

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**June 15, 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 District 2 Brian Vail.

**B.     ROLL CALL:**

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	PATRICIA DEZMAN, excused
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: none**

**D.     PRESENTATIONS:**

**E.     PROCLAMATIONS: July 4 – Independence Day**

Mayor read.

**F.     CONSENT AGENDA:**

**1.       Approval of Minutes**

Regular Town Council Meeting – 6/01/09

Joint Council/P&Z Meeting – 5/27/09

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

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

**Vote:** All Ayes

**G.     PUBLIC COMMENTS: General Items not related to agenda items per Reso. No. 1-2009.**

Liz Ritter, 2860 Orange Avenue, regarding the possibility of Council taking up the issue of fencing property due to wild pigs in area. She has had all kinds of wildlife in and around her property. They fenced their property because of the wild pigs. Stated she hoped we aren't going to start dealing with specific animal problems and stray into taking care of everyone's problem. We are a rural community and we don't want to forget that.

**H.     STAFF REPORTS:**

ATTORNEY: none

ADMINISTRATOR:

- MFD Report – Chief Joe reports (report attached). Talked about problems with Engine 1 and repairs that must be made. We must keep it for another 5 years. Ladder truck will be ready soon to move up to response and move one of engines back- working still to improve ISO. Working on Firewise Community with BWF. Grants may be available. He is also looking at insurance companies that could come on board and help reduce rates. He mentioned another Firewise Meeting this Thursday with Peter Culverson giving a presentation on Firewise communities. The Zetron has been installed and radios programmed. Get out about 9 miles with Relm radios. He is in negotiation with Tower

Company to raise height another 35 feet. He has not heard back from them. Regarding the high increase in EMS responses – dealing with aging population. Malabar received grant from County for 4K for medical equipment. That will benefit all. Mayor has volunteered to be driver and has taken training so he can drive during the days. BWF asked him to report on accidents in river. Chief stated that over week-end there were two accidents on the river or islands in river and the County toned them out for those accidents. Chief is questioning the Town's response boundary line. It goes out into the channel. If we are responsible, then we need to work with TA and get that liability covered. Three of his firefighters were ready to jump in and swim to island.

- BWF said that the Relm radios allow us to contact the PW also, so that is an added benefit. The Firewise meeting on Saturday was attended by 3 persons. They did ask them to come back out. There were representative from DOF and County also in attendance. They discussed the need for the 20-foot fire lane behind the Cameron Preserve. The benefit from this is explained. He related the recent fire in North County. The fact that they had a fire line, they were able to save ten houses. We will be getting very active on this. They believe we can be moved forward on this. Could get excellent insurance discount.
- BWF stated she completed the E-Team training and Asst Fire Chief Dan Welton will be going through the training in July. If we don't have training, then we can't apply for resources. This provides one person in administration and one person on the fire side to be trained.

CLERK:

- FGFOA Annual conference from 5/31/ - 6/3/09 was excellent. She is working on memo to brief them.
- Intern program through ARRA (American Reinvestment and Recovery Act) is providing funding to Joblink to offer the program to young people that have nothing to put on their resumes. It lasts for six weeks and provides the intern with experience. All expenses including wages and workers compensation insurance are covered through Joblink. We interviewed 13 candidates for the openings. Joblink will make the placements and the program should start next week.

**I. PUBLIC HEARINGS:**

**ORDINANCES: (0)**

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

**2. Request from Park and Recreation Board**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action

Request was for Council to direct staff to maintain a log of calls from residents related to hogs on residential property. Franklin stated the Park Board is reviewing the request from Council and has heard a lot of information at their last meeting. Staff has provided them more information for next meeting and a recommendation will be coming. As part of that discussion, in an effort to gauge the extent of the problem the question was raised if we can keep track of those types of calls. We do use Citizen Contact form when citizens call in. The consensus of council was that the form is sufficient for now. Council will wait for Park Board recommendation on fencing.

**K. ACTIONS ITEMS:**

**ORDINANCE: First Reading – 0**

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

**3. Approve Local Agency Program Agreement (Reso 12-2009)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE LOCAL AGENCY PROGRAM AGREEMENT WITH FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**MOTION:** Rivet / Borton to approve Reso No. 12-2009. Discussion.

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

Motion carried 4 to 0.

**MISCELLANEOUS:****4. Taxpayer Budget Review Board**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Discussion: This is from Mayor. He is recommending the establishment of a taxpayer budget review board. It would encourage the citizens to get more involved. Normally people don't speak at workshops. Mayor said unfortunately after the workshops, when the budget gets to first reading, it is pretty set in stone and at that stage, it is hard to change it. They would go through it and make recommendations for the second budget meeting. It goes along with civic process. Rivet asked why Mayor did not want members with previous council experience. McKnight said if there was only one member with previous experience, it could dominate the meeting. If the intent is to get more civic involvement, then let's not use anyone from any of the Boards, or relatives, etc. McKnight said that they will not know the process and they will have many questions. Who are they going to ask? McKnight suggested each Council member's appointees would ask their questions to their Council Member.

