

MALABAR TOWN COUNCIL REGULAR MEETING
July 21, 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 7:30 pm by Chair, Mayor Eschenberg. The prayer and pledge were led by District 2 Brian Vail.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

CHUCK McCLELLAND

NANCY BORTON

BRIAN VAIL

JEFF MCKNIGHT

PAT DEZMAN

TOWN ADMINISTRATOR:

BONILYN WILBANKS-FREE

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: Clerk stated she will ask for Council action on her report.

D. PRESENTATIONS:

E. PROCLAMATIONS:

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 7/07/08

Budget Workshop – 07/15/08

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Borton / McClelland to approve as submitted.

Vote: All Ayes.

List corrections: none

G. STAFF REPORTS:

ATTORNEY

- AGO opinion recently came down. Council member served as a webmaster for a website that served as an open forum for items that may come before them for action. Opinion dealt with a privately owned website operated by councilmember. Some of those issues would come before council for action. AGO opined that the items related to public business would have to be kept for public records. Also, if two council members participated in a blog it then could violate the Sunshine Law. Borton asked about keeping emails relating to public business. Attorney said it would be wise to send copies to the Clerk of any public business related to the town that is transmitted on their private computers.

ADMINISTRATOR

She reported that she had asked auditors if they could give a quick report for tonight. No, they do expect another half day here tomorrow and then they will go back to their office and drop in the numbers. She anticipates having the report from them by the second meeting in August.

•Fire Department Report

Chief Joe related the tree trimmers that got stranded in a cherry picker at a property on Corey road. They requested mutual aid from Palm Bay's ladder truck. It couldn't get in the drive but they did get them down with the ground ladder they carry on the truck. The Chief then gave the report (attached to minutes). They have submitted a grant for exercise equipment. Awaiting response.

TOWN CLERK:

- Requests from P&Z re: Grant-Valkaria – P&Z wanted to keep in touch with G-V by advertising our website in their newsletter and their website in our newsletter. Council has no objection. Clerk stated that the portion of Grant-Valkaria in the Post Office Route 2 gets a copy of Malabar Newsletter. Notify Grant-Valkaria.
- Comp Plan Memo – Clerk summarized communication with Ms. Lorraine Tappen of Calvin-Giordano and Associates, Inc. (CGA) the planning firm contracted to do the Evaluation and Appraisal Report (EAR) amendments to the Comprehensive Plan. Planning and Zoning will not be left out, they will review before Council. Mayor asked if based on previous meetings, it appeared that Council and P&Z agreed to certain changes to Hwy 1, Malabar Road and Babcock Street should be made. Clerk explained that more joint meetings would be needed to come up with a final determination. No final action at Council meeting was ever taken. Then we would have to get surveyor to determine the distance for the corridors to make the changes.
- Although Calvin-Giordano and Associates, Inc. (CGA) will get information from staff they will submit the EAR amendments first to P&Z for review before Council. The EAR amendments will not include land use changes. It will include text changes to provide for conservation/preservation types of recreation lands. Mayor wanted to include the land use changes to save money. Could staff do the land use changes? Clerk stated that the land use changes could be drafted by the staff and attorney and heard by P&Z and Council concurrently to the EAR amendments being drafted but they would not be reviewed by DCA unless the other requirements, the School Concurrency Element, and Capital Improvement Element, have been approved. This is what Mayor objects to.
- Amending Landscape Code – Clerk summarized the request from P&Z. They don't want to bring in experts to speak to the Board from St. Johns RWMD or from the University of Florida, Brevard County Extension center without direction of Council. Mayor did bring this to the P&Z Board. How to save water for new construction. Mayor/Chair asked for Council action. McKnight has no objection to having P&Z get St. Johns River Water Management District (SJRWMD) or others to come in and brief them. He stated he would prefer the positive reinforcement style program rather than to penalize. Changes to Land Development Code (LDC) to encourage water conservation would be good.

MOTION: McClelland / Borton to direct P&Z to pursue amendments to landscape code to encourage water conservation. Discussion.

