

**MALABAR TOWN COUNCIL REGULAR MEETING
SEPTEMBER 5, 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 Brian Vail.

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
ATTORNEY:	RICHARD RIEHL
BUILDING DEPARTMENT MANAGER	DEBBY FRANKLIN
BUILDING OFFICIAL	ROGER CLOUTIER
TOWN CLERK/TREASURER:	SUSAN KABANA

C. ADDITIONS/DELETIONS/CHANGES

Mayor – would like to add a proclamation as item E, Presentations. Also we have a representative from the Planning Company here who would like to get back to Orlando tonight so he would like to make her the first Action Item in front of Action Item 5.
Wilbanks-Free – under item number 12 would like to remove the first budget revision which was added in error. Council approved the agenda without objection.

D. PUBLIC HEARINGS:

ORDINANCES – FIRST READING

1. **Adoption of Proposed Millage Rate (ORD. No. 2007-12)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2007 THROUGH AND INCLUDING SEPTEMBER 30, 2008.

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

Mayor – without objection he reads by title only.

ORDINANCE 2007-12

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2007 THROUGH AND INCLUDING SEPTEMBER 30, 2008.

The Mayor stated that the proposed millage rate is 1.2693 and the final levy of 1.2693 mills will result in a -5.0 decrease the rolled-back rate of 1.3361. He then stated that the final millage rate of 1.2693 is to fund the expenses for the fiscal year commencing October 1, 2007 and ending September 30, 2008.

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

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

2. **Adoption of the Proposed Budget FY2007/2008 (ORD. No. 2007-13)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2007 THROUGH AND INCLUDING SEPTEMBER 30, 2008.

Exhibit: Agenda Report No. 2

Recommendation: Motion to approve

Mayor – without objection he reads by title only.

ORDINANCE 2007-13

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2007 THROUGH AND INCLUDING SEPTEMBER 30, 2008.

The Mayor stated that the final budget of \$2,183,486.00, is to fund the proposed expenditures from October 1, 2007 through September 30, 2008 and reflects the general operating millage of 1.2693 mills.

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

Wilbanks-Free overviewed the changes in the proposed budget. Notes that since we needed to fund the capital leases in Fund 200 and additional \$60,000 had to be found. She overviews those changes.

Dezman – why did she receive 57 new pages tonight? Is it because the books were late? Wilbanks-Free – no. Dezman – then why do we have this problem? Mayor – feels it was due to the staffing difficulties. Wilbanks-Free – notes that she brought in a new chart of accounts which was a lot of work. Dezman – does not feel this is the new Administrator's fault. Mayor – agrees, it was no body's fault. Dezman – notes that the buck stops here and feels that Council should get their act together. We are on the hook for how we do business.

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

3. **Adoption of the Stormwater Utility Fees (RESO No. 17-2007)** A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Motion to approve

Mayor – without objection he reads by title only.

RESOLUTION NO. 17-2007

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING AN EFFECTIVE DATE.

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 – Borton, Vail, McClelland, Moccia, Dezman.

E. **PRESENTATIONS**

Proclamation in Honor of John Barry Day (item added to agenda)

Mayor reads Proclamation in Honor of John Barry Day, asks that it be given to Mr. Bill Moroney next time he comes to Town Hall.

F CONSENT AGENDA**4. Approval of Minutes**

Exhibit: Agenda Report No. 4

Recommendation: Motion to approve

MOTION: Borton/Moccia to approve consent agenda.

McClelland – on the August 20th minutes, under Attorney – a threat to place a lien is there you can NOT – a NOT is missing – the fourth sentence from the bottom.

VOTE: All ayes.

G. STAFF REPORTS:**ATTORNEY**

Riehl – in regard to the impending junction regarding Mr. Gentile the attorney's office is asking the Town Administrator to follow up on any violations, if there are any. Wilbanks-Free – we actually have some residents that have been meeting with her and per Karl Bohne, those citizens can document any activity that was prohibited by the court judgment and report it to the Town, which they are doing. And then she was told by Mr. Bohne that code enforcement issues should be handled as a separate issue, which we are doing. Dezman – asks if anyone has been out there? Wilbanks-Free – she has been out but it was during the 30 day window after the judgment. Dezman – asks that someone go out there because she thinks the horses may be gone.

ADMINISTRATOR

- Update on A/C for Town Hall

Wilbanks-Free - after research it was determined that the a/c retrofit would be too costly to do but the split system could be done and the a/c person recommended putting it on the small southeast wall so the air would blow over the Council. The a/c guy was then able to get a price of \$2,000 because this model is being discontinued, but it functions just as well as the newer models. Her problem is that she has to move on this, he cannot hold the system due to the change in models. Notes that this also has a heat component. Mayor – that is well within the Town Administrator's authorization. He recommends she move forward. Vail – no objection, but he wants to make sure the building department would be involved. Wilbanks-Free – notes that the contractor would still have to get a permit.

