

**MALABAR TOWN COUNCIL REGULAR MEETING
APRIL 3, 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 Pat Dezman.

<u>ROLL CALL:</u>	MAYOR/CHAIR	TOM ESCHENBERG
	VICE-CHAIR:	STEVE RIVET
	COUNCIL MEMBERS:	FRANK HICKSON
		BRIAN VAIL
		BOBBI MOCCIA (7:35 pm)
		PAT DEZMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	DEPUTY TOWN CLERK:	CINDI KELLEY

ADDITIONS AND DELETIONS TO AGENDA: None
Without comment, agenda stands as it is.

CONSENT AGENDA:

A) COUNCIL MINUTES 3/20/06

MOTION: Hickson/Rivet to approve the minutes as presented. VOTE: All Ayes.

REPORTS:

ATTORNEY

At this time, Mr. Bohne has nothing to report.

ADMINISTRATOR

We have had a great response with regards to the surveys sent in the Mailboat. I will discuss this in a few minutes. Mr. Booth advised Council that he had a very upset resident in his office. This happened because a few meetings ago, this person's son was mentioned regarding a particular topic of discussion. We, as a whole, need to be mindful while we are addressing issues, to use a little restraint in identifying people unless we are going to mention everyone as a whole group.

Mr. Booth advised Council that he will be out of the office for a short time this month due to medical reasons.

The EEL 11th County Commission meeting is coming up very shortly. Mr. Booth has asked that, if possible, Council members attend this meeting and give our side of the story. Since we said no more, they have decided to negate us. Mr. Booth stated that we are getting ready, with the Comp Plan, to rezone the property that they already own. It will cost a lot of funds to bring these pieces of property into compliance. We have Home Rule and they must comply with the ordinances of this Town whether they own the land or not. They must take care of their land under our ordinances.

Mayor Eschenberg asked Mr. Booth if he would be addressing the survey information at this time. Mr. Booth stated that this would be discussed when we reached the discussion items of the agenda.

FIRE CHIEF

At this time, Chief Gianantonio came forward and addressed Council. A copy of his presentation was made available before the meeting for Council to review while he addressed them. While we have stayed within our budget, we are now running a little short. We are hoping that we have no more major problems with the trucks.

Our response time is a little slow. We have been getting held up at the railroad tracks. Until we arrive on scene, we have received mutual aid from the County or Palm Bay. The new tower is getting the signal out much better and more people are responding to the station to go out to the scenes.

We have an increase in duty hours with our man power time up, with certified Fire Fighter IIs and EMTs. We do have some equipment needs. We are looking to procure 12 sets of bunker gear, which will cost \$17k. The Department of Forestry will match 50%, with grant funds, making our portion \$8,500. We are also looking into purchasing 30 sets of wild land gear for brush fires. We would also pay \$17k, but again, the Department of Forestry would also match 50% of this cost with grant funds. With both grants, we would receive \$17k back from the Department of Forestry. After the hurricanes, with no where to store the gear, it was not stored properly. The gear collected mold and is now mildewed. Our fire fighters have been using structural gear to fight brush fires. This is not good, as they can get overheated with this type of bunker gear. The new brush truck is a huge success. We are able to knock out fires in record time. We have a couple of trucks out of service and one is being condemned.

With the 1500 gallon tanker being condemned, this could have an impact on the homeowners of the Town. This means that if we don't have enough water in the town for fire protection, the insurance rates could be increased. We need to look at this and try to work getting a new truck in to replace this one. Mayor Eschenberg asked Chief Gianantonio if we could get anything else from Forestry. Chief Gianantonio stated that there is a truck available but the fire department doesn't have the funds in the budget right now. It will cost approximately \$15k to get this truck on-line and ready to go. Mr. Vail stated that he would work with the department to come up with a better figure for this truck to come on-line.

PARK BOARD CHAIR

At this time, Hans Kemmler came forward and addressed Council. The Park & Recreation Board has gotten the ball rolling for the surveillance equipment at the park. It may be started within the next two weeks. The contractor will be in contact with the Fire Department to coordinate placing equipment at the station. Chief Rowan, from the audience, stated the funds were not in their budget for the portion that they were going to place at the Fire Department. Mr. Kemmler stated that all of the necessary pieces had been purchased. The old equipment will be removed and be replaced with the new equipment.

