

**MALABAR TOWN COUNCIL REGULAR MEETING**

**December 5, 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 3 Council Member Steve Rivet.

**B. ROLL CALL:**

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Clerk stated for the record that also present is Malabar Fire Chief Dennis Covey.

**C. ADDITIONS/DELETIONS/CHANGES:** Beatty would like to pull the item 6. Beatty wanted to get more info in order to do a better presentation. Mayor asked if Council objected. McKnight said it was his request and he did not object. White asked why. He thought council would expand on the item about the independent counsel but since they can't be combined he thought it would be better to bring back in the very near future. Chair said without objection, it will be pulled.

**D. CONSENT AGENDA:**

**1.a. Approval of Minutes**

Regular Town Council Meeting – 11/21/2011

**Exhibit:** Agenda Report No. 1.a.

**Recommendation:** Action on minutes

Minutes: Beatty has issue with minutes. Issues with what minutes reflect Karl Bohne said about Country Cove drainage. Beatty said Atty Bohne said there was sufficient evidence that roads were accepted but not drainage. Minutes stated that Bohne stated that there was sufficient evidence that drainage was accepted. Franklin said she will be happy to do verbatim as she believed that is what Attorney said. Acquaviva, Rivet and Mayor asked Attorney if he recalled what he said. Bohne said that is what he said. He based his opinion on facts given to him. Chair said minutes are supposed to reflect what was said at meeting. He could change that opinion if he got additional facts. There were things that were said at meeting but if he got additional facts he could change his mind. There was enough evidence that the drainage was accepted. Beatty said he will give additional evidence to Attorney. Chair asked if he had other comments. Yes, some other nit picking things but ..... Chair asked if he had additional comments to change the intent? Beatty said if he gives Attorney statement he can re-evaluate his opinion. He has firsthand knowledge of what was done what was not so he did not have a problem. He will let the other little ones slide.

**MOTION:** Rivet / McKnight to approve the consent agenda.

Discussion:

**VOTE:** 4 Ayes. 1 Nay (Beatty) Motion carried 4 to 1.

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

Speaker's Cards: Chair has a number of speaker cards so per the Council procedures Chair will invoke the three minute rule. McKnight asked Chair about the Council procedures regarding responding to either public comment area on agenda. Per procedure the Council can reply or not reply to comments at either public comment area. Difference is the first public comment on agenda is for items not related to agenda items. Second one can be about anything.

Chair called Mr. Hammond who yields his time to Mr. Steve Morris.

Mr. Steve Morris, Weber Road, is back with same issue: water, took pix and will pass around. Also has three pictures of Foleys backyard. Some is exposed to his backyard, also Mr. Cameron and Mr. Hammond. Next two pictures show a dike Foley built on his property. Next three pictures are dirt and 5x5 – not even railroad ties. He has letter dated Nov 10, 2011 from TA Wilbanks stating she was going to address these issues. Area is not sodded yet. Cattle were moved. Berm is gone. Has not been seeded, sodded. It is down in the bottom of the swale. He showed one picture of Weber Road and asked council to look beyond the water – the Campbell's' are not causing this. It is 2000 Weber Road causing this. Mr. Morris said 2/3 of his water goes to the back of his property to pond and only 1/3 goes to front. We only had a few rain storms with 4-5 inches. Town Eng Mr. Morris has vendetta against him. He didn't ask him to come into his backyard. Didn't ask him to come in and wait for it to rain. Who paid for the phony topo map that he did. Mr. Cameron put in a berm and proved that the water is not coming from his property. He showed picture of his dogs and they are in cage. Bull tried to gore them. No grass over there. His grass is tall. Abuse of animal – five is too many animals on that land for that little grass.

Chair asked him to get to what he wants Council to do. Mr. Morris said Town was supposed to make him put in berm and another fence and make him sod it. He has put up with this enough. Didn't move here to fight with everyone. Ditch was started in July 2010. It has been 18 months and is still an issue.

Acquaviva asked if McKnight had had his meeting. McKnight said yes; TA Wilbanks, PW Dir Tom Miliore and Eng Morris Smith. They discussed issues that Foley should deal with. TA sent letter to Foley but he has disregarded.

