

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**November 3, 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 5 Pat Dezman.

**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 BUILDING OFFICIAL	ROGER CLOUTIER
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

**C.     ADDITIONS/DELETIONS/CHANGES:**

- Pull Agenda Item 2 – the Code the Attorney was using was not current. Attorney will revised and resubmit at next meeting.
- Add item regarding Susan Kabana employment status per Administrator's report. Add to end of Miscellaneous
- Move Agenda Item 7 up since they have representation present – moved to "I.2."

**D.     PRESENTATIONS:**

**E.     PROCLAMATIONS:**

**F.     CONSENT AGENDA:**

**1.     Approval of Minutes**

Regular Town Council Meeting – 10/20/08

JT WS EAR Meeting – 10/22/08

**Exhibit:**                      Agenda Report No. 1

**Recommendation:**    Motion to Approve

**MOTION:** Dezman / Vail to approve as submitted.

**Vote:** All Ayes.

**G.     STAFF REPORTS:**

ATTORNEY: nothing

ADMINISTRATOR:

- Letter from Architect – BWF will send response letter back
- ISO – Town rating went from 5/9 to 4/8B – about a \$1000.00 savings for some.

CLERK:

- P&Z Alternate called and msg left– no response to date.
- Conflict Resolution meeting set for 11/10/08 at town Hall at 1:30PM
- Kiosk Cost estimate at park is \$2,000.00
- Invite from Glenbrook ALF on Brook Hollow for Saturday lunch and tour. Please let me know. No comment from Council.

- Interest in doing a Resolution supporting the widening of SR528, aka Beeline, aka Beachline? Looking for consensus. No comment from Council.
- PB Chamber Event on Nov 21, 2008 @ Kelly Ford – food and merchandise vendors

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

**I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING  
(Moved from #7)**

- 2. Approval of Letter to Developer – Oakmont Preserve SD**  
**Exhibit:** Agenda Report No. 7  
**Recommendation:** Request Action

Chair asked staff to introduce. Attorney Bohne reviewed the background. Why weren't fire hydrants addressed before? No clear record, meetings were held with Booth, lack of paper trail on details. Staff has reviewed the meeting minutes and it looked like the water requirement was waived. Fire suppression was not included. Code does allow waiver from these requirements. There is a requirement in Art. XVI for a Hold Harmless, and it was provided. Under sovereign immunity we are protected.

Attorney stated that upon review of the minutes and other records, it looks like one of the issues was the lack of availability of water for a central system. Bohne didn't want to have the Administrator send the letter without Council approval. BWF explained that there had been a meeting and the conclusion was that the subdivision had been approved and the homes would be built as required for single family homes. Mr. Pence asked for the meeting and then for the memo of understanding from that meeting.

BWF said that regarding the turbo draft tool, there are two 12' deep ponds in the subdivision and the turbo draft is available and could be used if they could access the ponds.

The CUP is a separate issue and will require fire suppression and that is not the issue. McKnight said that if they come forward with the community stable they would be required to have fire suppression. He was concerned that they were claiming exceptions on one hand and then asking for community stable as subdivision. Vail asked if the homes would be reviewed differently within a subdivision. Mayor asked what is different in review process. Is there some difference in building in SD with fire hydrant or not. No difference in home building requirements.

Dezman asked why fire suppression was waived. We presume it was impractical to require it because we did not have water close by. McClelland said they could have required fire suppression via fire wells or ponds. He explained what was required for Country Cove before water came to area. Bohne said that in regards to McKnight's question of the SD having a community stable, staff will have to review the Code and research if and when he applies. Vail said we waived them from the central water requirement and that would have excused him from having water hydrants.

Mayor asked about draft letter – how does Hold Harmless they provided fit? Bohne referred to the section wording *any and all liability*. Even with that the sovereign immunity will protect us for final clarification.

Developer's Attorney, Mr. Nohrr, 1795 W. Nasa Blvd., Melbourne, addressed and thanked Council – stated the Oakmont Preserve Subdivision was approved by the seated Council at that time. The question was raised to them. He was not involved back then. We would like to resolve this so we can settle this once and for all. It takes a lot of expense to get a subdivision approved. As reflected in the minutes, when it is approved and it has taken a number of years and a significant amount of capital. When you are sitting there with lots and when they are sold and the owners submit plans they will get the permit to go forward and build. As far as the equestrian facility, that is not the issue for tonight. If and when they come back on this issue, they will provide fire suppression.

