

MALABAR TOWN COUNCIL REGULAR MEETING
JUNE 4, 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 Pat Dezman.

B. ROLL CALL:

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	CHUCK McCLELLAND
COUNCIL MEMBERS:	NANCY BORTON
	BRIAN VAIL
	BOBBI MOCCIA
	PAT DEZMAN
TOWN ADMINISTRATOR:	BONILYN WILBANKS-FREE
TOWN ENGINEER:	BILL STEPHENSON
ADMIN.	
ATTORNEY:	RICHARD RIEHL
DEPUTY TOWN CLERK:	CINDI KELLEY

C. ADDITIONS/DELETIONS/CHANGES

Dezman-add Discussion item 12 – package received regarding Town Administrator
Dezman-add Discussion item 13 – Council meeting night
Eschenberg-Discussion item 14 – Road Ordinance
Moccia-discuss Fern Creek Park and Eagle Scout projects after presentation to Boy Scouts

D. PRESENTATIONS

- **Larry Weber, Keep Brevard Beautiful**
Larry Weber and George Glectko made presentation to Mayor Eschenberg with a check for \$500 and a plaque. Mayor Eschenberg made presentation to Boy Scout Troop 37 with the check.

Bobbi Moccia advised Council that there are two Eagle Scouts, Paul Draper and Robert Ritter, III, planning projects for the Fern Creek Crossing park; a foot bridge and finishing the fencing at the park. Each Scout is now checking on pricing and gathering ideas of how to raise the funds for these projects. It will be coming back before Council before any work commences.
- **Certificates of Appreciation for:**
 - a) **Deputy Town Clerk Cindi Kelley**
 - b) **Public Works Supervisor Carl Beatty**Mayor Eschenberg presented certificates to Cindi Kelley, Carl Beatty and Susan Kabana for the outstanding job of putting the Springfest together.
- **Certificate of Completion for Mayor Eschenberg, completion of the 2007 Advanced Institute for Elected Municipal Officials**
Bonnie Wilbanks-Free presented Mayor Eschenberg with a certificate for completing the classes for Advanced Institute for Elected Officials.

E CONSENT AGENDA

1. **Approval of Minutes**
 - Regular Council Meeting – 05/21/07**
 - Town Council Joint Workshop with P & Z – 05/23/07**

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

MOTION: Moccia/Borton to approve the consent agenda. VOTE: All ayes.

F. STAFF REPORTS:

ATTORNEY

Richard Riehl sat in for Karl Bohne; with regards to the Gentile case, Mr. Gentile's attorney is filing a motion to withdrawal. This will more than likely set the case back on the docket.

ADMINISTRATOR

Gave a brief update to Council on the C/O for the building at the fire department. C/O was issued on June 1, 2007; we can now move forward with getting bids for the electric and doors. Also advised Council about leaks on the southwest corner of the fire station; working on getting information about the roof warranty to get this matter taken care of.

FIRE CHIEF

Gave a brief over-view of the status of the fire department; responses are up over 239 calls; well over where they were last year at this time with responses. All units are in use. Possibility of moving funds within their budget to get some repairs to apparatus that is needed.

CLERK

Nothing to report at this time.

G. ORDINANCES – FINAL READING

2. Second 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. 2
Ordinance No. 2007-04

Recommendation: Motion to approve.

Without objection, Mayor Eschenberg read by title only.

MOTION: McClelland/Vail to approve Ordinance 2007-04.

The roll was called: Borton, Vail, McClelland, Moccia and Dezman, Ayes.

3. Second 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. 3
Ordinance No. 2007-05

Recommendation: Motion to approve.

Without objection, Mayor Eschenberg read by title only.

MOTION: Moccia/Dezman to approve Ordinance 2007-05.

The roll was called: Borton, Vail, McClelland, Moccia and Dezman, All ayes.

4. **Second 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. 4
Ordinance No. 2007-06

Recommendation: Motion to approve.

Without objection, Mayor Eschenberg read by title only.

MOTION: Moccia/Borton to approve Ordinance 2007-06.

The roll was called: Borton, Vail, McClelland, Moccia and Dezman, All ayes.

