

MALABAR TOWN COUNCIL REGULAR MEETING
August 03, 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 1 Nancy Borton.

B. ROLL CALL:

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

- C. ADDITIONS/DELETIONS/CHANGES** – Mayor, as he was driving down, thought of something, correspondence from FLC for voting member; BWF stated that Borton would be the delegate. We need to add this as Action 7A.

D. PRESENTATIONS – (0)

E. PROCLAMATION – (0)

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 7/20/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

Discussion: Kelley advised that on page 1 under Call to Order, Mayor Eschenberg led the prayer and pledge; not Pat Dezman. Mayor, clarification, page 6, 2nd paragraph, third line from bottom of the paragraph; Florida has 3 projects on the list that affect Brevard County.

MOTION: McKnight / Borton to approve minutes as corrected. VOTE: All Ayes.

- G. PUBLIC COMMENTS:** Per Reso 1-09 General Items not related to agenda - Speaker Card Required - NONE

H. STAFF REPORTS:

ATTORNEY: final touches on the lawsuit for Palm Bay. Mayor asked what the time-frame is; Bohne replied that we have until October.

ADMINISTRATOR: the draft budget that was provided to Council has been uploaded to the website for the residents to look at and review. A flyer and the Candidate Qualifying packet have also been uploaded to the website.

There is to be a site visit to the Coastal Jewel property. This information has been uploaded to the website; information will be updated as it is provided. An invitation had been sent to Council; BWF will follow-up with and e-mail.

McKnight advised that anyone coming in to qualify as a candidate must complete the first page in the packet before they can perform any other duties to become qualified.

BWF stated that McKnight would be speaking about the culvert at 2590 Rocky Point Road; he took pictures today. McKnight, after making presentation, stated that he is in agreement that the culverts need to be replaced but it is not a rush. Mayor stated the two problem culverts need to be fixed to help this culvert.

CLERK:

- SCLC dinner is at Cocoa Beach Country Club
- Candidate qualifying will be from August 5–19. Signs have been made and will be posted throughout District 4 and 5. It has also been noticed on the website, at the Post Office, the Building Department and the front office at Town Hall.

If we do have an election then the two referendum items will also be on ballot – EELs and Charter change related to terms.

I. **PUBLIC HEARINGS:** Are legally advertised for 7:30 PM *or as soon thereafter as possible.*
ORDINANCES: (0)

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

2. **Recommendation from Planning & Zoning Board Regarding Joint Meeting on Land Use Planning**

Exhibit: Agenda Report No. 2

Recommendation: Action

Discussion: Mayor was at the meeting when this was discussed. What they really want to do is make some specific recommendations before the second meeting. They have decided what to do on the south side of the road. Do you want to go with it tonight or save it for the joint meeting. BWF stated that P&Z is recommending the meeting of the 12th be postponed until the first meeting in September. Perhaps the budget hearing won't take too long, it could be done after that. McKnight feels that P&Z should have this for a while and give them the opportunity to do what they need. At the next joint meeting, all information should be available for review and discussion. Vail stated that Council needs time to review the information. McKnight said he likes what they have done so far. Mayor asked that staff give the message to P&Z of the fine job they are doing and to please continue.

3. **Recommendation from Planning & Zoning Board Regarding Fences**

Exhibit: Agenda Report No. 3

Recommendation: Action

Bud Ryan, member of the P&Z Board, came forward and addressed Council. The section regarding columns is in the first draft but does not appear in the second draft. He recommends that the wording from the first draft be added to the second. He had no problem with the definition, it just needs to be added to the second draft.

Ryan stated that there seemed to be a question of just how long 600' feet is. He measured from Malabar Road down Marie Street; it is 20 feet short of the north entrance of the church.

All other information will be saved for the joint meeting with Council.

MOTION: Borton to proceed with draft one. For lack of a second, the motion dies.

