

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

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

**ADDITIONS AND DELETIONS TO AGENDA:**

Mayor Eschenberg asked if there are any additions/deletions to the agenda. Pat Dezman asked that she be able to present a report after Mr. Booth regarding the meeting with Country Cove and the County regarding the hog situation.

**The additions and deletions to agenda were accepted without any objections.**

**CONSENT AGENDA:**

(A) WORKSHOP MINUTES 1/12/06 (B) REGULAR MEETING MINUTES 1/12/06  
(C) REGULAR MEETING MINUTES 1/23/06

**MOTION: Dezman/Moccia to approve consent agenda as presented. VOTE: All Ayes.**

**REPORTS:**

**ATTORNEY**

At this time, Mr. Bohne advised Council that he had a couple of issues to report on.

Mr. Bohne stated that he has received documentation from the courts requesting discovery regarding the Gentile case. Mr. Bohne stated that there is a lot of information that has been provided to him by the Town that has to be reviewed. A response back to the court is due by the 17<sup>th</sup> of this month. He also stated that discovery on the side of Dr. Gentile will take a little longer as they are "fishing" for details regarding the Town of Malabar.

Mr. Bohne has also received notification of a class action settlement with regards to AT & T and our right-of-ways. If we were to opt to participate in this class settlement, we would be compensated \$1.40 per linear foot. However, if we do opt to participate, the easement document asks that you give up more rights. Mr. Bohne advises Council that it would not be advantageous for the Town to participate at this time. We would still reserve the right to participate if we want to at a later date. He is advising that we do not participate at all.

**ADMINISTRATOR**

At this time, Ed Booth came forward and addressed Council regarding the following matters:

We are still working on the power point and should be here by the next meeting. Susan is working on getting the equipment that is needed.

**- LOCATION OF FLIGHT SCHOOL (NOT MOVING TO VALKARIA AIRPORT)**

The flight school will not be coming to the Valkaria Airport. If anything, they would opt to go to another city. The Melbourne International Airport needs the flight school to justify having a tower at the airport.

**- LETTER TO STATE**

Mr. Booth sent a letter to the State. This letter was strong and it was meant to be. The EELs are now going to the County Commissioners to purchase more land. This is happening because this Council has not given them your blessing to purchase more land in Malabar. This is a "don't care" attitude, but when Mr. Booth goes to the State, that will change.

**- DRAFT STATE ORDINANCE**

We need to pay close attention to this ordinance and make sure that we read it and understand it. What is happening is that there is no more land to place low-income housing. The State can look at the surplus land and decide to use the land for this purpose. The land we have is zoned as PUD, but we are in the process of getting the zoning changed. We will do this as fast as we can to keep this from happening.

Mr. Booth also advised Council that he has a meeting with FEMA on Thursday to close out the 2004 hurricane season and get the final inspections done that need to be taken care of. He also has a meeting in Orlando with the Florida League of Cities to close out the insurance portion of the 2004 hurricane season.

Mr. Booth asked Council, if there are no objections, to move the funds around to different line items for the Fire Department. The funds are already in their budget, they just need to be shifted around to different line accounts.

At this time, Mr. Booth asked Bill Withers to come forward and speak to Council regarding the pump at the park. Mr. Withers came forward and addressed Council. On February 1, 2006, a meeting was held at the park. In attendance were: Fire Chief Gianantonio, Deputy Chief Foley, Jim Stuart, Consultant and Bill Withers, Park Maintenance. Mr. Withers read a memo prepared on February 3, 2006. A copy of this memo was provided to the Clerk for the record and is hereby made a part of these minutes. In conclusion, it is the recommendation of all attendees that this site **NOT** be utilized as emergency water fill for the Malabar Volunteer Fire Department.

With Mr. Withers report complete, Mayor Eschenberg asked Mr. Booth a question regarding the letter that he sent to the State regarding the EELs land. Mayor Eschenberg asked if this letter is for real or is it "smoke". Mr. Booth advised the Mayor and Council that this letter is intended to have the EELs step up and take care of the land that is owned by the State and managed by them. If they aren't going to do this, then maybe the State needs to look at other options. The State will provide the

assistance and the funds. The pigs would be removed from the land and all of the evasive plants/trees would be taken out as well.

