

**MALABAR TOWN COUNCIL REGULAR MEETING
DECEMBER 3, 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 7:32 pm by Mayor Eschenberg. The prayer and pledge were led by Pat Dezman.

B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

BUILDING OFFICIAL:

ATTORNEY:

TOWN CLERK:

TOM ESCHENBERG

CHUCK McCLELLAND

NANCY BORTON

BRIAN VAI

JEFF MCKNIGHT

PAT DEZMAN

BONILYN WILBANKS-FREE

ROGER CLOUTIER, EXCUSED

KARL BOHNE

DEBBY K. FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES – Chair stated the Town Administrator wanted to add Agenda Item 14 to discuss a possible land offer by Mr. Billie.

Mayor made announcement to audience of the sudden death of Kathleen Reilly, whose husband, Patrick, serves on the Planning and Zoning Board. The memorial service for Kathleen Reilly was held at 6:30 this evening and many had attended just before the Council meeting. Mayor asked all to keep Patrick in our thoughts and stay in contact and support him.

D. NOMINATION AND ELECTION FOR COUNCIL CHAIR TO SERVE 2007/2008

We have a full Council.

Nominate for Chair – McClelland/Borton to nominate Mayor Eschenberg to serve as Chair for the next year. There were no other nominations

Vote: All Aye

E. NOMINATION AND ELECTION FOR COUNCIL VICE-CHAIR TO SERVE 2007/2008

Borton/Vail: nominated McClelland to serve as Vice-Chair for the next year. No other nominations. Vote: All Ayes.

F. PRESENTATIONS – NONE

G. PROCLAMATION – PALM BAY CHAMABER ACCREDITATION – Mayor read BWF will deliver to Kathleen Bishop of Chamber.

H. CONSENT AGENDA

1. Approval of Minutes –

Regular Town Council Meeting Minutes 11/19/07

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

Motion: Vail/Borton to approve as presented Vote: All Aye.

I. STAFF REPORTS:

ATTORNEY

- none

ADMINISTRATOR

- Report from Fire Chief

Fire Chief presented – package attached.

BWF is ready to have Chief review the applications for fire fighters. Also Administrative Assistant - interviews set for Wednesday and for Building Department Permitting Clerk on Thursday or Friday .

CLERK

- Report on Fall Fest & Tree Lighting
- SCLC – Annual Christmas Dinner Meeting hosted by Patrick AFB
- Proposed Amendment of property tax – FLC Reso and DVD

J. PUBLIC HEARINGS: None**ORDINANCES – None****K. ACTION ITEMS****ORDINANCES – First Reading - None****RESOLUTIONS**

2. Reso 28-2007: APPONTMENT OF BOARD OF ADJUSTMENT BOARD MEMBER – A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPOINTMENT OF JOHN BULL TO SERVE ON THE BOARD OF ADJUSTMENT; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Motion to approve Reso 28-2007

MOTION: McClelland/Vail to approve resolution and appoint Mr. Bull to BOA. Mr. Bull introduced himself, 1980 Flashy Lane, neighbor of TC Jeff McKnight. Practice consists of real estate and criminal defense. Lived here for 3.5 years. Feels it is important to participate and wants to keep Malabar rural. Roll Call vote: Council Members Borton – Aye; Vail - Aye; McClelland – Aye; McKnight – Aye; Dezman – Aye; Motion carries. Enjoy your service.

L. ACTION ITEMS

3. REQUEST FOR SITE PLAN EXTENSION – PALADIN SHORES CONDOMINIUM PROJECT; APPLICANT - ATLANTIC COAST CONSTRUCTION, JOSEPH PALADIN

