Gianantonio purchased the Life Saving Award ribbons for this presentation. He then called each member and presented the ribbon as Council and audience applauded. Jesse Austin (was Explorer at time), Fire Fighter Tom Mihalich, Fire Fighter Jon Luzzi, Driver/Op Mira Elmir, Explorer Jonathan Becker and Chief Gianantonio.

- E. PROCLAMATIONS: None**

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 03/02/09

Budget Workshop FY 08/09 - 03/11/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Borton to approve as corrected. List corrections: Dezman: pg 3 of RTCM minutes, 2nd para from bottom, "is" is missing. Pg 10, 5th line down, in Art 9 the in is in the margin. And Article 9 s/b IX. Budget WS min pg 2 her discretionary money s/b to go first to insulating the building and then to archiving. Insulation s/b first. Archiving only if staff research determines it is statutorily required. Mayor: RTCM minutes, pg 9, 6th line, referring to building permit fees, based on SF – the intent there was that in Malabar the fees are based on value. Do verbatim of that section. Budget WS minutes on page 1, he stated that we will have to take from reserves OR reduce expenses. No other changes.

Vote: All Ayes.

G. PUBLIC COMMENTS – General Items not related to agenda:

H. STAFF REPORTS:

ATTORNEY: Prior to last Council meeting which he could not attend he met with Palm Bay Attorney Stokes and he understands our position and agrees with it. Stokes wants to discuss with his City Council and he will call back by noon tomorrow. The meeting was very productive. The meeting was not with their outside counsel. Borton asked Bohne to call Council individually and let them know. Rivet asked if the case is dragged out, should we put the disputed amount into an escrow account? Bohne thought about that but they may have the right to turn off the water and we wouldn't want to do that to Malabar customers. He was strategizing that he could ask the Judge if it comes to that. Mayor asked if he was going to talk to the City Manager.

ADMINISTRATOR:

- She has not had her meeting with Palm Bay City Manager Lee Feldman until Attorney Bohne's discussion is complete.
- BCSO – representative is here if you have questions: BWF asked about crime arrest on Feb 18 at Malabar Community Park and she would like a copy of the report. She asked that BCSO notify her or copy her on criminal activities that occur within Malabar public lands. Borton asked about slowing speed on US1. BCSO can do the selective enforcement with the motorcycles as they are doing now along Malabar Road. They can increase their exposure on US1. Vail asked about their relationship with FDOT to reduce the speed along Malabar Road and US1 – BCSO working with FDOT and also with County Traffic Engineering to request traffic studies in order to modify the speed limits. Vail asked if BCSO Rep thought the speed should be reduced on Malabar Road. He stated it depended on the time of day – when it is night and there is limited lighting, reduced speed limits would be good. Malabar Road at Weber should be reduced. He will report back to Council. They discussed illegal parking at boat ramp in south part of County. Absent any other parking areas, they look at it at a \$15.00 parking ticket for the day. BCSO stated enforcement is complaint driven.
- Fire Dept Report – Asst Fire Chief Dan Welton reviewed the report. It is attached to minutes. B-299 and 399 are in need of expensive repairs and with fire season upon us, it is imperative to repair and get online. Z-tron will be giving volunteers a 5- mile radius. The company will be coming in soon to program the Relm radios so PW will have radio communication.
- Fire Explorers Report – Myra Elmir was senior advisor at recent Explorer trip for competitions held at Coral Springs. Their host was very helpful. Myra went over the PowerPoint pictures from their three day event showing the training facility and training equipment. Their training grounds are props the members built. The classrooms were filled with plaques from previous classes. The trip lasted three days and there were 15 organizations participating. There were break out sessions including rappelling down a side of a building and use of the bucket at height up to 100 feet. There was technical rescue, used to extricate a victim from a vehicle. There were plenty of trainers and advisors. 3rd day was competition day. The combat challenge was impressive. They all learned a great deal and it was good practice for the next competition.
- BWF had wiring in Town Hall inspected and Electrician found open ground and many loose connections. They corrected the open ground and tightened up everything.
- McKnight asked about issues between the Park Board Chair and Town Administrator. Clerk will email draft Park Procedure to Pat Dezman and rest of Council, and to Park Board as draft for Wednesday meeting to ask them to comment. Dezman said there will be no bullying of staff. The Mayor doesn't think there has been. Rivet said he has heard complaints from several other people about the member.

CLERK: Referenced her memo with the FLC Legislative Alert and reminded Council that the Budget workshop on Wednesday, March 18th will be at 7PM.

