

MALABAR TOWN COUNCIL REGULAR MEETING

September 21, 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 3 Council Member Steve Rivet.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

PATRICIA DEZMAN

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: none

E. PROCLAMATIONS: Hadassah Goes Green December 2009. Mayor read and presented to Hadassah President Lois Felder. Picture was taken.

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 9/09/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Borton / Vail to approve as presented.

Vote: All Ayes

G. PUBLIC COMMENTS: Per Reso 1-09 General Items not related to agenda - Speaker Card Required.

H. STAFF REPORTS:

ATTORNEY: Nothing

ADMINISTRATOR:

- BCSO Commander Salvo: offered to answer questions. Mayor said paper said Melb Beach is safest place in Brevard Cty to live. How did paper get the info? Did they get stats from sheriff office? Salvo will look into and get back to TA. BCSO does have Malabar and G-V data separately. McKnight asked about increase in burglary. Salvo said there was a solved burglary at Enchanted Lakes. Moonbeam is a street in Enchanted Lakes Estates. Salvo said the past 30 days have been quiet.
- She and Franklin attended the EELs mtg of SMC on 9/18/09 and it went very well. We had met with the EEL staff in early September and explained the need for the ROW and easements and they are going to support the dedication of 45 feet for row and 10 feet easement for the trail along the frontage of the Coastal Jewel property on Marie Street, approximately 1400 feet. It was a very good meeting.

- McKnight said he had to ask about this in this public forum. He asked TA about the situation with the PW Supervisor. BWF said there was the annual evaluation, and she expressed his inability to follow up on tasks, she had to take over the schedule for roads and drainage. She had always asked him for input in a matter and none was ever forthcoming. Another Council Person interceded and spoke with Carl and things got a little better for a short while. Then there were the hostile work environment complaints of two employees. Aside from that she extended his evaluation period, he did not like her disciplinary memos. It got to point he would say he didn't know anything and told PW employees to get answers from TA. When she came here, he was supervising six people and that position should have been salary position then. At the time she gave him the position, she gave the position a 10% pay increase to compensate for the loss of wages from overtime. Since that position has been taken from him so has the 10% increase and he will revert to hourly. The person given that supervisory position will now be salary and receive a 10% pay increase. The situation was sent to the labor attorney and has responded that the situation was handled properly. McKnight said that Carl has been here a long time and anyone who managed for so many years would not want to work for someone he supervised. BWF stated we have had to adjust our team and our resources and do more with less. With Carl, if you don't ask the question the right way, you will not get a useable answer and he will not volunteer information that would be helpful or useful. McKnight said he does not want to place the blame with either the TA or the employee. He wants something in place so Council can review the evaluation employee's give of the Administrator and Clerk. TA will comply with Council direction. McKnight said the evaluation would not be the end all. McKnight is not trying to do anything detrimental and suggested making the evaluations anonymous. BWF offered to set up a meeting so McKnight can speak to the PW staff. McKnight said it is not about just him but overall how they perform. McKnight likes the end product coming from them but would like to have insight to how things are getting done. None of Council knows what happens on a day to day basis. McKnight is not trying to damage our positions or save Carl, he is trying to get a better idea of what is going on. Rivet said Council is like the Board of Directors for a corporation. They do not judge on basis of how they are thought of; the CEO is judged by results. Rivet stated that Council Members are free to talk to any employee. Any of Council can speak to any employee. Dezman said she does not like having the evaluations anonymous. McKnight stated if you have a good manager, and one employee giving you trouble that one will stick out. There seems to be a broader issue. Vail said he has 3 people under him and he doesn't know how municipal governments work, but he would not think it is unreasonable to have staff give bottom up evaluations. Rivet said it is not uncommon. Mayor suggested thinking about it for 2 weeks and have it on the agenda for an up and down vote.
- Borton asked about hogs. TA said we have had no complaints called in or logged on the website. Dezman said the phone calls are about jet skis.

CLERK:

- Regarding our investments, four of the CDs matured in August and the rates were so low, I put them in sweep account to check interest rates on CDARS program. Clerk purchased one CD for one year period that would provide 2.5% interest and then opened a line of credit at bank in case we need liquidity.

