

MALABAR TOWN COUNCIL REGULAR MEETING

September 09, 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 District 2 Council Member 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:** One deletion, pull Item 9 since that was Pat Dezman's item. We will have that on next meeting. Borton would need to be excused by 9PM as she has unexpected visitors.

D. PRESENTATIONS:

- E. PROCLAMATIONS:** Commodore John Barry Day September 13, 2009. Mayor read and presented to Malabar resident Bill Moroney. Bill said there will be a formal recognition at Jetty Park at 11AM on Saturday and all are welcome.

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 8/17/09

Budget Workshop Meeting – 8/18/09

Budget Workshop Meeting – 8/24/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Borton to approve as corrected:

Mayor: RTCM 8/17/09 pg 7, change years to months in his report.

Vote: All Ayes

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

H. STAFF REPORTS:

ATTORNEY: GV is in dispute over the airport. They had proposed an ord to regulate some activities at airport including limitation on flight schools and training. Many have expressed their concern that federal law has preemption. There is no such preemption unless you are regulating noise or certain other specific items. He referenced FS125, that appeared to give rights to county to regulate airport activities. GV asked him to get an Attorney General (AG) opinion. AG has contacted him and said they want the County to join in the request. GV tabled the 2nd reading of their ord pending the AG opinion. If AG comes back and says a municipality has no rights to regulate, then the issue is done. If we can go forward we will have to deal with federal FAA preemption. They are looking at it as a disguised noise regulation. Ignoring the AG opinion would invite a lawsuit. Rivet asked if the FLC could help GV? Bohne not sure. Bohne would like to introduce Item #4. McKnight asked Bohne about sunshine concern discussed at

last budget meeting. Was there a violation? Bohne asked if after that meeting, was that board disbanded, sunsetted? McKnight stated that he felt their job was done when they made their recommendation. Bohne asked if Council was satisfied that their services were completed when they submitted their recommendation? Yes. Bohne stated if the committee continued, then there would be a violation. Mayor said it was very clear, they had one meeting and there was no sunshine violation after that period. Vail said it was clear to all that they were to meet one time and present their recommendation to Council. Bohne said was that the intent of Council – that their job was done after the one meeting? Consensus was yes. McKnight said in the future we should use specific language that the committee is formally terminated. Bohne agreed.

ADMINISTRATOR:

- Went over memo regarding computer services. Council had wanted staff to check out alternatives to computer services. The memo describes the maintenance netDirective provides and the 10% discount the offered for the rest of this year they will continue in the next year. Franklin had contacted other cities and found that netDirective is well respected in this area. Some went to fulltime IT personnel. The companies that provide computer service and maintenance at this level are limited. If anyone has questions they can contact her.
- Gave update from trapper. He has got four more hogs. The Town has had no contact from residents with hog problems, either on the website or by phone. The trapper reported that his trap has been stolen. BWF stated that this trapper assisted the Town years ago when this was an issue, that a property owner in Country Cove that backs up to the Cameron Preserve, let the trapped hogs loose. Trapper said he chased out 4 people that were picking palmetto berries. The hogs eat the berries. If all the berries are picked from the palmettos in Cameron Preserve, they will move onto private property. If you want to keep them in the Cameron Preserve, he suggested putting some signage to prohibit picking the berries.
- Staff researched the insurance rates as requested and compared the FLC FMIT rates to Auther J. Gallagher's offering through PMIT. Franklin said Gallagher offered a \$1,000.00 lower rate from the premium we were paying. In the end FLC FMIT premium will be a \$5,000.00 savings from last years premium and we will also be getting a \$3,500.00 dividend on our current premium. Rivet stated staying with FLC would give us a \$4,000 savings over the Gallagher proposal. Yes. BWF will have the numbers changed on the final budget. Rivet asked BWF about status of traffic control he had asked for. The BCSO put up the sign board on Weber and they were also staged on Weber. They also went to Brook Hollow. She will get report. She talked to BCSO Commander Salvo about cuts in staffing for this area. BCSO Commander Salvo said no, we will have same level of control – no loss in this district.

CLERK:

- Stated she had been asked to do a proclamation for the Hadassah Group going green in December and asked the Mayor/Chair about it. He suggested asking Council for consensus. The group will plant a tree in each community. Cocoa has already done a proclamation. The County is planning to do one. We will get a free tree. Franklin asked if they had a Malabar connection – a member. No, but they were trying to get each community to do a proclamation. They will donate the tree to Malabar and we can get photo of Mayor shoveling the hole for the tree. No objections. Franklin will have it on the next agenda.

