

MALABAR TOWN COUNCIL REGULAR MEETING
October 20, 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 8:00 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: BWF to add reso as Item 5A since it is a reso.

D. PRESENTATIONS:

E. PROCLAMATIONS:

F. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting – 10/06/08

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: McClelland / Vail to approve as submitted.

Vote: All Ayes .

G. STAFF REPORTS:

ATTORNEY: Conflict letter was sent out with the resolution. Meeting set on Oct 30 at 10AM. Mayor said he knows Lee Feldman got the letter.

ADMINISTRATOR: Announced the Hometown Hero as Chief Joe Gianantonio. Doing a trial schedule to go to a four ten schedule. Not shutting down. Will provide time before and after working hours to get things done. Franklin and BWF will alternate. She has split up PW to 5 days but still work 10 hour days. This allows for consistency throughout the department and more efficient way of operating the department. Input will be provided in late November and they will determine if the schedule should change on quarterly or six month period.

She also showed the old buildings on Malabar Road. Vail wants to see if there is interest. BWF asked if there is council consensus to move forward. We would have to put it up to code. They have a possible historical value. Borton asked where you would put them. BWF said the suggestion was to put one where Christmas tree goes and the other where the trail head is. The problem is that area is the space for our overflow parking. What about the trailhead. Can we make them into restrooms. If you use it with a historical designation, it has many requirements and they can get expensive. Possibly locate them on the 17 acre site. What would it cost. Would the owner donate them? How much cost to move them? Should we pursue? Better to have the notice come from Administrator. There is

Council support for getting additional information. BWF will notify and Vail can inspect buildings and maybe they can get some volunteers to commit to do the move and restoration.

- BCSO Lt. is here: crime stats from last two weeks had nothing, then this morning we had a burglary on Atz Road. Person at home at the time and that raised their concern. Occupied burglary and they fled when they were discovered. Helicopter and dogs have given them some good leads. It also made him think about something also to give back. People stealing the trash and getting into the identify theft. Fraud perpetrators. Majority have found technologies to aid them in this theft. It will continue. Be aware. They can do presentation to groups of residents if interested. Shredding of documents. They will do if it is wanted. Both Atz and Hall have access to Palm Bay. BWF will check it out. Dezman asked about an 18 wheeler parked at north end of Corey Road Saturday night and left this morning. If it happens again we can try to find out who owns it. He will provide info to BWF to put on the website.

- Fire Dept report – Chief Gianantonio went over report. Attached to minutes. Mayor stopped in two weeks ago and got a tour and it was very impressive. Mayor suggested other council members go by and get tour. Borton asked about email asking about who reports to who with the paid volunteers. Chief said that if there is friction he would like to handle. Gianantonio would like to get a copy.

CLERK

- Meetings set for October 22 & 29 to review EAR Amendments will start @ 6 pm;
- Park Reso amended and sent to Park Bd last week for review. Will be on 11/3/08 agenda for approval.

H. PUBLIC HEARINGS:

ORDINANCES: (2) Ordinances have been legally advertised.

2. **Amending Malabar Vernacular (Ord. No. 2008-13)**

Without objection, Mayor reads by title only.

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. 2

Recommendation: Action on Second Reading of Ord. No. 2008-13

Public Hearing Opened:

No public.

PH Closed.

MOTION: Vail / Borton to approve Ord. No. 2008-13 amending Malabar vernacular.

Discussion: none.

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

Motion carried 5 to 0.

3. **Amending Code for Amend Tree Ordinance (Ord. No. 2008-08)**

Without objection, Mayor reads by title only.

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. 3

Recommendation: Action on Second Reading of Ord. No. 2008-08

Public Hearing Opened:

No public.

PH Closed.

MOTION: McClelland / Dezman to approve Ord. No. 2008-08 amending Malabar code for tree buffer.

Discussion: none.

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

Motion carried 5 to 0.

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

4. Recommendations from P&Z Board

- Alternate position
- Feasibility Study

Exhibit: Agenda Report No. 4

Recommendation: Action

Chair asked if Council would like to hear from P&Z Chair Bob Wilbur. He explained that the first alternate had taken a sabbatical. They didn't know if council wanted to handle this or not. With the EAR and other developments they wanted to move Alt 2 to Alt 1 spot. That is it as far as the alternate.

The other issue is the Foundation Park Blvd feasibility study and he encourages Council to look at this. He heard that there was some argument against this. He provided background.

Chair asked if Council wanted to tell P&Z what to do or to allow P&Z to handle their own movement. Vail said the Board knows who is working on the Board and who is not. Borton said council appoints the board members. McKnight said he is not sure of the issue. Chair explained that when there is a vacancy should the alt #1 take that place or can they appoint Alt #2. Let council puts the stamp of approval. It takes the responsibility. Dezman said they have worked very well getting direction from the Boards.