Acquaviva asked if McKnight had seen engineering done by Mr. Morris. McKnight said no one wanted to look at it when it was brought in. Acquaviva thought it would be helpful to review and compare to other engineering. Mr. Morris had his engineering done by Mr. Smith on Malabar Road. He said it is way more detailed than the one Town's Eng Morris Smith did.

Mr. Morris also said the Town Eng Morris Smith told McKnight that he had turned him in and asked him why he wanted to help him when he had done that. McKnight said he did say that and he thought it was unprofessional to say that.

Chair asked Attorney Karl Bohne if there is anything in the code that would require person to maintain a berm, swale or other drainage feature. Bohne said if it is a St John's permit then yes. Bohne said the failure to keep the thing functioning the way it was intended could be a violation. Not expressly provided for but could be an implied obligation. Could be tested by taking it to the Special Master. Rivet asked if that was the only recourse. Bohne said they could file with an injunction but we have a Special Master, let's use him because in the long run it would be less expensive. BW said that she went out there after the meeting and the conversation she had with Foley after the letter was the issue that the second fence creates problem for maintenance. Foley dropped off pictures today showing work that has been done and she will meet with him and Town Eng Morris Smith Weds morning. She was out there with the bull, cow and calf and none were aggressive. She is still really working on this issue. She asked Attorney Bohne to provide her with info on what code violation to go to Spec Master. McKnight said he was supposed to follow up on this, but has so much going on. TA said the 6x6 in the pix are so the cows cannot step over to get to the berm. It is not a weir or a moat. That is in addition to the 1-foot high berm. He asked us to go look at it and that is why they went out there. That is the explanation on the wood. Will meet with eng on Weds. Chair asked if McKnight wanted to go. TA to call McKnight first or Mayor to go out there.

Mr. Cameron, Hall Road, also has issue with Foley. Cameron has to the west of him; ten acres from Hall Road north to ditch in Town's preserve. Foley put up a privacy fence behind his new building so he could not see his barn. What has happened is the sand spurs and weeds have grown and he can't get back there to maintain the area. Cameron assumes he is going to ignore it. Before the cold weather, the weeds were six-feet tall. His land has animals that go in and out of barn all day. Is there any

enforcement possible for maintenance? Cameron mows right up to the fence. Is he the only one that has to maintain the property or is neighbor going to also be required to maintain his property? Mayor asked if there was a road ROW there. Cameron said no, prior Council abandoned it. Cameron wasn't going to trespass in order to maintain that area. TA stated she has had no complaints about this – we do not do pro-active code enforcement. Franklin said Council in about 1997 vacated the ROW but got a 7.5 foot easement for public utility and drainage purposes. TA will do code enforcement action.

**F. ATTORNEY REPORT:**

Bohne said tomorrow they will meet with Palm Bay regarding the utility issue. TA asked if he needed to call an executive session. He will call it now for 12/19/11 for possible resolution. 7PM ok with everyone. Beatty wants to attend the meeting tomorrow. Bohne said he doesn't know what will be discussed tomorrow but he will inquire and get back to him. Rivet said he was appointed by Council as the representative on this issue. Acquaviva agreed and said if they don't have someone then they may not want Malabar to have someone. Bohne has no problem asking if a council member may attend. Mayor said he thinks it is an informational meeting. TA said they will not be making any decisions. The information she asked for should be at this meeting. Bohne said they will listen to what they present. if it is not a negotiating meeting then they should be able to attend but would expect that if they go they should just sit and attend; that is just his opinion.

Rivet said Palm Bay is not planning to attend with a Council person. Bohne said it should be just the four of them. Rivet said if there is any negotiations he will attend or they can appoint another representative. Mayor said those are council opinions. Asked if Beatty still wanted to attend. Yes. Beatty would like to keep the issues separate, the lawsuit is about surcharge and the rates we charge are separate. He doesn't want them to merge the two together during discussions. The only reason we are meeting with Palm Bay is the surcharge. Don't want to see them discussing the rates. We have yet to decide what we are going to charge our residents. We have some rates and they may be too little based on what Palm Bay is charging. The only issue we have with Palm Bay is they want to put the surcharge on. Don't want to see that issue combined and then we are giving our utility away or doing these outside issues when the issue is can they charge the surcharge. The attorney has already challenged that and he feels confident and Beatty has found some stuff that would back him up and based on that we need to deal with two separate issues. Bohne said Mr. Beatty has been helpful with providing him information and assured Council they would not be discussing the rates the Town charges its residents. Rivet said anything is open to negotiation. Beatty wants to be a fly on the wall so he would not walk in to a meeting and not be prepared and know what has gone on so he can be ready to back the Town of Malabar. Rivet said keep it to Attorney and Administrator. Chair asked rest of Council. Acquaviva concurred with Rivet. White agreed. Mayor said Beatty heard what his fellow Council Members said but he answers to the voters not the other Council Members so he can attend if he wants; you know how they feel.

