

MALABAR TOWN COUNCIL REGULAR MEETING
December 4, 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 Council Member Nancy Borton.

<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
DEPUTY TOWN CLERK:	CINDI KELLEY

ADDITIONS AND DELETIONS TO AGENDA: Mr. Booth made a request that the Florida Institute of Government presentation take place before the attorney gives his report. Mayor Eschenberg stated that he would like to add a presentation of pictures of the tree lighting next. With no objections from Council, the agenda stands as presented with the two additions.

At this time, pictures were shown of the Christmas tree lighting.

FLORIDA INSTITUTE OF GOVERNMENT CERTIFICATE OF COMPLETION OF 2006 INSTITUTE FOR ELECTED OFFICIALS FOR MAYOR ESCHENBERG

Mr. Booth made a presentation to Mayor Eschenberg with the certificate of completion for the class he had completed.

Mayor Eschenberg stated that this class is a very good one to take if you are new to public office. It is also a good refresher course for anyone who would be interested. The next class is being held in Gainesville. The classes have been set up for a weekend program so that more people are able to attend.

CONSENT AGENDA:

(A) COUNCIL MINUTES 11/20/06

MOTION: McClelland/Borton to approve council minutes from 11/20/06 as presented. VOTE: All Ayes.

REPORTS:

ATTORNEY

Mr. Bohne had nothing to report at this time.

ADMINISTRATOR

- RESIGNATION OF NORM SMITH, BUILDING OFFICIAL

It is with regret that Mr. Booth advised Council that Norm Smith gave two week's notice today. His last day will be Wednesday, December 13, 2006. Marvin Waterman will continue with the inspections. Mr. Booth stated that Palm Bay will be able to assist with reviewing plans when we need them.

- GAG GIFT FOR SPACE COAST LEAGUE DINNER

For the second year in a row, we have drawn Melbourne's name for the gag gift for the Space Coast dinner. They are looking to send the police cars home with their officers; there is talk that they may not have enough cars to do this. We will provide a police motorcycle for them this year.

- LANDSCAPING

Mr. Booth stated, along with Mr. Cameron from the Planning & Zoning Advisory Board, they will become a sort of project manager for the clearing of trees on commercial land. The trees will be identified that can be removed from the site. The two of them will be provided with information and have input regarding the ponds that will be placed on new commercial development. Mr. Booth advised Council that he will be charging for two day's of his time to MIMA for this project. The underbrush will be cleared from the land first so that this committee can see what trees are on the property. They will be saving as many trees as they possibly can.

Mr. Booth advised Council that he will be making a presentation regarding the police protection at the next council meeting. He will be meeting with a few towns/city that have combined police/fire departments. One small issue that has come up in the last week is Melbourne Village is challenging the County on the MSTU. Per the constitutional amendments, the maximum mils to be collected are 10. Melbourne Village is asking if it is legal to charge this tax. Mrs. Moccia asked if the County is charging more than 10 mils. Mr. Booth stated that when adding all the MSTUs, it comes to approximately 16 mils. This doesn't affect Malabar because we have elected out of a portion of these MSTUs. This is an issue we will look at; an answer should be reached by July.

Mr. Booth advised Palm Bay has increased the water rates. They will be giving some services back to Malabar. We are now required to do a lot more with the utility per DEP. We don't have the staff for this; we have been doing a residual test twice a week. Palm Bay will step in and assist with this and the paperwork that comes along with the requirements now placed on us.

At this time, Mayor Eschenberg asked, with Norm Smith leaving, wouldn't it be beneficial to have one person from Palm Bay overseeing the new developments. Mr. Booth advised Council that Marvin Waterman has been and will continue to be the inspector for the projects. Mr. Smith was the one who reviewed the plans for the new projects coming into Malabar. Mrs. Moccia asked if Mr. Waterman is qualified to do these inspections. Mr. Booth stated that he has been doing this type of work for sixty years. There were concerns at the last council meeting about water flow. Mr. Stephenson will be responsible for taking care of this issue.

PARK BOARD CHAIR

Hans Kemmler was not available to report to Council at this time.

FIRE CHIEF

Chief Gianantonio stated that the fire department enjoyed the tree lighting and reminded Council of the Christmas party this Saturday, December 9th, at 6:00 pm at the fire house. He gave a brief overview of the responses that they have been called out to. Fire Fighter I class is now ended and they have several more people, once they pass their test, that will be even more beneficial to the department and the Town.

