

MALABAR TOWN COUNCIL REGULAR MEETING
September 22, 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: Correct agenda item #3 s/b 2nd reading on action

D. PRESENTATIONS:

E. PROCLAMATIONS:

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 9/08/08

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Dezman / Borton to approve as corrected. List corrections: pg 1 at bottom 2nd line from bottom. That comes off the 885K – remove the K. Done. **Vote: All Ayes.**

G. STAFF REPORTS:

ATTORNEY: none

ADMINISTRATOR:

- Fire Dept Report – August – Asst Chief Dan Welton reports. Report is attached to minutes. Eng 99 and 299 both have AC out. Update to report. Exhaust system will be installed at end of week. That was with last years grant money. No answer on 2008 grant application yet. Received used donated rescue tool from Palm Bay and the new one from DOF grant and had training on both and they are great. Shipping containers are in annex, stove and water heater are in. Vehicle roll over on Weber Road and it was in the deep ditch – no injuries. BWF said they moved forward on FCC antenna change over.
- BWF also mentioned the fees from County to IHB and Melb Bch for first responders is for law enforcement to act as first responders, not their fire departments.

McKnight asked about MVFD, Inc. Any progress? She has met with the new officers and they also promised the surplus list and she has not received it. She did get asset list from McClelland. He brought in list of inventory over \$500.00 from his tenure as Chief. Dezman was she was here 10 days ago and she was impressed with the communication during the meeting between the new corporation officers and BWF. She thought they would get it (surplus list) to her ASAP. BWF stated they did say that they will not be in office until October. The old president didn't mention any of this to the incoming officers. They did change out the stove and

water heater to electric. Borton asked about the legally? It is their money. She sent it out to after the last meeting. Dezman didn't get it. Bohne said if they are a 501-3-C. BWF asked if anything reflects on town because the are housed in Malabar FD. If seats are owned by Inc. and someone gets hurt at FD, who is liable? The corp. If we use the chairs for a town meeting, then town is liable. The corp. property is spread all over. McClelland said the corp. has no liability insurance. McKnight suggested this be brought as a discussion item for next agenda. Can we cancel the agreement? Clerk stated the contract is for three years – 2007 to 2010. She retrieved and provided contract for Attorney Bohne to review. Bohne stated the new contract is much watered down. BWF asked if it could be brought back for discussion due to liability. Put it on as action. Dezman said should be discussion first. McKnight asked if agreement states we have to provide them space in Fire department. Attorney stated contract has a 180-day cancellation clause. Bohne said the contract states the building should be shared.

CLERK:

- Letters sent to Board Members; BOA is short 3 members – TC please talk to neighbors.
- Gates at Parks-4/21 agenda item to bring back in Sept we were paying 5200 to contractor and would pay 8200 if employee- does TC want to re-look at this? No complaints. Funds were cut from budget. No direction to put on future agenda.
- Feasibility Study – Foundation Park Blvd East going forward. No objections.
- Cougar Mtn Software ordered and will be installed 9/23/08.
- Site Committee Members notified and thanked and ask to stand down for now.
- Candidate Articles for Newsletter - We have been asked to allow each candidate to write a brief intro and provide contact information.
- Also mention re: utility rates, we buy water from PB and pay sewer on it. Some Brook Hollow residents want a credit when they fill pool and we say no. Does TC want to consider another policy? No response from Council.
- Also mentioned Brevard Cty increased well permits. St.Johns has raised permit fee and has created and/or increased minimums for certain reviews.
- To save money and benefit voters, we are running our sample ballot in Florida Today on same day and in same area of paper with other cities and as one display ad to get the best price and then will pay the prorated portion of the bill based on ballot size.
- Also mentioned that I am doing draft review of the EAR amendments for preparation of meeting with P&Z. We also need to get the Pub Sch Fac Element before P&Z and TC before end of year.

McKnight mentioned board member terms and term limits and discuss in general. We have a hard time enlisting members and we need to bring it back and lengthen. Boards term limits and length of terms. Consensus to put on for discussion.

Candidate information in Mailboat. Council consensus to allow candidate to submit general info and contact info in Mailboat. Borton stated there should be no politicking. How would you just put a phone number and email? Dezman stated they should be given the opportunity and if a candidate chooses not to do it, the Mailboat should state that it was the candidate's choice not to contribute. McKnight asked that he has had a request for the authors of articles in Mailboat to cite their articles. Clerk stated we can do that.

H. PUBLIC HEARINGS:

ORDINANCES: (2) Ordinances have been legally advertised.

