

# **TOWN OF MALABAR**

**REGULAR TOWN COUNCIL MEETING  
MONDAY, JANUARY 28, 2008**

**MALABAR COUNCIL CHAMBER  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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## **AGENDA**

**A. CALL TO ORDER, PRAYER AND PLEDGE**

**B. ROLL CALL**

**C. ADDITIONS/DELETIONS/CHANGES**

**D. PRESENTATIONS: BS Troop 37**

**E. PROCLAMATIONS**

**F. CONSENT AGENDA**

**1. Approval of Minutes**

Regular Town Council Meeting – 1/7/08

**Exhibit:** Agenda Report No 1

**Recommendation:** Motion to Approve

**G. STAFF REPORTS:**

ATTORNEY

•

ADMINISTRATOR

• Fire Department Monthly Report

TOWN CLERK

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**H. PUBLIC HEARINGS:**

**ORDINANCES: None**

**I. ACTIONS ITEMS:**

**ORDINANCES: First Reading**

**2. Business Tax Certificate. ORD. No. 2008-01**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING IN FULL ARTICLE II OF CHAPTER 10 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING IN FULL ARTICLE II OF CHAPTER 14 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING IN FULL SECTION 1-5.25 OF ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; INCORPORATING CHANGES TO CHAPTER 205 OF THE FLORIDA STATUTES: CHANGING OCCUPATIONAL

LICENSES TO BUSINESS TAX RECEIPTS; PROVIDING FOR REPEAL; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No 2

**Recommendation:** Motion to Approve Ord. No. 2008-01

#### **RESOLUTIONS:**

3. **Legislative Issues Support. RESO No. 02-2008.** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA URGING MEMBERS OF THE FLORIDA LEGISLATURE TO SUPPORT THE FOLLOWING ISSUES DURING THE 2008 LEGISLATIVE SESSION; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No 3

**Recommendation:** Motion to Approve Reso. No. 02-2008

4. **Road Exhibit Modifications. RESO No. 07-2008.** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING EXHIBITS "A" THROUGH "B-3" OF SECTION 13-41 OF THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No 4

**Recommendation:** Motion to Approve Reso. No. 07-2008

5. **Renaming a new street in Malabar RESO 09-2008** A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE RENAMING OF MUSSELL SHOAL LANE TO FINS LANE; PROVIDING FOR THE FORWARDING OF THIS INFORMATION TO BREVARD COUNTY ADDRESS ASSIGNMENT FOR E 9-1-1 EMERGENCY IDENTIFICATION PURPOSES; PROVIDING FOR THE POSSIBLE FUTURE RE-NAMING OF FINS LANE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

**Exhibit:** Agenda Report No. 5

**Recommendation:** Motion to Approve Reso. No. 09-2008

#### **MISCELLANEOUS:**

6. **Authorization to Enter Case Study Agreement With UCF**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Discussion and Action

7. **Extension of Time on Code Violation – 75 Booth Road**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Discussion and Action

8. **Revised Letter to Brevard County Concerning the Proposed Purchase of Hossain Property by EEL program.**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Discussion and Action

**J. DISCUSSION ITEMS:**

**9. Fire Department 5-year Forecast of Needs**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Discussion and direction

**10. Recommendation from P&Z regarding Maximum Building Height**

**Exhibit:** Agenda Report No. 10

**Recommendation:** Discussion and direction

**K. MAYOR AND COUNCIL REPORTS:**

**L. PUBLIC COMMENTS: General Items**

**M. ADJOURNMENT**

If any individual decides to appeal any decision made by this Council with respect to any matter considered at this meeting, a verbatim transcript may be required and the individual may need to insure that a verbatim transcript of the proceeding is made (FS 286.0105). The Town does not provide this service.

In compliance with the Americans with Disabilities Act (ADA) anyone who needs a special accommodation for this meeting should contact the Town Clerk at 727-7764 at least 48 hours in advance of this meeting.

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**January 28, 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 8:05 pm by Mayor Eschenberg. The prayer and pledge were led by District 3 Councilmember Chuck McClelland.

