

**MALABAR TOWN COUNCIL REGULAR MEETING  
OCTOBER 2, 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.

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|--------------------------------------|----------------------------|
| <b><u>ROLL CALL:</u></b> MAYOR/CHAIR | TOM ESCHENBERG             |
| VICE-CHAIR:                          | STEVE RIVET                |
| COUNCIL MEMBERS:                     | BRIAN VAIL                 |
|                                      | BOBBI MOCCIA               |
|                                      | PAT DEZMAN (arrived @7:32) |
| ASST. TO BUILDING OFFICIAL:          | DEBBY FRANKLIN             |
| ENGINEER:                            | BILL STEPHENSON            |
| ADMINISTRATOR:                       | ED BOOTH                   |
| ATTORNEY:                            | KARL BOHNE                 |
| DEPUTY TOWN CLERK:                   | CINDI KELLEY               |

**ADDITIONS/DELETIONS:** None

**CONSENT AGENDA:**

**COUNCIL MINUTES 9/18/06**

**MOTION: Moccia/Rivet to approve the consent agenda as presented with the following corrections:**

Minutes from last meeting, page 3 clerk upcoming newsletter "time will not allow", page 5 3<sup>rd</sup> paragraph, Mr. Rivet's statement: we need to make a decision based on what the town wishes to allow, need more information regarding this request. Mrs. Dezman; page 7, would like the minutes to reflect that Mr. Vail, while coming into the last meeting, heard the comments made while a car was passing Town Hall regarding Mrs. Dezman. Mr. Vail did confirm that he heard the comments.

**VOTE: All Ayes.**

**PRESENTATIONS:**

**MIKE KNIGHT, QUARTERLY UPDATE FROM THE EELS (ENVIRONMENTALLY ENDANGERED LANDS)**

Mike Knight came forward and made a presentation to Council. He gave a brief presentation of what is happening with the EELs land in Malabar and the priority properties that they would like to purchase in Malabar. Mr. Knight did advise Council that there are no willing sellers in the areas that they are looking to acquire at this time. Brook Hollow is the only active land acquisition at this time; closing is approaching in the very near future for this parcel. Mr. Knight stated that the EELs program would contact the Town if any property they are looking to acquire becomes available.

Mr. Rivet asked Mr. Knight if the EELs are willing to make a limit as to the amount of land purchased in Malabar. Mr. Knight stated that their direction comes from the County Commissioners and this is not the direction that they are heading. The County is not agreeing to purchase the land that makes sense; there is no cap on the amount of land purchased in Malabar. Mr. Knight stated that a cap has not been discussed.

There was discussion between Mr. Knight and Chief Gianantonio regarding the placement of fence. Chief Gianantonio expressed some concern regarding the Fire Department's access to the property if an emergency arises. Mr. Knight stated that this would not hinder the Fire Department in any way.

**REPORTS:**

**ATTORNEY**

Mr. Bohne advised Council that a draft of the Bed & Breakfast ordinance has been sent to Debby Franklin. This ordinance will be reviewed and will be coming before Council in the near future.

#### **ADMINISTRATOR**

Mr. Booth reported to Council that we should be receiving another \$26,000 from FEMA and the insurance funds from the Florida League of Cities; a total of approximately \$50,000. When these funds are received, we can close out the 2004 hurricane season.

The ordinance for the Florida vernacular look of Malabar should be ready for review at the next Council meeting. He is scheduled to take several pictures in the Melbourne area of this type of building aesthetics. Mrs. Moccia asked if Council would have input in the colors of the buildings. Mr. Booth stated that this information would be covered in the ordinance.

We have placed the new gazebo in Huggins Park. The gazebo has benches all around for people to sit. Smaller playground equipment was donated to the Town and it has also been placed in this park. Mrs. Moccia asked if a picnic table was also in the gazebo. Mr. Booth stated not at this time, but it is something that we can take care of.

A fire break is being installed by the County. Mr. Withers has also spoken to them about placing fertilizer in the park.

The vehicle storage shed behind the Fire Department is complete. The ground around the front of the building will need to be taken care of for drainage. The doors for this building will be coming out of this fiscal year's budget.

Mr. Booth advised Council that the cover for the playground equipment will be put back in place this week.