2. Adopt Proposed Millage Rate for FY 2008/2009 (Ord. No. 2008-11)

Without objection, the Mayor read by title only:

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA,
ADOPTING THE MILLAGE RATE FOR THE TOWN OF MALABAR FOR THE PERIOD
FROM OCTOBER 1, 2008 THROUGH AND INCLUDING SEPTEMBER 30, 2009;

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

He also read from the info sheet, stating that the proposed millage rate is 1.4676 and a final levy of 1.4676 mills will result in a 10% increase over the rolled back rate of 1.3342. The millage rate of 1.4676 is to fund the expenses for the fiscal year commencing October 1, 2008 and ending September 30, 2009.

Exhibit: Agenda Report No. 2

Recommendation: Action on First Public Hearing of Ord. No. 2008-11

Public Hearing Opened:

Keith Kessler, 460 Hall Road, thanks Council for their work. Thanks his Council Member. He stated there are many people that are on reduced wages.

No other public.

PH Closed.

MOTION: Vail / Borton to approve Ord. No. 2008-11 setting the millage rate for FY 08/09 at 1.4676.

Discussion: Mayor said this is a roll forward rate.

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

Motion carried 4 to 1.

3. Adopt Proposed Budget for FY 2008/2009 (Ord. No. 2008-12)

Without objection, the Mayor read by title only:

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2008 THROUGH AND INCLUDING SEPTEMBER 30, 2009. PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Mayor also read from the info sheet stating the proposed budget for the Town of Malabar is \$1,927,058.00 and reflects an operating millage of 1.4676 and is to fund the expenses for the fiscal year commencing October 1, 2008 and ending September 30, 2009.

Exhibit: Agenda Report No. 3

Recommendation: Action on Second and Final Reading of Ord. No. 2008-12

Public Hearing opened.

None.

PH Closed.

MOTION: Borton / Dezman to approve Ord. No. 2008-12 adopting the Budget for FY 08/09.

Discussion: Borton said for record that last year's budget was 2.2 mil and we brought it down 14%. Dezman agreed and said what we did shows the cooperative position between staff and Council. Vail said we did very well. McKnight stated it is still an increase over expenditures. McKnight said it was more than what we said we were going to spend. Mayor said the difference is all in the stormwater fund. You need to look at the general fund. Dezman said we all look at it differently.

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

Motion carried 4 to 1.

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

J. ACTIONS ITEMS:

ORDINANCES: First Reading - 0

RESOLUTIONS:

4. Approve the Interlocal Agreement with Brevard County for Stormwater (Reso. No. 35-2008)

Without objection, the Mayor read by title only:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR APPROVAL OF THE INTERLOCAL AGREEMENT FOR STORMWATER PROGRAM MANAGEMENT; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action on Resolution 35-2008

MOTION: Borton / Dezman to approve Reso. No. 35-2008 approving Interlocal Agreement for one year only, for FY 08/09.

Discussion: McKnight said like last meeting, until we get some benefit from it, we should not participate. We have not put this money to use that residents can see. Borton asked if we are mandated by State for some of this. Yes, NPDES and water sampling. BWF said that in the past this program was not utilized by her predecessors. She is moving forward for two different areas and you will see a difference this year. McKnight does not have faith in program. Vail asked about some questions that had been asked at the last meeting of the county representative. Ms. Carolina Alvarez, Brevard County Stormwater, stated the money was utilized to do the town inventory. Also did much work on the NPDES. In the past they brought plans to the Town and the town did not choose to do them for whatever reason. McKnight asked about the projects not meeting the water quality side of the program. Alvarez said they must do both. Use baffle boxes. The administration fee is 10% of the amount collected on the non-ad valorem. She stated that the projects BWF is proposing will have to be done in phases. She said first they would have to do a feasibility study and protocols have to be followed. Mayor said he recalled when Council first approved this it was because they were told if they did not, we would not be able to apply for grants; Alvarez said if you don't have a stormwater utility you would not be getting points for that on grant applications. The county also coordinates assessments and adjustments and responds to citizens. Mayor said it was discussed before that the town collect the money themselves. BWF said in the other cities she had worked, they collected stormwater themselves. Council discussed term of Interlocal agreement (ILA). Alvarez said this one is for 3 years; we asked for the change. In the past, it has been for one year. Dezman said BWF has experience that we can draw upon. Dezman recommends we change this ILA to one year. Borton agreed with BWF abilities. McKnight stated that the ordinance "Whereas" references one year or year to year. We could do this again next year. Attorney stated that "Section 22" deals with the duration. This particular Interlocal agreement "Whereas" refers to one year but the Section 22 refers to a three (3) year agreement. Yes, we can we modify this one. Also, there is an "Exhibit A" that needs to be attached. Alvarez said she sent it to BWF and then to Franklin. BWF said no and Franklin said all she got was the ILA. Alvarez said it was sent earlier. It lists what they do. Franklin will get copy from Alvarez and attach to ILA.