- Government Week – Oct 21st – 27th

Wilbanks-Free – other towns have had an essay contest or art contest for the younger children and then the art and essays hang in Town Hall the week of the event. Feels this is great for the kids, we can invite the older ones to the last Council meeting of October and they can watch government in action. Moccia – will assist Wilbanks-Free in contacting the correct people.

- Town of Palm Shores Donation Request

Wilbanks-Free – has a request for donations for the troops from the Town of Palm Shores, asks how does the Town handle this? Mayor – we do this through our Fire Department. Wilbanks-Free – then she will let them know we participate in our own program.

CLERK

- Fall Festival

H. ACTION ITEMS

Mayor – takes Action Item 11 now.

11. Approval of the Planning Services Contract

Exhibit: Agenda Report No. 11

Recommendation: Council Action

Shelley Eichner, Calvin, Giordano & Associates, Inc. Moccia – she has previously asked about the Town owning the information after the project is over. Mayor – this is included on page 4. Eichner – we will give you the documents in whatever form you want.

Mayor – asks if this is considered a firm fixed price contract? Eichner – yes.

MOTION: Borton/Dezman to approve the contract. VOTE: All ayes.

Eichner – notes that we need to have to scoping meeting before Sept 30th. Asks Council how they would like to do this? Moccia – recommends 7:30 pm on October 1st before the regular agenda. Dezman – she cannot be here. Moccia – feels October is best, knows that everyone can't be here. Wilbanks-Free – notes that we can advertise it on the marquee and on the website. Moccia – she notes that she would like Eichner look at the complaint log, it can give you a well-rounded view of citizen concerns. McClelland – he will donate some of his funds for signs for this meeting. Mayor – how long do you think the scoping meeting will last? Eichner – 30-45 minutes. Mayor – asks if she is going to meet with P&Z? Eichner – yes, or someone from her office will if she cannot. Mayor – asks if someone can attend their meeting next week? Eichner – she will coordinate with Wilbanks-Free. Thanks Council.

ORDINANCES – First Reading**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

MOTION: Moccia/Borton to remove from the table to discuss. VOTE: All ayes.

Mayor – he will take public comments first.

A. Kristoff – 1545 Corey Rd – does not know why this is even on the agenda. There are so many violations on this property already. The Town has been aware of this since early 2000. Would like to know why violations are not being fined daily. Everyone seems to keep passing the buck, nothing seems to be getting done and there is no excuse.

Building Official Cloutier – he spoke with Ms. Parker this afternoon. He cannot recommend any further action on her property until she complies with the current code. She is in the process of wanting to add the hurricane clips and tie down the structures. He told her she could tie down the structures but that she could not take any further action. If she does not show action in a reasonable amount of time he will have to take action. He is trying to work with her.

Dezman – notes that one of the previous speakers on this issue planned his move carefully from a deed restricted area to this area and she feels that if this was anyone but Ms. Parker they would not be permitted to get away with this.

Borton – feels this needs a time limit and that fines should begin when the time runs out, feels 30 days is what she is usually given.

Mayor – reminds Council that there are two issues here, one is the structures; the other is the animals. Asks for a motion from Council.

MOTION: Dezman/Borton to deny the rezoning. VOTE: All ayes.

Borton – feels it is time to enforce the code. A bad storm would possibly damage other people's property. She wants to be on record that it is time to take action.

Kristoff – asks how do you approve a two-story structure that was built without a permit? How can you bring something like that up to code? He states that if he wants to do something he has to get a permit.

Mayor – asks if permits were issued for any or all of the structures there?

Franklin – a previous building official issued permits for the coups in 1996 and the RS-15 zoning was already in existence, so the permits were actually issued in error and they have since been revoked by our new Building Official, Roger Cloutier. Not all the structures have permits. Notes that in 2004 the Building Official, Norm Smith, went out there in response for assistance to the property owner in reference to people living in the barn. He did what he could at the time.

Mayor recognizes Diane Parker.

Diane Parker – 1573 Weir Street. She did not realize that there was this much upset in the Town since she moved in and now she is seeing that this is all happening. She is trying to rectify the situation but she has no money and if the Town fines her she will have to sign over the house to the Town. There is nothing else she can do. It is apparent that she has made a lot of mistakes but she is trying to correct them. Today when Franklin and Cloutier came by they told her all she needed to do was to tie down the structures, not all this. She feels like the permits were given to her so she is operating on the premise that she has a right to keep the coups and the birds. If the Town asks her to get rid of the birds she will have to leave because she cannot give up her birds.