With regards to a FRDAP Grant, we will be getting one together in time for this year. We are waiting for a call back to see if we can get a grant to spread things throughout the Town. There are several items that we are looking at and we need to know if this would be possible. Mr. Kemmler reported that people have asked about a pavilion and restrooms at the Cameron Preserve. They are also asking about having restrooms closer to the playground equipment at the Community Park.

Mr. Kemmler advised Council that the Springfest preparations are going very well. It will probably be the biggest event so far. We are hoping to have six pins at the Golf Disc Park across the street from Springfest. This will allow people to see what this is all about. It is possible that nine pins have been secured, but there will only be six in time for Springfest.

The shade structure for the playground equipment will probably be placed back on the equipment before Springfest. Mr. Booth stated there is no probably about it. It will happen. We have contacted someone to make the repairs to the shade structure. It should be repaired this week and placed back on the equipment before the event this Saturday. Mr. Kemmler stated that he has e-mailed repeatedly to Playmore, with pictures showing the damage. The damage happened sometime before Hurricane Wilma. The Public Works crew went to the park to remove the structure and found the damage already done. The people from Playmore are acting as though the shade structure is not with the same company. Once the repairs are done, we will submit the paperwork to Playmore for reimbursement. Mrs. Moccia asked if we could just leave the shade structure up and make sure the insurance coverage is so that it will be taken care of. It was stated by several people that this could not happen because if the winds were strong enough and it picked up the shade structure, the entire playground equipment would become a flying missile during the storm. Mr. Kemmler stated that Playmore has really let the Town down with regards to taking care of the warranty on this equipment.

CLERK

At this time, Ms. Kelley reminded Council of the Space Coast League dinner for April 10, 2006. Reporting for the Clerk, Mr. Booth advised Council that FEMA has come in and done an audit. The paperwork was in good detailed order. They are going to reopen the Corey Road project and we may get an additional \$40k. Ms. Kelley stated that the \$40k was for additional funds not reported for debris removal. The Corey Road project would be reopened and we would have to see what this produces.

DISCUSSION ITEM:

1. PROPOSED RIGHT TURN LANE ON COREY ROAD, CONTINUED FROM FEBRUARY 27TH MEETING

Prior to any discussion, Mr. Hickson stated that he would be abstaining from this discussion. This issue, when it comes to light, will be passing through his office with FDOT for approval. A Conflict of Interest form will be provided to Mr. Hickson at the next meeting for his completion. Mr. Booth stated that this project will cost approximately \$25k; \$20k for the turnout and \$5k for the phone company to move the poles and mailboxes. Mayor Eschenberg asked Mr. Booth if they had looked at the SE corner with the possibility of a straight through lane so we wouldn't have to go so far to the right. Mr. Booth stated that we would have to ask FDOT. They will determine how we do this project. Our Engineer is currently in the process of working with them locally to see what we need to do. There are some very strict rules with FDOT that must be followed. This is an issue that will come back to Council in July. At that time, Council will be able to decide what they want to do. We will have the basic budget for this in July.

2. RESULTS OF THE SURVEY REGARDING SAFETY IN MALABAR

We have had a good response to the survey sent out. We have provided the comments to Council for your review. Mr. Booth made a presentation by transparency. In looking at the numbers, it looks like the citizens feel very safe here. Quite a few of our citizens

are gun owners. The crime here has been fairly minimal. Mrs. Moccia stated that she received several calls regarding this survey. The citizens of the Town like the idea of having the Eagle Corp. They usually do their patrols during the day when most of us are working. Mr. Booth stated they are least satisfied with the ATVs and the enforcement of traffic laws. We don't have our own Police Department and this isn't something that we do. The visibility is down because we don't see the sheriff's deputies all that much. The overall consensus from the survey is that the police protection is mostly satisfactory. The community feels very safe. We are being pressured by the County Manager, who is being pressured by the Sheriff's Office, for an answer regarding the MSTU. The recommendation from staff is that we go out with a non-binding referendum asking if we pay the MSTU or not; or does the community want their own Police Department or not. Mrs. Moccia stated that if we don't pay the MSTU, the Sheriff's Department will send out General Fund officers and they aren't even sure that these officers exist. Mr. Booth stated this is just what Sheriff Parker stated when they were here a few short months ago. Most of the officers on staff are with the MSTU. Mr. Vail asked if we paid this, what our guaranty of coverage is. Mr. Booth stated that we don't have any guaranty and we won't get anything in writing.

