

**MALABAR TOWN COUNCIL REGULAR MEETING
MARCH 21, 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 Mr. Vail.

ROLL CALL: MAYOR/VICE-CHAIR
CHAIR:
COUNCIL MEMBERS:

TOM ESCHENBERG
BOBBI MOCCIA
FRANK HICKSON
BRIAN VAIL
STEVE RIVET - EXCUSED
BOB ROSSMAN - RESIGNED
ED BOOTH
KARL BOHNE
BILL STEPHENSON
SUSAN KABANA

ADMINISTRATOR:
ATTORNEY:
ENGINEER:
CLERK:

ADDITIONS AND DELETIONS TO AGENDA

MOTION: Hickson/Vail to approve agenda. VOTE: All aye.

PRESENTATION: TO RETIRING FIRE CHIEF McCLELLAND

After many years of service Malabar's Fire Chief, Chuck McClelland, retired as of March 19th. The Council presented Chuck with a beautiful fireman's axe mounted on wood. They thanked him for his years of service, there was much applause by the audience.

CONSENT AGENDA:

(A) TOWN COUNCIL MINUTES OF 3/7/05

Vail – would like to wait for approval until he has listed to the tape. Approval is postponed.

REPORTS:

ATTORNEY

- REVIEW OF PROPOSED LIGHTING ORDINANCE

Bohne – there should be a copy of the proposed lighting ordinance in the Council packets tonight, this is only for discussion. Hickson – it is not in our packets. Moccia – concurs, and there are two Council Members who are out so we can wait to discuss.

Bohne - has received a response from the Attorney General in regards to the Gentile issue. The Town can enforce its' commercial restrictions against Gentile but we are not allowed to prohibit him from the raising and grazing of the horses, which was Gentiles specific request on the agriculture exemption. The Attorney General said that nothing in the Right to Farm Act prohibits us from enforcing our ordinance to prohibit commercial activity, but they did not give Bohne an opinion as to whether or not an offering of trail rides and riding lessons constitutes a bona fide agricultural activity. They suggested that we go back to the Property Appraiser and ask them this. Moccia – this is passing the buck. Bohne – yes but it's because the Attorney General said it is not within their jurisdiction to make this determination. The next step is to ask the Property Appraiser, in its' determination of granting the exemption, whether or not trail rides and riding lessons were part of their exemption. Moccia – can we get an answer in writing? Bohne – will send a written request and ask for a written opinion.

ADMINISTRATOR

Booth – the playground set has arrived and is being constructed.

- Rivet is in Bangkok, shows pictures.

- Code Enforcement – the trailer on Malabar Road is gone and the house on Malabar near Weber will go soon.

- Will negotiate with Sheriff for ATV patrol. The ATV's are causing more and more damage and someone could get hurt, we are looking for weekend enforcement.

- Withers picked up a truck and Booth shows picture of how they want to modify the truck, the water tanks will hold water for fire fighting. This will help augment the brush truck fleet.

- Booth states that the Fire Dept building is still under construction, it will take about six weeks to complete.

- We received our first FEMA check, it will be disbursed to the fire fighters.

- Is looking for a new planner, Keith is great but he is so busy and we are going to need someone a couple days a week.

- Bob Rossman has resigned due to illness. Moccia – states that Rossman recommends Pat Dezmond to serve the remainder of his term.

- REVISION OF SUBDIVISION ORDINANCE

Booth overviews our current process for approving subdivision applications. Then he overviews a new proposal for the process for approving subdivision applications. We will take a hard look at the fees that are paid and at the next meeting Council will look at a revised fee schedule, right now we may be losing money. This proposal is a standard procedure for other communities. The big change is that the applicant must go P&Z one more time before the final plat. Also we want a warranty bond just to make sure the infrastructure does not fall apart in first few years. Booth notes that this is just the beginning philosophy as he and Bohne work on the subdivision ordinance.

Vail – is this standard procedure? Booth – yes. Moccia – does this proposal apply to the current subdivisions? Booth – no but they still must follow the current rules.

Eschenberg – when does this get filed with the County? Booth – at the end.

Eschenberg – at what point can lots be sold? Booth – if they put a bond or a tri-party agreement in place they can come to P&Z and Council for approval before the infrastructure is totally finished. The other way is that he completes the project first before selling.

Eschenberg – but when can he sell lots? Booth – when you give him a final approval.

Vail – so the 1 ½ acres will not change? Booth – no, it can't change, it is in our charter.

