

MALABAR TOWN COUNCIL REGULAR MEETING

February 7, 2011

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 Thomas Eschenberg. The prayer and pledge were led by District 2 Council Member David White.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

DEPUTY TOWN CLERK:

TOM ESCHENBERG

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

BONILYN WILBANKS

KARL BOHNE

DEBBY FRANKLIN – excused

CYNTHIA KELLEY

- C. ADDITIONS/DELETIONS/CHANGES:** Acquaviva asked why the web streaming was taken off the agenda; she had read information regarding this item in the FYI. Mayor stated he talked to Franklin about it; he looked into the terms and conditions and there are no problems. Acquaviva was concerned about the possible issues of downloading and having the information as a public record. She asked if all of Council was good with this; Rivet stated he had not seen the terms and conditions of U-stream. Wilbanks stated it was attached to the FYI; she will send it out again if Council needed it again. Wilbanks stated she did speak to Bohne about the copy right issues; Bohne only concern is the video is a public record. As long as we can provide it if a request is made, we are good. If copy right laws are in place, we would have to comply with them.

D. PRESENTATIONS -

- Volunteers Who Demonstrated Disc Golf 12/4/2010
 - John Leach
 - John Precious
 - Mark Miller

Mayor Eschenberg made a presentation to the three gentlemen who provided a free instructional clinic of the game to any and all people who were interested in learning. The clinic took place on Saturday, December 4, 2010 prior to the Christmas Tree Lighting ceremony.

Bernadette Knudson, member of the Parks & Recreation Advisory Board, stated that the group has provided discs to the Town. Anyone interested in playing the game can go to Town Hall and sign them out and use them at the park. John Leach came forward and stated he has played the game all over the country; he thanked the Town for giving them the opportunity to play in Malabar and he encouraged anyone who wants to play to come on out.

E. PROCLAMATION:

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 01/03/2011

Special Town Council Meeting – 01/18/2011

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Rivet / Acquaviva to approve the consent agenda with corrections.

Beatty, page 3 of the January 3, 2011 minutes, he had a concern that a statement was added to the minutes after the meeting. Acquaviva stated that she had written this statement before the meeting and it was read into the record to be included into the minutes. Beatty stated he stands corrected. No change to minutes is needed.

VOTE: All Ayes.

G. PUBLIC COMMENTS: General Items not related to agenda items (Speaker Card Required)

H. STAFF REPORTS:

ATTORNEY: Bohne gave an update on a recent case that was handed down from the 5th District Court; it encompasses Brevard County. The City of Palm Bay has an ordinance with code enforcement liens having super priority over all other liens on a property. This would elevate code enforcement violations up to tax liens. The 5th District Court stated there are no provisions in Statute 162 to give over a previously recorded lien. Mayor asked which city; Bohne stated it was Palm Bay. Two judges agreed with Palm Bay and one did not. Palm Bay did not win the case.

Bohne, as directed by Council, is proceeding as discussed in the executive session. He encouraged Council to call him if they have any questions.

ADMINISTRATOR:

- Lift station – the certification with the backflow has been taken care of; the saddle was put on last Friday and the certification was done on Thursday. We don't want to leave the big brass fixtures out to be stolen. Palm Bay does not want to help us with the lift station; we have monthly sampling with the readings. We have been informed that Palm Bay will not be assisting us next month. Wilbanks asked attorney if we can send a letter as they have not given us any notice that they will not be assisting Malabar. We need to know this ahead of time as we have deadlines for the reports to be submitted; we need to contract this work out. At a minimum Palm Bay should give us notice if they are not going to assist us. Could this be addressed in a letter? Bohne stated he did review the contract for repair obligation; they are not obligated to do repairs. He will check the contract for testing and reporting obligations and advice the Town Administrator. Bohne also stated that he amended the original complaint to include the sewer rates as well as the water rates. White stated that we should find a contractor; he has contacts and will provide them to Town Administrator. Beatty stated that a good resource for this is West Melbourne and Cocoa. There are cities doing the same thing; we can talk to them. Beatty made comments regarding running the lift station for three weeks after a hurricane came through. Wilbanks stated that the line item for the electric has been used up and there will be a budget adjustment coming to Council. Beatty stated there should have been a report to show the length of time the station was running to show the power usage. Wilbanks stated no reports have been received. She will give West Melbourne a call and asked White to provide contractor contacts to her. It's a priority that the report is turned in by the end of the week. Bohne stated he would do a letter making a demand on it; if they fail, we have tried.
- Town Administrator asked Sheriff Billy Hammer to come forward; they are short handed this evening and he really needs to be out and about. Rivet asked if there had been any burglaries in Malabar; Hammer stated that a four-wheeler off of Atz and Corey had taken place and another burglary in Century Oaks as well.
- Fire Dept Report – Welton gave a brief overview of the end of the year report. Our response time is about 6 minutes; which is in line with the area responses. Everything is in service with exception of the ladder truck; we have a quote, went to the sales people

