

MALABAR TOWN COUNCIL SPECIAL MEETING
February 1, 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 Mayor/Chair passed gavel to Vice-Chair for this final meeting. The meeting was called to order at 7:30 pm by Mayor Eschenberg, Chair. The prayer and pledge were led by District 3 Council Person Steve Rivet.

A. ROLL CALL:

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	JEFF McKNIGHT
COUNCIL MEMBERS:	NANCY BORTON - excused
	BRIAN VAIL
	STEVE RIVET
	MARISA ACQUAVIVA
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
DEPUTY TOWN CLERK:	CYNTHIA KELLEY

Also present Town Clerk/Treasurer Debby Franklin to take pictures and Attorney Erin Harrigan.

C. ADDITIONS/DELETIONS/CHANGES: None

D. PRESENTATIONS – Certificate to Cindi Kelley

Mayor made presentation to Cindi Kelley for completing 3rd year of her education for CMC designation; Franklin took pictures.

Legislative Update from Eligere Strategies

Mitch Needleman and his partner came forward and gave a brief overview of what they have been working on for the Town; TABOR (Taxpayers Bill of Rights); mandates from the State and legal advertisements (alternative to using newspapers for advertising). The next step is to meet with people out of our comfort zone; get the Town Administrator involved at staff level. The issues for Malabar will become a reality. There needs to be availability to have a few of Council go to Tallahassee during session. Meeting could be set up; need to look at a united front with TABOR. The final decision would be made with Malabar having input in the matter. Everyone needs to be brought up to speed with the history and background; this is a very important part of getting the job done. Needleman stated that they will continue to work on these issues and asked Council to let them know what other orders you may have for them to work on; we need to know what Malabar's message is.

E. PROCLAMATION – Employee Stephen Mike Brown

Mayor read proclamation to retiring employee Stephen "Mike" Brown and presented it along with a plaque. Franklin took pictures. Brown thanked Council and said he would enjoy retirement.

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 1/04/2010

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

Discussion: McKnight stated on page 4, in his report, it should read "Happy New Year.

MOTION: Rivet / Vail to approve minutes from RTCM 01/04/10 with correction. VOTE: All Ayes.

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

H. STAFF REPORTS:

ATTORNEY: Update on Sunshine Law memo he issued; the important part is text messaging. He had confirmed, twice, that the Attorney General is not touching this issue. It is written words but most of the time, you can't get the text from the phone to a written document. You would be better off making a phone call to a constituent, not each other, when a text is received.

Bohne gave a brief update on the mediation with Palm Bay. He and Stokes are trying to come up with an outline of proposal so as to not implicate the sunshine law. Mayor asked if a mediator can be in the meeting between Malabar and Palm Bay; Bohne stated yes but you can't discuss strategies in an open mediation and keep it confidential. McKnight asked about the sunshine law and if it would ever be rescinded. Bohne stated that this would never happen; Rivet stated that it would have the appearance of "hiding something" from the public if the Sunshine Law were to be rescinded. Bohne had spoken to Gougleman regarding this issue as he is trying to do the same with the Melbourne/West Melbourne situation.

ADMINISTRATOR: Advised Council that all of Public Works is here and asked that they stand in introduce themselves. They are all CDL certified and can work each piece of equipment. She thanked Public Works for being here in support of Mike Brown.

Financial statements, the first set had been e-mailed out and the comparables from last year also sent. She did not receive any reads from anyone on Council. If you didn't get the information, let her know and she will re-send.

ARRA Update-we don't have an update at this time. The award letters went out. There is a discrepancy with needing a contract or not. She doesn't feel comfortable that a contract is not in place; we wouldn't be able to hold them accountable if they are not working up to par. Bohne is in agreement; she will move forward with the contract tomorrow.

Franklin is getting information regarding an ordinance from Palm Bay and Melbourne for cleaning pools that have become a safety hazard. This will be brought to Council in the future. She is not sure how they are going onto private property but she will find out what the procedures are.

The Hossain property is now the Bappi property; they sold it to EELs. Mike Knight is checking on the easement; it was not owned by the Hossain people who became the Bappi people.

As reported in the FYI, she has a plan of action in place for the Derek Ports. She had received draft information from the Chief for the disciplinary action. It will be reviewed, additions/deletion/changes made and put into action.

