

MALABAR TOWN COUNCIL REGULAR MEETING
April 6, 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 Thomas Eschenberg. The prayer and pledge were led by Council Member Nancy Borton.

B. ROLL CALL:

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

C. ADDITIONS/DELETIONS/CHANGES: Mayor wants to pull two of his items - #11 and 14 and put back on when Council Member McKnight is here. BWF will pull #12 for same reason.

D. PRESENTATIONS: LED Lighting – Anne Goldberg - shows light sample and it is the greenest light you can find. Made with 90% alum and are 100% recyclable. Mercury is in fluorescents. She knows Malabar. This light is like daylight. You control them with a central computer. You can program them. Fewer shadows – Can be adjusted for color. Solid state, turn it on and off 100 times and it will not shorten the life of the bulb. When they do a retrofit – they will do an inventory of what we have and replace what we have with smaller number of. Illumination is engineered to standards and will reduce the number of light fixtures. It will be designed with the right standards. Phenomenal on indoor and outdoor applications. Will not brighten the night sky. They are highly directional. Goes exactly where you want it. The lifecycle of the lamp. Won't change a light for almost 12 years. If you run them 24/7 they will last 6 years. It will dim down to as it goes out at end of life cycle. Energy saving is from 90% to 50% depending on what you are using. Or 70% over older fluorescents. Also getting rid of the mercury in the existing lights. They don't attract bugs. Lights don't get hot. Not over 77 degrees. Take out lights that are hotter the AC doesn't have to work so hard. The program to install. Energy Smart program allows the complete retrofit and they do 100% of the installation, audit and materials. We agree to pay Energy Smart for a period of 5 years. Once installation is in, we would pay less than what the amount of the savings. From day 1 of retrofit we will have positive cash flow. They are approved vendors in many counties. Where you burn the lights the most you will see the most savings. Vail asked how the savings is calculated. They will compare the current consumption to the proposed consumption. They do not include the maintenance cost savings. BWF asked how we can budget for this. They create the lighting plan with a certain number of watts. 450 watts and they are replacing 1500 watts that is the savings and that is the basis for the savings. Mayor said the hours the lights are on are important to know. He got the brochure and the pictures showing the sodium lights compared to the LED. You can program the lights to blink if there is motion. Daylight sensors to adjust for morning light. Mayor asked about changing the street lights – FPL owns them. She mentioned park uses. Rivet asked what the power savings ratio compared to fluorescent 60% and LED are 80-90%. They come in different applications. Where are replacement purchased? As of 2014 fluorescent lights will not be available in US. EPA has targeted mercury as a pollutant. This is an opportunity. For FD when they do an audit, they can build in a percentage for storage to replace any lights that may go out. Bob Rowan asked how to replace if it is vandalized. Mayor asked if other cities are interested. W. Melb and Cocoa Beach are also interested. Chair will put on next agenda to see if TC is interested. Anne said if we got the inventory information on what we use,

she could have a price on what our savings would be. Any proposal they would do is not going to commit them. It would be solid to talk about.

- E. **PROCLAMATIONS:** National Crime Victim's Week April 26-May 2, 2009. Mayor read proclamation. Franklin stated the TA will present the proclamation at the luncheon on the 21st.

F. **CONSENT AGENDA:**

1. **Approval of Minutes**

Regular Town Council Meeting – 3/16/09

Budget Workshop FY 08/09 - 03/18/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Borton to approve as corrected:

Rivet referenced in the RTCM of 3/16/09, section H. Administrator Report, last bullet: he had made comments that he had heard the same comments regarding park member. Clerk will listen to tape and add comment to minutes. Mayor - on workshop minutes of 3/18/09, pg 4, regarding adding notes to minutes – keep the notes as separate – do not add to minutes or delete from minutes. Dezman asked Franklin to do memos on page 2 and 4 of the minutes. Franklin stated it was simply used to highlight a finding or answer to something.

Vote: All Ayes

- G. **PUBLIC COMMENTS:** General Items not related to agenda items per Reso. No. 13-2008

H. **STAFF REPORTS:**

ATTORNEY: He has not spoken to Atty Stokes of Palm Bay – Stokes is trying to speak with Cloud first. Lack of communication between the two. The resolution lies between these two. BWF is not to go forward with meeting with City Manager until the attorneys speak.

