

**MALABAR TOWN COUNCIL REGULAR MEETING
FEBRUARY 7, 2005 8:00 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. The meeting was called to order at 8:10 pm by the Chair, Bobbi Moccia. The prayer and pledge were led by Bobbi Moccia.

<u>ROLL CALL:</u>	MAYOR/VICE-CHAIR	TOM ESCHENBERG
	CHAIR:	BOBBI MOCCIA
	COUNCIL MEMBERS:	FRANK HICKSON
		BRIAN VAIL
		STEVE RIVET
		BOB ROSSMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	CLERK/REC. SECRETARY:	CINDI KELLEY

ADDITIONS AND DELETIONS TO AGENDA: None
MOTION: Rossman /Rivet to approve. **VOTE:** All AYES

CONSENT AGENDA:
(A) COUNCIL MEETINGS 12/6/04, 01/03/05
MOTION: Rivet/Vail to approve. **VOTE:** All AYES.

REPORTS:
ATTORNEY:

Karl Bohne came forward and made his presentation. The topic of discussion was:

- AGRICULTURAL STATUS OF GENTILE PROPERTY

On the 18th of January, I sent a letter to Ed Booth, Town Administrator, summarizing in detail why he believes that the Town of Malabar would be very hard-pressed to do any kind of enforcement action or regulatory action against Mr. Gentile as long as he is operating a business that has bone fide farm activity. Mr. Bohne still stands by that opinion that the Town, whether it be through zoning, a Comp Plan or whatever; cannot prohibit any citizen from performing a bone fide farm activity on their property. That brings up the question of the non-farm related activities on the property. We can probably regulate these activities. The question becomes whether or not a "non-farm" related activity is a ancillary area of a farm related activity. The Attorney General, in some of the opinions that he has found, has left that wide open for future determination. His suggestion is to not go to court at this time, but is asking for Council's authorization to write a request to the Attorney General, get their opinion on the matter to see what type of regulatory actions we are allowed to take. This will be a guide of where we need to go from here.

Moccia-I think that this is perfectly acceptable. Is everyone in the same frame of mind as we are?

Vail-do we have a criteria of farm related activity?

Bohne-no we do not at this time. One of the things that has arisen is the difference between the agricultural tax exemption and its relationship to zoning laws. In the cases that determined what is an agricultural activity for purpose of the exemption, the Supreme Court clearly stated that the raising and breeding of horses is a bone fide farm activity. There is nothing to dispute about that. Issues like offering of trail rides, is that an ancillary to the area of raising horses or does it go beyond that and become a non-farm related activity. That's a question of fact for the court or some other regulatory agency to decide. My thought is to get an opinion from the Attorney General. I am going to stand by my opinion that we can enforce those zoning laws i.e. the conditional use permit process to deny Mr. Gentile the farm activity. If we did, he would not qualify under our code because he does not have the required road frontage for a horse stable in the Town. If we enforce that against him, he could not perform that activity. This is where he wants to go with this, so if the Town Council is in consensus, then this is the way we will approach this issue.

Moccia-poses the question to Council. Council is in agreement and advises Mr. Bohne that his is what they would like for him to do.

Rivet-you gave us an opinion that we cannot regulate bone fide farm activities. He suggests that we stay on our course until such a time that we hear back from the Attorney General.

Moccia-we are all in agreement with this.

ADMINISTRATOR:

Ed Booth came forward and made his presentation. The topics of discussions were:

- PAVING OF DRIVEWAY WHEN IT MEETS A PAVED ROAD

At the last meeting, there was here a citizen from Palm Bay in attendance. He made the suggestion that we pave our driveways onto our paved roads. Mr. Booth advised the Council that this had been done last year and it was made into an ordinance.

- AUDITOR'S COMMENTS REGARDING CURRENT AUDIT

Mr. Booth advised Council that the auditors have brought up a couple of issues while doing the audit. They are as follows:

While attending a League of Cities conference last August, Mr. Booth forgot to pay for a couple of movies that was put on the Town credit card, as this was used to book his room. He has since paid for these movies. Mr. Booth made his apologies to Council for this error.

With direction from Council, I had the Berri Patch pay the utility impact fee to the City of Palm Bay directly. Our contract requires the Town to make this payment as they do not take any payments from citizens. I have directed Susan Kabana to pay this fee. The auditors saw a note made that the Council had approved that we have the Berri Patch pay this directly and made a comment regarding this matter. The City of Palm Bay was holding us in arrears until this payment was made. Mr. Booth stated that until impact fees are reimbursed, permits for phase two development will not be issued.

With regards to the Fire Department, there has been a policy change in ordering supplies. This policy change also affects the Public Works Department. With auditing the inventory for the Fire Department, we have equipment on the list that no longer exists or is missing. At the next Council meeting, you will be getting a listing of the number of radios that we are going to drop from our inventory that have been lost over the years. The auditors want more accountability. All of the Fire Fighters and Public Works staff will have to sign for any

equipment that they use or keep with them. If the equipment gets damaged, we will replace it. If the equipment gets lost, the person responsible for that piece will buy a new one, what ever it may be. With this new policy in place, we will now have better control over the inventory that is bought for the Town of Malabar Public Works Department and the Malabar Volunteer Fire Department. Property accountability will become a large issue. Nothing will be ordered without Mr. Booth's review and approval, there will be a reasonable explanation for any replacement of equipment.

Rossman-we do have, in place, an inventory with numbers of equipment and town numbers of everything we own. If something disappears, we will know who had it last and what it was.

Booth-this will be very much like the military system. We will have individual files on each employee with the equipment that they have and are issued. If you are assigned it and you lose it, you replace it. If it tears or breaks, then it will be replaced.

- UPDATE ON EELS

The County Commission has agreed that they will not purchase any more large parcels of land in the Town of Malabar. If any small parcel is being looked at, they will come to Council with an explanation of why they want to make a purchase. A real win has taken place on this issue.