At this time, Mr. Rivet stated we have had a couple of robberies within the last week. One of the homes robbed was his own. When the Sheriff was called, it took twenty-five minutes for them to respond, and this was with telling them the person was thought to still be in the home. Mr. Booth stated he feels that next year we need to work towards this or pay the MSTU and get a good agreement going. It was agreed on by Council to have a non-binding referendum prepared for the next Council meeting.

At this time, Mr. Rivet stated that the park at Corey and Malabar Roads is almost done. This park is attracting vagrants and they have been found sleeping there. Mr. Booth stated that we have vagrants throughout the Town. They have been chased out of the area where the church is being built on Marie Street. Mr. Booth stated that he is doing inspections regarding the light ordinance and when they are seen, he makes them leave the premises.

At this time, Mrs. Dezman asked what information would be provided to the citizens of Malabar regarding this non-binding referendum. Whatever information is provided, it should be before the November elections so that they can make an informed decision of what they would like to do. Mr. Rivet stated that we should also provide the statistics for crime in our community so that the people know what is happening in the community.

ACTION ITEMS:

- 1. SITE PLAN REVIEW FOR USED CAR SALES LOT, BABCOCK STREET, MALABAR, CG ZONING, 1.28 ACRES, APPLICANT PETER ZABINSKI**

At this time, Mayor Eschenberg opened the discussion to the public because we have one pink card. He would like to hear from the public before bringing it to Council.

Bill Withers-2324 Candy Lane, came forward and addressed Council. Mr. Withers spoke against having this business approved for the Town of Malabar. He feels that Malabar is not a place for used car sales. A few years ago, we fought to keep Sunshine Dodge out of the area. Mr. Withers asked that Council look long and hard before approving this, please don't do it. Mr. Booth stated that the land across from the hospital could not be used for this. This is why Sunshine Dodge could not come onto that piece of land. The land for this project is for general commercial (GC) and can be used for this purpose.

Mayor Eschenberg brought the discussion back to Council. He asked if there was anyone here to represent the application.

Pete Cantelou, the engineer of record for the project, came forward and addressed Council. Mr. Cantelou stated that Barefoot Motor would have a used car lot of forty cars, maximum, on the lot. The sales would be conducted during the day. There would be no loud music, loud PA systems and no hot air balloons used for advertising. Mr. Cantelou stated that he felt that this car lot would not be competing with Sunshine Dodge. The site lighting would be minimal with shields. The owners would, more than likely, be closing the office doors at 8:00 pm.

At this time, Mrs. Moccia stated that a loud PA system is something that she doesn't like and would not allow them to have one. Mr. Cantelou stated that the whole area is 100 square feet; they would probably yell across the lot or use cell phones to contact each other. Mrs. Moccia is totally against the Town having any loud PA systems in it. That goes right along with the bright lights. Again, Mr. Cantelou stated that the lighting would be minimal with shields. They are planning to close around 8 to 9 pm.

Mayor Eschenberg stated that he looked through the entire project and plans and finds this is quite an expensive effort for a used car lot. Used car lots usually come and go. Why would someone put so much time and effort into this project? Mr. Cantelou stated that he only wanted to permit the site one time.

Jason Judge-owner of the business, came forward and addressed Council. He stated the business has a wholesaler who would be providing the cars for the lot. There is no mortgage on the property and they do not have a huge overhead. Mrs. Moccia asked where the repairs to vehicles would take place. Mr. Judge advised Council that they have spoken to Callagy Tires, Inc. If there were to be any repairs, the cars would be taken over to Callagy Tires and worked on there. All repairs to any of the vehicles would be performed off-site.

At this time, Mrs. Dezman stated she has concerns regarding only permitting this property once. What if they sell the property. Are we giving permission to sell the land and for future land use? Mr. Cantelou stated that he may have not made himself clear. He is speaking of only permitting once with St. John's Water Management District. Mr. Booth stated that any change in the land use would have to go through the Town. Mr. Cantelou stated that whatever is planned for the future, they won't have to cut out more driveways; only deal with the stormwater issues one time.

MOTION: Hickson/Vail to approve the site plan as presented.

