

## MALABAR TOWN COUNCIL REGULAR MEETING

April 4, 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 1 Council Member Carl Beatty.

### B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

MARISA ACQUAVIVA

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Would also note for record that Town Auditor Jim Warmus and Randy Nunley of Warmus Durkee Osburn Denning, is in attendance and Malabar Fire Chief Dennis Covey.

### C. ADDITIONS/DELETIONS/CHANGES: McKnight reported that on agenda face sheet, the Audit firm name is wrong – should be Henning.

Mayor stated Connor Mahoney finished his Eagle project of installing fire pit at Malabar Community Park and would like to update Council. No objections.

Also there is a change in presentation: Mr. Abare will present PowerPoint presentation before introducing Architect Mr. Dean. No objections.

### D. PRESENTATIONS:

Connor Mahoney: Goes over project as Franklin shows pictures of project. It was a successful project and they completed it the week before Springfest. The cost was less than he estimated; The Town portion was only 31.75 (over the discretionary monies). Home Depot donated a pallet of sod. He made some changes and the sod is around the fire ring. He noted that the water pressure is very low and needs attention. Added a little concrete for the benches. Also added the top soil. The changes were made because the sod couldn't grow on top of the sand. Council complemented Connor on his project. Connor said you could have a flag retirement ceremony to spotlight the new fire pit.

Annual Audit Report FY 2009/2010 Averett Warmus Durkee Osburn Denning

Mr. Warmus introduced himself and Mr. Nunley, the audit manager that handled the audit. They issued a clean opinion – opinion with no exceptions, pg 1 that is the audit opinion that it is in compliance with the generally accepted audit principles. This is the standard report for a government agency. On pg 32 is the compliance report. This is a clean report on laws. Those are the two reports that the auditors submit; the rest in information and data from the Town.

He referred them to pg 29, budget as approved is in left column, third column is what they compare with actual. You had a net income of 17,823 in a very tough time. He commended Council and staff for reducing the expenditures in such a tough year.

Mayor asked about figure on pg 4; Warmus said part of that is depreciation. He further explained that is the difference on govt reporting. The depreciation that was charged is in foot note #4 on page 23. The building here, get put back on the book for GASB 34. the fire equip, it came to 254K. Warmus said look at pg 12.

Mayor said comparing pg 5 to pg 29 again, referenced the revenue on pg 5 look at interest. Then look at pg 29. Warmus said on pg 5 the lost revenue in SBA Fund B of 6K and that is put against that on

page 5. Warmus said he would be happy to meet with Mayor and answer all his questions at a mutually agreeable time and date. Mayor is looking at the general ledger dated for the September 30 year end. Mayor asked if there is any simple way to report the end of year report to look like the monthly report. Warmus said he gives them (mgnt) the schedules and they can put the numbers in at the end of the year. Mayor asked about reserves on deposit and not restricted. Warmus said look at pg 29. The number is 794,000.00 at the end of the year. He will send the detail and they can drop it in. Warmus said the Sept 30 report doesn't have all the adjustments. Move the audit date out and do in Dec instead of Oct. Warmus doesn't have a problem moving it out to Dec. He stated the quicker you get the monthly financial statements the less accurate they are going to be. It is hard to get that all at the same time.

McKnight asked if the audit reports could be sent via email with a read receipt. That will count. Next year send the reports via email and mail Mayor hard copy. Warmus appreciates working with the TA and Clerk and the Council and the residents of Malabar.

- Mr. John Dean, Architect

Mr. Abare described the Architect; Mr. Dean came on 3/30/2011 and met with him and CM David White at Town Hall. Also present were the expert affiliates Mr. Dean brought: a water and sewer engineer, a civil engineer and a structural engineer. Abare explained the TA and Clerk were also at meeting. They discussed the intent of the inspection was to determine what minimum improvements would be necessary to utilize the building for the Town.

Power Point Presentation is attached. Apex did termite inspection this date. We could budget over several years for major improvements. Mr. Dean said it is completely appropriate to block the stairwells with a sign stating closed/ no access if Council wanted to keep them out of the 2<sup>nd</sup> floor. They accompanied them to old sch house for inspection. Met Malabar Fire Chief at site. They went through building and Abare put PowerPoint together from discussion with Mr. Dean afterwards.