Exhibit: Agenda Report No. 3

Recommendation: Discussion and action

Jillian Sparks explained the delay in financing. She provided packet. Site Plan approval was extended once already and expires on December 6, 2007. Project includes water and sewer. Chair asked if Council had questions. Paladin brought the broker for the banker to address Council and explain situation with financing. The appraisal is over 60 days old and has to be redone. National City didn't approve them. The offsite improvement was hard to get financing for. It is not an easy sell today. The financing is all that is holding them back. The broker will explain. Borton asked if they would pay the impact fees. Paladin stated yes - they are pursuing loans to pay for impact fees, offsite improvements and construction. Condo docs and insurance commitments had to be redone. First thing they will do is pay impact fees. Paladin stated he doesn't want to sell project. McKnight said that last time – 9 months ago he said that he would build in 45 days. What happened? The bank financing fell through. McKnight said the concern is that there are a lot of investors out there and you want to wait. Paladin said that he is not a developer – he does not want to bring in investors. Borton asked how long it will take. She doesn't want them to walk away from the project. When you build the project – you make your money. Mayor asked Paladin if Council did not grant extension, what would they do? Start over. Then the site plan will have to be approved before he can get financing

Motion: McClelland / Borton to approve a three (3) month extension to Paladin Shores Condo Site Plan. Discussion. Dezman wanted to hear from applicant's broker representatives. Andrew Turek and Laura Ledderer - Brokers for Paladin introduced themselves. Ms. Ledderer stated Harbor Federal declined Paladin's loan. Many banks are closing and ones that aren't are being more cautious. We have an appraisal and everything is set up where it needs to be. If site plan is not extended then they need to start over and get it approved in order to show banks, etc. Closing is weeks away contingent on appraisal. Borton asked specifically how many weeks - she said less than a month. They are brokers and have spoken to many bankers and changed the loan. Done as a refinance because Paladin owns the property. GMC has a commitment letter. McKnight said that Agenda Item No. 6 may have an effect. Attorney said that the item 6 will not have an affect if the site plan is extended.

Motion: McKnight / Vail to table extension for three months until after Item 6. Vote: All Aye.

4. BUDGET REVISIONS FOR FY 2007/08 BUDGET – Reso 30-2007

Exhibit: Agenda Report No. 4

Recommendation: Discussion and action

Mayor read Reso 30-2007 by title only. BWF – stated the budget worksheet explained the addition of contractor services by Personnel Plus and created the line item to pay for Michele Kelly in Building Department with funds transferred from Franklin's salary.

Roll Call vote: Council Members Borton – Aye; Vail - Aye; McClelland – Aye; McKnight – Aye; Dezman – Aye; Motion carries.

5. UPGRADE TO TOWN WEBSITE

Exhibit: Agenda Report No. 5

Recommendation: Motion to approve change of website hosting company

Mayor asked BWF to explain. BWF explained the inability to manage our own website. The last two agendas have not been able to upload. We have had to email them to website manager. McKnight mentioned it again wasn't posted in a timely manner. She asked another company to evaluate and give her a price. He will upgrade our site to make it more user friendly. BWF wanted to have Council input.

Motion: Dezman / Vail to approve – McKnight said why can't we get someone closer. BWF said he will work remotely. We don't have to have him here. The town will handle the upload. McKnight said he saw the travel. He is ok with her answer. There is no contract with current hosting company. We would do the updating ourselves. BWF said she, the Clerk and one other will do the updating. BWF explained the benefit of the banner flasher if you need a boil water alert – fire emergency – disaster, etc. Big help. Dezman asked if there would be a procedure. BWF will write the procedures. During the development can they make input – McKnight would like a blog site – and state their opinion – BWF said that she will ask him – she will need council consensus. Vote: Ayes.

6. RECOMMENDATIONS FROM PLANNING AND ZONING

Exhibit: Agenda Report No. 6

Recommendation: Discussion and action

Attorney explained the timing element when we change the ordinance – project prior go with old code; projects after change comply with new code. Borton asked if they were trying to change the height again. Mayor said he was at P&Z and they thought there should be clearer regulation within the code. McKnight referred to Paladin project and asked if Fire Dept can accommodate their project. Vail said they recently went through that. Mayor said the rehab project's conceptual plan was 35 to the mean roof height. That is when the LDC – Borton asked if we are protected. P&Z wants it in the body of the

code. It is clear in the definition portion in the back of the code – it states 35' to the highest point of the roof.

Motion: Borton / McKnight to include definition in the body of the code. **Vote:** All Ayes.

Vail asked about appurtenances. Attorney does not know philosophy of the P&Z Board.

Motion: Vail / Borton to send to P&Z a request to review that portion of code dealing with appurtenances to roofs that are allowed to be higher – send any specific recommendations back to Council **Vote:** All Ayes.

