

MALABAR TOWN COUNCIL REGULAR MEETING

October 17, 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 Mayor Tom Eschenberg.

B. ROLL CALL:

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

MARISA ACQUAVIVA, excused

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE

STEVE RIVET, excused

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated for the record that also present is PW Dir Tom Miliore and Malabar Fire Chief Dennis Covey.

C. ADDITIONS/DELETIONS/CHANGES: none.

D. PRESENTATIONS:

E. PROCLAMATIONS:

F. CONSENT AGENDA:

1.a. Approval of Minutes

Regular Town Council Meeting – 09/26/2011

Exhibit: Agenda Report No. 1.a.

1.b. Budget Adjustment (Reso 103-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2011-2012; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.b

1.c. Council Procedures (Reso 104-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 01-2009, COUNCIL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1. c.

Recommendation: Request Action on all

MOTION: McKnight / White to approve the consent agenda. Mayor read the Resolution 103-2011 by title only. Mayor read the Resolution 104-2011 by title only.

Discussion: none

ROLLCALL VOTE: 1.) Beatty, Aye; White, Aye; Rivet, Excused; McKnight, Aye; Acquaviva, Excused.

Motion carried 3 to 0.

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

Speaker's Card: Steve Morris, 2000 Weber road, this is his 6th time here. He said he had other things to do than be a caretaker of 2000 Weber road. Has letter from TA with wording saying to call on her cell; also has been given her card. Nothing has been done and he has hired an engineer and is ready to go to court. He thanked TA for starting ditch on Weber but it was never done. Mr. Morris said TA is

calling CM McKnight a liar and you are calling your street guy a liar. Mr. Morris asked to see copy of as-built of water control. Mayor asked him to be specific about what action they want the town to take. Mr. Morris said rescind the thing the town gave Foley saying it was done. Mayor said then his opinion is Mr. Foley must do something.

He thanked Mayor for coming out there. Mr. Morris had water going over his driveway. If you could shut off Foley's water you would not have this. He said before Foley developed the land some of the depressions on his land held water and now it is filled in and runs into town's ditch. Mr. Morris said he heard that Mr. Foley is asking town to reconsider his project and Mr. Morris is making a similar request – reconsider Town's action on Mr. Foley's property.

Mayor thanked him for coming down.

McKnight said he is not civil eng but something does not seem right there. He has seen the water run south from Foley to his. The green dye was on Foley land and it ended up in Mr. Morris' land. Doesn't know how that little berm can hold water back. If water was running down Foley's property into Town ditch and then overflowed onto Mr. Morris' property, then it would be a Town issue.

Mayor will talk about under reports.

H. STAFF REPORTS:

ATTORNEY: Since the modified Order was done on Sunrise project, the Clerk and the Atty have gotten communication disputing the Council actions. According to the law and the Town procedures, there is no right to a re-hearing. In our policy on quasi-judicial policies we do not provide for rehearings. We got more communication from them today and he responded to them again stating the same thing. His position is they are done.

White said the only thing he thought was that we should give them specifics. Bohne said they did that in the modified order. Due process was done. Based on what was submitted to Council there is substantial competent evidence presented to support why the project was denied. They then had 30 days to appeal it. He explained the tolling process and that it does not stop just because an applicant requests a rehearing. The position of the Town is that we will not provide for rehearing. If they think they can take it to next level that is their decision.

McKnight did not give specific details so as to not be a bias rather than specific. White said Mr. Reilly's presentation clearly laid out the issues and deficiencies. Attorney stated the Mayor asked Mr. Reilly if he wanted to make it part of the record and he did.

Bohne explained the rehearing. Substantial competent evidence was submitted to show the deficiencies. Bohne thinks we are fine. Their time to appeal is gone. He talked to an attorney and they indicated they were not going to proceed. This does not prevent them from reapplying. White questioned how they can re-submit the same plan. Bohne said the resubmittal would have to meet the criteria you stated was deficient.

Mayor asked about Palm Bay re: utility issue. The litigation is proceeding but not on fast track. They were directed to meet with Palm Bay City Mgr and Atty and they did and that led to further negotiations which are ongoing.

