

**MALABAR TOWN COUNCIL REGULAR MEETING
APRIL 16, 2007 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 Eschenberg. The prayer and pledge were led by Council Member Brian Vail.

<u>ROLL CALL:</u>	MAYOR/CHAIR	TOM ESCHENBERG
	VICE-CHAIR:	CHUCK McCLELLAND
	COUNCIL MEMBERS:	NANCY BORTON (excused)
		BRIAN VAIL
		BOBBI MOCCIA
		PAT DEZMAN (excused)
	INTERIM ADMINISTRATOR:	BILL STEPHENSON
	ATTORNEY:	KARL BOHNE
	TOWN CLERK/TREASURER:	SUSAN KABANA

ADDITIONS/DELETIONS:

Moccia – would like to add an item regarding the Valkaria Airport Board. Mayor – asks Council if we could move Public Comments right after reports, Council agrees.

Mayor – has an addition, The Mayor's Trip to St. Cloud. He toured their city hall and senior center and would like to do this right before reports. Without objection the agenda stands.

CONSENT AGENDA:

(A) COUNCIL MINUTES 3/19/07

(B) COUNCIL WORKSHOP MINUTES 3/24/07

(C) COUNCIL MINUTES 4/2/07

MOTION: Vail/McClelland to approve.

Vail – on page 7 of the April 2nd minutes in regard to Action Item 5, Selection of the Architectural Review Board Committee Members. This item does not mention that this is for the new town hall and it could be confused with the recently passed architectural ordinance. Kabana – will add an editor's note for clarification.

AMENDED MOTION: Vail/McClelland to approve as amended. VOTE: All ayes.

PRESENTATIONS:

MAYOR'S TRIP TO ST. CLOUD

Mayor – looked at two buildings in St. Cloud, the City Hall and the Community Center. Uses Power Point to show pictures, there are pictures of the building, the council chambers, offices for Council Members, and a conference room. There is a bench out front with a covering that might work for the benches we have around town. There are offices for each Council Member. The second floor is the IT center; they are 100% wireless internet, the first in the nation. The building construction cost was \$10 million which is way out of line for us so he went to see the senior center/hurricane shelter and it cost \$3.4 million dollars and it's a pretty building. The porch goes all the way around the building. They store 200 cots and shelter supplies. There are showers in the restrooms. Stephenson – notes that the city hall building is a tilt-wall building; the walls were poured and then lifted into place, very innovative construction.

REPORTS:

ATTORNEY

- PALM BAY WATER AGREEMENT

Bohne – recently Stephenson was in contract with Mr. Feldman and it had to do with their ordinance 2006-72 that deals with increasing water rates by adding a surcharge for people located outside the Palm Bay city limits. Our agreement is from 1993 and it states that the rate charged is the 'current retail rate' and the new surcharge is beyond the current retail rate. There is a Florida

Statue and a Special Act that are applicable here. Both of them authorize water surface providers to surcharge non-residents, the Statute says up to 25%, the Special Act limits it to 10% but you can go up to 25% if you do a rate study. Initially both Bohne and Stephenson agreed that Palm Bay's increase of the water rates violates the agreement. There are no grounds in the agreement that authorize them to raise the water rates the way they did. He notes that some form of the Florida Statute was in effect at the time of the agreement with Palm Bay and that being the case, if they wanted the ability to surcharge they should have put it in the agreement. Staff is asking for Council direction, how should this be handled?

Moccia – she sees no reason not to hold them to the agreement, they hold us to it. Vail – agrees. Bohne – they are keeping our feet to the fire on this agreement, we really should do the same. Our agreement is clear, 'no changes to the agreement unless both parties agree', and in it they agreed to charge us the current retail rate. Mayor – he would be willing to pursue it through political channels also. Bohne – this is something for us to move on.

Stephenson – feels we should start by writing a letter. Moccia – we should tell them we've upheld our end of the deal, it's unfair for them to change the rules now. Bohne – feels the Administrator should write the letter and then the Mayor should approach the Council there.

