

MALABAR TOWN COUNCIL REGULAR MEETING

August 4, 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 3 Chuck McClelland.

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

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

- C. ADDITIONS/DELETIONS/CHANGES: Dezman stated that she wanted her name removed from item #9 – she had asked for information and #10 was not her item. 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 – 7/21/08

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Borton / Vail to approve as submitted. List corrections: McClelland – under discussion of ladder truck – the model is misspelled - should be Sutphen. Also under "Call to Order" it says district 1 and should be 2. Vote: All Ayes.

G. STAFF REPORTS:

ATTORNEY

- Refresh Council on one aspect on Sunshine and written communication from Council. It is not a violation of Sunshine to submit a written position paper to another council person. When a council person submits a position paper there should be no solicitation of others for their position on the issue. It would be inappropriate for councilmember using staff as a method to solicit position of others. Although it is not illegal he cautions them to using this. Perceptions are worse than actuals.
- Ladder truck lease purchase agreement. Not appropriate for Mayor to sign. He has concerns and he listed them. (attached as copy) Vendor is listed as the manufacturer and this case we are not getting the vehicle from the manufacturer. User is the Malabar Fire Department. If a non-user uses the fire department; venue should be in Brevard County not elsewhere; like Tampa where Leasing 2 is located or elsewhere this will be transferred to Old National Bank, wherever they are located. The opinion letter needs to be modified. It also states the Mayor is representing that there will be no hedge bond and sinking funds. Needs clarification. If they have those cleared up then he is ok with it. The vendor is the big item. If something goes wrong we have no one to go after. It is a boiler plate. Attorney can change the opinion letter. Specifically identify who and what the users will be.

ADMINISTRATOR

- Political signage complaints. For clarity, she is suggesting a registration form similar to Melbourne. Sometimes it is simply calling the candidate to move a sign but it has been pretty charged at times. Does not want Public Works to get involved with removing or moving signs for obvious reasons.
 - Sheriff Office is here. Mayor is always interested as he gets out on citizens (Eagle Patrol). Since last meeting, there have been business burglaries. Ace Hardware, Borton said Saturday night she had someone stop and ask her for money. Deputy said that the next time she will call 911. The signage complaints for them have already started. The closer to election day the more signs we will have.
- She has given out the general fund budget for Council to review. Stormwater and water fund will come tomorrow. The accountant will be here tomorrow. If you have questions, call her. We can go through line by line. FPL reflects a known 14% increase and the health insurance are estimated at 14% increase.

TOWN CLERK:

- SCLC dinner is 08/11/08 at Cocoa Beach Country Club
- Candidate Qualifying runs from 8/6/08 until 8/20/08. Three Council seats are open and the Mayor. Found another error in the codified Charter. It does not require the candidate for Mayor to get signatures on petition. We will be making correction.
- Communication from Ethics Commission - status of Susan Kabana as an employee. She did not mail in the Form 1. She is listed with Ethics Commission as still being out on LTD. We emailed her and she said she sent in her final termination report as no longer an officer of the Town. Commission said they never got it. Franklin needs direction from Council.
- Grant-Valkaria already references our website and they will also put it in their newsletter. We will do article about them in our next newsletter. BWF will link their website to ours.
- Procedures in place currently cap vacation accrual and two employees exceed that cap. Does Council wish to revise the hours? We can't afford to have the employees take the time or loose the time. Cap is currently 320 hours.

MOTION: McClelland / Vail raise vacation cap to 400 hours in the next employee manual update. **Vote:** All Ayes. Do resolution for next meeting.

Attorney explained the 15 signature requirement for petitions for candidate qualifying for council seats. It is silent on the Mayor. Mayor is not part of Council. McKnight asked about the resign to run requirement. Why? Attorney said the P&Z is the local planning agency and because of that he had to resign. Does that apply to county seats as well? No it is local stuff. If you were a member of code board to have some authority, you have to resign, it is state law. Mayor said he just read that in town with population under 5000 council members can serve on P&Z board. Attorney is not aware of any law that addresses that.

H. **PUBLIC HEARINGS:**
ORDINANCES: (0)

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

2. **Request to be appointed to Town Hall Site Selection Committee**

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Dezman said she had problem with this – the vacancy should be filled by someone in same District. Purden was in District 4. Ryan lives in 2. McKnight is District 4 and he supports the appointment.

MOTION: McKnight / McClelland to appoint Charles (Bud) Ryan to TH Site Sel Committee.
Discussion. **Vote:** 4 Ayes, 1 Nay (Dezman).