H. ACTION ITEMS

RESOLUTIONS

5. **Adopt Fern Creek Crossing as Official Town Park - RESO No. 11-2007**

Exhibit: Agenda Report No. 5
Resolution No. 11-2007

Recommendation: Motion to approve.

Without objection, Mayor Eschenberg read by title only.

MOTION: Moccia/Borton to approve Resolution 11-2007.

Moccia-is this something that should be done with each new park?

Wilbanks-Free-it is good to have in place for grant funds.

Stephenson-it should be in the management plan for approval.

Wilbanks-Free-it should also be in the land plan as well.

The roll was called: Borton, Vail, McClelland, Moccia and Dezman, All ayes.

6. **Adopt Disk Golf Park as Official Town Park – RESO No. 12-2007**

Exhibit: Agenda Report No. 6
Resolution No. 12-2007

Recommendation: Motion to approve.

Without objection, Mayor Eschenberg read by title only.

MOTION: Moccia/Vail to approve Resolution 12-2007.

The roll was called: Borton, Vail, McClelland, Moccia and Dezman, All ayes.

MISCELLANEOUS

7. **Rezoning Request From RS-15 to RR-65, 1.5 Acres, Applicant Diane Parker, 1573 Weir Street Malabar, Florida**

Exhibit: Agenda Report No. 7
Ordinance 2007-07

Recommendation: Motion to approve

Diane Parker 1573 Weir Street-addressed Council. She would like to participate in the agriculture of Malabar; she wants to protect her birds. With the growth coming around her, she is working very hard to bring her property up to standards of what is coming in. This has been a joy for her and the animals have had a lot of meaning to her and others

in her life. She doesn't feel the birds will be an issue with the neighbors; there is quite a bit of area between her and her neighbor.

The discussion was brought back to Council.

MOTION: Moccia/Vail to table until legal opinion received from attorney.

There was additional discussion between Council, attorney and application. Ms. Parker has offered to sign a document stating she will only have a handful of chickens and her 125 pigeons; the goat will not be acquired. She is willing to do whatever she has to; preserving her animals and lifestyle is most important to her.

VOTE: All ayes.

8. Request for Site Plan Approval, 1450 W. Railroad Avenue, CG Zoning, presented by MBV Engineering. Applicant: Mark Archer

Exhibit: Agenda Report No. 8

Recommendation: Motion to approve

Mark Reagan-MEB Engineering, is here on behalf of the property owners. They are seeking site plan approval for Railroad Avenue Storage. The property is located behind Town Hall and across from the Public Works complex on Centre Street. There are three existing storage units; this building will be placed on the western portion of the lot. The bottom floor has roll-up doors to the units and there is an elevator and stairs for access to the second story. Staff has worked very diligently with the applicants to get the project this to the approval point. There is a condition to pay half of improving Centre Street; since Public Works is on the other side of the street, the town will pay the other portion of the road improvements. Landscaping will be placed all along Centre Street and the retention pond on the west side.

Mark Archer-1450 W. Railroad Avenue-property owner came forward to introduce himself to Council and to thank staff for all assistance provided during the application process. Mr. Archer also thanked Council for taking time to listen and review this request.

Moccia-asked how the height of the building fits into the code.

Franklin-the height of the roof, to the tip, is 28'; it falls within the 35' allowance

Vail likes the way it looks, has the Florida vernacular and goes with the look of what we are trying to maintain in Malabar.

MOTION: Borton/Vail to pass the site plan with the recommendations from P&Z.

Moccia-likes the look of the new building. Are there any plans to make changes to the existing buildings?

Reagan-at the time of application, this was not a consideration. This building will enhance what is already there.

Archer-there are plans for a second phase; it is possible to paint the existing storage buildings to match the new building. They are trying to work as best they can.

VOTE: All Ayes.

9. Environmentally Endangered Lands (EEL's): willing sellers of two identified parcels with the Town. Parcel 29-38-07-00-1.1, approximately 21.44 acres and Parcel 28-37-36-00-503, approximately 1.47 acres

Exhibit: Agenda Report No. 9

Recommendation: Motion to approve

Mayor Eschenberg-the EELs program would like to have Council's approval to purchase these two small parcels.