TA said they have since met with Palm Bay staff to get better understanding on both sides. City Mgr Sue Hann brought her staff here to discuss the issue brought up by Beatty on what is included in making up the base rate. TA had asked previous City Mgr and Utilities Director for months for the calculations that made up the base rate. She was given two rate studies but neither explained the makeup of the base rate. The base rate typically is made up of costs of infrastructure, materials, etc. That is not something they should burden us with. We keep our own stock and do our own maintenance. Palm Bay thinks they can produce the rate study from 1995 that would explain what makes up the base rate. There is a follow up meeting set up for next week. TA said the meeting was very good; but did not discuss the litigation. Beatty thought there is one issue regarding the litigation and it is the surcharge. White asked why staff is negotiating. The litigation involved the surcharge,

attorney fees, reimbursing for previously paid surcharges. Bohne said after the hearing, they were directed to meet. We have not abandoned the lawsuit. TA said there are new people in Palm Bay and the meeting was productive to get both sides up to speed on the issues.

ADMINISTRATOR:

- Sandy Sanderson – FPL, the last time he was here was when they renewed the 30 year franchise agreement. They went over some goals on how to keep prices down and implementing some energy savings. He wants feedback from Council. Do they have issues, concerns so they can take action before they rise to the level of the major issue? Summary of how plan is working – there are 55 locations where they can buy power. Of those 55, FPL is the lowest. In reliability 99.965% that is very high for this industry. The environment is also very important to FPL. In Brevard the new power plant is going in Pt St John. Old plant burned oil. They used fuel to get 800mgh of energy. Now use much less. They are also focusing on new technology – solar plant on NASA property. Putting solar and wind plants elsewhere also.

McKnight doesn't think we have the reliability that the rest of Brevard has – due to our rural environment. Typically it is 5min every 4-5 weeks, flicker on weekly basis. The flicker is protective procedure. It does it three times. It is usually done due to wind. He will go back and look at this area to trim trees. Momentary are almost always. Last storm they were out for 4 hours. Last week, it was on par with a hurricane. McKnight is not complaining; this is a rough environment. And this last storm was much more than we have had for Fay. McKnight asked if there were any cost share programs to go underground. Yes. They went to PSA to upgrade to extreme condition" instead of just to code. Sustained winds of 139mph instead of 119mph. Also looked at what we could do a study to see what we could help pay for putting this underground. FPL will do 25%. If homeowner can do trenching, then they would still pay 25% of cost. FPL will give close price for free. If you want the detailed cost, they will collect a fee to cover that cost. The cost of the eng is built into the fee. The back of the envelope estimate is pretty darn close. They are happy to help. Some cities will do the trenching.

Mayor lives south of Jeff and agrees with him – once a week something is flashing. He was surprised because his power was out for 13 hours. Bill Arnauckas from audience also had power out for 13 hours.

White is frustrated with automatic phone loop when you try and call for status. Sanderson said there is a website and email for elected officials that will give current information on power restoration. Please do not give this out to residents. He then said there is available to public www.fpl.com/status you can look at any area of the town - yellow triangle or red squares; that is being tested and will be released to public soon. How can we use that if there is no power? If there is a major line out we wouldn't know that until it is called in. In 2012 and 2013 all meters will be changed out on all homes to smart meters and they will be able to detect power outages. They are coming up the east coast with this upgrade.

If you call the phone board and let them know of power outage. They have a priority list to return community to normalcy. The most for the shortest period of time. Until you get your smart meter, call. They bring in people from other states and that will help them to determine where to deploy them.

Carl Beatty said all along US 1 the power was out. Power going across the road and then the two wires were hitting. Sanderson said last weekend was atypical. When the previous storm just skirted coast – FPL called up for 1000 workers from OK and TX. Last weekend's storm was not supposed to be so severe. White said he passed over 100 FPL trucks going down I95. Sanderson said every FPL employee has two jobs - normal job and storm assignment job. FPL has their own meteorologist and they move assets and reallocate resources based on that. Projections for last weekend were off.

TA said she is inundated with calls from people saying the tree cutters trim and leave it and don't mulch or haul away.

