

MALABAR TOWN COUNCIL REGULAR MEETING
October 05, 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 5 Council Member Pat Dezman.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

PATRICIA DEZMAN

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS-FREE

TOWN ATTORNEY:

KARL BOHNE

TOWN ENGINEER

J. MORRIS SMITH, P.E.

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Also attending was Attorney Bohne's Associate Counsel Ms. Erin Harrigan

C. ADDITIONS/DELETIONS/CHANGES: none

D. PRESENTATIONS:

E. PROCLAMATIONS: Complete Count Census 2010 – Mayor read. Franklin will present to Complete Count Census Committee. She sits of govt subcommittee.

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 09/21/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet/Dezman 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: Writing off some of fees for the work on the foreclosure ordinance as stated at last meeting. It will show as a \$400.00 credit on September billing.

ADMINISTRATOR:

- FD Report by Asst Chief Dan Welton for September 2009 – Went over report (attached to minutes.) Hydrants on Weber and Hall are all that is left that need to be painted. Water system shelter has been ordered. He explained the incoming calls are now recorded. They need to order a sound card.
- Stimulus Project Status – Americans Recovery and Reinvestment Act (ARRA) projects are tied up in bureaucracy. Stimulus projects must be reviewed by the committee and Bill S has done the scope. Money must be requested before we can bid the job.

- She introduced the new Public Works Manager Tom Miliore as of October 1 and explained the new work being done and the maintenance logs on equipment. Relm radios back up and running. Will have a means of communication when cell phones go out.

CLERK:

- Regarding our annual audit, they have begun the process and we hope to be done by November. BWF and I are learning new modules of the Cougar software that will make the reporting more efficient.
- Have handed out a budget memo with a schedule of meetings for 2010.
- Brevard Hardwoods is listed in the Brevard Historical Landmarks and the write up in the pamphlet includes a nice description of the Sand Hill trail head and the trails within the MSS and the Cameron Preserve.
- SCLC dinner is hosted by G-V and Melbourne and the dinner is at Rialto.
- Have been working with citizens complaints on the drainage issues and would like to present a vendor to provide the benefits to aquatic spraying at a future Council meeting.
- Went through a recent Florida State Retirement System audit successfully. This is done every six years.
- Will be bringing you a request to allow an exception to sign restrictions to allow temporary signs leading up to the April 2010 census.

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

ORDINANCES: (0)

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

2. **Request from Sandra Tyler regarding Marie Street Improvements (tabled from 9/9/09)**

Exhibit: Agenda Report No. 2

Recommendation: Request Action

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

Who bears the cost burden come from. Rivet said this should be the new collector road to take traffic off of LaCourt. Vail said Atz Road also needs to be improved to the point where they connect. McKnight said are we responsible for this? Would we allow them to operate a similar operation? Town can because it is the Town operation. McKnight said don't react to this situation and don't set precedent. Do we grant them approval to use this road? Accepting an existing road is very different from accepting a non-road. Rivet said are we granting something special for them? Desire to sell land is catalyst. Accepting this road does not grant any favors. Council discussed collector roads versus local roads. The Comp Plan has designated Marie Street as a collector road. Town Code calls for requirement to improve local roads. Vail questioned the timeline for the Town to improve the roadway from the Town's property south to Atz Road. Vail said if we have plans to improve it. What happens when someone wants an extension beyond about that? McKnight said what about Raulerson. What if someone wanted to have Town accept so they can sell the lot. Discussion underway now on future land use maps and the roadway map may be changed to reclassify it to minor collector. But collector roads are Town's responsibility – right-of-way for local lanes are required to be improved and accepted as stipulated in Code.

MOTION: Rivet / Borton to accept the existing improved Marie Street to the south end of the Town parcel.

Rivet said withdraw the motion and send to Attorney Karl Bohne to draft a resolution accepting the portion of road. McKnight said can we bring this back as an action of Council and not as a request from a resident. BWF said can we bring this back after BOCC gives us the ROW. McKnight said he likes that and for this applicant, give her a copy of the minutes. Don't commit to the property owner. BWF will draft letter and Attorney Karl Bohne will review.

Attorney stated the Malabar Code applies to local roads regarding improvement requirements. Until such time as the Town improves Marie and Atz Roads to collector status it is the responsibility of the property owner to improve in order to develop.

