

**MALABAR TOWN COUNCIL REGULAR MEETING  
JUNE 18, 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 the Mayor.

**B.     ROLL CALL:**

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	CHUCK McCLELLAND (excused)
COUNCIL MEMBERS:	NANCY BORTON
	BRIAN VAIL
	BOBBI MOCCIA
	PAT DEZMAN
TOWN ADMINISTRATOR:	BONILYN WILBANKS-FREE
ATTORNEY:	KARL BOHNE
ASSIST. TO BUILDING OFFICIAL	DEBBY FRANKLIN
TOWN CLERK/TREASURER:	SUSAN KABANA

**C.     ADDITIONS/DELETIONS/CHANGES**

Wilbanks-Free – Borton would like to pull Item 10 from the agenda. Dezman – why? Wilbanks-Free – we were able to pull together a meeting with Mike Knight of the EEL's and we are working on setting up a meeting.

**D.     PRESENTATIONS**

**Marguerita Engel, Intergovernmental Coordinator, St. John's River Water  
Management District – Drought Information and Irrigation Rule**

Engle – if we don't preserve our water resources we will suffer in the future. Of 'reduce', 'reuse' and 'recycle', 'reduce' is most important, we have to think about how much water we use. Inside the home we can fix leaks, use conservation methods. Outside the home we should water the landscape only twice a week. The District's website has information on water use and conservation. Ms. Engle reviewed various program information sheets for citizen use. She left copies at Town Hall for distribution to the public. For municipalities, the District has a stormwater cost-sharing program. Kabana – per a Water District request, the Town put a link on the Malabar website regarding drought information.

**E       CONSENT AGENDA**

**1.       Minutes - Regular Council Meeting – 06/04/07**

**Exhibit:**                      Agenda Report No. 1

**Recommendation:**    Motion to approve

**MOTION: Moccia/Dezman to approve. VOTE: All aye.**

**F.       STAFF REPORTS:**

**ATTORNEY**

Bohne – Gentile trial is scheduled for late July or August. Gentile's attorney has filed a motion to withdraw, which leaves Gentile without representation. Mr. Gentile has not been in communication with his lawyer. Bohne told the court that he did not want to see any kind of an order that would delay the trial for 30 days while Gentile hires a lawyer and the court agreed. The case has been in the litigation phase since 2005. They have set aside three days, Bohne has filed a pre-trial statement and listed witnesses.

**ADMINISTRATOR**

- Letter to Brevard County on Valkaria Airport Master Plan  
Wilbanks-Free – included a draft letter in the packets tonight, Council approves the letter.

Wilbanks-Free – she talked today with the Fire Chief because she wants to move forward with the concrete aprons around the doors. She wants to finish the aprons before expending anymore money to finish the driveway area so we can work on the building, securing it for the hurricane season. She feels we would be remiss if we had a large parking area and turn around area but there were no doors on the building. Notes that the aprons are being formed now and we are almost ready to pour. The Chief has the money allocated for the aprons.

#### **CLERK**

Kabana – notes that Form 1's, Financial Disclosure, are due on July 1<sup>st</sup>.

Mayor – has a procedural question for the Council. Normally it takes a card to speak at the meeting but sometimes a person raises their hand then comes to the podium and speaks. Does Council want to continue to allow this or should speakers fill out a speakers card before speaking? Borton, Vail, Dezman – would like to have the card filled out and attached to the record. Mayor – notes that if someone asks to be on the agenda they do not have to fill out a speakers card. Moccia – notes that when Board members are in the audience and Council wants them to speak then they also will have to fill a card which will take more time.

### **G. PUBLIC HEARINGS**

**ORDINANCES – Final Reading – None**

### **H. ACTION ITEMS**

#### **ORDINANCES – First Reading**

**MOTION: Moccia/Dezman to ready by title only. The Mayor read:**

- 2. Protection of the Town logo, Town Seal and Town Letterhead. ORD. 2007-10**  
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADDING SECTION 2-1 TO CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; DESIGNATING AN OFFICIAL TOWN SEAL, LOGO AND LETTERHEAD; PROVIDING FOR PENALTIES FOR ILLEGAL USE OF THE OFFICIAL TOWN SEAL, LOGO OR LETTERHEAD; PROVIDING FOR CODIFICATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

**Exhibit:** Agenda Report No. 2  
Ordinance No. 2007-10

**Recommendation:** Motion to approve

**MOTION: Dezman/Borton to approve. VOTE: Aye – Vail, Borton, Moccia, Dezman.**

**RESOLUTIONS - None**

#### **MISCELLANEOUS**

- 3. Approval of Extension of the Brevard County Interlocal Agreement - Local Option Gas Tax.**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Motion to approve

**MOTION: Dezman/Borton to approve. VOTE: All aye.**

- 4. Approval of Park Mowing Contract**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Motion to approve

Council was concerned about when to allow the contractor to mow, if there are too many stipulations then they won't be able to mow after rainy days. It is decided that they can mow on the weekends if needed, as stipulated in the contract. If there are complaints the Administrator may need to modify the contract.