At this time, Mayor Eschenberg mentioned that at an earlier meeting, the Corporation and their contract was discussed. At that time, there was an agreement between Council and the fire department that meetings would be held between the fire personnel and the corporation personnel to get things ironed out and report back to Council at the first meeting in December. He is asking Chief Gianantonio what the status of this task is. Chief Gianantonio stated that the Corporation is going through some changes; they are trying to have a special meeting to elect a new president. This has not been taken care of yet. They have been working on it. Mr. Booth and Mr. Vail were asked to be a part of these meetings. Mayor Eschenberg asked if this could be resolved and a report given to Council at the January 22nd meeting. Chief Gianantonio stated that this should be enough time to get things taken care of. This item is to be on the January 22nd agenda as a discussion item.

CLERK

Ms. Kelley thanked everyone for coming out the Christmas tree lighting on Saturday, December 2nd. We had a great turn-out; approximately 100 people or more. We had a new band ensemble playing, Fred Levy, a resident, has a group that he has established.

The league dinner is Monday, December 11th at Patrick Air Force Base NCO Club; anyone interested needs to call the Clerk's office by Wednesday, December 6th, for reservations.

DISCUSSION:**1. INVOICES FROM ATTORNEY (MOCCIA)**

Mrs. Moccia just wanted to go over the invoices for the attorney with the new Council members. In the past, the attorney was called if someone didn't understand an issue in the package they received. Phone calls should be limited. If you have questions, please write them down and ask Mr. Bohne while at the meetings. We should try to keep the costs down. Mayor Eschenberg stated a call to Town Hall to Mr. Booth, Mrs. Kabana or Ms. Kelley should take care of most of the questions; please call them before calling the attorney.

2. DROP-DEAD DATE FOR THE MSTU

Mr. Booth advised Council that the drop dead date is July 1, 2007. We need to have to make a decision and we should do this a little before this date. Mrs. Dezman asked if the funds have to be in the County's hands by this date. Mr. Booth advised Council the funds need to be there by July 1, 2007. A presentation will be made and this should be hashed out at the January 11th meeting. It would be an additional tax and we cannot go over 10 mils. An increase in the way ad valorem taxes are done must go out to the public.

3. POLITICAL SIGNS

This was brought to Council by Mayor Eschenberg. During the election season, the signs were placed in the right of way. This is something that has been done for years and has not been enforced. When the local laws and ordinances are not enforced, people tend to loose respect for these laws and ordinances. If it is not working, then it should be fixed. He feels the signs should be placed 3 feet from the edge of the road; 21 days prior to the election and removed within five days after the election. Public Works was instructed not to pick them up until the fifth day after the election; they are held there and recycled for other purposes. Anyone wanting their signs back that we have collected must pay \$5 per sign. No one has ever come back for their signs; therefore we have not collected any fees for this. Mayor Eschenberg, if this seems reasonable, is asking for Council for consensus to move forward with this.

MOTION: Borton/Vail to approve this being placed in ordinance form.

Mrs. Dezman stated she would like an opinion from the attorney. Mr. Bohne stated that he would need to look at this; there are State laws that protect political signs. Since the Town has so many dirt roads, his question is "what does road mean". Mayor Eschenberg stated a better definition may be needed. Mrs. Dezman asked how this will be enforced. The vote was called for. **VOTE: All Ayes.**

4. GATES LEADING INTO MALABAR PARK

Before putting the gate in at the park in 2002, the fire department was consulted with the size of the largest truck to make sure that they would have access to the park if needed. This gate is also on EELs property and we had to have their permission before the gate could be placed; Mrs. Moccia is not sure permission would be granted to move or widen the gate at this time.

Discussion continued between the Council members regarding the moving/widening the gate. Mrs. Dezman wanted to be on record that a sign would not deter trucks. Mrs. Borton feels we have enough signs at the park and doesn't think we need any more signs at this time. Both Mr. Vail and Mr. McClelland expressed their concerns with people being able to clear the gates when entering the park with large vehicles. The most cost effective way for this would be to widen the space, from curb to curb, if this is what Council would like to do. Mayor Eschenberg stated that if it is the general

consensus of Council, we can set this in motion this evening, if not, it would have to be placed on the next agenda. Mrs. Moccia feels that before we do anything, we need to contact the EELs program and let them know of our intentions. This will be placed on the January 11th agenda as an action item.