Borton-is asking for guidance as to how Council feels this should be handled; she would like to sit down and have a meeting with them one on one.

Mayor Eschenberg-stated that he heard from DEP regarding the land for the new town hall; EELs is the road block with this project.

Dezman-believes that these are the two properties that we had stated would be okay to purchase at a previous Council meeting.

Vail-one of the purchases is contiguous with what is already owned by them; it completes the grid that already exists.

Dezman-we were very clear in what EELs has done in the past; the Commission can over-ride our decision and approve these purchases. We are okay with this; we agreed to these two purchases and no more.

The Town Administrator will write a letter to the County with Council's opinion.

MOTION: McClelland/Dezman to accept these two purchases. VOTE: All Ayes.

Mayor Eschenberg-stated to Mrs. Borton that she can advise the EELs that Council whole-heartedly approves these purchases.

Wilbanks-Free-stated she was able to introduce herself at the Boundary Canal meeting; this opened the door to communications.

10. Park Signs for Fern Creek Crossing and Malabar Disk Golf Park

Exhibit: Agenda Report No. 10

Recommendation: Motion to approve

MOTION: Dezman/Borton to approve option A using Artistic Signs.

Kabana-how are we going to pay for this?

Moccia-Stillwater Preserve gave \$20,000 for recreational fees

Kabana-this would be a good place to take the funds from; she had forgotten about these funds.

Amended Motion: Dezman/ to approve option A using Artistic Signs and take from recreational fees from Stillwater Preserve. Vote: All Ayes,

I. DISCUSSION ITEMS

11. Valkaria Airport Advisory Board

Exhibit: Agenda Report No. 11

Recommendation: Discussion and direction

Janice Walters-Valkaria part of the Grant-Valkaria-spoke against the master plan bring prepared by F.I.T. All the people who live in the area are not happy with what is taking place at the airport. She also thanked Mrs. Moccia for volunteering to sit on this committee and being the voice for Malabar.

Curt Lorenc-Grant-Valkaria resident-also spoke against the master plan that is being prepared. It's almost like the plan is to build Valkaria National Airport, moving the noise from Melbourne to Malabar. The County did not go out for competitive bidding for the master plan. He is the one who notified the Department of Professional & Business Regulations; a Cease/Desist order was issued to stop the work on the master plan. This order has been ignored; work continues on this plan. Moving a flight school to this area would definitely change the look and feel of Malabar. Grant-Valkaria unanimously voted the master plan down; he is requesting that Malabar do the same.

Linda Mason-5647 Cypress Creek Drive, Grant-provided verbatim statements from the January 26, 2006 Brevard County Commission meeting. She also spoke against the master plan for the Valkaria Airport and is requesting that Malabar's Council vote against this plan.

Bernadette Knudson-Hunter Lane-spoke against what is happening and the plans for the airport within the master plan. She is asking that Malabar's Council write a letter stating that a master plan is not needed.

Dezman-made a suggestion to Mrs. Knudson to get in touch with the people of Country Cove and Brook Hollow. Helicopters are landing in people's back yards.

MOTION: McClelland/Moccia to send letter against master plan.

Moccia-this was discussed a year ago and Malabar made their wishes known. When Mr. Brodsky, manager of the airport, addressed Council it was stated by him that they would only be making the necessary repairs to the airport due to the hurricane damage of 2004. These repairs were to be made because of safety issues to the existing building, hangars and runways. When we write this letter, a copy of the first letter sent should also be attached as backup material.

Dezman-made a suggestion that we have a joint meeting with the County Commissioners and the Grant-Valkaria Council to discuss this issue and let them know our wishes and concerns.

Vail-asked the attorney if a referendum could be put on the November ballot so the people can speak about this.

Riehl-stated he would have to research this to see if it is feasible.

AMENDED MOTION: McClelland/Moccia to have Bonilyn Wilbanks-Free draft a letter and bring back before Council with backup information at the next Council meeting. VOTE: All ayes.