**G. BREVARD CTY SHERIFF:** Deputy **said** the only arrest was guy who stole metal from Beatty.

**H. PUBLIC HEARINGS:** none

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

**2. Recommendations from P & Z Board related to:**

- Definitions for Art V related to Ponds
- Parking RVs in Front Yards

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

**Pond Recommendation:**

Mayor said this started with guy wanting to build a pond larger than ¼ acre on adjacent lot to his house. He asked Franklin. Franklin said that issue came up first when a person was allowed to build a pond ¼ acre or less and they had issues with DEP. Also because of the conflict with Article VII that requires a site plan for disturbance of land 1000sf or larger. Clerk took issue to Council and was directed to send to P&Z. Mayor said it had to do with a guy who wanted to put ¼ acre pond on his adjacent lot and the

amount of engineering was excessive and costly. Rivet asked Mayor for clarification. Mayor said 1000sf or less would require permit and checklist; larger would require site plan. Smaller water features would only have to follow checklist and meet setbacks; no expensive engineering. Acquaviva said they are recommending that Council approve these recommendations that would require they keep excavated material on lot. Yes. They came up with three recommendations. Define small water area and larger water area and third recommendation is don't take fill off site. Code currently says don't take from Town. Acquaviva asked for Attorney opinion. Attorney has no problem with what they want to call a water feature or pond. Code does provide exceptions regarding excavated material for developments, allowing it to be removed. Attorney said there could be issue with telling people they can't remove fill from their lot. Perhaps it should say it should first be used on site and then excess can be removed. Current Code requires it to stay within Town unless it is a listed exception. Chair said Council could just provide consensus. Franklin said if Council takes formal action it will provide direction to staff and let P&Z know they are working in the right direction. They will continue to work on the checklist.

**MOTION:** Rivet / Acquaviva to approve the P&Z Board definition of water feature and ponds.

**VOTE:** All Ayes.

*RVs in Front Yards:*

Mayor said P&Z has dealt with this three or four times. He referred Council to his memo and said it stated the current code. His memo under #1 also states what he thinks the P&Z Board is intending with their recommendation and said Franklin was at last meeting. By making those wording changes in the code that would be what P&Z wants. P&Z never discussed his other recommendations. He would like Council agree to his #1 and then for #2 and #4, if Council chooses to accept those changes, to send the marked up memo back to P&Z and they would be forced to discuss it. McKnight agreed with that. Franklin said for clarification, P&Z was not done with this; they wanted Council action on this and then they would continue discussion on Mayor's other suggestions. Mayor said this is done as far as RV parking; they are done with Section 1-5.15. Franklin said that the recommendation from P&Z only deals with this one issue. P&Z Board still has the Mayor's other suggestions on their agenda to discuss. Mayor said they should have included them with their recommendation. Mayor would like to have them agree to his items in his memo and send that back to P&Z.

Mayor referred to the drawing in the package. Franklin had handed out the revised drawing showing the setback footage as the required front yard. Mayor said that current code prohibits parking of RVs anywhere in front yard. They are recommending that the restricted area only be the front setback area. Franklin said the drawing on the overhead was wrong and pointed out the wording changes and handed correct copies to audience. The arrows on drawing were correct. Required front yard was deleted from Code with Fence Ord update. It is not defined in Art XX.

Rivet sees no reason to change it. Do we want to see people storing their RVs in front yard? Acquaviva agreed; don't allow them in front yards. Beatty said if the person set his house back beyond the setback then he is not able to use the area. He said that is not the required yard area. The neighbor who builds his house at the setback line and puts his RV next to it could still be in the front yard view of his neighbor who built further back. Beatty discussed the required yard. Rivet and Acquaviva both said take the word required out. Franklin said the required yard used to refer to the area around the house after the setbacks. P&Z is proposing to bring that term back but in reference to the front setback area in regards to parking of recreational equipment. The current code prohibits RVs in entire front yard. P&Z is recommending Council allow the area beyond the setback for parking of such vehicles.

