

MALABAR TOWN COUNCIL REGULAR MEETING
March 17, 2008 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 Mayor Eschenberg. The prayer and pledge were led by District 1 Council Member Nancy Borton.

B. ROLL CALL

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	CHUCK McCLELLAND
COUNCIL MEMBERS:	NANCY BORTON
	BRIAN VAIL
	JEFF MCKNIGHT
	PAT DEZMAN
TOWN ADMINISTRATOR:	BONILYN WILBANKS-FREE
ATTORNEY:	KARL BOHNE
ENGINEER	BILL STEPHENSON
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

- C. ADDITIONS/DELETIONS/CHANGES – Accountant’s presentation was pulled** and Agenda Item #10 has been pulled. Regarding Agenda Item #2, the Mayor wants this discussion. Staff wants to pull it and Council needs to decide. In attorney’s opinion we don’t need it. Last June it was unanimous to vote on this. Leave it on agenda: Dezman, Borton, McClelland, and Vail. McKnight – pull it. It stays.

D. PRESENTATIONS:

- ~~Accountant August Torres Financial Progress Report~~
- Town Hall Recommendations by Town Engineer

Engineer Stephenson explained the request that was made of him and reported on it. His sketch was in the packet and on the overhead for the audience. He showed the setback from Malabar Road and the west lot line. Can construct up to an 11K sf building. The advantage of one-way traffic is the driveways are narrower. Parking can be next to building or far away from building. Site is flexible and would lend itself well and still maintain operations while it is being built. His plan offers flexibility of what to do with this building. Change entrance / exits.

McClelland asked about the 24 spaces and they are not in a drainage area. Stephenson indicated 1200 sf is set aside for septic. Dezman thanked Stephenson for the fabulous job for a first pass. McKnight asked about cost benefit to adding to this building vs. building a new building from scratch. Stephenson said bringing this building up to new code could be big undertaking. The 51% requirement to bring retrofit up to current code. Be wary of the costs - AC, insulation, fire protection, and windows are all considerations that could cost a lot of money. Mayor stated we would need to run the numbers and compare adding 3K sf of new building vs. retrofit on this building.

Free explained the lack of ceiling space for AC etc., in the current building. Dezman does not support retro of the current building. McClelland stated this building is pretty strong. Dezman wants a hurricane safe building. Stephenson said the lot in front of the

Public Works building could be used for parking if we want to lease this building out. Or the lot could be used for stormwater treatment. Stephenson said it is difficult to design for 30 years out and this layout gives the flexibility to change.

Clerk reported there had been no response from other property owners. McClelland asked about grant. The architect has been selected and the property is here. Borton asked if we could build a 2-story building and connect it to existing building. Stephenson said he laid out the site with the building to the far west of the lot and close to Malabar Road.

Status of Site Selection Committee is they are waiting on input from Council regarding whether to continue to look for a 5-acre site or use existing site. Vail said not to call off the search for a new site. Vail would like to see the new town hall by the fire station. As a municipal center or focus. Don't give up; this is a secondary site location. We could be on hold for two years. Vail wants site selection committee to pursue other sites. Dezman wants the site selection committee to review the plan from Bill S. and offer comment on whether it is a good site; get a status of the EELs location, and forward their suggestions based on their combined expertise. The site committee can start with this drawing and Stephenson could help. BWF thinks Stephenson is on that committee.

McKnight said the more ideas the better. His issue is that the public thinks this purchase was for the town hall site. That is what we bought the property for.

Clerk will notify Site Selection Committee. Dezman asked who the Chair was – Alan Wollard. BWF will let Council know in FYI when that meeting will be held. Clerk will provide minutes to members. Stephenson said the foot print can be used on another property.

E. PROCLAMATIONS:

F. CONSENT AGENDA

1. Approval of Minutes

Regular Town Council Meeting – 3/3/08

Exhibit: Agenda Report No 1

Recommendation: Motion to Approve

Motion: Dezman / Vail – to approve with correction to value of McClelland's properties stated in Agenda Item #5. Vote: All Ayes.

G. STAFF REPORTS:

ATTORNEY - Nothing

ADMINISTRATOR

The Mailboat is mailed out to 2500 addresses and she read from the listing on where they are delivered. She stated that many of the 701 box holders are in Melbourne, Palm Bay and Valkaria. Only 558 are completely within Malabar. She wanted Council to be aware we are paying \$445.00 in postage for bulk mailing. We can't cut them out without losing the bulk mailing rate.

