

MALABAR TOWN COUNCIL REGULAR MEETING
JULY 2, 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 McClelland.

B. ROLL CALL:

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

C. ADDITIONS/DELETIONS/CHANGES

D. PRESENTATIONS

E CONSENT AGENDA

1. Minutes - Regular Council Meeting – 6/18/2007

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

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

F. STAFF REPORTS:

ATTORNEY

McClelland – anything new on the Gentile case? Riehl – nothing at this time but does know that the attorney for Gentile withdrew which could lead to a continuation.

ADMINISTRATOR

Wilbanks-Free – we need to order an inventory for the cement pipe for a project and we will use the County vendor. Council decides that this issue should be brought to the next Council meeting to discuss the cost.

Wilbanks-Free – read a letter by Dr. McClure into the public record regarding the Valkaria Airport proposed Master Plan, it will be attached to this agenda packet.

Moccia – she also received the letter but she has not received the reports by Dr. McClure. Staff is still looking for them, she is very concerned about the lack of public record.

Dezman – in the space of 25 minutes there were two airplanes flying over Country Cove, feels this is extensive air traffic.

FIRE CHIEF

Chief – they are awaiting the completion of the mini-pumper, the delay is through no fault of PRIDE.

Notes that there was concrete work completed at the Fire Department, this is to be discussed under agenda item 9.

The website is ready for the citizen use, it will be monitored and updated as needed.

The Chief continued to review the monthly Fire Department update. They are again holding the training programs to certify the firefighters. The Explorers are doing an excellent job. Spending is at 52.06%. They had an FEMA audit regarding a grant they applied for and it is looking good,

the Federal Share is \$54,250 the Town share is \$2,855. There are no major incidents to report this cycle.

CLERK

- Candidate qualifying is August 17th to August 31st, the seats up are District 4 and District 5. Kabana notes that she is on vacation July 15th to July 29th. Council Member Moccia is on vacation during that time also.

Notes that TRIM started on July 1st and that she is still working on the DR-420, we are still waiting for information from State and the County.

G. PUBLIC HEARINGS:

ORDINANCES – Final Reading

- 2. Protection of the Town logo, Town Seal and Town Letterhead. ORD. 2007-10**
Mayor read without objection:

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

The Mayor opened the public hearing and asked for public comment, being none, he closed the public hearing.

MOTION: McClelland/Moccia to approve. VOTE: Aye – McClelland, Moccia, Dezman

H. ACTION ITEMS

ORDINANCES – First Reading

- 3. Amending Chapter 13, Article 2 Streets, Ord. 2007-11**

Mayor read without objection:

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 A PRECONDITION FOR THE ISSUANCE OF PERMITS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 13-39 OF 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 OF 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. 3
Ordinance No. 2007-11

Recommendation: Motion to approve

MOTION: Moccia/McClelland to approve. VOTE: Aye – McClelland, Moccia, Dezman.

RESOLUTIONS

4. Naming of Beekeeper Road (Old Mission east of Corey Rd.) RESO 13-2007

Mayor read without objection:

A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE ADOPTION OF BEEKEEPER ROAD AS A NEW MALABAR STREET NAME; PROVIDING THE FORWARDING OF THIS INFORMATION TO BREVARD COUNTY ADDRESS ASSIGNMENT FOR E 9-1-1 EMERGENCY IDENTIFICATION PURPOSES; PROVIDING FOR THE POSSIBILITY OF RE-NAMING; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4
Resolution No. 13-2007

Recommendation: Motion to approve

MOTION: Moccia/Dezman to approve. VOTE: Aye – McClelland, Moccia, Dezman.

MISCELLANEOUS

5. Rezoning Request - 1573 Weir Street – Applicant Diane Parker, Ord. 2007-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE DISTRICT BOUNDARIES OF THE OFFICIAL ZONING MAP OF THE TOWN OF MALABAR AS PROVIDED FOR IN ARTICLE II, SECTION 1-2.3 OF THE LAND DEVELOPMENT CODE; REZONING A PARCEL IN THE TOWN LOCATED ON THE EAST SIDE OF WEIR STREET NORTH OF MALABAR ROAD; REZONING THE SAID PARCEL FROM TOWN OF MALABAR RS-15 (SINGLE FAMILY RESIDENTIAL) TO TOWN OF MALABAR RR-65 (RURAL RESIDENTIAL); PROVIDING AN EFFECTIVE DATE. (Z.C. 2007-03)

Exhibit: Agenda Report No. 5
Ordinance 2007-07

Recommendation: Council action on ordinance

Bill Withers, Candy Lane – feels that every person who does not want to follow the rules asks Council for an exception. He asks for Council to deny this request.

