

"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 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 1 Council Member Nancy Borton.

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, excused
ASSOCIATE ATTORNEY	ERIN A. HARRIGAN
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

- C. ADDITIONS/DELETIONS/CHANGES** – Mayor added a letter delivered to his house at 4PM today. He was asked to read it and then hand out similar letters to each Council Person. The letter requests a grievance hearing. Council to decide whether to grant a grievance hearing. No objections to add this item. Added as Misc # 6.

D. PRESENTATION:

E. PROCLAMATION

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 12/07/09

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Vail to approve the minutes of 12/7/09 as presented. **VOTE:** All Ayes.

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

H. STAFF REPORTS:

ATTORNEY:

ADMINISTRATOR:

BCSO - Agent Holiday: he is the agent assigned to Malabar and G-V area. Agent Bermuda is also. Good news and bad news. Bad news is that we have had some crime lately. Has worked here for 22 years. Good news is they have been successful in catching some bad guys. He still has some stolen items. By word of mouth most of the calls from Malabar residents have resulted in returned material. Also, have had a kayak recovered from a pawn shop and made arrest. It was a total stranger. On Rocky Point we have had several boat burglaries. There were four actual break ins from docked boats. Successful in identified the suspect and was picked up down in Marten County and returned all the material. Sometimes he calls staff and asks them to put stuff on website. There is still a day time burglary. They will knock on door and if no one answers the kick in the door. They are following leads. Very similar across the river. Eric Weaver and Anthony Brown on the boat and kayak burglaries. Mayor asked if they are in jail. These two are. Eric Weaver is still in Martin County answering charges down there. He did not know about Anthony Brown. As of yesterday, he was still in jail. Mayor asked about the other crimes: when did they take place? A particular day or time? Nothing

they can track. Whoever it is, the best thing that catches them is nosy neighbors. As a rural community, it makes it a little harder to watch these neighbors. You must talk to your neighbors. If you think you know something, call. Marisa asked about how many door kick ins? It is not a home invasions unless there are people home. Day time burglaries, breaking and entering. He thinks there may be three or four in the past 6-7 weeks. In Palm Bay that is not a big deal, but here it is. Wilbanks asked if he has something we could put on the website. Holiday said they have made Malabar one of the safest places. Put that there have been some day time burglaries, and to be watchful. Vail said word of mouth is the best method. That solved the vehicle burglaries. That was over 30 of them. When the Deputy responds, they are supposed to canvass but if it is late, or they have calls waiting. He is big on serving the public. Rivet asked about the effectiveness of burglar alarms. Holiday said he likes the loud ones. Some are the silent ones and the burglar doesn't know it has been tripped. They rarely work. The loud ones can be heard across the acre and the neighbor comes out. There is a place in G-V that also uses game cameras. It showed the guy pulling up and it showed his license plate. A lot of video is as cheap as alarms.

FD Report – attached

Borton asked Chief about the ladder truck repair. The ball valve pin sheared off and needed to be repaired. Have we used it? Twice we have used it: once to Palm Bay and once for a response, but not the ladder part.

CLERK: SCLC January meeting will be co-hosted by Malabar and Palm Bay. Palm Bay is making arrangement this year. It will be on January 11, 2010 at 7PM and will be held in the new cafeteria of the newly expanded Palm Bay Hospital. Would like to have a good turn-out.

At December SCLC meeting, the Malabar Wish was to have more water front access. A question was raised at the Dec SCLC meeting regarding a charge on FPL bill. It is labeled storm charge and has gone up considerably in December, mostly on the street light bills. Council Member Borton asked me to review our bills and contact FPL for an explanation and report to Council. Our FPL contact is on vacation. I have placed a call to the billing department and will report back. We have paid \$174.32 to date, mostly on our street light bills.

I. PUBLIC HEARINGS:

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

ORDINANCES: (0)

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

K. ACTIONS ITEMS:

ORDINANCES: First Reading – None

RESOLUTIONS:

2. Approve Reso 28-2009 (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. 2

Recommendation: Action on Reso. No. 28-2009

Mayor read by title only.

MOTION: Borton / Vail to approve Reso. 28-2009 as presented.

Discussion:

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

Motion carried 5 to 0.

3. Award of Stimulus Projects

Chair asked Wilbanks to present. Wilbanks said the memo given to each Council Person before the meeting explained the requirement to award the bids to the lowest bidder for each project. Mr. Stephenson's memo is incorrect. McKnight stated that if we must award to the lowest bidder for each project then Council's job is done. Wilbanks explained that some cities bids came in under the budgeted amount and those extra dollars would go back into the pot. We have asked for some of those monies to fund the difference in our bids and budgeted amount. Mayor asked if there would be competition for this money. Yes, but the County at first was going to automatically get all the extra money, but they are already getting 10% from each city for doing the LAP certification. The money should be used to help small towns that are doing the LAP certification themselves. That is what we are pursuing. We wouldn't have to cut a project. If they had no intention to help us, they wouldn't have said they don't want us to cut any projects.

McKnight said if we can pay for the projects with the stimulus money or if we can pay for any difference with Stormwater funds, he has no problem with approving the bids.

Reso 29-2009 (Project 1)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM Construction Management Associates FOR PROJECT #1, ARRA-215 FPN 426268 FOR \$18,375.00; PROVIDING AN EFFECTIVE DATE.

