

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**MAY 21, 2007                      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 Council Member Bobbi Moccia.

**B.     ROLL CALL:**

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

ATTORNEY:

DEPUTY TOWN CLERK:

MAYOR/CHAIR TOM ESCHENBERG

CHUCK McCLELLAND

NANCY BORTON

BRIAN VAIL

BOBBI MOCCIA

PAT DEZMAN (not present)

BONILYN WILBANKS-FREE

KARL BOHNE

CINDI KELLEY

**C.     ADDITIONS/DELETIONS/CHANGES**

Vail-made suggestion to wait on discussion of road ordinances until joint session with P&Z on Wednesday, May 23<sup>rd</sup>.

Wilbanks-Free-stated this is on the agenda for Wednesday's meeting.

Mayor-discuss tonight and get Mr. Stephenson's input on the matter and take the information to the joint meeting,

**D.     CONSENT AGENDA**

**1.     Minutes - Regular Council Meeting – 5/7/2007**

**Exhibit:**                      Agenda Report No. 1

**Recommendation:**    Motion to approve.

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

McClelland stated correction on page 9, should stated that Vail asked if Dr. McClure should come and address Council.

**Vote: All Ayes**

Nancy Borton arrived at 7:35 pm.

**E.     STAFF REPORTS:**

ATTORNEY-nothing at this time

ADMINISTRATOR

▪   **Update on Fire Department Building**

Wilbanks-Free-at last meeting advised Council of issues with building that needs to be finalized before we can move forward and make agreement to get quotes for doors and electric. The punch list was not able to be completed before this meeting; checked in to two things that she was asked to do. Mr. Vail asked to find out consideration on the concrete up to the doors. Mr. Stephenson did the work; the building is 100'x6'x6" plus the end door that is 16'x8'x6"; estimated at 13.5 cubic yards of concrete for an approximate price of \$2,400 but we should budget \$3,000 should cover it. She also asked for the millings to go to the side of the building, we need to make it T shape so Forestry would have a place to park; estimated cost of this is \$648.00. Roughly between the two, we would need \$4,000; at this time, not sure where the funds would come from; financials are in the works of being completed.

Vail-the concrete is still available as a donation; Mr. Foley has some connections with Tarmac; still had between 20 & 40 yards left to use for the project. He will check to see if offer still good.

Wilbanks-Free-if concrete is still available; we would only need funds for the millings. On the millings side, it may be that Forestry would be able to assist with this because it is being put there for their trucks. She will go forward if she has Council's direction on this. They are very interested in this; it's a matter of getting everything done systematically and still cover the issue with the building itself; to go forward with the doors or not.

▪ **Update on Palm Bay Water Surcharge Meeting**

Wilbanks-Free-gave a brief overview of the meeting that she and Mr. Stephenson had with Lee Feldman and Jason Yarborough of Palm Bay. She has asked that Mr. Stephenson speak on this matter. Currently, we are being charged for a 1" pipe; Palm Bay wants to implement charges for the 10" pipe on Malabar Road. This will have a definite impact on Malabar.

Stephenson-gave an overview of the meeting; the 10" pipe on Malabar Road can pass more water through for fire purposes. Palm Bay's position is that they have, in their rate ordinance, a minimum amount of water to be billed through each meter size. For the 10" pipe, the cost is approximately \$4,000. Palm Bay will be implementing this; when they do, it will be a financial hardship for Malabar. If Malabar doesn't adjust their rates for this increase, you could lose up to 90% each month. Implementing this increase will cause a problem for Malabar in terms of revenue and, secondly, it will be a two-fold problem because this is the type of facility that is to be placed along US 1. In the long run, the water billings will catch up; without a delay or something like this it will be a hardship.

There was discussion between Council and Mr. Stephenson.

Mayor-would like for Mr. Bohne to review all the legalities and see what we can do. A conflict resolution is something that we may be able to do. Mr. Bohne is to review the material and have a legal opinion at the next Council meeting.

**Notice from the League of Cities** (this was added to agenda)

Wilbanks-Free-received a notice on the special session advocacy plan and what they would like us to do in the interim while the session is going on. She is looking for direction from Council on this. She just returned from the FCCMA conference where Mike Sittig spoke. One of the things pushed was to have a public meeting to advise the citizens that it's not just taxes that they will be giving up or saving. It can impact all the way around. Would also like for us to get in contact with our Senate Delegation and thank them; needs direction on this. Mayor-doesn't know if a public meeting in Malabar would be much benefit. First off, we haven't done any kind of study to indicate to the residents how this tax cut would impact the Malabar budget; without this data, what would a public meeting do?

Borton-when is the meeting with Mr. Needleman?

Kabana-it's after the special session.

Wilbanks-Free-they are advocating that we do this while the special session is happening so they receive our communications; especially the one with the Senate to let them know that we support the fact that we know they weren't just slashing budgets.

CLERK-nothing to report at this time.

**F. PUBLIC HEARINGS – None**

**ORDINANCES – FINAL READING - None**

**G. ACTION ITEMS**

**RESOLUTIONS – None**

**MISCELLANEOUS**

2. **Approval to Piggyback the City of Palm Bay Park Mowing Agreement**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Motion to approve.