Borton – did the birds have to go away for awhile? Parker – she had predators coming in and did not have them for months.

Mayor – asks if she has a copy of the letter from our attorney? Parker – yes.

Mayor – he makes it clear that we are operating under the county code and he sees the only way this could be achieved by Council approving a conditional use. Parker – that would be fine with her. Mayor – reminds her that one citizen in Town had to get rid of his roosters and he had had them for years and years.

Parker – if the Town fines her she will turn over the house to the Town. It will be fixed but not in 30 days.

McClelland – asks what if we put this to the building official and let him see what can be done. Mayor – feels that the issue goes deeper than that. Moccia – feels that Parker is going to have to apply for a conditional use, feels it is Parker's only hope.

Dezman – asks what the stop work order is for? Franklin – after an inspector visited there, after a complaint was received, and he determined that work was going on that required a permit. And as they explained to Ms. Parker this morning it cannot be lifted until the unresolved code issues are addressed.

Dezman – are the structures that do not comply with Town Code a hazard to her or to her neighbors? Cloutier – at this time because they are not on proper foundations with a strong wind they could tip. He explained to her that due to the zoning requirements she ultimately has to get rid of the animals so what would be the point of spending money to upgrade the structures? She talked about a lot of alternatives but those are up to her.

Vail – since we have revoked the permits issued by Carl Boyer, where does that leave the Town? Riehl – the permit was for the structures, there was never anything issued regarding the birds. Vail – what does disallowing the coups do to us? Wilbanks-Free – if we find out that a permit was issued in error, then it is up to the Town to correct

that error. Dezman – Carl Boyer issued those permits 11 years ago, and we should not perpetuate the error. Asks when were the permits revoked? Franklin – Coulter revoked the permits recently, notes that this entire issue has been on hold until we hired a Building Official. She notes due to the constraints of our interlocal agreement with Palm Bay they could only issue a stop work order. Franklin states that our code states that it is our duty to correct a code violation.

Dezman – there is no doubt that Parker is emotionally involved but she strongly suggests Parker look at this as a possible blessing in disguise a couple years down the road. Parker is working so hard, but at some point in time hands may be forced to make decisions. Dezman under no condition wants to make Parker get rid of her pets, but as a Town Official at some point in time something has to give, this is not personal in the least. If Dezman could give her what she wants she would do it.

Mayor recognizes another speaker's card.

Juliana Hirsch – 1035 Malabar Road. Heard Borton state that she feels that everyone should be up to code. Feels there is a lot of mess in this Town behind the trees. While she does agree that Ms. Parker is not in the right zoning, she states that she is here to speak to Ms. Borton's comments about bringing everyone in Town up to code. If a house has to be condemned that is one thing, but feels this standard is a bit harsh

Mayor – reminds everyone that this may well be why the Parker situation has gone on for so many years, the way this Town operates is that code enforcement does not act until someone complains. Dezman – states that Council is accountable for the way we do business.

Vail – at the time this Council did not want reactive code enforcement. Dezman – she didn't want that. Vail – but the Council at the time did. He does not think this Town is ready for pro-active code enforcement. Moccia – notes that we've had one of those, Council has forgotten the way it was. Moccia – feels that what has everyone so upset is that it has take this long. No one wants to tell Ms. Parker she can't have her birds. But we also found out that she is not zoned for this and it is up to Council to deal with this.

Mayor – reiterates that there are two issues, the non-conforming structures and then the birds that are not allowed in that zoning.

Vail – feels that in regard to the structures, we should let the Building Official come to terms with Parker in a timely manner and have him come back to Council in the next 30 days. Feels that the Building Official should come up with a realistic approach to this problem.

Moccia – if this Council is willing to pass a conditional use for Ms. Parker, then we need to tell her now, or else we are just wasting her time and there is no reason to do that. If she needs to start finding a place for her birds then we are just wasting her time and money. Council can think on it more but the neighbors are not going to continue to allow this. The area is not zoned for the birds. There is no reason for her to upgrade her structures because this just isn't going to work. Vail – he understands.

MOTION: Vail/ direct Building Official to handle the situation according to Councils wishes. MOTION dies for lack of second.

Moccia – and just what are Council's wishes? Vail – obviously the animals are not going to be allowed. Moccia – and she has to get rid of the structures.

MOTION: Dezman/ that we deny the conditional use. MOTION dies for a lack of second.