Mayor – does Council want to remove from the table?

MOTION: Moccia/ to take from table. There is no second, motion dies for lack of second.

Dezman – this should wait for the entire Council, it should show up on the next agenda

Diane Parker, 1570 Weir Street – this action is not just about the pigeons. The only reason for the rezoning was for the birds. It is not in her agenda to only go for the rezoning. A conditional use would work also. She will do whatever it takes to work with the Town on this issue. Mayor – does Ms. Parker have the information given to Council? Parker – no, also she is a member of the racing pigeons association and she wants to educate both herself and the Town. Please call her if Council has questions.

Dave Beaudry, 1540 Gilmore Street – when he was the Code Enforcement officer for the Town he spent most of his time trying to undo what was done wrong. We have a zoning map that states what we can build where and he used that map in choosing where he wanted to build his home. He did not want to live with flies or with vermin. The Town spent a lot of money getting

the zoning map and we are just throwing it out the window. His gut feeling tells him that if this is approved it will open up a can of worms.

6. Voting Delegate for the Florida League of Cities Annual Conference

Exhibit: Agenda Report No. 6

Recommendation: Council to appoint Voting Delegate

MOTION: Dezman/Moccia to appoint Mayor Eschenberg. VOTE: All aye.

7. Amending Accounting Policies and Procedures Manual

Exhibit: Agenda Report No. 7

Recommendation: Motion to approve

Wilbanks-Free – she was surprised that the Town does not adopt a budget time table in May or June that follows TRIM. She is stating that the first Council Meeting in June we will set the budget time table. The important part about this that everyone is on the same schedule, both staff and Council.

MOTION: McClelland/Dezman to approve the amendment to match TRIM compliance.

VOTE: All aye.

8. Approval of the Budget Timetable for the FY2007/08 Budget Process

Exhibit: Agenda Report No. 8

Recommendation: Motion to approve

The first budget workshops is August 2nd and the second one, if necessary, is August 9th, both are at 7:30. The September public hearings are September 5th and September 17th at 7:30pm.

9. Unauthorized Concrete Slab at Fire Department Annex Building

Exhibit: Agenda Report No. 9

Recommendation: Discussion and direction by Town Council

Wilbanks-Free – at the last Council meeting she mentioned that only the aprons would be poured at the Fire Department and it would be with pervious cement, for which the Building Department issued a permit. The next thing she knew there was a concrete man asking her to sign an \$18,000 proposal, only to find out the cement was totally formed and poured. The contractor never had a pre-pour inspection so we are not sure what is in there. Now Tarmac has give us a price break to \$16000+. If this happened in Palm Bay the contractor would be told to take up the slab. McClelland – is not sure when we jumped from using millings to pouring concrete.

MOTION: Dezman/ to pull up the slab. Motion dies for lack of second.

Riehl – feels it would be helpful if Council spend some time discussing and looking at the facts before making any decisions.

McClelland – the contractor knew they needed authorization but they don't have one signed document.

Wilbanks-Free – notes that we did issue a permit but it was strictly for the aprons. At the time of the discussion of the aprons, we were told by Tarmac that we had a 20 yard donation and that the aprons would take 13 yards. Now we've been told the donation no longer is there. Mayor – do we have a breakdown for the \$18,000 invoice, how much labor, how much rebar, etc? Wilbanks-Free – no, we only have the invoice, the detail should have been in the proposal, which we never received.

