

MALABAR TOWN COUNCIL REGULAR MEETING
October 6, 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 1 Nancy Borton.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

CHUCK McCLELLAND

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

JEFF MCKNIGHT

PAT DEZMAN, excused

TOWN ADMINISTRATOR:

BONILYN WILBANKS-FREE

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: none

D. PRESENTATIONS:

E. PROCLAMATIONS: First Baptist Church of Malabar 37th Anniversary Day

Mayor read Proclamation and presented to Pastor Rick Whitworth for the Reverend Daniel Wilkerson, who was on sabbatical.

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 9/22/08

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Borton / Vail to approve as submitted. List corrections: none.

Vote: All Ayes (Dezman excused).

G. STAFF REPORTS:

ATTORNEY: Introduced Ms. Erin Harrington, new attorney at their office. She is interested in municipal law. She provided NCAA compliance as the legal officer for that in the college basketball arena. He is hoping to be able to use her eventually as his back up.

Related to agenda item #4 which has been pulled. He was asked by Town about appointing a relative or spouse to BOA and it is not allowed under the anti-nepotism law. There is nothing in the Sunshine Law to prevent spouses from sitting on the same elected Board. McKnight asked how far the nepotism range goes: mother, father, brother, sister, child. If it was another type of board it wouldn't present a problem, but with land use issues before the Board it can't be allowed.

ADMINISTRATOR:

BCSO Lt. is here; he has been on week ends and nights. He has run some stats on the area. There was an attempted commercial burglary and a car break in. It has been a light month. Mayor asked about speed meter out in front of the town hall. Lt. stated it is helpful for 90% of the people who may not realize how fast they are going. 10% are always going to abide by

speed limit. The speed is at the posted sign. The FDOT governs the speed on the State road. No other questions for Lt...

- No list from MVFD Inc of surplus material -
- MIMA donated and planted ten large Oak trees planted at Park – this will provide shade at the benches by play equipment and bleachers. Also still have some trees for residents
- Close west end of Hall Road where it would intersect Convair Street in Palm Bay. We are working with City of Palm Bay and Melbourne Tillman Canal District. She referenced previous problems McKnight had brought up about the amount of foot traffic and potential burglaries. This is an escape route. We will have input later regarding the outcome.
- Recent circumstance have come up regarding the repair and maintenance of fire department vehicles– in balancing the budget that is an area that was cut and we will need to budget something for the vehicle repairs and maintenance.
- The office area at fire dept will still need cleaning even though the cleaning of the other areas of the fire dept was stricken from the budget. The office area will be locked and not assessable to the volunteers in off hours.
- BWF stated there will be prescribed burning and asked Asst Chief Bob Rowan to address Council. He stated the EELs will be burning and they want to start this week and they have an aggressive schedule for the next two months. The first area will be east of the boulevard where we wanted to put the town hall. 28 acres. Then the next area will be around Country Cove with HOA notification and coordination with Town Administrator. Rowan explained they do the burn and we do standby. They will bring in students for wildland training if the timing is right since Chief Joe is certified to train.

CLERK

- SCLC request for Malabar's top 3 Municipal Priorities to send to Brevard Delegation in December. These are areas of concern for Malabar that the town wants support from the Brevard Delegation. They will be presented in early December so send them in ASAP.
- Public Hearing on Conditional Use Permit withdrawn by applicants Dan and Marsha Michael. They intend to reapply.
- Set meetings for October 22 & 29 to review EAR Amendments start @ 6 pm; will be long meetings. We are trying to get signs made and need to know start time. P&Z members Ritter, Wilbur, Reilly and Krieger are okay with early start time. TC Pat Dezman is ok with it on 22nd and will let me know later tonight about the 29th - McKnight will not be able to come on the 22nd. Town wants to encourage town involvement and participation and not kept them out all evening. These meetings will provide access for consultant Calvin Giordano and Associates to address citizens and answer questions. They will provide the appropriate staff for the elements to be covered. OK to make signs starting at 6PM
- There will be public hearing at P&Z and then Council for Public School Facilities Element and Capital Improvement Element in conjunction with the EAR amendments. They don't allow for much alteration.
- Cougar Software installed and training begun; training received on Utility module for IMS
- Brief background on candidates and contact information has been received by all candidates and will be in next newsletter

H. PUBLIC HEARINGS:

ORDINANCES: (1) Ordinance has been legally advertised.

