

## **MALABAR TOWN COUNCIL REGULAR MEETING**

**June 1, 2009**

**7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

### **CALL TO ORDER:**

The meeting was called to order at 7:30 pm by Chair Thomas Eschenberg. The prayer and pledge were led by Nancy Borton.

### **ROLL CALL:**

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

DEPUTY TOWN CLERK:

TOM ESCHENBERG

PATRICIA DEZMAN -excused

NANCY BORTON

BRIAN VAIL

STEVE RIVET

JEFF MCKNIGHT

BONILYN WILBANKS-FREE

KARL BOHNE

CYNTHIA KELLEY

### **ADDITIONS/DELETIONS/CHANGES: None**

**PRESENTATIONS:** Keep Brevard Beautiful's Ms. Pat Brown and Waste Management's George Geletko to Present Checks for Malabar's Trash Bash Award to:

Malabar Mariner's Association – Commodore Hans Kemmler \$200.00

Malabar Boy Scout Troop 37 – Leader Joey Sartin \$300.00

Pat Brown of Keep Brevard Beautiful and George Geletko of Waste Management to come forward to address Council. Mr. Geletko thanked the Town and staff for their support. Pat Brown, the executive Director of Keep Brevard Beautiful, stated the Town has won again this year for best performance for our population; 215 bags of trash were collected by Boy Scout Troop 37 and the Malabar Mariner's Association. Mayor Eschenberg came forward and presented two checks; one to Commodore Hans Kemmler of the Malabar Mariners and the other to Joey Sartin, Scoutmaster for Boy Scout Troop 37.

Mayor to Present Certificates of Appreciation to:

Alex Hoffman and Boy Scout Troop 37

Joey Sartin, Hans Kemmler and Carl Beatty

For their efforts in constructing a fence at Golf Disc Park in May.

During the presentation, pictures were shown of the fence at the Disc Golf Park during construction. Eagle Scout Alex Hoffman built the fence as his required project to become an Eagle Scout. Mr. Hoffman had assistance from his Troop, Park Board Chair Hans Kemmler and Public Works Manager Carl Beatty. His Troop Leader was also involved in the project. After presenting the certificates, Joey Sartin addressed Council and thanked the Town for all the support given to the Boy/Eagle Scouts; they are very proud to be a part of the Malabar community. There are three new Eagle Scouts this year.

Mayor and Chief Gianantonio to Present Certificate of Appreciation to:

Liz Ritter/Camelot RV Park

For their assistance in allowing a fire truck and crew to stage at their location while the railroad crossing was closed in May.

Chief Joe came forward and spoke on behalf of the fire department. Mrs. Ritter provided a lot and trailer for the Fire Department to use while the repairs were being done to the railroad tracks at the beginning of May.

Brevard County Commissioner Trudie Infantini was introduced and addressed Council:

Mayor stated he is very happy to have someone interested in Malabar. Trudie Infantini came forward and addressed Council. She offered congratulations to those who received awards. She came to this meeting tonight to touch base with Malabar and bring the residents and Council up to date. She is against a milage increase and will not vote for this. They are going to be doing with a little less; all contracts will be going out to bid instead of being given to vendors of record. Hopefully, this will be a change that is going to take place.

Infantini prefers that Kennedy Space Center not purchase land in Malabar, she is concerned about the tax base being taken away. Brevard County is a huge place; if tax base taken away in Malabar, there won't be funds to provide services needed in the community. Mayor Eschenberg asked who is in support of the purchases in Malabar if she is not. She stated that the funds are not there for the EELs to purchase any more land; they need to be able to take care of what they have and she has asked Mike Knight for a management plan to clean up the properties that they have. She doesn't think they have any more funds and no more will be given. Nancy Borton stated she had spoken with all but one Commissioner; she would like to have a workshop and discuss the Commission's views. Borton asked Infantini if she would be okay with this. Infantini stated this is a good idea. Under Sunshine Law, she can't discuss issues until an open meeting; she will forward the Commissions calendar to Wilbanks-Free. Brian Vail stated there are a lot of issues to be worked out. Infantini stated she would like to see the education center built with EELs funds; it's a better use of the funds. Merritt Island's education center is located on the beach and it is not visited. She was against this; the project cost \$300,000.

Mayor Eschenberg asked about all the vehicles that the County owns. Infantini stated that the vehicles will be recycled and no more will be purchased. A lot of the departments will be looking at the way they use their vehicles. She thanked Council for their time and stated she would be back in July for another update.

**PROCLAMATIONS:** Flag Day and Month – June

Mayor read proclamation. It will be hung at Town Hall in the Clerk's office.