Chair asked what Council wanted to do. White said that if a person has three acres and sets his house back and then wants to park his RV there, he has no problem with that. McKnight said it is a situational thing; if your house is set in the back of the lot and you have a detached garage in the front you can't park your boat in your garage. Acquaviva said how many RVs can they park then? Can they park a boat, and RV and a camper? Mayor said if they go back to his original recommendation; P&Z did not

follow it; there would be a limit depending on what the zoning was; max of three in RR-65, two in RS-21 and RS-15 and a max on one in RS-10. Mayor said P&Z did not do it that way. Mayor said P&Z Board came up with the same issue as Beatty; they should not be penalized for building further back. Rivet said so they should not be held to comply with code because of decisions they made? Acquaviva recalled a complaint this year about a commercial truck in his driveway. Chair said that is separate issue. This is strictly recreational vehicles. That issue is in Section 1-5.16 and will come to Council after a recommendation from P&Z; it is still on their agenda. This is strictly RVs. Are there complaints. TA said yes and related the two concreted slabs for a camper at Atz and Corey. Neighbors didn't like it. There house sits back and between pretty tall pines.

Mayor asked Rivet what he didn't like about it – Rivet said it is not what he likes or not it is about aesthetics. Acquaviva said what about the neighbors complaining when the RV is a rusted or unsightly recreational vehicle; then what can we do? What happens when it doesn't work and we have no provision in code. There has not been an issue to date. Mayor said there has been an issue and he brought data to Council. He and David went up 38 streets and counted 52 RVs in front yards. If people want to do that then maybe the code should let them do that.

TA said in fairness the reason there was 52 and we have had one complaint is we haven't done pro-active code enforcement. Mayor said that is the way we do code enforcement today. Will that be the same in three or four years? Mayor said in the past there were people in favor of pro-active code enforcement. Mayor said there is more to this than the simple map. Is it ok that so many people are violating the code? Mayor feels if so many people don't follow the code then there is something wrong with the code and we ought to fix the code.

**MOTION: White / Beatty to approve the P&Z Recommendation that RVs can park in front yard as long as they are not in the setback area.**

**VOTE: 3 Ayes. 2 Nays (Acquaviva, Rivet)** Motion carried 3 to 2.

#### **J. ACTIONS ITEMS:**

**ORDINANCES: First Reading:**

**RESOLUTIONS:**

**MISCELLANEOUS:**

#### **3. Approve an Independent Investigator for Fire Incident on 11/11/2011**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Speaker Cards:

Bud Ryan, Howell Lane, incident of house fire on Marshall Lane. Hopes Council and TA got his email. He stated there is a need for this independent investigation. The incident reveals an ongoing era of harassment and intimidation of Derrick. He can document. He has been approached by members of the Fire Dept and two Officers regarding this situation. When Ryan realized it was going on he sent email to TA about this concern with harassment and then later sent the TA a copy of Whistleblower protection statute. He believes Mr. Ports as a line of action. The incidents have been ongoing and more than just minor harassment. Mr. Matson's attitude toward him is a glaring example of what has been allowed to occur at fire dept and has not been corrected by TA. Ryan sent another copy of whistleblowers statute and copied it to Mr. Covey. So far no response. This is because the people that are allowing this to occur believe Bridget Ports is the source of leaks in the fire dept. He has been approached by members and officers of the fire dept and to single out Mr. Ports is wrong. Action needs to be taken to cease and desist now. He is recommending an independent investigation. This is not a case of he said/she said it is he said/they said. What one person said happened is in direct conflict with eye witnesses and residents at the time. There are too many discrepancies. Someone from outside has to come in and find out what really happened.

Acquaviva asked if he has been documenting this and investigating. Yes. She asked if he was present at fire. No. Ryan said there was person that wrote the letter and sent it to town hall is here now if

Council wanted to question him. There are other witnesses the Ports are able to provide that collaborate with what Timothy has written.

White asked Ryan what he is referring to or accusing the fire dept of? It has to stop. What is "it"? Ryan said it is a pattern of harassment and intimidation as a way of striking back at Mr. Ports. White said before he referenced many and now it is just one person. Ryan said many people have reported this to him; he does not know why, but they did. White said they are reporting harassment. Yes. He spoke to people involved. Then he reported it to the TA.