- UPDATE ON FEMA

Booth-We have approximately \$500,000 coming in, which we have applied for with FEMA.

Rivet-when you say that the money is coming from FEMA, this is what we have applied for?

Booth-yes, the worksheets have been put in through our Project Officer. Ed gave the Council a reading telling what some other Municipalities are going through. The Mayor has spoken to Congressman Weldon's office; he will help with trying to the funds from FEMA. FEMA doesn't have the money in the bank, they have to wait for Congress to appropriate and put the funds in the bank.

- UPDATE ON ROADS

Hall Road is finished. Atz Road has been started. Mr. Booth stated that some work still needs to be done over at Country Cove and he will bring back the workers when we fix Rocky Point Road. Rocky Point Road needs to be paved from the repairs.

Rivet-what is the schedule for completing Atz Road?

Booth-we are looking to have it completely finished by this coming October. In general, we have been using overlay on the roads. Within the next year or two, we are going to change it to half paving and have coquina. With our dirt roads, they tend to breakdown and need to be rebuilt. We need to renourish those dirt roads. We will be in a renourishment mode and for topping those roads. Benjamin Road is starting to show wear and tear. There are some problems with people building on the County side in our right-of-ways. We are looking into a legal remedy, possibly establishing some impact fees. The County gets impact fees and our road is the right of way. We should be receiving some funding from the developers or from the County to help. There is a lot of development starting to happen on the County side of Benjamin Road and Osage Road.

Moccia-can we do a little checking on that, maybe write a letter to the County Commissioner?

Rivet-have we spoken to Helen Volz regarding this matter?

Booth-I have to look at the legal aspect before I contact her.

Rivet-please remind her of her friends in Malabar.

- UPDATE ON FIRE DEPARTMENT GRANT

We have the grant for the tanker. David Exberger wrote the grant for the Malabar Volunteer Fire Department. He has written the grants for the past two years.

Moccia-persistence has paid off in this matter.

- SHERIFF'S DEPARTMENT UPDATE

Mr. Booth advised the Council that the County Sheriff's Department would like to come back to the Town as a sub-station.

Rivet-we love them, come on back.

Booth-they will use the Eagle Corp office until such time that we can move the travel trailer behind Town Hall. They like the travel trailer and think this would be a nice place to set up.

Moccia-they don't want the little office?

Booth-we have to use the travel trailer for at least a year. This will make a good sub-station, as it is equipped with a refrigerator and other amenities. This will provide the Town close Sheriff support, whether we pay for it or not.

- BREVARD COUNTY CITY/COUNTY/STATE/SCHOOL BOARD SUMMIT

The summit was here about 2 years ago. The importance is placed on by the County and the School Board. I am really promoting it for the Council, so if you can go, please do. The date is set for March. All of the cities will be there; locally their attorney will be there as well. The County is willing to look at the problems this time then they were at the last summit.

Moccia-do you have the exact date?

Booth-March 4, 2005, which is a Friday, from 9:00 to 12:30.

- SECOND MEETING IN FEBRUARY

We need to set a new date for the next meeting. The next meeting date is Presidents' Day, which is a holiday.

Moccia-what do we need to do?

Rivet-is there any reason that we can't have a regular meeting on Presidents' Day?

Moccia-the office is closed.

Rossman-the next Monday would be the 28th of the month.

Booth-there really is no reason that we couldn't have the meeting on the 21st

Kabana-it's a holiday. There are other people who would attend but may have plans to be away.

Moccia-let's push it back to the 28th of February.

Rivet-is there any other night we could have the meeting?

Moccia-would Mr. Bohne be able to attend the meeting set for a different night?

Bohne-it really needs to be a Monday, as his schedule would not allow a different meeting day.

Rossman-is there anything pressing that we need to reschedule it?

Moccia-Mr. Rossman brought up a very good point. If there is nothing pressing on the agenda that must be addressed with a rescheduled meeting, then maybe we can wait until the first meeting in March, which would be March 7, 2005.

Rossman-let's make a tentative date for the 28th of February.

Mayor-the week after the 28th is the first Monday of the month, so you will have meetings back to back.

Moccia-we have a tentative date of February 28, 2005. Please call and let me know if there is anything pressing on the agenda, otherwise we will wait until the March 7th meeting.

- FREE MULCH FRIDAY

Mr. Booth advised the Council that we have free mulch. This has been a big hit. We will deliver to your home, at \$15/load. This is a fee for the running of the dump truck and other equipment used to move this mulch. We have 22,000 cubic yards is going very fast. If you would like mulch, then you will want to make the necessary arrangements. There was a concern that if we kept it there too long it would start to smell, but it won't be there that long.

- CODE ENFORCEMENT

Mr. Booth advised the Council what is happening with Code Enforcement. The two-story home on Malabar Road has been sold. The developer was told that before we would talk to him about a plat, the old house has to be demolished.

Moccia-I saw some people out there walking through the building, which looked to be dangerous.

The mobile home on Malabar Road has a contract on it to be demolished. The contractor is currently in Barefoot Bay at this time, but we have asked that this be taken care of as soon as possible.

The pepper trees on US #1 have been removed. The Highway Department is the one who removed the trees. What I found on the other side led me to believe why there was such a disturbance over the pepper trees. It was a bunch of debris and the water had been diverted. The Highway Department had a problem with this. Sometimes there are other reasons why things get accomplished.

Moccia-while on the subject of Code Enforcement, she has been receiving telephone calls from resident regarding goats.

Booth-gave an overview to Council. We will write a letter to the home owner telling them to get the number of goats down to the correct number. The homeowner told Mr. Booth that he had taken in more goats due to the hurricanes because they had no where else to go. Mr. Booth advised him that the time had come to reduce the number of goats on his property. We will give him two weeks and then we will go from there. Mr. Booth has been working with the neighbor making the complaints.