J. ACTIONS ITEMS:

ORDINANCES: First Reading – 2

3. Amending Article XV Providing for a Tree Buffer (Ord. No. 2008-08)

Before Mayor read by title he wants to discuss. They (P&Z) made no recommendation, they wanted to change it and bring it back. They felt it should apply to all trees not just pine trees. P&Z member Don Krieger was going to provide changes. Does Council want to go forward or let P&Z work on this some more?

MOTION: Borton/McKnight to send back to P&Z. **Vote:** All Ayes.

4. Amending Article XVII Providing for P&Z Review and Recommendation for Site Plan Extension Requests (Ord. No. 2008-09)

Without objection the Mayor read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTION 1-7.5 OF ARTICLE VII; PROVIDING FOR REVIEW AND RECOMMENDATION OF SITE PLAN EXTENSIONS BY THE PLANNING AND ZONING BOARD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Action on Ord. No. 2008-9

MOTION: Borton / Vail to approve Ord. No. 2008-09 to include the deletion of the first sentence under Section 7.5.

Discussion: Borton agreed if it is for a change but not just to extend it out. McKnight said it is fair because then the new person and the old person have to comply to same rules. Borton said Clerk or staff should know the new rules. Dezman said that it should go back to P&Z in every case to avoid setting inconsistencies. Mayor asked Attorney about the site plan does not run with the land but later it says it is transferable. Is that a conflict? Attorney said that if it runs with the land, he suggests that the intent.... It is his opinion that site plans run with the land. He thinks it should. This is first reading and we can delete the first sentence. It is the appropriate time. **Roll Call Vote:** Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman Aye. Motion carried 5 to 0.

RESOLUTIONS:

5. Supporting Passenger Rail Service (Reso 31-2008)

Without objection the Mayor read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, URGING THE FLORIDA DEPARTMENT OF TRANSPORTATION TO INCLUDE PASSENGER RAIL SERVICE ALONG THE FLORIDA EAST COAST RAILROAD AS AN AREA OF INTEREST IN THE UPCOMING STATEWIDE RAIL SYSTEM PLAN UPDATE; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Action on Reso 31-2008

MOTION: Borton / Vail to approve the Resolution 31-2008.

Discussion. Mayor has suggestions. There is typo in third Whereas, "in or within" and in Sec 2 add send it to SCLC instead of sending to all cities. Consensus to send to all cities via email. Add Florida Rail Stakeholders Advisory Committee to incorporate into the rail plan. Mayor will give Clerk email for Advisory committee.

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

Motion carried 4 to 1.

MISCELLANEOUS:

6. Approval of Support letter for Georgia Phillips

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Mayor explained that if you get elected to 2nd VP, more than likely in two years you will be president of FLC. Brevard hasn't had anyone on the ballot since Mayor of Rockledge Larry Shultz served as President.

MOTION: McClelland / Borton to approve having Mayor sign the letter of support for Ms. Georgia Phillips for 2nd VP at the FLC. It would be nice have someone from Brevard. **Vote:** All Ayes

7. Amend the Authority of the Town Hall Site Selection Committee (McKnight)

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Mayor objected to previous minutes and stated he does not have such authority. At the last joint meeting, the TH Site Sel Committee Chair asked for clarification and no one disputed.

MOTION: McKnight / McClelland to clarify that the TH Site Selection Committee does not have the authority to commit the Town to any offers or purchases. **Vote:** All Ayes.

K. DISCUSSION ITEMS:

8. Administration of Fire Department (Eschenberg)

Exhibit: Agenda Report No. 8

Recommendation: Discussion and Direction

Mayor said there was a lot of material in the packet but he wanted the Council to consider his question to the Attorney and the Attorney's response. Dezman said there are only two people that report to Council – the Clerk and the Administrator. The Fire Department has been under the Administrator in the past. It shows in the Organizational Chart. She did not see the chart in the package. Mayor was pointing out another inconsistency with the Code.

MOTION: Dezman/ Borton to change the Code to match the Organizational Chart. Discussion. McKnight said that this will give more responsibility to Administrator and does she want that. BWF said she has been doing this and in the past the Fire Chief has reported to the previous Administrators. Dezman spoke with the TA and the Fire Chief and neither have a problem with this process. They work well together. **Vote:** All Ayes

9. Review Water Consumption for Possible Changes (Dezman)

Exhibit: Agenda Report No. 9

Recommendation: Discussion and Direction

Mayor did mention this at last meeting. It came up at a quarterly meeting he attends. Water will be big issue. Establish a type of user and then criteria for high users within that type. The intent to identify those using way above what is normal for that type.