Vail – but no one has applied for a conditional use. Dezman – but that is what would have to happen, she'd have to have a conditional use. Mayor – Council either make a motion to allow the structures to remain and be brought up to safety standards

or make a motion to have the non-conforming structures to be removed. One of those would be a definite action, one way or the other.

Franklin – in order to grant a conditional use it would take a comprehensive land use change. Right now you can't grant a conditional use for something that is not allowed in that zoning.

MOTION: Dezman/ that we have the structures removed. MOTION dies for a lack of second.

Riehl – states that Council needs to let the Town Officials to do their duty in order to allow due process. That is why you have officials. They then can make their recommendation to Council. If you don't do it right the first time then you will end up doing it again.

Borton – but isn't that what they are doing right now?

Wilbanks-Free – notes that staff brought you a rezoning ordinance and Council has not acted on it yet.

Mayor – without objection he reads by title only.

ORDINANCE NO. 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)

MOTION: Vail/Borton to approve. VOTE: Nay – Borton, Vail, McClelland, Moccia, Dezman.

Mayor – asks Council what they want to do. Do you want to instruct the Building Official? Moccia wants the Building Official to continue with what he has already started. Vail – agrees. Moccia – and he has already told us that she needs to remove the animals because she is already out of compliance. He also told her he will be checking up on her regarding the structures. Moccia is not so sure Parker wants to put money into the structures at this point. Wilbanks-Free – and then this will not come back to Council, it will go to the Special Master through code violation. Dezman – wants all the Building Official actions documented in writing to the homeowner. Wilbanks-Free – states that we will follow Florida Statute in reference to the Special Master. Dezman – she just wants to make sure that in the due process the homeowner is notified in writing.

Vail – he does not know if there is any consideration given for the time already involved. Wilbanks-Free – notes that it was an error when it started and it is an error now. Vail – then what kind of time frame is involved? Moccia – we need to let the Building Official do his job, this is what we hired him for. Wilbanks-Free – plus the Special Master can impose a time line that can be part of their process.

RESOLUTIONS – None

MISCELLANEOUS

6. Qualifying of the Election Candidates

Exhibit: Agenda Report No. 6

Recommendation: Motion to approve

Mayor – asks the Clerk who qualified. Kabana – we had two Candidates qualify. For District 4 Jeff McKnight qualified and for District 5, the incumbent, Pat Dezman qualified.

MOTION: McClelland/Moccia to qualify the candidates. VOTE: All ayes.

7. Concrete at Fire Department

Exhibit: Agenda Report No. 7

Recommendation: Council action

Mayor – notes that the contractor has now given the Town an invoice for \$16,000+, he asks if it would be appropriate for the Town to pay that invoice or not? Should we hold a quasi-judicial hearing and call witnesses? Riehl – he does not feel this is a bad idea but he feels that the item stating that the concrete was not poured to code says it all. He feels they need to re-do it and have the Town follow the bid process.

Vail – did the Engineer say this would work? Wilbanks-Free – the Engineer said we will have to drill holes wherever there is a 'bird bath' after the next rain in order to allow the concrete to drain. But even if we do that we still end up with the strength of the concrete. Notes that weight of the trucks that were going to use the pad were too heavy for the concrete poured and within a very short period of time we will end up with cracked concrete because the rebar wasn't correct.

Vail – was it stated that the existing concrete will not withstand the weight of the trucks? Wilbanks-Free – yes. Vail – but there is rebar in there. Wilbanks-Free – but it was never inspected, we really don't know what is in the concrete. Moccia – if it doesn't meet our code, then it doesn't meet our code.

Vail – it seems foolish to tear it out, notes that there were people who saw the rebar in the form. Mayor – Bill Stephenson suggested we do core samples.

Riehl – can we have core samples done? Wilbanks-Free – but at whose expense? Dezman – does it meet Town Code? Wilbanks-Free – notes that anyone else who had concrete poured on their property without an inspection would not be passed. Asks if Cloutier would normally approve something like this? Cloutier – no he would not.

MOTION: McClelland/Dezman that we not pay the \$16,000+ invoice due to fact that there was no contract signed, it is not built to Town Code, and there were no inspections done.

Borton – she feels the slab should be torn up. Moccia – if we don't pay this can he put a lien on the Town? Dezman – no.

Vail – asks if the aprons were poured as required? McClelland – no, they are not pervious. Moccia – if I poured a slab without a permit I'd have to pull it up. Wilbanks-Free – notes that the contractor was told not to do a thing until they come over to the Building Department and get a permit.

VOTE: All ayes.