McKnight stated he wants to keep this simple. The second draft is simple. Vail stated he hasn't had a chance to talk to staff or the Building Official regarding this. He doesn't want to rush into anything.

MOTION: Vail to table this issue. For lack of a second, motion dies.

Borton asked if the joint meeting was a waste of time; thought that everyone was in agreement regarding the fence issue. This has been going on for two years. McKnight stated that at the meeting, the discussion turned to types of structures. Let's keep it simple; the first draft was more complicated than the second draft. Mayor asked if either of these two drafts will cover the situation where someone builds an entrance way. He doesn't think they will. He is speaking of someone building columns or a wall with no gate. If they build an entrance way without a gate, would draft one control the building of the entrance. Vail asked the Building Official his opinion. Cloutier stated that the meeting was to discuss gates only but Article II of the code includes fences as well. Mayor had made a suggestion at the joint meeting to add a new section to the fence ordinance called "entrance way". BWF stated the discussion was that we have fences; there really aren't any guidelines. The fence is why you want this drawn in with. Mayor asked if this would be in draft one or draft two. It was stated that the Building Official could decide; there isn't anything we can do at this time. BWF gave a brief overview of a fence situation on Marie Street. There are safety issues that need to be looked at as well; we need to think beyond the fence just looking good.

MOTION: McKnight / Vail to send this back to P&Z to look at entry ways; add what the Town Administrator feels is necessary and have one draft brought back to Council.

Borton stated the draft should be reviewed by the Town Administrator.

VOTE: All Ayes.

K. ACTIONS ITEMS:

ORDINANCE: First Reading – (2)

Without objection, Mayor read by title only.

4. Florida Power and Light Franchise Agreement (Ord. 2009-24)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF MALABAR; PROVIDING THAT THE GRANTOR SHALL NOT BE LIABLE FOR CERTAIN ACCIDENTS AND DAMAGES; PROVIDING THAT THE FRANCHISEE'S RATES AND REGULATIONS SHALL BE SUBJECT TO REGULATION AS PROVIDED BY LAW; SPECIFYING THE CONSIDERATION FOR THE FRANCHISE; PROVIDING FOR CERTAIN RESTRICTIONS UPON THE TOWN; SPECIFYING CERTAIN CONDITIONS UNDER WHICH THE FRANCHISEE MAY WITHHOLD CERTAIN PORTIONS OF FRANCHISE FEE PAYMENTS TO THE TOWN; SETTING FORTH THE RESULTS OF A DEFAULT BY THE TOWN OR BY THE FRANCHISEE; PROVIDING FOR TERMINATION OF THE FRANCHISE AGREEMENT; PROVIDING FOR AN EXAMINATION OF THE FRANCHISEE'S RECORDS; PROVIDING FOR A REPEAL OF ORDINANCE NO. 11-7-79; PROVIDING FOR AN EFFECTIVE DATE AND AN ADOPTION SCHEDULE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

MOTION: Borton / Vail to approve Ordinance 2009-24 Florida Power and Light Franchise Agreement on first reading.

Discussion: Bohne stated he had made house-keeping changes to the ordinance; he reviewed other municipalities ordinances and incorporated information into this ordinance for the Town. Mayor stated that it could be written into the agreement with regards to four-laning Malabar Road. He feels there is a chance it could happen in the 30 year agreement; would the Town have to pay to move the power poles along Malabar Road?

Sandy Sanderson, External Affairs for FPL, stated that FPL would be responsible for paying to move the poles on Malabar Road.

Patrick Bryan, attorney for FPL, stated there is a statute on the books, Chapter 337 that specifically addresses this. When a road is widened or improved, the Franchise will pay the cost to relocate the poles. Mayor stated the big concrete poles would be very costly to move. Bohne stated that maybe FDOT would not pay for the relocation of the poles. Mr. Bryan stated that FDOT would contact FPL and have the pole relocated.