Mayor recommended the Florida Waterstar website to all. He had already given information to P&Z. Could be given to new residents building in Malabar. Flyers were prepared for Council and the residents – they are on credenza in back of room. **Vote: All Ayes.**

Mayor said in Orlando Sentinel there was a large article on grass and how much water certain types take. There is an Orlando City Councilmember that is charging this issue up. He left copy with the Building Dept.

H. PUBLIC HEARINGS:

ORDINANCES: (0)

I. PUBLIC: ITEMS DIRECTLY RELATED TO PLANNING AND ZONING BOARD RECOMMENDATIONS

2. **Recommendation from P&Z Board – Malabar Vernacular**
Exhibit: Agenda Report No. 2
Recommendation: Request Action

MOTION: Borton / Dezman to approve P&Z recommendation as submitted. Vote: All Ayes.

McKnight wanted P&Z to know the Council discussed the pictures. Clerk showed the pictures that were used when the ordinance was adopted. They were not included in the ordinance that was adopted. Dezman thinks the pictures should be part of the ordinance. Council reviewed the pictures on the overhead and made comments about the need for flexibility. Mayor stated that the minutes should reflect that some of Council support including the pictures and some do not.

Borton wants to find some other pictures to send to P&Z. Mayor said it should go to P&Z without any undue influence from Council. Let the Board send them their recommendation after they get the draft from the Attorney. Attorney stated this will have to have a Public Hearing at P&Z before it comes back to Council.

BWF asked to add the Lt. from the BSCO for his report to Council. BWF called up the Lt. and he said that there have been no class 1 burglaries. Since the last meeting there has not been much activity. There have been some smash and grab so keep stuff out of site. Hurricane preparedness is a priority. End of report. No questions.

Attorney asked Chair to address Council. He cautioned Council about the side conversations during the meeting. It got 2 member of the G-V board in trouble. The audience can not hear. It could be a violation of the sunshine. His job is to keep Council advised on items that could be problems.

J. ACTIONS ITEMS:

ORDINANCES: First Reading –0

RESOLUTIONS:

3. **Approve Quasi-Judicial Procedures (Reso No. 29-2008)**

Without objection, Mayor read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING QUASI-JUDICIAL PROCEDURES; 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 29-2008

MOTION: McClelland / Borton to approve Reso No. 29-2008.

Discussion: none

Roll Call Vote: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman Aye;

Motion carried 5 to 0.**4. Revised Ladder Truck Purchase for Fire Department (Reso. No. 30-2008)**

Without objection, Mayor read by title only.

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 TO ENTER INTO A MUNICIPAL LEASE AGREEMENT WITH LEASING 2, INC. TO PROVIDE THE FUNDS REQUIRED TO SECURE THIS ACQUISITION; PROVIDING FOR AMOUNT, TERMS AND CONDITIONS; 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 30-2008

Chair recognized one speaker card:

Capt. Seigmann, 2305 LaCourt Lane, Malabar, He has heard a lot about the way Council is spending money and cautions them to think this through.

MOTION: McClelland/Dezman to make correction to spelling – should be Sutphen and approve the Resolution 30-2008.

Discussion.

McKnight has stated previously that he is against this and is against spending in general. It is not the time to spend money. Borton had the same feeling after the budget meeting. She is afraid we would not be able to pay it off. BWF explains the 220K and the draw down comes from the lessor. We don't pay – they do. In Dec we start the pay back. The accountant was also correct. We ask the auditor. When you sign in this year, you are on notice that you have a liability. She asked that the Agenda Report be corrected to reflect the 4.98 percent interest. The resolution and agenda were corrected. We made the reso more detailed so you can look back and see what was committed to. Vail said this is a good deal on the truck. The other truck is almost ready to be timed out. He is having a hard time. He is also giving it a second look.. Dezman said the number 1 concern is public safety. Don't do it because it is not in the budget. We must do the right thing.

Vail asked if the FD could help pay for this. BWF told FD not to put things in the budget we don't have money for. They have to budget around the annual payment. You will see it under the next budget as principal and interest. They can't move money out of that line item.

