

## **MALABAR TOWN COUNCIL REGULAR MEETING**

**June 16, 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 7:45 pm by Chair, Mayor Eschenberg. The prayer and pledge were led by District 5 Patricia Dezman.

### **B. ROLL CALL:**

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

CHUCK McCLELLAND, excused

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

JEFF MCKNIGHT

PAT DEZMAN

TOWN ADMINISTRATOR:

BONILYN WILBANKS-FREE

ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

### **C. ADDITIONS/DELETIONS/CHANGES:**

Franklin stated that the presentation by Torres include May.

### **D. PRESENTATIONS:**

- Keep Brevard Beautiful Presentation for Trash Bash Award Ms. Pat Brown of KBB thanks Malabar for participating over the years. It was held April 19, 2008 and had 1339 volunteers and collected 106850 tons of trash. WM sponsored the competition and Malabar won for Category D, overall winner by population with 48 volunteers and 865 bags, or 17 300 lbs. of litter. She has two checks made out per Town instructions - \$200 for the MMA and \$300 for BSA and a certificate for the Town. She made the presentation of the certificate to the Mayor. Then presented the checks to:
- Boy Scout Troop 37 Leader Joey Sartin – Sartin was grateful and happy with the Town and proud of our association. He presented the Council with a Thank You card. Mayor asked him a question - He has old flag that is ready for disposal. Sartin replied they do retirement ceremonies for flags.
- Malabar Mariners Association (MMA) Commodore Chuck Pierce – They are proud to be part of Malabar and want to continue the relationship.
- Pat Brown then said at the last KBB meeting they agreed to donate 5K to the fire victims in Malabar and Palm Bay.
- Mayor then made presentation of IEMO certificate to Jeff McKnight for his completion of the course.
- Mayor presented BWF a certificate from County Commissioner Jackie Colon for all her efforts during the fires.
- April Financial Report by Town Accountant August Torres – He had the April and May financial reports and he handed them out. BWF stated that if you have questions on these please send them to her and she will forward them to him and send response to everyone. Regarding the funds in SBA, Plan B that are on hold, the general fund would realize a \$7900 market value loss and in utility plan there would be a \$460 market value loss. (These are paper losses if the securities were sold at this time)

Torres stated the budget shows we have an excess of revenue over expenses of \$45,000. This is the slowest portion of the year for revenues. Torres reported that we are on track for expenses in the budget.

Dezman commended him on getting this up to date. Torres stated the budget changes from the last meeting are also included. We are current. He does bank reconcile before the financials are done. For example, you have a number of deposits that show in transit – he tracks both deposits and outstanding checks and make sure they are cleared. Dezman said there is a lag time. BWF stated she changed the deposit system shortly after starting here because we were not making timely deposits and getting the benefit of the sweep account. She initiated the daily deposits. She stated we are working with Check 21 and if they do not improve their turnaround then we may be changing the way we do the deposits.

- Fire Pictures (Mayor Eschenberg) – Mayor described the fire on Old Mission and whatever fire department responded did a great job with foam and saved the 100 year old house. The owner said he had some water damage. This was a result of the brush fire.
- Next one is a hobby shop and it burned from the inside out. Fire Chief explained there was radiant heat and flammable liquids inside that caused it to burn from inside out.
- Hunter Lane, boat on fire.
- Corey Road, the house north of Van Fleet, 3060
- 3080 Corey Road
- 3120 Corey Road
- Helicopter coming down behind Mayor's house and filling up.
- Senator's Nelson's outbuilding

**E. PROCLAMATIONS: Independence Day – Mayor read.**

BWF showed the sketch of proposed town hall expansion provided by Building Official and commended staff for taking initiative. BWF also stated that Carl Beatty was working on one. BWF reported that the special needs persons were identified to her by Emergency Operations but they are confidential. Dezman said that she asked about the persons in need because of her friend in Palm Bay.

**F. CONSENT AGENDA**

**1. Approval of Minutes**

Regular Town Council Meeting – 6/02/08

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Vail / Dezman to approve as submitted. **Vote:** All Ayes.

