

"The following draft minutes are subject to changes and/or revisions by the Town Council and shall not be considered the official minutes until approved by the Town Council."

MALABAR TOWN COUNCIL REGULAR MEETING

December 7, 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 Marisa Acquaviva.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

JEFF MCKNIGHT

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

STEVE RIVET

MARISA ACQUAVIVA

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

A. ADDITIONS/DELETIONS/CHANGES - none

D. PRESENTATION: Mayor read statement and presented IEMO Certificate to Council Member Acquaviva. Mayor read that the John Scott Dailey Institute and the FLC awards these certificates after completion of 18 hours of the week-end program covering six sessions. Acquaviva said it was a very beneficial experience and she gained great knowledge. It was an honor to be able to attend prior to taking office.

E. PROCLAMATION

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 11/16/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

Discussion: Franklin said the verbatim sections of the minutes were for reference and would only be incorporated if Council directed.

MOTION: Rivet / Borton to approve the minutes of 11/16/09 as presented. Acquaviva said she had only questioned the section dealing with check signers, she believed she asked that question.

McKnight could not remember. No direction to change minutes. VOTE: All Ayes.

H. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required

I. STAFF REPORTS:

ATTORNEY: We have our court reporter here for the closed session. He anticipates that portion of the meeting should take 45 minutes to an hour. Regular meeting will be recessed; the participants listed will be in the meeting and can only discuss litigation strategy. We are required to do mediation with Palm Bay. It is important to move this process on. At end of closed session, we reopen the regular meeting and Debby comes back. It is important to speak one at a time for the court reporter.

ADMINISTRATOR: Emails regarding on land off of Booth and Lett Lane. Complaint by resident who has had property damaged by hogs. She spoke to person who has the hogs. She has permission of the owner who are her parents. They are being fed and watered. The zoning is RR-65. Wilbanks spoke to the trapper who works for us and he stated there are similar traps all over the area. She wasn't going to go any further. The caller wants her to go further. Rivet knows the guy that is

complaining. Wilbanks said he is concerned someone will let out the hogs and did damage. She does have contact info of the property owner. It is not a permitted fence, but it is a temporary pen and is small in nature and under a \$750.00 value. Wilbanks had copied the BCSO Nov stats.

BCSO: Commander has Agent Harry Bermuda with him. There have been lots of burglaries in late November and he wanted him to present. Agent Harry Bermuda, BCSO. He explained a BCSO Patrol found a boat burglary off of Rocky Point in recent past and BCSO was fortunate to be there and make an arrest. In the recent weeks we have had a couple of burglaries along the river and also one other that wasn't reported. They are working on it. In October, there was a rash of thefts of unlocked vehicles and they got away with property on ATVs. Agent Holiday of BCSO prepared a flyer and we spread them around and a resident called with information. They have three under arrest, Anthony Ayers, Casey Keith, and Nicolas Thayers who Council may know. Two live on Atz and one on Corey, ages from 18 to early 20's. There is some electronic equipment that has not been returned yet. There was a variety of things taken. Jewelry and wallets, small bikes, etc., going in garages and open vehicles. Borton asked if they were coming up by water? No, in the most recent burglaries, two boats were docked and one was in the DW. In the previous incident, they did use a boat to transport to a larger boat and the patrol officer questioned them and made the arrest. He will also make the BCSO Ag unit aware of the incidents. On the ATV arrests, he assisted Agent Holiday and it took over two weeks to process. Over 30 burglaries and none since. Mayor asked if they had prior arrests? Yes, the Keith brothers have previous arrests. Commander said it is ok for residents to call us. If it spurs them to wonder if they should call, they should call. Maybe they only have one little part but between all of the information they can piece it together. One of our residents got the flyer and called in. Vail suggested we put an article in the Mailboat. Council thanks BCSO for presenting.

CLERK: nothing

J. PUBLIC HEARINGS:

Are legally advertised for 7:30 PM *or as soon thereafter as possible.*

ORDINANCES: (1) Advertised November 26, 2009

2. Amend Road Ordinance Regarding Easements (Ord. No. 2009-29)

AN ORDINANCE OF THE TOWN OF MALABAR , BREVARD COUNTY, FLORIDA RELATING TO ROADS; AMENDING SECTION 13-39; PROVIDING FOR AN EXCEPTION; ADDING A NEW SECTION 13-39.1; PROVIDING FOR THE DEDICATION OF EASEMENTS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR SEVERABILITY AND CONFLICTS; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Mayor read by title only. Opened public hearing (PH) to the public. No public. Closed PH.

MOTION: Rivet / Vail to approve Ord. 2009-29 as presented. Discussion: none.

VOTE: 1) Borton, aye; Vail, aye; Rivet, aye; McKnight, aye; Acquaviva, aye. Motion carried 5 to 0.