ADMINISTRATOR:

- Went to TAC meeting and went over some things that were being considered by legislature regarding Growth Management. The term *smart cap* has replaced the tax payer bill of rights cap. The seat belt law is going forward and we will be going forward and we may see more money from this. The Altman bill about putting camera up, do we want to consider the light at US1 and Malabar. No points on license because of the challenges they see. If it passes, and we have ordinance in place, we can go forward. Regarding the stimulus projects, the March 3, was signing day on the bill and there was discussion on whether it is 120 days or 150 days to get started. The kick-off will come soon. The County has offered to do the handling of these projects for all the cities. We can pay 5% on each project and let them handle the projects. BWF will become lap certified in order to handle our own projects.
- We got a proposal for a new building to house the water pump and generator for \$5,800.00 – local builder, reduced cost, will use donated block on hand at Fire dept – Dezman supports using Clevenger. Put on 4/20/09 agenda for approval
- Contractor opened the areas around the Country Cove bridges and still found carpenter ants. He will have it completely redone and compacted, tested and corrected.
- BCSO Commander Salvo has talked to all the deputies and the room is under utilized and we can use the space and still allow them to put a fax and printer in there.
- Chief Joe Gianantonio was out at training last week and Assistant Chief Dan Welton is out until April 30, 2009.

CLERK:

- SCLC Dinner at Radisson at the Port 4/13/09 7:00P.M. – tell me tonight as reservations will be called in by Wednesday. No more calling individual members.

- BOCC approved on 3/5/09 a two year moratorium on Transportation Impact Fees on Commercial and Residential building.
- Spring fest was good. Banners in front of park need to come down with all the wind. Dezman wanted them down tonight. Beatty will take down this night.

I. **PUBLIC HEARINGS:** Legally advertised in Florida Today newspaper per Florida Statute 166.041 on March 20, 2009

ORDINANCES: (2)

2. **Adoption of Evaluation and Appraisal Amendments to Comprehensive Plan (Ord. No. 2008-18)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA AMENDING THE TOWN'S COMPREHENSIVE PLAN BY ADOPTING THE EVALUATION AND APPRAISAL REPORT (EAR) BASED COMPREHENSIVE PLAN AMENDMENTS; AND PROVIDING FOR SEVERABILITY, CONFLICT AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Action on Ord. No. 2008-18

Mayor read the ordinance and turned item over to Lorraine Tappen of Calvin Giordano and Associates, Inc. She pointed out that there were sign-up sheets in back of room for people interested in getting update from DCA regarding this ordinance. She will make changes to maps as was brought to her attention this date and get them back to us.

Vail would like to hear from P&Z. Chair called Bob Wilbur. He has reviewed the maps and stated that some of the corrections were made and some weren't. He doesn't have problem with review on DCA comments but wants to have P&Z Board review the maps again to make corrections prior to approving it. He is not in favor of approving before corrections are made. Dezman asked what kind of corrections – Wilbur said some wetlands are missing in Oakmont Preserve and other new construction areas. Glatter Road does not show going through. LaCourt is showing as local and is being used as a collector. It should be shown as collector. Historic sites aren't located on map. Mailboat pier across from Orange is not on map. Existing land use map shows commercial and should be RLC. Lorraine Tappen responded to Wilbur – she is going to review the change on land use. Historic site map adding the boat dock and the position of the school house. On the LaCourt Lane, if we designate it as a collector it could have a problem, since it is supposed to be a local street. The other comment about wetland and other water bodies, they are getting that from other agencies. They could add a note that local knowledge indicates that the area is wetter and the area is higher, but they can't alter the data without verification from those other agencies.

Chair said that this will come back when the corrections are made. Council discussed tabling. PUBLIC HEARING is OPENED:

Patrick Reilly, Vice-Chair of P&Z, 1985 Howell Lane. He does not see need to bring it back to P&Z. There was review and recommendation on the report, and the comments from the DCA review were not in need of discussion. Riley asked about additional cost if Council votes on tabling it.

PUBLIC HEARING IS CLOSED.