TA said did anyone suggest that if these volunteers within the fire dept have issue, why not have them follow the policy; if they can't bring it up to supervisor then follow policy. Ryan said they don't want to have the same thing happening to them. TA said the harassment policy is pretty direct.

Chair said this is not the issue. The issue is what happened on Marshall Drive on November 11, 2011. Acquaviva said it is being brought up in a public forum. Mayor said it should be under the agenda item that was pulled. The item under discussion is the independent investigation and if it is approved the only item to be investigated will be the incident on November 11, 2011.

Ryan recommends an outside investigation. The outcome will make very clear that there is this harassment and intimidation going on and it needs to be addressed. If it isn't corrected, maybe there is liability to the Town.

Acquaviva asked if Ryan was sending this documented information to Town Hall to be provided to Council. TA said she has received not written statements. White was just going to ask that.

TA said Whistleblowers Act applies to employees – not volunteer staff. She expected it to come forward since that is what Ryan said, but no employee has come forward. Then she would contact the labor attorney and take action. Ryan recommended she get in touch with Mr. Ports. TA said he should follow policy and file a complaint. Ryan said Mr. Ports wants to keep his job and not make matters worse. TA said he said no action was taken – there was no complaint filed to act on.

Chair stopped discussion and said it does not apply.

Mr. Timothy Knasal, writer of letter that has created so much emotion.

Chair said the issue is the incident and whether an independent fire investigator should be approved. He asked him to come up and answer should there be such an investigator and why. White asked who he works for. He works for Brevard County Fire Rescue. Acquaviva asked if he was a Malabar. He lives in Grant-Valkaria. He just happened to be driving by the fire on Marshall and knowing that Malabar is mostly volunteer and stopped to see if he could help. Apparently some things happened there that he witnessed and that will lead more to what has been moved to the next meeting. Some of the documents and emails he has seen and received made him believe there does need to be an independent investigation.

Beatty thanked him for stopping by, lending a hand even though he was off duty, you are a qualified fireman evidently and stopped to assisted Malabar in whatever capacity.

Mr. Knasal wanted to make a quick correction to his letter. He wrote on it that he was going to deliver a copy to the fire department and Town Hall and was asked not to. He spoke with Ms. Franklin and clarified that and sent an email to her clarifying that. He was asked not to and he did not make that change on the letter.

McKnight asked if he could give a summary of what happened at the incident since he was there. Chair asked if he had read the Chief's report. Yes, and has a different recall. Chair asked him to relate

incident. McKnight said he knows he is here on his own free will and doesn't want him to have to come back and would like to get info now rather than later when he may not be able to.

November 11, 2011, doesn't know the time. He lives in Grant and was going to Kempfers and saw engine pull out of station. He got closer to store and saw the fire truck at Marshall Drive. He smelled fire that was not vegetation. Coming back from Kempfer's his wife saw smoke coming out of house. There was still only one engine there. He had no gear with him, but realizing the manpower that Malabar has as a volunteer station, he stopped to see if he could help. He parked at end of street. Mr. Ports was in front yard. He saw three personnel getting ready to enter. Derrick told him he had already done a 360 around the house. He thought he had said he had broken out the back window. He was told today that the window was broken out prior to that. He was making some sort of communication on the radio. Knasal walked around the house. That back window was broken. He assumed Derrick did it. It was broken and the rear sliding glass doors were opened. He doesn't know who opened that, but it was more ventilation.

He walked back and told Derrick what he saw. Three fire fighters at front door were getting ready to go in. He helped feed some hose for a few minutes. Turned around and Palm Bay was there and Brevard County Rescue and District were there. There were a couple of Palm Bay supervisors there. He didn't need to be there. He went to find Mr. Ports and tell him he was leaving the scene. He was across the street in a vacant lot. As he approached him so did a Lieutenant from Malabar, later identified as Matson, who berated him openly and loudly. Derrick replied are you sure you want to go through with this. Derrick was shocked. So was Knasal; so shocked he didn't think to take out phone and record. Matson then ran over to deputies to get him to leave. They didn't respond. Derrick went back to his truck. Knasal followed and they sat in his truck. He was blocked in by all the other vehicles and could not leave. Stayed with Derrick for about 10 minutes. He said he was ok so he left the scene. Reason for letter was he was so astonished by the display and the reprimand that Derrick received, the way it was handled and the fact that this all happened in front of the family whose house was on fire.