**F. CONSENT AGENDA:**

**1. Approval of Minutes**

Regular Town Council Meeting – 5/18/09

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Vail / Borton to approve as corrected. McKnight stated a typo appears on page 5, item 6 - a zero was used instead of an o; Mayor stated page 1; Proclamation, slightly below middle the word should be enactments, not efforts; Mayor also stated that the Public Reports, fires should be hires. Vote: All Ayes.

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

Two speaker cards were handed in that are not agenda items:

William Davis, 2125 Linrose Lane – came forward and addressed Council. The drainage in Linrose Lane needs to be looked at. There is no place for the water to go and it backs up. Something definitely needs to be done to stop the flooding. He is on the corner of Hall and Linrose. Mayor Eschenberg explained that this is under reports for Town Administrator and she will address it at that time.

Julianna Hirsch passes on her time to speak.

**H. STAFF REPORTS:**

ATTORNEY:

Bohne advised Council of a case that was in the paper about Melbourne denying a re-zoning request for low income housing. During the course of quasi-judicial proceedings, they imposed conditions on an applicant regarding drainage issues. This is not something that should have been discussed during the re-zoning application. The applicant appealed to a three judge panel; the decision was reversed. When quasi-judicial comes before Council, they must adhere to the code requirements. One City Council Member expressed a clear biased opinion of the request. As long as the applicant meets all requirements of the code, you cannot deny unless it is code based. You cannot impose conditions on the applicant that are not required by code. Rivet asked if the mistake was adding conditions. Bohne stated this would have been a site plan issue. The next step is where the questions need to be asked. The fact that it is something that is desirable is not a reason to deny. Rivet wants to understand who to be able to control. Bohne stated that you may need to look at the code. Melbourne added ad hoc conditions that the applicant didn't even know had to be met. Council should take a look at the re-zoning criteria. Rivet asked that this information be provided when something comes before Council.

McKnight stated there was a good presentation when he attended classes through the FLC. The case went to court and the complainants won. Council members can also be cited with fines.

#### ADMINISTRATOR:

With regards to the stimulus package, we knew where we wanted to do this; the west side of Corey Road at Atz Road. We were allowed to make the necessary change. She thought she was going to have to have six individual RPFs, spend funds to get funds back. These projects fall under \$250,000; we don't have to do all this. It can be done with one RFP. Rivet asked when the work was expected to start. Wilbanks-Free stated it would start in October; the LAP Agreement will be before you at the next Council meeting and within 30 of that meeting, the RFP will be sent out.

Waste Management follow-up - there are no roads that the trucks cannot go down. There is no reason for any resident to haul the trash cans to the end of the road. She can have trash picked up immediately if there are any problems.

Linrose Lane flooded when Tropical Storm Fay came through in August. Wilbanks-Free went to Stephenson; he had worked on 2 years previous and brought recommendations for drainage showing where the additional pipe should be placed. Placing this additional pipe would give relief to Mr. Davis. She also spoke to Stephenson about putting in another drainage ditch on the opposite side of Linrose Lane; Beatty stated the road would need to be relocated to do this. A concrete pipe was put down across Hall and it brought the water back, creating washout. Corrections were made by pulling out the concrete pipe and fixing the problem and adding rip rap. Support is needed under the road; when Stephenson comes back on June 3<sup>rd</sup>, Wilbanks-Free will make contact to see what needs to be done. The project funds would come out of Stormwater. Tropical Storm Fay was reported as a 100 year event; we want to elevate this from happening again.

Franklin wrote a letter to the Air Force regarding the \$900,000 to be given to the EEL Program to purchase 191 acres in Malabar. McKnight asked who initiated the letter. Franklin spoke with Borton and wrote letter; Wilbanks-Free did not have any input. Borton stated the Franklin spoke to her about this; Franklin and Wilbanks-Free went to Kennedy Space Center. During this meeting, future projects were discussed; this is what led up to the letter being written. It was stated at tonight's meeting that the Air Force cannot make purchases from a private party. This is a way to tie up the funds and hold things up. This plan is not on the table anymore. Our property was discussed at this meeting; a certain amount of acreage is needed by the Air Force. McKnight stated that this letter needs to be placed on the next agenda for discussion. The residents need to know about this.

Wilbanks-Free drafted a more detailed letter to the EELs regarding the Jewel property. Franklin thought we should stick to the three points that Council asked for. After reviewing the letter with Council, there is nothing in the letter saying we would support this purchase.