**MOTION: Borton/Vail to approve. VOTE: All aye.**

**5. Renewal of Lease for Building Department Rental & ADA Ramp**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Motion to approve

Wilbanks-Free – feels that not having the ramp on the building department building leaves us with a huge liability. She first went to the company we lease the building from but their figures were too high. Then she went to the company that supplies the ramps to the leasing company. So for \$210/month she can lease the ramp from one company and then it would be \$12,000 for the next two year lease on the building itself. Wilbanks-Free has it in writing that we can lease the building for less than two years without penalty.

**MOTION: Dezman/Vail to sign a 24 month agreement for the building rental and have the Administrator go directly to the company that builds the ramps and have a 24 month agreement with them for \$210 per /month. VOTE: All aye.**

**6. Approval of Site Plan Extension for Paladin Shores Condominiums and to Postpone Utility Impact Fee payment**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Motion to approve

Mayor – this request is for two separate things, the Site Plan has expired and the second issue is to postpone the utility impact fee, which is in direct conflict with the ordinance. Asks Bohne if the Council has the authority to violate the Town ordinance. Bohne – no, but they can apply to the BOA. The Town should not allow anyone to violate the code.

Paladin – they were asking to split the water impact fee out so they can preserve their water rights now, which was suggested by the City of Palm Bay. They just want to pay the water impact fee now and then pay the sewer impact fee later. Bohne – unfortunately our code states that both impact fees shall be paid at the same time. The request is denied.

Regarding the site plan extension: The environmentalist found one tortoise on site that had a respiratory disease and Paladin was told they would have to kill all 14 of the tortoises on the site. Mr. Paladin did not want to see them killed, only relocated and he ended up having to wait for new legislation to be passed that would allow the moving of the healthy tortoises. Waiting for that legislation put him behind schedule.

Richard Kern, 385 Pineda Court, Engineer for Paladin Shores – after Mr. Paladin pays the impact fees there is other permitting that has to be obtained. A six month extension would be safe but a year extension would be better.

Jillian Sparks, Atlantic Coast Construction – state that they honestly did not received the notification of the expiration.

**MOTION: Dezman/Moccia to extend the site plan for six months.**

Vail and Borton – want to see it go 12 months.

**VOTE: Aye – Dezman, Moccia. Nay – Borton, Vail.**

**MOTION: Vail/Borton to extend for a year.**

Borton – understands the lengthy process. Dezman – does not feel it is prudent to extend for twelve months.

**AMENDED MOTION: Borton/Vail give them a nine month extension. VOTE: Aye – Borton, Vail, Moccia. Nay – Dezman.**

**7. Approval of Name for Old Mission Road east of Cory Road**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Motion to approve

**MOTION: Borton/Moccia to approve Beekeeper Road. VOTE: All aye.**

**8. Recommendation from Planning and Zoning regarding Fichus trees at Malabar Mini Storage**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Motion to approve

Mayor – the current owner of Malabar Mini Storage is requesting that Council approve a different landscape plan.

**MOTION: Borton/Dezman to deny the change to the landscape plan for Malabar Mini Storage. VOTE: All aye.**

**9. Eagle Scout Project - Bridge for Fern Creek Crossing**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Motion to approve

**MOTION: Moccia/Dezman – pending St. John's agreement of the foot bridge, she would like approval from the funds from Fund 110 to pay for this project, the amount should stay around the \$900 quoted. VOTE: All aye.**

**I. DISCUSSION ITEMS**

**10. ~~Discussion of the Proposed Site for the New Town Hall with Mike Knight, EEL Program Manager~~**

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

**11. 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; CREATING A NEW SUBSECTION (d) TO SECTION 13-38; PROVIDING FOR AN EXCEPTION FOR THE COMPLETION OF ROADS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 13-39 FOR THE CODE OF ORDINANCES; PROVIDING FOR THE DEDICATION OF SUFFICIENT RIGHT-OF-WAY AS A PRECONDITION TO THE ISSUANCE OF A BUILDING PERMIT; AMENDING SECTION 13-42 FOR THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR AMENDING THE PROCESS FOR IMPROVING ROADWAYS WITHIN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR CODIFICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 11  
Proposed Ordinance

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

Paul Marpil – when the roads go to the Board of Adjustment the wording must be exact as Council can make it. The word 'primary' should be added to designate what road should be improved because some of the houses have two and three frontages. Without the word 'primary' someone may have to build roads on all three sides of their home which would be astronomical. Your primary road is the one your mailbox sits on, it is your street address.