- Bohne – out of the blue last week he got a call from Gentile's attorney. Bohne surmises the attorney has a client problem. The long or short of it is that Gentile's attorney may be requesting to come before Council to see if we can resolve the issue. Bohne advised him to come alone, feels we are obligated to meet with him if requested.

INTERIM ADMINISTRATOR

Stephenson – gave Council financial informational on the Springfest, Cindi Kelley has really preformed a yeoman's job organizing the event; it looks like it is going to be a real success.

Stephenson – the owner of the gas station on Babcock Street applied for and received a permit to modify and upgrade his canopy. Originally he had eight light fixtures under the canopy but under the current Malabar code, which specifies 0.2 lux (candles per square foot) at the property line, he would be allowed only three lights under the canopy. His competitor across the street has eight lights. Stephenson notes that the property line is actually Babcock Street. The houses are on the backside of the property, away from the canopy. It seems to Stephenson the right thing to do here is to allow him to put back eight lights; he should be allowed to put back what he had. McClelland – he is not open that late, not past 10:00pm. Discussion about the code. Vail is concerned about down-lighting. Stephenson asks would you rather go to a gas station that is nicely lit up or one without much lighting. Moccia – does not think the intent of the ordinance was to restrict this use.

Mayor – does not think the Council should allow exemptions to the code. Asks Debby Franklin if the canopy had to come down because the tanks had to be removed for environmental reasons. Franklin – yes. Mayor – so, regardless, he had to take down the canopy. He has a problem when the Council wants to exempt anyone for anything that's in the code book. Feels Council should not go into this territory, feels this could be fixed another way. Bohne agrees, Council should not exempt anyone from the code. Mayor – the cleanest way to do this is to change the ordinance. Bohne – the code is pretty clear, agrees that the way to do this is to change the code. Stephenson – we will issue the permit according to the code. Bohne – and if we want to change the code we can do that. Mayor – in the mean time he could build his canopy and only put in three lights until we get the code changed. Stephenson – we will tell the applicant that the Council has no problem with considering a change to the code for commercial site lighting.

CLERK

Kabana – she finished the book with all the information for the proposed site for the new town hall. There are three copies available on the table for Council to view. It contains history, maps, and general information. Mayor – looked at them this morning and feels Kabana did a great job putting them together.

PUBLIC COMMENTS:

Dr. Doris Leedy – There was a meeting of the Valkaria Airport Advisory Board last Thursday. One of the main issues approved would allow for night lighting, therefore allowing for night flying. She is very concerned, she chose to come to Malabar because of the quiet. She can just imagine what will happen if we don't do something about this, right now there might be the occasional night flight but in the future we could become the overflow for the Melbourne Airport. The approval was 14 to 1, and even though it was supposed to be a public meeting, no one knew about it, it feels underhanded. She wants to keep Malabar quite, pretty and green in every way. Also, she does not feel the person the Council appointed to represent the board really is the best representation because he owns an airplane there. Would like Council to do something about this.

Burnadette Knudson – she feels that recently Malabar has been anything but green, it has been noisy, loud, and destructive. She feels the Airport Advisory Board is acting in an underhanded manner. She understands that Dr. McClure is the Malabar liaison and he was in favor of the amendment. There was one opposition vote and he is the newest member. He stated that none of his neighbors knew about the meeting, he spoke about his concerns about the expansion and the night lighting. Vail – what exactly was voted on? Knudson presents Council with a copy of the plans. Moccia – asks if Dr. McClure has submitted any information to the Town. Kabana – she is not aware of anything. Mayor – Dr. McClure's role is to go to the meetings and then report back to Council. He has filed a report in the past by email. Knudson – there were two meetings, one at FIT and then one last Thursday. She notes that Dr. McClure was very curt to the dissenting voter and Knudson does not want Dr. McClure representing Malabar any longer, she feels he was unprofessional and self-serving. She would like an action item on the next agenda to remove him from office. Moccia – wants to see the minutes. Knudson – has a tape of the meeting and would be glad to provide it. Vail – agrees, would like to review it before the next meeting. Knudson – is dismayed that no one knew about the meeting. Moccia – he is supposed to represent us. Mayor – but he is not required to give this Council advanced notice of the meetings. Moccia – we told Dr. McClure that we did not want flight school or night flying, we were very clear. We need to see the minutes. Knudson – will be happy to supply the video for that.