#### Fire Dept on possible fund raiser

Dan Welton came forward to present a proposal for fund raiser. For the month of April, he was in

Pennsylvania for Harris. While there, he visited several volunteer fire departments. Not all departments are funded by their towns; they do fund raisers. There is a gun fund raiser; the department cleared over \$25,000; they raffled off tickets for the guns and the winner goes to the gun shop to pick up their prize. This is for future consideration. The Legion on US #1 has a gun raffle at their post. The actually purchase the guns and raffle them off on site. Before he mentions this type of fund raiser to the Corporation he is asking how Council feels about this. It is the general consensus of Council to allow. Bohne stated that tickets should be raffled off; would prefer that the Corporation not purchase the guns. They should go the other route and eliminate any liability. McKnight stated they could have the dealer bring the guns and do the registrations on site. Bohne stated that the winners would have to go to the dealers for pick up and registration of the gun.

CLERK:

Kelley reported that Franklin is as FGFOA conference.

Park Board is reviewing the fencing of Cameron Preserve and will take action at their June 17 meeting and provide recommendation to Council. Staff is getting info for Board.

SCLC meeting will be on 6/8/09 at Chameleon Fusion Bistro on Stack Blvd at Palm Bay Road. W. Melbourne and Melbourne Village are hosts.

I. **PUBLIC HEARINGS:**  
**ORDINANCES: (0)**

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

**Recommendation from P&Z Board:**

2. **Request for Extension of Site Plan – RR Avenue Storage – Mark Archer**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action

Mr. Archer came forward and addressed Council. Planning & Zoning have granted their request for the extension. He is requesting an extension for 12 months.

**MOTION: Borton / Rivet to approve the extension of the RR Avenue Storage Site Plan for 1 year.**

McKnight stated that this comes to Council often. We have given two extensions; it should be made a part of the procedure. Bohne stated that according to code, any extension must be approved by Council. We need to have administrative extensions. Maybe Council should make the plan good for three years. McKnight, this comes here quite often. Mayor stated that we should consider making the site plan good for three years. McKnight stated he doesn't have an issue doing this. Vail stated each extension is considered on a case by case basis. McKnight stated that financial hardship is not a reason for an extension. Vail stated we are approving the concept of the project only. Rivet stated it would make sense to have the site plan good for three years. Bohne stated the site plan approval must be given before permitting process starts. This is up to Council. This will be placed on the next agenda for discussion.

**VOTE: 4 yes; 0 Nays**

Motion carried unanimously.

K. **ACTIONS ITEMS:**

**ORDINANCE: First Reading – 0**

**RESOLUTIONS: (1)** Without objection, the Mayor read by title only:

3. **Authorize Administrator to Proceed with Two Garage Door Replacements on Fire Department Main Building (Reso 11-2009)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF PROPOSAL FROM McKINNEY COMMERCIAL CONSTRUCTION GROUP, INC. FOR GARAGE DOORS AT FIRE DEPARTMENT MAIN BUILDING; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Borton asked if we can check on the work of the contractor before we pick a company.

Wilbanks-Free stated the RFP for the eight doors on the annex building included letters for reference. This job is under \$10,000; we did an RFQ which did not request letters of reference. It was stated the lowest bid wins if all the criteria is met. Mayor stated that the contractor will not be paid until all work is done and it is satisfactory. McKnight has one concern; the bids for Omega and McKinney has wording that is almost exact to each other. These two bids are the lowest. Wilbanks-Free stated it's the same language, but she has spoken to different people regarding the quotes. She gets a list of contacts from the Better Business Bureau. Vail asked about how much maintenance is required. Wilbanks-Free will make contact with two companies to check on the warranty information; there is latitude to ask questions. She will also ask if they have an extended warranty. McKnight stated if all warranty information is the same, he has no problem moving forward.

**MOTION: McKnight/Vail approve McKinney Commercial Construction Group, Inc. as the contractor. VOTE: All Ayes.**

**MOTION: Rivet/Vail to approve Reso No. 11-2009.**

McKnight and Vail stated contingent on equal warranty periods.