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

L. ACTIONS ITEMS:

ORDINANCES: First Reading – None

RESOLUTIONS:

3. Approve Reso 26-2009 (1000ft of Marie Street)

A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE ACCEPTANCE OF THAT PORTION OF MARIE STREET DESCRIBED HEREIN FOR OPERATION AND MAINTENANCE PURPOSES; PROVIDING

FOR A NON-WAIVER PROVISION, REPEAL, CONFLICT AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Action on Reso. No. 26-2009

Mayor read by title only.

MOTION: Rivet / Vail to approve Reso. 26-2009 as presented.

Discussion: Vail asked about the status of the road as a collector. Franklin said approve just the part we use, as is. The subject of improving it to collector status is for another meeting. Mayor asked why we don't accept down to south end of parcel 764. Franklin said we don't use that part. McKnight said we will be on hook to improve it at some point. If we accept it to the end of 764 we may be pressed to improve it.

VOTE: Borton, aye; 1) Vail, aye; Rivet, aye; McKnight, aye; Acquaviva, aye.

Motion carried 5 to 0.

4. Approve Reso 27-2009 (Budget Revision)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2009-2010; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Action on Reso. No. 27-2009

Mayor read by title only.

MOTION: Rivet / Borton to approve Reso. 27-2009 as presented.

Discussion: McKnight asked about money. Wilbanks states it is just reallocating funds by taking 3,000.00 from millings.

VOTE: Borton, aye; Vail, aye; 1) Rivet, aye; McKnight, aye; Acquaviva, aye.

Motion carried 5 to 0.

MISCELLANEOUS:

5. Fire Department Request for New Badges

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Mayor asked if anyone wants to hear from Asst Chief Dan Welton. Vail said ok. Wilbanks said she provided spreadsheet with Dan Welton's proposals and added the design. Going with the cheaper one how much are you going to save? Rivet wouldn't have a problem with them choosing Smith & Warren. Borton said she wants to go on record that the money should be spent more wisely. The Corp should raise money for this. Rivet said that we get a lot of valuable effort from our volunteers. Rivet said it is a perk to show our appreciation. Vail said it was budgeted and it did not get cut. He is reluctant to take it away. Rivet offered \$200.00 from his discretionary account. Borton said this is something that should be purchased through the corporation. McKnight agreed with the philosophy that Borton is wording. Everyone had to cut from their budgets and most cut deeply. These recurring costs add up. We need to tighten up the purse strings.

MOTION: Rivet / Vail to approve the purchase from either Collusion or Smith and Warren.

Acquaviva thought this should be an item the corporation buys. Borton said since we budgeted for it, we are on hook for it.

VOTE: All Ayes.

6. Approve Insulation for FD Annex Building

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: Vail / Borton to approve expense. Vail said he has spoken to TA and Clerk and he thinks the insulation should go into the main building over the offices. There was supposed to be ventilation put in to keep the office area cooler and save money. This is not a necessary expense. The exhaust fans

yes, Wilbanks said we are doing the exhaust fans as they only cost \$1,700.00. Rivet asked if they had done a calculation on electric savings. No. Vail said the storage buildings inside the annex have small window AC units. One holds uniforms and equipment and the other houses radio and computer equipment. Wilbanks said we can track the cost of the electric as the annex is separately metered.

VOTE: Ayes, 0; Nays, 5.

7. Reconsider Appointment of Bill Reviewer

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Vail asked for this to be reconsidered from the last meeting. He said he was trying to get his flash drive to work and did not hear Borton say she wanted to be the reviewer. Rivet asked if she wanted to be bill reviewer. Borton said she did.

MOTION: Rivet / Vail to change the bill reviewer to Borton. **VOTE:** All Ayes.

Franklin stated for the record, for future years, the selection of the check signer needs to be by motion and a separate action. Clerk takes copy of minutes to bank to update signature cards.

8. Reappointment of Board Members

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Mayor asked Franklin if she had heard from Josh Treadwell. She had not since October. Mayor said the rest want to continue to serve.

MOTION: Rivet / Vail to reappoint Don Krieger to P&Z. **VOTE:** All Ayes.

MOTION: Vail / Rivet to reappoint Vicki Thomas and Scott Pollard to Park Board. **VOTE:** All Ayes.

MOTION: Rivet / McKnight to reappoint Donna Hanna and Barry Alexander to BOA. **VOTE:** All Ayes. BOA needs members and an article is in newsletter already.

9. Repair or Replace Gradall

Exhibit: Agenda Report No. 9

Recommendation: Request Action

Vail likes the prices he sees in some of the advertisements. If you wanted his opinion, he will look at some of it if it is not too far. There are also equipment people who could look at them. Vail said PW Tom Miliore could look at them as he knows what the equipment has to be able to do. There are some priced at \$20,000.00 and are 1999 models. Borton asked about the G-V deal to use our PW to do their roads and ditches. Wilbanks said they had discussed hiring Daryl Williams as an employee and then having him maintain G-V and get paid by G-V. Borton wanted this on a future agenda to discuss this possibility. Wilbanks said G-V is not prepared to increase their own staff and this could work for both municipalities. Council discussed sending the Gradall to Orlando to take it apart and determine if it needs the center pin. Consensus was to put that on hold. McKnight asked about how we clean ditches. Wilbanks said we do not do u-shaped ditches and don't keep digging deeper. We create a v-shape ditch that the property owner can maintain. The Gradall does this function; it is the method that it was being used. Wilbanks said that very deep ditches will have to be retrofitted and we are looking at grants for that.