Borton asked Chief if we have enough uniforms. Are we going to short cut our gear to fight fires by getting this truck? The 50/50 grant will get cut. Can he dress the guys and fight fires. Chief said yes. BWF said the Chief hasn't mentioned some of the donations of equipment can offset some of their expenses. Chief said Palm Bay is getting new equipment and we have used their TMP. They are donating such a unit to us. It is valued at 8K or 8500. We have an air unit. We used to have to get the air unit out to fill the tanks. Sat Bch. Donated the air unit. It is valued at 35 or 30K. Some other items have also been donated. The big ticket items. The gear we are conservative – not everyone is going to get the gear. They must have a commitment. They are selective on who they give the gear to.

Mayor said we haven't seen next year's budget. If the FD gets no increase in the next year, could they make the truck payment? Chief responded yes, they can. He is trying to budget smarter. They are planning out replacement parts and hose.

Dezman asked the Fire Chief, Joe Gianantonio, and Assistant Chiefs Welton and Rowan to address Council and state if they felt in their professional opinions, if the truck was necessary. Chief Gianantonio said yes, the truck would be a great asset. Don't look at it as just a ladder truck. It can be used to carry equipment.

Dan Welton said yes, that with the buildings we have currently, we do not have anything to fight a fire at Ace Hardware.

Bob Rowan, yes, absolutely, Melbourne just proved it – surround it and drown it. The residents will directly get a significant reduction in insurance costs.

Borton asked if we have to buy the truck. Can the other cities around us help buy it? Chief Gianantonio stated Palm Bay has one and every day it is out in the field. The county has no ladder trucks – they rely on the cities. McKnight said if the County doesn't have a ladder truck, then why do we need one. Chief said he could explain it takes fire equipment to fight a fire, 5 engine companies; he has to have all that equipment. That is without a ladder truck. The county gambles that they won't need it. If they do, they call cities to bring in the ladders. McKnight said it seems that the cost should be born by the commercial businesses.

McClelland said that it can deal with 2-story houses. It also carries ground ladders in addition to the big ladder. Vail said it is a fire truck. It is a medium rescue truck.

Roll Call Vote: Vail, Aye; McClelland, Aye; McKnight, Nay; Dezman, Aye; Borton, Aye.
Motion carried 4 to 1.

MISCELLANEOUS:

5. **Approval of Surplus Material List to Dispose – PW**
Exhibit: Agenda Report No. 5
Recommendation: Request Action

MOTION: Borton / Dezman to approve the Surplus List to Dispose of Public Works items.

Discussion. McClelland asked Beatty if the Shasta trailer would be sold for scrap. Beatty thinks it could be auctioned. Ownership question? It is abandoned vehicle. The condition is bad, the walls, roof, floors are all bad. Just need someone to air up the tires and haul it away.

Vote: All Ayes.

6. **Form DR-420, Certificate of Taxable Value**
Exhibit: Agenda Report No. 6
Recommendation: Request Action

Request motion to determine Preliminary Maximum Levy Calculation and set first Public Hearing on millage levy and budget.

MOTION: McClelland / Dezman to approve setting the preliminary levy at 1.4676% millage which would be a 10 % increase of the rolled back rate.

Chair explained the process of setting the preliminary millage and date for the Public Hearing. This information is sent to the Property Appraiser and then when the TRIM notice is mailed to property owners, they know what the highest rate could be and the date for the first Public Hearing.

Get from Chuck: McClelland stated that in 1977/1978 the residents passed a 1.5 mil tax. He wanted that in the record.

Vote: All Ayes.

MOTION: Vail/Dezman to set the date for first Public Hearing on millage and budget for September 8, 2008. Discussion: none. **Vote: All Ayes.**

7. Reschedule Budget Workshop for FY 08/09

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Mayor asked when staff would be ready. Monday at the latest. July is out. August 5, 2008 at 7:30 is chosen. Franklin will send out revised calendars.

BWF asked what preference they had to receive it. .pdf or excel - Excel for McKnight, Dezman, and Mayor. McClelland and Vail as pdf and all will get hard copies.

McKnight went through the last budget. He has the original budget that was approved. The items that have changed are not in that last column. McKnight has sent it to TA if anyone wants it.

