

MALABAR TOWN COUNCIL REGULAR MEETING
APRIL 18, 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 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
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	CLERK:	SUSAN KABANA

ADDITIONS AND DELETIONS TO AGENDA

Unanimous consent to approve agenda.

Mayor Eschenberg—presented a plaque to Bob Rossman for his services as Council Member, District 5.

Bob Rossman—has enjoyed his time on Council and feels that the Town is in good hands.

APPOINTMENT OF COUNCIL MEMBER FOR VACANT SEAT DISTRICT 5

Pat Dezman—has lived in Malabar for 9 years. She has three Bachelor Degrees and two Master Degrees. Mrs. Dezman is presently pursuing her Doctorate. She has written several grants, published papers and made dozens of professional presentations. Mrs. Dezman has served on several of the Boards for the Town and was the president of the Country Cove HOA. She has worked very closely with Ben DuBose and is humbled by the support of Mr. Bob Rossman. She feels that she can serve the entire Town.

Fred Peterson—Dr. Peterson has been in the Town of Malabar for almost three years. He is a physician at the Palm Bay Community Hospital. Dr. Peterson was attracted to this town because of the area. He feels that he can serve the entire Town.

Allen Wollard—came forward and addressed Council. He is currently the president of Country Cove HOA. He is speaking to Council in favor of Pat Dezman as the new Council member representing District 5. He feels that Mrs. Dezman would serve well for the Town.

Chris Norton, 1611 Country Cove Circle—came forward and addressed Council. Mr. Norton thanked Mr. Rossman for being a great Council member. He is speaking to Council in favor of Pat Dezman as the new Council member for District 5. He is thrilled that Dr. Peterson is here, but urges Council to vote for Mrs. Dezman.

Bob Rossman—of the two people here tonight, he feels that Mrs. Dezman is the most qualified to step in to fulfill his term for Council. Mr. Rossman knows both candidates. He has kept Mrs. Dezman apprised of what has been going on with the Council. Once the term is finished, let them both run in the election for the District 5 seat.

Moccia—we have three statements from people who could not be here tonight. Dave Stack from Country Cove is in favor of Pat Dezman. Theresa, also from Country Cove, supports Pat Dezman. Ben DuBose, from Brook Hollow is in support of Pat Dezman. That is where we are at. Discussion was brought back to Council.

Eschenberg—has heard some background but he is more concerned about the future and what you see in the Town of Malabar for the next year to two years, possibly five years on up to ten years. If it were November, for the election you both would have some type of campaign platform, something stating what you would do for the Town. I would like to hear what your vision or campaign statement for the Town of Malabar is and how they have time to devote to this job with their busy lives.

Dezman—came forward and addressed Mayor Eschenberg. Mrs. Dezman has two wonderful teenage children, is happily married and balancing things has never been difficult for her, even with going to school. She takes one class at a time because she is a life-long learner. Time management has never been an issue for her.

Peterson—besides the fact that I am very goal oriented, I don't have a resting moment. The time that he has is not an issue. I have a very supportive wife and family. We discussed this issue before tonight, as to how much this might involve. Also spoke to Mr. Rossman about this issue as well. I can see some growth but I don't want the growth in Malabar as it is happening all around Florida. I consider myself to be an environmentalist but I don't want the entire Town to be a park and no one else moves in. I think that there is a responsible compromise between growth and maintaining what is here.

Dezman—if you would have asked her a month ago to sit on the Council, she would have said no. I am very good at responding to, I think, opportunities and challenges. Where are we going to be in ten years? I didn't think we would be as far as we are in the ten years that I have been here. But I think it is of major importance to speak to the people of this Town, to make sure that there is a balance between what I think, what Council thinks and what the Town wants. I don't have that information to give you, because I haven't been walking the streets yet.

Vail—are they in favor of 1 ½ acres?

Dezman & Peterson—yes

Vail—Are they in favor of the rural character? Both – yes.

Hickson—I would like to know why each one of you wants to be on the Council.