BWF said instead of this board, why not allow people to speak at workshops. Rivet said we should also distribute the budget. There needs to be more contact with people. BWF stated she is adding to her email list and she does send out blast emails. The budget is also uploaded to the website. Mayor said that people don't show up for the budget workshops. They don't think that they will be taken seriously. If it is a group of 11, appointed, they will more likely feel like their input will be listened to. Vail said they could make them also attend the first workshop so they can ask the questions and get the answers from Council and staff. McKnight said the budget review workshop is very dry and boring. If you empower them with the budget sheets to attend the workshop and then get their input. He has sent spreadsheets out to residents but it is not a significant number. Rivet said anything we can do to encourage more participation in the process is good.

**MOTION:** Rivet / McKnight to establish a Taxpayer Budget Review Board.

Discussion. Mayor asked if they would deal with conditions with consensus. Allow ex-council, boards, and spouses? Vail confirmed with Attorney that their meeting would also be in the open. Mayor said two instances in past when they had plenty of participation; TA Selection Committee and the Town Hall Site Selection Committee were both well attended. Council discussed allowing spouses as members. Borton doesn't want more work for staff. McKnight said he will send out a request to his email group and take the first two that respond. Mayor said this would be for one meeting only. BWF explained that if these members are unfamiliar, they will have many questions. Instead she offered that in her other cities they allowed the public to speak at their budget workshops. McKnight said because they are unfamiliar with budget they will have questions and they should ask their Council Person. Rivet said we should get the budget out to anyone that asks and post it on the website.

Rivet said by allowing past council or a spouse, you are not encouraging spreading the civic involvement. McKnight said knowledge is power. If you have a previous council member that knows the process, then they will be asked questions and be listened to and the committee would have a natural bias towards that person. Vail said that there are a limited number of people willing to participate. Rivet said you get a broader perspective by having new sets of eyes review the budget. McKnight said if we want to promote civic involvement, then get people that don't normally get involved. Vail said that that might be the first stepping stone to get them interested. Borton said she would support the no council member, but not the no spouse. She values her spouse's opinion. He is a resident. Borton asked the Attorney and he said that committee "Voting" members must be registered electors. Attorney also said there needs to be some rules for the Board. McKnight said let's wait until next meeting to determine what if any qualifications will be required.

**VOTE: All Ayes.**

Each Council Member will come back with their own suggestions for qualifications and guidelines. What further restrictions on who to appoint.

Put on for action: July 6, 2009 RTCM – Taxpayer Budget Review Board Qualifications and guidelines

The goals of establishing this Board are both for the results of their recommendations, and the encouragement of civic involvement.

**5. Set Council Meetings / Budget Public Hearing for September**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Discussion:

Council reviewed calendar and chose the 9<sup>th</sup> and 21<sup>st</sup> for both the Public Hearing dates and the regular Council meetings. Both meetings will start at 7:30.

**6. Review Letter to Air Force regarding Coastal Jewel Property**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Mayor commented he had several speaker cards:

Bill Arnauckas, 2635 Weber road, say no to EELs purchases.

Lloyd Behrendt, 1085 Hall Road, has lived here since 1981, told some council that he was prior council. Thanks for what they do. It is hard. Wish he could come out more often. Thinks it is a good idea to purchase as much land. Don't think the letter is a good idea. If they can't find the proper habitat and there is a lot of demand for that type of property plus we would be supporting the space program.

Justin Morton, 2090 Meadowlane Avenue, Melbourne, Florida in regards to letter, is against sending the letter. Questions the legality of Town trying to stop the Coastal Jewel sale. He stated that this property has been under consideration for purchase for 13 years. It is very desirable. It is funded by State and County. It seems the Town is against it because they want the EELs off the tax rolls. The Town wants a trail along this property. This land is very environmentally sensitive. The Space Center is what drives Brevard County.

Juliana Hirsch, 1035 Malabar Road, in regards to purchase. It seems that a third of Town is either EELs conservation or other conservation and another third is swamps that won't ever be developed. Don't give another inch away. Why pick on Malabar. There are two big developments going in to the south. Did not do research.

Mike Knight, EEL Program Manager. Offered to provide feedback to Council on the recent letter. Town sent letter of support for purchase with some conditions. Only one condition that he wanted more info on. That dealt with State lands. It would be inconsistent with management plan. They did not have any concerns about the other conditions in the letter. The cooperation agreement was worked out with this in mind.

