

**MALABAR TOWN COUNCIL REGULAR MEETING  
OCTOBER 16 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 Phil Crews.

**ROLL CALL:** MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

STEVE RIVET

PHIL CREWS

BRIAN VAIL

BOBBI MOCCIA

PAT DEZMAN

ASST. TO BUILDING OFFICIAL:

ENGINEER:

PLANNER:

ADMINISTRATOR:

ATTORNEY:

DEPUTY TOWN CLERK:

DEBBY FRANKLIN

BILL STEPHENSON

KEITH MILLS

ED BOOTH

KARL BOHNE

CINDI KELLEY

**ADDITIONS/DELETIONS:** NONE

**CONSENT AGENDA:**

**COUNCIL MINUTES 10/2/06**

**MOTION: Crews/Vail to approve by unanimous consent.**

**Without objection approved by unanimous consent.**

**REPORTS:**

**ATTORNEY**

Mr. Bohne advised Council that he has received an unsigned request of continuance for this case. He will not consent to this; we have waited too long already. Mr. Gentile has a new attorney. If the courts grant this request, Mr. Bohne will submit a motion to be placed on the docket again. Mr. Bohne stated he does not foresee this case going to court before the year ends. At this time, if we went to court, Mr. Bohne is unsure of whom the judge would be; it could be someone who has been out for a while and comes in cold. Mr. Rivet asked if Mr. Bohne if the case is more likely to be ruled in our favor due to a continuance. Mrs. Moccia asked about the time frame that we are trying for and what this would do to our case. Mr. Bohne stated that we have met all the guidelines and that there are no statute of limitations since we have filed our case.

**ADMINISTRATOR**

**- OAKRIDGE LANE**

Mr. Booth advised Council that this project is approximately 75% completed. Mrs. Moccia asked about the pipe going underground. She feels the project is more like 50% completed. Mr. Booth stated this pipe has not yet been put in. The millings will be available when the mill opens up; we are not big enough for them to open the plant just for us.

**- STATE LANDS**

Mr. Booth advised Council that there are several groups that are joining the endeavor to have the EELs take care of their lands. The EELs are a lawn service for the State; everyone acts like they own the land. Mr. Booth does not have a clue what they are doing at this time with their land.

Mr. Booth advised Council that there are rumors going around that we are annexing into Palm Bay. This is not even possible; but he is receiving a lot of calls regarding this matter.

**- BUSINESS TAX – (O/L)**

Mr. Booth advised Council that we have a legal question pertaining to space for a business license. It is not legal to have a business license if you do not have a space to run your business out of. We are taking a hard look at the Occupational Licenses that do not have a qualified space. It is possible that some of these licenses will have to create a space for their business. Mrs. Moccia asked if these questions are not part of the application for a business license. It was stated by Ms. Franklin that this is required for home licenses. If calls come in, staff will advise the people what is needed for the license to be issued.

At this time, Mr. Booth reported on a few other topics. They are as follows:

There is a joint meeting with the County Commissioners regarding annexation. He will attend the meeting to see what is taking place.

Mr. Booth stated there has been a number of newspaper articles put out recently. They have been very positive in nature, giving the public warm feelings regarding Malabar. He received a letter from the Department of Interior which requires Mr. Booth to count Scrub Jays at the Cameron Preserve.

Mr. Booth advised Council that there was an attempt to mediate the Gentile lawsuit. This did not work and is now dead. Mrs. Dezman asked Mr. Booth for permission to address this issue. She asked Mr. and Mrs. King to come to the podium. Mrs. Dezman received an e-mail on October 3, 2006, one day after the October 2<sup>nd</sup> Council meeting. Mrs. Dezman read the e-mail into the record. She advised Council that her home has been vandalized within the last week. She then asked Mayor Eschenberg to address Council regarding collecting information regarding the Gentile lawsuit and not advising Council of what he was doing. Mayor Eschenberg stated he would address her questions and concerns at the end of the meeting in his reports.

At this time, Mr. Bohne asked for permission to speak. He had inadvertently left out a possible candidate for the Special Master. He is recommending Mr. Gary Sack, who clearly understands that the Town has been looking for a new Master. Council could advise Mr. Bohne to obtain more information, get more names together or take action on this matter this evening. Mrs. Moccia stated she would prefer to have a professional page on Mr. Sack to see his qualifications. Mrs. Dezman does not see any reason that this could not be handled this evening; the same feeling came from Mr. Rivet as well. Mayor Eschenberg stated that this should be on the agenda for the first meeting in November as an action item.

**CLERK****- REVERSE 911 SERVICE**

Susan Kabana advised Council that the presentation is ready to be made regarding the reverse 911.