McClelland asked about the delivery problem. It has been corrected and we will bring the newsletters back to the Malabar Post Office to avoid the problems encountered with the last mail out.

The financial report by August Torres was pulled because again we could not get reports to print. Data that had been entered and account numbers that had been entered are again comingled with account numbers from the old system. As a work around, Torres will be putting the data into his system and running the financials. Then we can budget for new software in the next year. This is an alternative that we have agreed to; he will hopefully have reports within two weeks.

Looking for the bios from Council and the Mayor to put on the website.

- Fire Department Activity Report

Assistant Fire Chief Dan Welton reported in Chief's absence. In the month of February there were 24 calls. We are slower this year. 966 hours of training. Report attached to minutes. Start the second round of interviews for part time candidates. Offer CPR classes to Malabar residents.

Getting assistance to fire dept. grant period is running out. Not a lot of time to devote to that. Regarding last year's grant award – the fire department needs to give the specs for the light trailer to TA so we can go out for quotes. BCC called and they want to bring their class to station to do extrication. BCC will provide food and costs.

The Administrative Assistant, Blanca Joshnick, is dynamite and invited Council and citizens to stop in and meet her - she is awesome.

McClelland asked how we are doing CPR class without a charge. They are not the BML cards. The Fire Department could pool up the \$100.00 to cover the costs. Dezman wants to know if there are costs – she will offer her discretionary money.

BWF recognized Commander Salvo of BCSO and asked if he had any reports or if Council had any questions for him. None.

- Park Board Chairperson Report

Hans Kemmler, Chairman of Parks and Recreation Board gave his presentation (attached to minutes). He has had many requests from the soccer community and work with them for the last ½ year. Malabar soccer kids have exploded. Have not found acceptable sites for more soccer fields. Soccer fields for ages 6-8 are 60 feet by 120 feet and the Park Board has found three possible locations: an area by the vending row; space in front of fire station (Park Bd doesn't think that would work because it is so far from irrigation); and the area by the little play equipment. If you take the slide out you can fit it in perpendicular to the existing field.

Dezman asked if stuff can be moved without council approval. BWF observed it and we are discussing with vendor on rehab and or possible move. Your consideration may be different when council gets the rest of this information. Use of park has increased. Costs would be leveling, filling, and irrigation. Don't want to become a soccer field exclusive. Park Bd will give approximate cost after next meeting. Mayor asked if the Park Bd had consensus. – no. Dezman stated Park Board should make a recommendation. Some impact to drainage that was laid out. Hans showed overhead. Dezman wanted a percentage of how many people play in

this soccer league that is actually Malabar residents. Kemmler said nine months ago, out of 90+ members over 50% were Malabar residents. BWF asked if she knew what the safety zone is. Dezman said Palm Bay would – call Palm Bay. The one that is the best fit would be right where the other people walk to get to the other soccer field. He will get costs. BWF will get distances. McClelland is not in favor of adding more soccer fields. He has a problem with soccer group anyway.

Kemmler asked about the pvc pipes – could be with the mitigation BKI is doing. Farm Credit may have done a survey. Another option. BWF will call BKI and get an answer.

Vail asked about feasibility – have Board consider this at board. Dezman asked for Kemmler and BWF both do research and then compare.

TOWN CLERK

Like to recognize my sister Grace from Ohio and thank Council Members for following through with the photographer.

H. PUBLIC HEARINGS:

ORDINANCES:

Mayor read by title only. This has been legally advertised in Florida Today newspaper on March 6,

2. Referendum Question Regarding MSTU - ORD. No. 2008-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY LAW ENFORCEMENT MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT SERVICES; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No 2

Recommendation: Request Action on Ord. No. 2008-03

OPEN Public Hearing

Bob Rowan, 2565 Corey Road and supports the MSTU and would not want to see it not passing.

Close Public Hearing

Motion: Vail / McClelland to Approve:

Discussion: Chair asked attorney to make comment. Bohne stated this ordinance is redundant to Ordinance 2007-06 – if referendum item passes. There is still one year and council has time to consider options in that one year. It also has another year. Verbatim minutes from Council meeting do refer to Council providing options. If Council does want to provide options, then repeal Ordinance 2007-06 and Council needs to create options. Staff wants direction. Have meeting in April to discuss. If Ordinance 2008-03 fails, we still have it on the ballot per Ordinance 2007-06. How would Council dispense with this one. Then Ord 2007-06 will still apply and it will be on the ballot with the simple question. It was done simultaneously with the adoption of the MSTU.

