

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**MAY 19, 2008                      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 7:42 pm by Mayor Eschenberg. The prayer and pledge were led by District 1 Council Member Nancy Borton.

**B.     ROLL CALL:**

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	CHUCK McCLELLAND
COUNCIL MEMBERS:	NANCY BORTON
	BRIAN VAIL
	JEFF MCKNIGHT
	PAT DEZMAN
TOWN ADMINISTRATOR:	BONILYN WILBANKS-FREE
ATTORNEY:	KARL BOHNE
DEPUTY TOWN CLERK:	CINDI KELLEY

- C. ADDITIONS/DELETIONS/CHANGES:** Item 2A, Agreement with Department of Forestry and Jackie Colon's presentation. Council Member McKnight would like to have item #7 stricken from the agenda; Council or citizen can add items to agenda. This was entered into by the Sheriff. Mayor states that it can be removed from the agenda by a vote from Council.

**MOTION: Dezman/Borton to leave on agenda. VOTE: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Nay; Dezman, Aye.**

Motion carries 4 to 1.

**D. PRESENTATIONS:**

Commissioner Jackie Colon came forward and made a presentation to Carl Beatty, Chief Gianantonio and Stuart Borton. She thanked Council for their support and working efforts that was provided during the fires. The people of the Town are truly blessed to have such dedicated people; the Fire Department was given kudos for their professionalism. This made a great impression on the other fire companies present in the Town for assistance. The other companies were made to feel as if they were a part of the community.

Mayor Eschenberg addressed the audience. He worked very hard last week along with a lot of other people. He thanked the Bortons' for feeding the masses; Pat Dezman worked in the office for a number of days to get the needs of the fire fighters met and Brian Vail was away from this business making quick repairs to the fire vehicles. Commissioner Colon was present, along with her family; working and making sure people had what they needed. Everyone pulled together and worked to get the job done. The local businesses were fantastic with their donations and the community came together.

Dan Welton, Assistant Chief with Malabar Fire Department, came forwards and addressed Council. One of the greatest comments he heard during the week from Jacksonville County Fire Department was that the City of Jacksonville needs to come down and see how the people in Malabar take care of their fire fighters. To hear this from one of the largest companies in the state was great.

Chief Gianantonio came forward and addressed Council. This started out as a joint effort with Brevard County. Let's not forget the Department of Forestry. The most refreshing thing, when someone came in and needed a repair to their truck, Brian Vail stepped up along with Brevard County. The citizens came together and worked to get what was needed and kept us going.

- Larry Weber of Keep Brevard Beautiful  
Larry Weber was not present; this item to be placed on the next agenda.

- Bob Cooper of Rolling Thunder POW/MIA Awareness  
Jim Boltari came forward to address Council. He gave a brief overview of the organization and what they do. Two POW/MIA flags were presented; one to Chief Gianantonio and one to Carl Beatty. These flags are to hang at the Fire Department and Town Hall.

**E. PROCLAMATIONS:**

**F. CONSENT AGENDA**

**1. Approval of Minutes**

Regular Town Council Meeting – 5/05/08

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION: Dezman/Vail to approve the minutes of the May 5, 2008 meeting as presented.**

Discussion: None

**VOTE: All Ayes.**

**G. STAFF REPORTS:**

ATTORNEY-nothing to report at this time

**ADMINISTRATOR**

- Fire Department

BWF stated that the pictures of the Fire Department could be moved to the next meeting.

**MOTION: Dezman/Vail to move the pictures of the Fire Department to the next meeting.**

**VOTE: All Ayes.**

- Park and Trail Head Gates

TA was asked to report back to Council within four weeks with the gates being unlocked at the parks. We have had no incidents reported from staff, staff that cleans the restrooms and BCSO. BSCO also states that it is much easier with the gates being open; better access for them. Based on this information, staff needs to know what Council would like to do. Dezman recommends that a period of time be set; three to six months and place back on the agenda for review. Vail states that summer is coming and there will be a lot more activity in the park; this should be monitored. Dezman recommends revisiting this in three months when school is back in session. Vail is in favor of this; we will go from there. If anything happens in between, we can bring it up

- Proposed EEL purchase

BWF and Franklin were requested to have a meeting with Mr. Lusk, Director of Parks & Recreation with Brevard County. This was at the request of Mr. Knight. During this meeting, the County brought to our attention they have consideration for what Malabar would like to do with the Doc Holiday property; better known as the Gentile property. This property is not commercial; you would need to use the property as is or make a swap. The price of the property at this point, with going into foreclosure was in excess of \$986,000. It has now come down to \$676,000; with a great deal of wetlands. After our discussion, Brevard County also felt they would not move forward with this property. We will receive this in writing. BWF wanted to provide this information to Council since the joint meeting with the Site Selection Committee was this evening. The other thing is Franklin received a response on the 17 acres. We sent another communication to the State asking them if they would allow, if we guarantee an EELs educational center, could we put our Town Hall on this site. Franklin sited a few of the things that would be appropriate for what we are trying to do. The state would encourage an education

center but not a Town Hall; does not meet what the original plan for the property when purchased. We cannot go forward with this site. This is not the same 17 acres next to the park; it is the other body of land that was spoken of.