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

ORDINANCES: (2)

- 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 read from the ordinance and stated the proposed millage rate is 1.6630. A final levy of 1.6630 mills will result in a -2.20% change (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: Borton / Vail to approve Ord 2009-26 setting the millage for 2009/2010 at 1.6630.

Discussion: Borton thanked staff for working hard on getting the millage reduced.

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

Motion carried 5 to 0.

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

Without objection Chair 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

Section 1 of the ordinance reads that 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: none.

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

Motion carried 5 to 0.

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

4. Recommendation from Town Administrator Regarding Road Maintenance

Exhibit: Agenda Report No. 4

Recommendation: Request Action

TA asked Daryl Williams of CDM Inc., to attend and to present information on condition of our roads. She explained that the new revised handout for this item included the uniform design that roads are built to in Malabar. Those are the typical standards for dirt roads. The specifications show a travel way of 11 feet each way with a center crown and a 2% grade down to the edge of the road. If our engineer were to go and do inspections on any of the roads they would fail. She asked CDM to prepare some roads, 3 dirt and 3 milled so Council could see the difference. Daryl Williams, CDM Inc, explained that there is a stepped process to get the roads back into shape. You have to cut the edges to re-establish the roadway. That material needs to be rolled back into the roadway and then be beaten down with vehicle traffic or it needs to be hauled off. That would be faster but that would also be much more expensive. During this early process, the residents are going to complain. The first step in the process is to look at how the road functions, for driving and for drainage. We will see improvements to the road widening. Borton asked how long to get them back into shape. It is like grading carpet.

Within 2 to 3 months they should be back into shape. The cars beat on the grass and by the third grade, it starts to smooth out. Right now with the windrows there is no way for stormwater to run into the ditch. If water is setting on the roads, the clay is the first thing to go. Grant Valkaria's roads weren't as bad as Malabar's. They have been maintained by County all these years. Malabar's roads no longer have the original grade that was established when they were built. These are in worse shape. He spent 8 hours on McCain to get it into shape. If the roadside is manicured by homeowners, we will get calls on that too, because in order to save money, he will have to leave material on side of road.

Vail has received negative feedback on work done so far and does understand the process. Vail understands the windrows with many organics that are trapped. The grader we have is in perfect condition. The point is the machine is sitting there not being used. If we can incorporate CDM's operator on our equipment in this process, the machine would be used. Vail asked if the Town's grader could be used by CDM employee. Daryl said he would have to check his workers comp insurance to see if he can put his employee on our equipment. Vail is looking for a cost to have the employee work on our machine to use it to improve the roads. Williams has a book that will tell him how much fuel the grader takes. Williams said if you go ahead and fix them then you can get away with grading every other month. He suggested they inspect Winter Green road off of Weber that he has done. Juniper is another but it is much shorter. They have minimum dust. There are products you can use and TA is looking at product now to add to water tanker

The Mayor said the Taxpayer Budget Review Board (TBRB) had suggested we look at outsourcing and then reduce the staff. BWF said we have one person doing grading and the others are mowing non-stop. The cost is per grade. This will give you an idea. Mayor said some of these roads are not problem roads. Mayor said the biggest ones are Eva and Duncil. Mayor said if we have a good grader and a good operator we should be doing the grading. If we don't then we should outsource it or we need to train the operator. Someone needs to train him. BWF said Carl is the one who was trained and that is what we have been discussing the current status of the disrepair of the roads. The operator must be CDL licensed. BWF stated we had the truck out in field and we had no one that could drive it. Dezman asked if the price was for every road in Malabar. Williams said he will fix all the roads as he goes. 15 – 20% are in really bad shape. Lots of the roads only pitch one way. Dezman said what was the time-frame to do all of them. To start out with the first grade, it will take 70 hours. After that he can do them all in 50 hours. How long to get them in shape. Two full grades with time between to allow for soft spots and. He also said that if there is a complaint, he will regrade. Grant Valkaria budgets 60K for CDM Inc. to grade the roads. Mayor said if we are going to sub out then we should only do the roads that need it. Williams said the only way to get this price is for him to have all the roads. Dezman said we can use the time to look for a grader operator. Williams said he has a contract with Grant Valkaria. Malabar roads are closer together; theirs are more spread out. Vail said he would not be for spending 60K a year for road maintenance. Daryl said we probably pay more now when you consider what we pay and our retirement, fuel, etc.

