

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**May 18, 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 Mayor Eschenberg.

**A.     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

**B.     ADDITIONS/DELETIONS/CHANGES: none**

**C.     PRESENTATIONS:**

- D.     PROCLAMATIONS:**     National Motorcycle Awareness Month – May  
Mayor read. Presented to ABATE of Florida, Independence Chapter, Safety Officer Ed “Spyder” Mills. ABATE stands for American Bikers Aiming Towards Education. Pictures were taken. Ed Mills spoke to Council and stated their chapter is the largest in the State of Florida. He introduced Don Hylland who is the Public Relations Officer of the Chapter and Christina Raidl who serves as Treasurer. Mills said that the Proclamation the Mayor read reiterates what they do - they educate. They also put the roadside signs up you see around Town at intersections and at Kemmlers’. They taught drivers education at Viera High and West Shore this year. These efforts help improve the visibility of the motorcyclist. ABATE appreciates the Town of Malabar adopting the Proclamation and showing the conscientious nature of Malabar. Mayor asked if ABATE used to mean *A brotherhood against totalitarian enactments*. Yes, many years ago. Mills said they do not want to be viewed as rebels – they drive fuel efficient vehicles and want to be safe. They have a lobbyist and his name is Doc Rickenbacker and he has gotten \$500,000.00 for them this year for safety education. Hylland stated that \$2.50 of each license was put aside for motorcycle safety. Those funds were not distributed for use. Governor Lawton Chiles was first Governor that took that money and used it for other purposes. They went after it with their lobbyist and won it last year and this year. Patricia Dezman arrived.

**E.     CONSENT AGENDA:**

**1.     Approval of Minutes**

Regular Town Council Meeting – 5/04/09

**Exhibit:**                      Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Rivet / Borton to approve as submitted.

Restate at the end of TA report regarding the council consensus to send hog fence issue to Park Board for a recommendation.

**Vote:** All Ayes

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

**H.     STAFF REPORTS:**

ATTORNEY: He is of opinion that we need another joint meeting with Palm Bay on the conflict resolution for the utility issue.

ADMINISTRATOR:

- Fire Dept Report on April Activity (attached to minutes)
- Do you want her to get dates for another joint conflict Reso Mtg.? Yes
- Stated we had signed up for Intern program with Job Link – no cost to us.
- Fencing project at Golf Disc Park by Eagle Scout Hoffman is complete and pictures shown.
- Gate is in at Country Cove Subdivision for fire access and will be used strictly for fire access. Will not be near tennis courts. It provides access to perimeter fire lane of Malabar Scrub Sanctuary. We will have to maintain that anyhow. Great effort by EELs and Malabar Fire Department. McKnight asked about why we had to get Attorney involved. BWF explained that a member of the HOA had thought that an agreement would be necessary to allow the Fire Department to cross a small area to reach the fence. They were concerned about the trucks going over the roads, but they are public roads and it is for emergency use only. Individual continued to push and so she got a legal opinion.

CLERK:

- Will be gone to FGFOA Annual conference from 5/31/ - 6/3/09. Must attend to meet requirement for FS. There is much good info at these conferences on how to improve our financial processes, checks and balances and budget prep.
- Brevard County Commissioner Trudie Infantine will be holding a town hall meeting at South Mainland Public Library, 7921 Ron Beatty Boulevard, Micco on Tuesday, May 26, from 5PM to 6:30.
- P&Z did review of EAR maps and comments have been forwarded to Ms. Lorraine Tappen of Calvin-Giordano and Associates, Inc. for correction/modification. P&Z has asked that they be able to review them before Council gives final approval/adoption of the EAR amendments. I explained that Council direction was to get correct maps and references before final adoption.
- Is there interest in purchasing the Gentile property? At one time we had discussed buying it and offering it to State as trade for the 15 acres in front of FD. Bank has contacted us and asked if there is interest.
- Met with Playmore playground equipment representative regarding the rust showing on some of the pieces. She learned that there was a maintenance booklet given to previous TA Ed Booth that was not given to PW Manager Carl and there has been no regular maintenance done on the equipment as required by the warranty. Purchased in 2004 for \$100,000.00. There is one piece, the 90 degree cloud walk that needs to be replaced. I will be reporting to the Park Board on this on Wednesday.
- The P&Z Board would like to have the joint mtg to discuss fence regulations on Wednesday May 27 at 7PM. They will then hold their regular meeting after that.
- We had a community service worker in that has done a great deal to help us get records scanned in so we can upload them to the website.
- Carry forward items I will be bringing to a future meeting include the BP fees, Waring Lane right-of-way, Procedures for all Boards, comparable insurance rates, Malabar Mini Storage.