to the factory. A verbal estimate which is about \$3,000 less but we are waiting for it in writing. E99 did fail its pump test after 18 minutes. Ring Power diagnostic/dyno test results are due in, needs to be picked up. We will know what to do once we have the report. Training is going well. More revenue coming; we will cover all our costs and put money back into general fund. Our people come in at little to no cost. Received new ISO map; got some very good information, favorable on our part.

Springfest is underway; have come up with some very unique ideas for the fire department to participate in. He has completed the first draft of the fund raising letter with Town Administrator. There were a few issues with the Explorers that have transitioned from this program to becoming a fire fighter with Malabar. He worked with the Town Administrator on a policy to assist with a smooth transition.

Mayor asked about the pond certification. Welton stated this is where he is going with the new ISO map. There are several steps to be able to certify a pond; we are not there. Wilbanks stated that this all came about from the residents wanting their ponds certified. With the new map, Welton will be able to send out revised letters to the homeowners to help save monies on homeowner insurance policies.

Welton stated this would be his last report to Council. He thanked them for giving him the opportunity to serve; he also stated he would not be able to do the job without the help of his support staff and secretary. Mayor asked if he had made any headway on the five year plan; Welton stated he had put some ideas on paper, one idea is for the biggest bang to the buck was to consider large artesian hydrants. He did measurements of 1,000 feet; for every 1,000, if municipal or artesian hydrant, you will pick up 14 residents. Mayor asked if he found out the cost of one of the hydrants. Welton stated that when the church and storage place were built, an 8 to 10 inch main was \$18,000 to \$20,000; pumping at 12 gallons a minute.

- Town Administrator asked Public Works Supervisor Tom Miliore to address Council. He reported that Daryl Williams of CDM Trucking, Inc., has a 60" trenching bucket for \$2,000. It can be converted for what is needed for about \$500. It would be used for when we do the big ditch cleaning with the water. In October's budget, Council approved the two blades for the slope mower. We purchased one blade and it is doing quite well; running for about a month and a half in the town. With the other quote, we would save \$2,000; which would pay for this bucket. The Town Administrator recommended to Council that the bucket be purchased. It's not cost effective for Daryl to convert it. Mayor asked if there are any plans for the old Gradall. Miliore reported that it could be converted to a water tanker for the roads. Also, Williams would take it for parts; we did not get a price. Town Administrator stated it would be better to convert it; it's the responsible thing to do. This is part of the five year plan.

Miliore reported that the second side of LaCourt would be put back on the schedule for next week; the dump truck was out of commission and just pick up today.

McKnight stated he heard about the assisted living apartment complex that is going in next to the Berri Patch. There are to be 96 residents in a very small area. He is very concerned about this. He knows the Town Engineer Morris said there is ample green space, water retention and parking but he wants to make sure; when they first put the school in, they put the water retention and the parking in for that school. Now they have added another building for the... Wilbanks stated the rental property; McKnight said yes. Now they are adding another building without any other stuff. Wilbanks stated he is talking about another building on the Berri Patch property. McKnight stated there are two extra buildings past the first one and the second building is going to be huge and I

