

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**October 19, 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 Mayor Eschenberg.

**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 CLERK/TREASURER:	DEBBY FRANKLIN, excused
DEPUTY CLERK	CYNTHIA KELLEY

- C.     ADDITIONS/DELETIONS/CHANGES:** Mayor brought up an addition; the minutes from last meeting Vail stated he would like discussion on the Billie property. Vail stated this will be added to the first meeting in November.

**D.     PRESENTATIONS:**

- E.     PROCLAMATIONS:** *National Domestic Violence Awareness Month* - Mayor read; Melody Keeth was not in attendance; proclamation will be sent via mail.

**F.     CONSENT AGENDA:**

**1.       Approval of Minutes**

Regular Town Council Meeting – 10/05/09

**Exhibit:**                      Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Dezman / Borton 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: provided an update on the Coastal Jewel right-of-way on Marie Street. Mr. Knight had asked the County's attorney about this; it is not permitted as it would be a violation of the bond covenants. The attorney opined that an easement could be drawn up; it would not give the Town of Malabar ownership of the easement. It would allow us to do what is needed. If the Council is inclined to accept the easement in lieu of the right-of-way, he would ask that it be drawn up for his review. BWF stated she received the easement and would print it out for his review; it could be discussed at this meeting. Rivet stated it would give us what we want; Borton stated we don't need to own it. Vail stated that people may be more willing to give up the land with an easement; Bohne stated this would only be done for the conservation lands, not private land owners. After reviewing the easement, Bohne stated it needs his attention.

While waiting for the easement to be printed, Mayor asked Bohne if there is any possible solution with the surcharge from Palm Bay for the utilities. Bohne stated we need to get back to mediation; there has been action but nothing to report to Council. BWF stated a meeting was held with Palm Bay; she spoke to Bohne about it before attending. She advised Palm Bay that

Malabar is not moving off the surcharge issue. Bohne stated the details should be discussed at the executive portion. Borton asked if we wanted to be in the water business. Dezman stated it would be best to save this for the executive portion. Mayor asked when that would be and who pays for the mediation. Bohne stated the cost would be split; the meeting would take place after the new Council Member is in place. All members need to be in place and on the same page.

ADMINISTRATOR:

- With regards to the easement language, BWF asked if he could have something to her in the morning as the deadline for the County agenda is noon tomorrow. He stated he would do his best to have it to her as he is leaving for vacation tomorrow.

CLERK:

- Special meeting to swear in the new Council Member Marisa Acquaviva and the incumbent Jeffrey McKnight will be held on Thursday, November 5, 2009. Since there were no challengers, the Charter reads that the candidates are automatically elected, but the Code states Council shall hold a special meeting within three days of the "election" to certify the results and swear in Council.
- Newsletter will be coming out soon.
- Repair and Maintenance on Malabar Community Park playground equipment has been completed by Public Works Department.
- P&Z still working on recommendations for future land use map changes.
- Both Boards have been sent memo that recommendations from Board can only be forwarded to Council after Board has approved the meeting minutes when the recommendation was made.

McKnight asked BWF about the culvert at corner of Howell and Hall, west of McCain and LaCourt. BWF reported that it was being acted on without a permit; that has been rectified. They are in the process of getting it done. Rivet stated it looks like a corrugated piece of plastic. BWF stated that this is acceptable. Along 95, they are using PVC pipe, it flexes better.

McKnight asked about Waring Lane; thought it would be on the agenda for discussion this evening. He has three suggestions for a new street name: Grass Lake Lane; Gator Way and North Waring Lane. These suggestions were provided to him by someone else; they were not his suggestions. Mayor Eschenberg stated he also has two suggestions: Michels Lane or Al Michels Lane. Rivet stated we may want to consider naming the road after the resident who built it.

- 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**

- K. **ACTIONS ITEMS:**

**ORDINANCES: First Reading – 1**

**2. Correcting Code Related to Road Improvement (Ord. No. 2009-28)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; CORRECTING AN ERROR IN CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; REMOVING ARTICLE III OF CHAPTER 13 DUE TO AN ERROR BY THE TOWN'S CODIFICATION COMPANY; AMENDING SECTION 13-54 OF ARTICLE II, DIVISION 2 OF CHAPTER 13; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

**MOTION:** Rivet / Vail to approve Ord. 2009-28.

Discussion: Bohne reported that an ordinance in 2001 repealed the ordinance from 1992; which created Article 3. In 2001, the ordinance repealed Article 3 but the codification company did not remove it from the code. Mayor Eschenberg asked who discovered it. A resident came in with the code trying to use it; Franklin stated it shouldn't be in the code. Research was done; it was found that it was still there. This is a house-keeping issue.

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

Motion carried 5 to 0.

### **RESOLUTIONS: (1)**

- 3. Amend Fee Schedule to Include Sales Tax (Reso. No. 22-2009)** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE COLLECTION OF SALES TAX WITHIN THE USER FEE, PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**MOTION:** Rivet / Vail to approve Reso 22-2009

Discussion: Bohne reported that this is a house-keeping matter. The auditors stated the way we are itemizing charges without sales tax could cause an issue with the Department of Revenue. We broke out the sales tax, keeping the same charges.