2. **Amending Chapter 8 Fire Prevention and Protection (Ord. No. 2008-10) AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE IV FIRE DEPARTMENT; AMENDING SECTION 8-93 RELATING TO THE**

DUTIES OF THE FIRE CHIEF; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Action on Second Reading of Ord. No. 2008-10

Public Hearing Opened:

No public.

PH Closed.

MOTION: Vail / Borton to approve Ord. No. 2008-10 clarifying the Fire Chief reports to TA.

Discussion: none.

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

Motion carried 4 to 0.

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

3. Recommendations from Park & Recreation Board

- **Kiosk at Malabar Community Park entrance**
- **Park fees per categories 1 - 6**

Exhibit: Agenda Report No. 3

Recommendation: Action

McClelland asked if there is money. Franklin stated there is money in the funds from developer's recreation funds.

MOTION: McClelland / Vail to approve the kiosks: Withdrawn by McClelland / Vail.

Discussion: BWF stated Attorney stated the Developer Fee is restricted to projects adjacent to the development. He gave his opinion in writing. Bohne will review. McClelland withdraws his motion and asked that staff gets a price on the cost of a kiosk. Bohne said that it is in Malabar Land Dev Code, Art. XVII, it states it is restricted right after a sentence stating it should be used for recreation to benefit Malabar. BWF said it restricted her ability to use it for the fencing at the disc park. Bohne will amend code and delete the sentence.

Second part of recommendation is park fees. Mr. Hans Kemmler, Park and Rec Board Chairman, explained that the Board reviewed the marked up copy of the fee resolution from the Mayor. They suggested merging the first three types into one and have the same requirements. The 4th is a commercial type and they recommended a higher fee for that. The 5 and 6th dealt with league sports. They didn't see any difference and looked at them as the same and saw a need for an agreement with a seasonal fee. Considered the mowing, fertilizers, watering, this is the fee they came up with to be in line with what other charge in the area. The money they pay helps to cover the cost of upkeep. This does not pertain to hot dog vendors. Mayor would like to make a point. Renting the pavilion. If a family wants to reserve the park pavilion for a party, there should be some basis for the charge. If the pavilion is open on the kiosk. You do have to keep up it. Do maintenance. And repair. So it is fair to charge some usage. McKnight agrees with Mayor. He can see both sides.

MOTION: Borton / Vail to revise park fee resolution per the recommendation by the Park Board.

Discussion. Vail said there should be a small nominal fee. A fee makes them respect it more. The amount spent to maintain it is considerable. He suggested \$20 for half a day. Council further discussed pros and cons of charging for pavilion. Does not want to change the motion. McKnight agrees with no charge and only a security deposit. Electric is extra. How can you quantify it? All neighboring areas are attaching fees to their parks. They had a group of 65 scheduled for today and they were from Melbourne. It has also been used by home schools. McClelland said that he had rented and it is not an unreasonable amount.

Vote: All Ayes.

4. ~~Appointment to Board of Adjustment (Reso. No. 38-2008)~~ PULLED

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPOINTMENT OF STUART BORTON TO SERVE ON THE BOARD OF ADJUSTMENT; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Action

J. ACTIONS ITEMS:**ORDINANCES: First Reading - 2**

- 5. Amend Malabar Vernacular (Ord. No. 2008-13)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE III, SECTION 1-5.29(c) and (e); PROVIDING FOR A DEFINITION OF "MIRROR BUILDING"; AMENDING ARTICLE XX, DEFINITIONS, REVISING THE DEFINITION OF "MALABAR VERNACULAR STYLE"; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Action on Ord. No. 2008-13

MOTION: Vail / McKnight to approve Ord. No. 2008-13 amending Malabar Vernacular.

