

## MALABAR TOWN COUNCIL REGULAR MEETING

January 04, 2010

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 Brian Vail.

### B. **ROLL CALL:**

MAYOR/CHAIR

TOM ESCHENBERG

VICE-CHAIR:

JEFF MCKNIGHT

COUNCIL MEMBERS:

NANCY BORTON

BRIAN VAIL

STEVE RIVET

MARISA ACQUAVIVA

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

### C. **ADDITIONS/DELETIONS/CHANGES** – Chair said the Fire Chief asked that Item 6, Request for Burn building be removed. No objections.

### D. **PRESENTATION:**

### E. **PROCLAMATION:**

### F. **CONSENT AGENDA:**

#### 1. **Approval of Minutes**

Regular Town Council Meeting – 12/21/09

**Exhibit:** Agenda Report No. 1

**Recommendation:** Motion to Approve

**MOTION:** Rivet / Borton to approve the minutes of 12/21/09 as presented. **VOTE:** All Ayes.

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

### H. **STAFF REPORTS:**

ATTORNEY: Would like to speak to Agenda item J.2 when it comes up.

ADMINISTRATOR: Introduced Lt. Jeff Ludwig, BCSO. He started career 22 years ago in south Brevard. He has evening and night shifts. He will have a temporary assignment elsewhere and then be back in south Brevard.

TA showed pictures of completed emergency repairs to Brook Hollow bridge approach.

TA reported that the Great Southern has reported that the Gradall problem was not the centerpin, but rather multiple hydraulic leaks and a leak in the hydraulic tank and an oil leak. They will provide her an estimate on the repairs but since it is not the centerpin assembly, we will be going forward with repairs.

CLERK: Referenced sample proclamation wording in front of each Council Member. The SCLC January dinner meeting theme will be about Palm Bay's 50<sup>th</sup> Anniversary. Malabar is co-host and in honor of there anniversary, Clerk would like to present a framed proclamation recognizing their achievements. Does Council support? Yes, Mayor supports, Rivet and Vail no objections, Borton likes idea, McKnight agreed.

### I. **PUBLIC HEARINGS:**

Are legally advertised for 7:30 PM *or as soon thereafter as possible.*

**ORDINANCES: (0)**

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

**2. Agenda Request from Derek K. Ports**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Discussion and Direction

Chair said we will hear from Town Attorney first. Bohne said he hoped all had read through what Mr. Ports has submitted. Bohne is not here to restrict Mr. Ports' ability to speak. The way the agenda report is submitted, it only gives one side. Not appropriate for Council to take action based on one side. Under Chapter 8 of Code, Council is authorized to form a Fire Review Board and they can review it and advise Council. Bohne said the agenda request addressed two elements; one, that a certain action taken against Mr. Ports should be reversed. The other element was a request to take action based on the allegations against other FD members and that should be handled by Fire Chief. Borton asked who makes up Board. Bohne stated each Council Member selects a member plus one volunteer fire fighter and one paid fire fighter. Rivet asked if it had to be a volunteer fire fighter who was also a resident; can it be a member of another Town Board. Bohne recommended it not be a member of another board; said this is a Board with advisory authority. Vail asked about residents being Board members. Bohne said in an effort to keep Board neutral, one appointee from each Council Member should be a resident, plus two fire fighters.

The Mayor said the other option is to have the Council hear the complaint and evidence hear from the Fire Dept and make a decision. TA asked if part time fire fighter would be ok for Board. Code does not specify other than professional. Professional doesn't necessarily mean paid.

Borton would prefer this Council to select a professional fire fighter from another city, to be objective. Rivet would prefer to keep it to a Malabar fire fighter.

Mayor would prefer to have Council act as the impartial Board. He stated Council is already impartial. Vail disclosed that he has known connections to Fire Dept but he can be impartial. Attorney Bohne stated as Vail has disclosed that he has connections to the Fire Department but could be impartial, that is sufficient. Mayor said both sides could present evidence. Acquaviva would not be prepared to review it tonight for action. Mayor said this would be done at a separate meeting. Bohne said if they go this route, they should not speak to persons about this. Bohne said keep ex-parte communications to none.

Council consensus to go the route of Council acting as the Board. The hearing will be a quasi-judicial meeting and restated there should be no ex-parte communications. Attorney Karl Bohne asked the Fire Chief to provide the by-laws and for the Policies that are referred to in the documents submitted. Bohne also said if Fire Department is going to present evidence and Ports is going to submit more info, Council should set a date for more information to be due. Mayor suggested January 18 for meeting date, since there is no Council meeting due to holiday. Not good for Chief; he will not be back until that evening. January 25<sup>th</sup> is selected and Chair confirmed that date is ok with Mr. Ports and the Fire Chief for the Fire Dept. Mayor then asked both parties to review the documents they plan to submit for their relevance before submitting. The 14<sup>th</sup> is the cutoff for documentation to be submitted. Meeting will be at 7:30PM on January 25, 2010. For Council Members now getting their package electronically, do they also want the documentation electronically? Yes, scan it in and send electronically. Acquaviva said don't make her a copy. Borton wants a printed copy.