**B.     ROLL CALL:**

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	CHUCK McCLELLAND
COUNCIL MEMBERS:	NANCY BORTON
	BRIAN VAIL
	JEFF MCKNIGHT
	PAT DEZMAN (not present)
TOWN ADMINISTRATOR:	BONILYN WILBANKS-FREE
ATTORNEY:	KARL BOHNE
DEPUTY TOWN CLERK:	CYNTHIA KELLEY

**C.     ADDITIONS/DELETIONS/CHANGES – None**

**D.     PRESENTATIONS – MALABAR BS TROOP 37 TO CARL BEATTY**

Robert Ritter, Assistant Patrol Leader, came forward and made presentation to Carl Beatty for his support and assistance with the Scouts during Trash Bash. Mr. Ritter also advised Council that there are two new Eagle Scouts, Brian Clay and Brett Stebbens who is also the Senior Patrol Leader for the troop.

**E.     PROCLAMATION**

**F.     CONSENT AGENDA**

**1.     Approval of Minutes**

Regular Town Council Meeting – 1/7/08

**Exhibit:**                      Agenda Report No 1

**Recommendation:**    Motion to Approve

**MOTION:   McClelland/Vail to approve as submitted.**

Mr. McKnight made note of a correction on page 3, item 5, six lines from the bottom; it should read unwise, not uswise.

**Vote: All Ayes.**

**G.     STAFF REPORTS:**

ATTORNEY – nothing at this time

ADMINISTRATOR

- Fire Chief's Report - attached to minutes

The report from the Fire Department has been moved to the second meeting of the month to give them time to provide the statistical information for the month. Since they gave the report at the last meeting they do not have anything for this meeting.

TOWN CLERK

- Deputy Town Clerk advised Council that Springfest will be Saturday, April 5<sup>th</sup> from 10:00 am until 4:00 pm.

**H.     PUBLIC HEARINGS:**

**I. ACTIONS ITEMS:**

**ORDINANCES: First Reading:**

**2. Business Tax Certificate. ORD. No. 2008-01**

**Without objection Mayor read Ordinance 2008-01 by title only. ORDINANCE 2008-01**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING IN FULL ARTICLE II OF CHAPTER 10 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING IN FULL ARTICLE II OF CHAPTER 14 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING IN FULL SECTION 1-5.25 OF ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; INCORPORATING CHANGES TO CHAPTER 205 OF THE FLORIDA STATUTES: CHANGING OCCUPATIONAL LICENSES TO BUSINESS TAX RECEIPTS; PROVIDING FOR REPEAL; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No 2

**Recommendation:** Motion to Approve Ord. No. 2008-01

**MOTION: McClelland/Borton to approve first reading of Ordinance 2008-01.**

Discussion: Mayor advised that we are changing some of the words to reflect the change in the statute from license to receipt. Mr. McKnight reported that he attended the IEMO conference this past weekend where this was discussed. He stated this is really a tax receipt not a license. People were coming back to the agency that issued the license saying they are responsible for the conduct of the business. Mr. Bohne advised that a license implies something like a state license; occupational licenses are not the same as a state license. There was a lot of deception going on. We are now in line with the State statute. The Town changed to certificate and we will need to change it to Receipt for this year. We have to change a couple of forms and we are back on track.

**Vote: The roll was called: Councilmembers: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman, Not Present. Motion carried 4 to 0.**

**RESOLUTIONS:**

**3. Legislative Issues Support. RESO No. 02-2008.**

**Without objection Mayor read Resolution 01-2008 by title only. RESO No. 02-2008**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA URGING MEMBERS OF THE FLORIDA LEGISLATURE TO SUPPORT THE FOLLOWING ISSUES DURING THE 2008 LEGISLATIVE SESSION; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No 3

**Recommendation:** Motion to Approve Reso. No. 02-2008

**MOTION: McClelland/McKnight to remove from table. VOTE: All Ayes.**

Discussion: McClelland reported that he and the Mayor both attended the last Palm Bay Council meeting; this went right through with no comment. He expected a longer discussion. Wilbanks-Free advised that Debby had put the Resolution first page both ways, leaving the Business Tax Certificate Receipt or taking it out. Mayor Eschenberg stated he would like to see, on page 2, the first condition taken out. The people of Malabar will want more say with their future tax funds before going to bonds. He also stated that the next to last condition regarding traffic infraction devices, he has an issue with this. McKnight is in agreement with the Mayor regarding the first condition; he's indifferent to the second regarding traffic infraction devices.