Acquaviva asked Knasal if he had safety gear on while feeding hose. No, he was well outside of the front yard. Acquaviva asked where Mr. Ports was and if he had on gear. Knasal said he had on bunker coat and helmet and was just inside the front yard.

TA asked if that is considered the hot zone or the warm zone. Knasal said he did not know how Malabar classified the areas in their SOGs and SOPs. McKnight thanked him for coming in; he knows it was difficult and appreciates him coming in.

Chair asked if Council was ready to consider the question.

Beatty said we had an incident that involved the Fire Dept and the Sheriff one or more times, Palm Bay units and Brevard County Rescue squad all on scene. This gentleman spoke. At last meeting, he asked for an independent investigator from the get-go then there would be no questioning of integrity. He got from many people that we should have an independent investigator. This will eliminate the he said/she said. Beatty got a legal opinion from Pat Gleason, legal counsel in Attorney General Pam Bondi's office and they said it should be done by someone that does not have a dog in the fight. Now we have a report and then a statement that questions the report. All those statements should be looked at by the independent investigator. Beatty apologized to White; thought he wasn't doing his job but Beatty was wrong. Beatty said White acted like he didn't know what was going on and he didn't because the emails from the Town to Mr. White were wrong. Beatty said that he did not get financial reports from town or the fire incident emails. Then he looked at email addresses. White's email was wrong so he didn't have the facts before last meeting. Beatty's first opinion was White wasn't doing his job. Then he found the three emails from TA to Council that did not go to White.

White said regardless of not getting the emails, Beatty was asking for an independent investigator before even knowing what happened. He asked then and is still now asking is what Beatty wants to get

out of this independent investigation. The Chief did his report. Beatty said they got emails that said Dan Welton was going to do study. Beatty said Pat Gleason said you don't want to have someone from within the system do the investigation. They might be biased.

Acquaviva said at the last meeting, we didn't have the report from our Chief; he was out of town, and compiling his report. We didn't even go through the chain of command in our own Town. He is a Department head and she is his boss. We didn't go through our chain of command before Beatty was expounding on getting an independent investigator. We didn't get Chief report until after the last meeting. Chief reports to TA. She was out of Town. His report should go to her first.

White said we don't need to consider an independent investigation when we haven't gotten a complaint. Until we get a written complaint, he doesn't know what we need this independent investigator for. We have the report from the Chief. White understands Beatty has all these complaints. Until we get something in writing, we need to go with the Chief's report. If we get written information at a later time, we can then consider getting an independent investigator.

**MOTION: White / Rivet to not use an independent investigator.**

Discussion: Attorney said this incident has two issues. One issue is the actions of the Lieutenant. And the other is whatever they are. TA has made determination that due to this incident and past incident, this person needs to be fired. That should not be investigated by an independent investigator. That is within her purview. Whatever decision council makes on the independent investigator, it should have anything to do with her decision to fire the person.

TA saw two issues; operationally at fire scene and the other was the behavior of an employee toward a resident. Don't cross them over as they are two separate serious issues. First one has already been decided. Matson was on an extended probation from a previous infraction. If any other employee had been given an extension of his probation and then violated again they would be terminated. This is a professional position. She made decision based on the probationary status of the employee.

The other issue is the person who is a support volunteer and they do not take command of a fire scene. From the debriefing meeting she heard that she and McKnight gave this individual the approval to go to a fire scene and take command. She referred to Knasal and said this professional fire fighter did not carry gear in his car. But this individual who is not a fire fighter shows up on a fire scene in bunker gear coat and helmet. She has an issue with that as a liability. She knows things from the past. If he was on scene and did a full 360 and he is disabled and what if he fell down going around the house.

Chair said there is enough evidence there for Council to make a decision. He said it is two things – the Lieutenant was on probation and the TA has taken care of it. The other issue – did Mr. Ports have the authority to take command of the scene. Yes or no. If no then – what are they going to do? If yes, did Lt. have authority to take command back? TA said Lt. is an employee of the Town. The other is not.