am very concerned that something will be dropped through the cracks. He can't see that there is enough green space, parking and water retention for those three buildings on five acres. Mayor offered suggestion to Council; McKnight stated he wanted the details. Does not want to come to Council and we say it's okay; you share some parking over here and some green space over here. When you get your packet, hopefully early enough, to go through it, anything missing, you can call or visit Town Hall. Wilbanks stated he tells her what he wants to see, she will make sure it's in the packet before it goes out. He wants to make sure they don't re-use green space, parking or retention for those three buildings; those should be stand alone; especially this building. It's a different company but it's Mr. Foley; we all know how Mr. Foley operates. So he is very concerned about this. Wilbanks stated that they had a meeting with Mr. Morris and Mr. Foley this afternoon; it was a good meeting. Mayor stated that Council should get there packets and make notes to ask questions. McKnight stated he wanted to make sure we keep his feet to the fire on this project and the new projects that come to Town. He is very leery of this because of the way he's done business so far. Wilbanks stated she needed to research the information, but in speaking to Franklin, but the reason Council approved the second building was to have security on the property. Now it is being used as a rental property. She doesn't know how Council worded it. If you have security, you have them on the property. She has seen a rental sign. McKnight stated this is exactly what he is talking about. This was a point of contention; Rivet stated that was the reason of the approval. Wilbanks stated if this is voided, does that mean other issues need to be addressed. Acquaviva asked if Council could see the minutes from P & Z; she was going to go to the meeting but was not able to make it. Wilbanks stated that this will be a part of the packet. Mayor made a suggestion to McKnight to get a copy of the P&Z packet and make notes for questions. You can send them to Franklin and she can forward to Council.

McKnight asked about the Disc Golf Park entrance; it looks a there are two permanent entrances. Wilbanks stated that we have left it there to keep the cost down while finishing the project.

McKnight asked about the depreciation schedule for the Utility Fund. Wilbanks stated she thought Mr. Warmus had sent it out everyone; she will check on it and make sure Council has it. River stated he hadn't seen it and asked Council. No one has seen it.

Beatty stated he would like to see the site plans for the Berri Patch buildings; wants to see the hydrant information as well as the berm information. Council needs to have all the information available to them. The master meter may be in an easement that we have. It looks like the berm is encroaching on the hydrants. There may be some issues. Need to look at the previous site plan for Berri Patch; the second building, this new site plan and the easement for the master meter. Need to check the measurements for the hydrant access. The berm went in because he waited till the very last minute to meet St. John's requirements. Shane Downs, Fire Department, will provide the circumference needed around the hydrant.

CLERK:

- Springfest Update-event will be held the first Saturday of April; which is the 2nd. The committee has held their second meeting and all RFQs for services have been sent out by the Town Administrator; food vendors are in the works; sponsorships/donations are in the works. If any of Council knows of anyone who might like to sponsor our event, please provide the contact information to DTC.

I. **PUBLIC HEARINGS:** Are legally advertised for 7:30 PM *or as soon thereafter as possible.*
ORDINANCES: 0 RESOLUTIONS: 0

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

K. ACTIONS ITEMS:

ORDINANCE: First Reading

RESOLUTIONS:

2. Approve New Malabar Fire Chief (Reso 76-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF DENNIS COVEY TO SERVE AS THE FIRE CHIEF FOR THE MALABAR FIRE DEPARTMENT FOR AN ANNUAL STIPEND OF \$9,162.92; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Without objection; Mayor read by title only.

MOTION: Rivet / Acquaviva to approve Resolution 76-2011 as presented.

Discussion: Wilbanks stated that Mr. Covey is here and had him come to podium for questions from Council. Mayor asked if he is retired; yes 21 years in fire business in New Hampshire.

VOTE: 1.) Beatty- Aye; 2.) White- Aye ; 3.) Rivet- Aye; 4.) McKnight- Aye; 5.) Acquaviva- Aye. Motion carried 5 to 0.

MISCELLANEOUS:

3. Approve Expense for Street Light - Blanche and Malabar Road

Exhibit: Agenda Report No. 3

Recommendation: Request Action

MOTION: Rivet / White to approve the purchase of street light at Blanche and Malabar Road.

Discussion: Mayor stated the original quote for the cost would be \$500; it has now gone up to \$1,500. Rivet was good with it at \$500 but not at \$1,500. McKnight asked if only one resident came and asked for this. Town Administrator stated yes. McKnight stated he would be for this if more than one resident made the request. Town Administrator stated it would assist all the people on the street. McKnight stated if it were a group effort that would be different. We are not here to serve the need of one; we can't afford it. Wilbanks stated she went back to FPL when the price came back in so high. The pole is there; it will cost \$1,500 to run the leg a half of a block. It seems totally out of proportion. Acquaviva asked, after the major expense of getting the electric there, what would the monthly expense be? Wilbanks stated is it around \$7 to \$8/monthly; it was to be low candle power to meet our lighting requirements. We are putting a major light out on US 1 and all we're paying is the guy wire rental fees monthly.