MOTION: Borton/Dezman to remove the concrete at the contractor's expense.

Riehl – does not think Council should take action that they may not be able to enforce. Feels the Town needs to find out if the concrete is up to code. Borton – she thought we had inspected it. Moccia – we were told that we don't know what is down there. Wilbanks-Free – she was told that the concrete could not support the trucks if the rebar was not properly installed.

Cloutier – suggests that Council tell the contractor to apply for a permit and then it is his (Cloutier's) responsibility to tell him to hire an engineer and possibly take x-rays so it can be determined if it needs a capping or stronger concrete.

Mayor – the Mayor now understands that since the Council has made the motion to not pay the bill, the Building Official can now proceed with telling the contractor to hire an engineer to assist in the process. Cloutier – yes, he will work with the contractor, he has made them use x-ray machines before. Mayor – so if Cloutier approves the concrete then he can come back to Council with his findings and have the Council reconsider payment? Wilbanks-Free – so does Cloutier want her to write the letter? Dezman – wants the Attorney to write the letter.

WITHDRAWN MOTION: Borton/Dezman to withdraw the motion.

Riehl – asks if Council expects the contractor to do this? Mayor – he has \$16,000 riding on it so if he can add a couple thousand to the total and get paid he may decide it is worth it.

Cloutier – all Council has to do is to call the contractor and tell him to come in and get a permit. Dezman – but first wants the Attorney to send the contractor a letter stating that we are not paying this bill. And that these are the corrective measures. Mayor, Moccia – feels that it is a combination of two people. Dezman – disagrees. Riehl – asks under what condition the contractor has to come in and get a permit? Cloutier – building codes. Moccia – but he did get a permit, he just didn't pick it up. Cloutier – then if it is still in the office he didn't get a permit.

Dezman – previously we made the choice to have the Attorney make contact with the contractor. She feels it is in the Council's best interest to have the Attorney write a letter and say, in response to your answers to our questions, there was no contract, he did not follow the code and there were no inspections. Based on that, Council has voted not to pay this bill so it is in their best interest for them to come to us. This will let him know that he has to pull a permit and have inspections that are not the Town's expense.

McClelland – why don't we leave the letter at saying we turned down payment and let him come to us? Riehl, Moccia – agree. McClelland – the worse that can happen is cracking. Dezman – she can't in all good conscience do that. Wilbanks-Free – but you wouldn't be doing that. We would be saying that Council has now taken action and the Council has determined that the following actions were not taken and we will not proceed with payment. Riehl – feels that if the decision is not to pay he feels the lawyer should write the letter because we will have to live with that decision.

McClelland – notes that the amount quoted was higher than what the Administrator can approve, the final decision would have had to come before Council for approval.

Dezman – if she did not get a permit or follow code what would happen? Borton – probably pull it up.

Wilbanks-Free – asks Cloutier if a citizen does this would we give them a chance to hire an engineer to prove to the issue? Roger – yes, we always give options. He is not going to hang his neck out, he is going to make an engineer do that.

Dezman – she wants a letter written to contractor stating that the Council has voted not pay bill. The town is going to have to figure out a way to certify the concrete. Moccia, Mayor – no we don't.

Mayor – right now we want the Attorney to write a letter basically informing him of Council's decision, and that is it. Asks if Council agrees. Moccia – she agrees

8. Clarification on Car Allowance for Town Administrator

Exhibit: Agenda Report No. 8

Recommendation: Council action

Wilbanks-Free – this is a clarification on her car allowance. During contract negotiations she asked that she get a flat \$600 and taxes should be on top of that. This is the way she meant to explain the issue and this is the way Council pays the other car allowances.

MOTION: Dezman/Moccia Administrator gets her car allowance at \$600 (taxes on top of that). VOTE: All ayes.

9. Approval of Accounting Procedure Changes for Check Deposits

Exhibit: Agenda Report No. 9

Recommendation: Council action

Wilbanks-Free – we need to administer the SOP to better protect the deposits. One deposit ticket will always remain at Town Hall.

MOTION: Moccia/Vail to approve. VOTE: All ayes.

Dezman – asks why just one person goes to the bank? Wilbanks-Free – notes that two people can be just as dishonest as one person so there is no point, but the Check 21 equipment will take care of that issue. We will not have to go to the bank anymore after it is implemented.

10. Approval of Accounting Procedure Changes for Purchase Orders

Exhibit: Agenda Report No. 10

Recommendation: Council Action

Wilbanks-Free – this SOP initiates a true purchase order procedure, not just the tracking that was done at the Fire Department.