Added Discussion Items:

Package Received/Bonilyn Wilbanks-Free

Pat Dezman requested that Mayor Eschenberg write a letter of inquiry to the Mayor of the Town of Golden Beach. If any new information is received, it will be brought back to Council for review and discussion.

Council Meeting Night

Pat Dezman has a conflict with meeting on Monday evenings during classes being taken in the fall. This will effect the months of August through November; classes held every Monday evening. Since the night of the meeting affects so many people, Council is in agreement that the missed meetings for Mrs. Dezman will be excused from Council meetings while attending classes.

Road Ordinance

Mayor Eschenberg reviewed the entire ordinance; cannot find any other changes to be made except for the change regarding existing home he brought forth and the changes by Bill Stephenson to get the Town out of the road building business. He feels that Council should go ahead with this. The BOA approved the variance request on Sikes Lane at their last meeting and the Town does not get the right-of-way. Council can do one of two things, Council can change the ordinance for existing home improvements so the Town can obtain the right-of-way; or Council can disband the Board of Adjustments and do the job themselves.

Dezman-would like information on the impact to Council if the Board of Adjustments is disbanded.

Mayor Eschenberg-if acting in quasi-judicial capacity, you are to get the evidence, testimony from the witnesses, any documentation; then you make your decision.

Riehl-it's very big responsibility; it's the source of all law suits, a major litigation for towns because there are very stringent standards that must be abided by. Grant-Valkaria Council acts as the Board of Adjustment as well.

Vail-doesn't feel that the Board of Adjustments is on the same page as Council; what can we say to them or advise them of?

Riehl-Council cannot tell them what to do.

Vail-can we make them aware of the repercussions we are receiving on our end and also would it be within their power to ask for the right-of-way?

Riehl-you can modify the ordinance to require that anytime one of the road ordinance requirements is waived by the Board of Adjustments, it should be made as a condition of

the variance application. There are two different permits; maintenance and additions. It is very easy to determine what type of permit is requested.

Mayor Eschenberg-his intent was if an existing home owner needed to make improvements to their home, making a requirement of the building permit to dedicate the right-of-way to the Town.

Dezman-this needs to come back as a discussion item with all the changes made; if Council likes the ordinance, it can be added to the first agenda in July for first reading.

J. MAYOR AND COUNCIL REPORTS

Borton-nothing to report at this time.

Vail-asked if there would be a quorum for the first July meeting; went around the table and there will be a quorum.

McClelland-should there be something coming back to Council naming "Old Mission" and the landscaping contract. Mrs. Wilbanks-Free stated that both will be brought back to Council by the next meeting. Mr. McClelland will not be present for the second meeting in June; Mr. Vail also stated he may or may not be at the next Council meeting.

Moccia-some of the plants at the Fern Creek Crossing Park have had to be replanted. She has been planting native species that don't need care in this park; all plants received have been donated and more are coming. A contact on the beach-side will be donating some Siads, which are palms of sort. Mr. Vail stated he noticed quite a bit of flooding on Corey Road after the big rain; this shows where we cannot place a bridge in the park. Mrs. Moccia stated that St. John's is looking at what we can do and they will be contacted before anything is brought to Council for approval.

Dezman-there needs to be a data base for staff to retrieve information without going through files. Mrs. Kabana advised that this is already in place. She apologized for missing the joint workshop meeting; missed it on her calendar.

Mayor Eschenberg-with regard to the dome, he has made contact and has been referred to several people. He has not heard back from anyone; will contact Amy Nissey again and give a short period of time for them to make commitment. If the don't, Lake Mary High School will be contacted. We would really like to donate it within Brevard County. Pat Dezman stated she has a contact on the Brevard County School Board; a call will be placed to see if anyone in Brevard needs something like this and Mrs. Wilbanks-Free will be notified with an answer by Thursday of this week. Mayor Eschenberg was okay with making this contact.

K. PUBLIC COMMENTS: GENERAL ITEMS

None

L. ADJOURNMENT

There being no further discussion, **MOTION: Dezman/Vail to adjourn. VOTE: All ayes.** This meeting adjourned at 9:50 pm

By: _____
Mayor Thomas Eschenberg, Chair

ATTESTED BY:

Cindi Kelley, Deputy Town Clerk Date