BWF said she just learned that FLC had a certification class for playground inspection. FLC did offer it in Palm Bay recently. Also she received the LAP cert n the Stimulus package.

**I. PUBLIC HEARINGS:**

**ORDINANCES: (0)**

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

**K. ACTIONS ITEMS:**  
**ORDINANCE: First Reading – 0**

**RESOLUTIONS: (3)** Without objection, the Mayor read by title only:

**2. Adopt Reso. No. 06-2009** (tabled 5/4/09)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2008-2009; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action on Reso. No. 06-2009

**MOTION:** Borton / Dezman to remove from table.

**MOTION:** Borton / Rivet to approve Reso No. 06-2009. Discussion.

**Roll Call Vote:** 1) Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Aye; Dezman, Aye.  
Motion carried 5 to 0.

**3. Adopt Reso. No. 09-2009 (Mayor)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REQUESTING THE ASSISTANCE OF GOVERNOR CRIST AND FLORIDA DEPARTMENT OF TRANSPORTATION SECRETARY KOPELOUSOS TO PRIORITIZE THE INTERCITY RAIL COMPONENT OF THE FEC CORRIDOR PROJECT (FROM JACKSONVILLE TO MIAMI) AS PART OF THE FEDERAL ECONOMIC STIMULUS PACKAGE FOR THE STATE OF FLORIDA; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Action on Reso. No. 09-2009

**MOTION:** Borton / Vail to approve Reso No. 09-2009. Discussion. Rivet has a problem with throwing money at this. Not a lot of demand for rail service. Mayor said the plan is being updated and this was in the 2006 plan. The FDOT determined it would be economically feasible in 2006. Rivet asked if that meant it would be self paying. McKnight said by the time it is implemented, there may be a need for it. Vail agreed.

**Roll Call Vote:** Borton, Nay; 1) Vail, Aye; Rivet, Nay; McKnight, Aye; Dezman, Aye.  
Motion carried 3 to 2.

**4. Adopt Reso. No. 10-2009 (Mayor)**

A RESOLUTION OF THE TOWN OF MALABAR, FLORIDA CLAIMING SOVEREIGNTY UNDER THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OVER ALL POWERS NOT OTHERWISE ENUMERATED AND GRANTED TO THE FEDERAL GOVERNMENT BY THE CONSTITUTION OF THE UNITED STATES EXCEPT AS LEGISLATED BY THE STATE OF FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Action on Reso. No. 10-2009

**MOTION:** Vail / Rivet to approve Reso No. 10-2009. Discussion: This is under consideration in a number of States. He does not know of any municipalities. Constitution doesn't specify municipalities. Mayor considers people to be town. Borton said she swore to uphold the entire constitution. Rivet said the entire constitution is important and it is unfortunate that we have to point this out to the federal government. McKnight said he supports it. Dezman asked Attorney

if this is enforceable. It is position and has no force or effect on. Rivet said that it is basically stating our position.

**Roll Call Vote:** Borton, Nay; Vail, Aye; 1) Rivet, Aye; McKnight, Aye; Dezman, Nay.

Motion carried 3 to 2.