Roll Call VOTE: 1)Borton, Aye; 2) Vail, Aye; 3)Rivet, Excused; 4) McKnight, Aye; 5) Dezman, Excused.

Motion carried 3 to 0.

Without objection, Mayor read by title only.

5. Regulating Maintenance of Foreclosed Residential Properties (Ord. 2009-25)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REGULATING THE MAINTENANCE OF ABANDONED FORECLOSING RESIDENTIAL PROPERTIES; AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES OF THE TOWN; ADDING A NEW ARTICLE IV; CREATING NEW SECTIONS 11-50 THROUGH 11-63; PROVIDING FOR TITLE, PURPOSE AND DEFINITIONS; PROVIDING FOR REGISTRATION AND MAINTENANCE OF FORECLOSING PROPERTY; PROVIDING FOR SECURITY REQUIREMENTS; PROHIBITING OBSTRUCTION OF ENFORCEMENT OFFICERS; PROVIDING FOR IMMUNITY OF ENFORCEMENT OFFICERS; PROVIDING FOR ADDITIONAL MAINTENANCE AND SECURITY REQUIREMENTS; PROVIDING SUPPLEMENTAL AUTHORITY; PROVIDING FOR INSPECTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ACTIONS BY THE TOWN IN THE EVENT OF NONCOMPLIANCE; PROVIDING FOR A LIEN; PROVIDING AN APPEAL PROCESS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE TOWN OF MALABAR CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Borton / Vail to approve Ordinance 2009-25 Foreclosed Residential Properties on first reading.

Discussion: Bohne stated we are being pro-active to protect the Town. We will find the responsible party for the upkeep of the home. It's one step; it may not clear it but it's a start. Vail asked how the registration process works. Bohne gave a brief overview of the process. Mayor asked how do we get into compliance. BWF stated that if a complaint is received or if Eagle Corp sees a property that looks abandoned, she will go out and look at the property. If there are any signs posted, we can find out and make contact with the attorney handling the foreclosure. It could be they are only handling the foreclosure and the owner of the property is still responsible. A notice will be sent. Sometimes the surrounding residents provide information regarding the property. Bohne gave a brief overview of the foreclosure proceedings and what happens. We are not required to send out notices to every mortgage company. If the mortgage company happened to be foreign, they are required to register with the state. BWF stated that we can obtain information from the Property Appraiser's office. Bohne stated the most important part of this ordinance is our authority. When a property is searched, our lien would appear. We have authority to make remedial methods to secure the property. McKnight stated there is a need for this; he has a concern for what might come up in the future. If the property

happened to be not vacant, would you be trespassing? If you say yes, then we have staff now trespassing. If you say no, then they have authority to enter the property. They should not go into the house. BWF stated that the Sheriff would be called to inspect a property if the need arose. Bohne stated that a violation must be visible from the road, then staff could go onto the property; they should never enter the home. He would work on language to cover this. If it appears to be vacant or abandoned, the law enforcement agency should be contacted. BWF asked if it would be better to bring this back to Council for review before advertising the second reading. McKnight stated that both of his names are mis-spelled on the ordinance. This will be corrected before the second reading.

Roll Call VOTE: 1)Borton, Aye; 2) Vail, Aye; Rivet, Excused; 3) McKnight, Aye; Dezman, Excused.

Motion carried 3 to 0.

RESOLUTIONS:

Without objection, Mayor read by title only.

6. Adopt (Reso 17-2009)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, SUPPORTING AND ENDORSING THE PRINCIPLES OF HOME RULE AND ADOPTING THE POLICIES SET FORTH BELOW TO SUPPORT THE PREMISE THAT THE TOWN/CITY SHOULD HAVE THE AUTHORITY TO GOVERN WITHIN ITS JURISDICTION; FURTHER PROVIDING THAT SUCH AUTHORITY SHOULD NOT BE ERODED; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Borton / McKinght to approve Resolution 17-2009 as presented.

