

**MALABAR TOWN COUNCIL REGULAR MEETING
MARCH 7, 2005 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 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 (excused)
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE (excused)
	ENGINEER:	BILL STEPHENSON
	RECORDING SECRETARY:	CINDI KELLEY

ADDITIONS AND DELETIONS TO AGENDA: None

MOTION: Rivet/Hickson to approve. **VOTE:** All Ayes

PROCLAMATION: IRISH-AMERICAN HERITAGE MONTH

Bobbi Moccia read the proclamation. Mr. Riley came forward for the presentation of the proclamation.

CONSENT AGENDA:

- (A) COUNCIL WORKSHOP 2/7/05
- (B) COUNCIL MINUTES 2/7/05

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

REPORTS:

ATTORNEY-Mr. Bohne was not in attendance this evening. Mr. Booth reported to the Council for Mr. Bohne. Mr. Bohne has sent a letter to the Attorney General's office regarding Mr. Gentile's property and what constitutes an agricultural exemption. This letter was mailed out on the 24th of February. The Attorney General's office is researching this and will send a response to Mr. Bohne. When this is received, a copy of the response will be given to the Council Members.

ADMINISTRATOR

Ed Booth came forward and made his presentation. The subjects for discussion were as follows:

- FIRE DEPARTMENT

Mr. Booth expects the Fire Department personnel to be back in the station within the next five weeks. The Fire Department is looking into a 2 ½ ton military truck to be used as a brush truck. The contract for the re-roofing of the Fire Department has been awarded to the contractor and the inside construction has begun. Once the

personnel are in the newly renovated station, the trailer will be moved behind Town Hall. We will use the trailer for at least a year, or we will have to pay FEMA back the funds that we received for the temporary shelter.

- FEMA

Mr. Booth advised Council that we have been told the money is forthcoming. We have not heard of other municipalities from Brevard County receiving monies, but other counties have started to receive their funds.

- SUBDIVISION ORDINANCE

Mr. Booth advised Council that the subdivision ordinance needs to be re-written. He is working with Mr. Bohne with regards to this. With the new subdivisions coming into Malabar, the ordinance that is in place now is very poorly written. Mr. Rivet asked if there were inconsistencies in this ordinance. Mr. Booth advised the Council that there are so many that this is the reasoning behind a re-write of the ordinance. Mr. Hickson asked if other ordinances will be under review once the new ordinance is in place. Mr. Booth stated that all the ordinances needed to be reviewed and if needed, they would be re-written as well. This process will take time though. We could contract this service out, but the expense would be very great.

- SCHEDULE WORKSHOPS

Mr. Booth advised the Council that there is need for several workshops to be set up. The first workshop needed would be the Utility Fund, which he would like to be in April. We need to wait for Mr. Rossman to return, he has been excused for the next several weeks due to health issues. Mrs. Moccia asked if we were looking at the first Monday, April 4th for this workshop. This is the first Monday of the month and we are already here. Would this be acceptable to everyone? Mr. Vail asked if the meeting started at 7:00, would a half hour be enough time to discuss this issue. Mr. Rivet stated that we could, as we did last time, push the regular meeting to 8:00. Mr. Booth advised the Council that there has been talk of having Palm Bay take over the Utility Fund but they are not in favor of this happening. We have a contract with them and that is how they are looking at this issue.

The second workshop would be for the Fire Department. This meeting was set for April 18th at 7:00. The regular meeting would be pushed back to 8:00. The second of May we would have a workshop for the ATVs. The meeting also would start at 7:00, with the regular meeting pushed back to 8:00. Mr. Booth stated that this would be a good time to have this meeting, as we have time to advertise this workshop in the Mailboat, which will come out after the Malabar Springfest and the Trash Bash functions.