BWF explained that the actual in 06/07 can't be inserted since they will be changed when they get the audit complete. Mayor said McClelland and Vail can download www.openoffice.org - you can download for free – spreadsheet software. All compatible with Microsoft Word. BWF asked Attorney if Town could purchase the software for the one council member that does not have it. Mayor has used it the software he is recommending without any problem. McKnight has an old 98 disk if McClelland wants it.

Dezman said Town could buy software and it could go on and then it would have to come off when he no longer is serving. McKnight said the school teachers were allowed an extra license for their home computer. McClelland said if it doesn't work then send it in PDF. McKnight will give him his 98 version.

8. Set date for Fire Wise Community Presentation

Exhibit: Agenda Report No. 8

Recommendation: Request Action

BWF has been working with Chief Joe and DOF on becoming the first Fire wise community. They would like to have a town hall meeting and describe the program. Chief Gianantonio is working on one aspect of the town plan and she is working on another aspect. If you give her a few dates. They would like it as soon as possible, while it is still fresh in resident's minds. McKnight asked how long the presentation would last? 1.5 hour and then Q&A. Tues or Thurs evening or Sat afternoon. Vail said a lot of people work half day on Saturday. It is also Summer and people have things going for Saturdays.

Council has no dates in July that will work. Review August calendar.

Mayor asked how we would get the word out. The website, the marquee and putting signs out like we did for the visioning meeting. McKnight asked if we could push it to Sept. No. The awareness may have already started to diminish. BWF asked about the 14th? Yes. At Town Hall? No. Needs to be at Fire Dept.

It will be held at the Fire Department. Council asked Chief. Chief Gianantonio said OK.

K. DISCUSSION ITEMS:

9. Raising Water Rates for High Users (Eschenberg)

Exhibit: Agenda Report No. 9

Recommendation: Discussion and Direction

Mayor wanted to discuss this. Dezman doesn't want to discuss it until she has seen the consumption reports and sees what the average usage is – McKnight has same stance as earlier item under P&Z recommendations. Encourage people to conserve water rather than penalize. He thinks it is better to use incentives rather than penalty for those who use more. Dezman asked if he had specific ideas. Not at this time. BWF will contact Jason Yarborough at Palm Bay and ask if they have any programs. Franklin said she lives in Palm Bay and they do offer water restrictors.

Get more information on methods for reducing water.

Stuart Borton, 141 Riverview Drive, Malabar. It is not fair to start sticking it to businesses and residents that have pools. Encourage conservation instead of penalizing. St. Johns has a lot of tips on their website. They are a restaurant and they wash a lot of dishes. When you punish high users. Has issue with the statement of let the businesses that need the fire truck should pay. The businesses also employ alot of local people. Conservation should be for all water - including well water. Conservation overall. Add water saving tips to the newsletter. Let's not add high water prices to high gas prices.

Mayor said his idea was to target the users that waste water. For instance, dumping it on lawns.

L. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

1) Dezman – she was not here last Tuesday, Close family friend had an emergency and she was in that mode and forgot meeting. But she did come for Thursday's meeting as no one called to say it was cancelled.

4) Vail: - nothing

5) Borton – Meeting with Rocky Randels and BWF and DKF to discuss the possible land swap for town hall site. He is very involved with the EELs. She is seeking his assistance to see if we can get something moving. He works well with EELs. Dezman asked if results could be included in the Friday FYI.

Borton also wanted BWF to invite the Grant-Valkaria Council to the Monday night event at Yellow Dog for the Fire Department Awards dinner. They were very much part of the fire experience. She also invited members of the audience.

3) McClelland – nothing

2) McKnight – Regarding the Site Selection Committee that was supposedly given authority to commit the Town to a land purchase up to one million dollars. He felt Council should withdraw that authority and cease any further actions by this committee under the current budget considerations. Add to next agenda.

6) Mayor – old item. Waring Lane, off of Hall has one house on it. Problem with emergency response. He said supposedly the letter went out. She said she didn't get it. She is selling the house. He thinks the street should be renamed. Put it on agenda for possible names. He has a suggestion. Amendments to Site Plan (Article VII) and Tree Protection (Article XV) will be going for public hearing at P&Z on 7/23/08.