I. PUBLIC HEARINGS: Legally advertised on Florida Today on November 27, 2008
ORDINANCES: (0)

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

K. ACTIONS ITEMS:

ORDINANCES: First Reading – 3-2

This ordinance deals with land use and must first go to P&Z (March 25, 2009)

2. Amending Article VIII Regarding Culvert Endwalls (Ord. No. 2009-21)

3. Adoption of the New Building Code (Ord. No. 2009-22)

Without objection, Mayor read by title only

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Action on Ord. No. 2009-22

MOTION: Vail / Rivet to approve Ord. No. 2009-22 .

Discussion:

Roll Call Vote: Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Aye; Dezman, Aye.

Motion carried 5 to 0.

4. Amendment of Advertising Procedures for Request for Proposals (Ord. No. 2009-23)

Without objection, Mayor read by title only

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE V OF THE MALABAR CODE RELATING TO PURCHASING; PROVIDING FOR ADVERTISEMENT REDUCTION FOR SOLICITATION OF BIDS; PROVIDING FOR AN ALTERNATIVE METHOD OF ADVERTISING FOR COMPETITIVE BIDS; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Action on Ord. No. 2009-23

MOTION: Vail / Borton to approve Ord. No. 2009-23 as changed to require the posting in both paper and DemandStar.

Discussion: Mayor has questions: Since this is written as newspaper of general circulation - Is Hometown News a general circulation paper? Attorney said the Hometown News would not qualify because it may not be available in Titusville. It is his opinion that we should use the Florida Today when running legally required ads. BWF stated that Hometown News is documenting its subscribership and asked if that would make a difference. Attorney Bohne said the subscribership would have to be Countywide.

The 2nd whereas refers to DemandStar as an alternative way to advertise. Much discussion on DemandStar. Staff wanted to ensure Council that they would still be

making every effort to advertise, but not make it a requirement. The intent is to add additional method. Mayor reads it as an either or. Many cities use DemandStar as the sole method of advertising bids. There is no cost to the town. Subscribers pay for this. Dezman wanted to start with the reduction of advertising to one time and add the online advertising. Over time, we could then remove the requirement for paper advertising. Attorney Bohne stated there is no statutory requirement to advertise bids in the paper – it was a Malabar requirement.

Rivet stated if DemandStar is the 21st century method of advertising for bids why advertise in the paper at all? Printed newspapers are being reduced. Dezman said not all people have computers. Vail said he wanted to do both. Mayor questioned if the bid doesn't get on DemandStar, are those bids void? It is reliable way to advertise. It opens up your competitiveness. You are sure you are getting the best price. McKnight agreed with Rivet – if it is free. No newspaper. There is no legal requirement to advertise for bids in the paper. The changes can be made before the second reading. Dezman said we will build confidence by progressing slowly.

Roll Call Vote: Vail, Aye; Rivet, No; McKnight, No; Dezman, Aye; Borton, No.

Motion failed 3 to 2.

MOTION: Dezman / Rivet to approve Ord. No. 2009-23 using DemandStar only or similar online method of no cost advertising.

Roll Call Vote: Rivet, Aye; McKnight, Aye; Dezman, Aye; Borton, Aye; Vail, Nay.

Motion approved 4 to 1

RESOLUTIONS:

5. **Award of Bid for RFQ - Foundation Park Blvd. Engineering Services (Reso. No. 03-2009)** AN RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM _____ TO CONDUCT THE FEASIBILITY STUDY OF FOUNDATION PARK BLVD EAST; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Action on Reso. No. 03-2009

MOTION: Rivet / Borton to select low bid of Calvin Giordano. Discussion: Borton said Calvin-Giordano also have added extra costs. McKnight did not see the evaluation for wetlands. They said they would do a summary. He is concerned about the extra fees. McKnight also thought the bid was cost plus. Get a firm fixed price. Borton asked if we can ask a bidder in audience if they provided a firm fixed price. No. Let BWF notify all bidders and ask if they provided a firm fixed price on their bid and if it includes wetland evaluation.

MOTION: Rivet / Dezman to table for a firm fixed price for feasibility study.

Discussion.

Roll Call Vote: McKnight, Nay; Dezman, Aye; Borton, Aye; Vail, Aye; Rivet, Aye.

Motion carried 4 to 1.

MISCELLANEOUS:

6. **Appoint Administrator to TPO/TAC**

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Borton / Dezman to appoint Town Administrator BWF as Malabar representative to Technical Advisory Committee.

