

**MALABAR TOWN COUNCIL REGULAR MEETING
NOVEMBER 20, 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 Eschenberg. The prayer and pledge were led by the Mayor.

<u>ROLL CALL:</u>	MAYOR/CHAIR	TOM ESCHENBERG
	COUNCIL MEMBERS:	NANCY BORTON
		BRIAN VAIL
		CHUCK MCCLELLAND
		BOBBI MOCCIA
		PAT DEZMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	ENGINEER:	BILL STEPHENSON
	PLANNER:	KEITH MILLS
	ASSISTANT TO THE BUILDING	
	OFFICIAL	DEBBY FRANKLIN
	TOWN CLERK/TREASURER:	SUSAN KABANA

NOMINATIONS AND ELECTION FOR COUNCIL CHAIR

MOTION: Vail/McClelland to nominate the Mayor as the Chair.

There are no other nominations.

VOTE: All aye.

Vail – would like to see a more strict enforcement of when the public is permitted to talk during the meeting.

NOMINATIONS AND ELECTION FOR COUNCIL VICE-CHAIR

MOTION: Moccia to nominate Pat Dezman as Vice-Chair.

MOTION: Borton to nominate Chuck McClelland as Vice-Chair.

VOTE ON FIRST MOTION: AYE – Moccia, Dezman. NAY – Borton, Vail, McClelland.

VOTE ON SECOND MOTION: AYE – Borton, Vail, McClelland. NAY – Moccia, Dezman.

SELECTION OF BILL APPROVAL INDIVIDUAL AND CHECK SIGNERS

Kabana – currently Brian Vail does bill approval. The Mayor, the Administrator and herself are the current check signers. Steve Rivet stopped being a check signer when his term ended.

MOTION: Borton/Vail nominates Moccia as the additional check signer.

VOTE: All aye.

The Mayor takes a vote and asks for all those Council members in favor of Vail to approve bills signify by saying aye. The vote was all ayes.

ADDITIONS AND DELETIONS TO AGENDA

Eschenberg – Bud Ryan would like to speak last tonight and would like to be moved to the end of the agenda. The Mayor moves this item after the last action item.

CONSENT AGENDA:

(A) COUNCIL MINUTES 11/06/06, 11/09/06

MOTION: Moccia/Vail to approve. VOTE: All aye.

REPORTS:

ATTORNEY

- EXECUTIVE SESSION

Mayor – has two speaker cards on this item. He will let the attorney make a statement first then let the speakers talk, and after that the Council will discuss.

Bohne – states that the Town Administrator was asked about an executive session in regards to the Gentile litigation. The executive session would allow the Council to meet in private to discuss the litigation but there are only two issues that can be discussed: potential settlement negotiations and finances. To have an executive session the Council must first hold a public hearing to discuss whether or not it wants to have the session. The only people who can attend are the Council, the Administrator, the Attorney and a court reporter. The transcript remains sealed until the litigation is over.

Alan Wollard, Country Cove Circle, and President of the Country Cove Homeowners Association – many of the homeowners in Country Cove and Stillwater will be interested in the outcome of this lawsuit. If the purpose for the executive session is to withdraw the lawsuit then the Association wishes Council would consider the position that would leave the Town in. They believe the Town would look weak and ineffective in regard to regulations and zoning. And any future commercial entity could possibly use this position against the Town.

Bob Rossman, Country Cove Circle – is also a member of the Country Cove Association. Rossman held a meeting at his home recently regarding this issue. He notes that the main concern is that whatever the town chooses to do will effect the whole town now and in the future. No one is against the running of a legitimate horse farm. What they do object to is the way the business is run. This will effect what rights the Town has over control of what is allowed, and not allowed, in Town.

Bohne – states that no final action can be taken in an executive session. It is only discussion and how to proceed. All action will have to take place at a public meeting.

McClelland – wants more background than he can find. Can we talk about background? Bohne – McClelland can call Bohne and they can discuss the background.

Borton – years ago she was part of an executive session and they were able accomplish a lot. Bohne – states that the topics are limited during an executive session, anything else violates the Sunshine Law. He would much rather speak with the Council individually.