At this time, Mayor Eschenberg asked Mrs. Dezman to make her report. Mrs. Dezman stated that the meeting between Country Cove and the County, with regards to the wild pigs, was held. Those present were Mrs. Dezman, Helen Volz, Mike Knight and Chris O'Hara. The intention was to walk around the properties and view the damage that has taken place. Due to the inclement weather, this meeting took place at Mrs. Dezman's home. It is reported that twenty-four pigs have been removed from the land and five pigs have disappeared. This is the good news. However, the bad news is that there is a family of pigs, with twenty babies, that have been spotted. At this meeting, it was stated that the County will provide specs for fencing that they have placed around a portion of the land. It would be beneficial to the Town that we put up the remainder of the fence on the land that we have, which is Cameron Preserve. Cameron Preserve allows access to the properties in Malabar. The County will also provide their recommendations for the up-keep of the fencing as well. Mrs. Dezman stated that Mr. Booth would need the general consensus of the Council to put the fence up without a permit. The County is looking to have the fencing up within the next four weeks. The Town needs to be there at the same time to take care of our portion.

With regards to the bridges in Country Cove, they will need to be taken care of as soon as possible. It's not just the main bridge, but both bridges in the subdivision need attention.

#### **FIRE CHIEF**

At this time, Chief Joe Gianantonio came forward and addressed Council. Chief Gianantonio asked that Council support the line item adjustments. The brush truck is now here and can be viewed by anyone that wishes to see it. We have brought the truck here tonight, so on your way out, feel free to take a look at it. This truck is much lighter than the one before. This will allow the truck to get back into the woods much easier. Also, this truck is owned by the Town.

At this time, Mr. Booth stated that he forgot to mention the benches for the school bus stops for Malabar in his report. These benches will be placed at various school bus stops throughout town. We have ordered six of them and they have been delivered. The benches will be placed this week.

#### **PARK BOARD CHAIR**

At this time, Hans Kemmler, Chairman of the Parks & Recreation Board came forward and addressed Council. Mr. Kemmler stated that Rick Rakauskas has stepped down from the Parks & Recreation Board. While at the podium, Mr. Kemmler ask that anyone in the audience or if Council knew of anyone interested in this board to stop by the Clerk's office and complete an application. With the next FRDAP Grant, we would like to make improvements to The Cameron Preserve. This is still in the planning stages and Mr. Kemmler asked if anyone had any ideas to feel free to express them to the Parks & Recreation Board. We are looking to add a large pavilion, bathrooms and signs for the trails. We cannot use the bathrooms as the main part of the grant, as this is considered to be an auxiliary structure.

Mr. Kemmler posed a question to Mr. Booth with regards to the shade structure for the playground equipment and asked why this had not been re-attached since the hurricane last year. Mr. Booth and Council advised Mr. Kemmler that this was a time for him to

give a report from the Parks & Recreation Board only, this is not a question/answer time. At this time, Mr. Kemmler made Council aware that the shade structure for the playground equipment has not been re-attached.

Mr. Kemmler advised Council that he met with the gentlemen regarding the surveillance equipment for the park on Sunday. He was advised that this cannot be completed with fixed cameras. We would have five cameras in total. Four would be fixed, with no movement; the other would be a panning camera with zooming capabilities. This camera would be at the fire station. This equipment would include a DVD recorder, as this equipment does not require a computer. Mr. Kemmler asked Council and Mr. Booth if Cindi Kelley or Sharon White could call and get a quote, based on the description written down. Mrs. Moccia stated that she hoped that the equipment would not be over \$10,000 because this was not what the Council quoted. Mr. Kemmler stated that that this was written before he knew what we wanted in the park. Mrs. Moccia stated that if it is going to be \$10,000 or over, we need to have the job put out for bids. We would need to see three bids. Mayor Eschenberg asked that Mr. Booth handle this and get things started.

#### **CLERK**

At this time, Ms. Kelley advised Council that the Space Coast League Dinner is Monday, February 13, 2006, and is being held at the Rockledge Country Club. For those interested, please call the Clerk's office and advise of the reservations that need to be made. We need to hear from you by Wednesday, February 8, 2006.