- SPACE COAST LEAGUE OF CITIES PROPOSED RESOLUTION

Mr. Booth advised the Council that Brevard County is attempting to change the ordinance pertaining to annexation. If someone wants to be annexed into an incorporated area, the rest of the County would be able to vote on this annexation. The question was asked that if someone in Valkaria wants to be annexed in, what does Mims have to do with the south end of the County. If this ordinance gets changed and passes, this would be a very expensive venture. The case of the

annexation of Valkaria came to mind and how much money it would cost to do a county-wide vote. The number would be astronomical.

- BUILDING DEPARTMENT

Mr. Booth advised the Council that the Building Department is very busy. Since the hurricanes, we have not charged homeowners any permit fees. The only fees being collected are non-hurricane related items. Since we have two subdivisions coming in, the pace is going to pick up in the office. We have the Building Official, his Administrative Assistant and a clerk working in the office at this time. When the new construction begins for the subdivisions, we will expand the department. They have received the first two house packages for the Stillwater Preserve subdivision, which we are looking at homes being built in the \$800,000 range.

- SHERIFF'S DEPARTMENT

Mr. Booth advised the Council that the Sheriff's Department wants to come back as a sub-station and they will be using the office that they were in previously. They can't use the trailer because they have to lock up evidence and the trailer will not allow them to do this. The trailer will be brought over from the Fire Department and parked behind Town Hall. This will then provide much needed space for the engineer, part-time inspector and The Eagle Corp.

CLERK

Cindi Kelley advised the Council that the next Space Coast League dinner is next Monday, March 14, 2005. If you wish to attend, please contact the Clerk's office by Wednesday, March 9, 2005, so that we can make the reservations.

PUBLIC HEARINGS:

1. SECOND READING: ORDINANCE NO. 2005-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING SECTION 1-3.2 RELATING TO LAND USE BY DISTRICTS; AMENDING TABLE 1-3.2 ALLOWING AS AN ACCESSORY USE IN THE OFFICE-INSTITUTIONAL ZONING DISTRICT UP TO 1,000 SQUARE FEET OF A CHURCH OR EDUCATIONAL INSTITUTION FOR THE HOUSING OF A CARETAKER OR SECURITY GUARD SERVING THE CHURCH OR EDUCATIONAL INSTITUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

By unanimous consent, Mrs. Moccia read by title only.

MOTION: Vail/Rivet to approve.

Mrs. Moccia opened this to the public for their comments:

Bill Withers-spoke against this ordinance being passed.

Richard Cameron, 650 Hall Road-spoke in favor of this ordinance being passed.

With no other public comment, Mrs. Moccia closed public comments and brought discussion back to Council.

Rivet-why are we limiting this to only schools and churches in the Town? We should allow this for anyone who needs this service.

Hickson-if we approve this ordinance, we should do it right the first time instead of fixing it at a later date.

Rivet-since we are expanding with growth, do we want to limit this to just schools and churches, as we only have one of each in the Town at this time?

Mayor-we should approve this ordinance at this time and then address future items when they come.

MOTION: Vail/Rivet to approve. The roll was called: Hickson, Vail, Moccia – Ayes. Rivet – Nay.

PRESENTATION:

1. ATLANTIC DEVELOPMENT HEIGHT REQUEST

Joe Paladin, President of Atlantic Coast Construction & Development, Inc. came forward and introduced himself and the people that he brought with him. He also passed out additional information and renderings to Council regarding the height request. Mr. Paladin is also the owner and developer of the project. If anyone has any questions or concerns regarding this project, this is who you would address them to.

Debbie Pantalo with RK Engineering-came forward and gave a brief overview of the project and the amenities that would be on site. This project would consist of six buildings total.

Dave Nagrodsky, Engineer of record for project-what Mr. Paladin is proposing to Council is to add a sun room to the condos, giving the units approximately 500 additional square feet of space. The total square feet of the roof is 12,500 square feet. They are looking for roughly 16% of the total roof area or 2,000 square feet. They are looking to extend the height from 35 feet to 41 feet.