Peterson—I have always had a very strong sense service. In every community that I have lived in, I have contributed in some way, from being a shelter director to a serving volunteer red cross. I believe that this is the next step for me in my community service.

Dezman—this is also the next step for her. She is finishing up her class, and at the beginning, the professor challenged the class challenge their comfort zone. With this, she would definitely be challenging her comfort zone.

Hickson—when I read the Charter, the people that we appoint have to meet all the criteria. Do they have to have the 15 signatures?

Bohne—that has nothing to do with an appointment, it has to do with the election. The signatures are not required for this.

Rivet-rather than voting for a motion, could we, each person, state who we would like to vote for since we have two candidates?

Moccia-rather than by voting by motion, do a role call? Is this okay?

Bohne-this would not be a problem.

Moccia-asks that Susan Kabana, Town Clerk, call the roll for the vote:

Steve Rivet – Pat Dezman

Bobbi Moccia – Pat Dezman

Frank Hickson – Fred Peterson

Brian Vail – Fred Peterson

Mayor Eschenberg is called upon to vote because we have a tie between the two candidates for Council seat for District 5.

Mayor Eschenberg – Pat Dezman

Pat Dezman is the new Council member appointed by Council and needs to come forward to be sworn in.

REPORTS:

AUDITOR: ROSS WHITLEY, BERMAN, HOPKINS, WRIGHT & LAHAM, ANNUAL AUDIT REPORT FOR FISCAL YEAR 2003/2004

Ross Whitley—partner, Berman, Hopkins, Wright & Laham. This year, the report is a lot different due to GASB 34, an new accounting pronouncement, and this was the last year we had to implement. In the past, our accounting was done on modified accrual. Now, with GASB 34, it will be done on a full accrual basis of accounting in addition to the modified accrual. In full accrual, the capital assets are expensed and depreciated. In modified accrual, it is expensed in the year it was bought. The long-term receivables, if revenue is not recognized by 90 days, like FEMA, it is a deferred revenue. Staff has to go back through all assets, determine historical costs, assign lives and set up depreciation schedules for all of your assets.

Before reviewing the financial reports with Council, Mr. Whitley stated that the auditor's opinion is an unqualified opinion. It states that the financial statements are presented in accordance with acceptable general accounting principles.

At this time, Mr. Whitley went through the financials for Council. Questions were answered during the presentation.

Rivet—at the top of page two what is the MDA? Is it required?

Whitley-it is a narrative of the financials. Mr. Whitley continues to go over the financials.

Shows a changes in net assets of 200k.

Page 5, Balance Sheet – Governmental Funds basis.

Page 6, Reconciliation of the Balance Sheet to the Statement of Net Assets- Governmental Funds - full accrual to modified accrual.

Page 7, Statement of Revenues, Expenditures and changes in Fund Balances – Governmental Funds – in the general fund, you had a net deficiency of revenues over expenditures of (\$25,399.00), in the Stormwater Utilities, you had a positive \$40,445.00. The combination of all the small special revenue funds, a deficiency of (\$28,460.00).

Page 8, Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balances of Governmental Funds to the Statement of Activities - another reconciliation from modified accrual to full accrual. Long term assets is the payment from FEMA.

Page 9, September Statement of Net Assets – Proprietary Fund. Unrestricted net assets of (\$39,108.00).

Page 10, Statement of Revenues, Expenses and Changes in Fund Net Assets- Proprietary Fund - shows the negative net assets of (\$20,386.00).

Page 11, Statement of Cash Flows – Proprietary Fund - cash flows for the water and sewer fund. The Water/Sewer fund as a decrease in cash of the year is (\$16,678.00) and another number that was pointed out was the operating activities of the Water/Sewer fund, for the year, had a deficiency of (\$6,657.00), this doesn't include any depreciation. This is strictly cash.

Next section is the footnotes.