Mayor – wants everyone to bear in mind that all Council Members can call the attorney. Asks what it would cost for the court reporter. Bohne – about \$500 and that does not count his (attorney's) fee. Mayor – asks what Council wants to do.

Moccia – states that before the election this lawsuit was a go. If this new Council has different feelings she would like to know.

Dezman – agrees, states that Council tried to negotiate and was unsuccessful.

Bohne – notes that there is a likelihood that some of the activity on the Gentile property will be allowed to continue but there are other actions that are not farm-related and those are a concern to the neighbors.

MOTION: Vail/ to call for an executive session. Motion dies for lack of second.

McClelland – is looking for more information. Dezman – if any of the Council Members want to be caught up then she suggests making an appointment with Bohne.

Moccia – what we do here will affect the entire Town.

McClelland – has heard much information but is not sure what is good info or bad.

Dezman – feels that the new Council Members should meet with Booth first for general background information and then go to the attorney to learn the legal side.

Mayor – asks the attorney to give a brief Sunshine Law overview.

Bohne – Sunshine law applies to the Council. That means that two or more members of the Council cannot meet in private to discuss any matter that could reasonably come before the Council for a vote or discussion. If you think something is a violation, then it probably is. Bohne also notes that any documents you receive or

produce in your capacity as a Council Member are public records and should be given to the town clerk for retention. Emails are public record, especially when written to you as Council Member. Call Bohne if you have a question.

ADMINISTRATOR

- SCHEDULE VISIONING WORKSHOP

Booth – would like to schedule a visioning and goal-setting meeting with Council.

Mayor – we can do that under action item 7.

Booth – we have resolved most of the code enforcement issues but Southern Comfort still has issues, mainly fire hazards, and if there is a tragedy the town could be liable.

Booth – O'Brien is just about finished with Matthews Lane and then he will go to Oakridge Lane.

FIRE CHIEF

- OVERVIEW OF DEPARTMENT

Gianantonio – the National Emergency Management Service has course requirements for the fire fighters and town officials to be completed by the end of the year so the Town can apply for Federal Grants. Brian Vail just completed the I700 course.

The Fire Department has 335 responses so far this year. The roads out of Palm Bay are getting busier and busier. Notes that since there is no light on Malabar Road at the fire station the trucks have to wait to turn out onto Malabar Road. Booth – we can have a light for \$75,000.

CLERK

Kabana – states that Deputy Clerk Cindi Kelly has taken the minutes for all the August through October Council meetings so Kabana could prepare for the 2005/2006 audit. This worked out great because the audit began last week. The auditors hope to present in January.

Kabana – for Christmas the Space Coast League of Cities is offering to match either a \$25 or \$50 donation by each town to either the American Red Cross or the Salvation Army for the 'Sue Pridmore Center'. Is Council interested in donating? The money would come out of other miscellaneous expense.

MOTION: Dezman/Vail to donate \$50. VOTE: All aye.

Kabana – the Christmas Tree Lighting is before the next Council meeting on December 2nd at 6:00pm. The employee Christmas party is December 9th.

PUBLIC HEARING:

1. WEBER WOODS SUBDIVISION FINAL PLAT APPROVAL – 14 LOTS, RR-65 ZONING, 25 ACRES, APPLICANT WINDOVER MALABAR LLC. REPRESENTED BY RICK KERN, RK ENGINEERING

Mayor – would like to hear from Rick Kern first then he will open the public hearing, then Council will discuss.

Richard Kern, 385 Pineda Court – he is the engineer on this project and is asking for final plat approval. This has received preliminary plat approval and is currently under construction. There are 14 lots, each 1.5 acres, and is located at the southeast corner of Weber Road and Malabar Road. It is bounded on the south side by Hall Road. It has a single large stormwater pond that discharges to Hall Road. There are only 2 driveway connections on Weber Road. They are providing a landscape berm along Weber Road. They are extending an 8" water main for fire protection and potable water. All improvements will be privately maintained, there will be no responsibility to the Town. All permits have been obtained.

