

**TOWN COUNCIL REGULAR MEETING  
MAY 15, 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 Brian Vail.

<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
	ENGINEER:	BILL STEPHENSON
	ATTORNEY:	KARL BOHNE
	TOWN CLERK/TREASURER:	SUSAN KABANA

**ADDITIONS AND DELETIONS TO AGENDA**

None.

**CONSENT AGENDA:**

**A) COUNCIL MINUTES 5/1/06**

**MOTION: Rivet/Moccia to approve.**

Mayor – has a minor correction on page 5, top paragraph, 2<sup>nd</sup> to last sentence, the Mayor said ‘maximum’, not ‘minimum’.

**VOTE (to approve as amended): All aye.**

**REPORTS:**

**POLICE CHIEF, MELBOURNE BEACH**

Chief Syrkus – he was asked by Booth about the benefit of forming a Malabar police department versus paying a MSTU to the County. He states that the Sheriff has certain constitutional and statutory responsibilities to all citizens in the county, regardless of whether they live inside or outside the city limits. He understands that the Town wants to enhance the level of law enforcement services beyond that of the present circumstance.

Florida legislation allows municipalities to enter into agreements with the County to provide law enforcement services for the Town and can sometimes be a win, win situation for both parties. But he feels that the Town would have higher expenses with a MSTU versus having a local police department because the MSTU will rise at a higher rate per year than a yearly budgeted local police department. The level of service will be higher with a local department. The officers will get to know the people and the area. The response time will be better.

Chief Syrkus does not believe the MSTU services are in the best interest of the Town. The Town is growing and with growth will come more crime, and responding to calls does little to prevent crime, but proactive problem solving policing can prevent crime and enhance the quality of lives. Community oriented policing must be flexible and adaptive. He does not believe that MSTU services will allow for timely adjustments in philosophy or policy. If the citizens want to control their destiny then a local department will better represent them versus a department that is responsible for many areas.

A local police department can more easily become involved in the community and as that involvement evolves the officers schedules may need to be flexible. The Sheriff's department would not be so flexible. He feels our growth will demand an increased police presence. He then overviewed his presentation regarding proposed startup costs. (attached to the original minutes)

His presentation began with general law enforcement, patrol, traffic operations, uniforms, equipment, insurance rates, and startup costs. The facility needs to be the correct size, be safe and secure, and be able to store secure evidence. There needs to be room for record storage. There needs to be a holding facility for prisoners. It must be secured, monitored and safe. There needs to be adequate office space.

We can pick up some reserve officers who work for free when they can and will fill in. They must have workers comp insurance and they are a source for staff when funding is available. There must be an interlocal agreement. They will need policies and procedures, audits and accountability (for use of force and for incidents). There are standards that have to be met in order to reduce insurance rates. Everything needs to be documented.

There needs to be emergency communications, 911, costs could be anywhere from \$10k to \$25k per year, but thinks \$10k is a good guess. States that there will be lawsuits, states that all personnel should strive for excellence. Excellence means doing the basics right. Need to have positive community perception, trust, and support and customer satisfaction. Must have excellence in leadership, will need to have a five year plan, goals and objectives must be set. Mission statement must be written.

You have to look like a cop to be a cop. The town must take care of the employees. States that Brevard Community College has a police testing center which is a good place for rookies, but must have some experienced officers also. Training is very important. The Town must reward employees for doing the right thing. Treat officers as professionals. Officers need to stay close to the community. Police departments should mirror the community they serve. There is no number for the cost of excellence.

Chief Syrkus put an operating budget in tonight's packet. Overviews proposed expenses and revenues, states that there are revenues that the county is currently receiving that the Town could receive. States that there are other revenues also available.

The first year operating budget would be \$357,770 with estimated revenue of \$77,500 making overall operating cost for the first year \$280,200. The MSTU estimated costs for the first year are about \$250,000; however the Town would lose the \$77,550 making the MSTU operating cost \$327,500, which is \$47,300 more than funding a Malabar department.

The first year would also have to contain expenses for capital improvements such as vehicles, uniforms, radios, a police station, etc. These cost could vary greatly depending on choices made. Estimated start-up costs would be between \$369,000 and \$450,000 in addition to the above mentioned operating costs. The low end of the combined operating and start-up costs the first year would be about \$649,200.

Though the initial cost for a Malabar police department is great the long-term cost would be less than paying an ever-increasing MSTU. A MSTU is based on property values, which will only increase, costing the taxpayers more and more for police service.