John Dean, architect, drove around town and likes it. He brought his engineers with him. This is an ace – good shape, got significance and charm. Has been maintained to good condition. Put a lot of blood sweat and tears into it by owners. It is located next to town owned property. It is on a large lot. It can be used for a community center. The wood working part can also be used for many things. Many problems can be solved. This is an up and open building with continual use. If it is closed then it is more work. As a community he has to push the vision and be proactive. Community ctr – historical preservation; is it adaptable. Is it easily assessable. Can it be maintained in a reasonable amount of time. Can do it cheaper than a new building. New building may have more useable area but not the charm. He gave three examples:

Sebastian Community Ctr had more problems, had to add external things, under floor, windows replaced; city hall was using without using the top floor. Sebastian loses money on having he community college there but it is their decision and creates good community. Had their bldg not been utilized there would have been an outcry from residents.

Kenansville, secured the bldg thru volunteers, created special district zoning and that is unique and that is what you can do here. Park next door needs bathrooms and water and you can make it work for both places.

Vero Heritage bldg., 4 days from being bulldozed. City council was against it. They got a stay on the bulldozing. It has the largest wood floor. The city keeps the building and a non-profit runs it. City charges non-profit \$1 per year. Then they got award and city was pleased.

This building is in really good shape. The continuing uses are similar to a community center. Code says this, interpretation says that. Who is interpreting the code. Work with zoning and building dept. It has a history of being used as a school, restaurant, pot luck dinners for community.

Roof needs a roof inspector even though it looks good. He said they could spend \$200 for inspection Plumbing – make both downstairs restrooms ADA compliant; 2<sup>nd</sup> floor, bathrooms will cost 15K, don't do right away. Elevator on outside, 80K. Can bring inside but that may compromise the structure. Can use for museum. Electric is up to code. Replace old panel with new one. AC add another 5-ton unit downstairs and add a new 100-amp service. Don't have to do it all at once if you get cooperation. Add lights, and fire extinguishers. The doors – put in ADA hardware. Asbestos – he doesn't think there is any but you have to have the inspection. Termites and pest control to be dealt with. Lead paint - \$100.00 to get someone to insp. As long as it doesn't come off, flake off. Hurricane protection, it looked at it as a continuing use, we can get started and work on protection in the future. He estimated 32K-40K to do septic. Well needs to be replaced; 25K for a new water system. If you are under 25 persons, then you must upgrade the well and add system. Give yourself time to work it in. Floor is good, some sag around stairs. Bldg is not hurricane anchor, There are a few big cracks and they need to be filled. 2<sup>nd</sup> story structure looked good. Roof is good. Owner did structural repair. If town is going to buy it do a little more looking. Buy but put conditions, example, have owner put in the new floors upstairs. Foundation no immediate thing, sag around steps.

Parking, this is where we work together. Put in concrete parking with 2 ADA spaces and leave the rest grass. There have been people parking here. With new project you have to do certain things. But if everyone cooperates you can look at it as a continuing use. Where he works, they work in a cooperative method. The ADA ramp is adequate. Drainage – existing swale in front. Flood zone X is very good. The kitchen is an addition to a building and it is over 50 years old. The kitchen is part of the history of the building, so the kitchen and the front door and the bldg being attached and is part of history. They can add an elevator in the future.

Kenansville group applied for grant funding over the years and has moved up in the ranking list from 32<sup>nd</sup> to 16 but still have received no money. Insurance did not look bad but if you want to do a wind rating.

Mr. Dean stated to Council that they need to decide on their vision. Continue to do your due diligence. What is your vision and how are you going to pay for it. Can't underestimate the value of an historic building. In Sebastian they put up new stuff that rusts to keep up the ambiance of the historical.

He stated you need the inspection for asbestos, and that should be \$1500. You have to get report on septic and well. He suggested they get every drawing you have on the building. It saves money.

Mr. Dean said you need to have a joint meeting with the Building Official, the Fire Chief, the Zoning Director and the Town Attorney. They need to do a Master Plan vision. Resources become available when you work like this. Make a list of these items you want the owner to take care of. Buy "as is" but you want seller to take care of certain items. The immediate improvements are estimated at 150-200K over the cost of the building. Phase the improvements over time. If this is within the vision.

White asked if the upstairs bathrooms are a convenience and not a requirement. Technically you should have bathrooms on both floors, but the key is the interpretation of code – improve at a later date. He referred again to the importance of the understanding between the BO, FC, Planning Director and the Town Attorney. White asked about the windows. Mr. Dean said in Fellsmere, they got a grant for the translucent shutters and they put them up in season and down after season. Mr. Dean said in the past the grant monies have helped and if you know the right people to approach. White asked if Mr. Dean is going to present a field report. Yes he will have a report.