Wilbanks-Free-advised Council that Mrs. Hann communicated with her in regards to Palm Bay just awarding a contract in March for mowing of Palm Bay's parks. The contract has been reviewed and it is very close to what we need; the price is good per acre and it would save time and money to advertise for an RFP. Council also asked for information to have Public Works do the work. The information has been provided to the Parks Board for their review and questions. We will provide our own agreement with the company; we get the benefit of the same price as Palm Bay pays. There are a few issues that need to be worked out, which she hopes to have all the questions answered within the week.

Kemmler-Chair of the Park Board came forward and addressed Council. While reviewing the contract, the board had some questions.

Wilbanks-Free-advised that she has reviewed the notes taken at the meeting. She will make sure that all concerns are addressed. The chemicals provided will be fertilizer, herbicides and pesticides. Repairs to the equipment will be performed by Public Works and they will be responsible for the trash pick-up as well.

Kemmler-Cameron Preserve entrance is not on the list; it should be added.

Fred Simcox-2345 Candy Lane-came forward with questions regarding the bid. It was asked if Palm Bay would be doing the mowing.

Wilbanks-Free-the contract has been awarded to the contractor; we get the benefit of the pricing. We will have our own agreement with the contractor separate from the one Palm Bay has with them. This agreement will be drawn up by our attorney.

**MOTION: Borton/Vail to direct Town Administrator to pursue option A to piggyback on Palm Bay's contract.**

Vail-we will get a better deal with piggybacking on Palm Bay's contract; the parks will be done to the standards we are accustomed to.

Wilbanks-Free-we can also put in a termination clause, a penalty clause if they don't perform to our standards. A background check on the contractor has been completed; this is a model RFP for this park.

**VOTE: All Ayes.**

Mayor-will this come back before Council at the next meeting?

Wilbanks-Free-the attorney and I will work up a contract to bring to next meeting. The County will be contacted with regards to her questions. The contractor is anxious to get with us on this project.

3. **Application request for Board of Adjustment, Donna J. Hanna, 2195 Wilson Lane**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Motion to approve.

**MOTION: McClelland/Moccia to approve as presented, making Ms. Hanna 1<sup>st</sup> alternate. VOTE: All Ayes.**

4. **First Reading, Ordinance 2007-04, Consideration of an Amendment to the Town Code Article V Section 1.5.30.**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTIONS 1.5.30 RELATING TO SITE LIGHTING EXEMPTIONS; PROVIDING FOR AN EXEMPTION FOR EXISTING COMMERCIAL BUSINESSES; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4  
Ordinance No. 2007-04

**Recommendation:** Motion to approve.

Without objection, Mayor ready by title only.

**MOTION: McClelland/Borton to approve Ordinance 2007-04 as presented.**

Vail-had questions regarding the site lighting complying with the shielding requirements. This would be referring to the down lighting?

Bohne-the shielding requirements is in the ordinance and everything else stays the same.

**The roll was called: Borton, Vail, McClelland, Moccia – All Ayes. Dezman-not present.**

This will come back before Council as a Public Hearing at the next meeting for the final reading.

**5. First Reading, Ordinance 2007-05, Providing for Inclusion of the Town of Malabar in the Brevard County Law Enforcement Municipal Services Taxing Unit.**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR INCLUSION OF THE TOWN OF MALABAR IN THE BREVARD COUNTY LAW ENFORCEMENT MUNICIPAL SERVICES TAXING UNIT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5  
Ordinance No. 2007-05

**Recommendation:** Motion to approve.

Without objection, Mayor read by title only

**MOTION: Moccia/Borton to approve Ordinance 2007-05 as presented.**

Mayor-under section 1, he asked if it is better to read as for a period of 2 years commencing October 2007?

Bohne-as it is now, the ordinance can be repealed. If a time period is put in, the ordinance could bind the Town for a longer period than you may want.

**The roll was called: Borton, Vail, McClelland, Moccia – All Ayes. Dezman-not present.**

**6. First Reading, Ordinance 2007-06, 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;**

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 IN WHICH SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 6  
Ordinance No. 2007-06

**Recommendation:** Motion to approve.

Without objection, Mayor read by title only.

**MOTION: Moccia/Vail to approve Ordinance 2007-06 as presented.**

Mayor-see corrections noted in ordinance.

There was a short discussion regarding what to do if we no longer participate in the MSTU. Council will have to present an option to the citizens when such time comes.

**The roll was called: Borton, Vail, McClelland, Moccia – All Ayes. Dezman-not present.**

**7. Park Signs for Fern Creek Crossing and Malabar Disc Golf Park**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Direction by Council.

Wilbanks-Free-discussion was held with getting information together regarding identification markers at the disc golf park and Fern Creek Crossing. We would like to

carry the same design through the parks; we went with the same vendor with each sign being \$810. Moccia-feels that this is a very large amount of money for two signs; recommends contacting the company on Palm Bay Road and inquiring about recycled plastic signs.

Borton-knows the owner will make contact. It could be possible that we may receive a break-in the price; this company does a lot for the community.