MOTION: Vail / Dezman to send back to P&Z.

Discussion: Dezman asked Attorney Bohne about cost to re-advertise. Bohne said it is entirely up to Council. Vail said he relies on P&Z. Wilbur does not have problem with document only with the data and it should be corrected. Can't do that without going over it. Franklin stated that Council Member Jeff McKnight called to say he thought this should go to P&Z again after review by the State. Mayor asked that the P&Z Clerk list that all changes asked by P&Z and corrections made. Council can then adopt. Wilbur said it should only take one more meeting.

Vail /Dezman rescind the motion on floor. Bohne stated it can be tabled and not require re-advertising. The Public Hearing has been held.

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

3. Adoption of Public School Facilities Element (Ord. No. 2008-19)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE TOWN BY ADDING A NEW CHAPTER 10, PUBLIC SCHOOL FACILITIES ELEMENT; AMENDING THE INTERGOVERNMENTAL COORDINATION ELEMENT; AMENDING THE CAPITAL IMPROVEMENTS ELEMENT; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Action on Ord. No. 2008-19

PUBLIC HEARING Opened:

Loraine pointed out the sign in sheet was in the back. No public.

PUBLIC HEARING Closed.

MOTION: Borton / Vail to approve Ord. No. 2008-19. P&Z had a public hearing. Mayor had question on this regarding the Capital Imp Element – there may just be a numbering issue.

MOTION: Dezman and Vail to table to correct numbering.

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

Motion carried 3 to 1.

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

4. Recommendation from Planning and Zoning Board – Site Plan Approval Ken Adams-Phase II- Two Proposed Buildings, 2235 Malabar Road

Exhibit: Agenda Report No. 4

Recommendation: Action on Recommendation

Chair called on speaker card.

Pat Reilly, Vice-Chair of P&Z and 1985 Howell Lane, stated the recommendation included three concerns of P&Z, not conditions as presented in the agenda report done by Franklin. The concerns were: the FDOT permitting requirements changing from private to public; the Malabar Vernacular, and the additional well on the north side for fire protection. He stated again they were concerns, not part of recommendation.

Applicant Ken Adams, 2235 Malabar Road, also a resident of Malabar. P&Z had 3 concerns. On original site plan it showed 2 wells. P&Z had concerns on not having the 2nd fire well. Applicant has had a second fire well installed at the north side of property. They are finishing this date. The Fire Department has tested the draw out of the pond and getting 1000 gpm. We have a lot of wells and a lot of water. It is his understanding that FDOT only needs a letter from the Town accepting the change in use. The exception put in the Malabar Vernacular was put in for projects like his; for this type situation. He is on Malabar Road and is quite a bit back from the road. He is here to answer any questions. Vail asked if Malabar Vernacular would be possible on his addition and how to tie it into existing building.

MOTION: Borton / Vail to approve Site Plan.

Discussion: Vail asked how buildings are hidden. He has 2.5 acres delineated as wetlands up front that screen the buildings. Adams replied that if you pass it because it is hidden, then the next guy can say he'll plant trees. Vail didn't think the mirror building would play because it was personal use. Rivet said if it is new building then the exception can apply, regardless if it is personal or commercial. Vail said it is about setting precedents.

Borton said in Malabar we have many unique situations. Vail asked how much it would be to require the vernacular on the ends. Rivet said it is in compliance with our codes if it matches

the previous building. Vail also asked Bohne if the use changes from private to public? Bohne said it is not relevant. Bohne said the precedent concern is not an issue. Follow our own rules. The Code provides the exemption clause.

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

Motion carried 3 to 1.

Borton commended him on his building and how attractive it is on Malabar Road.

5. Recommendation from Park Board on ~~Hot Dog Sales at Soccer games~~

Exhibit: Agenda Report No. 5

Recommendation: Action of Recommendation

MOTION: Vail / Borton to approve Park Board recommendation, no cooked food and soccer club will be responsible for the litter control.

Discussion: Rivet questioned if this is not prohibiting anything that isn't allowed. Don't want to allow something that would be prohibited from County Health Department.

Vote: Dezman requested roll call vote.

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

Motion carried 3 to 1.