Mayor asked about Knight's reference that the use of State lands would be inconsistent with the goals of the management plan. Mayor asked if there is any legal barrier. Knight stated the use of the bond funds is for acquisition only. It is the bond covenants that restrict the property. It would be inconsistent with the ballot language. Rivet asked about a trade.

Knight said there was a small tract in Titusville and there was a decision to make it surplus. That was a County owned property, not State owned. State owned land would be more complicated.

Mayor also asked about the Air Force. Knight said that the Air Force approached EELs and they will have to do offsite mitigation. They came to EEL and wanted to purchase something and place a conservation easement. They wanted to contribute their money.

Borton asked about the location of the land. Borton said the land is all west of the railroad. Knight stated that there has never been a willing seller for the other property.

Borton said looking at the drawing that Knight provided, (copies handed out at meeting) is there any way that they can use the boulevard to place the town hall. Borton said they had a kind of a go with the State, and it was not supported by EELs. Borton said the State was supportive. Mayor concurred.

Chair directed Franklin to put drawing on next agenda and label the drawing "town hall site at park restroom".

Vail stated the 15 acres in the front were disturbed; had been used for sales trailers, and infrastructure. The County asked for and got the ROW in the MSS and what we are asking for is less than what we gave in the ROW.

Knight said the historical documents he had seen stated that the County would work in good faith effort to get ROW. Knight explained they have restored that habitat now and the taking of that would be problematic. His opinion is that they should not give up any conservation lands. BWF also said the SMC also stated they could not support the trade. Rivet said part of the issue is the trust issue. He is skeptical of verbal promises. He would like to have the written agreements and if one element of the agreement can't be met, then entire agreement is thrown out. Rivet said he will not support any agreement that does not specify the specifics.

Vail said Malabar Boards have to look at each case. Vail asked if the SMC is thinking this would set precedent? Knight said he could ask SMC to look at this as it relates to the ROW. Vail said that the discussion has been throughout history. He wants a Town Hall, shelter, close to PO and across from Golf Disc Park. Looking for cooperation from EELs.

(From audience) Lloyd Behrendt stated this topic was not on the agenda.

Borton said can we put this on the next agenda? Borton wants the entire item on the next agenda. Everything in the report.

McKnight asked if there is another coastal property that has US1 frontage and has a small sliver along river, would they allow a kayak launch area on that land? So we could use it also. Knight

said that the cost of the land would probably not allow a purchase. But if they could, in other words, yes. They would support it for passive recreation. It is consistent with their goals.

Knight said they have a couple small tracts in Rockledge that have scrub habitat. The Air Force has to mitigate. And the Coastal Jewel property is the only property large enough without going out of the County.

Vail asked Knight not to wait so long between visits. They were supposed to be making regular appearances. Make it quarterly. Mayor said we can do it up front on the agenda under presentations, on a quarterly basis. Borton wants him at next meeting. As action.

Rivet said they should put straw vote to residents to find out what they want. Discussed a referendum to voters. Franklin said there is some legal advertising that needs to be done soon for referendum items. Franklin and Attorney will check out requirements. Straw vote on ballot - put it on for action after checking the requirements and make sure there is enough time.

Discussion:

Franklin stated that Council Member Borton did not ask her to write the letter to the Air Force. Franklin said that she stated she discussed with BWF drafting the letter to the Air Force in March after the article in the Florida Today. She also spoke to the Mayor about it. The Mayor provided her the Civ/Mil contacts to mail the letter. She attended the Kennedy Space Center update with BWF in late May and Director Robert Cabana provided a slide presentation giving an overview of the Space Center future plans and it referred to habitat and it reminded her of the letter. She felt she might be asked about the letter so she wrote a draft and sent it to the Mayor and asked if he wanted to sign it as the Mayor. She got no response from him. She left for conference on 31<sup>st</sup>. She left direction with Deputy Clerk that if it was ok, to mail it out. In hindsight I should have waited until this meeting and put it on the agenda. But this issue emphasizes the importance of getting our vision plan updated. Our Comp Plan lays out the plan for the Town. The previous Town Councils have been back and forth on this issue. We have asked for consideration in their plans and have complied with their requests for ROW.

I do not know what the actual tax loss was on Jordan and MSS because I would have to go back to do research on the taxes paid before it was sold.

The current tax on Coastal Jewel is \$705.92 for 192 acres

The current tax of Paladin proposed condo project is \$1,555.66 for 17.32 acres

The current tax of Hessee ALF proposed project is \$1,179.95 for 15.62 acres

The tax on Balkany was \$78.00 for 21.44 acres. It closed in Jan 2009.