Wilbanks-Free asked Mayor Eschenberg if the Charter or code would dictate how your

particular municipality does it even if they do it this way. Mayor states he doesn't know if we have anything at all for this. Wilbanks-Free asks if it requires a referendum. She also states that back in 2004 or 2005 every municipality was required to submit a financial plan with those kinds of issues in it. If it had been done, Council would have had to adopt it. Mayor feels the people of Malabar should have a right to speak on their future tax dollars. On the electronic devices, it doesn't say what kind they are. Unless it's the type that can take a good photograph of the driver and not just the license plate, he has a problem with this. It's not clear what devices are to be used. The other option we have is to do nothing at all. Vail states that if supported, these stipulations don't necessarily apply to our area. Borton states we should adopt this resolution to show support.

**MOTION: Borton/McClelland to approve the original Resolution 02-2008.**

**VOTE: The roll was called: Councilmembers: Borton, Aye; McClelland, Aye; McKnight, Nay; Vail, Aye; Dezman, Not Present. Motion carries 3 to 1.**

**4. Road Exhibit Modifications. RESO No. 07-2008.**

**Without objection Mayor read Resolution 01-2008 by title only. RESOLUTION 07-2008**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING EXHIBITS "A" THROUGH "B-3" OF SECTION 13-41 OF THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No 4

**Recommendation:** Motion to Approve Reso. No. 07-2008

**MOTION: McClelland /Borton to adopt Resolution 07-2008**

Discussion: Bohne advised Council the suggested changes were made by the Town Engineer. Mayor Eschenberg states that Council may want to consider the modifications as suggested. Vail asks if modifications of this nature have been done in the past. Wilbanks-Free gave a brief history of a situation that is happening now regarding the width of the road and there being a wetland. The applicant has received the permitting from St. John's. They would have to go back to St. John's for re-permitting, which is costly and there maybe more mitigation land for this road. Mr. Stephenson recommends that the modification be allowed once all permitting processes have been completed and St. John's stating they can't make the width due to wetlands. Council doesn't like exceptions on a regular basis; staff was told to look at the code when it became so structured that you would have to choose who could and could not do this. This is where we are at. We have actually put the wording of minor modification in the resolution. Vail expresses concerns for future development; who absorbs the cost. Mr. Bohne states the new person coming would. If the road couldn't be built in the past, chances are in can't be built in the future. A way to address the issue to go back and change the code to accommodate the trees and wetlands. McKnight states the definition is vague. Mr. Bohne stated when this was first presented there was no definition of minor change. He came up with a definition for the resolution. McKnight asks if this will set precedence. Wilbanks-Frees states that St. John's determines the wetlands. Mr. Bohne states it could have a precedential value if wetlands are determined. McKnight agrees with helping people who need it; he doesn't like this. Wilbanks-Free states that if this doesn't pass, the application will start the variance process. Vail is not completely against it.

**VOTE: The roll was called: Councilmembers: Borton, Nay; McClelland, Nay; McKnight, Nay; Vail, Nay; Dezman, Not Present. Motion carried 4 to 0; motion fails.**

**5. Renaming a new street in Malabar RESO No. 09-2008**

**Without objection Mayor read Resolution 09-2008 by title only. RESOLUTION 09-2008**

A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE RENAMING OF MUSSELL SHOAL LANE TO FINS LANE; PROVIDING FOR THE FORWARDING OF THIS INFORMATION TO BREVARD COUNTY ADDRESS ASSIGNMENT FOR E 9-1-1 EMERGENCY IDENTIFICATION PURPOSES; PROVIDING FOR THE POSSIBLE FUTURE RE-NAMING OF FINS LANE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

**Exhibit:** Agenda Report No. 5

**Recommendation:** Motion to Approve Reso. No. 09-2008

**MOTION: Vail /Borton to adopt Resolution 09-2008**

Discussion: Wilbanks-Free gave a brief history as to the name change request.