#### TOWN CLERK

- Public Meeting I-95 Extension to County Line

Kelley reported the Town Clerk has provided information regarding a meeting on June 4, 2008 at 5:00 to discuss plans for widening I-95 from the Indian River County line to south of SR 514 in Brevard County. The meeting is to be held at the Palm Bay Senior Center on Culver Street.

- Brevard County Commission approved T-hangers at Valkaria Airport

Kelley reported the Town Clerk has provided information regarding an approved \$1 million loan to Valkaria Airport for the construction of 20 new T-hangers. Dezman asks about the fire damage at the airport. Dooley reported some damage, but no major structural damage.

- Memo regarding Candidate Qualifying

At the request of McKnight, the Town Clerk has prepared a memo giving the guidelines for candidate qualifying.

#### H. PUBLIC HEARINGS:

##### ORDINANCES:

#### 2. Amend Charter Sec 2.03 Candidate Qualifying (Ord. No. 2008-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE TOWN CHARTER SECTION 2.03 CANDIDATE QUALIFYING PERIOD, TO CONFORM WITH HOUSE BILL 537, SIGNED INTO LAW MAY 21, 2007 AMENDING FLORIDA STATUTE 100 RELATING TO PRIMARY ELECTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action on Ord. No. 2008-06

Without objection, Mayor read by title only.

**MOTION: McClelland/McKnight to approve Ordinance 2008-06 as presented.**

Public hearing was opened to the public; hearing none, it was brought back to Council for discussion.

**The roll was called: Borton- Aye; Vail-Aye; McClelland-Aye; McKnight-Aye; Dezman-Aye.**

Motion carries unanimously.

#### I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

##### 2.A. Added: Agreement with Department of Agriculture and Consumer Services (Reso No. 25-2008)

**Exhibit:** Agenda Report No. 2.A.

**Recommendation:** Action of Reso 25-2008

Keith Smith and Lorna Tucker of Department of Forestry came forward and addressed Council. This agreement is so when we leave Malabar, everyone is happy and we make sure the area we used is put back to the way it was. Forestry used an area of the park as a briefing area during the fires. Mayor Eschenberg reported he surveyed the park; the soccer field was widely used. It looks like some fuel spilled and damaged the grass. This is all he could find. Beatty reported weeds in this area. Mr. Tucker stated his major concern was there was not parking; they used the area as parking and wants to make sure the grass is taken care of. Once the area is re-seeded, the chain will be put back and it will be used for major events. Mayor feels that Council should forego this. McKnight is in agreement; they were there to assist the Town

during a crisis situation. Mr. Tucker states a letter will be needed stating that DOF will not be penalized. It was a pleasure to work with the community and Chief Gianantonio was excellent. Mayor read resolution by title only for the record. Not motion made; motion fails.

**J. ACTIONS ITEMS:**

**ORDINANCES: First Reading – none**

**RESOLUTIONS:**

**3. Budget Revisions for FY 2007/08 Budget (Reso No. 24-2008)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2007-2008; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Action on Reso 24-2008

Without objection, Mayor read by title only.

Discussion: BWF requested that this be removed from the agenda and placed on the next agenda. All budget adjustments will be ready by that time.

**MOTION; Dezman/Borton to table Resolution 24-2008 until the first meeting in June. All Ayes.**

**MISCELLANEOUS:**

**4. Approval of Lease Purchase of 1993 Sulphen 75' Quint Ladder Truck for Fire Department**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Action

Without objection, Mayor read by title only.

Stuart Borton-141 Riverview Drive, came forward and addressed Council. While working at the Fire Department, he had a chance to speak with an incident commander. Borton asked, with regards to the pending purchase, if the Town should purchase a ladder truck. The commander asked how many three story buildings were in the town and the neighboring structures. It was stated that if the Town has a mutual aid contract, the commander recommends more brush trucks. The need for the ladder truck is not here at this time. Getting the water supply to the fire is the more important. Since this is a rural community, the Town needs to get through the fire with the two corporations in town, the Town could help themselves a lot more with the brush trucks or tankers; this would put a lot more personnel out to fight fire. Borton asks Council to table this until more research is done to see if a ladder truck is really needed.

Discussion: Mayor Eschenberg reports that he asked that this be on the agenda. This is a timing thing and Council needs to make a yes or no decision. The truck will not stay with the company for very long. McKnight reported he spoke to several people about this as well. He received similar comments as to what Borton reported. A ladder truck would get the personnel above the structure to get to fire in the back. Rowan has brought a capital improvement list with brush trucks on it. We need to have a better idea of our money before we spend the funds. McKnight would like the fire department to research this and make sure this is what they want.

Chief Gianantonio was asked to address Council. He reported that there are two schools of thought. You have to look at the structural side as well. We have the MIMA project and the possibility of a few more three story projects coming into the town; there is also Palm Bay Community Hospital as well. The ladder truck can be used for more than a ladder truck. Some of the smaller trucks cannot carry all the needed tools. When coming to fight fire with a ladder truck it has to be close to a hydrant and have water supply. We need more modern brush trucks. Vail states he, financially, agrees with McKnight. If this ladder truck is purchased, it will

close any window to expand the fire department. Nancy Borton reports that, if she remembers correctly, Paladin and MIMA were possibly coming on board and would assist with the purchase of a ladder truck. This may need to be placed on hold. We should get more brush trucks and tankers. The hospital would be in Palm Bay's jurisdiction. Chief Gianantonio reported that Malabar would be the second to be called if assistance is needed at the hospital. The MIMA building is on city water and is sprinkled. Palm Bay only has one ladder truck for the entire city.