#### **PUBLIC HEARINGS:**

##### **1. FINAL READING: ORDINANCE 2006-05, AMENDING ARTICLE III OF THE LAND DEVELOPMENT CODE IN RELATION TO BUILDING HEIGHT**

By unanimous consent, Mayor Eschenberg read the ordinance by title only.

At this time, Mayor Eschenberg opened the discussion to the public for comments.

Connie Adams – 2240 Raulerson Lane came forward and addressed Council. Ms. Adams shared some observations. She came from the south of Florida. Changes were made for just one time for developers and now everyone is sitting on top of each other. Fifteen years ago, it was like Malabar. She would like to see Malabar stay rural and keep the heights as they are.

At this time, Mayor Eschenberg brought the discussion back to Council and asked if anyone had any questions regarding the sketch that he provided to Council regarding the building heights. Mrs. Moccia stated that she didn't see anything in the ordinance with regards to the maximum of 35 feet in height.

#### **MOTION: Rivet/Vail to approve as presented.**

At this time, Norm Smith, the Building Official, addressed Council. He stated that he had spent a good part of today doing research on this ordinance. We have a conflict with the building code and the zoning code. This cannot be done. The zoning code is for Council and the Planning & Zoning Advisory Board. The building code stands by itself. What is being requested is to take the code from 2.5 stories to 3 stories, keeping the designation of the story and height, which would be 35 feet maximum and up to three stories. We would like to eliminate section two of the ordinance and continue to use the land codes. It would also be noted that that any building permit would be preceded by Council and the Planning & Zoning Advisory Board would take it out of Norm's hands. A building permit would not be issued unless it passes with Planning & Zoning. We are not using anymore dense criteria that what is in the code. It does not change at all.

Mayor Eschenberg asked if there were a motion to delete section two, would we have to have another public hearing. Mr. Bohne stated that if we remove or delete from the ordinance, another public hearing is not necessary. It would be necessary if the Council were to make additions to the ordinance. Mayor Eschenberg asked Council if we could change section four to read that sections one and three are to be codified, not sections one thru three are to be codified.

**MOTION: Rivet/Vail to approve ordinance with eliminating section 2 and changing section 4, changing reference from Section 1-3 to 1 & 3 to be codified.**

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

#### **ACTION ITEMS:**

##### **1. APPOINTMENT OF MALABAR REPRESENTATIVE FOR THE VALKARIA ADVISORY BOARD**

At this time, Mayor Eschenberg asked Mrs. Dezman to open this discussion. Mrs. Dezman advised Council that Mr. Castrillo was appointed by Council to this board in June of 2005. He has not missed four meetings; he missed two, one of which he was notified and the other he was not. Mr. Castrillo is a commercial airline pilot and is against any commercial development at the Valkaria Airport. Mr. Castrillo advised Mrs. Dezman that there are several issues that need to be addressed. He also believes that he is a good representative for the Town. We now have another person who has applied but she feels that there is no reason to replace Mr. Castrillo. He is out of town but not out of reach. He can be contacted. Mr. Rivet asked if he has made a commitment to go to the meetings. Mrs. Dezman stated that he does work as a pilot. He does know that the next meeting is in March, but he will not know what his schedule is until February 20, 2006 for next month. Council asked if an alternate member could be put into place to attend the meetings that Mr. Castrillo is not available for. Mr. Rivet asked what the ratio of in-town/out-town is, 50/50. Mrs. Dezman stated that she couldn't answer that question but Mr. Castrillo has served on other committees and has served the Town in other ways. Mrs. Moccia stated that Council needs to have a back-up plan. Mayor Eschenberg stated that we would need to check the County's ordinance to see if there is an allowance for an alternate member. Mrs. Moccia stated that we would need to contact the County. Mayor Eschenberg stated that he had a copy of the ordinance and this issue was not addressed. Mrs. Moccia stated that because Mr. Castrillo is so readily available, maybe someone could provide the information for Mr. Castrillo to have input. Mr. Bradley is retired and would be available to attend the meetings. At this time, Mr. Booth stated that Mr. Castrillo has done nothing to be replaced. Mr. Rivet stated that we need to move forward on this issue.

Leroy Rogers, who is on this board, came forward and addressed Council. He stated that he was asked by the County Commissioners to be on this board. Mr. Rogers is an out-fitter in Alaska. You cannot speak to the board on the phone, you must be present. Mr. Rogers spoke in favor of Dr. McClure.