Nohrr stated Pence has invested in this community. He read in the paper about the Fire Department's acquisition of a turbo draft pump. What he wanted to present on behalf of the developer to help in fire fighting in this community is the donation of \$2500.00 so the Town can purchase another turbo-draft. Nohrr stressed this has nothing to do with the request tonight. The issue of fire suppression is on everyone's mind. He wants to have the assurance that each lot will be able to be developed.

Dezman asked how much it costs to put in a fire well. 15K is the price the Mayor got from the FD. Dezman was on Council then and she voted on this without having all the info. It concerns her that the requirements for a subdivision were not enforced. Vail said that he would want to see fire protection in this subdivision. The subdivision was approved.

Nohrr said he is satisfied with the letter. Bohne said the current Council can't require the fire suppression improvements now after the subdivision was approved. McKnight said single family development should proceed as a subdivision.

Expand bullet 1 with the added wording of within the Oakmont SD. As the owners of the lots come in to build they will bring in permit packages for single family homes. Dezman asked if the applicant would not have to submit the plans to the HOA first. If applicant gets approved by town and not HOA that is not a town liability. The Town does not enforce the HOA rules.

At end of first bullet – add constructed in the Oakmont Subdivision. Add per Art 16 and 17. Franklin said the conflict is back if they add the Art 16 and 17 requirements. Chair asked Bohne for advice. Bohne said delete bullet 3; Bullet 2 stays in; Bullet 1 – add language “per SD code”

**MOTION:** McClelland / Borton to add to the end of bullet 1: “per Subdivision code”, leave Bullet 2 as written and Bullet 3 comes out of letter.

Bohne said there was a bad paper trail. This will give consistency from this point forward. Nohrr said that to be fair to this Council, it is the position of this developer that the subdivision as it exists is built in accordance with this code. If there is some issue with the code that comes up in the future, we are agreed that they have satisfied that the subdivision was approved according to our code.

Single family dwellings are built per code approved by Florida Statute. BWF said the letter originally was intended to memorialize a meeting. Change letter to read Council action. Dezman said the letter should come from the Attorney. McKnight said he has no problem having BWF sign the letter. Consensus to add a signature line for the attorney to sign.

**Vote:** All Ayes.

**J. ACTIONS ITEMS:**

**ORDINANCES: First Reading – 1 – PULLED – SEE ABOVE**

**~~2. Amend Charter with Referendum (Ord. No. 2008-16)~~**

~~Without objection, the Mayor read by title only.~~

~~AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA;  
CALLING AND SCHEDULING A REFERENDUM ELECTION TO DETERMINE IF THE  
TOWN CHARTER, SECTION 2.07, RELATING TO THE ELECTION AND TERM OF  
OFFICE OF THE TOWN COUNCIL AND THE MAYOR AND SECTION 2.09 RELATING  
TO THE FILLING OF VACANCIES SHOULD BE AMENDED; PROVIDING FOR THE  
MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING  
THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE  
DATE;~~

~~Exhibit: Agenda Report No. 2~~

~~Recommendation: Request Action~~

**RESOLUTIONS:****3. Park Fees (Reso. No. 39-2008)**

Without objection, the Mayor read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 01-2002; SETTING FEES AND DEPOSITS PER CHAPTER 12.5 SECTION 20 AND 22 OF THE CODE OF ORDINANCES; PROVIDING FOR CERTAIN PROCEDURES FOR USE AND RENTAL OF THE PARK; PROVIDING FOR THE REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**MOTION:** Borton / Vail to approve Reso. No. 39-2008 for park fees.

Discussion: Dezman asked about changes. Council approved the recommended changes from the Park Board. Changes were made and sent back to Park Board for review. Mayor said it added a seasonal fee for leagues.

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

**4. Building Civic Awareness (Reso. No. 41-2008)**

Without objection, the Mayor read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RECOGNIZING THE "BUILDING CITIZENSHIP IN THE COMMUNITY: BACK TO BASICS" INITIATIVE OF THE FLORIDA LEAGUE OF CITIES, INC., AND PLEDGING SUPPORT FOR THIS STATEWIDE EFFORT; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** Vail / Borton to approve Reso. No. 41-2008.