I. **PUBLIC HEARINGS:** Legally advertised in Florida Today newspaper per Florida Statute 166.041

ORDINANCES: (3) and RESOLUTIONS: (1)

2. Adopt Proposed Millage Rate for FY 2009 / 2010 (Ord. No. 2009-26)

Without objection he read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 1.6630 FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2009 THROUGH AND INCLUDING SEPTEMBER 30, 2010.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Chair stated the proposed millage rate is 1.6630. A final levy of 1.6630 mills will result in a -2.20% decrease from the rolled-back (forward) rate of 1.7004. The final millage rate of 1.6630 is to fund the expenses for the fiscal year commencing October 1, 2009 and ending September 30, 2010

Open Public Hearing: None.

PH is closed.

MOTION: Rivet / Borton to approve Ord 2009-26 setting the millage for 2009/2010 at 1.6330.

Discussion: Rivet. 1.6330 is a double negation. Drop the minus sign or change wording..

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

Motion carried 4 to 0.

3. Adopt Proposed Budget for FY 2009 / 2010 (Ord. No. 2009-27)

Without objection he read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2009 THROUGH AND INCLUDING SEPTEMBER 30, 2010.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Mayor read Section 1 of the ordinance. A final Budget of \$1,879,422.00 for the proposed expenditures from October 1, 2009 through and including September 30, 2010, reflecting the general operating millage rate of 1.6630 mills. This total budget includes \$1,544,766.00 in the General Fund, \$165,368.00 in the Stormwater Fund and \$169,288.00 in the Utility Fund.

Open Public Hearing: None

PH is closed.

MOTION: Borton / Rivet to approve Ord 2009-27 setting the budget for 2009/2010 at \$1,879,422.00.

Discussion: BWF said she did get a letter from the accountant holding him to \$20,000.00. Accountant asked not to be held to the 25% on utility but a total of \$20,000.00 was acceptable. Accountant said he could do this because of all the work we do for him. Mayor stated he did not review this item until late this afternoon and asked staff why depreciation wasn't shown on the expense side. Franklin said it had not been shown on earlier budget. It is in the cash flow report and reported on a monthly basis in the GL. Mayor said he provided each Council member with his worksheet on the utility fund and after three quarters the utility fund is showing a loss. McKnight wants this as discussion on the next agenda. BWF will ask the auditor. Rivet said the budget is a spending plan. It is about cash flow. Borton said call Augie and ask him. Mayor suggests adding language to pass budget as presented. McKnight said he agrees with Rivet, it should not be in the budget. BWF will get an answer from him.

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

Motion carried 4 to 0.

4. Regulating Maintenance of Foreclosed Residential Properties (Ord. No. 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 ESTABLISHING SECURITY REQUIREMENTS; PROHIBITING OBSTRUCTION OF ENFORCEMENT OFFICERS; PROVIDING FOR IMMUNITY OF ENFORCEMENT OFFICERS; PROVIDING FOR ADDITIONAL MAINTENANCE AND SECURITY REQUIREMENTS; PROVIDING SUPPLEMENTAL AUTHORITY FOR ENFORCEMENT; PROVIDING FOR INSPECTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ACTIONS BY THE TOWN IN THE EVENT OF NONCOMPLIANCE; PROVIDING FOR AN ASSESSMENT LIEN AND ENFORCEMENT; PROVIDING ESTABLISHING 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.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Franklin stated this was tabled at the Public Hearing on August 17, 2009 and the Public Hearing would be continued at this meeting.

MOTION: Vail / Rivet to remove from table. Vote: All Ayes

Speaker card – Judy Hard, 2560 Hard Lane Malabar. Had question – how many houses are we talking about. BWF said she knows of 5. How are you going to enforce mortgage companies. Force them to notify you within ten days. It looks like of bog down for the Town. The mortgage companies had vested interest. Mayor said we don't answer as they speak. Council will speak on it later. She is concerned that it would take so much resources of the town. If they don't do it, what are we going to do?. Once they file for foreclosure, you can get information from Clerks office.

Mayor said to go back and provide history, Bohne brought case up from CA where a small child was drowned. Perhaps we lost track of the goal. Bohne, said Erin and he had done some research. He was trying to build in more protection for the private property owner. He completely understands and appreciates the rights of the property owner. There are two facets – corrective action and foreclosures. They are not happening very quickly. Bohne is representing some that are bringing on the foreclosure and also some that are fighting foreclosure. Rivet asked what the time frame is. If it is a 1st mortgage, there is a mandatory mitigation. If it deals with Fanny or Freddie there are only 5 attorneys that deal with federal loans. The ord in order to have any teeth, to allow the Town to go in and impose a lien if this a homesteaded property. The City of Pt St John does it by special assessment and it goes on as a tax assessment. Bohne thought that changing to address the registration, he is going to recommend against it. If we take out the Town s ability to correct and assess, it takes out the teeth. He can't recommend the town go out and fix something and then not be able to collect. He has read the overwhelming opposition from residents. Rivet said several people had said it is a good idea. The email is not the will of the people. Bohne said he can't recommend approving without enforcement issues. Rivet said at a minimum address the public safety issues. Bohne said you can take them to code board, but if it is homestead property. If it is abandoned there is no one no longer living there; it can be liened. McKnight said the drowning of a child in a pool is not a good example for Malabar. There is more fear from ponds, ditches, dogs, etc. Vail said child drowns in pool, and public outcry, what did you do to try and prevent this. Must be very careful. McKnight said we have regulations now that require fences around pools. Vail said public awareness. McKnight said if there is a parent with a small child living near a house with a fence in disrepair, it is their job to notify the Town and the Town will call owner to repair. Mayor gave an example. Based on a complaint, code enforcement goes out