Discussion: Franklin stated that this was put on by her. There is information that can be brought back and reported to Council by the Town Administrator. It is helpful to have someone in the discussions that is supporting projects within our area. The stimulus projects currently being proposed were required to be either on a federal aid road or on the TPO plan. The only project we have on TPO list is the widening of Malabar Road. The feasibility study for the widening was accomplished through the good work of Frank Hickson, a previous Malabar Councilperson. Dezman wanted the wording for the Agenda Report for this item changed to show it was the previous Clerk that decided to ask Mayor to attend meetings. It was not in the Clerk's authority to make such a decision. Franklin said it was done as a cost saving so we would not be paying the Interim Administrator's hourly rate. Prior to that time, the Town Administrator attended these meetings. Mayor said it was his turn to speak. He is surprised that this was on agenda and we didn't have a meeting on it before placement. Franklin said she did send agenda to him on Friday and got no response from him. Mayor as Chair reviews and set agenda with Clerk. Eschenberg said previous Administrator made no report to Council on these meetings. Eschenberg got the feasibility study done by talking to Frank Hickson at a Civ-Mil meeting. The stimulus packet information went out from TPO Bob Camm to him and to BWF. She was copied on all agenda information. There is discussion at these meetings. The TAC is an advisory committee and they have one meeting once a year where they vote on projects. Mayor said the background history in agenda report was incorrect. BWF referred Council to second page of agenda report - the TAC committee members are not elected officials. Mayor wants everyone to understand he has no problem with BWF being the representative. Mayor didn't want all of this to come out but you forced him to bring it out. Borton said it is good to not have an elected official in this position. Mayor said it really surprised him. Dezman asked if the Clerk sent agenda to Mayor ahead of time. Yes. McKnight said it is should have been discussed beforehand. The Mayor, as Chair has authority to remove items from agenda; he could also have spoken to BWF about it. McKnight said there is no issue – they can both attend. Dezman said when you put the "Clerk" in agenda report, you need to name the clerk. Call for the question. Mayor recommends Council approve the motion. He is fine with the appointment. Dezman asked for vote call vote.

Roll Call Vote: McKnight, Nay; Dezman, Aye; Borton, Aye; Vail, Aye; Rivet, Aye.
Motion carried 4 to 1.

MOTION: Vail / Dezman to name Mayor as alternate to TAC. Mayor declines. Vail withdraws motion.

7. Franchise Agreement with Waste Management

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Discussion: Mayor said it is a waste of money to go out for bids. G-V went out for bids and they got socked by WM. If we do nothing it automatically rolls over. He thinks we would be wasting our money going out. Vail asked what harm would be done by getting information on costs from other vendors. Franklin stated that the franchise agreement was for a period of ten (10) years and will renew in August, 2009. If we intend to renew or go out for bid is council decision. Malabar is obligated to provide three month notification to WM. Staff is looking for direction. There are companies out there that are willing to bid to provide services to Malabar.

MOTION: Borton / Dezman to allow franchise agreement to renew with Waste Management.

Discussion: Rivet are we going to get a better deal for the residents? Vail said if it costs nothing to advertise – asked Attorney Bohne if we give WM notice that we are going out to bids before contract expires do we terminate the contract?

Speaker's card: Charles McClelland, 2050 Linrose Lane, when he served on Council WM asked for a rate increase and an additional fuel increase. Council approved the annual increase but not the additional increase because Council wanted their performance to improve. In his opinion, the performance still has not improved. There are piles of yard trash all over town.

Attorney Bohne said if we opt to go out for bids we would be terminating our agreement. Attorney suggested that it would be in excess of what we would be paying if renewing the current contract. G-V did go out to bid and they selected WM and their residents are paying a lot more than Malabar is paying. Rivet says he has not had a missed pickup. Borton says her residential bill is very low – amounts to 13.00 a month for trash, recycle and yard waste pick up. Attorney Bohne asked Clerk to review contract for penalty provision if they do not comply with contract. G-V has a penalty provision. We will look at it. BWF said that after Council voted to give WM the CPI increase but not the additional fuel rate increase, the number of complaint calls was reduced greatly. She has three people she sends out emails to when she needs service. Some of the piles put out by residents require a special pick up. She notifies residents and they have cooperated. Attorney said we could start those wheels in motion. Mayor asked if the complaints are verified. Yes, BWF drives out and checks them. Rivet said a phone call from him as a private citizen usually takes care of it. BWF also said Carl Beatty has been helping by calling in the addresses where large piles need to be picked up so they can mow. Dezman said she has seen an improvement since WM George Geletko was here. Vail said he cut down tree and will let us know how long it takes to pick up. Mayor said in 1999, when contract was signed residential service was only billed at 10something a month. If Borton is only now paying 13.something for residential service, then they haven't gotten much of an increase in the last ten years.