Discussion: Franklin explained P&Z meeting. Vail asked if pictures help. Could help or hinder.

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

Motion carried 4 to 0.

6. Amend Tree Ordinance (Ord. No. 2008-08)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, SECTION 1-15.7 OF THE LAND DEVELOPMENT CODE OF THE TOWN; PROVIDING FOR THE PRUNING OR REMOVAL OF TREES AND FOLIAGE UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Action on Ord. No. 2008-08

MOTION: Borton / McClelland to approve Ord. No. 2008-08 amending Tree Protection.

Discussion: Mayor said that it could now be any tree if it within the buffer and could fire and hurricane. DOF asked for 30 feet. Permit would be required.

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

Motion carried 4 to 0.

RESOLUTIONS:

7. Conflict Resolution (Reso. No.40-2008)

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Without objection, Mayor reads by title only.

Put title here

MOTION: McClelland / Vail to approve Reso. No.40-2008 approving Conflict Resolution.

Discussion: Bohne said under Chap 164 we have to proceed this way. We would be the initiators. It is a dispute over the rates. Vail references the letter from the Palm Bay City Mgr and they claim ability to charge more to outside customers. Feldman cites other cases from lower courts. District Court of Appeals is the higher court. Bohne cites the Rivera case. Can we, by contract, charge a higher rate. If we prevail do we get money back and then reimburse the customers. There are two meetings in this process. We will ask them for their position.

Roll Call Vote: McKnight, Aye; Dezman, excused; Borton, Aye; Vail, Aye; McClelland, Aye . Motion carried 4 to 0. We will send a certified copy of the Resolution with a letter within five (5) days, stating that the process has been initiated.

MISCELLANEOUS:

8. Recommendation to Brevard County Commission regarding EELs Coastal Jewel Purchase

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Franklin stated she did not hear from Brevard Cty Property Appraiser. The 192 acre site is classified as vacant commercial by their office: If the developer had (90 acres) to use and built 60 homes on 1.5 acres sites valued at 225K each with 50K Homestead, using 1.4676 we could have 154,080. In ad Valorum taxes on that piece. We currently get about \$1141.00 on the 192 acres. The current County Commission wants an answer. Franklin suggested the letter restate our request for the 15 acres by Malabar Woods Blvd. and Malabar Road by the fire station. BWF said that we may state this in the letter. McKnight stated he supported Franklin's position. Vail said that this is adjacent to Jordan Scrub but is also adjacent to residential development that could purchase it and expand.

MOTION: Vail / Borton to direct staff to draft a letter stating the reason of non-support and bring back for action at next meeting.

Discussion:

Vote: All Ayes.

K. DISCUSSION ITEMS:

9. Contract with MVFD Inc. and liability (McKnight)

Exhibit: Agenda Report No. 9

Recommendation: Discussion and Direction

McKnight wants to explore this with the Malabar Volunteer Fire Dept. Corporation; would like to know how this was originated, what benefit it serves us and the Fire Dept. and see where it is going. He would like someone to explain this.

McClelland asked to speak. In 1976, a group of Malabar residents went to Grant to receive some training; the County was going to hit us with 1.5 mil tax to provide fire protection to the Town of Malabar through the Grant Volunteer Fire Dept. We started forming up equipment, the Town agreed to put it on the ballot to pass the tax. The Malabar Volunteer Fire Dept. Corporation incorporated March 7, 1978. We were in the back of this building before our first fire; went on line November of 1978. When we were cut off by the County for one year to thirteen months, Malabar paid \$1,000 a month to the City of Palm Bay for fire protection because the County cut us off while the corporation was being formed. From 1978 until 1992, there was no agreement; the only thing that existed was Malabar Volunteer Fire Dept. being incorporated under the laws of Florida as a non-profit organization. In 1992, Malabar Fire Dept. was created and the first contract with the Malabar Volunteer Fire Dept., Inc. The move to the fire station was in October 1990. In the addendum, we have an insurance policy. In 1992 and thereafter, any contract with the corporation, including the current contract, the Town agrees to supply liability insurance.