BWF reported that even though the market has gone down, the two projects on US 1 are actively happening. Dezman remembers when discussions first started, it was discussed that they would assist with the ladder truck. McClelland asks if Engine 99 has hit its 20 year life. If so, would this truck take its place? Gianantonio reports that when a truck is refurbished, the life of the truck is brought to another level. The refurbishing is built into the cost of the truck. Vail asks how often the Town gets a chance to purchase a truck like this, the availability. Dezman states it has taken two years to get this bite. Vail has mixed emotions. This truck could partially replace Engine 99. Gianantonio reports that dual points are given from ISO with a ladder truck. You would have to take a tanker with this truck when responding to a fire. Borton asks if it is possible to take something on a newer level. Gianantonio reports that new trucks are very expensive. McKnight feels that if this truck is to serve the commercial businesses in town, the businesses should bear the expense. If it doesn't benefit the residents, he feels the Town should not spend the funds. Vail would like to compare same for same; bring the truck up to par. Borton echoes McKnight on this.

Mayor Eschenberg states when Welton made the presentation for the truck, he reported that some of the two story homes would be hard to get to with fire. Dezman states it's not just commercial use; three homes in Country Cove, hers included, would be difficult to get to. Vail states that his home would have a problem because of the wrap around porch. McClelland states his home would be difficult to get to from the back if there was a fire as well. Vail states he would like to see a quote for refurbishing one of the trucks.

**MOTION: McClelland/Dezman to table until the next meeting for additional information.**

**VOTE: All Ayes.**

Dezman asks if an estimate for the cost of our equipment for the fires will be available for the next meeting. She understands that one of the trucks cannot be fixed anymore. Vail reports that this statement is not true. This is important to her; will make a difference when looking to refurbish or replace equipment, in spending funds. Gianantonio states there will always be repairs with going over trees. Vail is in favor of keeping the older trucks going.

## **5. Staff Evaluations**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Action

Discussion: TA reports this was part of the evaluation system that was brought to Council. Evaluations are annual in April. The ranges have been laid out in non-supervisory employees and supervisory employees. All numbers in the CPI were not available at this time; the availability is in June.

**MOTION: Vail/Dezman to table staff evaluations. VOTE: All Ayes.**

## **6. Set Date for June Budget Workshop**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Action

Discussion: Mayor Eschenberg suggests having the budget meeting on June 23<sup>rd</sup> and the joint meeting with the Site Selection Committee on June 30<sup>th</sup>. Dezman reported she will be out of town on June 30<sup>th</sup>. Have the budget meeting prior to the 30<sup>th</sup> on the 10<sup>th</sup>, 11<sup>th</sup> or 12<sup>th</sup> of June. Borton states that both meetings could be done on the same night. Give the Site Selection Committee an hour for discussion and then have the budget workshop after; joint meeting from 7:00 to 8:00 pm. Borton states if we get most of the budget meeting done, it could be finished

the next Monday. BWF reports that two meeting nights have been set; if the budget gets finished then we can cancel the second scheduled meeting. BWF and Franklin will be working on the budget adjustments and they will be ready for the next meeting. Once you have the adjustments, you will see the \$20,000 short-fall. Council agreed to have both meetings on Monday, June 23<sup>rd</sup>; joint meeting to be from 7:00 to 8:00 pm. The budget workshop will begin at 8:00 pm.

**(NOTE: ACTION ITEM 7 PORTION OF MINUTES ARE VERBATIM)**

**7. Request to Expand MSTU Referendum Question on Ballot**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Action

**Mayor**-we do have cards on this item. Is Chris Filiberto here?

**Dezman**-yes she is. Mrs. Filiberto...

**Chris Filiberto**-first of all, I want to personally thank the Fire Chief for saving my house. I'm Chris Filiberto; I live at 2330 Rocky Point Road. My house was saved by the DOF and their helicopter with their bucket dipping into the Indian River for resources, splashing it over my roof and my house. Also, for the Fire Department of Malabar, they were there with their brush trucks and they did put the fire out. My house is also two stories; I don't know if that has anything to do with the ladder truck situation, but I get I was just fortunate to have the helicopter. The reason I'm up here is that I'm trying to understand what's happening with the MSTU vote. From what I'm reading here, and I haven't heard this presented yet between you guys, but from what I'm reading here, I'm understanding that they are trying to clarify on the ballot what it's for. Is that correct?

**McKnight**-they're attempting that; can we address that?

**Mayor**-back in 2007, when the Council passed the MSTU tax, they passed a companion ordinance at the same time that would offer the people in 2008 at the regular election the opportunity to say yes or no we want to continue paying the tax. It was to be a binding referendum. That ordinance was passed. In the meantime, the Sheriff has come to the Town and asked that language be changed that will be on the ballot. So instead of do you want to continue to pay the MSTU tax; yes or no, the Sheriff would like the Council to consider language that says would you like to continue paying the MSTU tax, and there's a place to mark yes, or would you like the Town to start their own police department; there's a place to mark yes. That's what the Sheriff is asking the Council tonight to consider changing the language to.

**Filiberto**-okay

**Borton**-can I reiterate to add something to that? He's also asking, because when we all agreed to put it back on the ballot in two years, we were going to give another option to our constituents.