We now have park benches throughout the Town at the bus stops. The children have been making good use of these benches, as well as "walkers" that need to take a rest. Mr. Booth stated that we have been offered four more benches along with two covers. The covers need to meet the requirements of the Building Department.

#### **CLERK**

Ms. Kelley advised Council that the agenda for the next meeting will be set early next week, as both Ms. Kelley and Mrs. Kabana will be out of town.

The Space Coast League dinner is October 9<sup>th</sup> at the Rialto Hilton; please call the Clerk's office for reservations by Wednesday, October 4<sup>th</sup>.

#### **PUBLIC HEARING:**

##### **1. FINAL READING, ORDINANCE 2006-16, MAXIMUM BUILDING COVERAGE**

By unanimous consent, Mayor Eschenberg read Ordinance 2006-16 by title only.

At this time, Mayor Eschenberg opened the public hearing to the public.

Richard Torpy, attorney in Melbourne, spoke in favor of the ordinance. The change the Town is making is real positive. The commercial corridor is the place to generate the tax base for the residential areas; 20% maximum building coverage is the same place you were at before. He has reviewed the recommendations that the Planning & Zoning Advisory Board recommended; he doesn't understand why Council would keep it at this percentage. He is suggesting to Council to entertain the change to 25% coverage. The more coverage you allow; the more return you get on the investment. With this

change, it would help for the development of the Malabar corridors. Per Mr. Bohne, a change in the percentage of coverage would not affect the title of this ordinance; this being the final reading.

**MOTION: Rivet/Vail to approve Ordinance 2006-16 as presented.**

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

## **DISCUSSION:**

### **1. MALABAR VOLUNTEER FIRE FIGHTERS INCORPORATED**

Mr. Vail stated that he feels that workshops with the Corporation and the Fire Department should take place in-house and then this be brought back to Council. These two groups are the people who have to work with the contract. They should try to work the difference out between them.

While reviewing the information, Mr. Rivet noticed the “draft” had not been signed. Is the 1996 contract still in affect today? Mr. Booth stated that we would fall back on the last executed contract with the Corporation. Mr. Vail feels that this is not an issue for Council at this time. Let the two groups have the workshops to iron out the differences. Mrs. Dezman stated that someone from Council should sit in on the negotiations; they don’t need to make comments, but would feel better if a Council member was present. Mr. Vail stated that Chief Gianantonio had requested that Mr. Vail be present. Mr. Vail is the liaison between the Fire Department and Council. It is the general consensus that Mr. Vail be involved in these meetings.

Mr. Bohne stated that the 2004 contract was drafted with rules regarding sexual harassment; this should be addressed since there was an incident regarding this matter. Mayor Eschenberg stated that he read the by-laws; he’s not sure what the conflict is. He feels that the duties of the Corporation and the Fire Department are not very clearly defined. Each entity needs to have a clear concise understanding of what they are responsible for. Mayor Eschenberg stated that the Corporation should be the personnel department and the Fire Department be the Fire Department.

Chief Gianantonio was called to the podium to address Council with regards to this matter. He stated he has read the by-laws. They say one thing but he stated he is not getting the support from the Corporation. The Town ordinances state that the Chief is responsible for the Town. Mr. Booth stated that he will also attend these meetings as well. Chief Gianantonio stated that the flavor of the Fire Department will be changing as we have two part-time employees.

Mrs. Dezman asked Council what kind of time-line there should be for these issues to be addressed. It was decided that something needs to be brought back to Council by the first meeting in December. Per Chief Gianantonio, the workshops need to start within the next two weeks. Mrs. Dezman would like all negotiations in writing, clearly defined without legal ease.

### **2. PROPOSED NUISANCE ORDINANCE**

Mr. Booth stated that this ordinance had been prepared to provide procedures for removing abandoned property in the public right of ways and on public property. Mr. Vail stated that he feels the wrecking companies who removed the property should be the ones to take care of all the details of said towing. There will be the mentioned corrections made to this ordinance and it will be brought before Council at the next meeting for the first reading. Mayor Eschenberg asked if it would be worth putting in a clause for “special” circumstances. Mr. McClelland advised Council that when a vehicle is towed, the person has 35 days to claim it.