Booth – the main changes are one more review by P&Z, posting a warranty bond, the preliminary review will be more formalized, and we will increase fees.

Moccia – did some research last week and learned that a 1.4 acre lot is calculated using the ROW easement, making the 1.5 acre requirement. Is glad to have such a big group here interested in this issue.

Booth – if there is no objection, he and the attorney will continue fine-tuning this ordinance.

Vail – asks about the calculations for fill, and notes that this Town has generally discouraged mining. Booth – St. John's covers the pond requirement, as far as the pad requirements the new subdivision ordinance does not allow for fill removal.

PROCUREMENT OFFICER

Bill Withers – they did get the 2 ½ ton truck that Council saw on the overhead, a forklift, and 2 10x20x9 tents to use for Malabar Day, brand new, still in the box. On the way we have 2 – 2 ½ ton 1200 gallon tankers, but when you put water in them you can't carry 1200 gallons because water weighs 8 lbs per gallon and fuel half of that, all are multi-fuel. The asking price was \$14,250 and they don't want to negotiate because this organization pays its salaries by what it

sells and it also takes care of its hierarchy in Tallahassee. And out of a \$14,250 deal we negotiated for 2 ½ days and saved \$4,500 out of our pocket. The vehicles are due on in within two weeks because they wanted \$600 to deliver them and he was able to get \$300 in two weeks. Moccia – sounds like a good deal.

CLERK

Nothing at this time.

DISCUSSIONS:

1. CONCERNING VOLUNTEERS & PARK USERS (Vail)

Vail – has been asked by many people to address this controversial issue, he has received complaints regarding the attitude and behavior of our contract park maintenance employee acting as a town employee. The concerns include not being felt welcome in the park nor felt appreciated as volunteers. The concerns come from varying areas of public interest.

Eschenberg – asks if Vail has first hand knowledge of this? Vail – no, he only has concerns from other people. Moccia – states that the people who handed in speakers cards can speak during public comments.

Vail – feels that there is the appearance of a conflict of interest even though he has been told by Bohne that there is none. Bohne – the ground rules for a conflict of interest states that there has to be some type of procurenary gain or a loss associated with a persons position on an issue. Bohne told Vail while it is not a conflict for Withers to sit on a board, Withers could not, in any way, vote on a issue relating to his position or contract.

2. POTENTIAL REVENUE SOURCE FOR THE TOWN THROUGH REDEVELOPMENT DISTRICT & TAX INCREMENT FINANCING

Booth – a while back we were trying to create a redevelopment district along US1 but once a developer came along staff pulled back.

Brad Smith – his company started with the town trying to find new revenue sources for the community, he was successful in obtaining \$150,000 for beautification along US1.

In tonight's Council packet there is information from Smith regarding a proposed Redevelopment Area, Tax Increment Financing and State Enabling Legislation as well as Florida Statute excerpts about how the Enabling works.

When you create a Redevelopment District the difference between what the taxes were at the beginning of the Redevelopment District and the amount of taxes after development in the District is all spent in the Redevelopment District. Even the County monies stay in the District. Smith suggests that Council take advantage of the future development.

Smith – brought Rochelle Lawandales, who is a planner, to help answer questions and to have some discussion to see if there is interest in doing this. His concern is that the town not loose the opportunity because there is a June 30th deadline that would capture anything that was built the following year.

Rochelle Lawandales – greets Council, feels the best part of this is that the community would be able to keep revenues that would normally be going out of the community and it gives Malabar an opportunity to leverage dollars into additional resources so you could make improvements like stormwater, parks, fire stations, streetscapes, or acquiring land.

Lawandales states that the first thing you have to do when creating a redevelopment district is to create a blight study. A blight study is statutorily defined and if you meet certain criteria based on the statute then you adopt a Findings of Necessity through a resolution where you preliminary set up a boundary and look at what you might want to consider as your district. From there you create a Community Redevelopment Plan. Lawandales states that all of this is done with much public involvement, because part of this is casting a vision and identifying what that vision is. After you adopt a Plan the attorney will draft three ordinances, one is to set up the

district, two is to establish the agency, and three this to set up a Tax Increment Trust Fund. It is a four step process: 1) findings and necessity 2) a Community Redevelopment Plan 3) setting up the Agency and 4) setting up the Tax Increment Trust Fund. Then the Town would have 30 years of revenue sources to do the things that the Town might like to do in that district.

Moccia – what does this cost? Lawandales – Rockledge spent about ten to fifteen thousand dollars on their blight study and their Plan was in the vicinity of thirty to fifty thousand but she does not want Council to get nervous about the cost because she would work out a fee schedule that is commiserate with Malabar's needs and budget.