Moccia-he has four goats there at the house. He lets two of them out at a time, but I saw the four of them. Did you tell him that you have pictures of the goats?

Booth-he does know that we have photos. He is allowed to have two goats total for the size of this property. He had been given time to get the goats down to the correct number, but it is now time to get this taken care of. This is more of a neighborhood problem more than it is a Code Enforcement issue. This is why you never give a flag lot, allowing someone to use your property as a right of way to their property, causing the situation to develop into a neighborhood fight. He has received as many phone calls from the gentleman with the goats complaining about his neighbor.

Moccia-needs some kind of time frame to tell the resident.

Booth-we will give him two weeks to get this taken care of. In a lot of places, Code Enforcement goes in immediately to get situations taken care of, but it has always been our policy to work with our residents to try to resolve these matters.

Rivet-are you also going to work with the resident who has the code violations that the neighbor with the goats is complaining about?

Booth-yes, it goes both ways. Everyone is treated the same, they are given a time frame to get their violations taken care of.

- Fire Department Maintenance.

Constant updates for the progress of the Fire Department will be provided to Council. First, we are taking out the oil, which has already been pumped. We are also removing the dirt that is out there. Mr. Booth gave a short presentation of where the new storage building will be located on the site. We are taking out the shower stalls, they are too small. The new stalls will be custom made. We are fixing the bathrooms. They will be done and we move on from there. We are looking to be complete with this project by mid March.

- Debris Pick-up

Every Monday, we will be telling them where the piles of debris are located. They will pick these piles up. What happened in the past, according to them, is that they send their truck out for a day and the driver drives around town looking for the piles. They have agreed to take our lists of piles and have the driver pick up at these sites.

Moccia-isn't this more work for us? Shouldn't they be doing this anyway.

Booth-they say that they are doing their job.

Moccia-does not agree with this.

Rivet-if we give them a list and they pick the debris up, then it's taken care of.

Moccia-you will have to provide this list and they will use this as an excuse if they don't pick-up.

Booth-Carl Beatty is out and about all week long, he will be the one to compile the lists for Waste Management.

Vail-one of his constituents has spoken to him about have a central collection point somewhere for those who would like to bring their white goods to be picked up, possibly Public Works yard? This probably wouldn't be necessary if we truly have the weekly pickup, but some of the debris has been sitting there for months.

Rivet-has thrown away a couple of appliances. If you call Waste Management, they will pick it up within seven days.

Moccia-when are they up for review on their contract?

Booth-will research this information and bring it back to Council.

Withers-(from audience) would this be something that the Eagle Corp could look for?

Booth-Mr. Beatty is out and knows where these piles are; this is why he is the one making the lists.

Moccia-that takes him away from more important issues that needs to be addressed. Doesn't feel he should be "looking" for garbage. This is not our job, but gave the go ahead to Mr. Booth.

- Stop Sign at Weber and Atz Roads

Mr. Booth has gotten a lot of feedback regarding this matter, both positive and negative. One of the Town's employees was involved in an accident and we lost the truck.

Vail-all for placing a stop sign at this intersection.

Moccia-we had a fatal accident there within the last two weeks.

Booth-I am still getting the pros that want a stop sign. Will direct Mr. Beatty to place rumble strips throughout this area? Both of the people involved in the accidents that happened recently were not familiar with our roads.

Rivet-I have had complaints that the rumble strips cause a lot of noise.

Vail-has also had complaints regarding this issue.

Rossman-the noise lets people know that the stop sign is coming. He believes it is effective.

Moccia-we are thinking of placing a stop sign now? The person on the corner, who has spoken to Mrs. Moccia, stated that there have been many near-misses while he is out working in his yard.

Vail-all for a stop sign at the corner of Weber and Atz Roads.

Booth-we will put together a Resolution and bring it back to Council.

Mayor-another thing to consider is why just this intersection. If this intersection needs a four-way stop, why don't all the major intersections need one? Why just signal this intersection out? The problem is, there are two kinds of people who run stop signs. The first is the ones who will run it no matter what you do and the second are the ones who were not paying attention. That's basically the two types. You have to address the problems. You have to get them to pay attention. You have to make them aware that the stop sign is there.

Moccia-referring to the speeding on Weber Road.

Vail-has noticed a lot more traffic on Weber Road, more so than Corey Road.

Mayor-travels Weber Road every day going and coming from work, driving the speed limit on the road. He rarely gets passed.

Vail-he has also had requests for stop signs at Hall and Corey Roads. That was originally discussed a year or so when Council was discussing four-way stop signs.

Moccia-this was only if they were needed.

Vail-if they were needed. We were going to try the one at Weber and Corey on Atz to see how it worked, but the Weber Road never came about.

Moccia-we only decided to do one and see how it worked out. We can speak to the gentleman who lives right there and see. He said that everyone slows down, they may roll through, but they at least slow down.

Mayor-you have to understand that the accident at Weber was that someone ran a stop sign, they were not speeding.

Booth-we will bring it to Council, in the form of a Resolution, and you can vote on this issue.

- Fire Department

Mr. Booth made the Council aware of an action that he took regarding Shawn Sweeney. Mr. Booth brought him back only as an administrative officer. We need someone in the office taking care of the records that aren't being kept on a daily basis. He will be responsible for the inventory accountability. He no longer has any supervisory capacities.

Rossman-would have a problem with Mr. Sweeney coming back to the Fire Department.

Directed a question to Mr. Bohne regarding liability if he comes back.

Bohne-if we have knowledge of a situation and retain or re-hire, there could be liability for the negligent retention or the negligent hiring.

Rossman-this is what he thought. In speaking to Mr. Booth, this is his concern.

Moccia-as is her concern as well.

Booth-will re-think this action. The deal would be that he is not in a supervisory position.

Rossman-it would expose the Town to a liability that he doesn't think that we should do. Does feel that there is a need for someone in that position. Did read the TD Group report and we need to do whatever it takes to strengthen the Fire Department. Bringing this person back is not something that he is for.

