

**MALABAR TOWN COUNCIL REGULAR MEETING
NOVEMBER 19, 2007 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 7:32 pm by Mayor Eschenberg. The prayer and pledge were led by Pat Dezman.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

BUILDING OFFICIAL:

ATTORNEY:

TOWN CLERK:

TOM ESCHENBERG

CHUCK McCLELLAND

NANCY BORTON

BRIAN VAIL, EXCUSED

JEFF MCKNIGHT

PAT DEZMAN

BONILYN WILBANKS-FREE

ROGER CLOUTIER, EXCUSED

KARL BOHNE

DEBBY K. FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES – none

Mayor reads from Section 2.13 of Town Charter – the full Council shall elect from its members ... he stated that the “full” council was added in 2003. This covers Chair and Vice-Chair.

D. NOMINATION AND ELECTION FOR COUNCIL CHAIR TO SERVE 2007/2008

E. NOMINATION AND ELECTION FOR COUNCIL VICE-CHAIR TO SERVE 2007/2008

Motion: Dezman / McClelland to table until there is a full Board. **Vote:** All Ayes.

F. PRESENTATIONS – FLORIDA LEAGUE OF CITIES “PUBLIC OFFICIALS LIABILITY”

Board watched 30 minute DVD on employment, land use, public meeting (procedural rules should be included in handbook for new members) and pre-meeting workshops or conferences for controversial items, stick to agenda, state procedures at start of meeting, keep public informed of procedures, keep emotions out of discussion, prohibit loud disruptive behavior or language, use of posters, or anything else not authorized by procedures, rely on legal council. Thank public for their comments, offer followup. Last item is precautions – does the legal authority advice know or is he saying what you want to hear. Any discussions with lawyer could wind up in court. Avoid the 4 D's - Drastic action, Documentation, Discipline and ? - Also Disqualify yourself if necessary. Review procedures periodically.

G. PROCLAMATION – NONE

H. CONSENT AGENDA

1. Approval of Minutes –

Regular Town Council Meeting Minutes 11/05/07

Special Town Council Meeting Minutes 11/07/07

Exhibit: Agenda Report No. 1

Recommendation Motion to approve

MOTION: Borton / McClelland to approve as submitted. Vote All Aye

I. STAFF REPORTS:

ATTORNEY

- Attorney was to summarize the labor attorney's opinion on a labor issue. The TA followed up with another question and he is still working it. He will report back.

ADMINISTRATOR

- Two meetings ago she introduced the Accountant and he was to have ready for the last meeting of November this year he was to have September done. She introduced him. He explained that the reports handed out this night were similar to the ones they have received in the past. This report will be subject to adjustments pending the year-end audit. There will be many adjustments since this was not done according to the Governmental Accounting Standards. Borton asked if we were over in our expenditures. Yes on this preliminary that is what it shows at this time. In the future, he will be advising Council during the year to avoid write up by the Auditors. TA stated that the last meeting in August and September there were tremendous amount of budget adjustments – is he saying we should do this on a month to month basis not a year end. You should be doing line item adjustments before the expenses – not after. Theoretically you are supposed to be approving before the expenses. It will still take a lot of effort to get every – need the balances in so we can see where we are now. As of October 1, we are on target. Mayor stated that the revenues came in at 88% - on the 4th sheet in the package, there is a 63K difference in what was budgeted for permitting fees. TA stated Susan told her that Mr. Booth and Susan never looked at what was spent and that no formula was used in the preparation.
- Mayor asked if the ACH had all been accounted for. Torres stated that some of them may not get here until late November.

CLERK

- The “K” has been changed to “C” on the Disc Park sign
- Beautification project – continue ? – no comment
- Town Hall site selection committee – continue meeting – architect never notified

Attorney will be working on – Council explained these are two separate committees for architect and site selection committee The land owned by the State can't be used. Mike Knight is the roadblock – Nancy is the EELs contact. She doesn't think that anyone will give us any land. TA said that the arbitrary decision to not allow the trail going through the Marie Street portion of the Sanctuary. TA will have another go at it and report back to Council after she talks to the County Manager. The State rep is Mr. Sol. Mayor said that Borton and TA should meet with County Commissioner Helen Voltz, County Manager and Mike Knight and invite Mike Sol of the State. Dezman said that we had such success with going straight to the County Commission with the MSTU that we should try that again. Using State land for Town Hall site is unlikely because of the number of environmentalist that he can pull out of the woodwork with a phone call. Borton thinks we should work with DCA Mike Sol and the State was set on supporting us.

Nancy will set up another meeting with Mitch Needleman and Nancy - - how far should we go – reconvene the town hall site selection committee and tell them to forget about the 15 acres and see what they want to do. We can recommend to them that they give up on that - they may want to pursue and take on Mike Knight. Dezman says go back to the site selection committee and she recommends Nancy Borton attends that meeting and present what Council thinks about this. Constituents who are voting for County Commissioners may have more clout. Borton thinks we should hold a town hall meeting and see if the residents even wants a new town hall. We should have our ducks in a row per Dezman. We should have a vision.

Mayor said we need to have some answers before the committee can move forward.