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

Motion carried 4 to 1.

5. Adopt Malabar Utility Rates for 2008/2009 (Reso. No. 36-2008)

Without objection, the Mayor read by title only:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR ADOPTION OF UTILITY RATES FOR OCTOBER 1, 2008; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action on Resolution 36-2008

MOTION: McClelland / Borton to approve Reso. No. 36-2008 adopting utility rates for FY 08/09.

Discussion: What would this do if we don't pass it? Our rates will remain at current level. Palm Bay increased their rates as of Oct 1; so our cost will go up that we pay them. Mayor asked what about the "out of service rates" we still pay. The City Manager in Palm Bay said no to change. Mayor's interpretation of the 30-year agreement we have with Palm Bay was that we

pay the same as Palm Bay resident's rate. Atty Bohne said the Palm Bay City Mgr Feldman's position is that they are entitled to charge more to customers outside the City per F.S. If we pursue this we would have to do the conflict resolution. Bohne did send letter. And that is as far as it went. He was not directed by Council to continue. Mayor said we should pursue with the conflict resolution process we should meet with Palm Bay Council to start this. Dezman said we should get started. Bohne said we can start with requesting dates for a meeting. Bohne stated the record (minutes) should reflect we are not acquiescing that we are willing to pay more by passing this resolution. We are simply passing on their increase plus our 15%.

Roll Call Vote: McKnight, Aye; Dezman, Aye; Borton, Aye; Vail, Aye; McClelland, Aye.
Motion carried 5 to 0.

MOTION: Dezman / Vail to pursue breach of contract with Palm Bay regarding utility agreement.

Discussion: Many members stated Palm Bay gets some of their water from wells in Malabar. Bohne thought the agreement pre-dates the statute allowing the increase in rates to outside the city limits customers. Bohne will initiate the conflict resolution process. **Vote:** All Ayes.

MISCELLANEOUS:

6. Repair to Mobile Home damaged during May fires

Exhibit: Agenda Report No. 6

Recommendation: Request Action

McKnight asked if there are any other instances out there with someone getting damaged and bring their complaint to Council for payment. BWF is not aware of any. Borton has no problem with paying this claim but what if they come back and want more for inside. The damage is on the outside corner. Bohne said if Council approves, he will draft a release for owner to sign to protect the Town. McKnight said since we paid for the car we should pay for this with a hold harmless. Vail said the repair person should assume the warranty. It states to leave claim open. BWF will draft the letter to owner stating if they will sign hold harmless, we will pay for repairs to outside. She will send to Attorney Bohne to review.

MOTION: Dezman / Vail to approve MH repair by low bid, River Grove contractor.

Discussion: none

Vote: All Ayes.

7. Fire Department Repeater

Exhibit: Agenda Report No. 7

Recommendation: Request Action

McClelland asked if the money was in this year's budget. BWF did not think so. That is why she asked to have it broken down. They can pay for it over two years. Either way, the money will come out of reserves.

MOTION: McClelland / Vail to approve purchase of repeater in this FY.

Discussion: none.

Vote: 4 Ayes; Nay (1) McKnight

8. Waste Management request for increase in rates

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Chair introduced WM representative Mr. George Geletko. He introduced himself and thanked Council for their support and stated that fuel increased 200% in last few years. The trucks burn a gallon an hour. The increase they are asking for equates to 53 cents per household. McKnight asked if we have resolved any of our issues. BWF said that they have sent out letters and she has notified them to pick up piles. He said they don't have to pick up land clearing. She was told they need to call and then it will be picked up. Who makes the determination if they pick up or not. If it is in front of unimproved property, they are not required to pick it up. If you call, they will pick it up. The contract in 1999 asked the Town to seriously consider putting

this on the non-ad-valorum tax roll. Mayor reflects that they were to send us a list of non-payers. They are in violation of the ordinance. We send out letters. He will supply an updated list. McKnight said there are many residents that say they don't pay. The benefit is when we get the piles picked up then we can mow and clean the ditches. It has a domino effect if they don't pick up. Borton said if we changed the ordinance... We have one more year on the contract. In the ten (10) year agreement, we got 5% as a franchise payment and an additional 5% after the first five years for a total 10% franchise payment every month.