**Mayor**-well that's another

**Borton**-that's facts

**Mayor**-that is another contentious point.

**McKnight**-that is not a fact.

**Mayor**-that is another contentious point

**Borton**-check the verbatim

**Mayor**-it's another contentious point just like the town hall site.

**Borton**-check the verbatim; check the verbatim, Jeff.

**Dezman**-is the verbatim in the ordinance here?

**Borton**-no, but I will have the verbatim and I will put this back on in two weeks and I will bring the verbatim in. That was why the Sheriff came back and asked. Let's put all the fact out, Mayor.

**Mayor**-we still have a speaker here.

**Filiberto**-as a constituent, someone that lives in Malabar, I just want clarification on what it exactly it is.

**Mayor**-trying to keep it simple; as exactly what the council is considering tonight. Not the reasons for or the reasons against, but exactly what their considering and then you can give your opinion on whether the Council should leave the language the way it is or whether the Council should change it to what the Sheriff is requesting.

**Filiberto**-okay. Well just from my point of view and reading this, I think it does need clarification because from what I'm hearing, if it's misinterpreted or misread, it's vague in it's language, then we may be, in fact, not realizing what we're voting for and we may be stuck with people thinking we don't need this tax any more. We only had it for two years and we didn't see any difference so I'm going to vote no. And then, well, guess what, we're going to have to pay for a new police station or new fire station and we didn't realize that when we were voting no for the M, I always get that mixed up

**Vail**-MSTU tax

**Filiberto**-the tax that is relatively inexpensive compared to what it would be to have to pay to have a new police station and new police cars and all that stuff. So I would like clarification on that if you guys are going to discuss that tonight.

**Mayor**-so what you're saying, if I understand you right, you would like there to be some valid language that offers another option other than yes or no to the MSTU tax.

**Filiberto**-I think so.

**Vail**-okay, I want to touch on that.

**Filiberto**-thank you very much; thank you for saving my house, Town of Malabar

**Stuart Borton**-141 Riverview Drive. I think the language is very very vague what you're asking on them to put on the ballot. The MSTU tax, in my discussions with Sheriff Parker, if we vote no for this, and we stop paying taxes, he is going to stop servicing us with MSTU deputies. If he doesn't stop, he is under the impression that the other cities are going to sue him to stop. Now we don't want to be with out MSTU deputies or deputies in this area. There are not very many general fund deputies, they are mostly commanders and they're stationed in Viera. Our response time would be a long time. Our former Council member, Steve Rivet, had a very long response time waiting for a deputy to show up; it was twenty to thirty minutes. If he thinks that's a long time, wait until we don't have an MSTU deputy to call on and we have to the general fund deputies. This is a very dangerous thing that you guys are considering here tonight. You're leaving us citizens at great risk with no coverage by not putting the proper language on the ballot and to making sure that citizens have a clear choice and indication of what it's going to be; of what we're saying no to. Everybody's going to say no to new taxes; nobody wants taxes. So give us an option; tell us what's going to happen if we don't pay the MSTU tax. It's just not fair to put this out there and expect us to vote on this and ask us to pay a tax. I'm always voting against taxes; I don't like taxes. But I understand as a citizen and a business owner, you need taxes to support certain things. I hate for you guys hiding the fact, I don't know what your agenda is, whether you want your own police department here or what you're trying to sneak by the residents by having the language like it is, but I don't like the fact that you're hiding something in there by not putting out what's really going to happen if they vote no on the MSTU. So just keep that in mind and I know a lot of you Council members don't like taxes either and you don't want to pay any more taxes than you have to, but by not making the public aware and having the proper language in the referendum, you're opening yourself for a whole bunch more taxes and a potential lawsuit from the Sheriff's Department. Thank you.

**Mayor**-Council?

**Vail**-another speaker card.

**Chris Peters**-Hardway Lane, Malabar, came forward and addressed Council. I guess I'm initially in favor of keeping the language the same just because that's what was promised to be on the ballot. If you're going to change the language, I would be in favor of three options. Pay the MSTU, start our own police department or the do nothing option and be covered under the general fund. I believe that he is legally required by the general fund and I think people do need to know how that might affect us. I'm not sure if everybody knows that. I would like to see that it considered that a police department is like a bond issue and it's paid for by a tax equal to the MSTU. You could do everything. You could do all three if you want; you couldn't do all three

but you could keep the MSTU and start our own police department slowly, ramp it up slowly; one deputy and one car initially, two the next year. But if you're going to change the language, you're opening the door to have a lot of unhappy people that thought the language was going to be what it was. Everybody complains about voter apathy and this is how it happens. People expect one thing and it gets changed.

**Mayor**-thank you. Council?

**Vail**-basically, we all agreed to put this question on the ballot. The research will prove what we said would be on the ballot; basically a simple yes or no. The people that I have polled; I feel that they are going to; I'm going to vote in favor of keeping the MSTU because I know that we cannot support our own department on the funds that we are paying on the MSTU right now. As far as the two year ballot, putting it on the ballot every two years that gives the people's input. That was the whole reason for that to be done and if, in the event that they vote no, we have one year to recover from that. We have a year's time frame. I think if we get too carried away listing options on the ballot, I think most of the people that I polled are content with paying the Sheriff's Department and willing to continue to pay it. It's not that much, for me it is, but that's neither here nor there. But I think it will pass and I don't feel that all the research and effort and the resources and manpower used to start developing all these possibilities and other alternatives is worth the Town's staff time in a time that we are needing to concentrate on other things. That's my two cents.