and verifies that the house is obviously abandoned, can they evoke the special assessment. Mayor is looking for regulations no more onerous than our current policy of not doing active code enforcement. Can you then go file a special assessment at that time. Also do a public education process. If they see a dangerous situation let them call town hall. BWF said that is what takes place now. We had a pool that was open and she had Denine check into this. Mayor said if we have to work with someone not cooperating, then it would be helpful to have this assessment. McKnight said it sounds like it is working and if so why fix it. Bohne said if the process is working, fine. If proceedings have not been filed, it may take more effort. Bohne hears the TA say it is working, hears concerns of residents. Would caution going on to private property without permission. Vail asked about legal liability. Town would have no legal liability. In fact, if you have it and don't do something, you may be liable. Bohne said he could not advise Council to approve the ordinance without the enforcement wording and would recommend they not go forward with adoption. Bohne said after the first round of questions and concerns, he started questioning it, and will adjust his bill. McKnight said that wasn't necessary. Rivet said we should legislate with morality and provide good legislation.

Open Public Hearing:

Judy Hard, Hard Lane, she is concerned about pools but there are also retention ponds with no fences that we should also be concerned about.

PH is closed.

MOTION: Vail / Borton to approve.

Discussion: Rivet said that the ponds mentioned by the speaker have regulations that require a gentle slope. McKnight stated there are many that preceded the ordinance or were done without benefit of a permit.

Roll Call Vote: 1) Rivet, No; McKnight, No; Dezman, excused; Borton, No; Vail, No.

Motion failed 4 to 0.

RESOLUTION: (Requires another Public Hearing)

5. Adopt (Reso 18-2009)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Franklin explained the error in the advertisement that required this to be redone.

PUBLIC HEARING Opened:

PUBLIC HEARING Closed.

MOTION: Vail / Rivet to approve Reso 18-2009.

Discussion:

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

Motion carried 4 to 0.

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

6. Recommendation from Planning and Zoning Board – Consideration of Land Purchase

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Rivet / Vail to direct staff to contact realtor to get asking price.

Discussion: Franklin explained the property is close to, south of, the Town's right-of-way parcel east of Orange Avenue. The parcel between the Town's and this parcel has expressed interest in working with the Town to develop a park. Franklin referred to the park land that was

developed along the river in Palm Shores and also the 1.1 acre site Sebastian developed across from their Main Street, with grant monies. There are FIND and USFW and other funds available to improve access for water use even with the present economy.

Vote: All Ayes.

7. Recommendation from Park and Recreation Board – Culvert to Access 17 acre conservation parcel on Weber Road

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Franklin said the property is located just south of Dr. Leedy's property on the west side of Weber Road. How can we get access. McKnight asked if the pepper busters group are still active. Borton said not very. BWF said it should not be a priority in such a lean year. Vail said for the price of a culvert we could get volunteers to clean up the property. Let them come in and help. As long as it is not an excessive cost for the culvert. Borton said once we clear it we must maintain it. Rivet said to ask Park Board to come up with ideas on how to pay for it; developer's recreation fee monies or donations from local businesses. Mention the incentives to the Scouts to allow them to use it for their scout meetings. They could solicit donations.

MOTION: Rivet / Vail to request Park Board to recommend a funding source and provide a plan to maintain the park.

Discussion: Franklin said management is required in the plan. Borton said we don't want to go overboard. What type of commitment for long term care? Franklin said we are responsible to manage the property. That includes eradicating the invasives and surveying the plant and wildlife. BWF said we pay \$250/month to mow the 8.48 acre parcel. Franklin said managing does not mean mowing; it is conservation land. We developed that parcel into a golf disc park. It could be left natural. Franklin said we maintain the other FCT properties – the Fern Creek Crossing was just cleared of invasives using a crew of prisoners from the County. The Cameron Preserve has had wetlands work and plant survey and a recent fire break installed. It is conservation land and it should not require mowing.