MOTION: Moccia/Borton to amend the Accounting and Policies Manual to include this Purchase Order system. VOTE: All ayes.

12. Approval of Budget Revisions for 06/07 Fiscal Year

Exhibit: Agenda Report No. 12

Recommendation: Council Action

Wilbanks-Free – she is requesting the attached budget line item adjustments be approved (less the ones removed at the beginning of the meeting).

MOTION: McClelland/Dezman to approve the line item revisions. VOTE: All ayes.

I. DISCUSSION ITEMS

13. Consideration of a Doggie Dining Ordinance

Exhibit: Agenda Report No. 8

Recommendation: Discussion and direction by Town Council

MOTION: McClelland/Vail to move this to first Reading. VOTE: Aye – Vail, McClelland, Moccia, and Dezman. Abstaining – Borton.

J. MAYOR AND COUNCIL REPORTS

Moccia – she went to the Grant-Valkaria meeting regarding the Brevard County decision on the Grant-Valkaria Airport Master Plan, she notes that she was able to speak first. After several hours she went home and watched it from there. Unfortunately the Commission still passed the Master Plan as written. And she was a bit non-pulsed with Volts told her that Moccia was actually appointed to the VAAB when Council made the motion to appoint her. Even though she will not be on Council in the near future she will continue to inform Council of what is happening with the VAAB.

Dezman – nothing at this time.

McClelland – notes that Palm Bay's agenda once again has a discussion of Ord 2007-30, Adult Establishments, tells Council we must be vigilant.

Vail – nothing at this time.

Borton – asked Franklin if we can use acreage in Cameron Preserve in conjunction with the new Town Hall. Franklin – she has a call into the State. Borton – if we use the Cameron Preserve we would have our own area for the Town Hall. Vail – noticed that we had a site committee meeting this month, on September 18th. Borton would like to know what Council thinks. Mayor – thought we could not swap with the Weber Road land. Franklin – correct, we can't swap conservation land for conservation land.

Dezman – one time she saw Scott Ellis speaking against and EEL's acquisition. She remembers thinking that he would be a good resource to us if we need to find out something about the EEL's. Borton – she would like to know if we would be in violation if we would build. Dezman – she thought Ellis would be a good resource for Council. Mayor – would like the EELs' to remember when the Council gave them all the ROW in the Malabar Scrub, after that he never trusted the EEL's. Dezman – feels Ellis will be a good resource.

Borton – she wants to make some comments about the letter we received from our Town Clerk. She has quite a bit of concern of her absenteeism. She doesn't want to micro-

mange but somebody needs to know where the Town Clerk is. Would like the Town Manager to have the responsibility of keeping track of when our Town Clerk is here. With all due respect she is concerned that the Town Clerk is not here to serve the people when she needs to be. She does not think we should be paying for someone for working a full day when she has only worked a couple hours. She knows Wilbanks-Free doesn't need much more on her plate. She is concerned about not having our Town Clerk and that the financials did not get done in a timely manner.

Mayor – that has been rectified. Is there some specific thing she would like to suggest as a solution? Borton – she would like the Clerk to tell her and the Council when she (Kabana) is not here. Dezman – our code says that she reports to us.

Borton – she calls in here on a regular basis and she comes in here and the Town Clerk is not here. She wants to make it public record that she is extremely upset about this.

Wilbanks-Free – does not feel the Clerk should report her time to herself, it should be to the Council. Borton – how do we do that? Wilbanks-Free – when she herself is out she calls the Mayor from the standpoint that though she works for Council she reports to the Mayor and tell him where she is. When she (Wilbanks-Free) was out yesterday she called the Mayor and when she got back today she filled in her leave slip, which she knows Kabana does also. But the way the charter is written she does not think that she can account for Kabana's time.

Moccia – no, it would have to be to the Council. Mayor – that is why he is asking Council, if Council has a problem then Council has to deal with it.

Borton – states again that this is a grave concern of hers. Moccia – suggests Kabana report to Borton when she is out of the office.

Vail – would like Kabana to comment.

Kabana – she states that for the record she has been sick, and she cannot believe after the past 12½ years, and her prior track record, and that being as ill as she is, that Borton thinks Kabana is out of the office for no good reason? Kabana has learned that because she is salary she is not required to keep a time sheet but she keeps one anyway because she has no intention to cheat the Town out of one hour of time.

Borton – no one said you were cheating. Kabana – but Borton just said Kabana works for an hour and it counts for a day. Borton – but that is exactly what you do. Kabana – no, she cannot get her work done and do that. Notes that the other night Council had a meeting, and Kabana had missed two hours during the day and came in and worked until 7:30 just to make up the time. Yes, she did have to go to the doctor that day, she does not what to have the disease she has and then have pneumonia on top of that. She is doing her very best.