Tax on Hossian is \$106.40 for 1.45 acres – does not show closed yet.

In comparison, Data Mgmt., Jordan Blvd., pays \$3,228.72 on the 5 acres that are developed and \$220.14 on the ten acres that are vacant.

Harris Corp., Jordan Blvd., pays \$15,409.80 on their 130.85 acre developed site.

McKnight said he saw the letter on the dais and the analysis and it seemed locked and loaded to prevent the sale going through. He said it is not appropriate to send it out.

**MOTION:** Rivet / to table any action on this item. No second.

**MOTION:** McKnight / Rivet to send out letter. Discussion. McKnight said it is ridiculous to tell someone how to donate their funds. Franklin should not send any letter representing the Town without Council direction. Vail said Franklin has good position to know Council position. Do we want to do this? He was not saying it was inappropriate. Borton said it is not inappropriate. Borton said in defense she was looking out for all of us. She doesn't think we should send it. It

will not make a bit of difference. Borton wanted the entire EEL purchase issue on the next agenda for action.

Vail said she has a feel for the council and does not think it was inappropriate. What better person to draft a letter. Does not support sending the letter. Rivet said that knowing that the letter would not have any affect. Vail said he does not agree with everything in the letter. Borton said that if it helps NASA then it is a good thing.

Lloyd said that to know that Air Force needs to mitigate and this is the only place in Brevard. We don't want them to give the money to Seminole or another county.

**VOTE:** Aye (0) Nays (4)

**7. Approve Pipe Placement at Linrose Lane**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**Discussion:**

**MOTION:** Rivet / Borton to approve. We are using stormwater funds. McKnight asked if this was the first use of those funds. BWF said no, she has used them on the other pipe failures.

**L. DISCUSSION ITEMS:**

**8. Review Site Plan Length, Extensions**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

McKnight asked for this to come back. Several builders have come back and we have set a precedent. Mayor said why don't we give them a three year and then after that, then no more extensions. Rivet said we lose flexibility and control. Requiring an extension is not unreasonable. Mayor said that as a real life example the Paladin project was approved and it allowed a 52" height exception for his appurtenances. Council then changed the Code. His extension would not be allowed now to be extended.

BWF said this was discussed at the summit she attended and the new law that was passed allows a three year approval. The new Growth Mgnt Law. Mayor had reservations so did Rivet. Vail said the extension request in most cases, if they are still compliant - we will give extensions. Vail says stick with the one year period. Consensus to keep site plan approval term at one year.

BWF said she will get more info on the new law. Rivet said to check if we can stay with one year if State says 3 years.

**9. Joint Meeting with P&Z for Malabar Future Land Use Vision**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Request Action

Mayor stated that he heard the Hometown Democracy has gotten enough signatures to get on the 2010 ballot and if it passes, doing comp plan changes will become way more cumbersome. We had meeting in the past and agreed on land use changes to US1, Malabar Road and Babcock and wants to get started now on this and also do the land use change on all our conservation lands.

Rivet asked if we can arrange on same weeks as Council meetings. If we can get one going on July 8, 2009. Vail will be here for 8<sup>th</sup>. We will take care of regular P&Z business on next June meeting.

**M. MAYOR AND COUNCIL REPORTS:**

(Number indicates order of Reports)

2) Rivet – said that the hogs are not native. He fenced his yard to keep pigs out. McKnight said he has heard from someone that said fence his property if we fence for the hogs. Mayor said we could put a bounty on pigs. Bohne said hogs are considered livestock for the property they are on. That is legal in a nutshell. Harvest them all year long. Dog killed by hog on Howell.

3) Vail – nothing

4) Borton – met Troy Rice with the MRC and he would like to put on agenda for next year.

It is part of sensitive land that she would like more support for the IRL. It has been mentioned that she has an agenda. Put him on agenda for presentation. She is having problem on her street with someone feeding cats and raccoons. She said she has called animal control. Franklin said there is a feral cat program and Rivet will get her the contact info.

) Dezman – excused

1) McKnight – nothing

5) Mayor – thank Council and staff for flowers for sister's funeral. Mayor is considering not going to annual conference. Mayor felt someone should represent Malabar. Is any Council Member willing to commit. Rivet will not go. Borton will go so someone is represented. Mayor will go only if no Council Member will go. Franklin asked about teen council attending the conference. He asked for info and she sent it to him. Cost is \$15.00 per teen for Saturday. No, do not invite them – we do not have bus.

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

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

**VOTE:** All Ayes. The meeting adjourned at 9:40 PM.

BY: Thomas Eschenberg

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby Franklin

Debby Franklin, Town Clerk

07/06/09

Date Approved