Mayor – opens the public hearing and asks for public comment.

Juliana Hirsch, 1035 Malabar Road – is not adjacent to the project but close enough to be impacted. Thanks the Mayor, Mr. Booth and Mr. Stevens. The Mayor came out on Sunday to see the flooding on her property. She feels the water came from Weber Woods. She feels it was a temporary situation caused by construction but she feels the contractor was less than honest with her. On October 17th she was told they complied with St. John's. She feels it would be helpful if they let her know what is really going to happen over there. She notes that for the water to get to her it traveled 600 feet or more and then it went another 300 feet over her property. She is convinced that the problem has been fixed but she is concerned; what if she had not been there? Also, when Weber Woods first started it had two basins. Would the two basins be better for her? She is not sure. Ms. Hirsch asks Kern now that there is a two foot high berm on the east side of their property and their water is flowing west, is there a provision for a swale to catch the water to keep it from further impacting her property? She is asking the Council to watch what they are doing over there, the permits are wonderful but if no one is watching they are not worth anything. Thanks the Council for listening to her.

Dick Korn, Weber Road – he has talked to his neighbors and their concern is traffic. You cannot get out Weber Road onto Malabar Road in the morning. Feels an access onto Hall Road would better serve the development.

Patrick Reilly, Howell Lane – P&Z looked at the same issue Korn addressed and they felt two accesses would be better than the original 13 that were planned by the developer. Asks about the bond, if it guarantees tonight's proposal by the developer, is what is shown tonight going to be able to be changed? Is the final as-built going to match what is approved tonight?

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

Stephenson – feels the drainage issue is two issues. The first issue is what happens during construction. The developer gets a permit from DEP called a 'generic permit for stormwater discharge from large and small construction activity'. This permit allows them to discharge their water from the site during construction. The restriction on this permit is related to water quality, not water quantity. At one point Stephenson had issues with the water quality but not the water quantity. Stephenson notes that it is almost impossible to de-water a construction site without some off-site pumping. The second issue is that once the developer is finished with the project and it is in the operation phase then he'll have a pond that has a minimum elevation, a mean elevation and a maximum elevation with a discharge into the Malabar stormwater system and that has a St. John's permit. And that permit requires the post-development discharge to be less than or equal to the pre-development discharge for the same property.

Dezman – where is the pond? Stephenson – on the east side of the development.

Moccia – there used to be a ditch along Weber Road and now that has been filled in, what is going on there? Stephenson – the water from that area drains to Hall Road, then east along Hall Road to Duncil, then turns and goes back north to the box culvert under Malabar Road. Moccia – so the water will head to Hall Road? Stephenson – yes. Booth – notes that we are going to clean out the ditch along west side of Weber Road.

Vail – wants clarification of how the water flows. Stephenson – it goes west on Hall and then north in the area of Duncil. It doesn't go north along Weber Road. Vail – after cleaning the Weber Road ditch will some of the discharge be alleviated? Stephenson – it will, to some extent, allow water to go in both directions but the driveway culverts are set about a foot higher than the bottom of the swale so the water will have to build up about a foot before moving on. Generally the water drains south to Hall Road then east along Hall but if it builds up a foot then there will be some flow north to Malabar Road along the east side of Weber Road. This is not the way it is designed but it is another avenue for the water. He cautions that we cannot flow water into DOT's ditch on Malabar Road. Though it may make more sense to have the water flow to Malabar

Road rather than south, then east, then back north, we must take historical drainage and DOT into consideration, therefore we don't flow the water to Malabar Road.

Mayor – asks about the berm that Ms. Hirsch mentioned. Stephenson – feels the berm was more of a temporary issue because the pond is going to have a bank and side slopes. The developer had a bank along the east side of the property when he was dewatering the site but what happened was that in a lower area the berm was breached and Mrs. Hirsch got water, but that is no longer the case.

Dezman – how much water will run-off of each home? How high will the lots be built up? Stephenson – there is a side swale between every other house that drains from west to east to take the water into the stormwater pond. It is a substantial swale, if it is full of water you can float your boat on it.