Chair again asked if he had the authority to take command of fire scene. Chief Covey said no, he is support staff. Chair called Chief Covey to podium. Covey said he had a meeting with Derrick the month before and he was told to contact him when he was ready to come back and even if he had that would not have been one of the things he would be allowed to do. He had not contacted him. Even if he had been back, he would not be able to take control of a fire scene. Covey is the one who brought him back into Fire Dept. even though many told him not to. He was integral part of the radio system transition. That was his role. Taking charge of a scene was not his role. Covey said the Lt is in charge of the fire scene once he arrived. If he didn't do it in the nicest way then that is wrong; but it is his job to take control of the scene; when people are in a building and it is burning and lives are at risk.

These guys were sent into a building and regardless of what a person says a week later, that the room was not vented, per the company from the County that went in and had to vent it. The picture of the window is black; it gets black when it has not been vented. They were at risk. There was no venting.



He was not allowed to take command of the scene. Chair asked if there is a policy on that. Chief said yes it is in the SOG. TA said the Chief had the SOG attached to his report.

TA said Chief knew she was out of Town. She had asked Welton to do investigation. When she returned she learned after Welton had the meeting with someone and felt his part was not wanted. Now he said there are 14 interviews that would have to be done and if Council doesn't want him to go forward he doesn't want to expend the effort. TA said Welton is a professional and would have done a fair and unbiased investigation.

McKnight said he had meeting with TA about this and told her Welton was biased against the Ports. TA said Welton is a professional. Mayor said he would have given a good report.

TA said there are two issues – he was in bunker gear whether it was Brevard County or Malabar and that gave the persona that he was in charge. When a fire person is on scene he is in charge. When someone arrives with higher rank, they are in charge; similar to Police and military. McKnight was inclined to discredit the Chief's report. And it did not say that the Lt. would be fired. TA said it is not his call, it is her job and he is not fired yet. He is on administrative leave. She has made the decision to fire him.

Chief said hot zone is not for support staff. Support staff belongs in cold zone. Matson went to Derrick and told him to leave and then it went down.

Chief said he did not feel Matson should be let go. McKnight said after taking 50 hours to research and then not think he should be fired, then he has problem with judgment of the Chief. Mayor said McKnight should have a one on one with Chief.

Beatty said the issue he brought up originally – there are reports that they put someone on the truck because there... Chair said that is a separate issue not related to this.

Acquaviva said she has not gotten the phone calls from residents that Ryan and McKnight have gotten. She read the rational report of the Chief. Ryan is referring to things and she has not heard them from anyone complaining – it is innuendo.

McKnight said no one should talk to anyone like that. TA said you can't put the said/she said in a professional report. McKnight is not blaming TA. He has heard from five people. Acquaviva said they should go through the chain of command. What is the innuendo? McKnight represents the people of the Town, not the employees or the fire dept. Acquaviva said they represent all the people of the Town.

TA said the crisis is over – fire was contained to room and no one was hurt. She is doing investigation and during that time she put him on administrative leave.

The other issue is do you want the other guy showing up at another fire scene. McKnight said he was fired by Chief. TA said he is a volunteer and the Chief was making a recommendation to her in his report. There is a policy in place about what has to take place. There is a process for handling volunteers.

Mayor recommended they table.

**MOTION:** Beatty / McKnight to table. **VOTE:** 2 Ayes; 3 Nays (Rivet, Acquaviva, White) Motion failed.

Rivet called for the question. (original motion)

**VOTE:** 3 Ayes; 2 Nays (Beatty, McKnight). Motion carried.

**(No Recess – Attorney Excused)**

**4. Appoint Alternate Delegate for SCLC****Exhibit:** Agenda Report No. 4**Recommendation:** Request Action**MOTION:** Rivet / McKnight to appoint Mayor Eschenberg as Alternate Delegate for SCLC \_\_\_\_\_.

Discussion:

**VOTE:** All Ayes.**5. Approve Proceeding with Engineering for Flashing Light at Fire Department****Exhibit:** Agenda Report No. 5**Recommendation:** Request Action

Beatty said that he thought the question was if paid to have only engineering done now and later when we proceeded to installation, the engineering would be old and we would have to have it done again. Beatty said if we are not going to put in light now why do engineering.