(Number before name indicates who votes first in roll call vote. It rotates from Dist 1 to 5)

**Roll Call Vote: 1) Borton-Aye; 2)Vail-Aye; 3)Rivet-Aye; 4)McKnight-Aye; 5)Dezman-excused.**

Motion carried unanimously. Wilbanks-Free is to check on the warranty

#### **MISCELLANEOUS:**

##### **4. Review Letter to EELs re: purchase of Coastal Jewel Property**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Discussion: Borton stated that she had asked Debby to figure the amount of taxes that have been taken off the tax roll with the property the EELs owns; also included in these figures is the 191 acres that EELs wants to purchase. The potential taxes of the tax rolls is \$8,000,000. We need to come up with a way to fund what is needed by meeting with the County Commissioners. Rivet stated the ad valorem taxes are based on fully developed property; \$7.7 million is the potential, not what it is today. If the Town doesn't grow, why should taxes be higher? Borton stated only so much can be done for the Town with the way things are now. The safety of our constituents is most important; take the situation with the hogs, we should probably put the fence in. We need to have some control and slow down the purchases in Malabar. Borton made the comment that we can't take care of the roads and ditches in our Town; doesn't understand how the Fire Department is operating on such a small budget; grants are sought after to be able to get the equipment that is needed. The Comp Plan revisions can't be paid for; McKnight stated that the Comp Plan revisions have been paid for. Rivet stated it is important to maintain what we have for some future development. McKnight stated that we can provide the same level of services without raising taxes; even if it means no increase in services. Rivet stated he likes living in nature. Most of the people he has spoken to are happy with no tax increases and the same level of services provided by the Town. Rivet asked if Borton's position is that there should be no more purchases. Rivet is in agreement that this purchase should not happen. Borton stated she had spoken to all but one Commissioner; everyone feels a meeting should be scheduled to discuss the positions of Malabar Council and the Commission. McKnight stated that this purchase has been delayed since October; it was dependent on this parcel. We told them we would support this purchase; if we back out now when we are trying to make progress, it won't look good for us. He doesn't want condos along US 1 or the traffic the condos will bring.

Vail stated he would like a meeting with the Commissioners. He also asked if there is a time frame that the letter is to be mailed to the EELs. Wilbanks-Free stated that when the cooperative agreement was signed, that part of our hold back was resolved; we should be writing the letter giving our support. This letter is long over-due and needs to be sent out. She wanted Council to review again because, when discussing the information with Franklin, there was varying information.

**MOTION: McKnight/ to direct Town Administrator to send draft letter presented this evening.**

Motion dies for lack of a second.

Borton stated she cannot support either letters. Vail asked Council if another bullet should be placed in

the letter asking for support for the 15 acres for Town Hall. Borton stated, if EELs gave their support at the State level, she would be willing to support anything in Malabar. Something should be given back to our constituents for taking away something else. Vail stated EELs know we want this. Mayor stated that according to Infantini, the funds are not there for this purchase. Wilbanks-Free stated this EELs got word that the \$900,000 was offered to them by the Air Force after she and McKnight had met with them. That was not even on the table when we met with them over the Coastal Jewel property. Borton stated some of this is because of mitigation. McKnight stated he has no problem meeting with the Commissioners about how much land is being bought; he doesn't want to do it contingent upon this property, he feels it's wrong. Regardless of whether this goes through, it is a separate issue, we need to go to the Commissioners and talk to them to let them know of our concerns. We shouldn't say we are holding back on this to see if the Commission can veto this. Borton stated she is not holding back; she wants them to work with us a little bit closer. We have a Commission that might. Knight works for the Commission, we need to get the Commission to at least understand. Rivet stated there's a lot to be said about not giving away our bargaining chips before we start negotiating. McKnight stated we are negotiating; that's what the letter is for. It would be a positive aspect with the cooperative agreement that we are doing something for their benefit and getting something back. McKnight stated that we need to get more feedback from Commission on these purchase. Wilbanks-Free stated that maybe the Commission doesn't know that we don't support purchases because paperwork is lost in a pile of agenda materials. Maybe if they don't read it, they don't realize that Malabar doesn't want to support the purchase. We have never had the kind of rapport on any of the properties since she has been here. Never did they hear that Malabar didn't want this property purchased because of our reasons. We did meet about the trail down Marie Street; they did listen to us then. Vail stated that he is reluctant to back down on our word; we need to stand true to our word. Vail agrees with McKnight and likes the draft letter. Rivet stated we agreed to cooperate; cooperation does not mean giving them everything.

Vail wants a letter sent; the one with the bullets, adding another bullet stating that we would support the purchase if EELs supports us at the State level for the 15 acres for Town Hall. Wilbanks-Free and Borton both stated that they cannot give the land; they need to say they agree with this as it has been passed to the State. We would build the Town Hall on our property with the educational building on the EELs side. Mayor stated that EELs cannot give anything that has been given to the State by EELs. Borton cannot support any of it. She thinks Council should go to the County Commissioners. Vail has mixed emotions; we promised something and we should go through with it. We will have to sacrifice to meet our Comp Plan; we've done more than our fair share with preserving the lands. Rivet stated that there is still going to be development; you could make an argument that we could get by with a little less money for taxes.