**Vote: The roll was called: Councilmembers: Borton, Aye; McClelland, Aye; McKnight, Aye; Vail, Aye; Dezman, Not Present. Motion carried 4 to 0.**

**MISCELLANEOUS:**

**6. Authorization to Enter Case Study Agreement With UCF**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Discussion and Action

Discussion: Wilbanks-Free stated UCF approached us to have this study done. She was not comfortable without Council's approval. A copy of all documentation will be provided to the Town upon completion. The Fire Department is in agreement with this study as well. This will assist with grants being obtained. It's a free service and it will teach the younger people what the Town has to offer.

**MOTION: Borton /Vail to approve.**

**VOTE: All Ayes.**

**7. Extension of Time on Code Violation – 75 Booth Road**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Discussion and Action

Discussion: Wilbanks-Free stated the property owners are present this evening. She had an opportunity to speak with the father-in-law and give him the history of the violation at the property and advised that the owner's should check into storage rental for the equipment; the extension to March doesn't feel would work; calls are coming in daily from the neighboring residents.

Randy and Maria Pappas, owners, came forward to address Council. Mr. Pappas advised Council that a rental agreement for storage had been signed this afternoon. They would like to have at least this week and possibly early next week to get the equipment moved to the storage area. They will begin moving tomorrow. A copy of the lease agreement was provided to the Town Clerk's office. Council reviewed the lease while discussion continued.

**MOTION: McClelland/Vail to approve extension of code violation at 75 Booth Road until Friday, February 8, 2008.**

**VOTE: All Ayes.**

**8. Revised Letter to Brevard County Concerning the Proposed Purchase of Hossain Property by EEL program.**

**Exhibit:** Agenda Report No. 8

Discussion: Wilbanks-Free stated there is a map in the packet the Council received. In June of 2007, a letter was submitted to Brevard County stating that Malabar didn't have an issue with this purchase. The Town received a call to attend a meeting last week; Debby Franklin expressed a concern with taking the property between Glatter and Marie Street because of drainage issues. If the EELs would like to take the property to the north and give us this little piece, we would be able to maintain and service our drainage ditch. We would have to advise what this property would be used for. This will go before the County Commission on January 31, 2008.

**MOTION: Vail /Borton to approve sending a revised letter to EELs concerning the Hossain property with a 1.74 out parcel back to the Town of Malabar.**

Bob Wilbur came forward and addressed Council. What he is questioning is what the constraints would be to clear, maintain and see what we can do with this property. Wilbanks-Free stated this is a wetland. If we don't do this, we could have a problem with our drainage.

**VOTE: All Ayes.**

**J. DISCUSSION ITEMS:**

**9. Fire Department 5-year Forecast of Needs****Exhibit:** Agenda Report No. 9**Recommendation:** Discussion and direction

There was discussion between Bob Rowan and Council regarding the 5-year forecast needs of the fire department. Wilbanks-Free states that there is a follow-up meeting scheduled for Friday, February 1<sup>st</sup> with Chief Joe, Dan Welton and Bob Rowan. Mayor and McClelland would also like to have a meeting to have the information broken down; feels there is a lot in this plan in excess. Wilbanks-Free asks anyone who has a meeting with the fire department to please provide her with the information so that all Council members have the same information. McKnight brings up the question of sunshine violations with all the meetings with Council members and the fire department; is there a potential for problems? Mr. Bohne advises that there is always the potential for this. Wilbanks-Free states that if any Council member would like to attend meetings at the fire department, the meetings can be noticed with a disclosure that one or more Council members may be in attendance. This will take care of any conflict that may arise. She would rather do this than have Council be afraid of attending the meetings.

Borton asked what the opinion of the rest of Council is as to a paid fire department. How long before we go to the next step? Mayor advised that Council cannot do this on their own; we could invoke a fire assessment fee but we don't know what the fee would be. It would have to go out to referendum. Mr. Bohne stated Council does not have the authority to create an MSTU. There are mechanisms in place that would allow this to be done. Borton states she is not asking Council to pass this. Mayor states that the dynamics of a fire department needs to be known before any fees could be assessed. McClelland states that the MSTU for the Sheriff's Office is due on the November ballot this year.