## **ACTION ITEMS:**

### **1. AGENDA REQUEST FORM, MICHAEL RILEY, OAKRIDGE LANE, RE: REQUEST FOR TOWN TO COMPLETE ROAD CONSTRUCTION**

Michael Riley-2325 Oakridge Lane-came forward and addressed Council. He provided a brief overview of the situation on Oakridge Lane. Mr. Booth stated that the Town will take some of the responsibility

for this, as a C/O was issued on a unapproved road. There is history behind this road. Mr. Riley is asking for a time frame of when this road will be corrected. When the heavy rains come, the water sits for days, making passage near impossible. Mr. Booth stated that O'Brien's Tractor Services will be working on this road. The entire road will be corrected. Mr. Riley stated that their end of the road needs to have something done as soon as possible.

Mr. Howard Littrell-2305 Oakridge Lane-came forward and addressed Council. He stated the original owner did not building the remaining 200' of the road. He has paid for his portion of the road. Half of Mr. Littrell's property is on the approved portion of the road, the other half is not. He stated that all of Oakridge Lane is in bad shape. Mrs. Moccia asked Mr. Booth if the Town could get some milling out there for the time being. Mr. Booth stated he would have Carl Beatty go out and do some emergency repairs to the road; he will be in contact with Mr. O'Brien and have this road moved to the top of the priority list. It should be started within two weeks.

## **2. REQUEST FOR APPROVAL OF SITE PLAN, MALABAR MINI STORAGE PROJECT, 2700 MALABAR ROAD, CG ZONING, 8.5 ACRES, APPLICANT KELLY VICKERS**

Richard Cameron-650 Hall Road; came forward and addressed Council. There have been a lot of comments throughout the town regarding this project. He is proud of the way Malabar is progressing. There will be changes happening very shortly along the corridors of Malabar. This complex is in a commercial zoning; the builder has offered to do whatever the Town requires to make this project happen. Mr. Cameron feels that the project that is being presented will be an uplift to the Town as people come in from US 1 and head west. This project will also assist the Town with the tax base. He is in favor of this project coming into the Town.

Kelly Vickers, developer; 1124 Brook Street, Palm Bay; came forward and addressed Council. He is a small time builder; this project is way beyond anything that he as ever done before. Mr. Vickers stated that he has been working on this project for eight months; he needs to get this project underway, if possible. He also made the offer to Council to show them houses that he has built. He made a plea to Council for them to come see the homes that he has built. He gave Council a brief overview of what he is trying to accomplish for the Town of Malabar.

Mayor Eschenberg opened the meeting for questions from Council if they have any. Mrs. Dezman stated she has questions that were asked of her by other people. In clearing the lot, were turtles killed? Mr. Vickers stated he had outside people come in to relocate the turtles. They were not relocated right away, as turtles must be quarantined for a time, as they have an infectious disease is highly contagious. The next issue was the clearing of easements. Mr. Vickers stated this had been taken care of and all corrections have been made. Mr. Vail asked Mr. Vickers if there will be another means of egress to the property. It is not required, but it is something to think about.

### **MOTION: Vail/Dezman to approve the site plan as presented for Malabar Mini Storage.**

Mrs. Moccia wants to approve the colors. The colors need to reflect the artist concept; if not, the colors must be presented to Council.

### **VOTE: All Ayes.**

## **3. DISTRICT 1 SEAT VACANCY**

Nominations for Council 1 seat; Mrs. Moccia stated that the person she had backed out. Mr. Vail stated that Mr. Crews is still interested. Mr. Booth advised Council that Jane Havet is showing some interest in this seat.

### **MOTION: Vail/Rivet to appoint Mr. Crews to the vacant seat for District 1 until the November election. VOTE: Vail, Rivet and Moccia; Ayes. Dezman; Nay.**

Mrs. Dezman stated her reason for the “no” vote is because Council was not consistent in the advertising of the position. Mr. Rivet stated that the circumstances would not allow for this.

**4. RESOLUTION 09-2006, AMENDING THE EMPLOYEE MANUAL MILEAGE RATE TO THE STATE OF FLORIDA RATE**

By unanimous consent, Mayor Eschenberg read Resolution 09-2006 by title only.

**MOTION: Vail/Rivet to approve Resolution 09-2006 as presented.**

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

**5. ORDINANCE 2006-17, FIRST READING, CREATING A NEW CHAPTER 13.7, “SEWER SYSTEM”**

By unanimous consent, Mayor Eschenberg read Ordinance 2006-17 by title only.