Vail-were the charges against him dropped completely? Did it just go away? Were the allegations ever merited?

Booth-please keep in mind that the charges were from the Sheriff's Department. The allegations, which is a different matter, were on the administrative side to the Town. The Town was not sued, let's put it that way.

Rossman-it's still there and the fact that it's there exposes us to liability. The exposure being there is something that we just can't have.

Rivet-I think the remedy that was agreed on was a one year suspension and then we bring him back. It seems to be the issue is to make an exception here.

Booth-we are getting close to the one year mark.

Rossman-to Mr. Bohne, in my past experience, we are exposed to liability.

Bohne-I think the exposure will be there one way or another. If nothing occurs, then nothing comes of it. But the previous knowledge is there, therefore, the liability is there.

Moccia-this would not be good policy.

Rossman-I think we have a responsibility to the Town and I would oppose it.

Moccia-asked each Council Member their opinion regarding this matter. They stated:

Vail-I would like more information before making a decision.

Mayor-would agree with Mr. Rossman.

Hickson-would agree with Mr. Rossman.

Rivet-I have difficulty with eliminating a person from a department were he has done a good job, without pay, on a volunteer basis.

Moccia-would agree with Mr. Rossman.

Rossman-I agree with Mr. Rivet as it being a death penalty, and it's a shame, but I don't see any truth. I would like to do whatever we could, but I feel that we have larger responsibility to the Town. As Mr. Bohne stated, twenty years and nothing has happened then we're ahead of the game, but if within three years something happens, we're stuck. I'm not saying that anything would happen, but it's a risk.

Rivet-there are risks with both course of actions and it is our decision to decide which makes more sense for the Town.

Rossman-would agree with Mr. Rivet.

Three of the five Council Members agree that it would not be in the best interest to have Mr. Sweeney return to the Fire Department. The decision was made that he would not be able to return in any capacity.

- Park & Boy Scouts

Mr. Booth advised the Council that we have a policy of no burning fires in the park. There has always been exception to this policy. We have been trying to lead them to the Cameron Preserve, which will be the ultimate place for them. I will be writing a FRDAP Grant to place a nice Boy Scout/Girl Scout facility. We have been asking them to go to the Trailhead because it has a large facility. We now have a small generator to provide power. They would be able to have the fires for the functions and this area has a larger pavilion. A compromise was made just last weekend. The fire was permitted as long as it was above the ground.

Hickson-is it a written policy that they can't have fires out at the Park?

Booth-if it isn't written policy, then it should be and will be.

Withers-the statement about no fires at the park is written on the permit.

Vail-spoke with Liz Ritter regarding this matter. It is his understanding that they want to move to the Trailhead. The only time that they need a fire in the park is for the small kids. I made a suggestion, and he knows that Mr. Withers doesn't agree with him, to have a portable above ground pit. We would discourage it at the park, but in the event that they absolutely have to have a fire, he is willing to donate an old fuel drum, cut in half, with three legs. Whoever uses the pit is responsible for the clean-up of the pit and the dumping of the ashes. It is his understanding that the Scouts would like to move everything over to the Trailhead.

Booth-with this permit, no one advised us of the fire.

Moccia-they do so many different things with the Scouts that it's possible that they just forgot to make mention of this fire need.

Rossman-in the future, and we have discussed it and he has spoken to Mr. Booth about this issue, is to set aside a portion of the Trailhead so that they can, safely, do the fires that comes with the Scouts.

Rivet-thinks that if they are going to have an over-night campout, then they will be having a fire.

Rossman-but if we set a designated place, we can clear enough area that we don't have to worry about them having a fire during their time in the park.

Hickson-a concern that was expressed to him was that they wanted to be near the restroom facilities that are out there, plus it is within view of the Fire Department.

Vail-hopefully, with what I am going to donate, this will not be a problem. Mrs. Ritter advised Mr. Vail that they really want to move to the Trailhead with most of their fire ceremonies, the smaller boys don't really have a need for fires.

Moccia-it's going to take a little time for them to get out there.

Rossman-fire is a real problem, especially after the hurricanes. We have a lot of trees that will burn very fast and will be a huge fire fuel.

Withers-(from the audience) when someone needs to build a fire, they are told to go to the Fire Department and have the Chief issue a burn permit.

Hickson-instructed the citizen to call the Fire Department before conducting the burn.

Rossman-anytime there is a burn, the Fire Department should be contacted for a burn permit.

Rivet-if we are talking about any fire, does that mean that I should call the Fire Department if I am having a hot dog roast in our back yard?

Rossman-if you are going to burn stuff, you should call the Fire Department.

Moccia-someone will more than likely call the Fire Department if they see something burning.

Rossman-if I am going to have an open burn, not with a grill, then I would definitely call the Fire Department.

CLERK:

Cindi Kelley advised the Council that the next Space Coast League dinner is Monday, February 14, 2005. We need to hear from those going by February 9, 2005 to make reservations.

DISCUSSION ITEM:

1. FIRE DEPARTMENT STUDY BY TD GROUP

This information was given to Council as a draft before the TD Group makes its final presentation. Mr. Booth asked if there is anything in this report that Council would like addressed before the TD Group comes before Council?

Moccia-has asked Mr. Rossman for his comments.

Rossman-he does have some questions but overall, it's a pretty fair assessment. It could be taken as an attack on the Fire Department. This was a look at the Fire Department with the intent to make it better and to improve its functions. On page 16, they compare us to cities of the same size with costs and it's pretty comparable. On page 21, there is a suggestion that a Fire Department Planning Committee, which should consist of five members. Of this whole report, page 21 is the page that Council needs to look at. We can go through the rest of this report, but page 21 is what we need to look at. This page suggests that we establish the Planning Committee, review the past performances of the Fire Department and evaluate the present performance objectively. He feels that this report is saying just that and

feels that we haven't been doing the evaluating of the Fire Department. As a result of rapid growth and lack of attention, because there hasn't been a need for it. We have overlooked the Fire Department, we haven't supported them in a manner that we should have. What really brought it to my attention was the talk of the annexation of Valkaria and looking at fire services that would need to be provided. His direction to the Council is to establish the Planning Committee. We need to have someone professional to come in and do the planning for the Fire Department. Vail-thinks that we have a good staff at the Fire Department to do it.