McClelland said that he has had many instances of poor performance and wished he had pictures. He has had seven (7) trash can lids go to the landfill. McClelland stated he pays about \$27.95 a quarter on his tax bill for WM pick up in the county. We pay more in the Town of Malabar than the county. Geletko stated the County pays less because they have more commercial. Residential pick up is very labor intensive. Geletko said he has more equipment assigned here (Malabar) – two (2) clam trucks for 700 homes. He may have 1 clam for an urban area of 5000 homes. Borton asked about going to fewer pick ups – do one pick up per week to save money. Geletko said that they are going in that direction. Geletko stated that after the Tropical Storm Fay, they had roll off containers parked here so they could clean up the Town. They had it cleaned up two (2) weeks after the storm. Mayor asked what G-V is paying. They (G-V) did a RFP and WM was the low bid at 21.70/month (almost \$70.00 a quarter) and will be getting a 9.5% increase. Mayor said that we will be looking at this same issue next year when the contract renews. Geletko said it costs a lot of money to run the clam trucks and get it to the landfill.

Dezman said she agreed somewhat with McClelland and had also has seen a decrease in performance in last 6 months. They need to take more care in the process. The trash doesn't always make it entirely into the truck. Then the cans and yard waste is strewn all over the road. Resident wants to address Council:

Speaker Card: Ken Shaver, 3035 Lett Lane, The piles on his street were there for weeks before the storm. And they are still there. He called a couple of weeks because they missed the trash. They came and picked his but drove by all of his neighbors and did not pick up theirs.

MOTION: McClelland / Dezman to approve Waste Management (WM) FY 2008/2009 rate increase request of only 5.02% CPI provided for in Section 11. A. of contract due to poor performance in current year.

Discussion: McKnight said we shouldn't punish them for individual performance. Vail said we have their attention. They have been working with us. Can we table this? Is this bargaining position? McKnight said on his street they do an exceptional job. They have done a good job. He has not seen the poor performance. Vail also doesn't have problem either except the pile at the end of the street. BWF said she will work with WM and send them an email and sends out a letter to resident requesting them to pick up. McKnight said that is the benefit of having a franchise. BWF said she went out on a tour and her trash was not picked up. The landfill was closed. She was able to explain to residents that called in. Residents will be reasonable. Vail asked McClelland to reconsider his motion. Maybe in a couple months.

Vote: Ayes: 3: McClelland, Dezman, and Vail; Nay: 2: Borton and McKnight. Motion carried 3 to 2.

McKnight said if we have problem we should go to BWF and have her take care of it with WM. We should not curb their fuel charge increase.

Council discussed this issue being brought back. Any member of Council voting on the affirmative side of the motion can make a motion to have it reconsidered or brought back. The members that voted against it cannot make this request. The applicant, Waste Management could come back in a month or two and ask for Council to consider another proposal.

K. DISCUSSION ITEMS:**L. MAYOR AND COUNCIL REPORTS:**

(Number indicates order of Reports)

3) Dezman – nothing

2) Vail: - nothing

1) Borton – thanks MVFD for responding so quickly to her restaurant during a recent 911 call.

4) McClelland – nothing

5) McKnight –nothing

6) Mayor – nothing

M. PUBLIC COMMENTS: General Items

Ken Shafer, 3035 Lett lane, regarding Clerk reporting on the feasibility study for Foundation Park Blvd East. His concern is that he doesn't see a need for an access. If you go to Foundation and look east and run a line, you would run into the Knights of Columbus building. He also said St. Johns (SJRWMD) has most of those lots marked as wetlands. There is no right of way exists and to get to a road where no road exists. There are maybe half a dozen of lots that would be buildable per him. If you go south there is a gas pipe line. If those lots are commercially viable, someone would have already done it. He further stated that the property that would need to be bought is owned by out of state owners, it would create non-buildable lots. The owners are in Mississippi and Missouri etc. He encourages them, (Council) to do a field trip. Mayor said that he should take this to P&Z this week. This P&Z of 9/24/08 has been cancelled. Shafer has fought this in the past. Vail said the support for this location was that the traffic light was already there.

N. ADJOURNMENT

There being no further business to discuss, **MOTION:** Dezman / McClelland to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 9:30 PM.

BY: Thomas Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby Franklin
Debby K. Franklin, Town Clerk/Treasurer

10/06/08
Date Approved