**Mayor**-anyone else?

**Borton**-I'd like to make a motion to table this until I can bring back the verbatim, word for word of what was discussed. I believe it should go on the ballot.

**Mayor**-we have a motion to table; it there a second.

**Dezman**-I'll second it.

**Mayor**-motion to table; all in favor say Aye.

**Borton**-Aye

**Dezman**-Aye

**Vail**-Aye

**Mayor**-I think I heard three; Nay?

**McClelland**-Nay

**McKnight**-Nay

**Mayor**-motion to table passes three to two.

**Kelley**-who said no.

**Mayor**-Chuck said no

**Dezman**-Jeff said no

**Mayor**-it could come back next meeting if Council wishes to pull it from the table next meeting which they likely will.

**Vail**-just for clarification, pending verbatim minutes, correct? We are waiting on verbatim minutes.

**Mayor**-as of now, you're requesting verbatim minutes now.

**Wilbanks-Free**-I was going to say somebody tell us what you want so that staff will bring back what you want.

**Borton**-I would like to bring back the actual night we all discussed bringing it back on the ballot.

**Mayor**-are the tapes available from those meeting of May and June of 2007

**Wilbanks-Free**-yes

**Mayor**-so we can actually get verbatim minutes on this particular subject.

**Wilbanks-Free**-we have transcribed them, Cindi, on a couple of occasions.

**Kelley**-sounds vaguely familiar and if they are transcribed, it will save a lot of time.

**Wilbanks-Free**-I'm pretty sure that two meetings are and there was more research in the long issue of where we found we had not certified or codified some of the ballot issues that were on, not this issue but the last one, Debby found that information, she went back. One of those is a vote concerning your police services.

**Kelley**-if I remember correctly, the Town voted very strongly no not to have our own police department.



**Mayor**-it was overwhelmingly no to start the police department.

**Wilbanks-Free**-I can pull the minutes for that two readings from there as well.

**Vail**-I think the question at hand is what was originally discussed when, Karl

**Bohne**-what the motion was

**Vail**-what the motion was

**Bohne**-there was a lot of discussion on it. You have to go by the motion and what was voted on; that's the key. There was stuff discussed at that meeting that I don't recall.

**Vail**-we need to know what the motion on the referendum that puts it back on the ballot this year was.

**Dezman**-if I'm not correct, was that not the meeting after which we had already met with the County Commissioners.

**Wilbanks-Free**-it was the May 21<sup>st</sup> meeting.

**Vail**-we had the meeting at the fire house and then the next meeting

**Dezman**-we had a meeting at the fire house and then we had a meeting at County headquarters and then there was a meeting here that we discussed it. That's what I'm looking for.

**Kelley**-the meeting at the fire house was in March.

**Vail**-because they were shooting for budget.

**Mayor**-you mainly need to check three meetings; there was, after the meeting with the County Commission, there was a meeting here with Council making a motion to direct the attorney to prepare the ordinance; that was the first meeting. Then the two meetings that followed, the first reading and the second reading.

**Borton**-so then the ordinance was to put it back on the ballot; but it was when I voted for it, some of what I voted for didn't make it, did it?

**Bohne**-I don't remember

**Borton**-but when I voted or agreed to put it back on as part of the agreement, was that we were going to have something for the constituents to pick from.

**Bohne**-need to see how that motion was written.

**Borton**-but it's not written that way; the motion was just to go ahead and put back on the ballot.

**Bohne**-I don't recall it

**Dezman**-that's what he's asking, Nancy. He wants to see it verbatim to know what we think we voted on and what we voted on are one in the same. He doesn't remember what the motion is.

**Vail**-until that's in front of us, none of us remembers.

**Dezman**-and I want to make it real clear that the present Council was not the Council sitting here a year ago.

**McKnight**-it was everyone except me and at that time, it was a unanimous vote to put it through. Mr. Bohne, is there a limit on how many times you can vote on one issue? This will be the fourth time we vote on the same issue. I mean, if I don't get the answer I want, can I keep bringing it back to Council. Can I bring it back to Council in two weeks?

**Bohne**-procedurally there is a way to do it. The answer to your questions is no, you can't keep bringing it up. You have to rescind the prior action of the Council and do a new motion. Every time there should be a motion to rescind; a motion for reconsideration unless it's done by a person on the prevailing side and I think it has to be done in the same session.

**Mayor**-it does

**Bohne**-it would be a motion to rescind the prior action but the first action we're talking about occurred in 2007 whenever it was where the voters did not approve the referendum questions for the police department; so that was not an action of the Council. The next action is what ever it is.

**Borton**-the straw ballot

**Bohne**-the straw ballot was done by the citizens not council. We need to see where the Council is and what their votes were on these particular issues. I don't think the Council ever voted to have a police department. I think it was always put it on the ballot, put it on the ballot. I think

the Council could vote again to put it on the ballot and let the citizens decide again. That could be done. The Council is the one who needs to do that.

**Vail**-I thought this was a continuing put it on the ballot every two years.

**Bohne**-I'm talking about the other option.

**McKnight**-specifically what I'm talking about is this referendum for the question on the ballot; this one right here, am I correct, if this comes up again, it will be the fourth time that we voted on this.