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

Motion carried 5 to 0.

### **MISCELLANEOUS:**

- 4. Approve Additional Expense for Fire Department**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Discussion: Mayor spoke to this. Council approved expenditure not to exceed \$10,000 for two projects at the fire department; the generator and the water shed. At the time of the approval, the total costs were not available; now they are. The total for the water shed is \$7,905 and the generator is \$8,700. The approved \$10,000 will not cover both projects. Mayor Eschenberg is requesting approval of an additional \$7,000. BWF stated that the \$7,000 is in the current budget under maintenance. In fairness, the \$7,000 was not planned but it can come out of this budget; we may have to come back to Council at a later date if the need arises. The \$7905 for the water shed was taken out of last year's budget; we couldn't use the remainder of funds because the project was not started prior to the end of the fiscal year. Dezman stated the projects must be done and the propane tank should be taken out. Mayor stated this was suggested by the Building Official. A price for this, if it is a 500 gallon tank, would be \$1000 to remove the tank and bring in fill. Dezman asked if the tank would be disposed of. The tank has been purged; the Fire Department could make a water tank out of it. Chief Gianantonio stated it could also be a propane tank for the burn building once that was in place. Dezman asked how long it has been in the ground. You seal it off and don't do anything; the tank doesn't need to be dug up. The Building Official's concern is that it be removed to keep the trucks from driving over it and collapsing the tank. Dezman recommended that it be removed and let the Fire Department use it. BWF was never involved with this with the Building Official. Vail asked what type of structure for the generator; the one in Palm Bay leaves a little exposure to the generator. Part of the quote is for sheet metal around the electronics of the generator. The structure has to be hurricane wind rated. We have to do something with the generator; it can be a safety issue.

**MOTION:** Dezman / Rivet to approve up to \$17,000 to complete the work at the Fire Department on the generator and the water shed.

BWF stated that you can't ask for \$17,000 when \$10,000 was approved last year; last year is over and done with. Mayor stated the motion doesn't pertain to any particular fiscal year for these two projects; the \$10,000 is for whenever these projects are completed. BWF asked how you can approve a project that was approved in the last fiscal year in this fiscal year. Rivet suggested that the motion be re-worded to approve an additional \$7,000 for completion of the projects. Dezman stated this is fine and asked if this was acceptable. BWF stated that this motion would be within our fiscal year now.

**MOTION:** Dezman / Rivet to approve an additional \$7,000 to complete the water shed and the generator at the Fire Department.

**Vote:** All Ayes. Motion carried 5 to 0.

**5. Approve Malabar Bus Route for SCAT**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Discussion: Mayor spoke to this. Prior to this meeting, a discussion was held with Trudie Infintini regarding bus stops in Malabar. Mayor had put a lot into research and came up with a route that would assist residents in Malabar as well as Palm Bay. He gave a brief overview of the route. Why not propose what we want and then see what we get? BWF asked how he was going to do this; the missing piece to this is the ridership. Mayor stated that ridership could be picked up in Palm Bay as there are already four routes that stop at Wal-Mart. Cross ridership could come from this.

**MOTION:** Dezman / Vail to approve the route and direct it be sent to SCAT

**Vote:** All Ayes. Motion carried 5 to 0.

Where the bus stops on US #1, we could get some riders from Century Oaks. BWF stated Southern Comfort as well.

**L. DISCUSSION ITEMS:** none

**M. MAYOR AND COUNCIL REPORTS:**

(Number indicates order of Reports)

4) Vail – concur with the millings; should be on all the roads. The regards to the water tank, parts are being ordered and it is the works. BWF asked if part have been ordered. Vail stated that they have been. He has communicated with Tom Miliore, PW. We have begun to locate the polymer.

5) Borton – nothing at this time.

1) Dezman – it was her intention to have all inventory at the Fire Department completed before leaving office; she is in the middle of her comps for her exams, these take priority. It will be done by the second weekend in November. She received an email from one of the people at the Fire Department pushing to get this done; she wants to do her own inventory count and report to Council her findings. She did not respond to the email.

Dezman reported she had received complaints on Duncil Lane; BWF stated we are working on this. Also, in the Florida Today, an article stated several towns are employing their teenage children to hog hunt; she wanted Council to know this is happening everywhere, not just Country Cove.

3) Rivet – regarding millings for the dirt roads; he had spoken to several people throughout the town and everyone thinks it is essential to have them. We need to get the millings. BWF stated that we have the water trucks and we are in the process of getting the polymer.

2) McKnight – nothing at this time

6) Mayor – reminded Council that the next Teen Council is tomorrow evening. He met with former Melbourne Beach Mayor Bill Stacey and they have come up with four issues that the teens will be discussing. Mayor Stacey will be the Chair and Mayor Eschenberg will be acting as the attorney. Vail stated that he has been to a couple of these meetings; it is very interesting to hear the kid's perspective. Mayor Eschenberg stated that the discussion will include the dogs on the beach issue and the Walgreen's store. BWF stated she thought there was a statute the

dogs could not be on the beach. McKnight stated he sees dogs on the beach all the time.

**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 8:27 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 K. Franklin, Town Clerk/Treasurer

11/02/09

Date Approved