McKnight asked about the second item from P&Z recommendations. The recommendation to deny extension. Does not come into play until Agenda Item No. 3 is brought back.

Motion: Vail / McClelland to remove three month extension for Paladin project from table. **Vote:** All Ayes. Discussion. Borton thinks it should be longer because of financing issue. Things are tough.

Motion: Borton / Dezman to change extension period to six months. Discussion. Borton said the banks are all doing the same thing. There is no money. Chair called for vote on amendment to main motion – changing motion from three month extension to six month extension. **Vote:** 2 ayes and 3 nays. Motion fails.

Back to main motion to grant three month extension to Paladin Shores Condo project. McKnight said he supports P&Z and is against granting any extension.

Vote: Ayes - Dezman, McClelland, Vail, Borton. Nay – McKnight. Motion approved for three month extension for Paladin.

7. BOARD OF ADJUSTMENT MEMBER WITH EXPIRING TERM – Carl Conklin

Exhibit: Agenda Report 7

Recommendation: Approve and re-appoint board member

Motion: McClelland / Vail to re-appoint Conklin. Mayor said it is assumed that Council is familiar with the members. BWF explained that in reviewing the minutes, member appearances had to do with new appointments. **Vote:** Ayes – Borton, Vail, McClelland, McKnight. Dezman away from dais.

8. BOARD OF ADJUSTMENT MEMBER WITH EXPIRING TERM – Donna Hanna

Exhibit: Agenda Report 8

Recommendation: Approve and re-appoint board member

Motion: McClelland / McKnight to reappoint Donna Hanna to BOA – **Vote:** All Ayes.

9. PLANNING AND ZONING MEMBER WITH EXPIRING TERM – Bud Ryan

Exhibit: Agenda Report 9

Recommendation: Approve and re-appoint board member

Motion: McClelland / Vail to reappoint Bud Ryan to P&Z. **Vote:** All Ayes.

10. PLANNING AND ZONING MEMBER WITH EXPIRING TERM – Pat Reilly

Exhibit: Agenda Report 10

Recommendation: Approve and re-appoint board member

Motion: McKnight / McClelland to reappoint Pat Reilly to P&Z. **Vote:** All Ayes.

11. PARK AND RECREATION MEMBER WITH EXPIRING TERM – Bob Seigmann

Exhibit: Agenda Report 11

Recommendation: Approve and re-appoint board member

Motion: McKnight / Vail to reappoint Bob Seigmann. Chair recognizes speaker Card from Hans Kemmler for Agenda Item Report No. 11 and 12. Kemmler is Chairman of Park

Board and explained that Seigmann's duties out at the Port prevented regular attendance and he was taken off the Board. He was later reappointed and has attended and offered valuable input. Bill Withers has also attended regularly and provided valuable input. Dezman – is impressed with Kemmler's comments. Vote: All Ayes.

12. PARK AND RECREATION MEMBER WITH EXPIRING TERM – Bill Withers

Exhibit: Agenda Report 12

Recommendation: Approve and re-appoint board member

Motion: Dezman / Vail to reappoint Bill Withers to Park and Recreation Board. Vote: Ayes - Dezman. Nays - Borton, Vail, McClelland and McKnight. Motion fails.

13. REQUEST ALTERNATIVE DEPOSITORY FOR TOWN FUNDS

BWF – this was discussed at the FLC legislative conference. The Legislative Conference is an important conference and next year she will go. Franklin explained the memos and the concern she and Town Administrator had with situation. Some of the larger cities pulled all their money out. SBA is concerned with run by participants. She explained that email notification notifying of frozen access to withdraw funds came after it had occurred. Town has participated since 1991. Concern is with some of the investments and potential risk. Participants are concerned about the liquidity availability. Does Council want to consider withdrawing a portion or all of the Town funds from the SBA and re-investing elsewhere. Franklin also stated Accountant Torres recommended adding an additional bank and buying Timed Certificates to diversify assets. Vail said if there is a threat that there is or will be a loss we should pull it. Decision on if and when freeze will be lifted has not been made. State Board and Advisory Board will meet again, but State Cabinet will be making the decision. BWF stated money is backed with mortgage money. State got burned on the FRS pension and Enron. There is potential for loss. They are trying to shore it up by putting in protections. The county is doing an excellent job of keeping us updated. If the State unfreezes the funds should they pull out a portion, a large portion or all of it. Vail stated we don't want to keep our money in if it is threatened. BWF – they are considering alternatives. McKnight wants to know what other cities are doing. Council consensus was to have more information for next meeting or call a special meeting if things change beforehand. Vail stated Council is the steward of the Town funds for our constituents – do we take a 2% hit to ensure its long term safety? Consensus of Council to put on next agenda.