Motion: Dezman / Borton reconvene the Town Hall Site Selection Committee, set a meeting date, and have Nancy Borton attend the meeting and have both Franklin and TA involved in this. Discussion. Staff can do the research for the committee. Nancy Borton can provide a

balanced report to them regarding the EELS. Vote: Ayes. Mayor will also attend and tell the committee what he did at the front end. It will be a public meeting. Dezman will be the representative on the site selection. Consensus of council to support

The Architect selection committee has done its duty and is disbanded.

J. PUBLIC HEARINGS:

ORDINANCES – None

K. ACTION ITEMS

ORDINANCES – First Reading - None

RESOLUTIONS

Reso 23-2007:

2. A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF PROPOSAL FROM _____ FOR GARAGE DOORS AT FIRE DEPARTMENT ANNEX BUILDING; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Motion to approve Garage Door Contractor
Motion to approve Reso 23-2007

Motion: McClelland/Borton to approve (for discussion) - McClelland's concern was that they would get the doors up and down manually and that takes a lot of time. He thinks TA should get prices with the garage door motors and electric hoists installation. If the electric hoists for the doors are separate and for now will be manual that will be a long delay in responding to 911 calls. McKnight asked if the TA expected the same company to submit. McKnight asked if the quotes were separated intentionally to keep the price. Motion and second withdrawn. TA to get more information from Fire Chief.

Motion to table : Dezman/Borton. Vote: All Ayes. Vail absent. Motion is approved.

3. Reso 24-2007:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE CREATION OF A EXTRA COMPENSATION PROGRAM TO REWARD OUTSTANDING EMPLOYEES; PROVIDING FOR INCOPORATION INTO POLICY MANUAL; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Motion to approve Reso 24 -2007

Motion: McClelland / Borton to approve.

Dezman asked if the program is stated. TA stated that McClelland offered \$25.00 from his discretionary fund and Dezman stated she would match it. First we had to establish that is can it be done and it can if we adopt a program. TA will recommend to Council employee.

The roll was called: Councilmembers Borton, McClelland, McKnight, Dezman: All Ayes. Vail absent. Motion is approved.

4. Reso 25-2007

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF AGREEMENT BETWEEN THE TOWN AND THE MALABAR VOLUNTEER FIRE DEPARTMENT INCORPORATED; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Motion to approve Reso 25-2007

Motion: Borton/ McClelland to approve resolution. Agreement was already approved by Council action on September 17, 2007. The Attorney recommended that the "direct" be removed from Section 2, since he is authorized to sign per the Charter.

The roll was called: Councilmembers Borton, McClelland, McKnight, Dezman: All Ayes. Vail absent. Motion is approved.

5. Reso 26-2007 A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF PROPOSAL FROM _____ FOR ELECTRIC SERVICE AT FIRE DEPARTMENT ANNEX BUILDING; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Motion to approve Reso 26-2007

Motion to approve: McClelland / Borton to award CMB, the low bidder at a cost of \$13,128.00. McKnight is concerned with the difference in estimates between the high and low bids. He also asked how we are protected from him not completing the work – Attorney said they don't get paid until they are done and put in a liquidated damage clause. Attorney will draw up. It is a local licensed contractor. A performance bond would just be added into the cost. That much disparity between the proposals is his concern. It must be spelled out in the contract. Some people are struggling and maybe that has something to do with the cost difference.

Attorney stated that we need two motions – first to approve the contractor and then to adopt the resolution..

Motion: Dezman/ Borton to rescind previous action of approval CMB as the contractor. Discussion. None. Vote: All Aye

Motion: McClelland/Dezman to table. Get with Chief on where the bay lights are. He does not see any. Vote: All Ayes.

6. Reso 27-2007: A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE MASTER AGREEMENT – INTERGOVERNMENTAL RADIO SYSTEM (800 MHZ) WITH BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Motion to approve Reso 27-2007

Motion: McClelland/Borton to approve.

The roll was called: Councilmembers Borton, McClelland, McKnight, Dezman: All Ayes. Vail absent. Motion is approved.

7. **Reso 29-2007:** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF PROPOSAL FROM _____ FOR AUDITING SERVICES FOR THE TOWN OF MALABAR FOR FY 06/07, 07/08 AND 08/09; PROVIDING FOR REMEDIES; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 7

Recommendation: Motion to approve Reso 29-2007

Motion: Borton / McClelland to approve the auditing company Averett, Warmus, Durkee Bauder Thompson and at a cost not to exceed 25,000 for FY 06/07; 27K FY 08 and FY 09. Discussion. McKnight asked if the hourly rates should also be approved. If something comes up that is not included. TA said they would have to come before this Council again to ask for any increasing. Mayor said they will want to increase and that should be in the contract. Anything that would be extra would be approved by Council and before the fact not after the fact. **Vote: All Ayes. Vail is absent. Motion is approved.**

Motion: Dezman / Borton to approve Reso 29-2007. .

The roll was called: Councilmembers Borton, McClelland, McKnight, Dezman: All Ayes. Vail absent. Motion is approved.