MOTION: Borton / Rivet to approve Reso. 29-2009 as presented.

Discussion: none

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

Motion carried 5 to 0.

Reso 30-2009 (Project 2)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM Construction Management Associates FOR PROJECT #2, ARRA-229 FPN 426289-1 FOR \$4,775.00; PROVIDING AN EFFECTIVE DATE.

MOTION: Rivet / Vail to approve Reso. 30-2009 as presented.

Discussion: none.

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

Motion carried 5 to 0.

Reso 31-2009 (Project 3)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM Construction Management Associates FOR PROJECT #3, ARRA-304 FPN 426289-2 FOR \$20,105.00; PROVIDING AN EFFECTIVE DATE.

MOTION: Vail / Borton to approve Reso. 31-2009 as presented.

Discussion: none.

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

Motion carried 5 to 0.

Reso 32-2009 (Project 4)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM Construction Management Associates FOR PROJECT #4, ARRA-239 FPN 426304 FOR \$9,525.00; PROVIDING AN EFFECTIVE DATE.

MOTION: Rivet / Acquaviva to approve Reso. 32-2009 as presented.

Discussion: none.

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

Motion carried 5 to 0.

Reso 33-2009 (Project 5)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM Construction Management Associates FOR PROJECT #5, ARRA-241 FPN 426306 FOR \$10,525.00; PROVIDING AN EFFECTIVE DATE.

MOTION: Borton / Acquaviva to approve Reso. 33-2009 as presented.

Discussion: none.

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

Motion carried 5 to 0.

Reso 34-2009 (Project 6)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE PROPOSAL FROM KCF Site Development FOR PROJECT #6, ARRA-245 FPN 426310 FOR \$7,446.90; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Action on Reso. No.34-2009

MOTION: Vail / Borton to approve Reso. 34-2009 as presented.

Discussion: none.

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

Motion carried 5 to 0.

Chair said that if we were in Palm Bay, all six of these resolutions would have been on their consent agenda.

MISCELLANEOUS:**4. Approve Employee Day Off**

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Mayor recommended closing Dec 24 and for Council to consider December 31. Employees got no raise this year.

MOTION: Vail / Borton to approve entire day off for employees for 12/24/09 and 12/31/2009.

No Discussion.

VOTE: All Ayes.

5. Approve Emergency Bridge Repair

Exhibit: Agenda Report No. 5

Recommendation: Request Action

BW said that this was to be done by Carl Beatty. He met with Engineer Bill Stephenson and Carl had a different opinion on how to do repair. Nothing was done. We have taken emergency short term work. Chief said what about the weight? At the time of inspection, the FDOT did not state there was a weight concern but now there may be.

MOTION: Borton / Acquaviva to authorize expense from reserved funds on deposit.

Acquaviva asked if there will be an engineering inspection. Yes. Once the repairs are made there will be pictures sent for our file with the bridge repairs.

Borton asked about how she didn't know about this? The report was addressed to Carl Beatty. Borton asked how that happened. BW did not know.

VOTE: All Ayes.

6. Added item – request for grievance hearing. Mayor will let Attorney brief Council. Erin Harrigan stated she had just read the memo just before the meeting and then reviewed the Employee Manual, and it is better to allow it. Once Council approves the grievance hearing a three person committee is formed. The grievant picks one committee member, department head picks one member and those two pick the third. If they can't make a selection, the Town Administrator selects. There are some time restrictions in the handbook.

His request for administrative leave also is a separate issue. She will talk to Bohne.

Mayor asked who will facilitate the organization of this committee. Would the meeting be in the sunshine? Is it a closed meeting? Erin said looking at the employee manual, you would typically have the issue causing the grievance on a Thursday and then the grievant would take grievance to his department head. Once committee is approved, you would have 5 days to present. Acquaviva asked if the grievant would have to present evidence.

BW said we should use the labor attorney. She has been in contact with him about the FMLA requirements; that is why we gave the last two time outs. If he had another sickness we could track using the FMLA. Rivet said he doesn't want to have the grievance committee until after the holidays.

Rivet said is the administrative leave with or without pay? McKnight thought that should be handled internally by Administrator.

BW asked about the personal effects. Are we allowed to send him a letter to remove the stuff? Erin said we can still continue to work as we. Rivet asked if this is the proper way to address a grievance. No says Erin. But she has no problem telling council they have time to set up a grievance. If he doesn't have anything, then the council will form the committee. Mayor said think up the questions, and council will make a decision at the first meeting in January if he is entitled to a grievance committee. Acquaviva asked if Erin will contact the labor attorney. No action tonight pending further info.

L. DISCUSSION ITEMS:

M. MAYOR AND COUNCIL REPORTS:

- 1) Borton – was asked to bring things back to SCLC Board. She went to the alpaca farm and they are friendly and sell stuff made from alpacas. Wish everyone a Merry Christmas
 - 2) Vail said Merry Christmas
 - 3) Rivet spoke with Holiday regarding stolen gas cans.
 - 4) McKnight said keep Mayor's grandson in our prayers, Happy Holidays.
 - 5) Acquaviva said Merry Christmas
 - 6) Mayor had nothing. Merry Christmas.
- BW offered to help with his mother in law.

N. PUBLIC – speaker card required - none

O. ADJOURNMENT

There being no further business to discuss, **MOTION:** Borton / Rivet to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 8:50 PM.

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

ATTEST BY:

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 1/4/2010