Chair asked if Mr. Ports wanted to speak on this agenda item. Mr. Ports said he would wait for Council hearing.

**K. ACTIONS ITEMS:**  
**ORDINANCES: First Reading – None**

**RESOLUTIONS:**

**3. Approve Supplemental Agreement with FDOT for Stimulus Projects (Reso 35-2010)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE LOCAL AGENCY PROGRAM SUPPLEMENTAL AGREEMENT WITH FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Action on Reso. No. 35-2010

Mayor read by title only.

**MOTION:** Borton / Rivet to approve Reso. 35-2010 as presented.

Discussion: TA pointed out the email

**VOTE:** 1) Borton, Aye; Vail, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye.

Motion carried 5 to 0.

**4. Approve Reso 36-2010 (Budget Revision)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2009-2010; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Action on Reso. No. 36-2010

Mayor read by title only.

**MOTION:** Rivet / Vail to approve Reso. 36-2010 as presented.

Discussion: none

**VOTE:** Borton, Aye; 1) Vail, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye.

Motion carried 5 to 0.

**MISCELLANEOUS:**

**5. Appoint Council Representative to Meet with Congressman Posey**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

**MOTION:** Rivet / Vail to appoint Mayor to represent Town Council in meeting with Posey.

**VOTE:** All Ayes.

**6. Request for Burn Building**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Fire Chief requested this be deleted from agenda.

**L. DISCUSSION ITEMS:**

**7. Fire Department to Report to Council (Mayor)**

Mayor asked for this and stated the Attorney has told him he thought this could be done with an ordinance. Mayor thinks if Fire Department were under direct control of Council, they would take a continuing interest in the FD. He knows there are problems with FD personnel. There are also problems with FD and Town administration. Acquaviva is asking why he is asking for this now. Borton

thinks there will be too many Chiefs then. Mayor said the Chief would be consistently answering to Council. The public safety is too important. Borton said then we would have to wait for a Council meeting. Rivet said if there is a problem then they would need to wait until next month. Mayor said perhaps it is time for a Fire Review Board to review. Acquaviva said we are the governing body and we can't be there to answer all the questions that the TA does now. Again asked why he is proposing this now.

Mayor said discounting the Attorney, there are two departments that report to Council; the Clerk and the Administrator. If you want to know something, you ask them. He is proposing the FD report directly to Council. The Fire Chief would be the other administrative head that would report to Council. Acquaviva does not understand why this is coming up. McKnight said he does not have enough information. We have issues with staff now. We have problems with the FD and now there are problems with Fire Dept and staff. McKnight said no disrespect to Chief, if he should be handling the issues himself. Borton said just because there are some issues and problems right now you do not sever the Fire Dept from reporting to the TA. The FD is one-third of the budget. The issues are personalities. You don't resolve that by making them not have to report to TA. Vail said the lines of communication do need to be approved.

TA disputed the comments made by Mayor. She relayed that a department head had made allegations to Borton and Borton to her credit, went to the TA and asked for input. Wilbanks told her to go to the staff and Borton's findings from her investigation were that they were false. This was started by a Department Head. When Indians are restless, it is a great time to attack the chief. Don't sit and take one person's comments; she urged all Council to speak to employees. Vail asked Attorney if Council can talk to each employee and FD member. Yes. Acquaviva said we are a strong form of govt and we all want the best for Malabar. The Vail said he is one vote of a 5-member decision. People do come to him. Rivet asked Attorney if we could talk to FD persons on this issue. Vail said we should not talk about the other issue. Borton said the chain of command in the FD. Attorney said that needs to be handled by Chief. The issue between the Town Administrator and the FD was

Look up minutes from previous meeting – clarification on reporting.

#### **M. MAYOR AND COUNCIL REPORTS:**

5) Borton – asked Franklin for issues for Borton to take to SCLC. She asked about handout from Carl Beatty.

3) Vail - nothing

4) Rivet – asked about water surcharge issue. Bohne's attempts to schedule a mediation meeting. He found an AGO regarding the W Melb issue, the AG referred to the Cap Canaveral, it was his opinion that the mediation should be in the sunshine. Mr. Stokes and Bohne are looking at a way to have a meeting – the court can order it. The AG makes no sense. It defeats what mediation is intended for.

2) McKnight – happy new year

1) Acquaviva – nothing

6) Mayor – SCLC Jan mtg. Hopes all can make it. Mayor will go to the Board meeting it will be his last and then Nancy will be sworn in at the general meeting. Teen Council tomorrow night at 7PM.

McKnight

#### **N. PUBLIC – speaker card required - none**

**O. ADJOURNMENT**

There being no further business to discuss, **MOTION:** Borton / Rivet to adjourn this meeting. **VOTE:** **All Ayes.** The meeting adjourned at 8:30 PM.

BY: Thomas M. Eschenberg

Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: 02/01/10