Rossman-we have the resources. One of the people that live in Town is Mr. Fossett, who is a retired Assistant Fire Chief. He's one of the original men who formed this and he lives on Malabar Road. Not sure that he would be available, as he has health issues. We should try to include the current Fire Department, you can't exclude them. This Committee needs to come back to Council and make their report.

Vail-the time frame that this report was done was from what time frame?

Rossman-between six and seven months.

Vail-as far as the interviews with the Fire Department personnel, which he had been told that there were not that many, were with the Fire Department and staff.

Rossman-doesn't know who was interviewed, but they don't need to interview all the personnel. They need to interview enough people to get an overview. It is our responsibility to the Town and to the Fire Department to make sure that we don't have this kind of problem come up again.

Vail-his only problem with the report is the total cost of the report and the long term outlook on page 52 discusses Fire Station #7, fully built out. We will never have seven fire stations; we might have a maximum of two. So how relevant is this to our Department?

Rossman-when you are looking at the long term outlook, there may be seven fire stations, we don't know fifty years from now, just like we don't know about the water system. We have no idea of what the growth will be and this is what they are saying. We may never have water all through the Town and we may never have two fire stations. Page 52 is just a projection for the next fifty years.

Vail-the research done behind seven stations to be put in this report just doesn't seem applicable at this time.

Moccia-this is a projection and thinks what they are trying to do is incorporate what we have and we are growing.

Rossman-if you look all through the report, it is stamped draft. It is to give Council an option of what to do.

Moccia-it looks like we need more time to review this.

Rossman-two thirds of this report is projection.

Moccia-addressed the audience. If they questions you have are short, because of time constraints, then please ask them.

Futch-(from the audience) John Futch addressed the Council at this time. He is the President of the Corporation for the Malabar Volunteer Fire Department. As this study has suggested, the Planning Committee, which has five members, has been established. Mr. Futch has had conversations with Mr. Rossman regarding this matter.

Moccia-asked Mr. Futch if all the members of the committee live in the Town of Malabar.

Futch-advised Mrs. Moccia that most of the members live in Palm Bay. Only one member lives in the Town. We are forming some new rules and regulations. Rossman-in our discussion, this is one of the things that I asked you to do. One of the suggestions made by the TD Group is this committee, and if it has been established we are ahead of this report.

Futch-we had a meeting here on last Tuesday evening, which was February 1, 2005. We are putting a list of things that are right and wrong, checks and balances, showing everything that we do.

Moccia-asked Mr. Futch if he could come before the Council and explain this in great detail, as we are running short on time.

Futch-would be happy to present information to Council.

Moccia-we are not trying to go around you by any means. We need to know what is going on. We know that Mr. Rossman has been speaking to some of you. There is a board established already.

Rossman-on page 53, it says that. The review of Malabar Fire Department policies and procedures are under review at this time.

Booth-we recommend that we have a workshop. The TD Group wants to make their presentation to Council. The workshop would include the Malabar Volunteer Fire Department and the TD Group. If Council has specific questions regarding this study, please call Mr. Booth with these questions so that he can contact the TD Group to have these questions addressed.

Vail-on a final note, keep in mind that the Fire Department is at a disadvantage because of the state of their building.

Rivet-this is not going to be adversarial.

2. ALL TERRAIN VEHICLES (ATV's) OPERATING LATE AT NIGHT

Mr. Booth made a presentation to the Council regarding this issue. From the Town's standpoint, as we have talked about ATVs in the past, this issue is starting to boil over. The ATV people are not being good citizens. There are a lot of the people coming from out of town because they (ATVs) have been banned where they live. The whole length of Atz Road is where the ATVs are being ridden. They are tearing up the road at Atz & Corey. His recommendation is to have a workshop with the ATV people here at Town Hall and find out how they are going to control themselves or I am going to recommend that they be banned from Town. They are becoming such a nuisance.

Vail-he has had discussions with the responsible riders. There are more responsible riders than not, but the irresponsible riders are making it bad for the others.

Booth-has had several calls regarding the ATVs running through the town. Palm Bay has pretty much outlawed them and so has everyone around us.

Rossman-how could you be a responsible ATV rider between 11:00 p.m. and 3:00 a.m?

Moccia-there should be a time limit for these vehicles. We need to set a workshop regarding this matter. Let's contact the Southern Knights so that they can attend.

Rossman-what are we going to do to address the problem of the 11:00 to 3:00 riders? We don't have anything in place.

Vail-how long does it take for the Sheriff's Department to show up?

Audience-they are very slow if they show up at all. Unless the Town of Malabar tells them to pursue it, with the laws on the books, they will do nothing about it at this time.

Moccia-any comments must be kept at three minutes. We need to keep the meeting moving along at this time. All comments will be heard at the end at public comments.

ACTION ITEMS:

1. ARNOLD LANE REQUEST TO BUILD PRIOR TO ROAD APPROVAL

Vail-he had discussion with Building Department today. The people wanting to building prior to the road have posted the bond for the road. The Town has the money and the road is secure. Mr. Vail doesn't have any problem with the house and road being constructed at the same time. If it so happens that the road contractor is doing the site work on site, it would be beneficial to both projects to do it at the same time.

Motion: Vail/Rivet to approve.

Rivet-are we talking about items one and two as being the same situations?

Moccia-we will move into the next situation in a moment.

Vail-both of these issues are the same.

Moccia-then we may as well discuss them both at the same time or can we do that?

Bohne-an amendment must be made to the motion to include item 2.