5. FIRE DEPARTMENT AND MICHAEL FOLEY

This item was requested to be put on the agenda by Mrs. Dezman. A letter from Mr. Welton expressing concerns he has about Mike Foley leaving the fire department was placed in each Council member's mail slot along with a copy to the Mayor, per his request. Mr. Welton called Mrs. Dezman to request that this item be removed from the agenda. She did not agree to this because she has not heard from Mike Foley. It would appear that a meeting took place at the fire department regarding this matter last week. This was brought to Council and she feels that it should be addressed. Mr. Booth stated that he has had a meeting as well. This letter has come from people at the fire department. Chief Foley has put in a lot of hours; he is paid to open/close the park gates and is on the payroll in some other areas. Mr. Booth stated that he needs to look at the financials; until he reviews them, he cannot make a recommendation at this time. This is a bottom's up; not a tops down thing. We do not have funds in the budget for this. We have two positions, part-time, in the budget that is for a little over \$7,000. These are salaried positions and are for fire fighters. Chief Foley is on medical disability and takes care of the administrative functions. He is also looking to get certified in being the inspector. He needs to take the State test before he can do this. There are a lot of issues that need to be looked at. If we had made the recommendation to Council, we would have provided all the information to you.

Sheryl Welton-licensed clinical social worker, volunteer work at the fire department on a professional level with EAP-came forward and addressed Council. She was asked to witness this meeting that is being talked about tonight and complete an assessment. The discussion in question has been going on for a while. Chief Gianantonio is willing and trying to look at the budget to see if there is availability for Mike Foley in one of those positions. In her assessment, she thought that this was fair and they have come up with some action items, which the Chief has a list of. One of the things that she would like to mention is during the course of the discussion it came to her attention that Mike does fire inspector duties; they may be the lesser duties but he carries them out. It was also her understanding that once he did become certified as fire inspector, he would have a position. There is someone in that position now. Her concern as a consultant to the fire department is there are tasks that over-lay to fire department duties that are taking his time as well. Her recommendation is that this piece of it be considered specifically until he does get certified as a fire inspection and can do this as a complete position.

Mayor Eschenberg asked Mr. Booth if he thought this would resolved by the 22nd of January when the Fire Department/Corporation would be coming to Council with their report. Mr. Booth stated that this should be a discussion item on this agenda. We will discuss the direction to be taken with regard to paid and non-paid fire personnel.

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

Mr. Ryan came forward and addressed Council. He missed the opportunity to thank Steve Rivet for his time on Council. He congratulated Chuck McClelland. He gave a brief overview of the election results and the turn-out of voters. The main issue is growth. He received several calls about the project across the street from Town Hall. It was explained that the contractor has followed the letter of the law for this project to be approved. His advise and strong urging to Council is to simply have the Town Administrator pass any mitigation on any project through Council first. It takes the heat off him and Council then knows what is going on.

Mr. Ryan expressed a need to have a candidate's forum. A number of people knew nothing about what the candidates stood for. The Mailboat is a great publication, but it is a one way publication. There is an informal web site out there that has been around for a while where people can discuss and get feedback from it. Mr. Ryan also expressed that there is concern with two seats that ran unopposed.

There is no vote for the unopposed candidates; if unopposed, they are automatically in the seat they qualified for. All of the candidates, including the unopposed people, should come to a forum. For the unopposed candidates, there should be a non-binding approval so the voters have an opportunity to share how they feel about the candidates. Mr. Ryan is happy to be back on the Planning & Zoning Advisory Committee. He is desperately concerned about Malabar Road and is against change in zoning along this road until the road is widened or safer.

ACTION ITEMS:**1. EAGLE CORP REQUEST TO SPONSOR BOY SCOUT PACK AND TROOP**

Mayor Eschenberg spoke on this issue. The corporation sponsors the Boy Scouts; it would seem that that Mr. Hinkleman is trying to consolidate and have everyone under one sponsorship. There seems to be some confusion for the sponsorship. Mayor Eschenberg stated, after having a conversation with Liz Ritter, that he got the impression that this did not need to be done. It is the Mayor's suggestion that this item be postponed to the January 11th Council meeting. We will ask that Mr. Hinkleman and Mrs. Conklin, Eagle Corp be here to explain this request to Council. Mr. Bohne stated that he did not see any problem with the Town allowing this request if this is what Council wishes to do.