McKnight said when he was on P&Z and had to quit to run. If he had to be taken out of order. Bohne said Council appoints and fills vacancy. They should consider Board recommendation. Wilbur said we have an alternate that is in town six months of the year. Being an alternate you need to be aware of the amendments. If the Alt #1 is named to regular member and goes away for six months and the alt #2 will fill in any way. BWF explained the need to be present. The full time member has to have a certain level of commitment. McKnight said he would want to talk to this person. Dezman said this is the first time she is hearing that the alt #1 – she didn't know that the alt was only here part of the year. There is no automatic that alt #1 gets to fill the next vacancy. The individual boards know there people. Vail said the person that can't regularly attend, then they need to respond and state if they can make the commitment. Table until you hear from alt #1 Bohne said

MOTION: Borton / to table. Dies for a lack of second.

Discussion:

MOTION: McClelland / Vail to approve P&Z recommendation to appoint Ritter Alt #1 and have her fill the next available vacancy.

Roll Call Vote: Borton, Aye; Vail, Nay; McClelland, Aye; McKnight, Nay; Dezman, Nay. Motion failed 3-2.

Council consensus directed that this come before them again. McKnight said it is about the way we do business. When he was dismissed from P&Z he was called and told not to come and it wasn't done right. Franklin will contact alt #1 and find out if she can attend the meetings for next year. She will ask for a commitment and report back to Council.

Regarding the request to do a feasibility study.

MOTION: Vail / Borton to direct staff to continue with the feasibility study.

Discussion.

BWF said they are getting quotes tomorrow. It will go out tomorrow. McKnight is against this.

Vote: 4 Ayes, 1 Nay (McKnight).

J. ACTIONS ITEMS:

ORDINANCES: First Reading - 0

RESOLUTIONS:

5. Budget Adjustments (Reso. No. 42-2008)

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Without objection, Mayor reads by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2008-2009; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BWF gave background – we are getting financial information sooner. We will be doing this monthly and allow you to question them. The first one is the parks dept we are adding a line item for the park restroom. We need to add this for health and safety and only charged \$5 per month. Moving from repair and maintenance in this dept. The second item is the 539 for pest control services. We did an RFQ and got new prices. We are moving it from repair and maintenance. The net is 511 and the FLC membership and it has gone up and we have taken from travel and per diem.

The following portion of the minutes is verbatim:

And last but not least, I brought to your attention last meeting regarding the major void in not having anything for vehicle maintenance and I will tell you at this point, we are only 20 days into the first of the year, I'm over \$3,000 in expenditures on repairs and without a line item to put it in, we are being negligent in how we are expending that money. So I am asking that we move, and my feeling on this and I am open to it for you folks, but of the things that we can move versus the things that we have as a, we want to apply, we have an obligation to cover our operational expenses, we don't necessarily have an obligation to go out and solicit for grants and make a match. Now granted, you get a lot more equipment, but it's a wish list of equipment and things that they see. I believe that we right now, with the major void we have found in this department, that we need to take the grant match money and utilize that \$18,000 and put it where it can be utilized for vehicle maintenance and repair.

Mayor-was that whole \$22,000 grant match money or wasn't the Explorers in that same line item?

Wilbanks-Free-yes, the \$3,000; that's why I'm only moving the \$18,000. I think that this is, I know I'm not going to make friends with the Fire Department by doing this, but I don't know of any other way. This is an operational expense and they knew it when they cut it from their budget which concerns me because I think it's putting you folks as the legislative body behind the eight ball by saying well you know that the Council will never let us not have our vehicles up on the road. They've got to do that; when in fact, they should have left that money in being conscientious of an operational expense and then cut someplace else that was not critical to the way you do business. So I don't like the methodology used in making that cut and I think it placed you in a very, very difficult position.

Dezman-point taken and I understand what you are saying but the flip side of that coin is we didn't catch it either

Borton-we should have caught it.

Dezman-we should have caught it.

McKnight-but the thing is, we went to staff and we went to the Fire Department, we said we have to cut this budget, do you want us to do it or do you want to do it. Both staff and the Fire Department said we want to do it; this is our stuff, we want to do it, we can handle this. And so we trusted the staff and Fire Department to go and make those cuts.

Wilbanks-Free-yes

McClelland-I make a **Motion for approval of Resolution 42-2008.**

Mayor-is there a second?

Borton-Second

Mayor-any further discussion? Hearing none, Madam Clerk, please call the roll.