Ms. Kabana advised Council that both Ms. Kelley and she attended the Institute's Career Development classes the previous week. She gave a brief overview of this school and advised that she has completed the first level for her Master Municipal Certifications and that Ms. Kelley is working on her certifications for becoming a Certified Municipal Clerk. Ms. Kelley has one more year to attend and then can apply for her certification.

**- MALABAR FALL FEST**

Ms. Kelley advised Council that the Fall Fest is fast approaching. Mr. Vail asked that Ms. Kelley give the times and events. Ms. Kelley gave a brief overview and asked for participation from both the audience and from Council.

**PUBLIC HEARING:****1. ORDINANCE 2006-17, FINAL READING, CREATING A NEW CHAPTER 13.7, "SEWER SYSTEM"**

By unanimous consent, Steve Rivet read Ordinance 2006-17. No objection was heard. Mayor Eschenberg opened the public hearing to the public. There being no discussion, it was brought back to Council.

**MOTION: Moccia/Crews to approve Ordinance 2006-17 as presented.**

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

Motion carries unanimously.

**DISCUSSION:****1. PROPOSED ORDINANCE FOR FLORIDA VERNACULAR ARCHITECTURE OF FUTURE COMMERCIAL BUILDING IN MALABAR**

Mr. Booth made a presentation to Council showing pictures of the Florida vernacular look around the surrounding areas. He took pictures in the Sebastian and downtown Melbourne areas. He also showed some pictures taken from a book specifically for Florida vernacular looks. There was a discussion between Mr. Booth and Council for the types of styles shown. It was decided that Mr. Booth would take a few more pictures and get this ordinance to the Planning & Zoning Advisory Board for their review.

**2. PROPOSED NUISANCE ORDINANCE**

Mr. Booth advised Council that this can be determined tonight if it is ready for a first reading. Mr. McClelland made some recommendations so that the towing company is responsible for all that this entails. Mr. Bohne advised that this has been added to the ordinance. It was requested by Mayor Eschenberg to have this as a first reading for the November 6<sup>th</sup> meeting.

**3. WEBER WOODS: REVIEW OF COST OF IMPROVEMENT BOND DEPOSIT FOR INFRASTRUCTURE IMPROVEMENTS**

Mr. Booth stated that this is a bond for \$426,937 so that the project can begin. This will cover any expense for the roads. Mr. Stephenson is the one to come up with these figures; it is 25% over the actual cost of the roads. It was mentioned that item 8 does not have a date in it. Mr. Bohne stated the date will be when the project is completed. Ms. Franklin stated this will become part of the final plat. The infrastructure must be completed before any homes can be built. The land can sell but no building is permitted until all requirements are met by the contractor/developer to the Building Department. The equipment has been delivered and the pond is being created. This project is moving along very nicely. It was requested by Mayor Eschenberg to have this as an action item for the November 6<sup>th</sup> meeting.

**ACTION ITEMS:****1. RESOLUTION 11-2006, REPEAL OF AUTO-WITHDRAW FEE FOR UTILITY CUSTOMERS**

By unanimous consent, Mayor Eschenberg read Resolution 11-2006 by title only.

**MOTION: Crews/Rivet to approve Resolution 11-2006 as presented.**

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

Motion carries unanimously.

**2. RESOLUTION 12-2006, WATER UTILITY RATE INCREASE**

By unanimous consent, Steve Rivet read Resolution 12-2006 by title only.

**MOTION: Rivet/Crews to approve Resolution 12-2006 as presented.**

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

Motion carries unanimously.

**3. BOARD MEMBER EXPIRATIONS AND REQUESTS FOR CONTINUATION ON BOARD**

**MOTION: Vail/Dezman to accept as presented. VOTE: All Ayes.**

Motion carries unanimously. Mayor Eschenberg gave information to audience about the Board of Adjustment and Planning & Zoning Advisory Board.

**4. APPROVAL OF 454 FEET OF MUSSELL SHOAL LANE**

This road is built to the best of the constraints of Malabar. It is recommended that this road be approved.

**MOTION: Crews/Rivet to approve as presented. VOTE: All Ayes.**

Motion carries unanimously.

**5. CERTIFICATION OF COST FOR 454 FEET OF MUSSELL SHOAL LANE**

**MOTION: Rivet/Moccia to approve as presented. VOTE: All Ayes.**

Motion carries unanimously.

**6. REQUEST FOR APPROVAL OF A 5-ACRE PAINT BALL FACILITY IN CG ZONING, APPLICANT KATHY BOMBRIANT, PROPOSED LOCATION: SW CORNER OF MALABAR ROAD AND MARIE STREET**

There was discussion between Mr. Booth and Council regarding this facility coming into the Town of Malabar. This is not ready for approval from Council at this time; it's only to see if Council would like to have a facility like this in Malabar in CG zoning.

