

RESOLUTION NO. 13-2009

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A NON-BINDING REFERENDUM ELECTION TO DETERMINE IF THE TOWN OF MALABAR SHOULD CONTINUE TO SUPPORT THE PURCHASE OF COMMERCIAL AND RESIDENTIAL REAL PROPERTY IN THE TOWN BY THE ENVIRONMENTALLY ENDANGERED LANDS PROGRAM FOR BREVARD COUNTY (“EELS”); PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town of Malabar is a municipal corporation organized and existing in Brevard County, Florida and has a population of 2859 and a total land area of 11.5 square miles; and

WHEREAS, the EELS program was approved by Brevard County voters in a 1990 Brevard County referendum; and

WHEREAS, the Brevard County, Board of County Commissioners has final responsibility for implementation of the EELS program; and

WHEREAS, the EELS program has purchased approximately 939 acres of land in the Town, which is approximately thirteen percent (13%) of the land in the Town; and

WHEREAS, the removal of this land from the tax base of the Town has and will cause financial strain for a town the size of the Town of Malabar; and

WHEREAS, the EELS program goals include, but are not limited to, inter-agency partnership, effective communication with the public, uniform acquisition procedures throughout Brevard County, providing liaisons with local agencies, cooperation with all municipalities in Brevard County, consideration of the financial situation of the affected municipality, impacts on the local community, economic impacts and impact on local programs; and

WHEREAS, despite numerous requests by the Town for cooperation and limiting real property purchases in the Town to the Brevard County, Board of County Commissioners and the EELS program, the Town Council believes that the Town’s requests have been substantially ignored; and

WHEREAS, the Town Council believes that EELS has purchased a sufficient quantity of land within the Town and that no more purchases should occur; and

WHEREAS, the Town Council believes that it should be up to the residents of the Town to determine if the Town of Malabar should support future purchases of commercial and residential land by EELS in the Town; and

WHEREAS, Florida Statutes, 101.161 provides for the procedures to submit a public measure to a vote of the electors of a municipality; and

WHEREAS, the Town Council hereby submits to the electors of the Town a non-binding referendum election determine if the Town should support future purchases of commercial and residential land in the Town by EELS.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1.

If there is a need to hold an election for a council seat on the Town Council of the Town in the November, 2009 general election then a non-binding referendum election is hereby called and scheduled to be held concurrent with the general election on the 3rd day of November, 2009 to determine whether the Town should support future purchases of commercial and residential land in the Town of Malabar by the Environmentally Endangered Lands Program for Brevard County. The non-binding referendum shall be approved by a majority of the votes cast in such election in which the qualified electors residing in the Town shall participate. Such non-binding referendum election shall be held and conducted in a manner prescribed by law for all general elections. The place for voting in such non-binding referendum election shall be the usual place for voting in the Town in the general election to be held on the 3rd day of November, 2009. However, in the event there is no need to hold an election for a council seat on the Town Council for the Town in November, 2009 general election then a non-binding referendum election is called and scheduled to be held concurrent with the general election in November, 2010 to determine whether the Town should support future purchases of commercial and residential land in the Town of Malabar by the Environmentally Endangered Lands Program for Brevard County.

The polls shall be open at such voting place on the day of such referendum election during the hours specified by the general laws of the State of Florida. All duly qualified electors residing within the Town shall be entitled to participate in and vote at such referendum election.

Section 2.

The ballot to be used at such non-binding referendum election shall contain a statement of the proposed subject matter of the question and shall provide facilities for qualified electors to vote for or against support for future purchases of commercial and residential land in the Town of Malabar by the Environmentally Endangered Lands Program for Brevard County (EELS) in two

(2) separate ballot questions. Said ballot shall be in substantially the following form:

**Ballot
Town of Malabar, Florida**

Question 1. Support for the future purchases of commercial land in the Town by EELS.

Should the Town of Malabar support future purchases of commercial land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS)?

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

Question 2. Support for the future purchases of residential land in the Town by EELS.

Should the Town of Malabar support future purchases of residential land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS)?

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

Section 3.

The Town Clerk is hereby authorized and directed to instruct the Supervisor of Elections of Brevard County to include the above-described question on the ballot for the general election to be held on the ___ day of November, 2009 if an election for a council seat on the Town Council is necessary. If an election for a council seat in November 2009 is not necessary then the Town Clerk is hereby authorized and directed to instruct the Supervisor of Elections of

Brevard County to include the above-described questions on the ballot for the general election to be held in November, 2010.

Section 4.

Notice of the said non-binding referendum election in substantially the form showing in Exhibit A to this Resolution shall be published two times in a newspaper of general circulation according to the laws of the State of Florida. The first publication shall be during the fifth week prior to the week in which the referendum election is to be held and the second publication shall be during the third week prior to the week in which the referendum election is to be held. A minimum of five copies of this Resolution shall be kept on file in the office of the Town Clerk for public inspection upon demand during normal business hours.

Section 5.

This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was moved for adoption by Council member Vail. The motion was seconded by Council member Dezman and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	<u>Aye</u> _____
Council Member Brian Vail	<u>Aye</u> _____
Council Member Steven (Steve) Rivet	<u>Aye</u> _____
Council Member Jeffry (Jeff) McKnight	<u>Aye</u> _____
Council Member Patricia (Pat) Dezman	<u>Aye</u> _____

This resolution was then declared to be duly passed and adopted this 6th day of July, 2009.

TOWN OF MALABAR

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST: Debby K. Franklin
Debby Franklin,
Town Clerk/Treasurer

Approved as to form and content:

Karl W. Bohne, Jr.

Karl W. Bohne, Jr., Town Attorney

Exhibit A
NOTICE OF NON-BINDING REFERENDUM ELECTION
TOWN OF MALABAR, FLORIDA

Public notice is hereby given that on November ____, 2009; the issue of whether the Town of Malabar should support future purchases of commercial and residential land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS) will be submitted to the qualified electors of the Town of Malabar and will appear on the same election ballot as a non-binding referendum on that date as one separate ballot question.

The Town Council of the Town of Malabar has adopted a resolution calling the said election on the following question:

AS TO QUESTION 1.

Should the Town of Malabar support future purchases of commercial land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS)?

AS TO QUESTION 2.

Should the Town of Malabar support future purchases of residential land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS)?

The places of voting shall be the usual places of voting in the Town of Malabar during the general election scheduled on November ____, 2009 and the polls shall be open from 7:00 a.m. to 7:00 p.m. on the said date. All duly qualified electors residing within the Town of Malabar shall be entitled to participate and vote in said referendum election.

The ballot containing the questions to be so submitted to the electors shall be in substantially the following form:

Ballot
Town of Malabar, Florida

Question 1. Support for the future purchases of commercial land in the Town by EELS.

Should the Town of Malabar support future purchases of commercial land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS)?

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

Question 2. Support for the future purchases of residential land in the Town by EELS.

Should the Town of Malabar support future purchases of residential land in the Town by the Environmentally Endangered Lands Program for Brevard County (EELS)?

Yes
 No

Instruction to voters: If you are in favor of the adoption of the foregoing mark the space to the left of the word "YES". If you are not in favor of the adoption of the foregoing amendment, mark the space to the left of the word "NO".

For further information regarding this referendum election, contact the Town Clerk of the Town of Malabar. A minimum of five copies of this Ordinance are on file at the office of the said Town Clerk at Town Hall, 2725 Malabar Road, Malabar, Florida, 32950, and are available for inspection upon request during normal business hours.