14. MR. BILLIE PROPERTY –

BWF – Visit from Mr. Billie – Booth had made an offer of 150K. Family wasn't for it and he withdrew offer. Now he has changed his mind and asked if we are interested. An area business has made an offer on the property so they can get frontage along Malabar. We have an opportunity to buy it. He wants at least 175K. Vail said it only makes sense to buy it and expand our property. BWF said we could continue to operate here while we expand there. It is .95 acre. We have .5 acre here. Public Works has about 1.5 acres.

Motion: Dezman / Vail to get it appraised. Vote: All aye. Mayor said TA could do a letter of intent. Attorney asked if Council intended to make him a contractual offer contingent on the appraisal. Authorize this to go on next agenda. Let him know we are taking the next step so he is kept informed. Vail said he thinks Billie is a man of his word. Letter expressing our interest and letting him know was are getting it appraised. That will suffice for him.

M. MISCELLANEOUS

N. DISCUSSION ITEMS

O. MAYOR AND COUNCIL REPORTS

Borton – where is newsletter – nor her neighbors got one. What about the town hall meeting. Vail – everyone had a good time at Fall Fest. The event is for locals and it was the perfect amount of people..

McClelland – A girl won the lawn mower pull against him and Vail and the chili cook off was also won by a female.

McKnight – he has sat on the P&Z Board for several years – their decisions are well thought out and deliberated much more than when it gets to Council.

Mayor – He has been attending Myregina.org on “how should we grow”. He has been involved. He passed on the book to Bob Wilbur. www.MyRegion.org. There is a man that has done presentations in Viera. Bob Wilbur would like a joint Town Council and P&Z meeting to hear a presentation in January. Mayor will go on the 10th for the final meeting of the year and he will ask if it is possible.

P. PUBLIC COMMENTS: GENERAL ITEMS

Juliana Hirsch, 1035 Malabar Road, holidays coming up vote to give full day off for staff on Christmas eve and New Years eve. Save gas. Feels any land use change should require posting and courtesy notification similar to the rezoning advertising. Town has to advertise. Last P&Z considered a commercial CUP. BWF said it could be on the website. Other cities put up signage. And send out registered letters. Attorney said it is statutory for rezoning to notify adjacent property owners. It fluctuates between 300 and 500 feet. Any other notifications are courtesy only. The adjacent property owners should be notified before it comes to Town Council. Clerk directed to notify CUP applicant's adjacent property owners prior to next Council meeting.

Sheila Eschenberg, Beran Lane, thanks Pat Dezman for doing the poster for displaying local men and women serving in the military. She did a report on the “Boxes” (care packages) to troops. Pat Lewis of the MVFD started this project and she has been sick so Sheila took it over. Six of the pictures on the poster are Malabar volunteer fire fighters. There is a total of ten Malabar residents from all 4 branches of the service serving in Iraq and Persian Gulf.

She took over four boxes and filled them up and she got \$100.00 from her booth at Fall Fest. She asked for \$25.00 from each Council member to cover the costs to fill and mail rest of care package boxes. Attorney said that the donation request should include a general public purpose statement for supporting our troops serving in the military by sending these care packages. McClelland has donated to this in the past. So has Vail. Minutes should reflect that it is Council directive that this type of support of our military is a public purpose. No objections from Council. Vail, McClelland, McKnight Borton, Dezman and Mayor will all donate \$25.00 from their discretionary funds to her.

Q. ADJOURNMENT

There being no further business to discuss, **MOTION: Vail / Borton to adjourn this meeting. VOTE: All Ayes.** The meeting adjourned at 9:30 PM.

BY: _____
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin, Town Clerk

Date