K. ACTIONS ITEMS:

ORDINANCES: First Reading – 2

- 6. Amending Article V Regarding Fence Height and Entrance Gates (Ord. No. 2009-20)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE V OF THE MALABAR LAND DEVELOPMENT CODE; AMENDING SECTION 1-5.8 (a) BY ADDING A DEFINITION OF THE TERM *ENTRANCE GATE*; AMENDING SECTION 1-5.8 (e) RELATING TO THE HEIGHT OF FENCES AND WALLS IN RESIDENTIAL DISTRICTS; ADDING A NEW SUBSECTION 6; PROVIDING FOR AN EXCEPTION TO THE HEIGHT RESTRICTION FOR CERTAIN GATES ATTACHED TO WALLS OF FENCES IN THE RR-65 ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Action on Ord. No. 2009-20

Pat Reilly, Vice Chair of P&Z, 1985 Howell Lane, stated the Board has been working on this for four months with Mayor Eschenberg. Reilly stated that the two violations on Eva Lane preceded this and they should not benefit from this ordinance. Mayor said P&Z recommended that the gate should not exceed 2 feet higher than fence. Ordinance needs blanks filled in or just limit the height of the fence.

MOTION: Vail / Borton to approve Ord. No. 2009-20.

Discussion: In section 2, the height needs to be filled in. Mayor said he brought this up – is a gate part of fence. Determined that gate is part of a fence.

Skip Hard, 2560 Hard Lane, why is there a concern for the height. Is it a conformity issue?

Safety issue? Eva Lane property owner was cited. Rivet asked why is the height restricted.

Don't want gates blocking view. Don't have issue with tall gates. Vail said if it is rod iron slats or a solid gate. You can have anything built. Gate should flow with the fence. If we are controlling the height of the fence, then we should control the height of the gate. Rivet does not want over restricting and over regulating.

Dezman said that instead of the band aid fixes it should be in one package and table and bring back as one package. BWF said that the Building Official says we can't deal with this because our Code doesn't require proper anchoring. Vail supports a workshop. Rivet says we need to discuss the reasons for the restrictions.

MOTION: Dezman / Vail to table for workshop with P&Z. **Vote:** All Ayes

7. **Amending Article VIII Regarding Culvert Endwalls (Ord. No. 2009-21)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; AMENDING SECTION 1-8.14.G. REQUIRING MITERED ENDWALLS IN RESIDENTIAL INSTALLATIONS PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 7

Recommendation: Action on Ord. No. 2009-21

Mayor asked for staff background before motion:

Basically, when we have the culverts replaced. They put mitered ends or just cut it off. Jagged edges, example was the west end of Hall and Atz where there is has degraded.

MOTION: Borton / Dezman to approve Ord. No. 2009-21 as written.

Discussion: Vail said that it is for mitered ends. Would all the straight cuts have to be retrofitted? Intent was for new and replacements. Town will only do mitered. P&Z recommended changing "shall" for should. Attorney said if you do that then they don't have to comply. Mayor asked about cost difference. Borton said the safety is the more important issue.

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

Motion carried 4 to 0.

RESOLUTIONS:

This will require 3 motions: the first to remove from table, the second to select the company and the third to adopt the resolution. **MOTION:** Rivet/Dezman to remove from table. All Ayes.

8. **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 CGA TO CONDUCT THE FEASIBILITY STUDY OF FOUNDATION PARK BLVD EAST; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8

Recommendation: Action on Company and Reso. No. 03-2009

MOTION: Rivet / Dezman to approve proposal from MBV for feasibility study on Foundation Parkway Boulevard east from Babcock Street.

Discussion: Council had asked for clarification and it looks like their responses. Lump sum does not necessarily mean firm fixed price. Karl said Lump sum does mean fixed price. If it is given to them you may want to change the wording in the contract to firm fixed price. Borton said she leans toward CGA since they haven't come back for any more money. Rivet called for question.

Vote: All Nays.

MOTION: Borton / Rivet to award feasibility study to Calvin Giordano and Associates, Inc.

Vote: All Ayes

MOTION: Rivet / to approve Reso No. 03-2009 for selection of Calvin Giordano and Associates, Inc. to do feasibility study on Foundation Parkway Boulevard east from Babcock Street for \$11,880.00

Discussion: none

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

Motion carried 4 to 0.