PRESENTATIONS:

1. BRAD SMITH & ASSOCIATES

(combined above)

ACTION ITEMS:

3. BRAD SMITH & ASSOCIATES – REVISION OF CONTRACT

Smith – will combine the Presentation agenda item with this action item. Smith states that the US1 project paperwork has been executed. The original proposed project was conceptual in design. This failed with DOT and now Smith must go back to a very detailed design. Smith's original contract with the Town did not cover a detailed design. Vail – is not comfortable making a motion until he knows the additional charges. Smith – we are well under budget on the original agreement. The proposed agreement is for \$13,350 which will take it through the completion of the construction documents. Moccia – this is additional? Smith – yes, but 10% of the project costs will be DOT's responsibility. The eligible costs would be \$15,000, to date on the original agreement the Town has encumbered about \$5,000, so the net is about \$3,000 that the Town would be responsible for.

VOTE: Vail/ Hickson to approve. VOTE: Moccia, Hickson, Vail.

1. RESOLUTION 02-2005 - AMENDING MILEAGE AND MEAL REIMBURSEMENT IN THE EMPLOYEE HANDBOOK

Moccia – asks for unanimous consent to read by title only. Moccia read:

RESOLUTION NO. 02-2005

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1 OF THE TOWN OF MALABAR EMPLOYEE MANUAL; INCREASING TRAVEL EXPENSES FOR EMPLOYEES ON OFFICIAL BUSINESS; AMENDING ILLUSTRATION 1-1 OF THE EMPLOYEE MANUAL; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Vail/Hickson to approve.

Hickson – why is the Engineer not listed in chart? Kabana – the Attorney reports to Council so that position is listed in the chart, the Engineer is a contractor. Hickson – how did we get the numbers? Booth – they are what is reasonable.

VOTE: Aye – Hickson, Vail, Moccia.

2. ACCEPTANCE OF BID FOR FIRE TRUCK

Booth – this was a grant and in looking at the base truck there were International Freightliner's and Peterbuilt's and the International Freightliner was chosen. Vail – there are two local dealers who can service the International Freightliner. Booth – the grant is split and the Town pays 10% and the FEMA 90%. The next Council meeting staff will come back to Council regarding add-ons. Also, due to a price increase Booth has already put in a purchase order.

MOTION: Vail/Hickson to approve.

Eschenberg – where does the \$22,000 difference come from? And based on our history of receiving payment from FEMA has Booth looked for other financing? Booth – this is a different type of FEMA money and it will come through quickly.

McClelland – the quote was a year old and was for \$174,000. David Exberger – we talked to FMEA and asked for the truck. Costs are going up. As far as the extra 10%, the Fire Dept thought that if our grant was over \$100,000 then the Fire Dept could go over the grant by 10% but in reality they could shift the money around in the grant not to exceed 10% between the truck and the equipment to go on it. Unfortunately the chassis went up \$3,000 to \$10,000 dollars, which means now they need more money. FEMA said we could 1) buy a lesser truck, 2) shift money from equipment to the truck (but the equipment allotment is low) or 3) obtain additional funds from the Town. But FEMA will not a lot any more funds. McClelland – last year at budget time Council considered buying a truck if this grant fell through again, adding more money to the Town's portion is still cheaper than buying the entire truck.

Eschenberg – feels that this is a great idea, he just needed more information. Vail – thanks all those involved.

VOTE: Aye – Hickson, Vail, Moccia.

4. FINAL PLAT APPROVAL – STILLWATER PRESERVE SUBDIVISION

Moccia – does the engineer have any comments? Stephenson – his recommendation is for approval and in their packet.

Bohne – he reviewed the tri-party agreement and made sure that it provided Malabar with a bond, other than that he has no issues, he leaves the details to the Engineer.

Booth – will go over Rossman's comments.

Booth – (Rossman) turn lanes at Corey and Malabar. The State has requested that the Town obtain the ROW. The problem we have is that the land we own at the southwest corner was bought with environmental money and will have to be returned to the State. The developer will construct a turn lane on the northwest corner, and the Town will budget to build a turn lane on the southeast corner. The additional amount of land that the State wants will be the most difficult thing to acquire.

Bill Stephenson – the difficulty with the piece of land the Town owns is that it was purchased with environmentally endangered lands money. The problem with the deed to the land is that an environmental attorney added about 40 stipulations regarding the land. But he thinks there is a provision in there allowing one State agency (DEP) to cooperate with another State agency (FDOT) in regards to the land. Stephenson has called DOT for the past two months trying to find out exactly what they need. Stephenson thinks this is doable but it will take some time.