Mayor Eschenberg brought the discussion back to Council. It sounds like we now have three choices, Mr. Castrillo, Mr. Bradley and Dr. McClure. We can either re-appoint Mr. Castrillo or appoint one of the other two applicants. Part of the issue regarding this position is that is everyone notified of the meetings. Mr. Castrillo was not notified in regards to the December meeting. This appointment has to be done by consensus only.

At this time, Steve Burowski, the manager of the Valkaria Airport stood up in the audience and advised Council that two phone calls had been made to Mr. Castrillo. Messages were left, as no one was available to speak to. The meetings are held on the first Tuesday of the month. Mr. Castrillo was also notified by email as well. The County, by law, is only required to advertise this meeting on the website. It is taken a step further by notifying by telephone and by e-mail.

Mr. Rivet stated that in accordance to the ordinance that creates the boards, Council needs to decide who is the best applicant for the position. With this said, we need to look forward and have someone in the position who can make the meetings. Mrs. Moccia stated that it should be someone who attends the meetings and then reports back to Council.

Mrs. Moccia made a suggestion to invite all three applicants to address Council. Mayor Eschenberg stated that we have two controversial applicants and one who is not. He asked if Mr. Bradley with the Town? Mr. Vail is in agreement with Mrs. Moccia. Mr. Rivet stated that Council has already heard from all three. Is there anything new that would be brought before Council? Mrs. Dezman advised Council that this issue has been tabled three times. Mrs. Moccia stated that this would not be tabled. She has some questions now that she has heard this discussion this evening. Mr. Vail stated that he is split with this issue. Mayor Eschenberg stated that we would need to make a motion.

**MOTION: Moccia to table until 2/27/06 meeting until each applicant addressed Council. Motion dies for lack of a second.**

**MOTION: Rivet to approve the appointment to the Valkaria Airport Advisory Board by Dr. McClure. Motion dies for lack of a second.**

**MOTION: Vail to approve the appointment to the Valkaria Airport Advisory Board to Mr. Bradley. Motion dies for lack of a second.**

**MOTION: Moccia/Dezman to table the appointment for the Valkaria Airport Advisory Board to the next meeting until such time that all three applicants are available to come before Council and we make a decision at that time. VOTE: Vail, Moccia, Dezman – Ayes. Rivet – Nay. Motion Carries.**

## **2. FIRST READING: ORDINANCE 2006-06, AMENDING ARTICLE XVI OF THE LAND DEVELOPMENT CODE, SUBDIVISIONS**

By unanimous consent, Mayor Eschenberg read the ordinance by title only.

**MOTION: Rivet/Vail to approve as presented.**

At this time, Mr. Booth advised Council that it is our intent to make this ordinance more restrictive than the last ordinance. There were too many ambiguities in the last one. Mr. Bohne advised Council that this ordinance provides a more stringent review of plats. There would be a substantial review from Town staff and the Planning & Zoning Advisory Board. Council would then review and it could be sent back to Planning & Zoning. We will be providing changes to Article 17 of the Land Development Regulations for Council's review in the near future. What will come next is Residential Subdivision, Article 18. Since the plans are reviewed by the Building Official, Planning & Zoning and Town staff, there is no reason to pay the Town's attorney for work that has already been completed. If it doesn't get through Norm Smith, Bill Stephenson or Planning & Zoning, then it won't make it to Council. We need to rely on the technical

people to handle the technical things. It will meet the requirements or it will not make it at all.

**THE ROLL WAS CALLED: Dezman, Rivet, Vail and Moccia – All Ayes.** Councilman Hickson was excused.

### **3. RESOLUTION 02-2006, SUPPORTING THE FLORIDA LEAGUE OF CITIES 2006 LEGISLATIVE ISSUES**

By unanimous consent, Mayor Eschenberg read the ordinance by title only.

**MOTION: Rivet/Vail to approve as presented. THE ROLL WAS CALLED: Vail, Rivet, Moccia and Dezman – All Ayes.** Councilman Hickson was excused.

