

**MALABAR TOWN COUNCIL REGULAR MEETING  
SEPTEMBER 6, 2006                      7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. The meeting was called to order at 7:32 pm by Mayor Thomas Eschenberg. The prayer and pledge were led by Council Member Bobbi Moccia.

<b><u>ROLL CALL:</u></b> MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	BRIAN VAIL
	BOBBI MOCCIA
	PAT DEZMAN (excused)
ADMINISTRATOR:	ED BOOTH
ATTORNEY:	KARL BOHNE
DEPUTY TOWN CLERK:	CINDI KELLEY

**PUBLIC HEARINGS:**

**1. ORDINANCE 2006-14, FIRST READING, 2006/2007 PROPOSED MILLAGE RATE**

By unanimous consent, Mayor Eschenberg read Ordinance 2006-14 by title only.

ORDINANCE 2006-14

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, 2006 THROUGH AND INCLUDING SEPTEMBER 30, 2007.

Mayor Eschenberg states that the proposed millage rate is 1.3970; the final levy of 1.3970 mills will result in a 9.9% increase of the rolled-back rate of 1.2712; and the final millage rate of 1.3970 is to fund the expenses for the fiscal year commencing October 1, 2006 and ending September 30, 2007.

Mayor Eschenberg opened this discussion to the public. There being no discussion, Mayor Eschenberg brought back to Council.

**MOTION: Rivet/Moccia to approve Ordinance 2006-14 as presented.**

**The roll was called: Vail, Rivet and Moccia, All Ayes. Dezman, excused.**

Motion carried unanimously.

**2. ORDINANCE 2006-15, FIRST READING, 2006/2007 PROPOSED BUDGET**

By unanimous consent, Mayor Eschenberg read Ordinance 2006-15 by title only.

ORDINANCE 2006-15

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2006 THROUGH AND INCLUDING SEPTEMBER 30, 2007.

Mayor Eschenberg states that the final budget of \$1,993,282 is to fund the proposed expenditures from October 1, 2006 through September 30, 2007 and reflects the general operating millage of 1.3970 mills.

Mayor Eschenberg opened this discussion to the public. There being no discussion, Mayor Eschenberg brought back to Council.

**MOTION: Vail/Moccia to approve Ordinance 2006-15 as presented.**

**The roll was called: Vail, Rivet and Moccia, All Ayes. Dezman, excused**

Motion carried unanimously.

**3. RESOLUTION 7-2006: ADOPTING FUND 105 STORM WATER  
UTILITY BUDGET FOR THE 2006/2007 FISCAL YEAR AND CERTIFYING THE  
ASSESSMENT ROLL**

By unanimous consent, Mayor Eschenberg read Resolution 7-2006 by title only.

**RESOLUTION NO. 7-2006**

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.

Mayor Eschenberg opened this to the public for discussion. Mr. Booth stated we have a representative to answer questions if anyone has questions. There being no discussion, Mayor Eschenberg brought it back to Council.

**MOTION: Moccia/Rivet to approve Resolution 7-2006 as presented.**

**The roll was called: Vail, Rivet and Moccia, All Ayes. Dezman, excused.**

Motion carried unanimously.

**CONSENT AGENDA:**

**A) COUNCIL MINUTES 8/21/06**

Mayor Eschenberg stated that page 1 under attorney reports it should state three attorneys were hired; and page 3 under staff meetings it should state to "look" over the agendas.

**B) COUNCIL WORKSHOP MINUTES 8/28/06**

**MOTION: Rivet/Moccia to approve the consent agenda with corrections to 8/21/06 minutes as stated. VOTE: All Ayes.**

**REPORTS:**

**ATTORNEY**

Mr. Bohne advised Council that Council voted to go with an injunction on the Green property. The injunction has been filed and Mr. Bohne is waiting to have it served. With regards to Mr. Brodsky's property, the file was just received in Mr. Bohne's office and he is waiting to proceed with this case. Mr. Booth advised Council that there are liens placed by the County on the Green property; this is a health problem.

**ADMINISTRATOR****- TROPICAL DEPRESSION ERNESTO**

Mr. Booth thanked the Fire Department for the preparedness for this storm. The cover will go back on the playground equipment at the end of the month; we will be farther out of hurricane season by this time. We were much more prepared for this storm than two years ago.

**- Bus Stops**

The bus stop at Hall and LaCourt is being used by several children. We are going to go out to various businesses to obtain tops for the benches; the businesses will be able to advertise on these tops. We have four more stops to take care of and we will be looking at Country Cove and Brook Hollow as well for this project. This project should be finished within the next two months.

**FIRE CHIEF**

Chief Gianantonio advised Council that the Fire Department is now back on line. They have not been able to provide information due to the station being down due to building repairs. The First Responder class is being taught at this time and we will be rolling right into Firefighter I after this class is complete. Chief gave a brief overview of the budget; over by 17% due to all the vehicle trouble in the past. They are looking to have a much better year.

At this time, Mr. Booth stated that he would like to have an addition to the agenda under action items. We have received bids on the Fire Department vehicle shed and would like Council's authority to proceed. Mayor Eschenberg stated that this would become Action Item 5A.

**PARK BOARD CHAIR**

Mr. Kemmler was not able to stay for the meeting. Ms. Kelley advised Council that there is nothing to report at this time. Mr. Kemmler will come back to Council at the first meeting in October.

**CLERK**

Ms. Kelley reminded Council that the Fall Fest is coming in October. We have asked that the members of Council participate by being judges in the various contests. Mayor Eschenberg is the only one, with the exception of Mr. Vail, to volunteer to be a judge. Mr. Rivet stated that he would be a judge for the Chili Cook-Off and Mrs. Moccia will participate as a judge for the Dessert Baking contest.

**DISCUSSION:****1. PROPOSED ARCHITECTURAL REVIEW ORDINANCE FOR NEW PROJECTS**

Mr. Booth stated he is looking for suggestions from Council. We are trying to describe what Florida vernacular is and what we are looking to have in our Town. Mrs. Moccia stated she would like to have something to look at; color schemes and building styles. Mayor Eschenberg stated there seems to be enough ordinances and if someone who knew about this could go through them and pick out information, this would be a great help. Mr. Booth stated he will put together an ordinance and have the Town's Planner, Keith Mills, review it. This information will be available at the next Council meeting as a discussion item.

## **2. SPECIAL MASTER MEETINGS**

Mayor Eschenberg asked Pat Reilly, 1935 Howell Lane, to come forward. Mr. Reilly provided a copy of his statement for Council. He read his statement into the record. Mr. Reilly spoke against having the Special Master and spending tax payer's funds if the Town was not going to take this process seriously. Mr. Rivet stated the Town has taken action listed under the attorney's report. He stated that there is some validation to the items brought before Council. Mr. Vail asked if this isn't what we decided to do at the last meeting with the injunction process. It was stated that this was going for just two cases at this time.

Mr. Booth stated he gets the feeling that the master is representing the defendant and not the Town. Two Council members were at the last meeting and one felt that she was being personally attacked. Due to a conflict of interest, Mr. Bohne cannot be involved in the Special Master's process. Mr. Booth advised Council that the Special Master wants these cases handled like they are court cases. He wants us to hire a server; our ordinance states that we can post the properties. Mr. Rivet asked if a new Special Master is needed. Mr. Vail stated if the ordinance states we can post, we should be able to do this. Mr. Vail did see some shortfalls to the staff but the Master was not listening to what staff had to say at the last meeting. Mr. Booth stated he has a problem with the Special Master and he cannot move forward with the cases. For clarification, we will still go through the Special Master, but we are taking the two specific cases by way of the injunction process. Fines cannot be collected on a homesteaded piece of property. An injunction from the court can get things done. Mr. Vail asked what the difference in the costs of the Special Master and the injunction process would be. Mr. Bohne advised that the costs would be three to four times more and you have the court time to consider as well. We can get a case through the master within thirty to sixty days, an injunction could take months. With the injunction process, fines can be assessed and if they don't comply, there could also be incarceration. Mr. Bohne stated we need to have the first case so that people can see that the Town is serious.

Mayor Eschenberg asked Council if they would like to see this as an action item to replace the present Master with a new Master at the next meeting. It is the general consensus of Council. This item will come back before Council at the next meeting as an action item. The question was asked if the injunction is at staff's discretion. Mr. Booth stated we will go to the master first. If there is no compliance then we will go by way of the injunction process.

## **3. PROPOSED NUISANCE ORDINANCE**

Mr. Booth stated he has re-written this ordinance, taking out all information regarding private property. We will post the abandoned property, giving 48 hours to the owner. If it is not removed, we will then have the towing company come in and remove it from the public right-of-ways and public property of the Town's. This ordinance will help to establish the procedures for this process. Chuck McClelland came forward and gave Council a brief overview of the process once the cars are removed. There are certain procedures that must be followed by law. Mayor Eschenberg asked that this ordinance be placed on the agenda for the next Council meeting as an action item for first reading.

**ACTION ITEMS:****1. RECOMMENDATION FROM AUDIT SELECTION COMMITTEE FOR THE POSITION OF TOWN AUDITOR**

Mr. Booth advised Council that only one bid, from our previous auditors, was received. Mayor Eschenberg stated this is housekeeping which is required by the State. There has to be a request for a meeting and for the bids.

**MOTION: Rivet/Vail to approve the acceptance of Berman, Hopkins, Wright & Laham. VOTE: All Ayes.**

Motion carries unanimously.

**2. DISBANDING OF THE AUDIT SELECTION COMMITTEE, APPROVAL OF AUGUST 29, 2006 AUDIT SELECTION COMMITTEE MINUTES**

**MOTION: VAIL/Rivet to disband the Audit Selection Committee and approval of the 8/29/06 Audit Selection Committee minutes. VOTE: All Ayes.**

Motion carries unanimously.

**3. REQUEST FROM PLANNING & ZONING: COUNCIL OPINION ON ADDING PET GROOMING AS A CONDITIONAL USE TO THE RR-65 ZONING**

Julianna Hirsch, 1035 Malabar Road, came forward. She spoke against this type of business coming into RR-65. She is making an appeal to Council and all the other boards not to approve this.

Mr. Booth gave an overview about what should be allowed in RR-65 and stated that Mr. Reilly is here if anyone has questions. Staff's opinion of this request goes along the lines of Mrs. Hirsch. This was brought to Council to get their opinion; should P&Z make a recommendation back to Council as a conditional use? This is more along the lines of commercial use, not agricultural.

Mr. Withers, 2324 Candy Lane, stated that Council, a few years ago, denied a rescue mission at the old school.

Mr. Vail stated the traffic flow is his concern. The O/L for home businesses does not allow for customers coming and going from the home to drop off/pick up the pets. Mr. Bohne stated the ordinance would have to be amended to allow this type of activity; and if it's done, is it just for dogs. How do you differentiate from the various animals?

**MOTION: Moccia/Rivet that we don't go any further with adding pet grooming to RR-65 zoning as a conditional use in that area. VOTE: All Ayes.**

Motion carries unanimously. Mayor Eschenberg asked that a message be sent to P&Z.

#### **4. REQUEST THE METROPOLITAN PLANNING ORGANIZATION (MPO) ADD TO THEIR PROJECT LIST THE EXPANSION OF MALABAR ROAD TO FOUR LANES**

Mayor Eschenberg brought this to Council. Mr. Vail has received mixed emotions from his constituents. We would need to have traffic lights along Malabar Road. Mr. Rivet stated this is a main thoroughfare, this could reduce congestion to some degree, it needs to be done eventually and we should be put on the list. Mrs. Moccia stated we probably won't see this happen for another twenty years. Mr. Booth advised Council that the projects for the MPO are at least twenty years out. Mayor asked if we could get some information regarding safety for two lanes as opposed to four lanes with no traffic lights. Mr. Withers stated we need to know how many artery roads are feeding into Malabar Road in this information as well. Mr. Booth advised he could request this information. The process is to write a letter from the Council. Mr. Booth is on this committee. It would be brought as a discussion item and a recommendation made to them to be added to the list of projects. Mr. Booth advised that the MPO decides whether the funds are spent for each project. Mr. Vail stated this is something to think about while we are looking to amend the Comp Plan. Mr. Rivet is in favor of asking that this project be added to the list. It was stated that it would be more advantageous for Valkaria Road to be made into four lanes. Mr. Rivet is in favor of asking that this project be added to the list. Mr. Vail stated that the general consensus of the group he polled is for this. Mrs. Moccia stated that Valkaria Road would be better, but with Council making the request, we should ask to be put on the project list.

**MOTION: Rivet/Vail to recommend that we request Malabar Road be added to the list of projects to become four lanes. VOTE: All Ayes.**

Motion carries unanimously.

#### **5. USING SPACE DOME AS STORAGE NEAR THE SOCCER FIELD**

Mr. Withers, 2324 Candy Lane, came forward to address Council regarding this issue. He spoke against placing one of these in the park; it is not a storage unit. The soccer equipment is kept in the designated area at the park at this time. The coaches have access to their equipment. Mr. Vail asked to have some research done; he would like to know the estimated figures to move one of these domes to the park. The research should include the cost of a concrete pad, how the unit would be tied down, will it meet the Building Official's requirements, etc. Mr. Withers stated that the shed that was at the park for this equipment is now back up, it was not tied down correctly, but that has been taken care of. Since there is a place for all the soccer equipment at the park, Mr. Booth asked that this item be set as an agenda item for the first meeting in January. He is requesting this because there are several other projects that take priority over this one.

**MOTION: Vail/Rivet to postpone this discussion until the first meeting in January, 2007. VOTE: All Ayes.**

Motion carries unanimously.

**5A. BID FOR FIRE DEPARTMENT VEHICLE SHED**

Mr. Booth advised Council that the Town went out for bids regarding the vehicle shed for the Fire Department. We received three bids; ranging from \$22,500 to \$55,000. A good portion of these funds will be paid by FEMA and out insurance company. Mr. Booth requested that Council approve the bid received from McKinney Construction with the condition that the Building Official and I have a successful meeting with the contractor, pending approval by staff. He provided a very detailed bid; we would like to have the authority to negotiate a contract.

**MOTION: Rivet/Moccia to approve acceptance of the bid for \$22,500, granting staff the authority to negotiate a contract.**

Mayor Eschenberg stated that when negotiating the contract, staff will determine whether vendor is qualified and whether the building meets all code requirements.

**VOTE: All Ayes.**

Motion carries unanimously.

Mr. Vail asked if there is any issues that come up, it would come back before Council. Mr. Booth stated that this would be the case.

**6. QUALIFICATION OF CANDIDATES FOR THE NOVEMBER 7<sup>TH</sup> ELECTION**

Mayor Eschenberg stated that this is an issue that the Clerk takes care of. Ms. Kabana has not made it to the meeting as of yet. Ms. Kelley stated that she sat in on three of the qualifications: Vail, Clevenger & McClelland; however, she stated that she knew for sure that the other two had been qualified. They are Charles Ryan, District 3 and Nancy Borton, District 1.

Mayor Eschenberg made the suggestion to move to the next action item and give Mrs. Kabana a little more time to arrive. As we were going to the next item, Mrs. Kabana arrived at 8:35 pm. Mayor Eschenberg called her to the podium. Mrs. Kabana advised Council that all candidates are duly qualified.

**MOTION: Vail/Rivet to accept the qualification of candidates for the November 7<sup>th</sup> election.**

**VOTE: All Ayes.**

Motion carries unanimously.

**7. VACANT COUNCIL SEAT: DISTRICT 1**

Mayor Eschenberg stated that our charter does not allow Council to appoint a member to a vacant Council seat without the remaining full Council being present. There can be no action on this item this evening; it will be brought back to Council at the next Council meeting; which is September 18, 2006.

**MOTION: Rivet/Moccia to postpone this item to the September 18<sup>th</sup> agenda. VOTE: All Ayes.**

Motion carries unanimously.

**8. PROPOSED REVERSE 911 SERVICE**

Mrs. Kabana came forward and gave Council a brief overview of this service. She has requested information from Intel, a company that provides this service, to pass along to Council. This has been put in the upcoming budget for 2006/2007. The system would cost approximately \$400 for the set-up and the call cost is approximately \$.11 per call. For a minimal price, we can provide information to our residents. Upon receipt of the information, we will provide it to you and place it back on the agenda for action.

**9. RESOLUTION 08-2006, BUDGET ADJUSTMENT**

By unanimous consent, Mayor Eschenberg read Resolution 08-2006 by title only.

**RESOLUTION 08-2006**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2005-2006. PROVIDING FOR ADDITIONAL REVENUE; PROVIDING FOR ADDITIONAL EXPENDITURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Mrs. Kabana advised Council that this is housekeeping before the end of the fiscal year. The auditors need to have Council understand that we need to have a balanced budget. Fund 109 is FEMA funds; Fund 110 allows the revenue for developer's fees; and Fund 400, this is due to depreciation for the utility. We don't seem to budget enough funds for this portion of the budget in the utility fund. The funds will not be spent; they would cover the budget so we are not over budget. This will show the problem with the utility.

**MOTION: Rivet/Vail to approve Resolution 08-2006 as presented.**

**The Roll was called: Vail, Rivet and Moccia, All Ayes. Dezman, excused.**

Motion carries unanimously

**10. CLOSING OF SUNTRUST BANK ACCOUNTS**

Mrs. Kabana stated that we have two accounts with Suntrust Bank. The previous Mayor wanted these accounts to remain open. The bank is charging us \$70.00 to keep these funds with them and we are losing approximately \$65/month in interest each month.

**MOTION: Moccia/Vail to approve the closing of bank accounts at Suntrust Bank and moving the funds to Riverside Bank. VOTE: All Ayes.**

Motion carries unanimously.

**REPORTS: MAYOR, COUNCIL**

**Rivet** - nothing to report at this time.

**Moccia** – advised Council that she would be using \$200.00 of discretionary funds to revamp the butterfly garden at Port Malabar Elementary School. She does this each year, with the help of students.

**Vail** - nothing to report at this time.

**Mayor** – advised Council that he would like to take some funds from his discretionary account to give to the Fire Department for Support Services. He asked Chief Gianantonio if Support Services has a fund for this. Chief stated that they don't have a separate account. Mr. Booth stated that each year the Town gives the Corporation \$2,500; however, the funds are not specified for expenditures. Mr. McClelland gave Council a brief overview of the "miscellaneous" budget item when he was chief. Support Services came out of this portion of the budget. Mayor Eschenberg donated \$500.00 of his funds to be given to Support Services for rehab emergency contingencies. Chief Gianantonio advised that five \$100 gift cards from Wal-Mart would be the best way to handle these funds.



**PUBLIC COMMENTS: GENERAL ITEMS:**

None at this time.

**ADJOURNMENT:**

There being no additional business to discuss, **MOTION: Rivet/Moccia to adjourn @ 9:10 pm. VOTE: All Ayes.**

BY:

Thomas Eschenberg  
Mayor Thomas Eschenberg, Chairman

ATTESTED:

Cindi Kelley  
Cindi Kelley, Deputy Town Clerk

DATE:

09/18/06