With regards to Carl Beatty, a letter of termination was sent to him via e-mail today. According to paperwork received from his doctor, he was to return to work on January 26, 2010. We had no form of communication from him and he was terminated for job abandonment. After the termination letter was sent, we received another doctor's note on the fax today saying he will be out until the 15th of February. She had been in contact with the Labor Attorney and they decided to extend employment to the 15th of February as the absolute. He must make a decision as to what he wants to do. McKnight stated he had concerns with her terminating him while on leave. He suggested, before Christmas, that Beatty be laid off. Wilbanks stated he did not fit the criteria for laying off; he does not fit the criteria for FMLA with this new issue and he used up the twelve weeks allowed for the last medical issue. McKnight doesn't want to see this mushroom into something that could lead to a court case; he felt there are personality issues between Beatty and Wilbanks. Wilbanks stated this is not true. She has been in contact with the Labor Attorney through all of this to make sure everything is being done properly. Beatty has not

communicated with her or his immediate supervisor to advise the Town of what is happening. When going to the doctor last week, at a minimum, he should have notified us of the new issue and that he would need more time.

Vail has concerns that Beatty has not communicated with the Town. Rivet stated that everyday operations should not be questioned. It is the Town Administrator's job to make sure all is running as it should. Mayor stated he doesn't think McKnight is micro-managing; he is just frustrated and is looking for answers. Acquaviva has concerns for the taxpayer's money being spent; who is taking up the slack for him while he is out? Bohne stated that there should be a meeting with McKnight and Wilbanks; information is being sought. Acquaviva asked if it would be possible to speak to the Labor Attorney. Wilbanks stated she would provide the contact information to Council. Bohne stated it should be kept to a minimum because of the charges to the Town.

Wilbanks stated that the Sheriff's Department called; they could not be here tonight because of a project that they are working on and it demanded more man-power. Any questions that Council has, please let her know and she will provide it to the Sheriff for answers.

Malabar Fire Dept Report for December-Chief came forward and addressed Council. He gave a brief overview of the status of the Fire Department. The storage rental units were brought up; this was a project that Dezman was working on with the Chief and Ports. The listing of the surplus supplies was not given to Wilbanks. She asked Ports if she had the information and to supply it to her if she does. Ports is to get it to Wilbanks so it can go before Council.

CLERK:

- Updated Sunshine Law memo from Town Attorney has been distributed
- Confirm Joint Meeting with P&Z Board 2/24/2010-McKnight cannot make this meeting; Acquaviva will make every effort to be here, she has jury duty that week.

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**

K. **ACTIONS ITEMS:**
ORDINANCE: First Reading – 0
RESOLUTIONS: 1

2. **Oppose Early Felon Release (Reso 37-2010)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, OPPOSING ANY LEGISLATION FOR THE 2010 STATE LEGISLATIVE SESSION THAT RELEASES DANGEROUS FELONS EARLY OR PLACES ANY ADDITIONAL CONSTRAINTS ON THE SENTENCING OF CONVICTED FELONS TO PRISON BY JUDGES THAT WOULD SACRIFICE PUBLIC SAFETY IN ORDER TO SAVE MONEY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Action on Reso. No. 37-2010

Mayor read by title only.

MOTION: Rivet / Vail to approve Reso. 37-2010 as presented.

Discussion: None

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

Motion carried 4 to 0.

3. Appoint BOA Member (Reso 38-2010)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, APPOINTING CHARLES FRAZEE TO BOA; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Action on Reso. No. 38-2010

Mayor read by title only.

MOTION: Rivet / Acquaviva to approve Reso. 38-2010 as presented.

Discussion: Rivet asked if this was the only applicant; Wilbanks stated yes. He originally applied for the P&Z Board. With his background, this is a better place for him to serve.

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

Motion carried 4 to 0.

MISCELLANEOUS:**4. Rescind Requirement for P&Z review of Accessory Structures Over 1000sf**

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Discussion: Mayor was not aware of this. There is nothing in the land development code that prevents an accessory structure over 1000 square feet. This was done with an interim Building Official; one structure was built out of compliance. It was Council's intent to make sure the accessory structures comply with the setback codes of Malabar.

MOTION: McKnight / Vail to rescind requirement for P&Z review of accessory structures over 1000 square feet. VOTE: All Ayes.

Motion carried 4 to 0.

5. Fence Ordinance Proposed Change (Mayor)

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Discussion: All Mayor Eschenberg is asking is for an okay from Council to send to P&Z to make a recommendation to Council. Rivet and Vail are both good with this. Vail would like this to go to P&Z. McKnight has an issue with some of the wording. Rivet stated that P&Z shouldn't restrict anything unless there is a really good reason. McKnight and Vail suggested that Mayor's recommendations be sent back to P&Z.