Vail-has reservations because of the ordinance in place. This ordinance was put into place to keep the height of buildings down, being able to still look out and have the views. Also, what about fire protection with the raise in height?

Nagrodsky-the sun rooms would not be on all units. Each building would have four per building, making a total of eighteen with the sun rooms.

Mayor-asked Mr. Nagrodsky where they were in the process.

Nagrodsky-advised Council that they are finishing up the site plan at this time.

Mayor-asked Mr. Booth if this would need to go before the Board of Adjustments?

Booth-advised Council that this decision would be made by them.

Moccia-would this go to Planning and Zoning and then come back to Council? She feels that they need input from the Board since the ordinance is for a total height of 35 feet.

Nagrodsky-stated that it is 32 feet to the top of the roof. They are asking for another approximate 10 feet for the sun room, which would be a total of 42 feet in height.

Pantalo-the elevation of the project is four feet higher than US #1.

Moccia-she still feels that Planning & Zoning should advise Council.

Rivet-if adding a small portion to the roof, his concern is the blocking of views.

Vail-still hesitant due to the height restriction of the Town. Are we opening the door for more height requests?

Mayor-he is neutral regarding this issue at this time. He would also like to hear from the Planning & Zoning Board.

Hickson-his initial reaction is to not change the rules. He would like to hear from the Planning & Zoning Board as well before making any decisions. Once you start giving special consideration, you start setting precedents.

Moccia-the ordinance is strictly at thirty-five feet. We were very thorough, in the workshop we had for this, in setting the ordinance to keep the height of buildings under control. We have enough people here requesting information from Planning & Zoning before we make a decision.

ACTION ITEMS:

1. HARD LANE, REQUEST TO BUILD PRIOR TO ROAD APPROVAL

Mr. Booth advised Council that the individuals have put up the bond for the road. We require, by ordinance, to build the road and then construct the home. The big trucks coming down the road will tear it up. We should have them put the road in at the end. The C/O is not issued until the road is completed. The ordinance needs to be re-written.

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

2. RECOMMENDATION ON EXCEPTION TO FENCE HEIGHT FROM P&Z

MOTION: Eschenberg/Rivet to approve.

Hickson-expressed concerns that if we approve this for this homeowner, will we have problems, if and when the property sells, with the new owners?

Cameron-the homeowners just want to do the front of the property because of the two different types of fence. Doing this would not obscure the vision from the street and Planning & Zoning Board has seen the materials to be used for this fencing project. The Planning & Zoning Board and the Building Official's opinion is very clear.

VOTE: All Ayes.

3. FINAL PLAT APPROVAL FOR STILLWATER PRESERVE SUBDIVISION

Booth-the staff has no problem with this subdivision. All the permits that are required have been obtained. There will be 74 homes in this subdivision.

Hickson-brought up concerns regarding drainage issues on the properties.

Mayor-brought up several issues regarding the final plat approval. Would like to have something in writing from Mr. Bohne stating that he has reviewed the packet and that he feels everything is okay with this project.

Steve Morgan, Engineer of Record- with the concerns that have been expressed thus far, Mr. Morgan stated that a performance bond (tri-party agreement) is a very standard procedure in Brevard County and the surrounding municipalities.

Vail-would rather hear from Karl Bohne stating that this is all been reviewed and we have no problems with any of the documents in this final plat approval.

Moccia-it would seem that Council is skeptical regarding this final approval at this time. With not having a written statement from the attorney, everyone seems to have concerns that this has not been approved and approved by Mr. Bohne.

MOTION: Rivet/Vail to postpone action items #3 & #4 until the next meeting where the Town Attorney is present. VOTE: All Ayes.

4. FINAL PLAT APPROVAL FOR OAKMONT PRESERVE SUBDIVISION

See the motion and vote for Action Item #3.

5. FIRE CHIEF RETIREMENT

Mr. Booth advised the Council that Fire Chief McClelland has handed in his retirement notice. We will take our time in deciding who will be the new Fire Chief. Once a decision is made, the Fire Department will have a vote regarding the new Fire Chief.