Ann Varco, Atz Road – agrees with Dr. Leedy. Wants Malabar to be kept quite. Does not want to be awakened in the night by planes. Does not know what their intentions are. She is not crazy about the night lights. Vail – he, and his neighbors in the audience, is where the planes fly, they are right over our houses, and he would be very concerned about night flying. Moccia – only 10 days ago she called the airport because there were helicopters landing in people's back yards. She found out they were doing maneuvers, and that is illegal, they are not allowed to land in our back yards. The helicopters terrified her goats. Knudson – as well as her bull which jumped the fence and ultimately she lost \$5,000 from that ordeal. Moccia – this all does not sound very rural-friendly. Mayor – notes that this is only an advisory board to the County Commission so he is sure they will hear about this. In the meantime he will call the Mayor of Grant/Valkaria to see if they have taken a position on this.

ACTION ITEMS:**1. REQUEST FOR APPROVAL FOR DIVISION OF FORESTRY TO LOCATE EQUIPMENT AND SMALL OFFICE AT FIRE DEPARTMENT**

Chief Joe Gianantonio – the current location for Division of Forestry is not suitable for their needs and they would like to locate at our fire station. Having them around will be advantageous, especially when we have brush fires, plus we will have access to additional training and equipment. McClelland – where are they now? Mike Foley, Deputy Fire Chief – at the Valkaria Airport station. Notes they can locate in the new building we have in the back of the station.

MOTION: Vail/Moccia to draft a letter of intent.

McClelland – is concerned that the new building has no power and no doors with nothing in the budget to improve it. Foley – Forestry is willing to use the shed the way it is, they know there are no doors or power. They get off at five, they are willing to assume the liability. McClelland – that

building is not satisfactory the way it is, what was the former Administrator's plan for improvements? Foley – we were told there is no money.

Stephenson – his recollection about how this building came about is that there was a shed out back that was destroyed by the hurricanes and it was insured. Booth got FEMA money and insurance money and the Council allocated some funds to get the building and they spent all the money on the structure. There were no doors budgeted but everyone knew that from the beginning, but they got the building.

Vail – that was his push originally, he wanted to get the structure first then we could worry about the doors later. Asks about the ramp. Foley – we will use packed dirt so the trucks won't harm the concrete. Vail – wants the ramp in first before we bring in Forestry. Stephenson – his idea was to put pervious concrete there so we wouldn't run into the problems with drainage and permitting.

Foley – is there a time span we can give Forestry, they want out of their current location. Mayor – could we construct a temporary ramp? Stephenson – maybe we could just use a couple loads of crushed concrete that would be a quick easy fix. Mayor – we could take a vote on the motion and then set the time.

Foley – if Division is willing to bring the rock is that acceptable? Council – that is fine.

VOTE: All ayes.

McClelland – where are we with having this building open on two sides. Stephenson – it is cross-braced and open on both sides. Vail – notes that he has a building with no doors on two sides that are rated at 110mph and he did not lose any metal on his structure. Asks can we find any way to allocate funds to buy the doors? McClelland – we need bids. Foley – has three bids, he will provide them to staff.

Stephenson – before we go getting bids we really need to make sure we have the right specifications to make sure we have the right door for the building. We need either a structural engineer or an architect to give us a recommendation. Vail – is the engineering in the plans? Stephenson – no.

Kabana – we can't go very far without allocating funds for the project. Mayor – we could pay for the doors over a five year period. McClelland – if we did that we could put the power in also. Kabana – maybe we could put off buying the vibratory roller and use that money for the doors. Vail – wants this as a discussion item on the next agenda.

2. DIRECT STAFF TO REQUEST NAME DESIGNATION FOR RIGHT-OF-WAY KNOWN AS OLD MISSION EAST OF COREY ROAD

Chief Gianantonio – sometimes we get a call for 'Old Mission' and we end up sending two different trucks to two different places, one off Corey Road and one off Weber Road. Often when we get a call for Old Mission Road we get an address but when we don't we can't take a chance.