Acquaviva asked about the kitchen. Dean said you could spend 12-29K on kitchen by putting in a warming kitchen, or spend 50K to put in the hoods and a regular commercial kitchen. You can make it happen now – add more sinks. It has been getting by. As a community center put some money in the kitchen but it doesn't have to happen right away. Make a plan and get the community to participate.

With an existing building there is always tomorrow's surprise. The advantage of a new building is you don't have the constant repairs. But you also don't have the ambiance. He would tear out the bathrooms and open the entire hallway and it doesn't all have to happen today.

White asked if he has knowledge on financing. He asked if the bank will have more stringent requirements or will they let us do it in stages. Tell them you are going to do it in stages. Mr. Dean said he is passionate about this work and he is not always all for it. You could spend \$150-200K with a liberal interpretation of Town code by BO, FC, and Attorney. You will have to deal with water and sewer. Mayor asked if it would be less than 50K. No, it would be more like 120K in the first year. Mr. Dean can't give a definite number without more digging. Dean gave ranges in his presentation. White said we should include the initial cost for first year repairs on the mortgage note.

**E. PROCLAMATION:** Support Melbourne Arts Festival April 23, 24, 2011

**F. CONSENT AGENDA**

**1. Approval of Minutes**

Workshop Town Council Meeting – 03/07/2011

RTCM minutes – 03/07/2011

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Rivet / Acquaviva to approve the consent agenda as presented. **VOTE:** All Ayes.

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

**H. STAFF REPORTS:**

ATTORNEY:

- Received a call from Atty Volk who represents Mr. Krieger. Re: discussion on fire inspection warrant. He brings it up as when they discuss fire insp, keep it generic and don't use specifics on Krieger's place. He cautioned Council not to discuss the specifics.

Beatty asked about the rate increase in reference to the contract with Palm Bay. Rivet said it is not what is fair; it is what is in the contract. Atty said he wants to leave it limited in purpose in public forum. BW will put result with Atty and put it in the FYI. Mayor suggested having a Council member go to a Palm Bay meeting and ask their Council why they don't want to meet. Mayor volunteered; he will get with TA and get info and present to PB council.

- Also got email from council member in G-V. Advertisement on commuter jet service coming to the area. He gave to TA. It was website and doesn't know if County has approved it. McKnight saw a jet heading there to land.

ADMINISTRATOR:

- Ref the workshop – Palm Bay has done rate increase after doing a rate study. The notice was on the water bill and we missed the small print.

CLERK:

- SCLC Dinner Meeting is April 11, and Cape Canaveral is host with Waste Pro
- Do you want the pill mill moratorium on next Council agenda for action? I got no direction at last meeting. The State has failed to enact the approved legislature. Do you want staff to draft regulations or extend the moratorium? The County extended their moratorium last month. The cities of Satellite Beach, Titusville and Cocoa have adopted regulations governing these types of clinics.
- I have forwarded information from current Legislation going thru this session that may have an impact on local government.
- Spring Fest was great success. Would like Council to recognize and thank our small staff for the terrific work they did without using overtime. Cindi is the front person on the

phone but every employee contributed to the success of the day. We made \$500.00 more than last year just with ticket sales and people seemed to stay longer this year. We have some ideas to make it even better next year.  
Marisa said thank you. She drives by early every morning and sees PW out working.

**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 Annual Audit Report for FY 2009/2010 (Reso 79-2011)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2009/2010 BY THE AUDIT FIRM OF AVERETT WARMUS DURKEE OSBURN DENNING; PROVIDING FOR SUBMITTAL TO STATE AND PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

**MOTION:** Beatty / Acquaviva to approve Resolution 79-2011 as presented. Discussion:

**VOTE: 1.)** Beatty, A; White, A; Rivet, A; McKnight, A; Acquaviva, A. Motion carried 5 to 0.

**3. Correct Error in New Street Name Reso 74-2011 (Reso 80-2011)**

A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE REPEAL OF RESOLUTION OF 74-2011 DUE TO ERROR IN LEGAL DESCRIPTION AND REPLACING WITH THIS RESOLUTION NAMING THE RIGHT OF WAY SOUTH OF TOWNSHIP ROAD FOR A DISTANCE OF 350 FEET IN SECTION 6, TOWNSHIP 29, RANGE 38 AS CHRISTIAN LANE; PROVIDING FOR THE FORWARDING OF THIS INFORMATION TO BREVARD COUNTY ADDRESS ASSIGNMENT FOR E 9-1-1 EMERGENCY IDENTIFICATION PURPOSES; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**MOTION:** Rivet / Acquaviva to approve Resolution 80-2011 as presented. Discussion:

**VOTE:** Beatty, A; 1) White, A; Rivet, A; McKnight, A; Acquaviva, A. Motion carried 5 to 0.

**4. Budget Adjustment (Reso 81-2010)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2010-2011; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** Rivet / Beatty to approve Resolution 81-2011 as presented. Discussion:

**VOTE:** Beatty, A; White, A; 1) Rivet, A; McKnight, A; Acquaviva, A. Motion carried 5 to 0.

**MISCELLANEOUS:**

**5. Decision on Old School House**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Mayor asked Council regarding decision. Rivet said we don't have enough info. White agreed and said we should contact a bank. Rivet said we have money in reserves; he would not suggest we use it but we should all discuss the options. White doesn't think we should take it out of reserves. Acquaviva has been talking to residents and was thinking about putting it on the ballot for residents to vote. She said the residents she has spoken with are 50/50. McKnight and Rivet also. Mayor said the referendum is not the way to do it. If you put it to residents – they are not informed.

How much are we going to ask the bank without knowing how much for the repair?  
Find out the requirements for water from our own contractors. Also TA can have Morris estimate the septic cost.

Acquaviva said is this the project we want to go with – what about the Billie property and the town hall. She is not confusing the issue but is this the vision we want to go forward with.

White said at what point do we want to make the decision of whether we want to buy it. Rivet said if the price is right then he is yes. McKnight said the same thing if we know how much it is going to cost us. Rivet said it is worth pursuing. Beatty said we just learned some new things – the cost of the termite treatments. We have to take those estimates and then fit them in to the budget.

Acquaviva thought there was a lot of good information. Why is the agenda worded like that? Staff requests direction.

Mayor said after the FC and BO interpret it, then we'll send info to Attorney. Mayor doesn't want to spend money on the attorney up front. Rivet said we can negotiate a purchase price, present the asking price, and determine the cost to bring it to usable state as a community center with cost estimates.

Look at financing options, mortgage. Rates, length of mortgage, prerequisites. TA said one of the items Mr. Dean presented was having a strategic plan – a vision.

Mayor said to find out the banks requirements. Attorney Karl Bohne said you should just call it a historical building. Rivet said don't throw out extra info. Mayor said to put on next agenda for action again with same title: decision on school house.

## **6. Fire Inspections (Mayor)**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

This is Mayor's item. Read his write up. He suggested this should be voluntary. Mayor said Malabar should be more business friendly. The way to do it, is don't charge.

Speaker's cards: Grant Ball, 1190 Hwy 1, wanted to come before Council and point out some inequities. He stated he had a continuous business license since the 1960s. We then had fire inspections done by the Volunteer Fire Chief. It was friendly, upbeat and he looked forward to it and gave them a donation for the department.

McKnight thought businesses should have received something in exchange for inspection; like fire extinguisher certification and keep price to the basic 35.00. The smaller you are the more we expect you to pay. Ball is bringing it up because he was given a letter in 1998 regarding the TA and Fire Marshal giving his business an exemption. It seems to him that the TA at the time changes this and we need a consistent plan.

Council discussed the fire inspection revenue budget of \$3000.00 and the \$2000.00 paid to the Fire Marshal for the inspections. Acquaviva stated she gave the information to Mr. Grant this evening after speaking with him. She only pays \$34.00 in Palm Bay and they have two stores. Acquaviva said in 1993, Malabar charged a flat fee. Franklin said the fee resolution in 2007 was drafted after reviewing

fees from other municipalities in Brevard and the table came from the one Brevard Cty uses based on square footage. Acquiviva does believe \$100 is too much to charge Mr. Ball and we need to be more business friendly. Do inspections at no charge. That is Mayor's opinion. Acquiviva said she pays 34.00 and 100 is too much. Mayor got list from Franklin on businesses needing fire insp. He went through the GL page and only 28 businesses are listed. His question is did all these business get inspected. TA said she wanted a list of required fire inspections. She has not received that from Fire Marshal. Also had issue with him doing inspections without notification.