Discussion: Mayor made a comment; the County has formed a Charter Review Commission. The concern is that they may come up with some ordinances that would affect the cities/town and they would lose home rule.

Roll Call VOTE: 1) Borton, Aye; 2) Vail, Aye; Rivet, Excused; 3) McKnight, Aye; Dezman, excused.

Motion carried 3 to 0.

MISCELLANEOUS:

7. Approve Stormwater Pipe Replacement Project at West End of Hall

Exhibit: Agenda Report No. 7

Recommendation: Request Action

MOTION: Borton / Vail to approve pipe replacement with Stormwater funds.

Discussion: BWF wanted to take the opportunity to introduce Daryl Williams of CDM Trucking, Inc. He marks the property in advance. His workmanship has been praised. Borton asked if it is needed; Mayor asked about the funding and BWF advised it would be from Stormwater funds. RFP is required for projects over \$10,000; but piggy-backing doesn't require one. BWF gave a brief overview of the situation and the property this involves.

VOTE: Ayes, 3 ; Nay, 0.

Motion carried 3 to 0.

7A. Appointing Voting Delegate for FLC Conference

MOTION: Vail / McKnight to appoint Borton as voting delegate for FLC conference.

VOTE: All Ayes.

L. DISCUSSION ITEMS:

8. Compact Disc Recording Equipment for meetings

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Discussion: At the request of the Town Clerk, Kelley advised Council that a presentation will be held here at Town Hall on Wednesday, August 5th; everyone is welcome to come to hear the presentation. This demonstration will be for equipment that will record to the server. This equipment will cost approximately \$4,500. Once the meeting is over, the council meeting will shift over to the server and we will be able to provide CD copies of the meeting before anyone leaves for the night. We would also like to purchase, for about \$600, a digital recorder and software to be used for off-site meetings. BWF stated that the system from BIS was installed at Pembroke Park and it was very good. Mayor asked if this will save money in the long run. McKnight wasn't sure if it would save money but cassette tapes will be hard to obtain in future. BWF stated that we are going to continue to look at the digital recorders to see if there is one available that will work with our sound system. Vail asked if we had checked with the residents who assist with our sound system. BWF stated that Pat Reilly has been very busy with his job. McKnight would like to have the information from the presentation provided to Council in a few months. He would like staff to research and see if there is a digital recorder that will work with our system and can be used off site as well when it is needed.

M. MAYOR AND COUNCIL REPORTS:

Number indicates the order of report given

1) Borton: nothing

2) Vail: nothing

) Rivet: excused

3) McKnight: nothing

) Dezman: excused

4) Mayor: reminder to notify the appointees of the meeting on the 11th and to pick up the budget books. Second meeting is 18th of August. Need to set meeting to discuss their findings. Study off of Foundation Boulevard-the study is just about completed. BWF gave a brief overview. Monies have been put in for the next phase of the Foundation Boulevard; we have not been invited to go to the County as of yet. Last item; he had a long discussion with the Town Clerk about the taxes; any non-homestead property in Malabar will have a reduced value and reduced taxes. Malabar residents here for 3 years or more get a tax increase. He provided a chart of people he knew that have lived in Malabar for three years or more with a brief overview of the chart. McKnight stated he doesn't think the system is right; penalizing those who have homestead exemption and helping those who don't claim the homestead. He doesn't know what to do but he doesn't feel we should raise taxes. There are a lot of retirees who are on fixed incomes. Last year we put the maximum in the budget; we can't keep doing this.

N. PUBLIC COMMENT – None

O. ADJOURNMENT

There being no further business to discuss, **MOTION: Vail / Borton to adjourn this meeting.**
VOTE: All Ayes. The meeting adjourned at 8:55 PM.

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

TRANSCRIBED BY:

Cynthia Kelley
Cynthia Kelley, Deputy Town Clerk

ATTEST BY:

Debby K. Franklin
Debby Franklin, Town Clerk

Date Approved: 08/17/09