MOTION: Rivet / Vail to table.

10. Approve 2010 Meeting Calendar

Exhibit: Agenda Report No. 10

Recommendation: Request Action

Separate handout with calendar and meeting dates listed. Mayor said you have to address probably four dates for holidays that fall on Council meeting nights. Rivet said to cancel the second meeting in January and February and change the July meeting and September meeting.

MOTION: Rivet / McKnight to adopt calendar. Acquaviva stated she may have to change some dates but she will be here for budget workshops. She asked if she could change. Yes. By having this approved, it allows you to schedule around these dates and they can be changed if necessary.

VOTE: All Ayes.

11. Line of Credit

Exhibit: Agenda Report No. 11

Recommendation: Request Action

Mayor said he did question this and he thought we should ask all of Council. Mayor said it is a principle with him and he doesn't like to spend money at a bank. Rivet said it is an insurance policy. McKnight said the loan fee is pretty steep. Vail said it is money if we need it. Acquaviva said most businesses carry a line of credit. Mayor said this is like carrying around a credit card and Council could be tempted to spend. Maybe not this Council. Council Borton carries multiple lines of credit and get very low rates and she had to pay to qualify to get it. Vail agreed with having the line of credit but he is not sure about the fees. McKnight said we have enough in reserves. Rivet said that the line of credit is looked at as a favorable

MOTION: Rivet / Borton to approve the Line of Credit. McKnight is against it. He thought it was for 1,175,000.00.

VOTE: Ayes, 3; Nay 2 (Vail, McKnight)

12. Appoint Voting Member to SCLC

Exhibit: Agenda Report No. 12

Recommendation: Request Action

Chair passes gavel to Vice-Chair and makes motion:

MOTION: Eschenberg / Vail to appoint Borton to SCLC Board. Discussion. Vail asked her if she was interested. Yes, Borton is interested. **VOTE:** All Ayes

MOTION: Mayor / Vail to appoint Bonnie Wilbanks as alternate. **VOTE:** all Ayes.

13. Appoint SCLC Intergovernmental Committee Member

Exhibit: Agenda Report No. 13

Recommendation: Request Action

This Committee meets maybe 4 times a year for a 15 to 30 minute meeting.

MOTION: Vail / Acquaviva appoint Borton as the SCLC Intergovernmental Committee Member. **VOTE:** All Ayes

14. Appoint Capital Outlay Committee Member for School Board

Exhibit: Agenda Report No. 14

Recommendation: Request Action

MOTION: Borton / Rivet to appoint Acquaviva to this Board. She will accept. **VOTE:** All Ayes.

Recess to Commence Closed Session - 8:50 PM.

M. CLOSED ATTORNEY-CLIENT SESSION

Pursuant to Florida Statute 286.011(8), the Town Council will hold a private attorney-client session, **which will not be open to the public**, with the Town Attorney, Karl W. Bohne to discuss pending litigation in Town of Malabar v. City of Palm Bay, Case No. [05-2009-CA-049231](#), filed in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida. The following persons will be present at said meeting:

City Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Jeffrey McKnight
Council Member:	Nancy Borton

Council Member: Brian Vail
Council Member: Steven Rivet
Council Member: Marisa Acquaviva
Certified Court Reporter: King Reporting Service

A verbatim transcript of this meeting shall be transcribed by King Reporting. The transcript will be filed with the Town Clerk and open to the public for inspection after the conclusion of the litigation.

Reopen and announce termination of Closed Session 9:45

N. DISCUSSION ITEMS:

O. MAYOR AND COUNCIL REPORTS:

- 1) Acquaviva, her neighbors in Stillwater had called her about the December 1 School Board meeting to discuss the redistricting of schools. She was out of Town and asked if anyone knew any meeting details. Was anything done at meeting. Vail didn't think it affected us in Malabar. That was the feedback from a parent that did attend. Wilbanks will get an update from School Board. Borton said she had talked to Ann Kneessy and she is willing to attend an upcoming meeting.
- 2) McKnight, nothing.
- 3) Rivet, nothing.
- 4) Borton said they had a kayak stolen from the river edge. She will be making a report to BCSO.
- 5) Mayor keeps promoting the teen council. Their next meeting is January 5. Mayor asked if any had submitted wish ideas. Franklin said she had heard from one member of Council.

P. PUBLIC

O. ADJOURNMENT

There being no further business to discuss, **MOTION: Rivet / Vail to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 10:05 PM.

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

ATTEST BY:

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 12/21/2009