## **MISCELLANEOUS:**

### **5. Support of EEL purchase of Coastal Jewel Property**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Discussion: McKnight wants the property for waterfront usage. Franklin explained that the 191 acres is west of railroad – it does not include the portion from RR to US1. BWF stated she sent this agenda report to Brevard County Commissioner Infantini. BWF said she was told they will not purchase another piece of property until they explain how they will manage the lands they have. Borton asked if we could meet with County Commission. Vail asked if they could provide the science. Borton said now they are purchasing more of Malabar. BWF said the scientists said there was nothing by their standards, to support purchase of Paladin property. Franklin explained the letter to Skora and the need for the trail easement and road right-of-way. Vail said that it is adjacent to EELs property. We can give them our opinion. McKnight said if we don't get it up front, we may not get it. Vail said we should give history to all of county commission. Dezman said she agreed. Borton asked about stopping the sale. Rivet said we are being asked to support the purchase. Mayor suggested sending a letter that we can't give our support until we complete our discussions with the Coastal Jewel owners regarding the request for trail easement and right-of-way dedication. McKnight said we have already delayed it since October. Dezman said we can't support it at this time. Borton wants to talk to the County Commissioners. Send letter and organize a meeting. Dezman does not support any more purchases of Town property. Rivet said he has constituents that want every piece of vacant land preserved. That is not realistic but we should ask for some consideration. His premise is that it doesn't matter our position. Rivet said don't misunderstand. He said we can't veto the purchase. McKnight is against some of their actions but is not against some of their purchases. Vail said where is the science. Dezman said you can make a case for either way with the data – like statistics. BWF said we can ask for the scientific study. No one is making the argument that this is sensitive land. We don't know about the 191 acres. Vail said they should have a letter stating the environmental purposes of the land. McKnight is for the Coastal Jewel purchase. We may have a position to get river front property later from them. Bring it to their attention. Riverfront property will provide chance to meet our Comp Plan EAR requirement for riverfront property access. There already is a boat ramp there. It is probably our only chance to get riverfront property. Rocky Point will not allow a boat ramp and access. We can't stop the purchase so let's see if we can get something from it. Vail is not willing to say absolutely no more purchases. We have to consider the improvements to the town if the purchase goes through. BWF said once they explained why we couldn't get the 15 acres. If we say no flat out, then it is her concern that if they go back to the table then they will have no credit. McKnight said we sent the letter and we will agree to work together. They can't give land after they purchase. Go ahead and ask about the future transfer of the property. Dezman said if we do that and not talk to County Commission, then shame on us when they don't give us the right-of-way. Vail said he still wants a discussion between Town and County Commission. Dezman said her position is still against the purchase. McKnight said first should be a letter to our Commissioner Infantini explaining our position. We will support the Coastal Jewel. BWF said then add that we have learned that they now want the CITA property. Borton said we need to go with positive attitude. We have to change it. If we try to build a bridge with County Commission, they should listen to our concerns. We could word letter to explain we want waterfront access to be open to passive recreation – it is not part of the purchase but is owned by same group. The County is also required to have waterfront access in their Comp Plan. This would allow them to acquire the waterfront and then allow us to have access.

Dezman said she is against individual Council members meeting with individual County Commissioners. We need to have unified position. Expressing the need for the row and the other coastal jewel waterfront and historically we have asked for stuff and not received it and would support the purchase if we got the r-o-w and access to waterfront. Dezman wanted the meeting in the motion. Vail said the owner may be considering selling it to EELs as last resort and wants to take his time. Have staff draft a letter and send it to all Council to review.

**MOTION:** McKnight / to direct TA to send a letter of support to EELs for purchase of Coastal Jewel property. Motion died.

**MOTION:** McKnight / Dezman to direct TA to draft letter of support for the EELs purchase of the Coastal Jewel property and link that support with the Town's acquisition of the needed right-of-way and trail easement on Marie Street either by present owner or transfer before sale to State, also link support with future land purchase for riverfront access and have it in writing and schedule a joint meeting between County Commission and Town Council.

**Roll Call Vote:** Borton, Nay; Vail, Aye; Rivet, Aye; 1) McKnight, Aye; Dezman, Aye.

Motion carried 4 to 1.

Dezman wanted all council available for meeting.

**6. Direct Disbursement of \$500.00 KBB Award**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

**MOTION:** Rivet / Dezman to direct KBB to draft two checks; \$200.00 to MMA and \$300.00 to BS 37. **VOTE:** All Ayes

**L. DISCUSSION ITEMS:**

**M. MAYOR AND COUNCIL REPORTS:**

(Number indicates order of Reports)

2) Vail – How much for the Gentile property. At the time was \$795,000.00. He doesn't see the harm in asking. It could be negotiated in the future. Could be used for trade.