Motion: Vail/Rivet to amend motion above to add item 2.

Vail-another problem is that the contractors are slow to respond as far as the road construction versus the site work, so when you get the contractor out there you want them to do it all at once.

VOTE: All Ayes.

Moccia-both Arnold and Howell Lane road approval is passed.

2. HOWELL LANE REQUEST TO BUILD PRIOR TO ROAD APPROVAL

See above discussion and motions made.

VOTE: All Ayes.

Moccia-both Arnold and Howell Lane road approval is passed for specified applicants.

3. REQUEST FOR SITE PLAN APPROVAL, BERRI PATCH

MOTION: Rossman/Rivet to put item 3 & 9 together.

Rossman-he has a problem with some of the Berri Patch proposals.

Vail-Mr. Booth has issues regarding this.

Booth-the issue he has is with item 9 on the agenda.

Vail-you had mentioned outstanding monies earlier.

Booth-they have applied for the building permits, but they will not be issued until the impact fees have been paid in full.

Rossman-why not put both items 3 and 9 together because they both pertain to the same thing.

Moccia-we need a motion.

MOTION: Rossman/Vail to item 3 and item 9 together as they pertain to the same issue. NO VOTE TAKEN.

Moccia-let's discuss this and see what we can come up with.

Booth-the issue here is that the Berri Patch has requested to put in a security apartment. By our ordinance, they are allowed to have a trailer for security at an educational facility or a church, but it doesn't allow for an apartment. The Planning and Zoning Board saw this and recommended that we make it a conditional use to allow a caretaker apartment rather than to have a trailer on site.

Rivet-if we are going to allow a caretaker on site, a building that is consistent with the structure that is already there, will look much better. Doesn't think that is unreasonable.

Vail-allowing this new apartment would look more pleasing to the eye. Should we limit the size of the apartment?

Bohne-we are jumping way ahead. We have the first reading of the ordinance later in the meeting. There are two options and the Planning and Zoning Board is in favor of option two for ordinance, which is a very simple way of handling it. This option has a limitation of up to 1,000 square feet of space. Mr. Bohne doesn't feel that we can discuss item 3 & 9 together because you need to read the ordinance by title. These are two separate items. He has not reviewed the site plan, but has a concern that the site plan does not call or allow for a security apartment. If you approve the site plan without approving the ordinance, then the apartment is there without an ordinance.

Rossman-has a problem with a security apartment. If we give a conditional use, we are opening the door to other conditional uses for the same thing. Another problem that he has is that the trailer would be temporary. The applicant has stated that they have had problems on their property. He is not sure that a security apartment will address this issue. He is concerned that, if this apartment is allowed, will a staff member reside there? If that's the case, will it become like a country store and they barter part of the person's salary for living rights of the apartment and everything that is there?

Vail-was told that it would be a member of the staff.

Rossman-is the member of the staff going draw a full salary and then have to pay rent? If this is a female staff member, what is she going to be able to do at 3:00 in the morning to stop someone from being on the property? She is not security, the police will need to be called which is what should be done anyway.

Vail-he was at the Planning and Zoning meeting and they just merely stated that the presence of someone with the lights on would be a good deterrent.

Rossman-this is a false statement. From past experience, schools that have put trailers on site with certified law enforcement officers still have problems with vandalism and other problems. It is a false sense of security.

Virginia Foley-owner of Berri Patch-she has a security apartment at the center in Melbourne on Lake Washington Road and she doesn't have problems on the site. Have they had to call the police, yes, in a fourteen year span, they have been called out approximately two or three times. But I don't have the kind of problems where I have to, on a Sunday morning, pick things up out of the parking lot that don't belong there or chase someone out of the parking lot.

Moccia-will you be enclosing it with some sort of chain link fence like the schools do?

Virginia Foley-the new building will have kind of like a fence area that will take them to the existing playground because the children will be across the parking lot from our playground, which is quite large now. The security apartment will be above the building, it's on the back corner. You probably won't be able to see very much of it. The stairway going up will be on the back side of the building and just adding that to the building will make it more pleasing to the eye from the road. The whole thing is to have the alarm system keyed into that apartment and then if there is a problem the person can call the police immediately. Sometimes she get a phone call at her home, which she is thirty-five minutes away and then I have to drive there to open up the building for the police.

Moccia-Mr. Rossman has some questions regarding the person who will be staying there. Perhaps you would be able to answer his questions.

Virginia Foley-my plans are to have the person living there receive full pay from me, while they work for me.

Rossman-then they would have to pay rent?

Virginia Foley-they would have to pay rent, but they would get a consideration because they are going to be there watching the place. So it's not going to be an exorbitant rent.

Rossman-my other question pertains to the parking spaces available and it went through the last Council and Town Planner, Keith Mills. He still thinks that there is a problem with parking.

Virginia Foley-asked Mr. Rossman where he saw a problem with the parking.

Rossman-referred to the memo from Keith Mills

Don Foley-came forward and stated that all the conditions that are in Mr. Mills memo have been taken care of. With the construction of the new building, the lift station would be able to take care of the whole facility.

Rossman-would approve with the condition that all ten items be taken care of.

MOTION: Vail/Hickson to approve with condition that all ten items on memo from Keith Mills be taken care of and passing of the ordinance. VOTE: All Ayes.

4. FLAGPOLE REPLACEMENT REQUEST FROM ACE HARDWARE

Booth-the flagpole that was on site was damaged by the hurricanes. Ace Hardware is requesting approval to replace the flagpole. We have a height restriction of 35 feet.

MOTION: Rossman/Rivet to approve.

Mayor-does ordinance allow Council to make exceptions to this. This should be presented to the Board of Adjustments.

Bohne-not aware of any provision in the ordinance giving exception except through the variance process, which is through the Board of Adjustments.

MOTION: Rossman that this goes before the Board of Adjustments.

Moccia-can we make it a conditional approval.