At this time, Mayor Eschenberg brought the discussion back to Council. Mrs. Moccia stated she is against loud PA systems and she feels that the site lighting should also be addressed. Mr. Judge stated that a PA system would not be, the lot is only 100 feet; communication would be done with cell phones. The lighting would be off by 8:00 pm. We want to have sales up until 8:00 pm. The only way there would be anyone on the property after 8:00 pm is if a sale was not yet completed. Mrs. Dezman asked if the people involved in this would be willing to put in writing the conditions of this site plan approval. All of the people involved stated that they would be willing to do this.

At this time, Mr. Bohne stated he wanted all the conditions made clear for this approval. The notes that Mr. Bohne wrote down were that they were acknowledging day-time

sales only; closing is at 8:00 pm, no sales at night and no on-site mechanics happening. Mr. Vail stated he felt that most businesses close at 10:00 pm. He doesn't feel that this is unreasonable to allow this business to stay open. Once again, Mr. Judge stated that he would like to have sales until 8:00 pm, with allowing the completion of the sales to continue in the office after 8:00 pm.

Mr. Bohne stated the following: no PA system, no on-site repairs; Mr. Vail stated hours of operation are from 8:00 am until 10:00 pm and then lights out.

At this time, Mayor Eschenberg asked if Mr. Hickson would be willing to amend his motion to include the stipulations listed by Mr. Bohne and Mr. Vail.

AMENDED MOTION: Hickson/Vail to approve the site plan as presented with the following stipulations: 1) no PA system; 2) no on-site vehicle repairs; and 3) hours of operation from 8:00 am until 10:00, with lights out at 10:00 pm. VOTE: Hickson, Vail and Moccia, Ayes. Dezman and Rivet, Nay. MOTION CARRIES THREE TO TWO.

3. PARK AND RECREATION BOARD REQUEST, VICKI THOMAS
MOTION: Dezman/Moccia to approve as presented. VOTE: All Ayes.

**4. AGENDA ITEM REQUEST, FORMER MAYOR PHIL CREWS, COUNCIL
OPINION ABOUT LOCATION OF PROPOSED NEW COURTHOUSE**

Phil Crews—2480 Johnson Street, came forward and addressed Council regarding placement of a new County courthouse in Brevard County. He stated that he would like to see the new courthouse come into the south end of the County. The main facility is in Titusville with branches in north Melbourne and off of Babcock Street in Melbourne. The courthouse in Viera houses fifteen judges. Mr. Crews is asking for Council's assistance by talking to their constituents. He has provided the information to Council with the names of the judges and phone numbers to contact them. They have asked that we try to solicit responses to this area. A place to consider is along US #1 or an area off of Valkaria Road. This area was offered to Malabar to be used as a park; off Rocky Point Road would also be a good area. The state owned land by the Fire Department is another good area to place this facility. It would be beneficial to send a letter to the judges if Council can unanimously agree on the placement of this facility.

At this time, Mayor Eschenberg asked Ms. Kelley to have this placed on the next agenda as an action item to draw up a letter and open it up for discussion with Council. This will give us time to speak to the people in town and get their opinions.

5. BOARD MEMBER TERMS

Mayor Eschenberg provided a handout for Council to review. This should fairly represent what staff is thinking about regarding Board member terms. This is a possible ordinance change for this to come into place. Mayor Eschenberg asked Council about how to handle the alternate positions of the boards. Mr. Rivet stated if it is a default situation, they should be moved up to a permanent position, if they are available. Mrs. Dezman stated we have several positions available on the boards. Why not move everyone up and start over? Mrs. Moccia stated the alternates fill in when there is not a quorum for the meeting. They have voting power in this capacity only. Mrs. Dezman asked why people are not being moved up if there are more than one alternate positions filled and a permanent position is vacant. Mayor Eschenberg feels, and he has made

the suggestion, that the Board members of each board move their own alternates to permanent positions and then advise Council on what actions were taken. The term limits are three years. If the Board member's term is up, the Board should make the recommendation to reappoint based on their past performance while serving on the board. Mayor Eschenberg stated that each Council member should attend one or two meetings of each Board during the course of the year. This will give them time to meet each member and get to see what is happening at their meetings. This would be a way for you to gather your own data regarding the various Board members. At reappointment, we would let each Board make the recommendation to Council. You can request that the Chair of each Board come before you and give their input regarding reappointments of Board members.

At this time, Mrs. Dezman stated she recommends that all alternates be vacated and moved into permanent positions. She also agrees that the Park & Recreation Board should be reduced to two alternate positions to match the other Boards. Mr. Hickson stated that he feels we should have a motion on the restructure of the Boards.