MOTION: Vail / McKnight to send Mayor's recommendations to P&Z. VOTE: All Ayes.

Motion carried 4 to 0.

6. P & Z Recommendations (Mayor)

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Discussion: Back in October, McKnight made a comment that Council should not accept recommendations from Boards unless the minutes have been approved. He wants to make sure that all information is correct in the minutes; doesn't want to make decisions based on incorrect information. Mayor stated this causes a minimum of five weeks waiting period for a resident to get their permit; he has an issue with this. We are not providing good customer service. Acquaviva asked if there have been complaints that would suggest poor customer service. Mayor stated that he does not think so, but he feels this could become a problem. Acquaviva doesn't understand why this is being discussed. She is concerned for Malabarians; she wants decisions to be based on as much information as possible so they are the right decisions made at the time. Mayor

suggested having verbatim transcribed minutes of the motions made given to Council. McKnight still wants some background information from each member of the Board stating the reason why they voted the way they did. Bohne stated that approved minutes do not validate the action of the Board. Rivet stated that Council needs accurate information before making a decision. McKnight would be willing to have a streamline system in place.

Wilbanks explained that we have a summary report for minutes that staff prepares; this is what she works from if there are things she needs to address. Let us put this together and provide after the P&Z meeting to Council as a means of getting information to Council in a quicker fashion. Mayor asked if Council can agree that if P&Z recommendations are unanimously passed, it can come to Council's next meeting.

Bob Wilbur of 2500 Glatter Road came forward and addressed Council. He stated that a couple of meetings had been cancelled. When they have their information and it is reviewed prior to the meeting, they have their recommendations fairly quick at the meeting and it can be sent to Council for the next meeting. Be careful on shortening the time frame too much for approval.

MOTION: Vail / Rivet any P&Z recommendations passed by unanimous vote can be passed to Council at the next meeting.

VOTE:

Motion carried 4 to 0.

L. DISCUSSION ITEMS:

M. MAYOR AND COUNCIL REPORTS:

(number indicates the order of the report given)

5) Mayor: annual forum for DOT-heard about the money for high speed rail. Florida only received half of what is needed to build the system. He did ask about the 200 million to have Amtrak come down the east coast. The second phase of the high speed rail is to go from Tampa to Miami. They are still doing environmental studies for this; he doesn't feel he will see it in his time. We need a railway on the east coast. He also attended the Amendment 4 briefing meeting; this is for Florida real estate. The realtors are against this amendment; if it passes all comp amendments will have to be put to referendum.

Borton: excused

4) Vail: nothing to report at this time.

3) Rivet: nothing to report at this time.

2) McKnight: while looking at the website, he cannot locate any minutes or agendas prior to 2007. Acquaviva was able to pull up the agendas and minutes as far back as 2003. McKnight stated he was not sure if he did the same process as her. Wilbanks stated that she thought the information went back as far as that.

McKnight doesn't agree with advertising Malabar Soccer League on the website. He doesn't see any other team being advertised. Wilbanks stated that she does the advertising for the Baseball League but they are in between seasons right now. Mayor stated that he is for advertising any activities promoting the youth; it keeps the kids off the streets and out of trouble. McKnight stated that as long as it's fair and not just the soccer team being advertised, it would be okay to keep them on the website.

McKnight would like to know if there is a class to attend for Robert's Rules of Order. Bohne stated he needed to read the book and then see if he can understand it. Mayor stated that when he is away, just run the meeting the way he does. McKnight stated he wanted to make sure he does things correctly. Bohne stated that he could provide his copy of the book to McKnight; it has book marks all over the place. Wilbanks stated she would try to find him a copy of the book.

1) Acquaviva: asked about the dinner for the Space Coast League of Cities. Wilbanks advised Council that it is at Rockledge Country Club. Kelley stated the information would be scanned in and sent to everyone in the morning.

N. PUBLIC COMMENT: None

O. ADJOURNMENT

There being no further business to discuss, **MOTION: Rivet / Vail to adjourn this meeting.**
VOTE: All Ayes. The meeting adjourned at 10:07 PM.

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

TRANSCRIBED BY:

Cynthia Kelley
Cynthia Kelley, Deputy Town Clerk

ATTEST BY:

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

3/1/10
Date Approved