Mayor did not recognize the areas. Franklin explained the subdivisions with water are Brook Hollow, Country Cove and Stillwater. Staff picked similar users for a three month period. The bill is already broken down into Block 1, 2 and 3. Most users fall under block 1. The more you use the higher the rate in block 2 and 3. The high users in the reports are either new homes with pools or pools that got refilled. We only have 187 water customers. Palm Bay does not have a high user type. Dezman said all three subdivisions are in Dist 5. She did not think this was a good idea. Mayor said based on this there is not a problem in Malabar with high water users. He will bring back the other issue with new construction (water conservation). Franklin said St. Johns does have compliance requirements.

BWF asked Clerk to send out request information on water saving incentive programs other cities may have and bring back to council. Attorney stated that St. Johns is working on a model ordinance for this. He will send what he has to Clerk.

10. Review Fire Inspection Fees (Dezman/McKnight)

Exhibit: Agenda Report No. 10

Recommendation: Discussion and Direction

McKnight said the more he looked at it the more uncomfortable he become with it. Reference Reso 02-2007 McKnight asked Attorney to read Section 2 – it appeared to him to apply to only new construction. Attorney explained the resolution deals with the background for the resolution and then the formal direction. Franklin explained that the resolution deals with new construction in Section 2 and then other areas in section 3, 4 and 5. There are certain requirements for re-inspection.

Mayor asked the Chief to come to podium. McKnight questioned the jurisdiction's authority. Chief Gianantonio said that NFPA 101 explains that the requirement for life safety for the community rests with the police and fire chief. McKnight said that existing businesses should not require inspections. No. McClelland and Gianantonio both said that FS 633 requires inspections. McKnight said that the same section does not require inspections. He asked Attorney to respond. The "Whereas" are the intent of the Council intended to give guidance. It is adopted pursuant to the sections under the Now Therefore. Attorney read from the code. If the building existed before the code then it does not require the inspection. The standard fire prevention code for all buildings existing prior to 1985. The Whereas are preparatory language. Section 1,2,3,4, and 5 are the body of the resolution and they really control. We are allowed to establish are rates. Chapter 8 Fire Prevention also refers to FS 633.

McKnight said he (Mr. Ball) was exempt. BWF said that the previous TA and the FM did not have the authority to waive the requirement. The fact that it was rescinded to make it fair and equitable for all. McKnight said he thinks it is unfair to businesses and knows that there is one business that will not renew. The problem he has it allows the town in to discover a lot of other problems. There are reasons. McKnight is trying to protect residents in Malabar that are being taxed on top of their business tax and thinks it is wrong. McKnight asked if Abernathy is part-time. Yes he is carried in both the Building Dept and the Fire Dept. There is one free re-inspection with the initial fee. Mayor has problem with fees. They should fairly represent the actual cost of the town to carry out the inspection. Franklin stated that prior to adopting the resolution staff brought fees from other cities and the county as part of the preparation for the resolution. Mayor questioned the permit fee. BWF said that the permit fee was for the new lift. If you enhance your business it changes what your permit is for. \$35.+ 15. Mayor said the permit fee he questions is the amount. Franklin explained the fees were studied. McClelland explained the Section 5 as the Town is required to establish the fees. BWF offers to bring fees from other cities. McKnight said it is difficult to compare Malabar with any other cities in Brevard County. It wouldn't provide for businesses like Mr. Ball and whether it is part time or full time. McKnight said he fears this will carry over to home occupational licenses. BWF said that is not done. It is costing the business owner right now and if we don't pay attention it will continue to cost the business owner.

McKnight was also concerned with the lack of notice. Wants owners notified and send a letter saying exactly what you are going to look at. Dezman and McClelland and Vail disagree. You can't send a letter stating what you are looking for. Vail said you have to follow the letter of the law. Businesses are not given a notice in other cities. McKnight said the business owner has a right to know what will be looked at it. BWF said she has received the information form from the Fire Marshal and will have it on the website. McKnight sees it as a witch hunt and not a benefit to the Town. We should offer to provide some service for them like certifying the fire extinguishers. Borton explained the cost of doing business. Fire Extinguishers require a certified person. If the building burned down we would be responsible for any damage to

adjacent property owners. Any business open to public is required to have an inspection. McClelland said he went out to a local business and they thought it was still being inspected by the county. Franklin explained that two years ago the letters did go out to all active business license holders explaining the switch and providing them with a new information sheet. Ok. It has been corrected. Ball knows lots of businesses that are operating without benefit of license or inspections. Fair and equitable is what we try for. We do not do proactive code enforcement. It should be reactive. That is all that McKnight has to say on the item.