Booth – (Rossman) will the entire ditch on Corey Road be filled in? Booth – no, there will be pipes there but the drainage has to flow.

Booth – (Rossman) lots 1 through 5 will open onto Corey Road.

Booth – (Rossman) sidewalks? Steve Morgan (engineer for the developer) – they will be along Corey Road and also internally.

Booth – (Rossman) landscaping plans were not on the plot plan, what will the entrance look like? Steve Morgan – the entrance feature details will be submitted with the building permit in the next month. It will be gated with a stone wall and stucco columns.

Booth – (Rossman) – what type of street lights? Morgan – FPL has a standard colonial style street light and they will be staggered every 300 feet and are very low intensity lights.

Booth – (Rossman) – the performance bond? Bohne – it is in the tri-party agreement.

Booth – (Rossman) – completion date? Morgan – June.

Booth – (Rossman) – on Corey Road there is a house in need of attention, and there needs to be some clearing.

Moccia – what about the corner that was supposed to be a park? Booth – most of that land was wetlands. And if the developer did build a playground it would be inside their community, so it would not benefit the entire Town. It was better to get them to make a cash donation to our park.

Eschenberg – from P&Z Aug 25, 2004, conservation easement granted to St. John's they will fence and sign it for no trespassing, what does that mean? Morgan – it does not say no trespassing, it is a sign you have to put every hundred feet along the creek that says no mowing, it's conservation area. The only thing you are allowed to do is remove exotic vegetation. Eschenberg – what about the fence? Morgan – the developer will put up a split rail fence. Eschenberg – it seems that there are 4 lots that are mainly conservation. Morgan – it's not unlike any other lot in Malabar, there are many lots with wetland that the owner cannot touch. Eschenberg – thinks of some unsuspecting out-of-towner who does not know about the conservation area. Morgan – those are very premium lots, you know that no one will ever build behind you. Notes that they have contracts on all those lots.

Eschenberg – as far as removing the gopher tortoises, it says you have to protect 7 ½ acres. Morgan – the land is off-site in Valkaria. Eschenberg – asks about specific land parcels. Morgan – those parcels are in Valkaria.

Eschenberg – in the covenants it looks like the setback requirements are changed from our code, it reduces the setbacks. Morgan – the Town code will always prevail. Eschenberg – there is one covenant that is more restrictive. Vail – does not want someone to read this and come to Council upset.

Moccia – is very concerned about the tortoises. Eschenberg – states that the developer is not required to move them, they are just required to set aside land for gopher tortoises. Bohne – the jurisdiction over endangered species is DEP, our codes says the developer must comply with other governmental agencies and that is what they are doing. Moccia – there is nothing we can do? Bohne – no, it is not our jurisdiction.

MOTION: Hickson/Vail to approve pending the revision of Section 10 of the Declarations of Covenant conditions and restrictions Stillwater Preserve to comply with the Malabar Land Development Code. VOTE: Aye – Hickson, Vail, Moccia.

REPORTS: MAYOR, COUNCIL

Eschenberg – reminder that Eagle Corp is graduating at 7:00 tomorrow night, Council is invited. Eschenberg - went through the retired Chief's memo and is concerned about the breakdown in Fire Inspections because we no longer contract with the County. Booth – we require them to go out and get their own inspection. Eschenberg – there is a 'breakdown' and he suspects they may not be complying with our request.

Eschenberg – what did we do with the proposed restriction annexation ordinance? Hickson – thought we adopted it. Eschenberg – we should have it for next meeting if it has not been adopted. Moccia – thought we adopted it.

Eschenberg – the residents of Micco and Valkaria are having a meeting and have invited citizens from Malabar, they must have some ideas on how to proceed.

Eschenberg – got a letter from Bob Kreiger, where you go onto Glatter from Malabar Road Glatter is in terrible shape. Booth – as soon as we get to the dry season it will be worked on. Vail – nothing at this time.

Moccia – went to the park this weekend and saw scrub jays, it was incredible. Also, was glad to see the park being used. Booth – the County was working on the soccer field today and is doing a great job.

Hickson – even though Chuck has retired the Fire Dept still has a great response time, there was an incident at the post office.

PUBLIC COMMENTS: GENERAL ITEMS

Chris Norton – called but no longer present.