Moccia-feels that the signs should not be as large as the main park sign. Take a picture of the existing sign and ask for an estimate.

**MOTION: Moccia/Vail to table until such time as the Town Administrator brings it back to the table.**

Kemmler-the signs should be smaller than the main park sign.

**VOTE: All Ayes.**

Wilbanks-Free-asked Mayor to see if Council would be willing to donate some of their discretionary funds to purchase the signs.

Mayor-let's wait and see what information is obtained before we ask for funds from discretionary accounts.

## **H. DISCUSSION ITEMS**

### **8. Suggested Changes to the Town Code - Chapter 13, Article 2 Streets**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING SECTION 13-38 (a); PROVIDING FOR THE COMPLETION OF A STREET/ROAD AS A PRECONDITION TO THE ISSUANCE OF A BUILDING PERMIT FOR A NEW RESIDENTIAL OR COMMERCIAL STRUCTURE ABUTTING AN UNIMPROVED RIGHT-OF-WAY OR UNACCEPTED LOCAL STREET/ROAD; CREATING A NEW SUBSECTION (d) TO SECTION 13-38; PROVIDING FOR AN EXCEPTION FOR THE COMPLETION OF ROADS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CODIFICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

- AND -

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING SECTION 13-42 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR AMENDING THE PROCESS FOR IMPROVING ROADWAYS WITHIN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR A REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 8  
Two Proposed Ordinances

**Recommendation:** Discussion and direction by Town Council

There was discussion between Mr. Stephenson and Council regarding possible changes to this ordinance. The information will be taken to the joint workshop on Wednesday, May 23<sup>rd</sup>, between Council and Planning & Zoning.

Paul Marpil-Chair to the Board of Adjustments came forward and addressed Council.

The way that this ordinance is written does not assist the Town. He spoke against this ordinance; feels it needs work before being passed by Council.

Mayor-volunteered to go through the whole section of code and make recommendations. Before this comes back to Council, he will get with Mr. Stephenson to discuss the changes being proposed.

### **9. Results of Board of Adjustment meeting of 4/17/2007**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Discussion and direction by Town Council

Mayor-requested this on the agenda; he sat in on the last meeting. Council should be aware of recent action taken by the Board of Adjustment. A brief overview of the last meeting was given.

Paul Marpil came forward and addressed Council. The case pertaining to the possible flag lot, the board did what they thought was right and in doing so, the Town benefited by the decision made. The second case that came before them, he was the only one who voted against it.

Bohne-in regards to the Board of Adjustment, they were correct in approving the case. There was a possible scenario creating a flag lot and becoming a non-conforming piece of property. With the decision that was made, the Town definitely benefits from the decision that was made.

Mayor-just wants Council to understand what is going on and what is coming before BOA and how they handle it.

#### **I. MAYOR AND COUNCIL REPORTS**

Moccia-the bales of hay held back from Springfest will be delivered back to Nail Farm and letters of thank you are being sent out. Port Malabar Elementary held a play and the hay bales were of great assistance to the school.

McClelland fire fighter Mark Marcenik, who started his career as a volunteer with Malabar, has passed away.

Vail-nothing to report at this time.

Wilbanks-Free-advised Council that Chief Gianantonio has asked for permission to have a truck in the funeral procession to show our support.

Borton-nothing to report at this time,

Mayor-he was asked to do two things regarding the Grant-Valkaria issues. He was able to speak to Del Yonts in great detail; it was a good move to replace Dr. McClure with Bobbi Moccia. Mayor Eschenberg advised Mrs. Moccia to contact Mr. Yonts and discuss this in length; he has a long history with the airport. It might not be a bad idea to have a joint meeting with the people of Grant-Valkaria to discuss the airport

Moccia-not sure when she is supposed to start going to the meetings.

Wilbanks-Free-emailed the County with the changes that Council would like to make. She also spoke to Dr. McClure and advised him of the change Council has made.

#### **J. PUBLIC COMMENTS: GENERAL ITEMS**

Bernadette Knudson, 2480 Hunter Lane-was at the last meeting for the Valkaria Airport. The Town of Malabar was excluded from any planning regarding the master plan. These meetings are announced in obscure places in the newspaper. Florida Institute of Technology (F.I.T.) was paid \$50,000 to do the master plan; they are not licensed to complete this type of work. A cease/desist order from the Department of Professional & Business Regulations was issued. She is requesting that Council write a letter; the Town of Malabar cannot approve a master plan completed by an unlicensed contractor. Mrs. Voltz is to put together a special meeting to take a stance to scratch the master plan and start over. F.I.T cannot keep up with the rising costs at the Melbourne Airport. She is asking that we follow what Grant-Valkaria has done.

Moccia-wants to review the workshop before speaking on this issue.

This is to be placed on the next Council agenda.

**K. ADJOURNMENT**

There being no further discussion, **MOTION: McClelland/Moccia to adjourn. VOTE: All Ayes.** This meeting adjourned at 9:30 pm.

BY: \_\_\_\_\_  
Mayor Thomas Eschenberg, Chair

ATTESTED BY:

\_\_\_\_\_  
Cindi Kelley, Deputy Town Clerk

Date: \_\_\_\_\_