Mayor – who authorized them to start work on the modified plans. Wilbanks-Free – does not know. Mayor – who marked-up the original drawings? Wilbanks-Free – the Chief did, and when she saw it she told him that he was going to need a lot more concrete than what was estimated by the Engineer. And she said she was a lot more concerned about securing the building than pouring the concrete. She told him all we needed were the aprons and the Chief agreed. Franklin – remembers having that exact conversation. Wilbanks-Free – notes that the aprons did not require rebar.

Dezman – then who gave the go-ahead to pour?

Chief Gianantonio – that he is trying to figure out. Notes that he was the one who made the first modification to the pad drawing. Then he received an email from the Engineer stating the extra concrete would cost about \$1,200. Then he gets another email from the Engineer that says '50 feet is half the length of the building, are you sure Malabar wants that, I made revisions to the drawing, some of this seems excessive.' The Chief says you need to come over to see the size of a fire truck, and the size of the building, and what it takes not to clip the building on the way in or the way out, and find out the weight of the truck.

The Chief told the contractor to stop work. But the contractor had rebar down and he said they are going forward in case they get an approval. The Chief told him there was not going to be an approval. Then the Chief asked the contractor if the type of concrete that was to be used would hold the weight of a 44 ton fire truck and the contractor said no, the concrete will crack in a year. So the Chief asked then what type of rebar is needed for that not to happen, the contractor told him and the Chief said for the contractor to write a proposal and get it to Town Hall. At that time the aprons were already poured. When the Chief saw the forms he told the contractor that the (the Chief) was going to have to get with the Engineer.

Wilbanks-Free – the question is why anything occurred after the meeting of the April 18th? Chief – the aprons were poured before the 18th and on the 19th when he went in the concrete was being poured. The contractor eluded to the fact that he already had approval. Dezman – sees too many hands in the pot.

Wilbanks-Free – actually the Engineer's only direction was to give us the schematic for the building permit. His emails stopped on June 14th, Stephenson discussed this being excessive which made Wilbanks-Free cautious, she felt it was more important to secure the building than to pour the slab.

Dezman – why didn't the Chief call the Administrator when he saw the concrete being poured? Chief – he probably should have. Dezman – who was on duty during the day? Chief – usually only him during the day. Mayor – asks if Brian Vail was there when the concrete was being poured. Chief – he did not see him.

MOTION: McClelland to deny payment of the invoice because a contract was never signed. Motion dies for lack of second.

Riehl – what day did the pour happen? Chief – the 20th. Riehl – when did the rebar show up? Chief – on the 18th. Riehl – so for two days the forms were there. Who told them to get off the job? Chief – he did after meeting with the Administrator. Riehl – who did you tell? Chief – the foreman.

Chief – notes that on the 18th, before the meeting, he saw Deputy Chief Mike Foley showing the contractor what it would take to turn around a fire truck and he Chief thought that they were staking it out for slab preparation sometime in the future. When he returned after meeting with the Administrator the entire thing was formed with rebar. So the Chief told the contractor to stop, and he said he just had had a meeting with the Administrator and we were not going forward. And at that time the form was only half done. The contractor then said, well I'm going to have to call my boss. And the boss said he had some type of approval. That day and the next nothing happens and then on Wednesday morning they are pouring the concrete.

Riehl – after the Chief told the contractor to stop work on the 18th, on the 19th was there anymore work done? Chief – not that he knows of, he never saw a work crew.

Deputy Chief Dan Welton – on the 19th there was no concrete poured as of 5pm. The ramps were poured on the 16th which is a Saturday.

Wilbanks-Free – so Welton is saying that when she discussed the pouring of the ramps on the 18th at the Council meeting the ramps were actually already poured.

Dezman – is there any daily log of activity kept by the Fire Department? There is no way this story can be put together by one person. There are too many people with hands in this pot. Notes that if she wanted to change her driveway she would have to have a permit.

Wilbanks-Free – when the contractor wanted to begin he went to Vail and asked if he could begin forming. Vail called Wilbanks-Free she said no way, we have to have a permit first

and Vail was fine with that. Then the contractor came to see Franklin who told him in no uncertain terms that he must have a permit before beginning the job. Does not feel there were too many hands that that pot, they were on the exact same page. Then when they came in with the proposal wanting Franklin to sign she said no way, she knew they didn't have a permit.