McKnight asked what the relationship between the fire department and the corporation. McClelland stated the corporation originally did it all. In 1992, it was stated that the fire department needed to be more professional; we started the Malabar Fire Dept.; that's the fire fighters. The corporation basically does the fund raising; with the latest contract, this is what they are. They raise funds to purchase equipment that the Town budget won't cover, such as the ambulance, which is being retired now, and the jeep that's being retired now. When the building went on-line, tools and furnishings were purchased; the big items were given to the Town because the corporation couldn't afford to insure them. McClelland has the inventory of equipment dated back to 1996; he has what the corporation owns and what the Town owns. A list from 2005 when he left the fire department as chief. There is a lot of equipment that is owned by the corporation. McKnight asked if it is normal to have a volunteer fire department to have a separate corporation to raise funds for them. McClelland stated that Melbourne Beach, Indian Harbour Beach, Micco, County Departments, Scottsmeer; there are a lot departments in the County that have volunteer groups to raise funds. Micco brings in a lot of money as does Melbourne Beach.

Mayor stated since this is a discussion item, he suggested McKnight read the previous contract; the current contract has hardly anything in it; it basically states that the corporation will do fund raising and run social functions. Mayor stated what happened, there seemed to be a lot of conflict between the corporation and the fire department. If you read the previous contract, you may see a lot of overlap and it wasn't clear where certain responsibilities lay, whether they were with the corporation or with the Chief and fire department. That is why the contract was simplified and cleaned out of it except for the socials and the fund raising. There is no further conflict with responsibilities. McKnight stated this is one of the reasons he wanted to discuss this; this is his main concern. There have been recent conflicts with the Town. Doesn't know this for a fact but some of the stuff that wasn't said in previous meeting he feels like there may be some conflict still between the corporation and the fire department; it's not a good relationship in his opinion.

Mayor asks McClelland if all members of the corporation are members of the fire department. McClelland stated there are some fire department members that are not members of the corporation. McClelland stated back in 2004, we had a contract ready to come before the Council; the attorney and I had polished it and submitted it to the previous Town Administrator. He never brought it to Council. Mayor asked if it was because the previous contract has expired. McClelland stated that the agreement was being worked on and finalized and Mr. Booth would never bring it to Council. Mayor stated the contract that exists now was approved by Council. McKnight asked if the conflict with the Town Administrator has been resolved. Wilbanks-Free stated the conflict she has is the surplus properties and it has not been resolved. She started working with Bryan Eriksen and met with Talena approximately one month ago.

McClelland stated that the new Board of Directors has been elected; they went into office as of last Wednesday. They have not had time to get going. A lot of the new Board is here this evening.

Bryan Eriksen, 1433 Wacker Ave., SE and Talena King, 710 Glendale Ave., NW-Talena met with Wilbanks-Free, the new board also met with her. We were given a list; due to the fact that we did not take over until last Wednesday, we could not do anything. She met with Bryan and Chuck regarding the surplus items. There are surplus items and we did highlight them and gave the list to Chief Gianantonio. Eriksen asked if this was a list for auction. Wilbanks-Free stated the items cannot go auction, the legislative body has to make the determination that it is surplus; whatever means to get the item out of inventory is another step. Eriksen stated the pagers don't belong to the Town. He met with Curtis Setty and Chief Joe. With his new position, it is hard for him to make a determination without seeing the equipment. He gave the list to Mr. Setty; Mr. Setty marked off what he knew was the corporation's and submitted it to the Chief. There are alpha-numeric pagers on the list and we made this clear that we couldn't sell them with the

liability involved. Wilbanks-Free stated this is not about the selling; we need to know what is yours and what is the Town's so that the legislative body, by statute, must determine it to be surplus. We don't have any equipment; the property is not here, it's at the fire station somewhere. King stated we have marked off what is the corporation's and what is not. We will give it to the Chief or to you. Wilbanks-Free stated the list will be provided to her to be placed on the next agenda.