Dezman – notes that Corey Road is not easy to get out of in the morning either.

Richard Cameron – Weber woods was part of 58 acres farm that was split up. There were two large uncapped wells on the front west corner of the property that ran for 40 years. The developer came in and capped the wells and the wetland there dried up due to the lack of water. He notes that his land is half a block to the west of this property. Cameron states that the developer has done exactly what he agreed to do. One of the problems with the current water is strictly a construction problem and as soon as the pond is built, which they were not required to build but were talked in to, the issue will be resolved. Feels the developer has bent over backward and it has all been for the betterment of the community.

Cameron feels the water problem is because Malabar does not have a stormwater drainage plan. There is a ditch that runs through his property, which is the main drainage artery out of the northwest part of Town. It runs through the cow pasture and jumps over to where MIMA is going to go. There is a box culvert there which no one can get to to clean because there are no right-of-ways. He maintains the ditch on his property. He states that during peak rainfall when the water builds up, it sheet sheds across Weber Road approximately 100 feet north of the intersection of Hall and Weber and turns into a 3 to 6 inch stream heading over into Weber Woods then it runs down to the east along Hall Road on the north side. There is an antiquated ditch that runs between the property in question and Mrs. Hirsch and there is no access to get to the ditch to clean it.

All of his water leaves his property backwards or it sheet flows to the neighbors east of him. There is still a little antiquated pond that sits on two pieces of property that you can still see the water grass turn bright after a rain and that water still trickles over to the swale that was built on the south side of the last house on Weber Road on the west side, then it turns to our ditch that is non-existent, and then turns and goes back to Hall and goes under the culvert then east on the north side of Hall and down that antiquated ditch. The developer has done everything asked of them and even got involved with St. John's when they did not have to. They have given the Town a water retention system that is going to handle the water that comes off that property and according to the rules they were allowed to discharge their minimal requirement run-off into our stormwater system. And until our stormwater system improves it can't get any better.

Mayor – when this project is complete does Cameron think the water situation will improve or remain the same? Cameron – improve.

MOTION: Vail/Moccia to approve.

Moccia – wants to make sure we watch the water, even during the construction.

Borton – wants to make sure there is enough room to widen Malabar Road. Booth – yes there is. Borton – also wants to make sure the construction does not ruin the road.

Vail – are the waterlines in a place so they will not have to be moved if Malabar Road is widened? Stephenson – the waterlines will go on private easements as opposed to DOT land so the Town does not have to pay for the moving of the line.

VOTE: All aye.

ACTION ITEMS:**1. FIRST READING: ORDINANCE 2006-18, AMENDING CHAPTER 11, NUISANCES, OF THE CODE OF ORDINANCES, AMENDING ARTICLE II, JUNKED, WRECKED OR ABANDONED PROPERTY****MOTION: Vail/McClelland – to take this item from the table. VOTE: All aye****MOTION: Mayor to read by title only without objection.** Mayor read:

ORDINANCE NO. 2006-18

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 11 NUISANCES; AMENDING ARTICLE II JUNKED, WRECKED, OR ABANDONED PROPERTY; CREATING DIVISION 1 PERSONAL PROPERTY; PROVIDING FOR PURPOSE AND INTENT, FINDING OF FACTS AND DEFINITIONS; PROVIDING FOR PROHIBITIONS AND NOTICE; PROVIDING FOR REMOVAL OF PERSONAL PROPERTY ON PUBLIC PROPERTY;; PROVIDING A PENALTY; PROVIDING FOR REPEAL, SEVERABILITY AND INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Vail/Borton to approve.

Vail – 11.31a states that the fine may be up to \$250/day. So if they are seen disposing of the property they can be fined? Bohne – yes.