**G. STAFF REPORTS:**

**ATTORNEY**

- Update on MSTU, On June 5 a letter was sent to Supervisor of Elections by County Atty Nash asking for the ballot question to be pulled because the wording is misleading and somewhat vague. They thought it was a improper ballot question. He was not copied. The Election office called Bohne and he had a lengthy discussion with the attorney. The Supervisor of Elections does not have the authority to pull a question from the ballot. Whether it was proper or not was not for him. It is legislative. It will not be pulled.

**ADMINISTRATOR**

- Fire Department report by Bob Rowan. Response time has gone up. En route response – no lights and sirens. Current roster is 58. 20 applications in the last two weeks. One given and one received for mutual aid. 41% of responses were fire. Report attached to minutes.

- They have submitted a AFD (Assistance for Fire Department) Grant for exercise equipment. He stated the fire breaks put in through the EELs property off of the Briar Creek Blvd. are great. Each section is 28 acres. Rowan stated in reference to the ladder truck, it still is serving as a reserve truck in Boca Raton and it just got a brake job.
- He, Rowan is getting quotes for smoke detectors to put back in upstairs. BWF asked Rowan to get the electrician to contact her. We need to get contract in place. Dezman said we had talked about doing a de-briefing. She is leaving on the 6/27/08. From playing the part she and her family are willing to donate the furniture for that office and paint. BWF explained that the cabling and the drop would cost about 2K or 3K and she needs plan from netDirect and before we move them upstairs, we must have the smoke alarm system. It is quoted at 7K to do it the right way. Before we can move Blanca down stairs, the Communications equipment has to be moved. The communication room will become gear room. Somebody needs to talk to Nancy and Stuart. The door under the stairs maybe should be moved. There was talk about upgrading and enlarging the kitchen and the door under the stairs may not work. Borton asked about the stuff in the yard. DOF removed their stuff after auction and then PW immediately manicured the land. BWF said she will be asking at next meeting to declare some stuff as surplus to have a auction or put it online like DOF. Mayor felt the majority of residents really only want a top notch fire department and their roads and drainage taken care of. He thinks there should be an article in the next newsletter on all the improvements that have been made at the fire department.
- BCSO Lt. Cockriel reported that the crime stats are low. Still looking for fire starters. With kids out it is quieter than he expected. He will be going back to week ends and won't be at meetings. There were two burglaries. Mayor asked time of day and day of week. Weds Sat and Sundays are big days. With this small of a sample it is not real accurate statisically. Grant Valkaria and Malabar and Barefoot Bay and Palm Bay. He likes to keep everyone posted. We share information now due to the common borders. Within the corporate boundaries in the last month there were two burglaries. Dezman asked if anyone called about guns being discharged and has it increased. Lt. said that yes they have and they haven't noticed a increase. She asked for data from the last six weeks. He will run out a report statistically and provide to her.

#### TOWN CLERK

- Ad for thanks –ready to run. Also in newsletter.
- Post draft minutes, so marked on website – This had been asked of Council before and Council stated they only wanted approved minutes on website. We currently post draft minutes on web with the agenda package. P&Z has requested that they be uploaded so residents could stay up on what was going on in town in a more timely basis.

McKnight has no problem with having them posted. Vail doesn't have problem as long as they are marked draft and there is a definition that draft minutes may be amended at the future meeting. Dezman said she didn't care. Borton thought it was a good idea. Attorney will provide disclaimer to add to minutes and where on minutes to include it. McKnight said they are already published in the agenda package. Dezman discussed adding a third column in the website area for minutes to provide for draft minutes. No that would be too confusion. Mayor has no problem with this. This would apply to all boards as well as council minutes. Staff will start providing draft minutes on website,

#### H. PUBLIC HEARINGS:

##### ORDINANCES:

Without objection, Mayor read by title only.