Bohne-needs to go before the Board of Adjustments before any approval can be given.

Kelley-didn't Mr. Rossman make a motion that this go before the Board of Adjustments?

Bohne-it's an un-necessary motion and needs to be withdrawn.

Rossman-I will withdraw the motion.

Rivet-once the Board approves the flagpole, we will also approve it.

5. RESOLUTION 01-2005: NAMING OF RIGHT-OF-WAY, SAMANTHA LANE

MOTION: Rossman/Rivet to read by title only.

MOTION: Rivet/Rossman to approve the resolution.

Rivet-this is the choice of the people improving the road?

Moccia-yes.

VOTE: Hickson, Vail, Rivet, Moccia, Rossman – All Ayes.

6. INTERLOCAL AGREEMENT FOR MUTUAL AID FOR SHERIFF'S DEPARTMENT

Booth-this has been reviewed by the attorney. This doesn't really apply to us as we do not have our own police department. The Sheriff's Department wants this in place. It's designed for someone like Palm Bay, who had problems with the police department, who called on the Sheriff's Department for assistance. The Sheriff's Department already has permission to come into the Town.

Rivet-they want authority to ask for help from someone?

Bohne-we don't really have the ability to provide help and by this agreement we don't have the ability to request help because we do not have a law enforcement officer who can request help.

Moccia-is this a little side thing from things in the past?

Bohne-no this is not. It definitely does not obligate us. This is a form agreement that is circulated to every municipality. We can request it nor can we provide assistance.

Moccia-should we just throw it out?

Bohne-no we should not do this.

Rossman-to Mr. Bohne, although the Brevard County Sheriff is a State Constitutional Chief Law Enforcement Officer and he has to provide law enforcement services to the Town and we are currently discussing the MSTUs, would this make us a little stronger in our argument that he has to provide the law enforcement services to the Town if we approve this?

Bohne-but it also, if we had a law enforcement department, we could ask Palm Bay or Melbourne for assistance. It's not necessarily the Sheriff's Department. It is not going to hurt us to sign this agreement.

Rossman-has no problem with this agreement being put into place.

MOTION: Rivet/Vail to approve. VOTE: All Ayes.

7. REQUEST FOR APPROVAL OF REVISED BIDS FOR THE REPAIR OF COREY ROAD AND ROCKY POINT ROAD

Booth-FEMA is reimbursing us \$65,000 for Rocky Point Road and \$19,000 for Corey Road piping. The bids came in considerably higher and the engineer has taken out several items to bring it in line with the total fees that FEMA will reimburse us.

MOTION: Rossman/Rivet to approve. VOTE: All Ayes.

8. MELBOURNE HEIGHTS VACATION OF RIGHT-OF-WAY RECOMMENDATION (FROM 10/18/2004)

Rossman-this came up in October and we set it aside for a later date.

Vail-there have been many workshops involving Planning and Zoning.

Rossman-at Mr. Stephenson's recommendation, this was put on the agenda as an action item for the next meeting. There have been several meetings since this meeting without discussion.

MOTION: Rivet/Rossman to approve.

Rossman-would accept Mr. Stephenson's recommendation at the meeting of October 18, 2004. He recommended vacating five feet.

Rivet-this is to remove right-of-ways between their properties.

Kelley-asked for permission to speak from the Chair. The way this was explained to me by Debby Franklin in the Building Department is that we would consider vacating the right of way adjacent to the north/south properties as long as the property owners gave us five feet of the east/west easements.

Rossman-my motion would be that we approve this as long as those east/west requirements are met.

Rivet-would amend his second of the motion to include that the east/west requirements must be met.

MOTION: Rossman/Rivet to approve Engineer Stephenson's recommendation as long as the east/west requirements are met. VOTE: All Ayes.

**9. FIRST READING: ORDINANCE 2005-01, ALLOWING FOR A
CARETAKER OR SECURITY GUARD IN THE OFFICE-INSTITUTIONAL
ZONING**

Bohne-the Planning and Zoning Board recommends option two.

By unanimous consent, Moccia read ordinance by title only.

MOTION: Vail/Rossman to approve.

Vail-only thing he would like to add is at the discretion of Council is the amount of living space provided.

Bohne-in the OI, there will be a footnote on the at the bottom that will state up to one thousand square feet per caretaker facility but it also provides that no use shall be allowed unless there is administrative approval granted by the Town.

Moccia-that's regarding the type of building structure, correct?

Bohne-that's regarding anyone. He left it open-ended to be reasonable.

VOTE: Hickson, Vail, Rivet, Moccia, Rossman - All Ayes.

REPORTS: MAYOR, COUNCIL

Mayor-received a letter from a gentleman in Indialantic who owns property on Lett Lane. The letter has a "no" on it, circled and signed by Mr. Booth. Could you please explain this.

Booth-the "no" is that he wanted to be put on the agenda, this is not an agenda item.

Mayor-it was explained to the new Council members that any citizen of Malabar can be put on the agenda by filling out an agenda request. They would be permitted to speak at the meeting. If the person is not a resident of Malabar, they would have to have a sponsor to be able to speak at the meeting. This was set forth by resolution.

Booth-this person is on a non-approved road, Lett Lane going north is a non-approved road. We had a culvert that collapsed and we pulled it out. The gentleman wants to get to his property to plant some trees. We will get around to taking care of this but there are a lot of priorities that comes before this.

Mayor-while out and about with the Eagle Corp, he saw this property. Doesn't he have access to his property, there is an east going road or path there?

Booth-he could but he is saying that he has to bring in his trucks off of Lett to unload his trees. We have a small pipe, and it will get put in when we have the time.

Rossman-there is a big improvement on Booth. The ditches need to be cleaned out, but it is much improved.

Mayor-a letter, which came from the Mayor in Atlantis, asking for state-wide support regarding golf carts. We have had problems in our Town with ATVs and they are having problems with golf carts. They are looking for support for a more restrictive law regarding this. The state law allows people as young as 14 years old to drive a golf cart. It is up to each individual town to raise this limit. The Mayor has asked that we draft a letter to Mitch Needleman showing our support regarding this issue.