VOTE: Aye – Borton, Vail, McClelland, Moccia, Dezman.**2. FIRST READING: ORDINANCE 2006-19, AMENDING LAND DEVELOPMENT CODE TO PROVIDE FOR BED AND BREAKFAST FACILITIES****MOTION: Mayor would like the vice-chair to read by title only.** McClelland read:

ORDINANCE 2006-19

AN ORDINANCE FOR THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE III OF THE LAND DEVELOPMENT CODE; AMENDING TABLE 1-3.2; PROVIDING FOR A BED AND BREAKFAST FACILITY AS A PERMITTED USE IN (R/LC- MIXED USE ZONING); PROVIDING FOR A CONDITIONAL LAND USE UNDER CERTAIN CIRCUMSTANCES; AMENDING TABLE 1-3.3(A); PROVIDING FOR A BED AND BREAKFAST FACILITY UNDER MIXED USE DEVELOPMENT; AMENDING ARTICLE IX, SECTION 1-9.2 OF THE LAND DEVELOPMENT CODE; PROVIDING FOR PARKING; AMENDING ARTICLE XX OF THE LAND DEVELOPMENT CODE; PROVIDING FOR THE DEFINITION OF BED AND BREAKFAST ; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

MOTION: Moccia/Vail to approve.**VOTE: Aye – Borton, Vail, McClelland, Moccia, Dezman.****3. FIRST READING: ORDINANCE 2006-20, AMENDING LAND DEVELOPMENT CODE TO PROVIDE FOR ATHLETIC TRAINING FACILITIES**

Mayor – we will take the speaker cards first. We will dispense with the timer for the time being if the speakers can limit themselves to 3 minutes.

Judy Hauser, Satellite Beach – is speaking for Joan Rosaci who is out of town. For last 15 years Rosaci has been in Melbourne but due to circumstances there she was forced to close. She bought land in Malabar in the OI zoning. She would like to add cheerleading as a conditional use in OI. This program is much more than just cheerleading. Notes that these days you can't just send children out to play and if we don't provide activities for the children they will find trouble. Joan Rosaci loves Malabar and lives here. She understands the concern for the traffic but the zoning is there.

Mostly there will be parents dropping off children. Ms. Hauser states that the children in the community need this type of facility.

Linette Dreyer – she drives her daughter an hour 3 times a week to Rockledge and she'd much rather spend her money here than up there and she'd love to save the time.

Faye Mattson – Ms. Rosaci has been in business for a long time and she has a good reputation. There are people who really miss her want her back in business.

Robin Laliberte – passes.

Barbara Baillargedn, Lett Lane – her main objection is increased traffic. Booth Road is a very narrow and two cars can't pass without going way off to the side. She states that cars have ended up in the ditch many times, her husband has towed them out.

Charlie Smutco, Lett Lane – is opposed to having this facility in their residential environment. Feels that there is not enough parking provided. Does not feel it would do justice to the community and would incorporate undue traffic into the environment.

Ken Schafer, Lett Lane – none of the residents of Booth or Lett Lane are in favor of this. In the beginning this was an educational facility, now they are actually calling it more of what it is, which is an athletic facility. Next week it will be called a children cardiac care unit. He's very happy to have a gym somewhere in south Brevard, and there is plenty of commercial property to have it, but the lot on Lett is ill-suited for that purpose and it is only 1.3 acres. The lot is not big enough to hold the building plus sufficient parking.

Moccia – how many people live on Booth and Lett? Schafer – 10 or 11. Moccia – then why does she only have 8 opposing surveys? Schafer – some are out of town.

Pat Reilly, Howell Lane – states that P&Z looked at this numerous times and the problem is that the table reference is a guideline for what is permitted and what is a conditional use in OI zoning. What they are proposing is much less impact than a church or a doctors office. P&Z supports adding this to the table.

Moccia – noticed that P&Z struck through some of the verbiage such as 'audible noise off premises is not permitted' and 'outdoor activities are not permitted' why is that? Reilly – because you can have outdoor activities at a school or a church, it is not fair to the property. Asks the Council to look favorable on this request.

Ken Schafer – was Reilly representing P&Z? Mayor – no. Schafer – but he kept saying 'if it was a church' and none of those conditions have been met. Mayor – his point was that those are already allowable uses in OI. Schafer – and that may be but a conditional use has to be a minimum of 5 acres. We already have a mistake on the corner of Booth and Babcock.