VOTE: All Nays. Motion failed 5 to 0

4. Approve Temporary Trailer Permit – 1573 Weir Street, Malabar

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Discussion: Town Administrator stated she did receive an update on this today. It's very clear that it was for new construction; it's the only way this has ever been approved. She wanted to be sure of the work that was going to be done. At first it was going to be taken down to the foundation and rebuilt; now they are planning to just remodel the inside of the home. The code doesn't say anything about new construction; it states for construction. Acquaviva asked how long they would be allowed to have a trailer there. Mayor stated as long as the permit is valid. Town Administrator stated that as long as inspections are being done, the permit would remain open. As long as progress is being made, it remains open.

MOTION: Rivet / McKnight to approve a temporary trailer permit at 1573 Weir Street, Malabar. VOTE: All Ayes. Motion carried 5 to 0.

L. DISCUSSION ITEMS:**M. MAYOR AND COUNCIL REPORTS:** (number indicates the order in which they spoke.)

6.) Mayor: received a complaint from a resident about the front of Town Hall; it's really bad. We really need to do zero-scaping. It could be an Eagle Scout project, with guidance. There are plants out there that would attract butterflies and we need native plants that would survive and require low maintenance. Wilbanks stated she would contact Bobbi Moccia and Amanda Condatore; they both have landscaping backgrounds. We could take the tree out of the front yard. He asked the Town Administrator how things are coming for a joint meeting with staff, Fire Department and Planning & Zoning for the five year plan. Town Administrator stated that everyone is working on their department and a meeting is in the works to be set up.

Town Administrator asked how many of Council are having an issue opening up the FYI she sends out with the attachments. Mayor stated he is having an issue; he could open them before but now he can't. They are coming to him as .dat; Town Administrator doesn't understand this, she doesn't send anything in that format. Acquaviva stated she has a Mac computer and doesn't have issues opening up the information. If anyone were to have an issue, it would be her.

Beatty made a suggestion to the front of Town Hall. Let's update the front of the building by enclosing the front porch with block and move the front doors to the side wall. Have a waiting room so people can come in and sit while they wait. A previous Council Member said that they would donate the block and another resident, Beatty is not sure if they are still around, said they would donate and deliver block if the Town needed. This is not an expensive thing to do; you could paint on one of the walls the Town's seal. We would only have to close in two walls and move the doors. The other point is that the tree planted out there should have never been planted there; it is growing up into the wires and if the flags are at half mast, they get torn up because of the limbs of the tree. Instead of just doing zero scape, we could do both projects and have the outside look very nice. This is just a thought and could be an agenda item for discussion and action. Mayor stated we could bring the block up half way and have an enclosed porch.

5.) Beatty: Went to IEMO; Lee Feldman was teaching a class. Feldman told the class that the 25% surcharge tacked on is pure profit. You can't charge something that you don't provide. They can only bill us at cost. Beatty thinks we have a good standing.

4.) White: nothing at this time

3.) Rivet: at the last Council meeting during the reports, McKnight accused him of lying and he would like to respond. McKnight stated he didn't accuse him of lying; he said he was exaggerated or biased; he would be thrilled to see all the evidence to back up your letter, it would make a huge difference in my personal view of your... Rivet stated that there are obviously no recordings of personal or one on one conversations that he had. There is a record of the sexual harassment issue that we had; people here, Mr. Bohne was... McKnight stated that you inferred that he tried to cover it up. Rivet stated that he had conversations with people at the fire department. That's exactly what happened; it was not an exaggeration. Rivet stated the attempt was made to suppress it and he was involved with, I was having conversations when the situation happened, with the administrator; he knows what happened. Wilbanks stated it was not her. Rivet stated it was with the previous administrator. McKnight stated that Mr. McClelland obviously tells me a different story. Rivet stated it didn't surprise him. McKnight asked about the other allegation. Rivet asked if it was about Mr. Krieger. McKnight said yes. Rivet stated he asked for favors. McKnight asked what kind of favors. Rivet stated that at first he asked for things that the Town couldn't do. He wanted to change the regulations for water retention, the square footage. He rang him several times over a couple of month period on that. He talked to Rivet on many occasions about how he didn't think it was necessary for him to have fire inspections. McKnight stated that that is true. Rivet stated that it is absolutely true. McKnight said that he was not asking for favors; was stating what the ordinance said and he consulted with staff and the