MOTION: Dezman / Vail to bring back to Council as action item after the Brevard County Board of County Commissioners have given us the right-of-way on October 20, 2009.

Vote: All Ayes

Borton said we have to also go to State regarding the needed right of way around the Town lot on Marie south to Atz Road. Consensus was to approve Marie Street from the current approved terminus to a point adjacent to the Town property. Direction was to do acceptance in a more formal manner such as a by resolution. Rivet said the resolution shall accept the road and define how and when we are going to improve the rest of it south from Town lot to Atz Road as a collector. Attorney Karl Bohne said that the three of us, TA, Clerk and Attorney could draft up a proper acceptance. Franklin will have the right-of-way measured.

Chair said staff should contact the State and ask for needed right-of-way down to Atz Road. Council said no.

3. Recommendation from P&Z Board – Feasibility Study

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Engineer Morris Smith went over the overhead flyover presentation that was given to P&Z. He pointed out the large Cypress Hammock within the proposed roadway. We talked about at P&Z was to look at setting up a commercial condo development and master planning this whole area. And set aside the wetlands and rehydrates and at the request he proposes as an alternative as the round about the wetland area. The white dashed line is the entry road. P&Z asked if we could move forward and have St John's come in to flag this area. The benefit to the Town would be the tax revenue. Perhaps a joint meeting or task force and invite the property owners. Franklin has requested the radius package. Chair asked if Smith recommended we invite St. Johns onto private property. No, should contact property owners first.

Smith said another benefit to the Town was the master stormwater plan. The wetlands owner would be benefited because it would carry great value. Dezman asked about previous requests. Boat storage, car towing and cheer school. McKnight said the number of people that this would benefit and there are better ways to spend TIFT money. He is under impression. Vail said the people on Booth and Lett Lane did not want. Rivet said how much are we? Borton said bring it to the people. We are wasting time asking St. Johns. Sounds like a great idea. Take it back to people. Vail said we should send out letters to owners. Don't service just one area of town.

Chair said the Town is taking a lead on this strictly for property owner's benefit. The Town may benefit when this is built out commercially. If you contact the property owners and let them know what they could do and let them take it forward. Dezman said get the property owners feedback first. Bring them in and find out where they stand.

MOTION: Dezman / Vail to get info from county and have a joint meeting with the P&Z Board and the residents in January.

Discussion. McKnight said it is too early to set a meeting. You may only get a 25% response from the property owners. Rivet said you would get a bigger return from the residents south of

Booth Road. Vail said the date may give them incentive to attend. Mayor said you could cancel it if not enough respond. BWF said they can respond to her via email.

Franklin said need clarification on who to notify. North of Booth or also south. Mayor said no and Rivet said yes. Vail said also go with owners to the north. Rivet said we have had some contentious meetings and no fist fights. Mayor said two segments of Town on two totally different sides. McKnight said he read the draft minutes in the agenda report. We should also only have approved minutes in an agenda report; never bring it to Council until the P&Z Board have accepted minutes. Franklin explained since staff was directed to put draft minutes on website, we make sure they are labeled. Staff has historically brought Board recommendations to the next Council meeting. This will be a procedural change.

Dezman withdraws her motion and motions to table. Rivet seconds. Vote 2 Ayes; 3 Nays. Motion to Table fails.

MOTION: Dezman / Vail to table until P&Z minutes are approved.

Roll Call Vote: 1) Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Aye; Dezman, Aye.
Motion carried 5 to 0.

4. Maintenance of Roads – Town Administrator

Exhibit: Agenda Report No. 4

Recommendation: Request Action

If you are going to subcontract out road grading are you going to have a cost savings by laying someone off. Do you want them to use our equipment? Insurance, workers comp and down time would be problems.

McKnight questioned the hours used in the calculation. Since the grader was purchased fewer road are graded, because we have paved Hall and Atz. BWF said there have been no maintenance records to show the maintenance on any of the roads or the equipment.

Mayor said contractor wanted all or none. You can't ask him to just do the hard ones. Chair asked if Council wanted to hear from Daryl.