MISCELLANEOUS:**9. Approval of Cooperation Agreement with EELs.****Exhibit:** Agenda Report No. 9**Recommendation:** Request Action

Mayor asked if anyone from staff had background. The last cooperation agreement was pulled from BOCC agenda for March 24, 2009. BWF went over new language with McKnight and he does not have issue or concerns with proposed wording.

MOTION: Borton / Dezman to approve Cooperative Agreement. **VOTE:** All Ayes.

10. Malabar Mariners Marine Patrol Offer**Exhibit:** Agenda Report No. 10**Recommendation:** Request Action

Mayor didn't understand what they wanted. They want to do something with the community on a regular basis, similar to Eagle Corp. Originally she was asked to check with Fish and Wildlife and they said they would be happy to assist and even train.

Mayor said the Eagle Corp uses a Town vehicle and Town provides insurance. We aren't going to provide boat. BWF said we could apply for FIND funds to get a boat. Vail said if they have rules to comply the set of rules. There is nothing now to prevent them from doing it. Borton said they have been very good to the community. Maybe they could get training from Fish and Game and/or Florida Marine Patrol. Dezman said staff should put something together on training. BWF can prepare something. If Mariners want to provide service for Town in exchange for recognition, it could mushroom into something more than we want to fund. BWF will address letter to MMA. Borton said don't drop entirely. Vail said we are saying yes under certain conditions. Letter said we support but can't fund. Rivet said the last two bullets are a concern. Let's explore it a little more.

No motion. Consensus of support.

Pulled

11. Approval Alternative Budget Preparation Method

Pulled

12. Approve Budget Calendar**L. DISCUSSION ITEMS:****13. Establish Dedicated Millage for Fire Service (Mayor)****Exhibit:** Agenda Report No. 13**Recommendation:** Request discussion and direction

Borton said cap can do it that way. Mayor said it would come out of ad Valorum.

Rivet said it guarantees a certain revenue stream for FD. It can guarantee an amount but it doesn't allow flexibility. Essentially, it removes some of the budget setting authority from elected Council. BWF stated that Borton, Franklin and she had met with Cape Canaveral Mayor Rocky Randal and he had offered to explain how they do their dedicated millage in Cape Canaveral but would only do it if invited by Council. BWF will invite him to next meeting.

Pulled

14. Return Stimulus Money (Mayor)**15. Grants for Communities for a Lifetime (CM Dezman)****Exhibit:** Agenda Report No. 15**Recommendation:** Request discussion and direction

Dezman reviewed the program and quickly went through the Power Point presentation. She went to grant writing workshop and that is how we will fund it. Faith based and other areas. Put

it on agenda for next meeting under presentations. Palm Bay does roll anytime there is a rescue call in Brook Hollow. Brevard County would require a radio call. Third area would be Lett Lane and Booth. Believe Palm Bay responds also, BWF will research.

M. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

- 1) Vail – Springfest was great.
- 2) Borton – Yard across from her needs mowing.
- 3) Dezman – Met with Country Cove HOA and will meet with Brook Hollow HOA after Easter. Make it abundantly clear to them that the seat is up in Nov. Going over the budget with all in her district.
- 4) Rivet – because of distance to respond to Leghorn, Brook Hollow and Booth and Lett off of Babcock, we should consider Interlocal Agreements with the County and Palm Bay. Mutual aid provides for response to Leghorn. Dispatch both County and Malabar.

MOTION: Rivet / Vail to extend meeting for ten minutes. No opposition.

) McKnight – excused

5) Mayor - handed out list of houses for sale he put together on Eagle patrol. He also said the teen council had held its first meeting and it was successful.

N. PUBLIC COMMENTS: General Items – none

O. ADJOURNMENT

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

VOTE: All Ayes. The meeting adjourned at 10:35 PM.

BY: Thomas M. Eschenberg

Mayor Thomas M. Eschenberg
Chair

ATTEST BY:

Debby K. Franklin

Debby K. Franklin
Town Clerk/Treasurer

Date Approved: 04/20/09