McClelland – he suggests using a residents name such as Ernest Whitt, who was a town father, we could name it Whitt Road. Foley – Beehive Road is a name that is already often used because the bee keeper is right around there. Vail – we will just have to have decent signage for the new name. Moccia – if we use a forefathers name she would want information on those people, she does not know of Mr. Whitt, maybe it should be another name, we'd have to find out. Council could call staff with names before the next Council meeting. Kabana – before Councils decides on anything staff must first pass the names through Brevard County 911, if they don't approve a name, like Whitt Road, there is no reason to do research. Mayor – the Council should call Ms. Franklin and give her names to pass to the County.

3. PROPOSED APPOINTMENT OF TOWN ADMINISTRATOR POSITION, RESULTS OF BACKGROUND CHECK

Kabana – the last of the background checks came in today, there is nothing outstanding to report.

Mayor – asked Ms. Wilbanks-Free to come to the podium. He introduced her to the audience and began reviewing the revised Administrator's contract. He notes that the only Council change to what the previous Administrator had was to change the amount of sick pay paid out when employment ends, it was changed to half-pay. Then he went on to Section 3.01 base salary, this was the amount set by Council and Wilbanks-Free accepted that. Section 4.04, she is asking for 20 days vacation, it was 15 days. Moccia – would that be taken all at one time? Wilbanks-Free – to take 20 days at a time for her is a lot to take, she likes short breaks but she does not want to limit it in case there is a special event or family issue but to normally take it all at once is not like her. After Council discussion it was determined that 20 days a year is granted.

Mayor – Section 4.07, Wilbanks-Free wanted to add a specific organization that was really in a catch-all phrase that was in the previous contract. Council has no problem with adding this phrase.

Mayor – on item C, she is asking that FCMMA dues be paid as well as ICMA. Kabana – we paid for all the memberships for the past Administrator.

Mayor – item D, car allowance, the previous Administrator took home \$300 a month, Wilbanks-Free is asking for \$600 which would have taxes taken out. She notes that the previous contract was for 'in-Brevard' miles only, mileage was submitted for reimbursement when miles traveled were out-of-county. Her request covers all mileage, she will not submit when going out-of-county. Moccia and Vail thinks this is very reasonable. Council agrees to \$600 gross.

Wilbanks-Free – Section 5.04, because she has participated in mediations or served with litigation with employers she has fulfilled post-employment obligations, especially for litigation, and compensation has never been considered. So now she has learned and this would ensure pay for her if her services are needed post-employment. She is involved in a situation like this right now and is not receiving any compensation and is having to submit some fairly detailed work. This is not to say she would nickel and dime us over a phone call. Bohne – and it is certainly insurance for remembering an issue, he does not see a problem with this language. Council agrees.

Mayor – Section 4.06, notes that health insurance will be paid at the same rate as other employees. Vail – is the budgeted amount for the Administrator on track? Mayor – the salary amount is over due to the pay-out for Mr. Booth. Kabana – and the previous Administrator did not choose to have the Town's health insurance and Ms. Wilbanks-Free is going to use this benefit and it really is not budgeted for. We will have to do a budget adjustment.

MOTION: Moccia/Vail accept the employment agreement as written and officially hire Ms. Wilbanks-Free to begin next Monday, April 23rd. VOTE: All aye.

4. APPOINTMENT OF INDIVIDUALS FOR CHECK SIGNING

MOTION: Moccia/McClelland to appoint the Mayor Tom Eschenberg, Council Member Bobbi Moccia, Town Administrator Bonnie Wilbanks-Free and Town Clerk/Treasurer Susan Kabana as check signers for the Town. VOTE: All aye.

5. APPOINT COUNCIL REPRESENTATIVE TO EEL'S ADVISORY COMMITTEE

Council would like Nancy Borton to be here.

MOTION: McClelland/Vail to table to next meeting. VOTE: all Aye.