Vote: All Ayes

8. Request from Sandra Tyler regarding Marie Street Improvements

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Sandra Tyler, 1360 Blanche Street, own property on Marie Street. Several people are interested but we want to determine what the requirements are. They want something in writing from the Town. The road is in place, and they have had it bore tested and it is good; it just veers to the east. They had it surveyed. Nothing has been done to that road. Can she get a letter from the Town stating what the requirements are? She has been here for years. She babysat for people on Marie that still live there. Mayor asked who she babysat for. She baby sat the Souter's. Franklin said our engineer Bill Stephenson reviewed the soil borings and the survey. It is good base but is not entirely in the right of way.

Franklin explained the situation with the road and the recent meeting with EELs. There are lots beyond the Town's property that are available for development. The Town has been maintaining the road to their PW yard. The east side of the property never gave road ROW. Vail said the question is do we have to improve to get access to land if we don't develop. Franklin said we require residents to improve the roadway if they wanted to fence. Rivet said it is our responsibility to comply with our own requirements. Mayor said we have two roads that were accepted; Kelly and Beekeeper. Franklin said that Beekeeper is not an accepted road. There was a property owner that paid money to the Town. They later requested their money back and were given a full refund. The only improvements done were by order of Town Administrator, PW took millings to the roadway. Beekeeper was named for fire-fighting response purposes only. Franklin will check on Kelly Lane. Town will be improving the south end of Marie for the trail. BWF asked when the property was donated. 1983. When did road

ordinance get approved? 1984 and then 1986 and then 1991. Vail is in favor of taking traffic off of LaCourt. Mayor said he does not support use of TIFT money to improve Marie St. McKnight said could we do a letter for her that it would be a shared cost.

MOTION: Rivet / Vail to table to the first meeting in October.

Discussion:

Vote: All ayes.

K. ACTIONS ITEMS:

ORDINANCES: First Reading – 0

RESOLUTIONS: 0

MISCELLANEOUS:

9. **Building Official Reporting to Town Administrator - pulled and will be on next agenda.**

10. Council Approval of Candidate Qualifications

Exhibit: Agenda Report No. 10

Recommendation: Request Action

MOTION: Rivet / Vail to approve the candidate qualifications.

Discussion:

Vote: All Ayes.

11. Fire Department Request to Pursue BLS License

Exhibit: Agenda Report No. 11

Recommendation: Request Action

Assistant Fire Chief Dan Welton went over a power point presentation. At this point no one knows what the cost and staff requirements are. He would like to gather the data and then present them to Council so that if and when the need is there for BLS then all the information is available. The information gathering will be at no cost.

Rivet asked if they are looking for a nod to go forward with research. Welton said yes. Fire Marshal Dave Abernathy will do research and report to Welton and Chief. BWF said there would be a cost using the Fire Marshal. We have cut Dave hours for both departments. The 2nd item, she said that they must have 24/7 staffing as first responder. IHB qualifies because their police force serves as their first responders. She will do the research and report back. It is not cost neutral. She talked to Chief today about this. There are many days when there is no one at station to respond with Chief. You put your liability on the line when you deal with volunteers. Before spending staff time and resources. The next time this issue comes up the information gathered may not be current. Welton asked if it would be acceptable to have volunteers do the information gathering. Mayor said if volunteers do it, Council won't object. Mayor said you may want the knowledge. Welton is not here to sell it. Vail said it is good to have a goal. Standards may change but the perspective. Consensus to allow them to gather information at no cost to Town.

12. Nominations for Trustee Candidates for FMIT Board of Directors

Exhibit: Agenda Report No. 12

Recommendation: Request Action

MOTION: Vail / Rivet to nominate Nancy Borton.

Discussion: BWF said Borton was interested in getting involved. BWF described her time on the PGIT Board and the input of such a Board.

Vote: All Ayes.

L. DISCUSSION ITEMS:

M. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

) Vail – nothing

) Borton – left at 9PM

) Dezman – excused

) Rivet – nothing

1) McKnight – appreciates Attorney Bohne's time on the sunshine issue.

5) Mayor – At Civ Mil meeting there were 3 CC members. He reminded them that before it got turned over to State, the row needs to be given. So he will squeak the wheel. Yesterday he had lunch with Tobias. He had been meeting with all the Mayors and Fire Chiefs and Police Chiefs. He talked to him about unfunded mandates and how we got clobbered by the cost. How does it affect the municipality? Tobias listened and paid attention. He has been in Tallahassee one year and is learning the ropes quickly. Before next spring, Tobias wants to come before Council again. He read article from Orlando Sentinel regarding Debary and their fire service. Debary population is 10K.

N. PUBLIC COMMENTS: General Items – none**O. ADJOURNMENT**There being no further business to discuss, **MOTION:** Rivet / McKnight to adjourn this meeting.**VOTE:** All Ayes. The meeting adjourned at 9:42PM.BY: 

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:


Debby K. Franklin, Town Clerk/Treasurer9/21/09
Date Approved