Rivet – what would the patrol be with 6 officers? Syrkus – at least one patrol car but sometimes with overlap there will be two. Rivet – what about detective work? Syrkus – a lot of times the local office will take care of an incident from beginning to end. Sometimes mutual aid must be called if the crime scene is extensive. Brian Vail – is there a limit to how many times mutual aid is called? Syrkus – no, and it works vice-versa (they can call use for mutual aid). Bill Withers – if a citizen calls in a crime is there

additional cost to that citizen? Syrkus – no. Dick Korn – is the administrative support included in tonight's budget paid personnel? Syrkus – no, he used volunteers from the community. Mr. Dempsey – is this 24 hour protection? Syrkus – yes.

#### **ATTORNEY**

##### **- GOVERNMENT IN THE SUNSHINE**

Mayor – there was a possible sunshine violation made by a board member and he has asked the attorney to re-acquaint us with the main ideas in the Sunshine Law. Bohne – by next meeting he should have an opinion on that matter. States that F.S. 286.011 applies to all the town boards or committees which perform some function of government. The Sunshine law applies where two or more people of the same board, committee, or Council meet and discuss some matter which will foreseeably come before that board in the future. There is no case law determining what foreseeable means. But he feels that if two or more board members want to discuss an item then those board members should refrain from having that discussion outside the confines of a public meeting. The Sunshine law states that board meetings must be open to the public, properly noticed and minutes must be taken. This applies to phone conversations, letters, emails or any communicating device between members. There is a natural tendency to talk outside the meeting, on the weekend or on the street, and as long as matters that could be discussed at the council/board meeting are not discussed that is okay. Bohne is very conservative when it comes to Sunshine and public records; it is better err on the side of caution. States that usually violations of the public records law are unintentional but they are still violations. This also applies during breaks. States that the way to use a conduit to violate the Sunshine law is when two or more members use another person to pass information between themselves.

Regarding public records, if you have a document that you obtain as a Council Member be sure to give it to the town clerk. Florida has an open public records law and many documents are open for public inspection.

Bill Stephenson, Town Engineer – has some simple information prepared by a local attorney that he can provide. Moccia – new board members need info.

#### **ADMINISTRATOR**

##### **- NEW TOWN HALL**

Booth – the committee will report soon to Council for a site suggestion. The architecture will be in the Old Florida style.

- We had a 3 acre fire on Friday. There was another local fire near some tanker trucks that was dangerous.

- Has a meeting tomorrow with developers who are interested in the land near the hospital.

- Met with Brook Hollow homeowners last week they are concerned about their border and fire hazard. We can go to mediation to get the situation resolved.

- We have an offer from Mr. Gentile. Karl Bohne – Bohne has tried to contact Gentile's lawyer and has had no response. The issue is whether or not his activities are truly agricultural activities. Bohne recommends not responding to the offer. He is looking for something with more substance.

#### **CLERK**

##### **- NON-BINDING REFERENDUM PROCEDURES FOR NOVEMBER ELECTION**

Kabana – there is a timetable in tonight's packets for the proposed non-binding referendum.

- Gave Council a copy of the proposed board member seat ordinance and resolution for their review, it has been through the attorney's office. It is to be a discussion item next meeting.
- She will be out of the office for two weeks.

**PUBLIC HEARINGS:****1. WEBER WOODS, REQUEST FOR FINAL PLAT APPROVAL**

Mayor – opens the public hearing and asks for public comments, being none, he closes the public hearing.

Booth – they are not ready, the survey could not be resolved. They will have to start over. Bohne – did they withdraw the final plat? Booth – no.

**MOTION: Rivet/Moccia to approve.**

Moccia – they are not ready.

**VOTE: All Nay.** Mayor – motion fails.

**2. OAKMONT PRESERVE, REQUEST FOR FINAL PLAT APPROVAL**

Mayor – opens the public hearing and asks for public comment, being none, he closes the public hearing.

Booth – this is ready for a vote. He passes out revised covenants. Stephenson – states that it is very difficult to dissolve a homeowners association any longer due to water management requirements.

Mayor – has not seen an updated plat. He made comments four weeks ago about this subdivision and he does not know if his comments have been addressed. There are two lots that he is not sure about.

Bill Alcock, Malabar Preferred Communities – has a plat here tonight.

Dezman – asks Stephenson if the plat meets the code. Stephenson – yes. Dezman – asks Stephenson if the lots are the correct size. Stephenson – will listen to Alcock explain lot sizes now. Alcock – explains the lots sizes, they have the correct frontage.

Mayor – describes his other comments. Alcock – answers Mayor's comments.