### **REPORTS: MAYOR, COUNCIL**

**Dezman**-received a letter from Leslie King asking questions about Dr. Gentile. She is asking when he will be brought before the Special Master. The lights are shining brightly in her yard. Mr. Booth stated that he did go out to Dr. Gentile's property and feels that the lights are out of compliance.

Mrs. Dezman asked Council if we have an ordinance regarding guns. Mr. Bohne stated that this was tried before but did not go through. Therefore, the Town of Malabar does not have an ordinance regarding guns.

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

**Moccia**-stated that Mr. Rossi is having problems with his neighbors and his culvert is crushed. She advised Council Mr. Booth stated that the culvert is to be fixed. A date was provided for this to be corrected and it did not happen. Mrs. Moccia requested that she receive a copy of the letter stating when this is to go before the Special Master. She also reported that we do have something in place for size of vehicles.

With regards to the Foot Park, Mrs. Moccia asked that Mr. Withers meet with her and the Boy Scouts. She would like to discuss what is needed for the fence and bridges.

**Vail**-stated that the Fire Department Corporation is now fully staffed. Leadership has been an issue for some time now. Mr. Vail asked Deputy Chief Foley if the pump at the park could be used to top off the fire trucks and maintenance. Deputy Chief Foley, stated from the audience, that only in non-emergency means, it could work. Mr. Vail stated that if it is feasible, that would be fine, but if not, that's okay too. Deputy Chief Foley advised Mr. Vail that he didn't want to see the pump burn up.

Mr. Vail asked if the Cameron Preserve is owned by the Town. Mr. Booth advised that it is. Mr. Vail asked if there are any other areas that the Town needs to fence. Are we setting a precedent? Mr. Bohne stated that we are not, it is up to Council as to how to spend the funds. This is a unique circumstance.

Mr. Vail advised Council that there have been complaints from the residents on Atz Road regarding vandalism to culverts. The vandalism is be done by area kids. At the corner of Atz and LaCourt, numerous complaints with regards to ATVs. Mrs. Dezman stated that while walking the trails, there has been a lot of damage by the ATVs. The hogs are migrating to the road. Two vehicles have been totaled because the hogs have run out into the road.

Mrs. Dezman asked Mr. Booth about the Adhoc Committee for the Fire Department. She will review her schedule and advise when is a good time for her.

Mr. Booth stated that he would be doing some research regarding the EELs management as to what we can and cannot do.

**Mayor Eschenberg**-brought up the Interlocal Agreement for Pending Surtax for the Roads to Council's attention. He has asked that this be put on the next agenda as an action item.

Mayor Eschenberg has spoken to Commissioner Volz with regards to the airport. She advised him that she is thinking about maybe having two advisory boards. One would be a technical board and the other would be a citizen's advisory board. It was asked who would preside over the meetings. The County Commissioners would take in all the information from both boards regarding the airport. Mr. Rivet asked if it isn't the whole to have a board with diversified opinions.

#### **PUBLIC COMMENTS: GENERAL ITEMS**

**Bill Withers-2324 Candy Lane**-came forward and addressed Council. The ATVs are coming in from the EELs land. There is a 43 foot opening. He called Chris O'Hara with EELs. Deputy Chief Foley has been very aggressive in getting them out. If the ATVs go onto the soccer field, there will be no place for the soccer kids to play.

The activities are at a high in the park and EELs land with inappropriate activities.

There has been golf activity and archery activity on the soccer field.

With regards to a traffic light at Corey and Malabar Roads, Representative Mitch Needleman gave Mr. Withers an old light. This was given as a joke, but the meaning was there. Mr. Withers advised Council that the plan was to have a caution blinking light. It's easier to have DOT change a blinking light to a regular traffic light. We aren't going to get one.

Mr. Vail stated that he has had conversations with Mr. Needleman. The Fire Department is looking for a light as well. Every other fire department has a blinking light that is controlled by the fire department. When a call is received and they have to leave, they "flip" the switch so they can get out onto Malabar Road.



**ADJOURNMENT**

There being no additional discussion, a **MOTION: Dezman/Rivet to adjourn meeting at 9:10 pm.**

*Thomas Eschenberg*  
Mayor Thomas Eschenberg, Chairman

ATTESTED:

*Cindi Kelley*  
Cindi Kelley, Deputy Town Clerk

03/06/2006  
Date