Borton asks if we will see the corporation often. King stated they will be more available. McKnight said it was disconcerting; they want communication and accountability. King stated they will be in better contact with the Town. Eriksen stated that as far as he knew the list had been taken care of. Borton would like to see the old contract. The old contract and the proposed contract of 2004 will be copied to Council.

L. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

1) Dezman – excused

3) Vail: - nothing to report at this time.

2) Borton – nothing to report at this time. Finished Wilbanks-Free's evaluation and will be working on Debby Franklin's next. It was turned into Wilbanks-Free and anyone wanting to look at it can. Debby Franklin's will take a little longer for her to complete.

4) McClelland – the last meeting we talked about the increase for Waste Management; it's already on the bill. It's not the entire amount. Mayor stated they have the right to do this effective October 1st. McClelland stated they didn't need our approval to do this for the 5%. What I want to comment on is the hit and miss yard trash. His neighbor's pile was picked up and the pile he put out was not. Wilbanks-Free stated that she and Franklin made a trip through the Town for the main roads and made a list. The only place was on Marie Street that was picked up. Nothing has changed. Vail asks if Eagle Corp and Public Works is looking out for the trash in the town. The list has been turned in to Waste Management and we are keeping all e-mails so we will know as we go. We are not the only place; down US 1 is a place where mattresses are being placed in the pile as well. Franklin stated she would add for the record to back up McClelland. We went down to investigate a citizen's complaint that the yard waste was there before the storms. When he called, his was picked up but they drove a block and a half to pick him up and left all other yard waste behind. That was the case. If you go down Lett Lane south of Booth, you'll probably find those piles. McKnight reported that Lett Lane is now clean. McClelland reported about the corner of Linrose and Hall Road. They picked up on Hard Lane but left all yard waste in getting to Hard Lane

5) McKnight – missed the potluck dinner last Sunday.

6) Mayor – spoke about the potluck; counting him and his wife, there was about 6 people there. This was advertised in the Palm Bay Bulletin; he told Jim Noble he would have it in the newsletter. Wilbanks-Free stated it is on the website as well. Franklin stated it was reported in the last newsletter. The potluck dinner has been set for the last Sunday of every month at 4:00 to 7:00 pm.

The Eagle Corp was mentioned with the trash pickups were concerned. We drive around and there isn't much to do but look while driving. If Wilbanks-Free would get the word to the members, place it on the clipboard, to check certain areas while driving around.

On the municipal priorities, if anyone has any ideas, the Space Coast League of Cities is going to need this information very quickly. There will be a committee meeting on it. Mayor has a good idea; recommend the State provide some funding to small towns to assist with EARs and follow up on amendments. Franklin said that in the past the State did provide exceptions for small towns and no one updated and now we have to update for the past 19 years. It won't cost so much when we do it every seven years and update the Comp Plan each year with annual requirements. Send any ideas you have to Debby so they can be passed on to Nancy Glass.

He was at the MPO TAC meeting; presentation on some new features on their website. Traffic count information; brevardmpo.com is the website. The site will give the traffic counts for Malabar and throughout Florida. Franklin put it on the overhead and showed various pages of the website.

M. PUBLIC COMMENTS: General Items

Bob Rowan, 2565 Corey Road, referenced the repairing of the trailer at Southern Comfort MHP. Council Member McKnight referenced the car repair. Rowan is stating it was his car that was damaged and Council did not repair it. His estimate was \$650.00. Council never settled the car situation and he was not paid. His vehicle was sitting in the emergency lot and was damaged during May fires. His final bill was \$265. He was volunteering at the fire station and was serving the town and was hit by another volunteer. Put on agenda for action at next meeting.

Vail stated local events are advertised in Friday's papers. Could we advertise the potluck dinners for Jim Noble? Could we advertise in paper for him? We don't have a section in the paper. Wilbanks-Free stated that the dinners are put on the website and Mrs. Noble does a write-up for the dinners. Mayor will suggest to Jim Noble about placing the dinners in the local events section of the Friday papers.

N. ADJOURNMENT

There being no further business to discuss, **MOTION:** Borton / Vail 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

10/20/2008

Date Approved