Mayor – states that our code does not meet with current standards.

**MOTION: Dezman/Moccia to approve.**

Rivet – feels the lot width was the main issue and that was resolved.

**VOTE: All aye.**

**3. ORDINANCE 2006-07, FINAL READING, CALLING AND SCHEDULING AN ELECTION UPON AMENDMENTS TO THE CHARTER OF THE TOWN**

Moccia requests to read by title only. Rivet read:

ORDINANCE NO. 2006-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; CALLING AND SCHEDULING AN ELECTION UPON AMENDMENTS TO THE CHARTER OF THE TOWN; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING FOR PUBLIC NOTICE OF SUCH ELECTION; PROVIDING FOR THE AVAILABILITY OF COPIES OF THE PROPOSED AMENDMENTS TO THE TOWN CHARTER; PROVIDING AN EFFECTIVE DATE.

Mayor – opens the public hearing and asks for public comment, being none, he closes the public hearing.

**VOTE: Moccia/Vail to approve.**

**VOTE: Aye – Vail, Rivet, Moccia, Dezman.**

**4. ORDINANCE 2006-08, FINAL READING, AMENDING THE TOWN CHARTER COUNCIL SEAT CANDIDATE QUALIFYING PERIOD**

Mayor read by title only:

ORDINANCE 2006-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE TOWN CHARTER COUNCIL SEAT CANDIDATE QUALIFYING PERIOD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor – opens the public hearing and asks for public comment, being none, he closes the public hearing.

**VOTE: Moccia/Vail to approve.**

**Aye – Vail, Rivet, Moccia, Dezman.**

**ACTION ITEMS:****1. BOY SCOUT COUNCIL OF AMERICA, REQUEST FOR DONATION**

Kabana – this is a Boy Scout Council of America request. Council declines to donate at this time.

**2. REQUEST FOR PROPOSAL FOR TOWN AUDITOR**

Kabana – Council needs to take another one-year option and hire our current auditor again or run a request for proposal, Kabana requests a three year contract.

**MOTION: Dezman/Rivet to run a request for proposal with a three year contract.**

Dezman – can it be out before Kabana leaves for two weeks? Kabana – yes.

**VOTE: All aye.**

**REPORTS: MAYOR, COUNCIL**

- Dezman – received an email from Mr. and Mrs. King and wants the lights to be measured. Booth – they have withdrawn their request for now.
- Dezman – tells Booth to call Alan Wollard to meet with County Cove homeowners.
- Dezman – has a very great concern about filing documents. Would like to offer her expertise to help with designing a system. Feels we need to start someplace.
- Rivet – wants clarification on the sunshine law violation allegations. He does not feel that it is taken seriously enough. Feels we need to take appropriate measures regarding real violations. Moccia – why are we looking at this? Normally the board takes care of itself, wonders why Bohne is looking into it. Mayor – because he (the Mayor) asked Bohne to.
- Moccia – has two individuals on Lett Lane calling about wetland issues and the flow of the water in their ditches. Booth – wetlands is under St. John's.
- Vail – asks if the sunshine allegations will be given to the Council in their packet for the next meeting. Mayor – cautions that this will have to be handled carefully so as to not create something that is not there. Dezman – we need to only look at the circumstances, take the personalities out of it. Wants sunshine pamphlet to go to all board members and have each board member acknowledge receipt.
- Vail – wants to donate \$100 to local Boy Scouts from his discretionary fund.
- Mayor – he reads from attorney Paul Googleman's legislative report: the incorporation of the Grant/Valkaria area has passed legislation, the citizens there will vote this August; The largest land owner in Viera was allowed to incorporate and will have taxing authority; Occupational Licenses have been renamed to Business Tax Receipts; Power substations can regulate tree trimming; If a development is denied

then the municipal authority must provide the denial in writing; eminent domain legislation was passed but it does not measure up to our standards.

- Mayor – asks if everyone received notice of EEL's public meeting to review lands for public acquisition? Sounds like it will include Malabar. Booth – he will attend.
- Mayor – there is a 2006 hurricane preparedness forum, is Booth going to attend? Booth – no.

**PUBLIC COMMENTS: GENERAL ITEMS**

None.

**ADJOURNMENT**

**MOTION: Dezman/Moccia to adjourn. VOTE – all aye.**

The meeting adjourned at 9:47 pm.

BY:

Thomas Eschenberg

Mayor Thomas Eschenberg, Chairman

ATTEST:

Susan Kabana

Susan Kabana, MMC  
Town Clerk/Treasurer

DATE:

06/05/06