Regina Bull, Flashy Lane – just wanted to comment on development, does not want to see the big developers come in and ruin our lifestyle. The developers have lots of money and can help build our community.

Maryann Marsh, LaCourt – would like a workshop on the grazing animal law, there are so many animals now and it needs to be addressed. There are issues with stalls on her street and would like a workshop on this also.

Chuck McClelland – feels that Bill Withers is a problem and the issue has been brushed off. Withers asked other people in the Fire Department who said we did not want a line from the pump to the building, he did not talk to the Chief about it and now it is something that still needs to be done. Withers also had the plumbing modified on the pump and now it is not usable to the Fire Department. Withers caused problems at the comfort station after the hurricane. McClelland told his guys not to talk to Withers because there were so many problems. Feels that Withers should do the park work and stay out of other things. Withers also coerced a Council Member into getting rid of him and another Town employee.

Bob Wilbur – Greenways and Trails was shut down eight months ago and he sees nothing in the works and there is a tremendous amount of work to be done. Trail Head number 1 needs to be finished, grants need to be written for restrooms. The extension down Marie Street needs worked on and there is no one to do the work. Trail Head number 2 needs to be done as well as the design of the Scout park and there is no one to do this. His other concern is that Trail Head number 1 is chained and locked and can only be opened at Bill Withers discretion. Wilbur notes that there are places that do get wet at the Trail Head but the parking area and the horse area are high and dry. This morning he heard the trail head was locked because it was so wet so he went out there and walked it but the parking area and horse areas were not wet. As far as cooperation and working together he has questions about park personnel enforcing regulations as opposed to just doing the job they were hired to do. Suggests that some classes may be helpful.

Mike Everette, Arnold Lane – has been a business person in Malabar for 10 years and is building a home on Arnold Lane. Is a member of youth sports organizations in Brevard County, has been a member of the Board of Directors for the Brevard County Football/Cheerleading Association. He is the Vice-President for Palm Bay's Little League, which encompasses Malabar. They have used the park a few times and have been run-off by Mr. Withers. He thinks there is a stigma linked to the Town and it is because of Mr. Withers, anything that has to do with Malabar Park is 'uh-oh, you have to deal with Withers'. As a result they stay away from the park. When he sees someone driving people off from public places and parks, it is not good for the community. There is not a professional relationship any more, we need a level of professionalism that you'd expect when you deal with Brevard County or Palm Bay Parks and Rec. He deals with those people on a regular basis deals with them well, they are very professional and don't micro-manage. Feels we would be better served by creating a little more of a professional environment.

Cliff Dykes, Hall Road – coaches with Mr. Everett and was present at the uncomfortable run-offs when they were trying to use the park. He has been to several meetings where there's been problems about this and he'd like to urge the Council to do something now, rather than hearing this at meetings over and over.

Liz Ritter, Orange Avenue – has lived here quite a while, is a past Council Member, their business is Camelot RV. She has never had one person who can make so many people uncomfortable. We are supposed to be a friendly Town and welcome people but it seems like that is not happening in our public park that is paid for with our tax money. It is a slight intimidation when a large person sort-of overshadows you and tells you what you can and cannot do. Feels rules are for everyone, and knows that Withers has done a lot for the Town but she does not feel his area is working with the public. He does a lot in other areas but in scouting people have been uncomfortable with things that are said, like move it to the trail head. Scouts police themselves and they'd like to go to an area where they won't be involved, they know the park is building up so they'd like to go to the trail head. Feels that we need to work together better and make it a friendly environment.

Vail – obviously we have a problem, does not have the answer, he would like Council to help with this issue. Some good points were made about public relation skills, he does not know where to go with this as far as the interaction with the community. Does the current position allow him to interact with the park user?

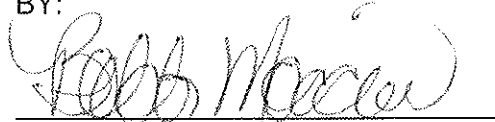
Eschenberg – has a suggestion, does not feel that Council should deal with Withers. The Council can listen to the complaints but the Council needs to deal with the Administrator. Suggests the Administrator resolve this problem in 90 days and if there is a problem in 90 days then he suggests the public come back. And if there still is a problem then they can put more pressure on the Administrator.

Vial – since it is the Administrator's responsibility, let him handle it. Hickson – agrees.

ADJOURNMENT

The meeting adjourned at 9:26

BY:



Chair Bobbi Moccia

ATTEST:

Susan Kabana, MMC
Town Clerk/Treasurer

DATE:
