

**MALABAR TOWN COUNCIL REGULAR MEETING
SEPTEMBER 18, 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 7:30 pm by Mayor Thomas Eschenberg. The prayer and pledge were led by Council Member Steve Rivet.

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

PUBLIC HEARINGS:

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

Without objection, 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/Vail to approve Ordinance 2006-14 as presented.

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

Motion carried unanimously.

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

Without objection, 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: Moccia/Rivet to approve Ordinance 2006-15 as presented.

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

Motion carried unanimously.

ADDITIONS/DELETIONS TO AGENDA: Mrs. Joan Rosaci would like to be added to the agenda as an agenda item request. Mayor Eschenberg has added this as discussion item #3. Referring to the minutes from the last meeting, Mayor Eschenberg asked Council, as general consensus, if they would like to as an action item the situation with the Special Master. Mr. Booth advised Council that an alternative measure has not been reached; he and Mr. Bohne are working on this together. Mayor Eschenberg asked if he would like Council to authorize Mr. Booth and Mr. Bohne to find another Special Master. Mr. Booth advised that he would like authorization from Council. Mayor Eschenberg stated this would be action item #5.

CONSENT AGENDA:

A) COUNCIL MINUTES 9/06/06

MOTION: Rivet/Dezman to approve the consent agenda as presented. VOTE: All Ayes.

REPORTS:

ATTORNEY

Mr. Bohne advised Council, from previous meetings, he was directed to file injunctions on two alleged code violations. Both of these injunctions have been filed; he is not sure if they have been served.

With regards to the Gentile court case, it looks like we are still on for the 23rd of October. The judge assigned to the case was reassigned; we will have a "presiding" judge. This is usually a retired judge. We are the fifteenth case on the docket; nine on the list. Since we don't know who the judge will be, there could be a delay in litigation. There is a 50/50 chance that we may not start on the 23rd; the longer trials are usually heard last.

ADMINISTRATOR

- VEHICLE STORAGE SHED

We have awarded the contract to McKinney Construction. The building erection started late last week and should be finished within the next week. This building will provide the much needed storage space for the Fire Department.

There was fire training on Howell Lane this past Sunday. The Explorers were able to be on scene to train in various aspects of the fire field and were able to be trained on fire behavior. The wind shifted, so only one of the houses was able to be burned to the ground. The second burning will take place some time this coming weekend. Mayor Eschenberg asked about the reimbursement for any costs pertaining to this burn from the property owners. Mr. Booth stated that the owners would be billed for staff's time for the clean-up and the rental of the dumpster. The owners donated the two houses for training for the Fire Department, so they will not be billed for these services.

- LEAGUE LEGISLATIVE CONFERENCE NOV 16-17, ORLANDO

This conference is for Thursday and Friday, November 16th and 17th. The Mayor will be attending. For those who wish to go, staff needs to have your information to make the necessary reservations.

- COUNTRY COVE HOMEOWNERS ASSOCIATION MEETING

Mr. Booth advised Council that he has had a meeting with the Country Cove Homeowners Association. They would like to see some clean-up along the north side of US #1 at Malabar Road. They are happy about the number of pigs that have been removed from their area; 37 pigs in all. Since Stillwater Preserve has come in, Corey Road is looking very nice.

- FRDAP GRANT

The FRDAP grant was mailed on Friday, September 15th, which was the deadline for mailing. This grant is for the larger pavilion at the park and the second bathroom facility.

The highway department is doing a project from Malabar Road to Palm Bay Road; they will grind and resurface this area of road. We have a request in to take all the grindings. This will be more direct and will help save a lot of money.

Mrs. Moccia stated that she had someone call her with regards to blight study. We had a beautification study included in this study. Mrs. Moccia will provide staff the name and number of the person who would like to do some work along US #1; we need to provide copies of our information to him. This will not cost the Town any funds if we are able to provide enough information to him. Mr. Booth stated that he may have already spoken to this person with an engineering firm. It looks like FDOT will be doing some beautification along US #1; we need to give information to Mr. Paladin as well. He would like to have something done in front of the condos that are coming in. It looks like the cost to the Town will be the maintaining/cutting of the landscaping.

Mr. Rivet asked where the grindings would be stored. Are we using them as soon as we get them or will we be storing them? Mr. Booth stated we will try to use them as soon as we get them but he will inquire about a storage area just at the corner of US #1 and Malabar Road as a temporary storage. That allows the grinding and storage; we will move it. The savings will offset the cost of the millings.

CLERK**- UPCOMING NEWSLETTER**

The last newsletter for this year will be coming out in the next several weeks. Time will not allow for another issue this year. This issue will have a lot of pertinent information regarding the upcoming election, referendums, MSTU/Police protection, Fall Fest, holiday information and office hours schedule, etc. Any articles that you would like to have in this issue must reach Ms. Kelley by Friday, September 22nd.

- MALABAR FALL FEST

The Fall Fest is fast approaching. The pumpkin carving contest is in need of all four judges. Mrs. Dezman has volunteered to be a judge.

Mr. Booth requested a ten minute break at 7:50 pm. This meeting came back to order at 8:00 pm.

FIRE CHIEF

Chief Gianantonio took a moment to thank Mayor Eschenberg, Mr. Rivet and Mr. Vail for their generous donations to the Fire Department and the Explorer Program. He also thanked Mr. Vail for his assistance with the vehicle maintenance at the station.

A handout was provided to Council to show the walk-in activity at the station and the number of tours that have been provided to the local schools and daycares in our area.

DISCUSSION:**1. MALABAR VOLUNTEER FIRE FIGHTERS INCORPORATED**

This item was put on the agenda by Mayor Eschenberg. He has a perception that there is a conflict between the Corporation and the Fire Department. The contract has not been signed. The perception of the conflict is that it is not clear on what the duties of the Corporation and the Fire Department are. He has asked that Council review the contract and the bylaws of the Corporation before the next meeting. This will be back before Council at that time as a discussion item. He also suggested that Council review Article IV, Fire Department, all sections, of the code book. This conflict cannot go on. The primary protection of the citizens for our Town is the Fire Department.

Bob Rowan-2565 Corey Road-came forward and addressed Council. He advised them that he is no longer a member of the Fire Department, that the Corporation is the major reason for his demise. He has asked that Council take a long hard look at the bylaws of the Corporation and make sure that they make good business sense. The bylaws must be followed, so Council needs to make sure there is accountability. Mr. Rowan doesn't feel that the Corporation should be involved in the management of the Fire Department. Use the funds that they take in as incentives for recruiting and keeping the firefighters.

Mr. Rowan also stated that Chief Welton invited him to come and observe the fire training this past Sunday. He was very impressed. The firefighters and the Explorers were doing a wonderful job on scene. He was impressed with the Explorers, who have only been established within the last two months. Everyone involved did a great job.

2. PROPOSED CHANGE OF MILEAGE RATE TO STATE RATE

Mr. Booth advised Council that he received a call from the Mayor of Melbourne Beach. The State of Florida pays \$.48.5 per mile; he was surprised that we were not paying what the State pays. Mr. Booth stated Council's travel allowance has been taken away; Mayor Eschenberg does a lot of traveling for the Town. This would offset the gas that is used in personal vehicles. Mrs. Kabana stated that this would come back before Council as a resolution, as it is a part of the Employee Handbook, if this is what Council would like to do.

3. ORDINANCE TO ALLOW FOR CHEERLEADING ACADEMY IN OI ZONING

Joan Rosaci-1765 Sandy Creek Lane-came forward and addressed Council. She was at the Planning & Zoning meeting last week and questioned why this use is not listed under educational institution. In doing some research in Brevard County, cheer academies are in a different zoning in each area of the County. She needs a building that is at least 25 feet in height. There is more than "cheer leading" being taught in her facility. This property is located at Booth and Lett Lanes. All of this property is OI with some residential to the south and commercial/limited commercial to the north. It went before P&Z; they did not have any strong feelings. Mr. Smith provided a letter to Mrs. Rosaci stating what uses could be placed on this property. The Planner was on the line;

this could be permissible or not. Mayor Eschenberg stated that Council is being asked to approve this particular business in OI. Mr. Bohne asked the question of how you differentiate between this business and any other business that may want to come in. Mrs. Dezman stated if it is allowed in one place, we must be consistent all the way around. Mrs. Moccia brought up the noise factor. With this being an educational facility, what about the outside activities? Mrs. Rosaci stated that everything would be contained in the building; it is completely inside. With this being a conditional use, Mrs. Dezman asked if the public around this property has been notified of what is being requested. If so, do we have any feedback from them? They may want to have some input into this consideration.

Pat Reilly-1985 Howell Lane-Vice Chair P&Z-came forward and addressed Council. He is speaking favorably to this request. He is recommending that a gym or activity be added to OI and have it as a permitted use and not a conditional use. It should be classified as a cultural or civic use.

Mrs. Moccia stated if all activities are held within the building, it should not be a big problem. Mr. Rivet stated Council needs to make a decision based on what the town wishes to allow; we will need more information regarding this request. Mr. Vail stated we should encourage P&Z to elaborate on this project. Mr. Bohne, based on the codes, stated this cannot be listed as a cultural or civic use. Mrs. Dezman stated that she would like to hear from the surrounding neighbors.

Council directed staff to make proposed changes and send them back to P&Z for their input. We need to keep the definitions tight. The public needs to be informed and then this should come back to Council.

ACTION ITEMS:

1. VACANT SEAT DISTRICT 1

Mayor Eschenberg advised Council that the Charter states that Council shall appoint a person to fill a vacant Council seat for the remainder of the term. He then made a recommendation that Mayor Crews be appointed to finish the term for District #1. Mrs. Dezman asked what his reason is for this recommendation. Mayor Eschenberg stated that for one, the tenure is very short; secondly, he is very qualified and knows the workings of the Town and the present Town Council.

MOTION: Rivet/Vail to appoint Phil Crews to fill vacant Council seat in District #1.

There was discussion with regards to the appointment. The last time a seat was vacant, it was advertised so that everyone in Town knew the seat was available and anyone who was interested had an opportunity to come forward and be considered. Mrs. Dezman stated the last vacancy was advertised in the Mailboat as well as being posted at the Springfest. Mayor Eschenberg explained that we had a much longer term to fill at that time then what we have now.

VOTE: Rivet & Vail, Aye; Dezman & Moccia, Nay.

For this vote, the Mayor cannot break a tie; it must be the majority of Council. This vote is not a majority. Motion fails.

2. FIRST READING, ORDINANCE 2006-16, MAXIMUM BUILDING COVERAGE

Mr. Booth advised Council that this is coming back to them with the changes from maximum building coverage of 25% back down to 20%; it also removes the number of stories of the building. The only change that is being made is changing Floor Area Ratio to Maximum Building Coverage.

Without objection, Mayor Eschenberg read by title only.

MOTION: Rivet/Vail to approve as presented.

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

3. APPROVAL OF EAGLE CORP CITIZENS PATROL SPONSORING THE VENTURE CREW #37 IN SIGNATURE ONLY TO SATISFY THEIR REQUIREMENTS

The Eagle Corp wishes to sponsor this group. Since the Town sponsors the Eagle Corp, they must have permission from Council to do so. Mrs. Kabana advised Council that this group is co-ed and they want to explore Florida. This sponsorship would be in name only, which is what they have asked for. The Town will not be putting forth any funds regarding this sponsorship.

MOTION: Rivet/Vail to approve the sponsorship of Venture Crew #37 by the Eagle Corp. VOTE: All Ayes.

4. DRAFT REGULATIONS FOR A BED & BREAKFAST IN R/LC ZONING

Mr. Booth stated that staff is looking for Council to direct them to start the procedures for making a change for a Bed & Breakfast in R/LC zoning. This has already gone to the Planning & Zoning Advisory Board. It needs to go back to them in the correct form. This would be for a conditional use permit. Mr. Reilly stated that this would be a permitted use up to five rooms and then conditional use after that. Mrs. Moccia asked where this would be located in the Town. Mr. Booth stated it would be next to Malabar Mo's; it is Hans Kemmler's property.

MOTION: Moccia/Vail to direct staff to draft the proper documents for a bed & breakfast to be allowed in R/LC zoning. VOTE: All Ayes.

5. PROVIDE AUTHORITY TO REPLACE SPECIAL MASTER

MOTION: Rivet/Dezman to direct Mr. Booth and Mr. Bohne to find a replacement for the Special Master.

The question was asked that once a replacement is found, would this come back to Council for them to be advised of the new Master? Mr. Booth stated that Council would be kept abreast of this. Mrs. Dezman requested that a letter be sent to Mr. Dyer relieving him of his duty as the Special Master.

VOTE: All Ayes.

REPORTS: MAYOR, COUNCIL:

Vail-asked Council where we can advertise that District #1 Council seat is available. Mayor Eschenberg made a suggestion to advertise on the marquee in front of the Fire Department. Mrs. Dezman stated that it was announced in the Mailboat with the last vacant Council seat. Both Ms. Kelley and Mrs. Kabana stated that there wasn't enough time to put it in the Mailboat.

Moccia-advised Council that the mulch for the Butterfly Park at Port Malabar Elementary School will be purchased tomorrow and receipts will be supplied to Ms. Kelley. She has requested that \$350.00 of discretionary funds be given to Mr. Withers for the orphanage in Peru.

Rivet-has nothing to report this evening.

Dezman-advised Council that she has reached her limit with obscene phone calls at her home. She believes these calls are being made by a Town resident. It is now on the

record and she is putting everyone on notice that the next call will have consequences. Mr. Vail stated that he heard the comments coming from a passing car as they were entering the building for this meeting.

Mayor-has a few questions for Mr. Booth regarding previous topics of discussion. He would like to know how we are doing with the nuisance ordinance. Mr. Booth stated this will be at the next meeting as a discussion item. Chuck McClelland provided a lot of information that helpful in putting this ordinance together. The Mayor also asked about the progress on the ordinance for the architectural review of new projects. Mr. Booth stated this is also coming along; the FRDAP grant took a lot of time last week and was the main focus to get mailed out in time. The MPO resolution is being put together and is coming along as well.

Mayor Eschenberg would like a Certificate of Appreciation for Frank Hickson to come from Council. Ms. Kelley will take care of preparing this for Council.

Mrs. Kabana stated the sewer ordinance will be at the next Council meeting as an action item; first reading.

Mrs. Dezman stated she would like \$300.00 of her discretionary fund to be given to Mr. Withers for the orphanage in Peru. She also would like to know the needs of Brandy Hall's children. Chief Gianantonio does not know at this time. Mrs. Dezman asked that he get back with her regarding this matter.

PUBLIC COMMENTS: GENERAL ITEMS

Dan Welton-2635 Hunter Lane-Battalion Chief for Fire Department, came forward and addressed Council with regards to the Fire Department. He advised Council that the department has come along way under the leadership of Chief Gianantonio. Mr. Welton has asked that when Council is reviewing the bylaws for the Corporation, please make them be accountable for their actions. It would seem that there is not a common agenda for both the Corporation and the Fire Department, but some of the Corporation personnel seem to have a personal agenda. This needs to be addressed so that we can work together for the same common goal.

ADJOURNMENT:

There being no additional discussion, **MOTION: Rivet/ Moccia to adjourn. VOTE: All Ayes.** This meeting adjourned 9:00 at pm.

BY Thomas Eschenberg
Mayor Thomas Eschenberg, Chairman

ATTESTED:

Cindi Kelley
Cindi Kelley, Deputy Town Clerk

DATE:10/02/06