Dezman – what would we make a citizen do if this happened? Wilbanks-Free – we'd make them pull it up.

Wilbanks-Free – she cannot support what was done but Council can make the decision to accept the slab based on a letter certifying what is in the concrete.

Mayor – would it make sense to send a letter to the contractor asking him to answer some of the Council's questions? Moccia – that is a great idea. Riehl can prepare a list of questions.

Mayor – what day did they pour and who authorized it can start the list, as well as why they didn't get the inspection or permit.

Wilbanks-Free – if we go through those questions, at the very least it will help up with the auditors. We've had management comments in the past about Council approving expenditures outside the code and this could possibly be another comment which is not good, knows that Kabana has issues in this area.

Kabana – Council needs to understand the gravity of the situation. This is a concern for the Town with banking, with grants, and with FEMA. If we need money one of the first things asked for are the financials and the first thing they look at are our management comments and if Council is shown to be approving things and not paying attention to the code we will lose grants and the banks won't want to lend us money. Her recommendation is to get the cost below what the Administrator can approve, which may not be feasible but it would make the situation fall within the code.

Moccia – feels we need to get the contractor to come here and tell us why this happened the way it did.

McClelland – is not so sure we should pay for this at all, they didn't follow procedure and they didn't use the proper material.

Dezman – recommends the Attorney write the letter to the contractor. This shows the Auditors that we are trying to take appropriate action because this was not done according to code. But she still thinks we have a problem if we don't have a better way to track fire department track activity.

Chief – he feels very bad about this entire situation.

Moccia – can we look at the security camera? Chief – yes, but it overwrites every seven days.

MOTION: Dezman/Moccia the Attorney to write the letter to Southeast Masonry and ask a series of questions regarding this issue after talking to Council Member Brain Vail.

Moccia – does not feel that we should pay the invoice, it is like an admission of guilt.

Dezman – Vail needs to talk to the Attorney and we need the responses back from the contractor.

Discussion of when Council will discuss this again, Riehl does not think this can happen by July 16th.

VOTE: All aye.

Tom Schinks 1140 Atz Road – notes that since we don't know what the concrete is made of, core samples could be done.

Dezman – tells the Chief that when he sends something like his statement to Town Hall that he should sign the first page and initial all other pages, that way nothing comes here that is not truly from you.

I. DISCUSSION ITEMS

- 10. Amending the prayer that is said before the Council meetings to include a line about our military**

Exhibit:

Agenda Report No. 10

Recommendation: Discussion and direction by Town Council

Mayor – gives three suggestions Council can use. Discussion of what to use. Council likes the first choice and discusses how and what to add. Dezman – how long should this be in place. Mayor – probably as long as our Armed Forces are seeing combat anywhere in the world.

MOTION: Dezman/McClelland to approve:

We also ask for protection of the members of our Armed Forces, pray for their safe return, and give strength to their loved ones.

VOTE: All aye.

11. Possibility of having a poster in Town Hall with information on local active military members

Exhibit: Agenda Report No. 11

Recommendation: Discussion and direction by Town Council

Moccia – feels this is a good idea. Council discusses how this is to be done. Dezman volunteers to put the bulletin board together. Council agrees.

J. MAYOR AND COUNCIL REPORTS

Dezman – reserve a room for her for the league convention. Notes that she was called to jury duty, it does not matter if you are an elected official. She learned a lot.

She is very grateful that the painting of the paneling was done. She thinks we need to look at our surroundings and improve on them. Feels we should present a better appearance. We have an obligation for maintenance and safety. She is conscious that there have been some very good changes made and she feels there can be more done. Is concerned about the fact that we do not have a fire safe for original documents. Feels we can make the surroundings better for those who work here.

Moccia – spoke with Mayor Yontz regarding the Valkaria Airport. He happened to mention that there are not supposed to be flights on the weekends. Which she sees every weekend flying over her home.

McClelland – nothing at this time.

Mayor – nothing at this time.

K. PUBLIC COMMENTS: GENERAL ITEMS

L. ADJOURNMENT

MOTION: Dezman/McClelland to adjourn. VOTE: All aye.

Meeting adjourned at 9:53 pm.

These minutes were approved on 8/6/07.