Richard Cameron, Hall Road – is a member of P&Z and both Council and P&Z are trying adjust the zoning overall and there are going to be those residential areas next to commercial. Maybe when they built their homes there was nothing but dirt roads but the zoning did already exist. Feels that the landowner has bent over backwards trying to address this issue. Feels that the Town will to continue to grow and some of this commercial area will grow with it. Rosaci's operation will be first class. If she should decide to leave, the town would still have the right to the conditional use. Feels this should be approved by the Council.

Neil Rosaci, Sandy Creek Lane – has heard concerns about traffic but there is not more than twenty cars coming in and out each evening from 5pm to 9pm.

Bob Wilbur, Glatter Road – agrees with Reilly and Cameron. Feels the definition of education should be better defined to apply to this type of use.

Mayor – there are no more speaker cards.

Mayor – does not have a position on this. This is a proposal to add athletic training facility to OI as a conditional use. This is not about one particular business. We are not here to approve one business, this is about changing the code to add a conditional use.

MOTION: Mayor to read by title only without objection. Mayor read:

ORDINANCE 2006-20

AN ORDINANCE FOR THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE II OF THE LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.B; PROVIDING FOR ATHLETIC TRAINING FACILITIES; PROVIDING FOR A CONDITIONAL LAND USE UNDER CERTAIN CIRCUMSTANCES; AMENDING ARTICLE III OF THE LAND DEVELOPMENT CODE; AMENDING TABLE 1-3.2; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

MOTION: Vail/ to approve.

Motion dies for lack of second.

Mayor – without a second there can be no more discussion.

MOTION: Borton/Vail to approve.

Borton – feels that we are opening up a can of worms. Feels like we are opening up commercial. This is not even an acre and a half.

Moccia – is there a minimum size requirement? Bohne – will look it up.

Vail – this school is not the point, we are only discussing if we would allow this as a conditional use in Ol.

Dezman – she has been very aware of Joan Rosaci's work, passion and good reputation for many years. Dezman has two teenagers and has driven this State for organized sports. However, this all smells because it says 'conditional use' and this Council and past Council's have turned down conditional uses that have erupted into a giant mess. We had a giant influx of people when Council was considering some horse activity as a conditional use. If this gets approved as a conditional use she cannot see this being approved sometimes and not other times. A previous Council stayed here until 2 in the morning and turned down a conditional use that was then upheld by the appeals court. She was the one who wanted the citizens on Lett Lane notified because at present we have people around what is considered commercial. We need to deal with our citizens. This is not to say a facility in South Brevard is not needed.

Vail – notes that the conditional use applies to the entire town and this applicant would have to go through the application process. Dezman – she understands that but she is trying to cut down on the ambiguity. We don't want to open a can of worms. Notes that this has nothing to do with the business that is asking for this, it is not a personal thing.

Bohne – there is a minimum size of 20,000 sq feet for the building, the lot is dependent on the size of the building. Vail – notes that anything we let go in there must apply with our code.

Mayor – since P&Z struck out some of the verbiage does Council want to keep the wording or the strike-out? Council does not change it so it stands as printed.

VOTE: Aye – Vail, McClelland. Nay – Borton, Moccia, Dezman. Motion fails.

4. AGENDA REQUEST FORM, JULIANA HIRSCH, 1035 MALABAR ROAD

Mayor – Mrs. Hirsch is no longer here but probably said all she came here to say.

6. REQUEST FOR ALTERNATE POSITION ON PLANNING AND ZONING, CHARLES 'BUD' RYAN, HOWELL LANE

Mayor – Ryan resigned from P&Z to run for Council and has applied to be back on P&Z.

MOTION: Dezman/Vail to approve. VOTE: All aye.

7. SCHEDULE JANUARY COUNCIL MEETINGS

The Council meetings are scheduled for January 11th and January 22nd.

On January 11th there will be a 7:00pm visioning workshop and P&Z is invited.