Borton said it was left to new Council – Bohne read from Vail's comments. Council never said when the options would be discussed. Discuss the options if it fails. Vail said as he understands it, the item will be on the ballot with Ord 2007-06. Dezman said the citizens spoke loudly and if this on it will be an emotional item due to the property tax, etc. She believes the county will file a lawsuit.

Bohne stated Council had previously attempted a charter amendment to start our own police dept. – and it failed by a lot. Staff will do what Council directs. Borton wanted to know how much it cost to put this on the ballot.

Ord 2007-06 this will come back every two years. Only way to revoke is to repeal Ord 2007-06. Dezman said then Council needs to explain this to residents and conduct an educational campaign.

Borton agreed to pass only to give residents an option if they don't want it.

Vote: The roll was called: Council members: Borton, Aye; Vail, No ; McClelland, No; McKnight, No; Dezman, No. Motion failed 1-4 .

Borton on record not supporting putting this back on ballot.

I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

3. Agenda Request Form from Soccer Coach – Sponsored by Mayor

Exhibit: Agenda Report No 3

Recommendation: Request Action

Mary Hoffmeister, 2340 Corey Road, port-a-lets on the field. Youth 6 participants need to run to opposite end of park to get the restrooms. Club will cover the 70 per month. It is the only organized sport in Malabar. Complaints we have gotten youth 6, 8, 10, girls and boys, etc that play on that team. Pay close to \$1000.00 for paint. They are not asking for much. A coach has to take insulin shots at the fire dept. Also a bunch of parents. The Park Board has been discussing bathrooms for the last two years. Can we get the port-a-lets put in? They are out there three months of the year.

Mayor asked if the bathroom would be open to the public for the rest of the year. Can we make this a joint effort – work together?

Chuck asked if this had gone to Park Board. This became an issue before the Park Board mtg. Just started games a month ago. Mayor explained the soccer team had already started and government is slow. This came to our attention after the cut-off for the council meeting.

Vail is in favor of temporary resolve but is not in favor of bypassing Park Board. Jeff thinks it should go to park Board for recommendation. Vail has mixed emotions on location and use. Maintain them once a week. Carl met with them at site. Put it by shed and lock it up. Final decision after Park Board recommendation. Dezman asked for legal. Do a licensing agreement with team to put the port-a-let in and maintain it; remove it at end of season.

MOTION: Borton/McKnight to send the issue to Park Board for recommendation.
Discussion – Dezman said we should look at locating port-a-let – once a week cleaning could cause an odor problem. McKnight said it is a park board issue.

McClelland pointed out that the contract had expired. BWF stated that the contract had been sent to coach. This is separate issue.

Roll call vote – Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman, Aye.

Motion approved 5 to 0.

4. Request for Mobile Food Vendor at Soccer Field – Sponsored by Mayor

Exhibit: Agenda Report No 4

Recommendation: Request Action

Mary represents food vendor. Other clubs have concession stands. This is huge for them. She had certifications from the food vendor. She refers to license and certificates.

MOTION: McClelland/McKnight to send to Park Board. Mayor asked if Attorney Bohne had reviewed. Chair read the park regulations and the Administrator has the authority if the applicant meets all the requirements. He understands her wanting Council to approve continuous use. It was a one time event and changed to an entire season. If you want to allow it all the time, change the Code. McKnight asked what the difference between the ice cream truck and hotdog vendors.

Roll call vote: Borton, Aye, Vail, Aye, McClelland, Aye, McKnight, Aye, Dezman Aye.

Motion approved 5 to 0.

J. ACTIONS ITEMS:

ORDINANCES: First Reading

5. Appurtenance Height ORD. No. 2008-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V, SECTION 1-5.1 OF THE LAND DEVELOPMENT CODE OF THE TOWN; PROVIDING FOR EXCEPTIONS TO HEIGHT LIMITATIONS; DECLARING THAT ELEVATORS ARE INTENDED FOR HUMAN OCCUPANCY AND SHALL NOT BE CONSIDERED FOR AN EXCEPTION TO THE HEIGHT LIMITATIONS; AMENDING SECTION 1-20.2 OF ARTICLE XX OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING THE DEFINITIONS OF STORY AND BUILDING HEIGHT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No 5

Recommendation: Action on Ord. No. 2008-04

Mayor read by title only.

Motion: McKnight / Vail to approve first reading of Ordinance 2008-04.

Discussion: none

Vote: The roll was called: Council members: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman, Aye. Motion carried 5 to 0.

