

ORDINANCE NO. 2008-17

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE ANNUAL UPDATE TO THE CAPITAL IMPROVEMENTS ELEMENT WITHIN THE TOWN'S COMPREHENSIVE PLAN IN ACCORDANCE WITH SECTION 163.3177, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2005, the Florida Legislature passed Senate Bill 360, which required, in part, that local governments annually update the Capital Improvements Element within the Comprehensive Plan in order to ensure that the required level of service standard for the public facilities listed in Section 163.3180, F.S. is achieved and maintained over the planning period; and

WHEREAS, pursuant to Section 163.3177, F.S., all local governments are required to adopt this update by December 1, 2008; and

WHEREAS, given that a majority of the Town was zoned for large lot rural single family development,, the level of service standard for the public facilities listed within Section 163.3180, F.S. is either being achieved or exceeded; and

WHEREAS, as such, no capital improvements are necessary for these public facilities; and

WHEREAS, pursuant to Article XII of the Town Land Development Code, the Planning and Zoning Board sits as the Local Planning Agency for the Town; and

WHEREAS, the Planning and Zoning Board, in its capacity as the Local Planning Agency, has reviewed the proposed ordinance and recommends approval; and

WHEREAS, the Town Council finds that the annual update to the Capital Improvements Element, which is attached as Exhibit "A," is consistent with state law and the Town's Comprehensive Plan; and

WHEREAS, the Town Council finds that this Ordinance is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Malabar, Florida:

Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Recommendation of Approval by the Local Planning Agency.

The Planning and Zoning Board, in its capacity as the Local Planning Agency, has reviewed the proposed ordinance and recommends approval.

Section 3. Adoption of the Annual Update to the Capital Improvements Element.

The Town Council hereby adopts the annual update to the Capital Improvements

Element within the Town's Comprehensive Plan, which is attached as Exhibit "A."

Section 4. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

Section 5. Conflict.

That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date.

This Ordinance shall be effective immediately upon passage by the Town Council on second reading, except that the effective date of the Plan Amendment approved by this Ordinance shall be the date a final order is issued by the Department of Community Affairs or Administration Commission finding the Plan Amendment in compliance in accordance with Section 163.3184, Florida Statutes, whichever occurs earlier. The Department of Community Affairs notice of intent to find the Plan Amendment in compliance shall be deemed to be a final order if no timely petition challenging the Plan Amendment is filed.

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

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

This ordinance was then declared to be duly passed and adopted this 15 day of December, 2008.

TOWN OF MALABAR

BY: Thomas M. Eschenberg

Mayor Tom Eschenberg, Chairperson

PH at P&Z: 11/19/08
First Reading: 12/01/08
Second Reading: 12/15/08

ATTEST: Debby Franklin
Debby Franklin
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr.
Karl W. Bohne, Jr.
Town Attorney