11. Consider New Street Names (Eschenberg)

Exhibit: Agenda Report No. 11

Recommendation: Discussion and Direction

Mayor said they read the packet. Asked Council to consider names. He also personally talked to the woman living at the house. She did not seem too interested in changing the name. He has one speaker card.

Sheila Eschenberg, Beran Lane. She believes the letter was sent to owner in 2007. She called Mrs. Greer twice and she was not interested in renaming it. There is no other house on the street. She would like to mention that the early settlers that settled part of Malabar, by the Catholic colony. She would like council to consider naming it Michel Lane after Mr. Michel who recently died at age 54. His family has many generations in the area. His wife lives off of Hall Road with their children. Chair said the decision is to rename or make the street go through. After all this rain he would imagine it is a swamp. BWF said this was discussed at staff and from the emergency response, the more names the more confusing. It could be cost free if we use TIFT money to improve the road by putting a culvert in.

BWF called on PW Manager Beatty. He explained that Waring was open and WM went through – the person that lived down there did not want traffic and he dragged in trees to block it off. Beatty said that he would recommend it be put in. If there are issues with St. Johns we will bring it back to Council. Vail said try and put it through. Franklin said most roads require a permit from St. Johns. Some require mitigation. Dezman recommended staff get more information. If St. Johns permit is required then the permit and mitigation. Mayor relates story about mitigation. He is not sure this is a good project for TIFT money. Staff will work on this.

12. Consider Amending Park Fee Resolution (Eschenberg)

Exhibit: Agenda Report No. 12

Recommendation: Discussion and Direction

Mayor said he wants to be clear on this. He saw signs advertising for sign ups for the youth sports and thought BWF will be negotiating soon so he wanted this on agenda. He has a change to #6 scratch rental fee.

Dezman asked if we have been provided a list of names of children who play on these teams that reside in Malabar. No. McKnight said under section 2 there should not be a period. Pertaining to the pavilion, do we charge per hour. Yes we do. Mayor asked how much more does it cost the town – we can't charge the residents because we have to mow it. We should have a right to use it. The Mayor said this resolution does not charge anyone but commercial operations. McKnight agrees. He goes to other cities and uses the parks and does not pay a fee.

Mayor said the deposit is \$2 or \$50.00. Vail asked about the deposit. Franklin can't remember how the \$50.00 deposit was determined. Mayor wants the resolution to get fixed up and come back as a reso for adoption. BWF said the Park Board needs to have input. Is it ok to send to Park Board. Consensus to send it to Park Board for comment.

Speaker Card: Bob Rowan, Waring Lane, said it is difficult to get the cards in until you hear what is going on. He mentioned problems with ATVs that know the deputy can't follow them.

Also the Fire Dept SOP is that the fire truck back down.. He would recommend cutting the road through.

Bridget Ports, 1340 Halls Road, we practice at Veterans Park. We have to pay \$10 per child to use the electric. And have to pay \$1500 per year. The park fees are needed. There are people from outside the area are using our facility. We are paying extra to police the park and how do they plan on paying for these if we don't charge? Our organization has to pay Palm Bay and pay \$50 per hour and a \$250 deposit. A \$500 deposit to use the community center. They charge us to put paint on field, pick trash up after games, maintenance, we have to pay to have field sprayed for cinch bugs. Thinks everyone should pay.

L. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

4) Dezman - nothing

5) Vail: - nothing

1) Borton -nothing

2) McClelland – With the rain there is a lot of growth and there is visibility issue at Weber heading east at Malabar. McKnight has same problem. McClelland will be out of town the 8th through the 11th this week.

3) McKnight – said enough

6) Mayor – MIMA will have open house on the 27th of August at 4:30 and he can't attend. He would like to have Borton represent him.

August potluck will be on the 10th and will be from 3-7PM. She will send the email out to everyone.

M. PUBLIC COMMENTS: General Items

Steve Rivet, Rivet Lane, recently experienced the fires - saw the fire start and called 911 and the Malabar Fire Department was right there. He wanted to thank them for their good efforts.

N. ADJOURNMENT

There being no further business to discuss, **MOTION:** Borton / Vail to adjourn this meeting.

VOTE: All Ayes. The meeting adjourned at 9:40 PM.

BY: _____

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin, Town Clerk/Treasurer

9/8/08

Date Approved