attorney, who agreed with him that Mr. Krieger. Rivet stated that Mr. Krieger was telling him that he didn't have to abide by the rules. McKnight stated that Mr. Krieger is correct. McKnight asked Bohne to speak to this. Bohne hadn't looked at the Krieger matter for a while; he does recall an issue with the fire inspection and he recalled researching it and providing an opinion. A fire inspection, does not want to say unconstitutional, but it probably is something that cannot be done. He didn't want to go too far because he can't remember all that was said. But he does recall researching whether a city/town official, including the Building Official, can or cannot walk onto private property and say I'm here to do an inspection; his opinion is no you cannot do that as it could be considered as unlawful search and seizure. There are exceptions to that but the exceptions don't appear to apply to this. That is what he recalls. McKnight stated Mr. Krieger was looking for some assistance from him Council Member and he didn't receive it. Rivet stated he asked for special treatment and he didn't receive it. Wilbanks stated that this would be coming back to Council on the next agenda; the issue of fire inspections. We do not say there is requirement for annual inspection; now they want me to send out a certified letter. She wants to see the law that states what buildings must be inspection; the only ones she know is daycare with life safety issues with children. Dave Abernathy provided a memo to TA just before leaving for conference. She doesn't concur with what is in memo. She asked Franklin to read to see if she concurs. Bohne stated that they both have asked for the information as to what authority can do this. The reason it's being brought back is we need the policy makers to say we are not doing periodic inspections except for those covered under the state statute or we can have an annual inspection of all commercial buildings but you need to tell us. Then TA will get with the Fire Inspector as to where he's going and what he's doing. Acquaviva is shocked that we don't require all commercial buildings to be inspected. She never knew that about Malabar. Wilbanks stated it will be back before Council at the next meeting. Also, Acquaviva wanted Council to know that she had printed all emails from her computer and brought them to Town Hall and had them placed in her file. McKnight stated the Town clerk should have been copied on the emails so we should have them anyway. Acquaviva stated that this is right but she physically did that so that there was no; you know. McKnight stated he never thought Acquaviva was trying to hide anything. Acquaviva stated that he had said he has things in his brief case so she hand printed the documents. Everything that came off my computer, I hand printed and put them in my file. McKnight stated that he disagreed with what she wrote. Acquaviva stated that he could disagree with what she wrote, he didn't say she was trying to hide anything. You said there are two people sitting up there that shouldn't be; that is a pretty... Rivet stated that it was a strong statement. Acquaviva stated that is a very strong statement to question someone's integrity. Rivet stated it was harsh as did Acquaviva. It's water under the bridge. She encourages people to watch the meeting she wants people to know it's her character. McKnight stated that what you said about Carl Beatty was incorrect. Acquaviva stated that she never once said his name. McKnight stated that is what she implied. Acquaviva stated that wasn't true. Acquaviva stated that she had neighbors say it wasn't Mr. Beatty. I never once said; I said I can't believe how nasty it is in Town. McKnight stated he read the email. Acquaviva stated that you can read the email; you can say whatever about me but it's not right. Bohne asked if Council wanted him to respond to two matters that were brought up. McKnight stated he thought that it was already answered. Bohne stated that with regards with Fire Department, he does recall an allegation of sexual harassment at the Fire Department and it was handled with the Town Administrator. That is his recollection. Again that was a few years ago. That's what he remembers and all he knows. McKnight stated he knows something happened but he doesn't agree with the politics part of it.

2.) McKnight: Thanked staff for getting the agenda out on time and the web site up to date.

1.) Acquaviva: stated the web streaming was an issue. She apologized for it getting heated with last month's meeting but felt a lot of good things came from the meeting. A lot of the residents looked at the meeting. Mayor stated that there were 44 views the last time he checked it. McKnight stated he doesn't think it's well known. Mayor stated it was his intent to have a link to the U Stream site on our website. Wilbanks stated the link is in the center of the home page. Mayor wants a link that takes them directly to the link of the video.

N. PUBLIC COMMENT: General Items related or not to agenda items (Speaker Card Required)

O. ADJOURNMENT

There being no further business to discuss, **MOTION: Rivet / White to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 9:00 PM.

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

TRANSCRIBED BY:

Cynthia Kelley
Cynthia Kelley, Deputy Town Clerk

ATTEST BY:

Debby K. Franklin
Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 3/7/2011