Discussion: Borton asked for info. Mayor said the new president wanted to this. He wants to encourage civic awareness among young kids. This supports this effort. It should be pushed for adults too. Vail asked how we could do this – initiate increased involvement. Mayor said you could get ideas from the League or come up with your own ideas. Vail agrees with the initiate. Dezman said we could visit schools and. Mayor said we could contact local schools and offer a local government speaker. McKnight said we could request interns. BWF said that we do that with some school children. We also could go to the local pre-school. We do training with the Explorers.

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

BWF will do letter.

**5. Approval of Interlocal Agreement for Countywide Radio Network (Reso. No. 43-2008)**

Without objection, the Mayor read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE INTERLOCAL AGREEMENT WITH BREVARD COUNTY FOR USE OF THE COUNTYWIDE RADIO NETWORK / 800 MHz SERVICE; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

**MOTION:** Borton / Vail to approve Reso. No. 43-2008 approving ILA for Countywide Radio System.

Discussion: Borton said they could add costs later. They already charge us for this system. McClelland said it is a highly computerized system. McClelland said on Sections A and D referring to purchasing equipment only from Communications International. That could cost

Malabar more. Malabar FD has already received donated equipment from Palm Bay and this would require us to have them evaluate it and charge us for that evaluation. McKnight also had question if Communications International was sole source. This needs to be reworded to allow Malabar to use equipment donated from another city that had approved equipment. Regarding Section "I" and the inventory - it will include not only working radios, it would include the inactive equipment as well. If we have a group of radios that is not on their network, we will still be charged. He has problem with that.

BWF suggested tabling and let her notify Mr. Lay regarding these concerns.

McKnight said that unless this is a sole source vendor, we will need to do bids for equipment.

McClelland said that the FD needs to provide an accurate inventory of working, active and non-working inactive equipment.

**MOTION:** Dezman and McClelland to table. Vote all Ayes.

#### **MISCELLANEOUS:**

##### **6. Recommended Regional Water Policies from Myregion.org**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Mayor stated he represents all 16 cities in the County on this congress. He said the answer to #1 on the questionnaire should be no. #2., use B. encourage. – it is expensive to put in and maintain. It would conflict with HOA requirements. Vail said as a community we are not like most. We can encourage water savings and encourage this but not require. The reason is that it conflicts with HOAs and no way to enforce it. We have larger land areas. What changes would be suggested? Does the Council support having all three WMD have one single policy – no. A single policy doesn't work. Should conform to land uses within each WMD. Council went thru the remainder of the questionnaire and BWF will send tomorrow.

##### ~~**7. Approval of Letter to Developer – Oakmont Preserve SD**~~

~~**Exhibit:** Agenda Report No. 7~~

~~**Recommendation:** Request Action~~

Moved to I.

#### **Added: Susan Kabana employment status**

**Motion:** Borton / Dezman direct BWF to write letter pursuant to the employee manual that states the relationship between the Town and her will end. Dezman said this will be a benefit to her.

**Vote:** All Ayes.

#### **K. DISCUSSION ITEMS:**

#### **L. MAYOR AND COUNCIL REPORTS:**

(Number indicates order of Reports)

2) Vail: - nothing

1) Borton –nothing

5) Dezman – she asked for a new flash drive on the new calendar year. Dec 15 she will not be here at council. Will she be needed here on Thurs? Yes to certify the election. Regarding a letter, she wants to be on the record that for the different people we have on here and she does not believe any of us are corrupt. McKnight also got the letter and thought it was inappropriate and said that for a town our size it was inappropriate. More respect should be given.

3) McClelland – responds after Dezman: It is too bad that the info is inaccurate. And people are too busy to come in and find out the truth.

4) McKnight – thinks the clerk and TA are doing a great job and he supports them both. BWF said the minutes are on website from 2003 to current.

6) Mayor – Request BWF to call sheriff to radar speed enforcement on Weber Road in the morning. It has been reported that they are speeding by the bus stops. The other item is the Malabar Fire Chief was here when he stopped in. The ladder truck was supposed to be delivered in November and it won't be delivered until December – it got bumped so the County could take delivery of their ladder truck first.

**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 9:05 PM.

BY: Thomas Eschenberg  
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby Franklin  
Debby K. Franklin, Town Clerk/Treasurer

11/17/08 as corrected  
Date Approved