There are other issues with using his people on our equipment; if our machine goes out, who broke it and who is going to pay? If he is on our equipment and it breaks down, Williams still has to pay his employee. Borton said we should sell the grader then. Vail said this is not a good time to sell equipment with the economy down. Williams said he would give us 10% more than four broker estimates or pay us the 10% if all the estimates came in unreasonably high.

Bring this back either next meeting or second meeting in October. Williams will put some numbers together.

Mayor asked if the road "grading" status list is available. BWF asked if Council wanted to give a list of what roads they think are not a problem and then she will compare it with citizen contact forms.

K. ACTIONS ITEMS:

ORDINANCES: First Reading – 0

RESOLUTIONS: (2)

5. Resolution 20-2009 amending Resolution 04-2009

Without objection Chair read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 04-2009 IN ITS ENTIRETY AND PROVIDING FOR A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2008-2009; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

MOTION: Borton / Rivet to approve Reso 20-2009-27

Discussion: Rivet said it is going back to original revenue numbers approved in September 2008 and the expenditures remain as changed in April and adjusted since then. Yes. Franklin stated that the Council has been adopting the budget every year since 2000 with an ordinance and that ordinance states the budget shall be amended with a resolution. We realize this is wrong and this will correct that for this year.

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

Motion carried 5 to 0.

6. Resolution 21-2009 amending FY 08/09 Budget

Without objection Chair read by title only. This one amends the budget for one last time before end of fiscal year.

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

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Vail / Borton to approve Reso 21-2009.

Discussion: Mayor did not review this as he was out of town. He went to a HS reunion in Ill. He scanned through it but did not have time to get with BWF. But he did notice on first sheet. account 5100 is office supplies. It is just a typo.

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

Motion carried 5 to 0.

MISCELLANEOUS:

7. Building Official Reporting to Town Administrator - Dezman

Exhibit: Agenda Report No. 9

Recommendation: Request Action

Dezman asked who he reports to now. TA said per our schedule he is to report to her. Borton asked if Building Official can stop in at any time on any project that has an open permit. Attorney Bohne said no, only when there is an inspection requested can BO go onto property. The authorization to come onto the property is triggered by a request for inspection. Open permit should be better defined. Rivet said if you called for an inspection, you have an expectation that the Building Official will be coming out.

During discussions at the RTCM 8/17/09, Council (Dezman) directed that this be placed on agenda for action. This was pulled from Sept 9 meeting due to Dezman's illness. The BO reports to the TA. But this BO does not feel it is necessary to report to TA. In the past, the BO would meet almost daily to keep TA abreast of issues in the Town.

MOTION: Dezman / Vail to direct BO to not do proactive code enforcement and all code enforcement activities should be directed by the TA with the exception of health and safety issues.

Discussion: Bohne said Council should be more specific. Motion and second withdrawn. Building Official should take issue to TA and tell her about it. McKnight said if there is a legitimate health or safety issue, he shouldn't have to wait on TA. Council mentioned examples such as low hanging wire or sparking connection. Franklin said the incident that he went into a house under guise of health and safety was what appeared to be an electric service from a home to an out structure. BWF said he took the Fire Marshal with him and took pictures of the inside of the house. Dezman said we need protocol. Whatever the situation is, the phone call first needs to go to the TA and she will make the decision on how to proceed. Council is not talking about his authority under the Building Code to find violations in construction code. Council is talking about code enforcement violations regarding Malabar Code of Ordinances.

They also discussed in the case of the Building Official finding a code violation while on his way to an inspection or secondary to what he is there for to inspect and if the Building Official feels it is a health and safety issue, a phone call must first be made to the TA. Attorney Bohne said Malabar position is to be reactive on code enforcement complaints, not proactive, out looking for violations. We respond to citizen complaints for code enforcement. If Building Official sees a code violation he should tell the TA about it but we will not respond until there is a citizen complaint. Vail said also if BO spots a code enforcement issue he can make TA aware of it but he is not to take action without a complaint. We are not looking for violations. The proactive approach is that BO needs to call TA. Vail said his authority is only on a construction site. Franklin gave the example of the refrigerator that was left with doors on and a memo was done and two days passed before the information got to TA.