**10. Recommendation from P&Z - Appurtenances****Exhibit:** Agenda Report No. 10**Recommendation:** Discussion and direction

It is the general consensus, with regards to building height, that the height is to the peak of the roof. One of the members of the Planning & Zoning Advisory Board, Don Krieger, made the comment that if you have a flat roof and place a decorative façade on it; it goes beyond the 35 maximum height requirements. It makes the building look nice; maybe we should revise the code to include these types of structures. Vail would be in favor of this; asks how tall a mansard can be. Mr. Bohne states building a mansard can be at 35 feet. Do we have a specific height on a flat roof? We need a height on appurtenances also. Mayor Eschenberg states that appurtenances are allowed with approval from Council. If we put them on with a specific height, the developer will come to us during the design stage rather than trying to cross the threshold. Appurtenances are not intended for human occupancy. McKnight is of the opinion that the attorney to review the ordinance for adequacy. There is a general consensus for the attorney to review and come back to Council. Mr. Bohne states he understands what Council is looking for with regards to appurtenances; he doesn't know the definition for human occupancy. Everything should be within a 35 height requirement. There are a lot of grey areas. Under the current code, a flat roof can be used because it does not reach the 35 feet. Wilbanks-Frees states that in a previous location, flat roofs were used and during hurricane season, it became a safety issue with who was going to make sure that all fixtures were removed to keep from becoming missiles. Vail states to send it back to the Planning & Zoning Advisory Board for their review and suggestions and have the attorney review them. Mayor Eschenberg volunteers to go through this section of the code and make suggestions to be brought back to Council. Vail is in favor of this.

Pat Reilly came forward and addressed Council. He is in favor of the Mayor's suggestion. He would like clarification from the attorney regarding human occupancy. Borton made comments regarding the elevator on her building. There was discussion between Council regarding this issue. Wilbanks-Free makes comments regarding ADA. Mr. Bohne states that you have a bonifide job description; if the person doesn't meet the requirement, you can get around this. It is a grey area.

**K. MAYOR AND COUNCIL REPORTS:**

**Borton**-is starting to see more activity on US #1 with prostitution. Wilbanks-Free is passing information on to Commander Salvo with BSCO; he's been on vacation and not available for her to speak to



regarding the gun shots near her residence last week and doesn't know if a report has been filed. Borton asks that a call be made for a general status on this to see if there was a response, if not, she has concerns.

**McClelland**-tasks for a status on the tanks at Marie Street. Wilbanks-Free states that there are state laws that prohibit from just loading them on a truck and hauling them away; they were given to the well driller. The Building Official is keeping on top of this; we were told they would be out by this week.

The MSTU is to be place on the November ballot as a question. Mr. Bohne will write the ballot question. Borton asks what the alternative is. Mayor states it will still be on the November billing; it has to be on for a year. Council has a year should the ballot fail. It was asked how soon the question is due to the Supervisor of Elections. Wilbanks-Free states a call will be placed to the Supervisor of Elections to find this information out. She and Mr. Bohne believes it is March but it will be verified. Mr. Bohne states the BSCO is required to provide a level of service to the Town; it will be with a general fund deputy if the MSTU does not pass. Wilbanks-Free reported that the four deputies for the South precinct have been hired; they are finishing up the FTO training program.

**McKnight**-attended the IEMO institute this past weekend; really enjoyed it and thanked staff for providing the information to him and making all the arrangements for him to attend. Wilbanks-Free asks if he will be attending the second part of the class. McKnight states he feels it's farther than he wants to travel. He will attend the Fort Lauderdale class in October. Wilbanks-Frees says she will get the information together for him. McKnight asks about the Sheriff's office here in Town Hall; is it rented? Mr. Bohne stated this is quid pro quo. Wilbanks-Free states that the Sheriff Deputies stop in and check on staff during the day and are here at times in the evening hours.

**Vail**-with regards to the road modification, he doesn't know if it's a bad idea. It may be something to be considered at some point in time. He doesn't want to rule it out and doesn't want it to be a part of every road.

**Dezman**-not present

**Mayor**-Mitch Needelman will be here Wednesday at 7:00 pm for his report; asked that Council be here in support of this meeting.

L. PUBLIC COMMENTS: General Items

M. ADJOURNMENT

There being no further business to discuss, **MOTION: Borton/Vail to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 9:45 PM.

BY:   
Mayor Thomas M. Eschenberg, Chair

TRANSCRIBED BY:

  
Cynthia Kelley, Deputy Town Clerk

2/1/08  
Date