Rivet-thanked Chief McClelland for all of his hard work while in the position of Fire Chief, telling him that he would be missed and he is appreciated for all that he has done for the Fire Department.

Moccia-asked Chief McClelland to step up to the mike so that Council could say their thanks to him. She also told him that they would be thanking him in a proper way.

McClelland-advised Council that he felt, with all his other duties that he was not able to give the required attention needed in this capacity any more.

Mr. Booth advised the Council that Chief McClelland would not be leaving the Fire Department, just stepping down as the Fire Chief. He will still be involved with the department.

6. FIRE DEPARTMENT REQUEST FOR STORAGE SHED

Mr. Booth advised Council that the shed that was on Fire Department property was blown down by the hurricanes.

McClelland-stated that we currently have more trucks then space to accommodate them. Per our contract with the Division of Forestry, we are to keep the trucks under cover at all times unless they are out on call. We are in violation of this requirement at this time. We are looking for a larger building to use to house all the trucks. They will not last six months if they are kept outside. Three of the trucks that we have belong to the Division of Forestry. We are looking for a budge of up to \$60,000 for this building.

Mayor-asked Mr. Booth if we are pulling funds from the reserves.

Booth-this money will be coming from the reserves. We are awaiting funds from FEMA and the insurance company. The insurance company will pay \$14,000 towards this new building. Once we have the funds from FEMA, we will do a budget amendment and shift the funds around to where they need to be.

Moccia-asked Chief McClelland if the trucks could be taken back if we are not in compliance with our contract. Also, would this new building be an extension to the existing building?

McClelland-stated that the trucks could be removed from the Town of Malabar if out of compliance with contract. The new building would be totally separate from the fire station.

MOTION: Vail/Rivet to approve budget up to \$60,000 for new shed for Fire Department. VOTE: All Ayes.

7. RECOMMENDATION FROM P&Z: REQUEST TO VACATE RIGHT-OF-WAY, A PORTION OF OLD MISSION ROAD

There was very short discussion regarding the vacating of right of way on a portion of Old Mission Road.

Rivet-stated that he would like to see a map of a visual of this request.

Booth-advised Council that this was an economic issue regarding this request.

MOTION: Hickson/Rivet to deny. All Ayes.

8. RECOMMENDATION FROM BOARD OF ADJUSTMENT TO INCREASE FEE

Mr. Booth advised Council that it is costing us more in advertising fees for people to request variances. We would like to add a separate advertising fee to the application process. This would cover the cost of running the ads in the paper, which is required in the variance process. The fee that we collect now covers the cost of staff expense; we just need to cover the cost of advertising.

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

REPORTS: MAYOR, COUNCIL

Mayor-asked Mr. Booth what is happening with the issue over Old Mission Road off of Corey Road. We have two roads with the same name.

Booth-the individual hasn't provided new names for the road to be approved.

Withers-(from audience) at one time, they tried to get a road renamed with the County. It took a total of nine months and they denied it.

Mayor-made a suggestion to everyone on Council, since there is a reprieve with the final plat approval, to take the information provided and do some research. Come back to the next meeting with any and all questions that you have to the attorney so that this will be able to be taken care of.

Cameron-came forward regarding Oakmont subdivision. He was a little surprised that this did not come back to Planning & Zoning Board for a second review. Mr. Cameron expressed concerns with them working out there. They feel we gave them the permits to go ahead and remove dirt, we feel that we didn't.

Moccia-could we please have some information regarding this issue for the April 4th workshop?

Booth-advised Council that staff would do some research and have the information provided by the workshop on April 4, 2005.

Hickson-what is the status of the lighting ordinance

Rivet-gave Mr. Bohne a lot of information regarding this ordinance. He is reviewing the information and weeding out what do not need for this ordinance.

Hickson-what is happening with the soccer field?