**Mayor**-not exactly the same question. It's a little bit different.

**Borton**-Jeff, I just want all the facts out there before you totally think I'm a lunatic because when I sat here and made my decision for my constituents as well as yours, it was based on a different answer. I just want you to see all the facts before you say drop it and you may; and I agree, it should go on the ballot. I just want you to know why I agree and I want it to be brought back; for some reason it never gets brought back.

**McKnight**-what do want brought back

**Borton**-the verbatim, the part that says this is what we're going to do

**Vail**-what the motion was

**Borton**-what the actual motion was because we all, it was unanimous, I voted, you were not there, but we all voted unanimously to put it back on but there was contingent things to why it was going to be put back on and we said, I can remember exactly, everyone said we will have a year to think of what we can do in case they don't want to do the MSTU. Those were the exact words. I'm a die-hard; yes I'll keep bringing it back because those people out there deserve to have all the facts.

**McKnight**-they deserve to have a simple question too.

**Borton**-the facts

**Mayor**-Karl, just to get this straight now, based on what you said, what really matters is the words in the motion that was voted on;

**Bohne**-absolutely

**Mayor**-and the discussion that took place prior to the motion is nothing more than discussion.

**Bohne**-that's correct.

**Borton**-I guess so then it's the fact; then don't bring it back because it was discussed.

**Bohne**-I don't know

**Borton**-I do know, I was there and the rest of you were there; so you're right. If it's not included in the motion, then let the horse die. Let these folks figure it out on their own. I won't bring it back to Council but I will educate the constituents on my own.

**Mayor**-Nancy, I would expect there is going to be an issue of the Mailboat before the election and I would expect; any Council member can write an article in the Mailboat so you are perfectly entitled to write an article.

**Borton**-and I will

**Mayor**-but not opinions, give them facts.

**Borton**-trust me, I'll give them facts

**Dezman**-Nancy, calm down

**Borton**-I can't, take it personally. I have a business in this town and I've been robbed in this town and those police have responded without batting an eye.

**Dezman**-I know but I'm asking you to take a deep breath; we'll get to the bottom of it.

**Borton**-sorry folks

**Dezman**-we'll get to the bottom of it. You have every right to do what you think is right just like every person on this Council does. Just take a deep breath, we'll get to the bottom of it. Could I ask please, I would like Sheriff Parker here for the next meeting.

**Wilbanks-Free**-do you want this verbatim

**Mayor**-based on what Karl has said, we need the exact wording of the motions that were passed of all three meetings.

**Dezman**-and Mr. Mayor, I would recommend that you put it in the context of verbatim so that we can finally, one way or another, put this to bed; just to ask for the motion, we're going to keep beating this. Do a verbatim in the context of the motion, the discussion and the vote.

**Wilbanks-Free**-we will do a verbatim of the whole agenda item of that evening.

**Dezman**-please

**Wilbanks-Free**-and we have done the verbatim already, Cindi. I've actually seen it.

**Dezman**-if you don't do it that way, you're asking for more of the same.

**Mayor**-I know you're asking for more of the same, but Karl says the discussion it doesn't matter.

**Dezman**-it doesn't matter, put it in context because if we don't then we're opening ourselves up for criticism because we didn't put it in context.

**Mayor**-it's only three meetings; only three agenda items that need verbatim.

**(NOTE: THIS ENDS THE VERBATIM PORTION OF MINUTES FOR ACTION ITEM 7)**

**K. DISCUSSION ITEMS:**

**8. Road Improvement Variances**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Discussion and Direction

Discussion: Vail asked that this be put on the agenda by Vail. As it has been brought up before, we have two major issues for when variances are given. Does the road reimbursement program apply to the person that was granted the short road. Bohne reports no. Vail asks who is responsible for the missing road. Bohne states that a variance procedure for the BOA was adopted to allow for a short road. Basically, it would require that the BOA find building the road unreasonable. That is a different standard than normal variance procedure in the Land Development Code which requires this hardship; this hardship is not a hardship. It was put in place for the lesser eco areas. Vail states that BOA can attach this to the present land owner for the missing link if he is not mistaken. Secondly, the person is also granted the variance from the right of way. Our current road ordinance requires, when improving the road, you must give up an amount of feet to bring the road right-of-way up to the standard that we currently have. It is above and beyond the existing, which is anywhere from 25 to 50 feet. The person given the variance does not have to give up the right-of-way for additional footage. The next person down the line has to acquire the land to make the width at his expense and build the road at his expense for what we gave permission. Mayor asks what he would like to do. Vail is not against a short road; could we put conditions on the variance; what he is against is someone down the road is going to have problems with this. Dezman asks if we can send this to Planning & Zoning for review. Bohne this is in the code of ordinances; it's one of the few times we allow the BOA to grant a variance to the code as opposed to the LDR. This is not a Planning & Zoning issue. We have time to figure this out. Bohne reports if Council eliminates the variance procedure in the code and still allow the variance procedures in the LDR, it would come before Council, not BOA. After additional discussion between Council and the attorney, Dezman states she needs more information before making a decision.