L. ACTION ITEMS

- 8.. **SELECTION OF BILL REVIEWER AND CHECK SIGNERS FOR 07/08**

Exhibit: Agenda Report No. 7

Recommendation: Discussion and action

Mayor read from the Town Charter, Section 4.01, Public Monies, requiring two signers for the checks – check signers are the Mayor, Administrator, Clerk and one Council Member. This person was previously Bobbi Mocci .

Motion: Borton / McClelland to select Councilmember Vail as Bill Reviewer. **Vote: All Ayes. Vail absent. Motion approved.**

Motion: Borton / McKnight to appoint Dezman to sign checks. **Vote: All Ayes. Vail absent. Motion approved.**

9. **SELECTION OF SPACE COAST LEAGUE OF CITIES VOTING DELEGATE**

Exhibit: Agenda Report No. 8

Recommendation: Discussion and action

Motion: Dezman / McClelland to select Mayor Eschenberg as Voting Delegate for the Space Coast League of Cities and retain Councilmember Nancy Borton as Alternate. **Vote: All Ayes. Vail absent. Motion approved.**

- 10 **Reso 28-2007: APPOINTMENT OF BOARD OF ADJUSTMENT BOARD MEMBER**

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

Exhibit: Agenda Report No. 10

Recommendation: Motion to approve Reso 28-2007

Motion to table: Dezman/Borton to table. **Vote: All Ayes. Vail absent. Motion approved.**

McClelland / Borton to remove Withers as a park board. Dezman says this is premature it is not part of the agenda. McKnight asked for legal input. Attorney advised to put it on as an action item.

Council directed staff to bring all reappointments – contact persons with expiring terms on P&Z, BOA and Park Board and then – list them separately on next agenda.

Put on all expiring terms. McKnight said these are volunteer boards and we should send out pleasant letters that thank them for their service.

Do with emails or phone calls because we only have two weeks. TA said the seat number doesn't match district. Dismissing a board member – do we need to provide written notice – directed to Attorney by Jeff McKnight. Expired terms do not require a written notice. If before their term expires – then written notice is needed.

M. MISCELLANEOUS

N. DISCUSSION ITEMS

11. COST RECOVERY FEES – EMERGENCY RESPONSE FOR VEHICLE CRASHES

Motion: McClelland / Borton to move this to ordinance form for Council action. Discussion. TA we started with Cocoa but the city of Longwood had already adopted an ordinance. They exclude residents and governmental vehicles. Do you want the exclusion that Longwood allows? McKnight asked about businesses in town – are they under the same umbrella. Attorney said he is not ok with the resident vs. non-resident – how do answer that under the equal protection clause under the Constitution. It is paid by the insurance. He will be looking into this. McKnight does not support this idea. The city contracts with a company and they provide the service to go to the at fault driver – TA said this hasn't been tested in court. If the Fire Department rolls all their equipment, does that entire cost get billed? No, they should not charge if they are not used. But that would have to be spelled out. Attorney said the non- resident driver is using the resident roads. You would have to prove the Increased percentage of accidents are due to non-residents using our roads. He will need that documentation. This is a user fee. Mayor said he is for this but wants it to be fair. It is to recoup justified fees – it is not a money maker. McKnight said it is not a wise idea. One lawsuit would offset any cost benefit. The insurance company may even file the suit. The company you hire may be aggressive. Attorney said don't expect the draft ordinance by next meeting. McKnight is not for this.

Vote: Ayes – McClelland; Nays - McKnight, Dezman, Borton. Vail absent. Motion Failed.

Dezman asked that this be on the first January meeting for discussion again.

O. MAYOR AND COUNCIL REPORTS

McClelland - stated that emergency response bills per cone on the Interstate.

Dezman – she has one more class and will be done. She asked if the Town offers long term disability. Yes. The town pays. She asked how much does it cost in paper for the agenda. This mtg was 2 reams. Dezman wants a CD of her packet. She is going to try to go paperless. They discussed the flash drive. Dezman will try this through January. Then she asked about indexing – it is not in place – but it will be in place. Also the resolutions – are necessary to track action items.

McKnight – will be attending the IEMO in January. Also he asked about emails from citizens how to deal with. Attorney said that his email is public record and should be sent to the Clerk's Office.

Borton – stated that there will be a community Award given to Stuart Borton for his many contributions in the community on 11-29-07 at 11:30 AM at the Yellow Dog. She encouraged everyone to attend. Also the press will be there tomorrow for the deck.

Mayor: comment on resolutions – do we really need a resolution for appointments of board members. He was at a meeting in Viera and there was a school system rep was there, Mr.Dane Theodore, and he wanted to convey his thanks to Council for passing the Concurrency Interlocal. Last item was recycling – check with South East or check with WM. Someone should want to recycle office paper.

P. PUBLIC COMMENTS: GENERAL ITEMS

Q. ADJOURNMENT

There being no further business to discuss, **MOTION: Dezman / Borton to adjourn this meeting.**
VOTE: All Ayes. The meeting adjourned at 10:30 PM.

BY: _____
Mayor Thomas Eschenberg, Chair

ATTEST BY:

Debby K. Franklin, Town Clerk

Date