Daryl Williams of CDM Trucking Inc. asked to speak. The oil change is once every 250 hours or once each six months and that is from Ringpower. The discussion was to have him fix the real bad ones and then take over the maintenance. The data he used is the only data that had hours on the machine, a schedule of what was to be done, and a calendar with work done. Williams explained how he maintains the roads in Valkaria, once a month on some of the roads and every other month if they don't need it monthly.

BWF said the roads come to the list from the citizens complaints. That varies with the road and the condition. Vail was under impression that these prices were good for only if all roads were done. Williams said these prices are good for an as needed basis. If there are no problems we don't have to add the millings. BWF said the place we would take the money from would be the millings line item. She has record of how much we have spent on millings. 90% of roads don't need millings. Vail said that the dust issue is a big issue. The more you grade a millings road you get asphalt dust. BWF said the dust is controlled by water and polymer.

Mayor asked Williams, how to treat the roads with millings. Williams said you have to use more than we have been using; use 4" and get them wet so they bind. Mayor said that thin layer it is worse than no millings. Vail said a millings road is better than a marl road. Mayor drives all these roads and Eva and Duncil are terrible. Vail said that he is not against farming it out but he is not for spending all that money \$60,000.00 for maintenance. Vail said some product called OYE that can be applied to the roads to keep dust down. Smith said that he has contact

R.H. Rodas in Tampa for information on their polymer products. Two main problems are washboard and dust.

It is also important to get the roads brought up to standards. Borton asked about the problems. Vail said we have a status of the Town's homemade tank. BWF said the project has been underway for two years. Williams has a tank on a trailer. Borton asked how often it has been done. Rarely, we are still constructing trailer. Vail said he will get with Tom Miliore and finish up the trailer.

MOTION: Borton / Dezman to continue with the sub-contracting out to CDM Trucking, Inc. of road maintenance on a trial basis on roads to be provided by staff for four months.

McKnight is uncomfortable with taking money from millings, because they are scheduled. BWF said they are not scheduled.

Roll Call Vote: Borton, Aye; 1) Vail, Aye; Rivet, Aye; McKnight, Nay; Dezman, Aye.
Motion carried 4 to 1.

K. ACTIONS ITEMS:

ORDINANCES: First Reading – 0

RESOLUTIONS: (1)

5. **Adopt Malabar Utility Rates for 2009/2010 (Reso. No. 19-2009)** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR WATER AND SEWER UTILITY RATES, CHARGES AND FEES FOR THE FISCAL YEAR 2009-2010 PURSUANT TO MALABAR CODE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

MOTION: Borton / Dezman to approve Reso 19-2009

Discussion: Where did 15% come from? In 2006 analysis was done by Bill Stephenson. Mayor said we could make this so that it is automatic and not have to approve each year. Franklin will check with auditor.

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

Motion carried 5 to 0.

MISCELLANEOUS:

6. **Approve new street name for section of Waring ROW**

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Mayor brought this up much earlier. Reading the Agenda Report it is not practical to put road through. Borton likes the idea of giving it a unique name, tied to history. Mayor suggests Council submitting some names and staff will forward them to E-911 for consideration.

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

Exhibit: Agenda Report No. 7

Recommendation: Request Action

McKnight said until we have a better method, the current code should be followed. Vail said we could ask but we do not have not authority to go in after the fact and ask property owners to pay. Is it the general consensus of Council to continue with the current method? Yes, Vail, Rivet, McKnight and Borton. No Dezman. Rivet said it is not always in the best plan to react. McKnight said if they built there and chose to build then that is what they knew to expect.

Consensus is 4 to 1 to leave it the same. Dezman said the way it is done is unfair. McKnight said he recommended it go to P&Z.

8. **Building Permit Fees**

Exhibit: Agenda Report No. 8

Recommendation: Request Action

MOTION: Dezman / Borton to keep building permit fees as stated in Reso 11-2004

Discussion: Mayor said this is not really what he asked for from staff. Vail said have we averaged the inspections in the last two years to four years ago. You still have the overhead. When the building projects are slow, you still have expenses. Mayor believes that in some cases that we are charging too much. Rivet said figure out how much we spend on inspection time and overhead and not value of project. It makes more sense to charge according to the square footage of the house than the price of the house. The Building Official ought to know what it costs him to do an inspection. McKnight compared same size house - one has basic house and another that has a 500K house. Inspection time should be the same.