**MOTION: Vail/Dezman to direct attorney to prepare a proposed ordinance making a change to Chapter 13, Section 13-38 of Code of Ordinances. VOTE: All Ayes.**

**L. MAYOR AND COUNCIL REPORTS:**

Borton-I have been talking to BWF regarding the list of people for thank you letters. Some people made donations for free. John Baker came in and fixed the air conditioning for the rehab center; Southern Ice came out and took care of the reverse osmosis and got the ice machine working; Southern Hood came in and looked at the hood system and oven; LaFortune Plumbing and Paul's Plumbing took care of repairs in the men's and ladies' room, they also repaired the bay sink and hand sink; both were flushing out onto the floor. McClelland made mention of concerns regarding the repairs done; these same items were taken care of after the hurricanes. Mayor also said he's heard some things about the repairs made to the station after the hurricanes. Borton reported that these people

don't want to be recognized but Borton wants it on the record. She gave thanks to Stuart Borton, Pat Dezman, Mayor Eschenberg and Brian Vail. When the chips were down, the town came around.

Vail-was unable to attend the potluck dinner; he dropped off food. The Borton's made an appearance. McKnight stayed for the whole evening. He hopes this function continues and he would definitely support it.

McClelland-received call from a resident who is willing to foot the cost to put in fire breaks. BWF reported that she has spoken to Building Official and the resident. It is not completely free; it will be a lesser cost for the Town. We have been in touch with St. John's; they need to have the residents agree and sign a paper to go on the easements for the fire breaks. We are in the process of obtaining the signatures now. They also need a drawing showing where the breaks will be located; there are wetlands back in this area. The two roads are Waring and McDonald Lane. We need to coordinate with Fire Chief as we need the dimensions of the trucks. McClelland reported the resident would pay his workers \$20/hour and the Town would assist with the fuel. BWF stated the Town would pay the \$20/hour to the workers. This is what was reported by the resident to BWF. This is something that can be attained quickly.

McKnight-Mark Phil of SE Waring Lane asked that he convey his thanks to the fire department; he thought his home was lost when a neighbor, who is a volunteer fire fighter, assisted in getting the fire under control. By the time the trucks arrived, the house was saved. The potluck was a very good time and he encourages Council to attend this function. This is a very good event and the Town should support it. We need to try to get some local businesses to sponsor and pay for the disposable paper ware. The Yellow Dog Café brought in a lot of food. He would like support from the Town, not only financially, but with written consent. BWF reported that she spoke with Mr. Noble's wife and told her it would be on the website and do some creative things with this

**(NOTE: THIS PORTION OF COUNCIL REPORTS IS VERBATIM; TO DO WITH MSTU)**

**McKnight**-the other thing that I have, I want to discuss this during the MSTU thing. Since it was tabled, I was cut off. I think this is necessary. I thought the Sheriff's letter was inappropriate and somewhat offensive. I don't think he has any right meddling in the Town politics. I'm not going to go up to his office and tell him how run his business; I don't appreciate him sending a letter telling us how to run our business. We have voted on this three times already and don't see why it keeps coming up. I think we have other options and like Brian's said, we have another year to figure out what we want to do. We could continue the MSTU; we could negotiate another contract with the Sheriff's Office. I know we have tried this before but that's like me going to Brian and saying, if I had a contract with Brian to maintain my fleet and then I say give me a quote for doing this for another, well I already have a contract with him. He's going to give me a quote; it's going to be higher obviously because he wants to maintain that contract. So I suggest that we negotiate also with Palm Bay; get services, police services with Palm Bay. The problem with this is how we get the metrics of it; how we quantify what we're doing because right now we have no way to measure what the general fund delivers and what MSTU delivers. If you look at what the MSTU delivers and what the general fund, they're exactly the same; you could lay them on top of each other, they're exactly the same. So what is he giving us for \$200,000 a year. I don't understand; I need some metrics; I need to know what he's giving us and I haven't seen that. I don't know if it's the number of officers present in town, the response time; we need something to compare it with. And also we need something to write down to go to Palm Bay and say we need these types of services; what we need, it's hard to quantify.

**Wilbanks-Free**-Karl, you may want to speak to this but I know this came up in multiple cities that I have been experienced in south Florida and it's very clear, you cannot do a contract with a municipality. You can do it with the County; you cannot do it with a municipality.

**Bohne**-I think there's been a change in the AGO's position on that. I had thought that, if you do it the right way, you are not contracting away your municipal service but it has to be done the right way. Now, certainly, you do it with the County; that's simple enough. But I thought, there was an AGO's

opinion that said you could do it under certain circumstances so it would have to be looked into to see if you can contract for police protection services with another municipality.

**Wilbanks-Free**-it's to do with the arrest powers for the municipal officer.

**Bohne**-but the thing is this, there have been, there are mutual aid agreements that authorize those arrest powers outside the jurisdiction. So again, it has to be done under certain circumstances. For instance, the County, West Melbourne, Melbourne and Palm Bay have one for Palm Bay Road because actually Palm Bay Road runs through all four jurisdictions and for instance, they allow Palm Bay to be the primary police responder with arrest power in those particular areas either in the County, Melbourne or West Melbourne but the agreement has to be done the right way.

**Dezman**-but that's because there are overlaps

**Wilbanks-Free**-that because one road, we had it on 36 Street to and it's

**Bohne**-it's certainly needs to be looked into. Definitely it can be done with the County. Cape Canaveral, I think, is the one that does it right now. If I'm not mistaken, they have a contract with the Sheriff.