6. FIRST READING, ORDINANCE 2007-03 POLITICAL SIGNS

Mayor – read: ORDINANCE NO. 2007-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE XIX OF THE LAND DEVELOPMENT CODE RELATING TO POLITICAL SIGNS; PROVIDING FOR THE LOCATION OF POLITICAL SIGNS AND RESTRICTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

MOTION: McClelland/Vail to approve.

Mayor – wants to clarify on the second page, in part D, the fourth line, beginning with the words 'All such signs which are...' should be struck out. He asks the attorney about the next sentence.

Bohne – it is questionable if that is a valid sentence. His thought is that if it is challenged it probably would not past muster. Vail – is there an existing standard? Bohne – he thought there was a case that involved 60 days but again, that has not been challenged. Mayor – would it make sense to put something in there. Mayor – what about 61 days. Moccia – when she ran the signage information was very clear. Mayor – he is thinking about everyone, not just Malabar campaigns. Bohne – feels 61 days is fine. Kabana – notes that our qualifying has moved up, it was in September but now is in August, believes it begins 81 days prior to the Election Day. Council agrees on 81 days prior. Next the sentence that deals with how many feet the signs can be placed near one another. Council decides on 50 feet. The changes would be as follows:

d. Political or campaign signs may be allowed in a public or private right-of-way but shall be located no closer than 3 feet from the edge of pavement or in the case of a dirt road from the edge of the dirt of a public or private street or five feet from the edge of a sidewalk, bike-path, or ped-way. ~~All such signs which are allowed in a public or private right of way may not be placed any closer than ___ feet to the edge of pavement or in the case of a dirt road any closer than ___ feet to the edge of the dirt.~~ Further any such sign allowed in a public or private right of way may not be placed any sooner than 81 days before the election. Such signs shall not be placed closer than 50 feet to a sign of the same candidate.

There is no other discussion.

VOTE: Aye – Vail, McClelland, Moccia.

7. STAFF RECOMMENDATION TO MOVE FORWARD WITH VIBRATORY ROLLER PURCHASE

MOTION: Vail to table. No Second.

Stephenson – we budgeted \$9,300 for the current year payments and a roller will cost about \$60,000 for the roller and trailer to be budgeted over several years. He feels used equipment prices are coming down, there is a huge auction in the middle of the state, and contractors are selling, not buying. Suggests that we can prepare specs and get bids. He does not know if it is prudent to buy one of these or not, it is not a piece of equipment that is going to used most of the time in Malabar, we can rent one if we need one. Moccia – feels we've only used one on one occasion. How often are we going to be using this? Vail – Glatter was mixed and rolled this week and it is our experiment as to how long it will hold up. Vail feels that we should not act right now until we see the results of the experiment. Moccia – agrees. Stephenson – do you want staff to proceed with preparing specs? Vail – yes. Moccia – but not run out and buy one for now. Stephenson – we can rent one if we need one. Council agrees.

MOTION: Vail/Moccia staff to get specs only on a vibratory roller. VOTE: All Aye.

8. RESOLUTION 09-2007 AND P&Z RECOMMENDATION REGARDING PROPOSED PALM BAY ORDINANCE 2007-30, LOCATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

Mayor – read: RESOLUTION 09-2007

A RESOLUTION OF THE TOWN OF MALABAR URGING THE PALM BAY CITY COUNCIL TO RECONSIDER THE LOCATION PROPOSED IN EXHIBIT “A” OF THEIR ORDINANCE 2007-30, PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING AN EFFECTIVE DATE.

Bud Ryan – can the Attorney read the resolution? Bohne reads the resolution.

Bud Ryan, Howell Lane – Palm Bay is trying to get through three ordinances. The first one has to do with public nudity, the second one has to do with adult entertainment in general and the last one has to do with siting which is what he is referring to. Shows a map of the area of concern as it relates to Malabar. Notes that all of Malabar is a potential school site. A lot of the businesses in this area would be negatively affected and they could start leaving, and if they moved out then the adult entertainment businesses would move in. Would like to see the resolution be presented to Palm Bay at the first reading. The area around Kirby road seems more logical. Please, please, please try and stop this.