2. **Amending Variance to Road Improvement Requirements (Ord. No. 2008 -7) AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING SECTION 13-38(c) RELATING TO VARIANCES AUTHORIZED BY THE BOARD OF ADJUSTMENT; ESTABLISHING GROUNDS FOR A VARIANCE;**

PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action on Second Reading of Ord. No. 2008-7

**MOTION:** Vail / McKnight to approve Ordinance 2008-07 as presented.

Chair opened Public Hearing; hearing none, it was brought back to Council for discussion.  
None.

**The roll was called: Borton-Aye; Vail-Aye; McClelland, excused; McKnight-Aye; Dezman-Aye.** Motion carries 4-0.

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

**J. ACTIONS ITEMS:**

**ORDINANCES:** First Reading - none

**RESOLUTIONS:**

Without objection, Mayor read by title only.

- 3. Approval of Sole Source for Fire Department Night Responder Light Trailer (Reso. No. 27-2008)** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AUTHORIZATION TO DECLARE ALLMAND BROTHERS, INC. A SOLE SOURCE TO PROPERLY PROVIDE NIGHT RESPONDER (EPN-8N) LIGHT TRAILER FOR THE MALABAR FIRE DEPARTMENT; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action on Resolution 27-2008

**MOTION:** Borton / Vail to approve Reso 27-2008

Discussion: Vail asked about funding. He wanted it clear for the record that the majority of his cost (95%) was grant money from the 2007 grant application. BWF described the reason why the fire lights are sole source.

**VOTE: The roll was called: Council Members: Vail, Aye; McClelland, Excused; McKnight, Aye; Dezman, Aye; Borton, Aye. Motion passed 4 to 0.**

Without objection Mayor read by title only.

- 4. Approval of Sole Source for Fire Department Exhaust Removal System (Reso. No. 12-2008)** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AUTHORIZATION TO DECLARE AIR VACUUM CORPORATION A SOLE SOURCE TO PROPERLY PROVIDE EXHAUST REMOVAL SYSTEM FOR THE MALABAR FIRE DEPARTMENT; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action on Resolution 12-2008

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

**MOTION:** Vail / Borton to approve Reso 12-2008

Discussion: none

**VOTE: The roll was called: Council Members: McClelland, Excused; McKnight, Aye; Dezman, Aye; Borton, Aye; Vail, Aye. Motion passed 4 to 0.**

- 5. Approval of Interlocal Agreement with Individual or Palm Bay (Reso. No. 28-2008)** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH BUILDING OFFICIAL DARYLE MUNROE TO PROVIDE BUILDING INSPECTIONS AND PLAN REVIEW;

PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action on Resolution 28-2008

**MOTION:** Vail / Dezman to approve with the individual.

Discussion: Dezman says we should revisit after this time and see how it worked. She doesn't want to give Palm Bay an additional 15% administrative fee. Vote: All Ayes.

Without objection Mayor then read Reso 28-2008 by title only.

**MOTION:** Vail/Borton to approve Reso 28-2008.

Discussion: McKnight wanted to make it clear that this is only for filling in – it is not to replace Roger as Building Official. We will try it out and BWF will report back after this incident.

**VOTE: The roll was called: Council Members: Dezman, Aye; Borton, Aye; Vail, Aye; McClelland, Excused; McKnight, Aye. Motion passed 4 to 0.**

**6. Ladder Truck Purchase for Fire Department (Reso. No. 23-2008)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO THE ACQUISITION OF A 1993 SULPHAN 75-FOOT LADDER TRUCK; AUTHORIZING THE TOWN ENTER INTO A MUNICIPAL LEASE AGREEMENT WITH LEASING 2, INC. TO PROVIDE THE FUNDS REQUIRED TO SECURE THIS ACQUISITION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action on Resolution 23-2008

Chairman allowed Speaker Cards first.

Speakers Card: Grant Ball, he has discussed this with other communities. He questioned should a rural community consider a ladder truck. It uses 750 gallons of water per minute. The other thing was that Melbourne and Palm Bay only have one truck each. Is this the best utilization of our money. He wanted to bring that up for Council to consider.