MOTION: Dezman/Moccia to postpone this item until the 1/11/07 meeting. Vote: All Ayes

REPORTS: MAYOR, COUNCIL

Borton-had a conversation with Strawberry (owner of Berri Patch); Mr. Booth has taken care of the situation. There was a message on her husband's machine from Mr. Gentile. She did not return any phone calls; she listened to the message and called Mr. Bohne with regards to this.

Vail-stated that the tree lighting was good, everyone had a good time. The accident on Malabar Road this evening made three members of Council late this evening; he is in agreement that something needs to be done. We need to get the speed limit changed. On the police department issue, Mr. Vail went to Gainesville for the holiday. The City of Newberry is having the same problems. They are considering a multi-use department; police/fire combined. He has asked that someone with a computer go on their web site to see if there is any information regarding this matter.

McClelland-he received a phone call from Mrs. Barr. She was getting information whether the Council is considering the executive session. He informed her that the executive session is not happening at this time. She asked that he meet with the King's. Mr. McClelland advised her that a meeting would not be able to take place.

Moccia-stated that Oakridge Lane is looking great; people are smiling. She asked what is happening with the Special Master. Mr. Booth stated we are doing well with compliance. We have not had to go to him for assistance as of yet. She received a call from Tim Zilinski, off of Waring, stated that there is some backhoe work or digging happening on our easement. Mr. Booth acknowledged this. Her concern is that Mr. Zilinski stated the work was not stopped; you were going to send a letter. Mr. Booth advised Council that a stop work order was issued; he took several pictures.. She advised Council that the work continued all afternoon. He will send Rose back out; the problem is that when they were there, no one spoke English. Mrs. Moccia asked where this property is. Mr. Booth stated it's the big tree farm. They have no permits to do anything. They are not building the pond on our easement but it is right next it; you can't have a pond next to the road. They will have to fill it in.

Dezman-already talked to Mr. Booth – activity moved from the park to the trailhead at the north end. Mr. Booth has notified the Sheriff's Department. She has received several complaints about several employees with the way town's people are treated when obtaining information. A stop work order for a home in being built in Country Cove has been placed by the HOA; there is a lien on the property. People are very clear on the police department issue; they feel that this is too expensive. They were also very clear; they are dead set against commercial activity outside their neighborhood. She is speaking of Mr. Gentile. There has been vandalism in the common areas of Country Cove. She made Council aware that she came out to find her home being surveyed/watched. When she was spotted,

the person took off in the car. She followed the car out of the community and watched as it turned onto a property at the north end of Corey Road.

Mayor-asked Mr. Bohne about the Country Cove HOA is not allowing the building of a home. Is there some sort of separation? Mr. Bohne advised that the Town cannot intervene if there are violations of the internal deed restrictions. We can only step in if they are in violation of our codes. Mr. Booth advised Council that the contractor did not clear the land properly nor did they follow anything that was agreed upon; the building permit will not be released until things are taken care of.

Mayor Eschenberg stated that he has been monitoring the web site that Mr. Ryan mentioned for some time now. All of the people on the web site, with the exception of Mr. Gentile, use fictitious names. If a Council member wishes to use a fictitious name, could they go on this site and make responses? Mr. Bohne stated that this could be a violation of Sunshine because you don't know who you are talking to. It would be best for Council to stay away from this site. Mr. Ryan had asked earlier in the meeting to have this web site place in the Mailboat; Council is opposed to providing this site's address in the Town's quarterly publication.

PUBLIC COMMENTS: GENERAL ITEMS: None

ADJOURNMENT

There being no further discussion, **MOTION: Dezman/Vail to adjourn meeting; VOTE: All Ayes.** This meeting adjourned at 8:50 pm.

BY Thomas Eschenberg
Mayor Thomas Eschenberg, Chairman

ATTESTED:

Cindi Kelley
Cindi Kelley, Deputy Town Clerk

01/11/07
Date