RESOLUTIONS:

6. Amending Council Meeting Agenda Procedures (Reso No. 13-2008).

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 4 OF RESOLUTION 5-97, COUNCIL

PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No 6

Recommendation: Action on Reso. No. 13-2008

Mayor explained the agenda procedures had been adopted by resolution so had to be changed by resolution. The resolution also addresses speakers promoting candidates of elected offices. He suggested changing "promote" to endorse in #4. Bohne suggested – "no request for placement on the agenda or person supporting or promoting that elected campaign. Mayor read Resolution 13-2008 by title only.

Motion: Vail / Borton to approve Resolution 13-2008 with attorney's change.

No discussion.

Vote: The roll was called: Council members: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman, Nay. Motion carried 4 to 1.

Dezman stated that Section 1 is her reason.

MISCELLANEOUS:

7. Calvin Giordano and Associates – Proposal to go forward with EAR amendments

Exhibit: Agenda Report No 7

Recommendation: Action

Mayor made his points. Where to get the money for this proposal. Council could pull it from reserves. Council has not seen a financial report in five months. Can not be fiscally responsible. Council doesn't know the effects of Amendment 1. Chair asked if any of Council had any questions about proposal itself.

Lorraine Tappen, senior planner, Calvin Giordano and Associates introduced herself. She stated the original E.A.R..was successful. DCA has found it sufficient. This is the next step. Vail understood this had to be done.

Motion: Dezman / Vail to approve to proposal.

Discussion: Dezman this item and agenda Item 8 are about spending money. We don't have financials. They did speak to the amount that it would cost to implement. No one remembered. Would this delay us? Mayor asked the question. Don't make the deadline. The State would not approve any comp plan changes. Borton asked the attorney and he stated: can you put it in the next budget and then run over and ask for an extension.

BWF said staff did not know we would not have financials by now. It is common to ask DCA for extensions. Consequences of not meeting the deadline – unknown.

Lorraine Tappen stated that the deadline to complete the adoption of ordinances recommended in the E.A.R. is 18 months. BWF stated we would show good faith by starting and ask for extension after budgeting.

McKnight said he would like this to go P&Z. What exactly is the firm going to deliver in this proposal?. They would like milestones and detail on what they would get for their money. He thought the verbiage was vague. He wants the break out to be bulleted under each item and detailed with what would be included.

Dezman and Vail rescind the motion to approve and second.

BWF will ask Calvin Giordano for more detailed information in the proposal.

MOTION: Vail / McClelland Motion to table. More discussion. Vail and McClelland rescind their motion and second.

MOTION: McKnight / Vail to forward proposal to P&Z and get more details on the scope of work on the proposal. McKnight stated if it is not in the scope of work for a fixed cost project we can not ask for it to be added later without additional costs. **Vote: All Ayes.**

Lorraine Tappan also asked if P&Z could provide input on the number of public workshops in the proposal. She said they planned to have all the appropriate staff at the workshops to explain the work they were doing on each element.

The EAR report states what you are going to use as guideline to change the Comp and Land Development Code. All the components will come before P&Z. BWF will ask for more specific information.

Dezman asked if the final project cost could come in higher. It is fixed fee. They suggested two workshops in the scope and she would like feedback. It is under public participation. There are nine (9) elements in the Comp Plan that would be updated. She would like to bring team members to go over each item. The purpose of the workshops is to get feedback and is held before the public hearings. This would be more detailed than the scoping meeting.

Dezman asked about the prices. Dezman went over the fees to pay. You can ask for an extension. Deadline is Aug 2009 to adopt the recommendations in the E.A.R..

8. Financing for Purchase of Property At 2715 Malabar Road

Exhibit: Agenda Report No 8

Recommendation: Action

Motion: McClelland / Vail to Table. Both rescind.

Motion: Dezman /Vail to approve to go ahead with financing from Riverside Bank.

Discussion. The \$50K down payment was coming from reserves and the balance of 125K would be financed for 20 years at approximately 1K per month. The funds for the rest of this budget year would come from Fund 300.

Vote: The roll was called: Council members: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, No; Dezman, Aye. Motion carried 4 to 1.

9. Certify costs of Matthews Lane per Chap 13, Sec 13-44

Exhibit: Agenda Report No 9

Recommendation: Action

Motion: McClelland / Vail to approve certified costs for Matthews Lane.

Dezman asked that spelling of linear be corrected.

Vote: All Ayes.