**Mayor**-right, we don't have a contract.

**Bohne**-we have a MSTU.

**Mayor**-I don't want to talk right now.

**McKnight**-it's okay, go ahead.

**Mayor**-I seem to remember when all the discussion was going on between this council and the County, that was brought up, a possible contract with the Sheriff's Office and the County Commission had no interest in that whatsoever.

**McKnight**-I suppose we have no other alternative other than our police department. But I think there are other alternatives. Also with the MSTU, if we're going to go that route, I think they need to cover our Eagle Patrol too. It says in the MSTU, they are responsible for citizen's patrol, but currently we fund those cars. We bought the cars, the Town of Malabar?

**Mayor**-yes, the Sheriff's Department has their own Citizens Patrol that covers certain areas all the way down to Micco/Barefoot Bay area.

**McKnight**-I'm not saying we should get rid of ours. I'm saying that

**Mayor**-we should get theirs too.

**McKnight**-yes, that's what we're paying for; that's what's spelled out.

**Mayor**-good point

**McKnight**-and also, we should consider the sub-station here. We have been giving a sub-station for free for many years and I don't necessarily think we should give it to them for free. We're paying for trailer out there for our Building Department and we have a room here we could put our Building Department in. That's all I've got.

#### **(NOTE: THIS ENDS THE VERBATIM PORTION OF COUNCIL REPORTS)**

Dezman-at the last meeting a horse was reported as being missing; it has been found in the woods dead. She did not go to the potluck; she will send a note. Dezman reported that she has a great deal of difficulty when she receives an e-mail from Franklin about not getting the agenda packet out on time because she has run out of day. She finds it unconscionable; Franklin works very hard and the last week was very difficult for everyone. She could reiterate all that has been said here this evening. Dezman would like the Town to take out an ad in the Florida Today paper to thank everyone by name; with a caveat at the bottom stating if we forgot anyone to please forgive us. She would also like to take on organizing the office she used during the fires to make it a nicer work area. She commends everyone on Council for working together to get the job done. More than once, she heard our hospitality was great.

Mayor-reported that last Tuesday before the Governor arrived, he took the opportunity to lobby for the emergency light in front of the fire station. He called Frank Hickson with DOT and inquired as to who to speak with regarding this. He was referred to Mr. Murrell, Safety Department of DOT; Malabar was given approval two years ago for this light. Mayor asked if DOT could assist with the funds for the light. Mr. Murrell stated that DOT has no funds available. Mayor was in Viera today and spoke to Dave

Weldon's assistant. He provided information so that it can be researched to see if there are any grants available to assist with placing the emergency light at the fire station.

Mayor also spoke to some of the Town's people. The Southern Pine is going to be the hated tree in town; he believes we have an ordinance in place to protect this tree and he doesn't know why we are protecting this tree. He feels these trees will be coming down and is bringing this to Council as an agenda item to possibly remove this tree as being protected in Malabar.

**M. PUBLIC COMMENTS: General Items**

Bridgette Ports-1340 Hall Road, came forward and addressed Council about the animals being left out of the loop during the fires. She feels there should be some means to provide for them and volunteered to assist with this if the need arises again. Mayor stated she may want to get with the animal owners to

get something in place. This can also go on the website and in the newsletter. Ms. Ports also reported that she was on the internet and found an article written by a fire fighter stating that the donation(s) received from Lowes. She feels that something should be done. If any businesses that volunteered services or donations were to read this, they may not be so forthcoming if assistance is needed in the future. She also mentioned supplies were walking away from the fire station that had been donated. Dezman answers the statement regarding the supplies. McKnight states that negative comments are not acceptable

Stuart Borton-141 Riverview came forward and addressed Council. He thanked Council members for coming together during the crisis. He also thanked the local area businesses for all that they did to help feed the fire fighters and volunteers. Citizens also brought in food when it was needed. McDonalds on 192 was readily available to assist; Chic-Fil-A. He asks that letters of thanks be sent out to each vendor. He was amazed by the community support.

At this time, Dezman asks if all is secured at the fire station with the supplies. BWF reported all is taken care of. BSCO provided prisoners for the last two days and they assisted with the clean-up and organizing of supplies. Sometimes those are the people we don't hear about.

BWF stated in spite of everything else, staff in this building, when everyone else was dealing with the fires, life still went on and your citizens were taken care of, we were handling the calls and dispersing the fire calls because people were calling Town Hall saying I've got flames, can you do something. So, they weren't out on that fire line but believe me, they were working just as hard, if not harder here because we were all stressed so I want to thank staff entirely. I owe Carl Beatty forever after one little episode; he knows what I'm talking about. But it was really a great great team effort all the way around.

McClelland reported that when the fire department was completed, we took an ad out with Florida Today (Melbourne Times) as a thank you to everyone. Dezman reported several projects have been set up for the Fire Department; they were set up with the assistance of the BWF and Franklin; one is for the animals of Malabar.

**N. ADJOURNMENT**

There being no further business to discuss, **MOTION: Dezman / Borton to adjourn this meeting.**  
**VOTE: All Ayes.** The meeting adjourned at 10:25 PM.

BY: Thomas Eschenberg

Mayor Thomas M. Eschenberg, Chair

TRANSCRIBED BY:

Cindi Kelley

Cindi Kelley, Deputy Town Clerk

06/02/2008

Date Approved