Withers-the field should be ready in about one hundred days.

Hickson-in regards to the rumble strips, DOT has done some studies and found that the strips do not help to keep the accidents down.

Moccia-asked Mr. Hickson if he could provide copies of the studies to Council so that they could review the information. She then asked Council if this is something that we want to continue to do.

Vail-asked if the strips could be removed after a certain time frame. They are usually used to make people aware of what is ahead.

Rivet-made a suggestion of a ninety day time frame.

Vail-made a suggestion of a minimum of a sixty day time frame.

Booth-advised Council that the rumble strips would be removed from the Corey/Atz Roads, as they have been there over ninety days. We will add rumble strips to Weber/Atz Road for a period of ninety days; then they will be removed. This is just to make people aware of what is coming ahead.

Vail-advised Council that Ace Hardware is willing to sponsor a Little League baseball team for Malabar. As long as we have enough teams to support this, they want to stay within our Town. Also, the ATV riders have come up with a flyer, which was passed out at the meeting to each Council Member. This flyer will have contact names and numbers on it for any problems or situations that arise. People will have someone to contact regarding this matter. The ATV riders will address any situation on a four wheeler level. This is coming from the group of ATV riders, not from the Town.

Rivet-asked Mr. Vail where the responsible ATV riders ride?

Vail-advised Council that they ride everywhere, but they stay off of Corey/Atz Roads. It was stated by people from the audience and by Cindi Kelley that they are riding on Corey Road.

Vail-stated that they may use these roads to get where they are going. It's a lot of work to load the equipment on a trailer to go a half a mile down the road.

Rivet-advised Council that he received a telephone call from a business in Kissimmee. If you look at their website and then at the website for Doc Holiday's, you will find that it looks like it was written by the same person. There could be a law suit coming. He thinks we should coordinate all our efforts and take care of this all at once.

Vail-advised Council that he had to come down the center of Malabar Road to miss a citizen walking her dog and checking the mail. All the mailboxes for Alexander Lane are lined along Malabar Road. At one point, most or all of these mailboxes have been wiped out.

Moccia-advised Council that at some point, one of the property owner's said that they would allow a portion of their property to be used for turning around.

Booth-advised Council that the offer has since been rescinded.

Moccia-advised Council that there are big trucks running down Old Mission Road. They usually do this on the weekends.

Booth-advised Council that we have a fund of \$5,500 in the budget for enforcement. He will contact the District Commander to see what can be done about this issue.

PUBLIC COMMENTS: GENERAL ITEMS

Bill Withers, 2326 Candy Lane-at some point, there had been talk of turning a lot in Stillwater Preserve into a small park. The lot they were looking at was lot 15. Mr. Withers has some concerns regarding Council Members being on Citizens Volunteer

Committees. Mr. Vail is on the Malabar Springfest Committee. He expressed his concerns to Council.

Vail-stated that he was asked to be on this committee from the start. He has attended the meetings and has tried to be of assistance to the committee. He expressed his concerns to Council regarding this issue.

Rivet-made a suggestion that this be put on the agenda as a discussion item.

Nancy Johnson, 2300 Oakridge Lane-came forward and spoke regarding the Stillwater Preserve subdivision. Can we look into adding the St. Johns Water Management required portion to the acreage? The 1 ½ acre lots don't seem to be adding up to the total 1 ½ acres required to build in Malabar. Why can't we advertise to have "rural" builders to the development in our Town? It would help to keep the Town in the rural setting, which is what our Charter is all about.

ADJOURNMENT

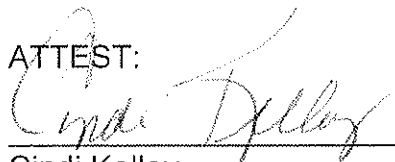
This meeting was adjourned at 10:00 p.m.

BY:



Chair Bobbi Moccia

ATTEST:



Cindi Kelley
Recording Secretary

DATE: 4/4/05