Hickson-DOT doing a re-surfacing project out on US #1. They have a landscaping program. They pay for materials, plants, construction and installation. They have local agencies do the design.

Moccia-we already have the design.

Booth-we have a grant for \$150,000. they are doing about \$1,000,000 out on US #1.

Hickson-the grant is \$150,000 or 1 ½%, but if you can piggy-back onto one of their projects, they will go much higher than that.

Vail-has nothing to add at this time.

Rossman-on January 3, 2005, we asked about a Site Lighting Ordinance.

Bohne-Mr. Rivet provided information to Mr. Bohne. It is more than what is needed and he is still looking and weeding out the information that does not pertain to us. He is working on this ordinance.

Rossman-we need to have something in place regarding this matter.

Rivet-the Valkaria annexation, are we still interested in this? It dropped off because of the hurricanes. He feels it still merits looking into.

Rossman-the ball is in their court.

Moccia-stated that she had seen a sign for a public meeting on her street, within the last month.

Vail-we spoke to one member of the group the other night and they are looking into their options. We're still looking favorable as they are encountering what it is going to take for them to incorporate by themselves. There is a lot of stuff going on with Palm Bay's annexation that has them fired up. There is a land acquisition, a potential offering up off of 95 that going up between Grant and Micco Road. They are still considering us as an option. He spoke to them, as a group, that whichever way they choose to go, we hope that they choose soon so that we can secure the life style that we have.

Rivet-wants to clarify that he feels it's a good idea only if that is what the citizens of Valkaria want.

Rossman-whatever we do, we need to do what is best for the citizens of this Town. It is now up to the citizens of Valkaria and what they would like to do. They need to come back to us. We will address whatever issues come up but only if it benefits the citizens of Malabar.

Moccia-what is happening with Brad & Associates?

Booth-we have signed an agreement with the State. We are waiting for the State to finish the work on US #1 before he jumps in. They were working and designing this.

Moccia-we gave him back his information and told him what we wanted. If this opportunity is available to us, what Frank Hickson brought to the table, then she thinks we should take advantage of this. To Mr. Hickson, could you get the paperwork involved with this, it would be good to get it to Brad.

PUBLIC COMMENTS: GENERAL ITEMS

Bill Withers-2324 Candy Lane-has issues with the ATVs. Mr. Withers has spoken to Mr. Vail regarding this issue. Mr. Withers has been passed by two ATVs on Atz Road, while driving his truck. We have had ATVs at the park, on the weekends, causing damage to the parking lots. It looks, from the tracks, that they are being unloaded behind the Fire Department then heading into the parks. Last year, at mid-summer, we spoke to the Fire Chief about this and he put a stop to it. We need to do something about it again. The first time that a child is killed while driving an ATV, the parents will be at Town Hall and the Sheriff's Department. When you talk about ATVs, also include motorized golf carts in this category for a resolution. Also include motorized golf carts in this category for resolution. We need to do something regarding this matter.

Steve Gentile-4220 Corey Road-vandalism has been continuing on his property. continued vandalism on the property.

Moccia-asked if there had been anyone caught regarding this issue.

Gentile-not as of yet, but the Sheriff's Department has been called out to his property to handle this situation. The second issue is his agriculture status of his land. He was under the impression that once he got this exemption from the County, he would be able to run his business with no problems from the Town.

Joe Losch-2700 Garden Street-he has sold his property. The new buyers of the property stated that the Town is going to require that they put up total screen around the property. First of all, my fences withstood the hurricanes. He has submitted picture of the property in questions. If the new owners are made to put up screening on the fences, they will be knocked down. There seems to be a question regarding security. He has never had a problem with security. He has, in place, two 250 watt high pressure sodium lights that have lit up the place. If you put up the screening and security fence, chances are they will have problems. The new owners were a little upset at these requirements. Mr. Losch has rented the first office building out to a company from California, refurbishing homes. They now have sixteen employees and will be operating out of Malabar. They feel that the restrictions are more than they can believe. He has been a resident for twenty years and has tried to do things the right way. The new owners want to make additions with some new buildings to the property. Mr. Losch is asking that Council look at his pictures of the property.

Rossman-asked for some information regarding this from Mr. Booth.

Booth-the property has been sold and is no longer grandfathered in. They were very general in what they wanted to do with the storage on the property outside. This issue has to go to the Planning and Zoning Board. There will be some conditional use permits required for this new business coming in.

Rossman-has a question, why are we asking them to put on a canopy?

Booth-they need to provide to the Planning and Zoning Board copies of drawings showing what their intentions are.

Rossman-so this canopy may not be a requirement?

Booth-no, not unless specified by the Planning and Zoning Board. They need to bring in the plans to the Board.

Tracie A. Fonte-Palm Bay-came forward and spoke regarding the Fire Department and individual being re-instated. She was a victim of the individual. Ms. Fonte does not understand why it has taken so long for this to come to Council and why is he being re-instated.

Moccia-this is the first time that this has come back to Council.

Rossman-as stated in the meeting when this issue was brought up, the individual will not be re-instated, three of the five Council members have spoken against this happening.

Bryan Keith-2590 Corey Road-came forward and stated that he feels the ATV riders need to police themselves. He has put curfews on his own children and provided them with very strict rules. He feels that it is the people outside of Malabar that are coming in and making trouble for this sport.

Brian Hunter-2825 US #1-stated that he has photos of the destruction that these vehicles have wrought. We have ordinances in place, but until we have someone to enforce the ordinances, this will remain to be an on-going problem.

ADJOURNMENT

This meeting was adjourned at 10:25 p.m.

ATTEST:


Cindi Kelley

Recording Secretary

DATE: 4/4/05

BY:


Chair Bobbi Moccia