Mayor reported the Evaluation and Appraisal Reports were the main item for discussion at a recent meeting he attended. The Cape Canaveral City Mgr. said if some of this growth management legislation is going to cause us to have to change our Comp Plan, they were going to request the DCA to postpone the due dates on the amendments. We may want to do the same. He will stay on top of this.

M. PUBLIC COMMENTS: General Items

Grant Ball, 1190 Hwy 1, Grant's Auto Marine Services. He handed out a copy of the letter he received from the Malabar Fire Marshal. He received a phone call at 7:15 for his address. This came back

because he has no mail box at his business, he has a PO Box. Malabar has always been able to get stuff to him.. He pointed out the date May 25 due date. Please notice that date and realize he got it last Saturday. Then he went over the fees. He was assessed the \$35.00 inspection fee for businesses under 1500 sf. His business is 900 sf. He is ok with that. Then there is a \$15.00 administrative fee and he is ok with that. But then there is a permit fee for \$50.00 and he questioned why a fire inspection should require a permit fee – does this require a permit? BWF explained the NFPA requirement for permits for certain types of business occupancies. She had spoken with the Fire Marshal since her conversation with Mr. Ball this morning.

BWF explained that when we had our own inspector, the fee was included in the (Occupational License) software. She is making corrections with the Fire Marshal and getting the addressing issue resolved. Mr. Ball is still not satisfied. BWF started to respond. Mayor gaveled meeting back to order. Public Comments do not require response.

Council did want to respond. McKnight wanted to know more about this. When we changed from Fire Marshal to County we changed the method of collections. Franklin explained the changes – fire inspection fees were listed on the occupational license – different fees for different occupancies and collected when the business renewed their license. (These are now called Business Tax Receipts) The inspections were done every calendar year and the OL was renewed every fiscal year. Then we contracted with Brevard County to do the inspections and stopped collecting on the renewals of the OLs. Council stopped the Interlocal with the county and we hired a part time Fire Marshal. We are still integrating his fire inspection software with our system. We need to go back into the IMS software program and reset the fire inspections and update those fees with the resolution this council approved two years ago.

Dezman asked if Mr. Ball would speak to BWF regarding these issues. Mr. Ball also wanted to point out the poor paperwork. BWF explained that the letters are on Town letterhead but are not reviewed by her at this time. McKnight asked about the fire inspection fees. Was the fee different before? Yes. The date issued has been resolved. What is the \$50.00 fee per the NFPA? BWF will get information from Fire Marshal. Clerk will provide a copy of the resolution to council showing the fees. The penalty will not have to be paid. BWF has directed the Fire Marshal to send out a letter explaining the NFPA and addresses. Borton said nothing should go out on town letterhead without BWF seeing all the letters.

Dezman wants this on the agenda for discussion on the next agenda.

Stuart Borton , 141 Riverview Drive. He is not for spending town money, but... He suggests that each Council member get a computer and it stay with the seat. This would avoid problems with mixing Town business with private business. He and Nancy use their computer for their business. If you bring your own computer to a meeting and there is an allegation of violation, the computer could be taken.

Your own computer could be taken down and they could not give up their computer for any purpose – they need it for their business.

Mayor asked Attorney how the computer would be confiscated. Franklin asked if there was an allegation of Sunshine violation, could the personal computer be taken? Bohne said no. There would have to be an action from Council to notify the State's Attorney to investigate.

Franklin said that Palm Bay and many other cities provide laptop computers for their council members while they serve.

McKnight also said some towns pay their council members who serve – Malabar doesn't have money for that.

Dezman asked to add a comment to her report. Council has been remiss in providing reviews for the Administrator and Clerk. She made a strong encouragement that staff get their reviews done. They were due in May for BWF and DKF.

N. ADJOURNMENT

There being no further business to discuss, **MOTION: Dezman / McClelland to adjourn this meeting.**
VOTE: All Ayes. The meeting adjourned at 9:55 PM.

BY: Thomas Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin
Debby K. Franklin, Town Clerk/Treasurer

08/04/08
Date Approved