Ashplunck people have normal mode, cut and remove and leave ground clear. During major outages, cut limbs so line crews can restore power. Cut and drop in storm mode. They can't come back

When they get 94-95% back on power, they go back on normal mode. He will definitely follow up on that. He left his card with them. Craig Bock is our service person. If that doesn't work call him.

▪ Regarding previous public speaker, TA wants it on the record that she has not called this Council a liar or CM McKnight a liar. She will go back to Town Eng Morris Smith. McKnight said he did not get the answers that night and he didn't think the topo maps explained what was happening. TA proposed a meeting when Eng Smith is back. Keep it between CM McKnight, Eng Morris Smith and herself. That would be the most productive. Morris Smith is due back at end of month.

CLERK:

- Fla City Govt week is Oct 16-22 or this week. We have bumper stickers this year that say "My Town" instead of "My City" also pins on credenza. She has given some to Cindi for tomorrow night's Teen council meeting.
- Next Council mtg is Nov 7. Then we need to hold a special meeting to swear in the unopposed Council Members. We had this listed on the annual calendar for Nov 10 but that is Veterans Day. We can hold it on Weds Nov 9 at 7PM if that is agreeable. Council pointed out to Clerk that Veteran's Day is always on Nov 11. The meeting will remain as scheduled on Thursday, Nov 10, 2011. White will be in New York. McKnight and Beatty will be able to attend. Consensus to have Special meeting begin at 7PM.
- We asked for a pool credit for a resident in Brook Hollow. We have received the credit from Palm Bay Utilities – part on water and part on sewer. Since the credit given by Palm Bay was based on this customers water usage am I correct that we pass on this credit in full to them? Yes. Council consensus was to pass it on as given by Palm Bay.
- FLC is offering Ethics course in Orlando on Nov 18. The cost is \$30.0 and the amount will be returned upon recorded attendance. Is anyone interested? No response.
- FLC is offering the advanced IEMO course again in Orlando from Oct 28-29. Is anyone interested? No response.
- FLC is offering the 51st Legislative Conference in Orl Nov 17-18. Registration is half price – 87.50. Is anyone interested? Carl Beatty will be there for his quarterly committee meeting and may want to stay for entire event. He will review agenda and contact Clerk.

I. PUBLIC HEARINGS:

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

**K. ACTIONS ITEMS:
ORDINANCE: First Reading
RESOLUTIONS:
MISCELLANEOUS:**

- 2. Approve Length of Commitment for Banking RFP**
Exhibit: Agenda Report No. 2
Recommendation: Request Action

Discussion:

TA said she had discussed this with Attorney and felt Council should determine the term of an agreement with the bank for inclusion in the RFP before it goes out. Scope of services she got from Franklin had a five year commitment. TA thought Council should decide this up front before RFP goes out instead of after we do it and then bring it back to Council and then have this discussion. Council discussion regarding the five year commitment term. Mayor does not see benefit. He said you could

call and ask what they would charge for a 30 day commitment and a five year commitment. TA said the cost of checks and time involved in doing the switch would not be beneficial for a 30 day commitment. TA said perhaps a two year with ability to extend three times.

Franklin offered for background information that she did not include a term in initial RFP given to TA. TA stated a term would be an incentive to bank to offer a better rate structure to town. In the past, in Malabar, we have selected the bank and then brought a resolution to Council for formal action. McKnight asked Attorney for insight on terms. Bohne can't say whether a two year vs. a five year vs. no term is better. White agrees with Mayor. What is the advantage? What do we get for this? McKnight does not see any reason to include a term. No term is needed. They discussed fees. Franklin said we pay fees now and then the following month they are credited back. They said they can't waive the fees. Mayor suggested TA call banks and get costs.

TA will work with Attorney and make calls to banks and ask for fees. TA will follow up in FYI.