Acquaviva said there are problems here. She doesn't pay an administrative fee in Palm Bay with her fire inspection and Malabar should not either. The Fire Marshal is coming on line with the inadequacy. TA said she doesn't change processes as whimsical things. This administrator did not change anything. The Council in 2007 adopted this. TA said bring it back for fee schedule. Rivet said periodic can be annual. Karl said the statutory direction requires inspections. McKnight said they should get a benefit or the insp should be free. McKnight said when the OL changed to BTR we lost the ability to have it connected to fire insp.

Covey, attorney said the inspection can be done by the fire dept staff and not a fire marshal. Bohne said some of the fear is the inspection may go too far; write up a new wall. Covey said life safety issues will be noted. The wording on the inspection form and letter should be positive. Report should be worded as a safety inspection.

Mayor said the Fire Dept should do these inspections because they can know the layout. Does that mean they have a sketch that they review before they respond to a fire. Covey said in a perfect scenario but not in reality.

Sec 8-32. Implied consent. It says that the town fire marshal or his designee is authorized to enter any building. That needs to be re-written. Covey said this wording is necessary in case of emergency. McKnight said this is the same kind of thing as the foreclosure ord that gave BO authority to enter property. Mayor said the code should be clearer and state in case of emergency.

Rivet said who does the insp and what is the cost. Asked chief if he has manpower to do one insp a week. Bohne suggested developing nice language. The code should be user friendly. Karl said the implied consent is required.

TA said we have not spent a dime on Spec Magistrate. Bohne said he will get with Chief and come up with list of inspections. Building changes affecting life safety.

Rivet is proposing we do away with fees and do insp for free.

#### **L. DISCUSSION ITEMS:**

##### **7. Review Fees for Fire Protection Services by Brevard County**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Discussion and Direction

Rivet said this is something we need to present to residents. Mayor said same thing. Beatty said put this info in the next newsletter – state that we looked into this issue of having the county provide fire services learned the cost is less to keep our Malabar fire department. White said it is news to him that there are times that there is no one there. Chief is making changes. Starting in May there will be a lieutenant there every day. McKnight said they were bringing people here from Vero and Kissimmee and then leaving. We need people to be there. If they can't put in their time, they should not be there. Covey said that is always going to be a problem. Rivet said in a few cases that may not be true. McKnight said 3 or 4 were carrying the load. TA said Covey addressed that immediately. Covey also said he also moved closer to town to be able to respond faster. Rivet appreciates that. Rivet agreed that we should put this in next newsletter. White is happy to hear of the improvements at the fire dept.

He would support keeping the FD now. He was frustrated before with the problems he had heard about. Acquaviva said get the community involved again. Rivet said we had a divisive group in the FD.

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

- 6.) Mayor: thanked staff for Spring Fest. Stated next year is the 50<sup>th</sup> anniversary.
- 5.) Beatty: nothing
- 4.) White: nothing
- 3.) Rivet: nothing
- 2.) McKnight: appreciates staff at Spring Fest and on time agenda package.
- 1.) Acquaviva: thanked staff again for Springfest. She mentioned the Florida fusion pamphlets. She referenced it to Chief Covey. Please look at that.

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

Bud Ryan, re: school house purchase: per the recent Census 2,770 and some odd people. How many pay taxes. He thinks a lot are on fixed incomes. O There is another segment that can do what they want. Election, there are people that don't vote. Long term impact. Get realistic figures and involve the public. How much it is going to increase their taxes. If you build it will they really come? Sebastian loses \$10,000.00 a year. Don't rush into obligating the future population.

Brian Vail, had a blast at Spring Fest 2011. He volunteered again in the dunking booth. They added a second dunking booth this year. He didn't get around to all the events but it was a great day. Regarding fire inspections and his business in Palm Bay, he had his inspection recently done by two fire fighters on a fire truck that stopped in unannounced and it cost him \$50.00. He supports the Malabar Fire Dept and continues to support it.

Bud Ryan, re: fire inspections, most businesses have insurance and the insurance companies require a fire inspection. Consider accepting the certificate of compliance from the insurance company to be evidence of the fire inspection.

**O. ADJOURNMENT**

There being no further business to discuss, **MOTION:** Rivet / Beatty to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned 10:35PM.

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

ATTEST BY:

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

Date Approved: 4/18/2011