**MOTION: Vail to approve as presented. There being no second to motion, motion dies.**

**MOTION: Dezman/Rivet to disapprove this request.**

Chester Bombriant, owner of facility, came forward and made presentation to Council. Discussion continued between the applicant and Council.

**VOTE: Vail, Rivet and Dezman-All Ayes; Moccia-Nay.**

Motion carries.

**7. REQUEST FOR SITE PLAN APPROVAL ON PERSONAL USE 12,000 SQ FOOT COMMERCIAL BUILDING IN CG, 8 ACRES BY APPLICANT KENNY ADAMS  
PROPOSED LOCATION: 2235 MALABAR ROAD, PARCEL ID 28-37-36-00-769**

Kenny Adams-2595 Coral Way-came forward and made presentation to Council. He gave a brief overview of what he is looking to accomplish with his request.

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

Mr. Rivet asked if the rendering will be what is placed on the property.

**VOTE: All Ayes.**

Motion carries unanimously.

**8. REQUEST FOR APPROVAL FOR A FENCE HEIGHT GREATER THAN 54" IN RR- 65 APPLICANT GERALD HIEBERT, ADDRESS 2565 BILLIE LANE**

**MOTION: Crews/Vail to approve as presented. VOTE: All Ayes.**

Motion carries unanimously.

**REPORTS: MAYOR, COUNCIL**

Mayor Eschenberg asked if Council would like for him to start this portion of the meeting. Everyone was in agreement.

**Mayor**-gave a brief history as to how it came to be that he had contact with Mr. Gentile regarding the litigation between the Town and himself. After explaining to Council and giving details, it was the Council's opinion that all contact with Mr. Gentile should be handled by the attorneys that have been retained for the Town and Mr. Gentile. Each Council member spoke to this issue and gave their individual opinions on this matter; Mayor Eschenberg had the Town's best interest at heart but this should have been addressed with the attorneys.

At this time, Mrs. Dezman asked Council if she is still the person that Council would like to designate as going to the courtroom for this litigation. It is the general consensus that Mrs. Dezman will continue to act for Council in this matter and report back to Council at such time as necessary.

Vail-would like for this to be a discussion item for the second meeting in November after the elections are over and the new Council is in place. We used to have two committees and would like to know what or how to address the Trails & Greenways.

Moccia-has nothing to report at this time.

Crews-thanked Council for the opportunity of filling in this seat for the next two meetings.

Rivet-has nothing to report at this time.

Dezman-reported to Council that her home has been vandalized within the last week and as stated before during the meeting, would like to have the Sheriff's Office called; ask that Council have their homes patrolled a little more often.

**PUBLIC COMMENTS: GENERAL ITEMS**

Bill Withers-2324 Candy Lane-came forward and addressed Council. He was not happy with the wording of the ballot for filling vacant seats for Council. It was stated that this would be explained in the Mailboat for the public. Mr. Withers asked if the Mailboat was being sent overseas; the answer was no. For those voting absentee ballot, they will not have any idea what this question is asking. Mrs. Kabana stated that the wording on the ballot is just what Council approved. Mr. Bohne stated that we are limited in the information that goes on a referendum ballot.

Ken Shafer-3035 Lett Lane, came forward and addressed Council. He spoke against having the Cheer Gym come to Malabar. There were several people from this area of Town; he was asked to speak on all of their behalf. They do not want this in their neighborhood. He thanked Mrs. Dezman for asking that the surrounding area be notified of the intentions of the property owners.

At this time, Council made a suggestion that the people start coming to meetings to see what is happening in Malabar and take an active part in what is happening in the Town. Make it a point to do due diligence and put it in writing to Council.

Mr. Withers, from the audience, stated that the property owner who presented this to Council is trying to set up a PE program for BCC; they don't have a program as of yet.

Jim King-of 1170 Corey Road, came forward and addressed Council. The e-mail was in no way brought up to bring the Mayor under question. It was a concern of the neighbors; the fact that Council is going through elections and there will be a change in the line-up, would a hold be put on this? Mr. Rivet stated that communication with Council is the best way to keep things moving. The best way to communicate with Council is to attend Council meetings and speak.

**ADJOURNMENT:**

There being no further discussion, **MOTION: Dezman/Moccia to adjourn this meeting. VOTE: All Ayes.** This meeting adjourned at 9:35 pm.

BY Thomas Eschenberg  
Mayor Thomas Eschenberg, Chairman

ATTESTED:

Cindi Kelley  
Cindi Kelley, Deputy Town Clerk

11/06/06  
Date