Bob Rossman – Country Cove Circle, is co-author of the existing Palm Bay adult-entertainment ordinance. The Supreme Court states that any municipality cannot prohibit adult entertainment but they can regulate it. Once a city reaches a population of 100,000 they have to re-address the issue. There are existing places in the City of Palm Bay that adult entertainment can go without the establishment of this ordinance. There are three choices the Palm Bay Council can make, they can pass this ordinance, live with the existing ordinance, or do nothing. Feels the Palm Bay Council will listen to their constituents. Feels someone from our Council should speak. Moccia – can we all be there? Bohne – just don't speak to each other. Rossman – feels very strongly that there is a hidden agenda in this ordinance. Vail – how did this site come about? Rossman – Palm Bay hired an adult entertainment ordinance attorney. Bohne – this is a very involved process. Discussion of Palm Bay meeting dates. Rossman – the existing Palm Bay ordinance does not prohibit adult entertainment. He feels that they want to localize this so they can localize the crime. The Kirby industrial site was looked at but there was too much opposition for putting it there. The idea was to hide the area off Malabar Road and Palm Bay Road. He strongly recommends Council be there to oppose this.

Bob Wilbur – 2500 Glatter Road, thanks Council for taking interest in this. Feels that Palm Bay is trying to clean up their corridor on Palm Bay Road by putting their trash near us.

Council discusses the resolution and changes the fifth whereas to read less than 1,500 feet.

Mayor – feels that the Council should be at the meeting. Moccia – she will be the speaker. Rossman – feels that Moccia should speak as the representative of the Town and the other Council members should speak as business owners.

Bob Wilbur – one of the most disturbing aspects of this is on page 6. Reads from ordinance, feels it was written for the adult entertainment industry, not for the current business owners. Feels this is a very dangerous ordinance.

MOTION: Moccia/Vail to approve. VOTE: All aye.

9. APPROVAL OF BID FOR ELECTRICAL IN MALABAR PARK

Stephenson – Cindi Kelley has been working on this to accommodate food vendors for Springfest.

MOTION: McClelland/Vail to accept the bid from Boys.

Kabana – Vail is on Springfest Committee, asks if someone else could make the motion. Mayor – agrees.

McClelland – Withdraws the motion. Vail – Withdraws the second.

MOTION: McClelland/Moccia accept the bid from Boys Electrical Contractors 70% from Festival Fund 108 and 30% from Park Fund 103. VOTE: All aye.

DISCUSSION ITEMS:

1. COMPREHENSIVE LAND USE PLAN EVALUATION AND APPRAISAL REPORT (E.A.R.)

Franklin – asks if Council has any questions. Notes that the new Administrator went through this and may be able to help us. She knows of a good consultant that managed this same feat in four months. Franklin feels the new Administrator will be a great asset in this. A joint Council/P&Z meeting is set for May 23rd.

2. BUILDING PERMITS ON UNAPPROVED ROADS FOR EXISTING HOMES – MAYOR ESCHENBERG

Mayor – this is a carry-over from the last meeting.

Ralph Lambertt – they gave packets to Council regarding their situation on Sykes Lane. States that the original law was for building new roads for services such as fire and ambulance. When the law was conceived he feels it was never established to stifle the owners of dwellings from improving their land. But now somewhere along the line the law got perverted, and carried out to its fullest people could not replace their roof, siding, septic system or add a room. It is a deterrent to improving the property and it would hinder the sale of that property because it would be a hardship for the new owner and a financial hardship for the current owner. In his particular case they knew nothing of this law and they bought a run-down piece of property with the intent of

improving it and if they go by the law they can't improve it. It is a great hardship for them. It is his view that this law should be amended to exclude existing homes on such roads and only apply to new homes.

Moccia – when she found out that we allowed them to begin improvements but then prevented them for continuing she was upset, why did we let them go out on a limb? Mayor – that is really a separate issue, if the building department made a mistake that really doesn't matter to this issue. Moccia – even though it is a separate issue it is one we can't ignore. Mayor – maybe the Board of Adjustment is the place for that matter.