Mayor – is Borton more concerned about availability or money?

Borton – the checkbook not being balanced. Kabana – notes that when Booth left, a lot of stuff came Kabana's way. She couldn't catch up and she was here on weekends trying just to keep things going and Borton is right, for the first time in 12½ years she got seriously behind but she has never done this before. Feels Borton has been on Council long enough to know that by the 30th of the next month Council gets the financials, and she is caught up. She notes that since the Accountant is out of Town and then on vacation she is going to close August. Kabana realizes how important this is to Council and how far Wilbanks-Free got behind.

Kabana – she also wants to say that she realizes what her absence has done to the two other people who work in this building. She feels terrible about it, she would have given the world not to be lying in her bed coughing her head off; she would rather be in here. She does not choose to be sick; she does not want to be this way. She has been here for 12½ years and it's not like for 12½ years that she has been a constant problem. Not with her reports, not with her availability, this has just been a few months this has gone on. Physically, things have gone from bad to worse. She is doing her very best and she will be happy to call Borton personally and let her know when she will not be in. Council is right, Kabana does work for them and she doesn't have a problem calling them and telling them if she has an appointment. Wishes she (Kabana) knew of Borton's concern, this a public meeting and this is the first time she has heard of this.

Borton – she has called quite a few times with no return call but the other day Kabana did call her back. Borton states that Kabana is not here. Borton has tried to call her two times to talk about it. Kabana – she has not received the message, there has not been a voice mail on her machine nor has there been a message taped to the front of her computer. She never got the message.

Mayor – do you use emails? Borton – she does not use it easily, she likes to talk on the phone. She does not want to take this any further because she did not intend to do this tonight. She asks how the Council feels, is she the only one who feels this way?

Dezman – no. Borton – she runs a business, is this the way we are supposed to do business?

Kabana – asks how is she supposed to resolve this? Dezman – tells Kabana to back-off for a minute.

Dezman – it is not personal. Feels that part of this is what she (Dezman) doesn't know, she didn't know Kabana was going to be here tonight. She can speak for herself that getting Kabana's memo was a lot later than it should have been. We've all asked questions of Wilbanks-Free because she is the natural person to go to. Part of what Kabana is receiving tonight is not personal. Dezman has been on record several times in the last several months. Notes that this is a volunteer position for the six of them who spend a lot of time and she has been here when Kabana has not been here. Kabana has waited too long to communicate with Council so part of the frustration Kabana is getting from Borton is because Borton is here more.

Dezman – came in tonight to find out that Bonnie had a death in the family and Dezman does not know who Wilbanks-Free told to tell the Council but Dezman did not know anything about it. And then she walked in tonight and found out that numbers (on the budget) changed. States that Council cannot talk to each other outside the Council Meeting so it is not personal, we are doing business collectively. And she will say that she thought long and hard about qualifying, this takes hours and hours of her time for a volunteer position. And the nicest part of doing this is when she is thanked for everything she has done.

Dezman – Kabana needs to communicate better with the Council. Kabana – and she agrees totally. Dezman – by your own admission you waited too long to communicate with the Council. When you got sick you chose to communicate with the Mayor and that was it. Notes that Kabana should have followed up. Kabana – she was a bit devastated at the time. Dezman – understands that but your responsibility is to report to Council.

Mayor – asks if Borton and Dezman want either emails or phone calls from Kabana? He personally does not need to know, if he calls in and wants to know then someone will tell him. But he feels that Kabana will be happy to communicate.

Dezman – it is not about direct communication. Mayor – how about timely updates. Borton – wants accountability. Dezman – she feels that she (Dezman) is more on the hook for this volunteer position. This needs to be rectified. Asks when Kabana last had an evaluation? Wilbanks-Free – notes that the rest of staff have had one and those will be provided to Council. Notes that she and Kabana do not do each others.

Moccia – as far as she can remember the Council ended up doing Booth's but not Kabana's. Kabana – Booth would end up doing hers. Moccia – and she does not feel this is the way it should have gone. Moccia states that she has even been concerned about the books. Moccia wants Kabana to tell them if she cannot keep up with something and get some help. They had no idea that Kabana was so overwhelmed and Moccia feels that more communication has to be there for the Council to feel good. Kabana – she understands everything Moccia is saying.

Borton – asks what about the \$7,000 overage in paying the auditors. Wilbanks-Free – at the last budget workshop Vail pointed out that the auditor expense was over budget by \$7,800. When Wilbanks-Free went to the auditors about the money Ross Whitely stated that there was an expectation that Kabana should have brought this to Council. Wilbanks-Free was told that Allison Becka, not Whitley.