MOTION: Rivet / Dezman to make clear that Council has directed that the Building Official has no code enforcement authority and he must contact the Town Administrator on issues of health and safety.

Vote: All Ayes.

L. DISCUSSION ITEMS:

8. Road Construction Payback Process (Dezman from 8/17/09)

Exhibit: Agenda Report No. 8

Recommendation: Request Discussion and Direction

Dezman said the process needs to be looked at again. They reviewed the process. Consider the evaluation formula. Vail said if you are considering removing frontage on wetlands in the discussion, you can't discount wetlands. What may not be buildable today can possibly be built on tomorrow. It is primarily roads where a house accesses another road (corner lot) or a pre-existing house. The payback is to the road builder. The Town retains \$50.00 or 5% to maintain the records. Mayor said to make this an action item for the next meeting. Dezman said the new member may not be up to speed when she comes on in November.

Franklin said that the new Council Member is being kept up to speed. Franklin has provided her all the minutes from the past year and all current minutes. She is copied on every current Council agenda packet and budget information. Ms. Acquiva has explained she has current obligation that will be completed in October.

9. Amend Article XVII of Land Development Regulations to Restrict use of Developer Recreation Fees (Vail)

Exhibit: Agenda Report No. 9

Recommendation: Request Discussion and Direction

Vail said that he wants it is clear the monies paid by developers in lieu of land dedication should be for enhancements and not maintenance. Wants it to only go for new stuff. Bohne said the code using the word *implementation* is the key word he based his legal opinion on. BWF said two pins at the golf disc park were stolen within a short period and that money was used to replace them. With the economy tight, it is one of the places to get money. Mayor suggested being very specific with wording: *no routine maintenance, replacement of major items*. Bohne said there should be an amendment to the code to state that.

MOTION: Vail / **no second** to amend code to prohibit routine daily maintenance as an allowed use of the developer's recreational fees.

Rivet said he doesn't have a problem with using the funds for maintenance.

No one agreed to second.

Borton said no one on this Council wants to use it for maintenance. She doesn't want to spend the money to change ordinance.

M. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

2) Vail – nothing

1) Borton – nothing

4) Dezman – nothing

5) Rivet – nothing

3) McKnight – asked about Oakmont. Material is being brought in. (NOT OUT?) He also asked about accessing the 17 acre parcel. The access is from Wilson and we have a right-of-way there. Town wants to use it to access the 17 acres. Also CDM Inc will be cleaning out our yard quarterly and McKnight would like some of the material on his back lot. The material makes good material for yard but not for fill. Mayor asked about the value. It is valuable for yard fill. If you want it gone, Mayor said if we can make a buck by charging \$50.00 a yard. Vail said the muck we got from Palm Bay when they dredged Turkey Creek was bad material. Williams has opened up the yard. It is not muck. Bohne said if it can be determined that the material can be used for yard filling; the Town can't bring it to him at no cost. Bohne asked about the cost of hauling it off. BWF said this would save the Town money so it would not have to be hauled off. The process will be very transparent. How many truck loads need to go – 2 to 3 K of loads (divided by 20 yards). McKnight said he could use some. Put ad in newsletter – cost plus 20%. 5) Mayor – food for thought – TIFT money – Mayor said there is a better use for the money for a right turn lane at Corey on south side. And if there is enough money left then to the south side of Weber Road.

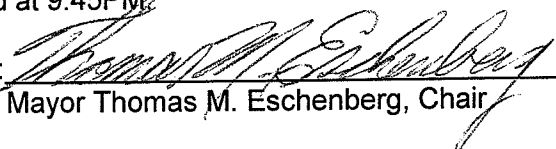
N. PUBLIC COMMENTS: General Items – none

O. ADJOURNMENT


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

VOTE: All Ayes. The meeting adjourned at 9:45PM.

BY:


Mayor Thomas M. Eschenberg, Chair

ATTEST BY:


Debby K. Franklin, Town Clerk/Treasurer

10/5/09
Date Approved