Mayor – he had asked Franklin if somebody had an existing house on an unimproved road that needed an air conditioner would we give them a permit. Franklin had told him yes, we have been. It reminds him of what the Sheriff told us about using the MSTU officers: technically we are not supposed to be doing this but we do it anyway, technically we can't do it by following the ordinance but we have to give someone a permit for an a/c system or a water heater. He feels there needs to be some type of exceptions to the ordinance, something needs to be done.

Franklin – the comprehensive plan, which is what our Land Development Code is based on, stipulates what we want for our roads. So she did a map showing all the unaccepted roads in Malabar and all the houses on those unaccepted roads. We've had the same game plan for gaining right-of-way since the 1970's. The Town was to get the required right-of-way from homeowner's as they improved the land but, she notes, that we have not done such a great job of doing so. Just tonight the Fire Department was to name an unimproved right-of-way. Realtor's run their cars up and down an area that they think is right-of-way and they try to market the land. She does not have an answer to this problem.

Mayor – feels we can allow the necessities in the ordinance and then if they do want to do major improvements then we should be able to obtain the right-of-way. Asks Council if they want to look at the ordinance.

Stephenson – this is a two-pronged problem. A while ago staff brought the 60' right-of-way issue before Council and Council was adamant that they want to maintain the 60' right-of-ways. And this is how we get the right-of-way. We get that segment deeded to the Town concurrently with the road improvement process. If we don't have some mechanism for that we are never going to achieve the 60' right-of-way. The other issue is the equity, or inequity, of the financial responsibility of the person building the road. Would it be fair to the person down the road if the first person didn't build his part of the road and then the person down the road would have to improve the road in front of the first person's property and possibly never get paid back. There really isn't a good solution to Malabar's road construction issue. But regardless we have the comp plan which has the 60' requirement and Council has already reaffirmed that, unless you've changed your mind. Just don't forget that we have an ordinance that works pretty well for road building, there is just no way to make it more equitable. If we start trying to exempt people he thinks we will make it more inequitable.

Mayor – we can require the dedication of right-of-way for something as simple as a water heater if we want to. Stephenson – we can consider that.

Vail – he wants the system to be equitable. Mayor – technically we are violating our ordinance now and we will violate it in the future.

Stephenson – notes that we have an issue on Railroad Ave with a commercial property that wants to improve the property but he fronts four non-conforming roads, with set-backs and right-of-way problems on every one of his streets. So you will have a site plan coming to you that is going to have problems on all four sides so if you do revise the ordinance don't just think it is for residential properties, commercial properties are also affected. He feels amending the code may make it more common sense but not to think that fixing it for one instance is going to solve your problems.

Vail – this is what he keeps telling Mr. Lambertt. Lambertt – then you shouldn't have given us the permits in the first place. Vail – this has gotten to the point where there has to be a combined effort if we are going to help the Lambertts. Mayor – but he is not thinking of one case, he is looking at this and looking to the future.

Franklin – transportation is one of the main elements in the E.A.R. so having a workshop on this would fulfill the need. Mayor – he will work with Franklin and Stephenson and have something ready for the next Council meeting. Council agrees.

3. MEETING WITH COUNTY COMMISSION ON APRIL 25TH

Mayor – asks Council how we are going to approach the County Commission.

McClelland – what are we getting back for taking all the property off the tax rolls? Mayor – is not sure that applies here. Vail – feels it is valid, the rest of the taxpayers are paying for police coverage for land that is off our tax rolls.

Moccia – was going to speak as necessary, she notes that the more people she talks to, the less she likes this. She has heard several different suggestions that are appealing, maybe hiring one person to patrol extra and then use the general fund officers. She does not want cheaper service. But she feels they will raise the rate as much as possible. Do we want them to have this control over us?

Mayor – we could approve an ordinance with a life of two years and then have a binding referendum. Moccia and Vail – agree.

Mayor – according to the County Manager we are past the point of enacting this this year. Moccia – then why can't we just put this on the ballot in November?

Mayor – are any of the Council Members ready to demand three officers for Malabar? Vail – he wants 24 hour protection. Moccia – but they have said they are not going to do that. Vail – it doesn't matter what they said, we need to decide what we are going to demand.