L. DISCUSSION ITEMS:

M. MAYOR AND COUNCIL REPORTS:

- 1) Beatty – nothing
- 2) White – nothing
- 3) Rivet – excused
- 4) McKnight – drainage issues still going on in town. Ditches filling up and spilling into residents yards – it should not do that. TA said that most Malabar properties are in low areas. We still have much to do. TA said call Mr. Hard and ask him about improvements. That quad section of the Town was worked on after T.S. Fay. McKnight said the area of Hall and Atz, along Weber Road the water doesn't have anywhere to go. TA said CMA did the stimulus job at Atz and Weber and a smaller round pipe was put in per specs. We can't go after contractor. The scope of work put out by Eng Bill Stephenson showed he did not put in effort. The pipe appears to be too small. The Town is going to have to put in another larger pipe. The ditch from Weber Road that goes north on Weber, East on Atz and north on Corey and then bottle necks at Fern Creek Park and the pipe going under Malabar Road there. Also another pipe under Malabar Road just west of Hirsch property. FDOT had just cleaned that pipe out before this storm event.

TA said also another article for newsletter – water not moving – there are blockages like trash cans and lids. Ask residents to go check their ditches. PW Mgr Tom Miliore asked what property McKnight was talking about specifically.

Bill Arnauckas from audience said difference in water level in his yard from event on Sunday morning and the T.S. Fay event was only 4". His yard looked like TS Fay – a pond. He said when they put the nursery in; they created a condition that allowed water to flow from the property onto adjacent property. He added 10" of earth around his pond but it didn't help in TS Fay and it didn't help Sunday. Also, some properties are so overgrown they clog the drainage. He also agrees that the pipe at Atz is too small. PW Mgr Tom Miliore also said the culverts going up Corey Road are not consistent in size and are not at set similar levels. As culverts go in now they are making sure the elevations are shot. McKnight said he knows there are improvements. He never saw it with this storm.

TA said the PW Dept gets to a point where they are ready to start on one of the drainage projects and then they have another collapsed pipe. TA asked Council to send her an email with addresses that have storm and drainage issues.

McKnight said there was a resident's survey done – would like tabulation. Thought the purpose was to have input during budget process. TA thought clerk did it. Franklin said TA did the survey and said she was going to do the tabulation on Excel spreadsheet. Franklin said she only did an informal manual review of the response to the question related to keeping the millage at 1.6630 or supporting the roll

back rate of 2.0651. It went from about 50-50 to ending with about 60-40 in support of keeping the millage at 1.6630.

2) Acquaviva – excused

6) Mayor – He said you can't count these recent kinds of storms in the discussion of drainage problems. These kinds of events are the normal rain storm. He measured 8" in his yard. You get a lot of water in a short period. He did notice that it went down much faster than in the past and he doesn't know why as his ditch does not move. He prefers it that way as he wants his water to soak in rather than flow off into the river.

Regarding Mr. Morris situation and his request to rescind the approval on Mr. Foley's property. Mayor asked Atty Bohne and Bohne said Town could rescind only if there has been a violation of a code. He doesn't know if there is one or not. And it would also depend on the nature of the violation, it could also require going to special master. He hears a lot of things about this at meetings but has not been asked to review issue. Mayor said it was previously a field and was pasture. Bohne said there is a lot of this is on the Bldg Ofc. Mayor is happy there will be a meeting with McKnight and TA and Morris Smith. He will be back from Japan at end of month. Mayor said the question is – is there anything the Town can do? TA said this is different because it is agricultural property and that is the parameters the Bldg Official was working on.

Mayor has not seen the paper he asked for on the ladder truck. TA said it was sent with last FYI. TA will resend it to Mayor.

Mayor said Teen Council tomorrow night. Parking RVs in front yards is on the agenda. P&Z is working on it now. In 2009 he had this at Teen council and they approved it with a 4 to 2 vote. He now wants them to deal with the unintentional consequences of allowing the parking of RVs in front yards. Now he is presenting additional issues – multiple vehicles, nuisance complaints from neighbors, etc. He also has for their consideration whether having six boats in front yard for sale is a used boat yard.

N. PUBLIC – speaker card required

O. ADJOURNMENT

There being no further business to discuss, **MOTION:** White / Beatty to adjourn this meeting. **VOTE:** All Ayes. The meeting adjourned at 9:15 PM.

BY: _____
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

Date Approved: 11/9/2011

(seal)