Acquaviva referred to letter from FDOT and her understanding from last meeting was that money was allocated for the flashing light but doesn't have to be spent on that; it can be used on turn lane on Corey Road. She asked Franklin to respond to FDOT follow-up. Franklin said she contacted FDOT after last meeting. They keep an inventory of signage on their state roads. Beatty referenced a sign from 2004 was not replaced after hurricanes. They have assigned someone to compare inventory list with existing signage. FDOT called last Friday and said that there was one sign damaged and in the ditch. They have reordered a new sign and their contractor, DBI is set to install. We can contact them if the new sign is not the one we are discussing. Mayor said that was not the issue. Acquaviva said that is part of it. If we can reduce speed then perhaps we don't need the flashing light at this time.

Beatty said the signage he was referring to was regulatory signage and was on inside of curve. The sign was near the sign for the fire truck. It got wacked so many times by mowers they moved the sign for the fire truck to the back side of the ditch. The speed limit sign was whacked off near ground level by contractor and they aren't going to report to FDOT.

Chair asked if there was enough money to do the turn lane at Corey Road (88K) Staff did not know.

Beatty said the buffer would be in getting a 45-mph zone at area by curve and fire department and get the turn lane put in and then come back and do the flashing light later.

Chair suggested they table this until next meeting. Get price on Corey Road.

**MOTION:** Beatty / Rivet to table.**VOTE:** All Ayes.**K. PRESENTATIONS:****L. PROCLAMATION:****M. STAFF REPORTS:**

ADMINISTRATOR:

- She said the golf disc is the third facility and she can go forward with request for 45mph.

She asked if council wanted her to contact FDOT with such a request. Consensus was yes. She is still going through stuff from being on vacation and thanked them for letting her go. She had a good time.

CLERK: nothing

**N. DISCUSSION ITEMS:****6. Fire Department in General (Beatty) PULLED****O. REPORTS - MAYOR AND COUNCIL MEMBERS:**

- 1) Beatty: nothing
- 2) White: nothing

- 3) Rivet: culvert at north end of Waring Lane. WM – Did follow-up with WM and they Turned it over to their insurance. PW Dir Tom Miliore is working up numbers and she will provide to WM. Resident knows we are working on it.
- 4) McKnight: culvert at Atz and Weber – any immediate plans to replace it. Need to go to a 36". Bill Arnauckas provided pictures of the problems. TA said another pipe has collapsed. The problem at Atz and Weber is the result of Mr. Stephenson's error in allowing the change to smaller pipe. McKnight said he was not speaking against Wilbanks. He does not feel he is getting the full story from the Chief and it infuriated him.
- 5) Acquaviva: reiterate that she was pleased to get letter from FDOT. It explained their reasons for not having a light there. She does get a lot of calls on that issue. She got a call from someone on Leghorn about a road issue. Town staff took care of it within a week and resident was happy. She absolutely loved the tree lighting and it was a great event and was very well attended and had great things for everyone. She was proud of her Town and it was a very positive experience; many families and members of the community. She also finally made it to the Fire Dept Pancake Breakfast. It was also a great event and good community event to have neighbors come out and see one another. Those are positive things worth mentioning.

Mr. Knasal came in and said that the Malabar Fire dept personnel were harassing him and the council needed to make them stop. Acquaviva said for him to call BCSO or 911. Chief covey went outside.

- 6) Mayor: reiterated to McKnight what he said earlier to him. Go see Chief and hash it out with him. Go over issues. Mayor goes in and talks to him. McKnight said he refuses to believe he did not know about that. Have to talk to everybody. Did anyone talk to TA about dip on Weber Road south of Atz Road – he thinks it is getting worse. Mayor also asked Beatty if he has talked to Tom Taylor – yes.

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

Jonathon David, 1376 Marshall Drive. The incident between Derrick and Lt was in the cold zone and was in front of young children aged between 3 and 13 yr old and his wife. It was in the vacant lot across the street. They were already traumatized from the fire.

Kathryn David, 1376 Marshall Drive, has a six year old nephew that adores him and now he thinks it is ok to talk that way.

**Q. ADJOURNMENT:**

There being no further business to discuss, **MOTION:** McKnight / Beatty to adjourn this meeting.

**VOTE:** All Ayes. The meeting adjourned at 9:50 PM.

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

ATTEST BY:

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

Date Approved: 12/19/2011