Mayor – this is supposed to be a negotiation. Bohne – feels they are not coming in with anything to bargain with. We are the ones giving things up. Mayor – the leverage resides on this side. Bohne – agrees, feels we hold the cards.

Moccia – so we should tell them we want 3 officers dedicated to Malabar. Vail – he would like it on November's ballot.

Mayor – reminds Council that the County Manager said this would not help them now because it is too late for this year, it has to be done by January 1st. Moccia – she wants that brought up at the meeting.

Mayor – if we can get the County to agree to 3 dedicated sheriffs, then Council could pass the ordinance effective for a two year period and then in two years, on a presidential election year, have a binding referendum and ask the voters if they want to do this for two more years. That would allow the voters some service time before they have to vote on it.

McClelland – we are hearing more and more people against this. He would like to hear the alternative ideas but he is not opposed to approving this now and having a binding vote in two years. Moccia – voting in two years agrees with her, we can be working toward any alternative ideas in the meantime. Mayor – feels this keeps the Sheriff on his toes. Bohne – and we can add a clause to repeal the ordinance after one year if service is very undesirable.

It is now 10:30 pm.

MOTION: Vail/Moccia extend 10 minutes. VOTE: All aye.

Moccia – feels this is a good idea to have a taste of what they have to offer and ultimately it goes to the voters. And we can readdress this every two years to keep the Sheriff on their toes. Moccia is elected to tell the Commissioners.

Kabana – notes that there is no reason for her to be there. Council agrees.

4. WATER MAIN EXTENSIONS TO SIDE STREETS ALONG US1 EAST OF THE FEC RAILWAY

Stephenson – it looks like the extension of water service along US1 is eminent. And there are several side streets that abut US1 that can have water. There are a few ways to do this, one is to let each street get an engineer to design a waterline, get a DEP construction permit and build it similar to the way we do roads now. Another way is to design and permit all the streets at one time

and then let them build them piece-meal as they have the money. Mentions that we sent out a survey last year and the support for the waterline was almost 99%, so the people there are in favor of this. Tells Council we could set up a special assessment district and do one design and one permit; what staff needs to know is how Council wants to handle this. Moccia – Council will have to work more on this before giving direction. Stephenson – any public water line is regulated by the Department of Environmental Protection and must be designed by a professional engineer and there is also a certification process. Vail – so if we did pay for this in advance we would recoup our funds? Stephenson – yes, the customer is the one who pays. Notes that the finances can be cumbersome depending on how this is done. Vail – can we wait until they come to us. Kabana – feels staff needs direction, Council should be proactive on this. Stephenson – staff needs to know what to tell people when they call. This does not have to be decided tonight.

It is now 10:40pm.

MOTION: Vail/Moccia extend for 10 more minutes. VOTE: All aye.

REPORTS: MAYOR, COUNCIL:

- Moccia – the Outdoor Learning Center at Port Malabar Elementary is almost done, she provided pictures and the school wants to thank us for our good business partnership, they have invited a Town representative to a luncheon. Kabana – Borton is going.
- McClelland – had a report of ATV's pulling out in front of a truck on south Corey Road and there was almost a serious accident. Mayor – if we had dedicated deputies for Malabar they could enforce our Town Code.
- Vail – notes that he had a problem with Mr. Lambertt at his (Vail's) place of business and Mr. Lambertt resorted to foul language, Vail did not respond to Mr. Lambertt.
- Vail – notes that Saturday night there were a couple of mailboxes that were run over on Corey Road.
- Mayor – he is the Mayor from Brevard County who represents the How Shall We Grow. Gives Council a How Shall We Grow packet to take home and asks them to fill out the first sheet only. It is for regional growth. At the next meeting all he is going to do is ask this Council if they are likely or unlikely to approve the growth contract.

ADJOURNMENT:

MOTION: Vail/Moccia to adjourn. VOTE: All aye.

The meeting adjourned at 10:45pm.

BY:

Mayor Tom Eschenberg, Chair

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