8. RESOLUTION 14-2006, PURCHASE OF TYPE 6 MINI-PUMPER TANKER TRUCK FROM PRIDE ENTERPRISES

MOTION: Mayor to read by title only without objection. Mayor read:

RESOLUTION 14-2006

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO THE ACQUISITION OF A TYPE 6 MINI-PUMPER FROM PRIDE ENTERPRISES; AUTHORIZING THE TOWN ENTER INTO A MUNICIPAL LEASE AGREEMENT WITH RIVERSIDE NATIONAL BANK TO PROVIDE THE FUNDS REQUIRED TO SECURE THIS ACQUISITION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Moccia/Dezman to approve.

Booth – Pride is a prison run facility.

VOTE: Aye – Borton, Vail, McClelland, Moccia, Dezman.

9. APPOINTMENT OF REPRESENTATIVE AND ALTERNATE REPRESENTATIVE FOR METROPOLITAN PLANNING AGENCY (MPO)

The requirement is for elected officials.

MOTION: Dezman/McClelland to appoint Mayor Eschenberg to be the primary.

VOTE: All aye.

MOTION: McClelland/Moccia to appoint Nancy Borton as alternate. VOTE: All aye.

5. AGENDA REQUEST FORM, BUD RYAN, 1923 HOWELL LANE

Mayor – Bud Ryan has not made it yet but Eschenberg talked to Ryan and Ryan stated that the vast majority of the general election votes were cast for Ryan or McClelland and that the voters made a statement: keep Malabar rural.

DISCUSSION**1. REFERENDUM VOTE ON POLICE PROTECTION**

Eschenberg – asked that this be put on as a discussion item tonight. Moccia – feels like the people spoke loud and clear. Vail – when does the final decision have to be made? Kabana – is not totally sure, possibly July. Dezman – the County knows the vote, does not think they want to wait until July. Vail – would still like to negotiate.

Borton – went to talk to Jack Parker and he sent a letter ensuring us he would do everything in his power to work with the community. Parker was not threatening but he kept saying that it's time to get the protection we need, we are getting bigger.

Vail – what concerned Vail was what Parker said about not guaranteeing us anything, and that is not looking out for Malabar. Borton – Parker was saying that everyone was defensive the night he presented to Council and that is not the impression he wants to give.

McClelland – would like to have the Town look at public safety officers. One person is police, fire and EMT. They are doing it in Indian River Shores. Vail – does not think we should close any opportunity. Moccia – thought we were done with that.

Mayor – we should look at all the options, we could talk to Palm Bay. Vail – we should pursue all possibilities, notes that Palm Bay tried Public Safety Officers years ago and it did not work.

Dezman – so is she hearing that the Council wants to continue to investigate and not pay the MSTU? Borton – she is for the MSTU. Vail – he is not saying we shouldn't pay the MSTU, he just feels we should pursue alternate means. Dezman – but what about police protection right now, given what the voters told us? Vail – it was non-binding. Dezman – she understands that, she is asking Vail if he is proposing more investigating and hold off paying the MSTU? Vail – we may have until July to figure this out. Bohne –

we actually would have to back that up some because we need time to pass the ordinance. Vail – we need to find out our drop dead date.

Dezman – asks Booth what the Commissioners are saying. Booth – all of them know what the vote was and have indicated they expect it to be done now.

Vail – we need to find out the drop-dead date and investigate other possibilities until then.

Moccia – feels that Vail should have told the voters about those other possibilities before now. She feels that now Council is doing what they want to do anyway. She feels this is taking it right out of the voters lap and putting it in Council's lap, and we are here because of the voters.

Booth – notes that if the Council funds anything other than the MSTU we will have to go back to the voters to ask for a special tax to cover the cost of the protection.

Dezman – she heard the voters and they said to pay the MSTU. Would like the deadline date as a discussion item for the next agenda.

Borton – states that Parker said that if the Town wanted to stop the MSTU in the future, that he would work with the Town to develop its own police department.

Moccia – so it is not set in stone?

Bohne – the MSTU exists and the Town would adopt an ordinance basically opting into the MSTU and to get out we just repeal the ordinance. It's that simple.