1) Borton –. Asked about fence for hogs. She knows someone who will trap. He wants \$20.00 per hog. He traps them to live. Mayor said teen council dealt with this and voted to pay and provide a cap. Borton said she is not for trapping. McKnight said he is against putting up any fence for the HOA. It is part of living by conservation land. Raccoons are natural. Hogs are invasive species. Dezman said this property has gotten worse since Stillwater Preserve went in. The Country Cove HOA Board will not let this go. She has sent a letter to Board. Three of the five homeowners affected by this will not let it go. Suggested a fence partly paid by them and partly paid by us. Vail said this is not the forum for fence discussion. Borton also asked Mayor that when he promotes the adoption of the 10<sup>th</sup> amendment resolution, she wants her position known. She supports the entire the constitution. She doesn't want her name showing for it. Franklin stated the vote will be on Resolution 10-2009.

5) Dezman – Wants BWF to have Denine write out the scenario. She attended Purden Eagle ceremony on Saturday. She was in Orlando for class tonight. She will miss two meetings in the summer. It moves her graduation up. She will let BWF know of the dates she will miss.

3) Rivet –.He has not heard anything else from owners on Howell Lane. The 3 letters she has received state they want to maintain the first portion of the road. Rivet said another resident on Howell and other Lanes have told him the garbage truck does not go down the north side of Howell Lane. She will call them and request that they go down north end of Howell Lane. There are many lanes in Malabar that they back down. The resident also asked for mail delivery. Post Office said if they have a 50 foot area they will be able to turn around. Holes in road at Atz and Weber. BWF said that is one of the areas we are having fixed with the stimulus money. It is the NE corner. She will check it out tomorrow. Is there a ditch cleaning schedule. Yes it is on the website. This month she has had the crew cleaning the ends of the culverts throughout the Town. It has to be dry to clean it out. She asked Carl Beatty for status. He said

they are about 2/3 done. Ditch on both sides of Linrose will be done next week. The recommendation is to put a pipe in under Hall Road to carry the water. Bill Stephenson is getting the price and requirement on the pipe. She will present to Council. Engineer Bill Stephenson supports this as it would force water into bigger ditch to carry off. Decision to do this year or next will be Councils, but the ditches will go in this week. First Linrose and then Duncil.

4) McKnight – City of PB police at Malabar and US1 and looked like he was giving a ticket out. BWF said that they do have right to pursue. She said she has seen them on Riverside Dr in Malabar. If they are sitting there to pursue traffic, then they should not be in our venue. McKnight then asked about the letters she has been getting. BWF said we got a complaint from the former Mayor and his wife. She explained it and said it was Denine that had the conversation. She will have Denine write it out. McKnight does not need it.

6) Mayor – He went to Robert Ritter's and it was a very impressive ceremony. Teen council is on recess until August. He needs to come up with more material for them to deal with. If any member has any ideas pass them to him. Dezman asked why no TA. They are considering adding the TA and Atty as student and gradually will have a Chair and he will sit in the audience. The teacher from PB High was not helpful. Article will go in Mailboat. Rivet suggested EEL purchase land. On the reso on the 10<sup>th</sup> amend – anyone that doesn't support it doesn't support.

- N. PUBLIC COMMENTS: General Items** – Juliana Hirsch, 1035 Malabar Road. Too long of a discussion on EELs property. When there is something that involves the property, there should be a visual on the overhead. We should see have this – it is important. We can't hear in the back of the council chamber. She is so disappointed that the Council is not more interested in the future tax base. The property will come off the tax roll and the remaining property owners will have to bear increased taxes. She did not fill out a speaker's card because she did not think the Council would support the EELs purchase. Regarding right-of-way, there should be a rule that whatever the Town needs for right-of-way, it should be given. She appreciates the Mayor's effort on the 10<sup>th</sup> Amendment Reso but not as important as the position on the EELs. It is more than the citizens should have to put up with. Regarding hogs, she has 10 acres and her entire land has been torn up by hogs and she hires a trapper.

**Mayor asked Attorney about eminent domain proceedings. If Town did that it would hold up sale. The owner could split off the right-of-way and easement land sell the rest to EELs.**

**O. ADJOURNMENT**

There being no further business to discuss, **MOTION:** Borton / Rivet to adjourn this meeting.  
**VOTE:** All Ayes. The meeting adjourned at 9:50 PM.

BY: Thomas M. Eschenberg

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 06/01/09