MOTION: Dezman/Hickson to accept the re-structure of Board terms as presented this evening. VOTE: All Ayes.

At this time, Mr. Hickson asked if this is how this is done. Mayor Eschenberg stated the moving of alternate members to permanent positions should be at the discretion of the Board. There should be no change for this particular portion of the re-structure. Mr. Vail stated the Board needs to make the recommendation. Mr. Rivet stated the Boards need to make the recommendation and be approved by Council. We should not move everyone up to permanent positions. The new people on the Boards are fresh, with no experience. This is where they would gain the experience for representing the Board as an alternate.

Mayor Eschenberg asked Mr. Bohne to put this in the form of a resolution so the Council can see this. Mr. Bohne stated that this has to be done by ordinance, not resolution. Ms. Kelley asked who would be taking care of this. Mr. Bohne stated that Susan Kabana would start the process and then he would review what she has put together.

Hans Kemmler asked Mayor Eschenberg if the board is the one to decide who is moved to a permanent member. Mayor Eschenberg stated it would be up to the Board's discretion of who is moved from alternate to a permanent position. The Board would need to report back to Council with the action that was taken.

REPORTS: MAYOR, COUNCIL

Hickson-has nothing to report at this time.

Vail-stated that the Fire Department building is coming along. The survey is being done and the concrete is coming in. The Springfest event is coming along and he is looking for some other people to get into the dunking booth. It was suggested that Mr. Rivet have a go, but he has volunteered to assist in other areas during the day.

At this time, Mr. Vail brought the situation with the person's name in the minutes up. This started when Mr. Vail was speaking to Council about the ATV riders. Mr. Vail asked the Chairman to make sure that when discussion comes back to Council that there is no audience participation. We need to make sure that we conduct these meetings in an orderly fashion.

Moccia-made a report on the foot park. She has purchased four benches and plants with funds from her discretionary funds. She is looking into the purchase of some more plants.

Dezman-has nothing to report at this time.

Rivet-has nothing at this time.

Mayor-with response to Mr. Vail, we don't stifle free speech. When someone is addressing Council from the podium, they have every right to say what they want. We do ask that you think about it first. Please try to get your point across without names.

At this time, Mayor Eschenberg asked Mr. Bohne if there is any progress for the two ordinances for the referendum in November. Mr. Bohne asked which ordinances the Mayor was inquiring about. One is for replacement of Council members if they are not able to complete their terms. The other is on eminent domain. Mr. Bohne asked if Council gave staff the go ahead on these ordinances. Mayor Eschenberg stated they had indeed. Mr. Bohne stated he had worked on the language for eminent domain, gave the Town the ordinances and had not heard back from them. Mayor Eschenberg stated we needed to get these going to have time to advertise them and get them to the Election Board to be placed on the ballot. Mayor Eschenberg stated he had been listening to a talk-radio station and he is not impressed with the way things are going with eminent domain.

PUBLIC COMMENTS: GENERAL ITEMS

Bill Withers, 2324 Candy Lane-came forward and addressed Council. He was the one who stated the name of the person regarding ATVs. He also stated that he had made two phone calls to the parents and received no response back from them.

With regards to the hog/fence issue in Country Cove, Mr. Withers feels this should be revisited by Council. When the vote came in, two of the Council members were not present. It was suggested by Mr. Withers that the cost of the fence, \$2,100, be split between the Town and the people of Country Cove; whether they take their funds from the HOA fees or collect funds from each household. This would be up to them as to how they come up with their share.

Mayor Eschenberg asked if there is any member of Council, who did not vote, who would like to have this revisited on the next agenda as an action item. At this time, Mr. Rivet and Mrs. Moccia both stated they would like to have a chance to hear and to vote. This item will be placed back on the agenda as an action item for the April 17, 2006 meeting.

Mrs. Dezman did advise Council that one of the homeowners, whose yard was already damaged from a previous time, was hit again. The backyard is all torn up. The people of Country Cove came out to assist this family as best as they could.

ADJOURNMENT

There being no additional business or discussions, **MOTION: Dezman /Rivet to adjourn. VOTE: All Ayes.** This meeting adjourned at 9:05 pm.

By Thomas Eschenberg
Mayor Thomas Eschenberg, Chairman

ATTESTED:

Cindi Kelley
Cindi Kelley, Deputy Town Clerk

DATE: 04/17/06