~~**10. Request by Atlantic Coast Paladin Shores, LLC to go forward with 114-unit Condo Project without repeating the Site Plan process.**~~

_____ **Exhibit:** _____ Agenda Report No 10
_____ **Recommendation:** Action
Motion: _____ / _____ **to Approve:**

11. Appoint Malabar Representative To Capital Outlay Committee and Staff Working Group per the School Concurrency Interlocal Agreement

Exhibit: Agenda Report No 11
Recommendation: Action

Mayor explained purpose of representatives. Mayor asked previous Mayor Phil Crews to be the representative for Capital Outlay Committee. A staff person for the staff working group.

Motion: Vail / McClelland to appoint BWF as staff rep to the Staff Working Group.
Vote All Ayes.

MOTION: Borton/Dezman to appoint Dezman to COC. Mayor said it would be beneficial to commit to the appointment for a period of time. Mayor Crews has represented Malabar on the School Concurrency. McClelland said it should be a current elected official.

Vote: All Ayes.

K. DISCUSSION ITEMS:

12. Amend LDC for Fences/Walls for S/D Developments (Proposed Ord No. 2008-99)

Exhibit: Agenda Report No 12
Recommendation: Discussion and Direction

Mayor has been attending P&Z for the last 3 years. P&Z member brought it up as it related to fences around subdivisions over six feet in height. The decision was made that our code doesn't apply to subdivisions. P&Z took this action to correct this deficiency. Subdivisions will have to comply with the regulations.

Motion: Dezman /Borton to direct staff to prepare ordinance regarding fences. Vote: All Ayes. Only applies to new subdivisions. McKnight thinks they should comply with code. Review all uses.

13. Fire Department Capital Improvement Plan

Exhibit: Agenda Report No 13
Recommendation: Discussion and Direction

Motion: Borton/Dezman to table since Chief is absent. All Ayes.

L. MAYOR AND COUNCIL REPORTS:

Borton: Serious about software. We did get rough estimate and 6K and this is the work around until the next budget year. Would have financials within the next two months. There are more checks and balances in place now.

She is the Malabar representative for the EELs meetings. It is not working trying to attend these meetings. She can't do it. Jeff McKnight offered to take over as representative and attend the meetings. We will notify Mike Knight

Put on next agenda – Repeal Ordinance 2007-6 as discussion item to determine council vote to direct Attorney to draft ordinance to repeal. .

Vail: Referred to the railroad repair done on Malabar Road that failed and the huge amount we have to pay them for such a large failure. The large amount is for maintenance of Jordan Boulevard crossing. The State pays for Malabar Road crossing.

McClelland: Thanks staff for IDs. Won't be here for Spring Fest. Will be gone from April 2 to 6th. He will be here for meeting on 7th.

McKnight Thanks to staff for council packet preparation. He mentioned issue he had with soccer coaches and the way players are picked. McClelland stated he also had issues with the soccer team - they took money from his wife but can't accommodate her son and allow him to play. Someone else left the league and went to Palm Bay. At last game of season turned in birth certificate. BWF asked for the professional contact overseer association. Call Palm Bay and get information.

Dezman: Received phone call from person with problem with staff members. Person already spoke with Mayor. She said that Sharon is the nicest person and this person upset Sharon – that takes a lot. Clear in communication. Mission was for practices – not to be league play. It is unconscionable that staff has been treated this way. Very clear what our mission is in having in our park. She asked again to see percentages of Malabar residents.

Received phone call about Weir Street. She will give to BWF.

Grey hound dog looks like it was abused or sick or hit and ran across the road, south to north.

Motion: to extend the meeting for six minutes. Vote: All Ayes.

Mayor: Showed a booklet on citizen survey – he will leave it with staff if anyone wants to review it. Asked if the 17 acres could be used. It is set aside for conservation -Can't use for soccer fields.

He proposed to write a letter to DCA about EAR explaining the financial situation and realizing the Comp Plan situation. Does DCA have any idea for funding or grant money.

M. PUBLIC COMMENTS: General Items

Bob Rowan, 2535 Corey Road, Great plan that the Mayor and the Chief brought up a great plan. Timing is a major concern. Senior Staff meeting with Town Administrator was excellent and at the end of the meeting they decided to table it for another year. They don't want to jeopardize the plan. Hold off for now. Bad timing.

N. ADJOURNMENT

There being no further business to discuss, **MOTION: Dezman / McClelland to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 10:40PM.

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

ATTEST BY:

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

4-7-08
Date Approved