Bob Rowan, two items on fire report. There were two fires that were put out with help from high tech. East end of Hall Road had a fire today and the first fire was last week on Hall Road near McCain. They used the thermo imaging cameras and found four hot spots and were able to get them put out..

Regarding the ladder truck, there is a tanker behind it. The county used it on recent fires and prevented fires from reaching two residences on Weber. The ladder truck allows for carrying shields that are used for covering private property. It can be used for a fire truck and can be sent to respond to fire. It can also be used to rescue.

Without objection the Mayor then read Resolution 23-2008 by title only.

**MOTION:** Dezman / Vail to approve Reso 23-2008.

Speakers Card, Mr. Raulerson - he is a fire fighter and has worked on ladder trucks. One or two people can respond with a ladder truck. It has a multiple purposes. Possible drowning or vehicle over embankments the ladder can swing down and be used.

Discussion: Chair asked BWF to read McClelland's comments. McClelland comments are read by BWF and will be attached to minutes. He did research. It can be used to carry other ladders. Ladders must be certified. This gives us another engine and will help with reducing residences insurance rates.

McKnight said it is unfortunate that this comes at this time. We are spending money that we have not budgeted. If you want to pursue this in the future, inform the residents and the 40 he has heard from were against it and three were for it. He can't approve the spending for it. Borton agrees with

McClelland's statement and his research. Vail said it is a ladder feature but it is a third engine. Any crew can drive it out and operate it as a engine. Vail had mixed emotions on spending the money. Budgetarily he doesn't... This will shut them down for buying anything else. It is well cared for and it is high end. McKnight said their residents checked with the insurance company and they don't get a reduction in insurance rates based on fire equipment. Dezman said after the fires she doesn't want to say she did not support equipment that could better protect the Town.

Borton thought this was tabled at previous meeting. Discussion of it being put on as Action Item RTCM 051908 per the Mayor and then tabled so Fire Department could provide information and costs to refurb one of their trucks so Council could compare. That information came late on the Friday before the RTCM 060208 so it was not on agenda. It was discussed at the last meeting under Public and staff was directed to put on agenda.

**MOTION:** Dezman and Vail to remove from table. Vote: All Ayes.

**VOTE: The roll was called: Council Members: Borton, Aye; Vail, Aye; McClelland, Excused; McKnight, Nay; Dezman, Aye . Motion passed 3 to 1.**

Mayor asked about the financing. Asst. Fire Chief Welton said the leasing company handling the sale said we would work with the refurbishing company. We would pay the refurb company 70K upon signing contract.

**MOTION:** Dezman/Vail to use the 7 year lease which is Option #5 on the agenda report. Borton asked about change in percentage from 5 to 7 years. It doesn't behoove us to take the shorter term to save the difference. McKnight suggests choosing the options by number. **VOTE:** Ayes: 3; Nays: 1 (McKnight). Motion passed 3-1.

#### **MISCELLANEOUS:**

**7. Appoint Voting Delegate for FLC Annual Conference**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**MOTION:** Borton/Vail to appoint Eschenberg

Discussion. none

**Vote: All Ayes.**

**8. Approve Brevard County Open Roads Policy**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

Chair asked for discussion first. BWR stated McClelland's provided comments. His concern is that this would open town up to liability. They have 90 minutes to clear the road. To clear the road is a major priority. All towing companies have to agree be able to do this. BWF asked Atty Karl Bohne to do research. Bohne stated it subjects the Town to the liability. It ties our hands and creates liability. Mayor asked what the Town gets. Atty doesn't think we should enter into the agreement that could cause us additional liability and doesn't provide benefit. The example is the Interstate and the Highway 1 and if we sign it what are we opening up ourselves. Bohne said the general liability law states by signing the agreement it would create a liability issue that otherwise would not exist.

Franklin stated that it had been sent to all the cities and the county and It was signed by all but Melb Village and one other. She understood from the FDOT contact that the intent was to have all possible responding agencies to agree to clear the road and restore vehicle traffic flow - the signature pages from all the other signatories is in her office. Perhaps they didn't take the agreement to their councils. Bohne stated there is no benefit and could create a liability issue.