BWF said he selected a SFR and a shed. Dezman asked who brought this up. The Mayor said that he did not get what he wanted. McKnight said we are trying to make sure we don't overcharge. It is not supposed to make a profit. McKnight gives a 2000 SF project valued at 200K house and one at 400K. There are a lot of variables with that may affect the cost of the house. Dezman said there is a motion on the floor.

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

Motion carried 4 to 1.

9. Follow Up With Property Owner on US 1 - Logue

Exhibit: Agenda Report No. 9

Recommendation: Request Action

Mayor is against operating like the federal government. Dezman said it would only benefit a small number of people – mostly outsiders.

MOTION: Vail / Rivet to pursue the purchase of this property.

Discussion: Vail is for purchasing but is not for this price. Borton asked if Dezman had figures on how many people would want it. Borton asked McKnight – possibly. He thinks the majority of use would come from Camelot and Century Oaks. Camelot has their own dock. Rivet said his constituents are in the whole Town and there are a lot of people that would use such a property. It is not for motorized boats. Rivet asked if you could you get a kayak down to the river. Yes said McKnight. Vail said his constituents would support this. When the economy gets better we won't be able to purchase it. Dezman said what is the difference between the property next door and this property. Start the process. Find out what they are asking.

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

Motion carried 3 to 2.

Dezman said we need to remember management. Vail wants to purchase property next door.

10. Evaluation of Town Administrator and Clerk

Exhibit: Agenda Report No. 10

Recommendation: Request Action

McKnight said he did not ask for this. Mayor said he said to put it on for an up or down vote.

MOTION: Borton / Rivet to take no action. Discussion:

McKnight said it is common to have this done. It is called a 360 assessment. BWF said the 360 assessment was done in the 1990's and when she checked with the ICMA she found it is not supported anymore. There some legal issues that came back.

Roll Call Vote: 1) Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Nay; Dezman, Aye. Motion carried 4 to 1.

11. Approve Contribution Payment to FSA for Hearing

Exhibit: Agenda Report No. 11

Recommendation: Request Action

Attorney said it is an unknown factor and it was worth the small contribution.

MOTION: Rivet / Borton to direct payment. Discussion: none. Vote: All Ayes.

Morris Smith stated the EPA just settled a case in Tampa and they said to agency, that they will be setting the levels we must meet to be compliant with water quality. Their levels are more than two times stricter than current levels.

L. DISCUSSION ITEMS:

12. Fire Department Storage and Fire Dept Corp Inventory Update

Recommendation: Request Discussion and Direction

Dezman said the FD inventory has had one swipe by Ports and she will have both items done by end of October. Mayor said she could continue after she is off Council. She will have it by end of month.

M. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

3) Vail – put Billie property on next agenda for discussion and its status.

5) Borton – nothing

1) Dezman – nothing

4) Rivet – nothing

2) McKnight – humbly ask for agendas to be delivered more on time. He asked about the broken piece of the play equipment. It is going to be removed. McKnight said that area damaged by dump truck on Glatter Road is still marked off – what is status? BWF stated the Town is contacting the insurance company of the driver to pay for the repairs to the road.

6) Mayor – Update on FD repairs: the demo on water system shed will be started very soon. The generator project at the next council meeting he will be asking for more money. Council approved expenditure up to 10,000.00. Water project is at \$7,905. He will be asking for another \$6500.00 to get the generator cover. Generator will be modified to have shields over the electronics. Mayor ran into Rocky Randel and he sits on SCAT Board. Sometime ago this Council asked SCAT for a bus stop in Malabar. He said he can help us. It is brochures. Look up SCAT on internet and look at the routes and determine where they could stop, how often, and how many persons could add to rider-ship of SCAT. Put on next Council meeting for action. BWF said one of the considerations was that don't put it at the serene facility. The intent was people can't get to hospital. Go online and see every route and they show how they run. Have it go down to Wal-Mart. Vail said 3 SCAT buses nose to tail coming out same parking lot.


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 10:30 PM.

BY:


Mayor Thomas M. Eschenberg, Chair

ATTEST BY:


Debby K. Franklin, Town Clerk/Treasurer

10/19/2009
Date Approved