Mayor – can Booth talk to the Sheriff and see what he is offering and check into the other possibilities. Can it be part of the visioning workshop? Booth – yes, he will have the info by the visioning workshop.

Vail – notes that until the idea of a public safety officer was brought up tonight he never really thought of it or of talking to Palm Bay. Moccia – feels this could have been discussed before, it is not fair for us to go back to this after getting the vote from the people.

Mayor – reminds Council that there was not a third option of 'doing nothing' on the ballot. He does not accept the numbers as the opinion of the people.

REPORTS: MAYOR, COUNCIL

- Borton – is glad to be back on Council. Being at this meeting reminded her how important it is for the town to have a game plan for residential and commercial areas.

- Vail – he feels that the Ol already exists and no matter what tries to go in there will be unhappy neighbors.

- McClelland – notes that the gates into Malabar Park either need to be moved back or widened or both, large vehicles have a hard time making the turn. Dezman – would like this under discussion at the next meeting.

- Moccia – says welcome back and welcome. We are not going to agree on everything but we are all doing it for the right reason. We just have to remember that.

- Moccia – What is going on with Benjamin Road? Booth – this budget year.

- Dezman – welcome to both Council members, if anyone tells you that she's said something, unless she tells you to your face, it is not the truth. The only person who can speak her opinion with any kind of certainty would be either Mr. Booth or Mr. Bohne and even then they might paraphrase. If she has a problem with someone she'll say it to their face.

- Dezman – suggests that Council should let the employees go at 2 pm on Wednesday for the Thanksgiving Holiday, they really don't need to be here until 4:30. Council agrees. Dezman – states that Carl must go home at 2 pm also.

- Dezman – the Christmas party is Dec 9th and that is basketball season. She knows she is working a couple of basketball games that day and hopefully she can make the Christmas party.

- Dezman – why did she get a conflict of interest email? Booth – the Mayor went to a Ethics Seminar and he came back with an opinion regarding conflict of interest. Booth

obtained two conflicting attorney opinions. Bohne – years ago Vail asked Bohne about a possible conflict and at that time Bohne told Vail that he read the intent of the Statute to cover corrupt intent, which Vail did not have, so Bohne saw no problem. This issue popped up again after the Mayor went to the Ethics Seminar. So Bohne called the Ethics Commission and the attorney there thought it might be a problem but they would not write an opinion unless one of the participants would write to them asking for the opinion. Vail – will draft a letter.

- Dezman – is Mike Foley leaving? Dan Welton (from the audience) – prior to Welton coming to the Fire Department Mike Foley, Chief Joe Gianantonio and Bob Rowan spent about 60 hours a week for the past two years working there. Foley thought he was working toward a position with the Town. Now there are rumors that the Town will not be offering the position. Foley is now considering leaving. Dezman – would like this as discussion item for the next meeting, Fire dept and Michael Foley.

- Dezman – new town hall? Booth – has a couple sites and is waiting to hear from the land owners.

- Dezman – was the letter sent to the old special master? Booth – yes.

- Dezman – is she still the designee for the Gentile case? Bohne – yes. Dezman – she explains that she was designated by Council to be the liaison and that Council should not, as individual Council Members, go out and discuss this. So until such time as we take action on this, please be careful who you talk to as an official of the Town. She recommends talking to Booth and Bohne first. We need to have clear communication.

- Mayor – in reference to the conflict issue. The reason he brought this to Booth was because while he was at the conference he asked specific questions and he wants the related parties to know that if there is a conflict they are going to come after those parties. It could happen.

PUBLIC COMMENTS: GENERAL ITEMS

Unknown – would like the church sign to be removed at the corner of Booth and Babcock since the church will not be built.

Mayor – at the next meeting he'd like a discussion political signs.

ADJOURNMENT

MOTION: Dezman/Vail to adjourn. VOTE: All aye.

The meeting adjourned at 10:20p.m.

BY:

Thomas Eschenberg

Mayor Thomas Eschenberg, Chairman

ATTEST:

Susan Kabana

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:

12/04/06