Marpil – is concerned about the varying right-of-way and how a person is to build.

Mayor – the intent of the ordinance is for the Town to obtain the right-of-way. Marpil – is still concerned about how the road meanders. Kabana – in the code there are cross-sections and you use only the cross section that will be allowed to be built in that right-of-way, often it is going to be the cross-section for a 25 foot right-of-way.

Marpil – suggests items on pages 4 and 5 are out of order of what really happens.

Dezman – have Wilbanks-Free read the sections on page 4 and 5 and put them in a better order.

Council wants any 'new or existing residents' added to Section 13-38.

Mayor – in his suggestion the first section is for new residents, and the second section is for existing residents.

Bohne – does the Council want to provide for exceptions, which is the ordinance he wrote, or does Council want to allow for the Mayor's suggestions, which encompasses exceptions.

Moccia – add the word 'primary' to the ingress and egress. And then the Mayor's suggestions but instead of 'and' write 'any new or' that would simplify things.

Bohne – wants Council to completely understand that if Council makes those changes and you have an existing home on an unimproved road and the homeowner wanted to add on, or build a pole barn, they would not have to improve the road. Vail – just wants to make sure there are no exceptions to giving up the right-of-way.

Vail – feels there should at least be some type of minimum standard that makes the road passable by emergency vehicles. Bohne – does not know how to define that. Mayor – as far as the streets on the map he has been down everyone of them and does not know of any problems.

Mayor – we should get with the Fire Chief and ask if there are any impassable roads.

The ordinance will come before Council with the suggested changes.

Dezman – notes that when people are submitting things for changes the sheet should be noted as to where the suggestions came from.

#### **J. MAYOR AND COUNCIL REPORTS**

Moccia – she has tried to call the powers that are in charge of the Valkaria Airport Board and found out that she is not on the board yet. Wilbanks-Free – the County Commission will not meet until July and Council's change is on that agenda, but the change will not be until then. Moccia – is going on vacation and heard of a meeting on the 16<sup>th</sup> but she cannot find any information about it. Wilbanks-Free – will make contacts and do her best to get the meeting notices.

Dezman – we are in hurricane season and Dezman wants to make sure Wilbanks-Free has a place to stay.

Borton – we have a letter to Mr. Patel, is that being resolved? Wilbanks-Free – is working on this by sending this letter.

Borton – we have to look at the a/c in this building. Kabana – we put in a new system in the last few years. Mayor – it could be added on to.

Vail – is still working on a home for the dome.

Vail – is going to start pushing for trails and greenways again.

Vail – will not be at the next meeting.

Eschenberg – the prayer we say before the meeting, would like Council to add one line to it for our military people.

Eschenberg – the possibility of having a poster in town hall for a place for active military with a blurb.

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

Bill Withers, Candy Lane – a UPS truck is approx. the same width as a fire truck and it cannot go down south Candy Lane.

Bill Withers, Candy Lane – it is not a good idea to not allow a roof permit after a hurricane without dedication of the right-of-way, citizens will get angry.

Bill Withers, Candy Lane – there is a old fire truck that has been at the Fire Department since Malabar Day, kids like to climb on it and it is ripe for a lawsuit.

Bill Withers, Candy Lane – this morning there were two men mowing at Crane Creek Crossing, at 1:40pm three men were mowing Crane Creek Crossing.

Mrs. Kundson – Wilbanks-Free – did an excellent job on the letter. Notes that there is a new email list that will send you a notice for all meetings and cancellations. On July 24<sup>th</sup> the Commission will decide when they will hear the new master plan.

**MOTION: Dezman/Vail to adjourn. VOTE: All aye.**

**MOTION: Dezman/Vail to un-adjourn. VOTE: All aye.**

Cindi Zindel – Allen Street is so bad that an ambulance got stuck there. There are tree stumps in the ROW. It has lots of soft sand. The drainage on Weir Street is coming back to the lowest property on the street and hurricane season is here. Please do something about Allen Street and the drainage on Weir.

**L. ADJOURNMENT**

**MOTION: Dezman/Vail to adjourn. VOTE: All aye.**

Meeting adjourned at 9:30pm.

TOWN OF MALABAR

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

ATTEST:

\_\_\_\_\_  
Susan Kabana, CMC  
Town Clerk/Treasurer

\_\_\_\_\_  
Date