**MOTION: Rivet/Moccia to approve Ordinance 2007-17 as presented.**

Mr. Stephenson stated that the Town is becoming a Utility and this needs to be established so that funds will be available to take care of the utility in the future. This ordinance will assist in getting the procedures and costs in line for the Town.

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

**6. RESOLUTION 10-2006, SUPPORT THE WIDENING OF MALABAR ROAD TO FOUR LANES**

By unanimous consent, Mayor Eschenberg read Resolution 10-2006 by title only.

**MOTION: Moccia/Rivet to approve Resolution 10-2006 as presented.**

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

**7. REQUEST FOR APPROVAL TO DIRECT THE TOWN ATTORNEY TO OBTAIN AN OPINION FROM THE ATTORNEY GENERAL, RE: FESTIVAL COMMITTEE SUBJECT TO SUNSHINE LAW**

Mayor Eschenberg stated he attended a Sunshine Law & Ethics conference. Ms. Kelley had asked him to do some investigating with regards to the Events Committee being under the Sunshine Law. This conference consisted mostly of attorneys; one gave the opinion that if the committee is not appointed by Council and does not report to Council, it would be worth writing to the Attorney General for an opinion.

Mr. Bohne stated that he had spoken with Mr. Booth regarding this matter. The information that he received previously was leading him to believe the committee was under Sunshine guidelines. After speaking with Mr. Booth, it became clear that the committee does not exercise any power of the sovereign. All funds spent on events comes from donations, it is public funds. With this new information, he feels that the committee is not governed by the Sunshine Laws. The Attorney General will give an opinion on the what information is provided. There is no action required at this time.

**REPORTS: MAYOR, COUNCIL**

**Moccia**-is requesting that a discussion item be placed on the second meeting in November regarding Council members calling the attorney regarding questions concerning Council packages. These questions should be held until just before the meeting or call Town Hall and speak with Mrs. Kabana or Mr. Booth. A few years ago, the invoices received from the attorney showed money spent because Council members called the attorney for Council questions. We don't want to see large bills being made from new members not understanding what is their packages, if the case arises.

**Vail**-feels the people of the Town need to know that the Town doesn't have any say when the EELs are purchasing land in the town. He would like something sent out to let people know about this issue. He did ask if we could get this in the Mailboat. Ms. Kelley stated that it is too late for this to be in the Mailboat.

Rivet-has nothing to report at this time.

Mr. Cameron received permission to speak from the audience. The problem is not with Mike Knight, it is with the County Commissioners. Mr. Knight is doing a good job with the message that Council is sending.

Dezman-asked if any of the Council members had seen a sign with: [www.malabarcommercial.com](http://www.malabarcommercial.com). This sign is located between Sandy Creek and Eva Lanes. She noticed this when coming east on Malabar Road. Mr. Vail stated that the property has a "for sale" sign for Land a Lots; he believes this is their website.

Mrs. Dezman asked Mr. Booth if the property just west of Corey Road on Malabar, if the nuisance ordinance would apply; they have trucks back behind and in the trees. Mr. Booth stated that this would need to be looked at.

Mrs. Dezman asked Ms. Kelley about the Fall Fest. It is Saturday, October 28<sup>th</sup> from noon until dusk. She is needed from 12:00 to 12:30 for judging the pumpkins.

Mayor-provided a list of questions that he received from the FDLE regarding the MSTU. This list was given to Council previously, but it was provided again for the upcoming election.

Mayor Eschenberg asked that it be in the minutes that Susan Kabana has qualified for the first level with the IIMC for her MMC certification. He asked that Ms. Kelley explain. Ms. Kelley stated that this is why both the clerks will be out of town next week. Mrs. Kabana is working on her certification to become a Master Municipal Clerk and Ms. Kelley is working towards her certification to become a Certified Municipal Clerk.

**PUBLIC COMMENTS: GENERAL ITEMS:** None

**ADJOURNMENT:**

There being no additional discussion, **MOTION: Rivet/Dezman to adjourn this meeting. VOTE: All Ayes.** This meeting adjourned at 9:25 pm.

By Thomas Eschenberg  
Mayor Thomas Eschenberg, Chairman

ATTESTED:

Cindi Kelley  
Cindi Kelley, Deputy Town Clerk

10/16/06  
Date