Franklin-**Council Member McClelland, Aye; Council Member McKnight, Aye; Council Member Dezman, Aye; Council Member Borton, Aye; Council Member Vail, Aye.**

Mayor-Motion carries

Wilbanks-Free-thank you Council.

5. A. Reso for identify theft – Mayor reads by title only. Reso 44-2008

BWF corrected the title per the Attorney's recommendation. The other recommendations from the attorney were not incorporated and she explained. Their response should be to the sheriff's dept. The policy said that we should allow the BCSO to verify if it is fraudulent. McKnight asked if atty had any input. The policy itself complies with the requirements. He agrees with BWF explanation. We are required to do this.

MOTION: McClelland / Vail to approve Reso. No.44-2008 with amendment to title.

Discussion:

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

Motion carried 5 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:

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

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MOTION: McClelland / McKnight to direct staff to mail letter to EELs.

Discussion:

Vote: All Ayes.

7. Political Sign Ordinance Amendment

Exhibit: Agenda Report No. 7

Recommendation: Request Action

BWF said the item was discussed before and it is not cost effective with present policy. They have to run around to find a phone number to call a candidate to remove or relocate signs. She is asking for a registration requirement so we have contact information.

MOTION: Dezman / Borton to direct staff to prepare ordinance and modify with state statute.

Discussion: Franklin said there is an ambiguous part that Florida Statute conflict and can be changed to clear it up. This would not relieve. Where is the right of way? The filing officer in the local office is Franklin and she doesn't have staff like the county or state. They have dept. BWF also stated there are issues with visibility. If it is a hazard, it can be moved. When she called FDOT

Vote: All Ayes.

8. Contract with MVFD Inc. from 1996

Exhibit: Agenda Report No. 8

Recommendation: Request Action

What is the direction of Council? There was a concern with liability. The contracts all state No action.

9. Damage to Volunteer's Car during May Fires

Exhibit: Agenda Report No. 9

Recommendation: Request Action

This was requested and everyone has the copy of the invoice.

MOTION: McClelland / Vail to approve payment to Rowan

Discussion: McKnight said he does not support. There is a burden of responsibility for the owner. If this had happened at Publix parking lot they would not pay the bill. That is the reason we pay car insurance.

Vote: 4, Aye Nay, 1 (McKnight).

10. Proposal from Fire Department for Electric Savings

Exhibit: Agenda Report No. 10

Recommendation: Request Action

Dan Welton put together the estimates to save money. Harris has the automatic light sensors. He doesn't know what the return on investment is. Most homes not have programmable thermostats. Borton did an energy savings audit. Franklin said the electric bill is about \$1000.00 a month. Do the exhaust fans ever get put in upstairs? No. Pending the FPL audit lets wait and see.

MOTION: McClelland / to table – died

MOTION: Borton/Dezman to have FPL do energy audit.

Discussion:

Vote: All Ayes.

K. DISCUSSION ITEMS:**11. Board terms and Council terms**

Exhibit: Agenda Report No. 11

Recommendation: Discussion and Direction

Dezman explained that because Rossman got sick and she took over in May and completed his last six months, it counted as a full two-year term. It wasn't like he quit. It was unfair. McKnight stated that the opposing side was that she could have served six years plus the six months. Dezman said she was given bad information. She would have waited. It would require a referendum to get it on the 2009 ballot.

BWF said she could support an ordinance at this time and direct that the referendum be placed on the 2009 ballot. Dezman said it is important. Borton said she was told it would be counted as a term by Franklin and so she waited and Crews filled the term. Dezman said it takes an enormous amount of time for new council member to get up to speed. Mayor suggested that she get a soft copy of the charter and make the change and he also asked them if they want to get rid of term limits. Dezman did not think they wanted to do that.

L. MAYOR AND COUNCIL REPORTS:

(Number indicates order of Reports)

1) Dezman – She is not going to Harris for GPS demo. Check phone list. It is ok. Dezman asked about EMT interns can't do *ride alongs* in Malabar. They have to do it with an ALS agency, like County.

4) Vail: - RNB 250K that is covered – our money is insured. P&Z and BOA both need members.

5) Borton – nothing

3) McClelland – nothing

2) McKnight – He will take the hard copy of EAR amendments to review as he will not be at mtg on 22nd.

6) Mayor – showed article about St Augustine grass. Made budget adjustment for FLC membership increase. SCLC Board discussed this and they think their budget is too fat. There

memberships will be increased 5% for each of the next ten years. They will be discussing their budget at a future meeting. Send email to FLC and confirm.

M. PUBLIC COMMENTS: General Items

N. ADJOURNMENT

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

VOTE: All Ayes. The meeting adjourned at 10:05 PM.

BY: Thomas Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby Franklin
Debby K. Franklin, Town Clerk/Treasurer

11/03/08
Date Approved