Kabana – the overage was explained to Kabana that when she (not the auditors') found an error on the books before they were complete, regarding the recording of the Stillwater waterlines, she was told that the Auditors were going to have to overhaul the financials. But this was something they should have caught, not Kabana. Borton – Kabana should have brought it to Council. Kabana – agrees, she has never been in that situation before and there is no reason she can think of that she should not have brought it to Council. Kabana had a problem with the expense when Becka called Kabana, all kinds of red flags went up. She certainly did not agree with it, especially with the amount, and Kabana does not have an excellent reason for this error. She tells Borton that this is absolutely nothing else like that.

Kabana – states that Council wants accountability but she is still going to have to go to the doctor. Borton – and she respects that, everyone has illness. Borton knows that Kabana will have some of her appointments after work but does she need a leave of absence? All she knows is that we cannot run a town this way. Kabana – in 12 years she has not had this problem. Borton – you are taking it personally. Kabana – feels that you have to look at where she has been as well as the past months, she has not done this before.

Dezman – tells Kabana that we are way past the point of lack of communication as an excuse for anything. Long before Dezman was on Council action was taken for non-communication. Kabana reports to Council so everything has to be brought to us. She is very good about email and she hates email but that is the fastest communication and this will do a lot to cover Kabana. This way is it not personal.

Vail – asks Kabana if she can keep up with the demands of the job. Kabana – she has some appointments in September and there is an Accountant to help. So if she needs help then help is there. Wilbanks-Free – the Accountant is not here to help, he will be closing the books. He is a Finance Director and as accounts payable and accounts receivable, he will prepare the end of year books. Kabana – misunderstood what she was told. Wilbanks-Free – tells her to read the minutes, Wilbanks-Free cannot handle everything. Kabana – she misunderstood what was told to her. Dezman – if Kabana is not sure then Kabana needs to ask Council. Kabana – she didn't know she didn't know. Moccia – it is in the minutes.

Wilbanks-Free – also, in reference to Kabana being here tonight, she was not expected to be here. Kelley was to be here tonight but she is in the hospital. Vail – will Kabana be at the next meeting. Kabana – she can be.

Borton – when we were talking about the budget we were talking about a 4% raise, Borton thinks the morale is dropping like flies. Kelley is sick and in the emergency room due to stress. Finally we have the Building Department straightened out and our new Town Manager has walked into total chaos. But for the first time in years we have a City Manager that knows what is to be done and gives direction. Borton is so concerned that we will lose someone like her with bad moral. Everyone Borton talks to is down because they are carrying such a heavier load. Dezman – she understands that very well because when Dezman came in to qualify last week for this stressful job if it weren't for the people telling Dezman she is doing a good job then she (Dezman) would be in a little box.

Dezman – Dezman encourages Council to do good things for staff, like giving gift certificates, let staff know they are appreciated, right Debby? And then when they tell you their opinion on something and you can just say thank-you.

Borton – she does not think that is why there is a moral problem here. Dezman – agrees. Moccia – it is the work load. Wilbanks-Free – states that we are getting through the budget process which has been very labor intensive on a good day. We had to change the budget process and move it to a tolerable level and that would have been hard with everyone here. You have to realize that a great deal of the budget is done by finance and the finance person was missing. Dezman – then there is something wrong with how we do business if that is a one person show. Wilbanks-Free – but you are a small town.

Vail – would like Kabana, in two weeks, here or not, to basically give us an idea of what her availability is. Regarding the budget, regarding the doctor appointments, how she is doing and what her ability is and is she able to do her job or will she need additional help or time off?

Mayor – asks for additional comments. Dezman – we have not heard a word out of McClelland. Mayor – or out of himself either.

Mayor – the Mayor asked for an update on Cindi. Kabana – Kelley made it to her room today at 3:00pm. Kelley's Mother called and stated that the insurance would not pay for a stress test but Kabana called the new insurance liaison and it was worked out. As far as Kabana knows Kelley is resting in her room awaiting additional tests. Kelley will not be here for the rest of the week. Mayor – can Nancy Conklin come in? Wilbanks-Free – we will call her. Dezman – is available Friday if necessary.

Vail – it notes that the Fall Fest will be the Saturday after Thanksgiving, the same day as the Tree Lighting.

K. PUBLIC COMMENTS: GENERAL ITEMS – None.

L. ADJOURNMENT

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

This meeting adjourned at 10:31 pm.

BY:

Mayor Tom Eschenberg, Chair

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