**MOTION:** Dezman/Vail to approve

**Vote: All Nay**

**We will reconsider if FDOT will give us a flashing light at fire station.**

**K. DISCUSSION ITEMS:**

**9. Proposed Amendments to Tree Protection Code**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Discussion and Direction

Vail asked about the formula. 40' tree should be 40' away from house. Mayor suggested adding something to it – the 30 is good or. Jeff suggested changing it to 40' and leaving at that. Mayor said Pine trees don't have much of a canopy. Slash pines don't have much canopy. Change it to 40'. Keep it simple. Have for first reading at next meeting.

**L. MAYOR AND COUNCIL REPORTS:**

(Note: number reflects order of reports)

#4 - Dezman: June 27 through through July 4<sup>th</sup> will be gone. She made a comment to Salvo that the behavior of Sheriff was inappropriate and uncalled for and unprofessional. She already mentioned the debriefing. She would like to see brainstorming session to list the pro and con list of MSTU. She asked about the contribution letter asking for money for the corporation. Nowhere on there does it explain that the money is going to a separate corporation. She wants it on the record that this corporation funds are spent. There were several people that wanted to host a thank you dinner. A Linda wanted to have a thank you dinner at the fire department.

#2 - Vail: - wants an email set up. BWF will get Brian a email. BWF again asked for bios from Council to put on website. Email contacts can be included.

#1 - Borton – mysafeflorida.com She has saved over 2K by having them out and they recommend 866-513-6734. July 6<sup>th</sup> Yellow Dog will sponsor the Pot Luck and they will do hamb and hot dogs. Fire Dept will come with their boot and try and raise money for fun items. From 3 to 6 pm. She has bought lots of games. She has talked to the blue grass musicians and they will try and incorporate their music with the event. She is meeting Thursday with Filiberto and BWF.

July 28 at 6:30PM Yellow Dog will do the awards ceremony. She will get the time for us.

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n/a - McClelland: Excused – will be back on 22<sup>nd</sup> in time for the 23<sup>rd</sup>.

#3 –McKnight – thanks for putting the front page on link. Also the scan agenda package in black and white and . The color scan creates too large of a file and it is difficult to open. Regarding Mark Archer extension request - it was not sent to P&Z first. Put on next agenda for discussion to require site plan ext go to P&Z first.

#5 – Mayor – Mayor gave handout to take home and read. Fees for accidents. Now West Melb has fee. He wants to keep it in front of you. It can be challenged. There is also a HB to ban this but it has not occurred. We will watch and see how they are doing. His other comment has to do with water. FS that deals with xeroscaping. Have P&Z look in to this and see if they would be interested in changing the code to perhaps outlaw St. Augustine or a percentage of landscaping as xeroscape. Mayor then mentioned the MSTU – the meeting at the fire station in the spring of 2007. If we had another one of those held no more than two weeks before the election. Invite the sheriff back and advertise it. It got a lot of people. They could ask questions. Anything they need to know to vote.

**MOTION:** Vail / McKnight to extend 5 minutes. Vote: All Ayes.

McKnight has tried to get information from Sheriff and it has been very difficult.

**M. PUBLIC COMMENTS: General Items**

Bob Rowan, working the Osage fire, his car got hit. He has spoken with FLC and they responded today that they won't cover it unless he states that the town was negligent. McKnight, asked the Attorney to comment. Bohne said Council can not be using public money to pay a private benefit. Borton asked BWF to find out what IHB does. IHB does not provide what Rowan is suggesting we do. We would have to create a policy. BWF did speak with the FLC and she said you must be really careful. It could expand to the Rolex that the volunteer wore to the fire. She said it was difficult to stop.

#### N. ADJOURNMENT

There being no further business to discuss, **MOTION: Vail / Borton to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 10:40 PM.

BY: Thomas Eschenberg  
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby Franklin  
Debby K. Franklin, Town Clerk/Treasurer

7/7/08  
Date Approved