Vote: All Ayes.

8. Approval of Cooperation Agreement with EELs.

Exhibit: Agenda Report No. 8

Recommendation: Request Action

MOTION: Vail / Dezman to remove from table. **Vote:** All Ayes. BWF did wording change on the typo. Council had no specific questions, just wanted Attorney Bohne here to provide guidance. Bohne explained that he reviewed and revised the contract the EELs representative had sent. We are showing intent to work together for mutual benefit. BWF said she met with Brevard County Commissioner Infantini on March 13, 2009 and went over the property under EELs management and the overall project. Infantini supports an educational center in south Brevard. Mayor asked if BWF explained to Infantini the 15 acres of disturbed land that we wanted for a town hall site. McKnight said that the meeting he and BWF attended with Environmentally Endangered Lands Selection and Management Committee (EEL SMC) made it clear that there will be no land traded. The cooperative agreement is to make a gesture and we have nothing to lose. If we get in on ground level work on projects together for mutual benefit. He also suggested we could contact Coastal Jewel before the sale and ask if they want to dedicate a portion for town hall site. If the land can't be dedicated to Town after the EEL purchase, we need to ask for it beforehand. He referenced the proposed purchase on Malabar Road that included areas we needed for ROW on Glatter Road and Malabar Road.

BWF stated Infantini was surprised to learn that the Coastal Jewel property was being looked at by EELs due to lack of funds. Infantini is very supportive of the Town and she

can speak to the purchasing and money issues. She supports the educational facility not a maintenance building.

Discussion: McKnight will attend next meeting BWF has with Infantini. Mayor wants history on 15-acres given to Brevard County Commissioner Infantini. Franklin said we are trying to improve relations with the EELs and recently had a very productive meeting with Mike Knight and Don Lusk.

MOTION: Rivet / Borton to approve agreement with removal of wording "adjacent town park site."

Vote: All Ayes.

9. Fee Waiver for Malabar Mini Storage.

Exhibit: Agenda Report No. 9

Recommendation: Request Action

MOTION: Rivet / Dezman to reimburse.

Discussion: McKnight said we can offer a reduction but to waive fees sets a precedent. McKnight said he has problem with wording. It gives the impression that favors can be asked. We should have transparency for residents. Rivet withdraws original motion. Dezman said the Malabar Mini-Storage facility has been great help to the Fire Department during and after the fires in May 2008.

Carl Beatty, he had conversations with owner Kelly Vickers and they want us to move the stuff into smaller units. They have more need for the larger units.

Dezman directs BWF to work with Mr. Marks. The units and space were given during the fires. McKnight said it was a helpful deed during the fires, but we should either pay the monthly rental if we still need them or get out of there. Vail said the business owners offered the Malabar Fire Department the space. Attorney said Council can reimburse. Suggested the Malabar Mini-Storage facility invoice the Town for \$55.00 and that we pay it. Dezman wants it brought back to Council after BWF gets info from Marks.

MOTION: Dezman / Vail to table. **Vote:** All Ayes.

L. DISCUSSION ITEMS:

~~10. BCSO Office Space Allocation~~

M. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

) Vail – nothing

) Borton – nothing

1) Dezman – attended the fund raiser for Posey at Yellow Dog. It was outstanding. Hats off to Stuart and Nancy. She is working with BWF on program to work with her constituents and meet with them after the budget reduction meetings. She will do this to keep them informed. She is setting that up for the end of the month. BWF said she will help other Council members if they are interested. Rivet said we could get more citizen buy in. BWF said Alachua County started out with their Boards the projects the Council never would have cut, the Boards were willing to touch.

3) Rivet – Is Country Cove bridge fixed? No, she is sending out RFQs it needs to be done by an outside. She needs to find out if we have to remove the material we put in or can they compact it and warranty the work. Dezman wants May 1 to be the finish date.

BWF needs to get info from Bill Stephenson who is out of the country now. Rivet asked if there an updated schedule for roads? BWF said the Oakridge and Eva required millings. She needs to get more millings.

2) McKnight – Asked about posting agenda at Post Office. Clerk will check.

4) Mayor – Referenced the printout from the county on tax rates.

N. PUBLIC COMMENTS: General Items - none

O. ADJOURNMENT

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

VOTE: All Ayes. The meeting adjourned at 10:15 PM.

BY: Thomas M. Eschenberg

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin

Debby K. Franklin

Town Clerk/Treasurer

Date Approved: 04/06/09