Vail stated he wants to talk to the Commissioners. Mayor asked if Council would agree to send a letter with response that we are sorry for the delay, in light of wanting to speak with the Commissioners to get a feel of their stand on this. McKnight feels terrible that we are taking longer to respond to EELs. Vail feels, in light of new Commission and Infantini coming to Malabar, we need to make a stand. McKnight asked if the intention is to stop the purchase. Borton is saying enough is enough. Last year we said no to a sale and they sold it anyway. We need to look for something for all that they are getting. Borton feels Malabar should get something back from the County for all that they have taken off our tax roll. Rivet stated we are doing better than we were 5 years ago; doing better than 15 years ago. We need to decide what we want; rural life styles. Mayor suggested there are 5 new Commissioners; educate them with the history of the EELs and the 15 acres. That has to be important that they know this. We, Malabar, wants the ability to say what we want EELs to purchase. McKnight stated he will voice his opinion at the meeting as well; it's not a unified meeting. Rivet agrees with McKnight; we are not of one voice.

**MOTION: Rivet/McKnight to direct Town Administrator to send draft letter with an additional bullet regarding all future Malabar purchases that Malabar will have a say in the purchases.**

Vail asked for another bullet to the motion to state EELs support of the 15 acres to develop within the Malabar Scrubs.

Mayor stated this would be hard due to the agreement the Town just signed; they need to support at

the State level. Mayor asked he wanted to say something like the EELs will cooperate with the Town of Malabar, a request to the State to secure the 15 acres at the corner of such and such. Vail stated it could be simply for, if you want to generalize or pinpoint it; he's reluctant to put a quantity in the letter. Wilbanks-Free doesn't want to see it come back and say that's what the cooperative agreement gave. Bohne stated to terminate the agreement; there's a termination clause in it. Borton stated how about a letter that says we have changed our minds.

**AMENDED MOTION: Rivet/McKnight to direct Town Administrator to send draft letter with one additional bullet stating Malabar has veto power over any future land purchases in Malabar. The EELs will support the Town of Malabar for acres at a State level for public facility expansion.**

Wilbanks-Free asked Council to let her think about the last bullet; it will come to her but not at this time. She will e-mail the letter to Council members tomorrow for their approval before sending it to the EELs.

**Vote: All Ayes.** Motion carried unanimously.

**L. DISCUSSION ITEMS:**

**M. MAYOR AND COUNCIL REPORTS:**

(Number indicates order of Reports)

3) Vail – the issue at W. Railroad and the memo from Fusco-Scarbro; does the attorney need to review? Wilbanks-Free gave an overview of the situation; she sent a letter to the original complainant Rivet asked if issue is dead; Wilbanks-Free stated it is not, the gentleman was to be at the meeting this evening. Mayor Crews came in the office on Friday asking the status of this. Bohne stated he has seen the information that has been in the Council packets. Mayor asked if we wanted to spend the funds for him to review. It was asked that he complete a brief review of all the documents regarding this matter so he is aware.

The Gentile property, an e-mail was received; the asking price for the property is \$400,000. The original price was \$800,000; the infrastructure is there; is this something we could purchase to use as a trade for the 15 acres we want for the Town Hall?

4) Borton – wanted a consensus from everyone; is everyone in agreement to meet with County Commissioners? Rivet asked if she is in agreement with the letter; she is not in agreement with a lot of the information in the letter. Mayor suggested a workshop to meet and come to an agreement before meeting with Commissioners.

) Dezman – excused

2) Rivet – Nothing to report at this time

1) McKnight – had heard that the Gradall has had a lot of problems; is this true? Vail gave a brief overview of the maintenance being done on the equipment. Wilbanks-Free stated that the month of May, they pushed to get the roads done since there was not rain.

5) Mayor – stated that Franklin had sent e-mail asking if wanted something as a discussion item; Grant-Valkaria is having a meeting regarding the Valkaria Airport. They want to outlaw flight schools. He felt the timing was off to discuss this evening. Let them make a decision first and then we can discuss it. He has been in contact with the editor of Quality Magazine. In the July/August issue, there should be an article about the Teen Council.

**N. PUBLIC COMMENTS: General Items –**

**O. ADJOURNMENT**


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

**VOTE: All Ayes.** The meeting adjourned at 9:50 PM.

BY:

  
Mayor Thomas M. Eschenberg, Chair

MINUTES BY:

  
Cynthia Kelley, Deputy Town Clerk

6/15/09

Date Approved

ATTEST:

A handwritten signature in cursive script, appearing to read "Debby K. Franklin", is written over a horizontal line.

Debby K. Franklin, Town Clerk/Treasurer