Page 24, **Notes to Financial Statement** – Note H (footnote on FEMA) there is a footnote regarding expenditures for the two hurricanes that impacted the Town of Malabar. For the year ended September 30, 2004, the expenses related to the two hurricanes totaled \$193,215.00. These expenditures are eligible for reimbursement from FEMA and accordingly, a receivable has been recorded for a portion of this amount.

Page 32, **Management Recommendations From Prior Year**, - In the management letter, they were required to address several things to the auditor general. First, comments were made on last year's comments.

Page 33, **Management Recommendations From Current Year** – These are comments for the current year. The first comment made was in reference to travel expenses on the Town's credit card, there were some personal expenses on the Town's credit card. When management was made aware of this, the Town was reimbursed immediately.

The Town's water and sewer billings are dependent upon meter readings and rates determined by the City of Palm Bay. During the testing of this process, it was noted that the consumption reports generated by the billing system did not match the actual readings, nor was the rate increase instituted by the City of Palm Bay implemented. Recommendations that the Town institute a policy to monitor the rates periodically to insure the Town is charging accordingly. A further recommendation that the Town perform monthly reconciliations of its billing system to the actual readings.

The Town should record capital expenditures in its capital outlay accounts according to the Town's capitalization policy. The Town did not consistently records its capital expenditures in the capital outlay accounts; therefore, additional procedures were necessary to reconcile the accounts. A recommendation that the Town reconcile their capital asset inventory and capital additions to the capital outlay accounts.

On page 34 of Management Recommendations From Current Year, Subsequent to year end, it was discovered by the Town that their buildings were under-insured. The Town has increased their coverage at this time to replacement value. The Town has instituted a policy to evaluate, on an annual basis, the coverage for all facilities.

The Water/Sewer Fund continues to have a deficit and decrease in cash flow in their utility fund. The Town needs to address this situation.

A copy of the Annual Audit Report for Fiscal Year 2003/2004 is kept in the Town Clerk's office.

Hickson—04-01, proper documentation for credit card.

Booth—this was my error and was corrected immediately when I was told about it. I also advised the Council when this was brought to my attention.

Eschenberg—how do you calculate the cost of land?

Whitley—all the assets are valued as historical costs, based on the date of donation or purchase.

MOTION: Rivet/Vail to accept auditors report. VOTE: All Ayes.

ATTORNEY – nothing to report at this time.

ADMINISTRATOR

- RAILROAD CROSSING AT JORDAN BLVD

The Railroad has agreed to do this on Saturday and Sunday. Harris has agreed and Data Management is okay with this. Susan Kabana received a call today stating that the materials needed were not received, so this has been postponed to May sometime. Harris was upset with this news because they had already planned for this work being done. There is a question as to who is going to pay for this work being performed. We signed an agreement in 1984 between the railroad and the Town. Mr. Bohne feels that we have the responsibility.

Bohne—there is an agreement between the Town and Harris that is referenced in a resolution. But we don't have a copy of the agreement.

Booth—we really need to do a records search for this document.

Vail—who mandates the condition of the tracks?

Booth—that would be the railroad, they are on a schedule and they are going to do the maintenance.

- FEMA PAYMENTS

We have received about \$295,000 from FEMA. We will be receiving a little over \$500,000, which does not include the additional money for the larger shed with the Fire Department. There will also be payment for some of the salaries of the employees and rental equipment. The firefighters are getting their second check for the work they

performed for Hurricane Frances. We have enough in the reserve fund to go through another hurricane, if it were to happen.

- **EELS**

Parcel 1 is something Brook Hollow feels that they own and would like sell it. Part of this was mitigate land and a portion was to be given to the Town for recreation purposes. That land is not as accessible for Brook Hollow to sell like they would like it to be.

Moccia-is this the same piece that they offered to us?

Booth-what they wanted us to take was that land and swap it for the road. In reality, part of the land probably belongs to us for mitigating for recreation. We just never took title to it. Every development that goes in is required to either put up land or give us money. They put the land there and set it aside, but they never gave it to the Town. The developments that are going in now are giving us money. Stillwater recreational fee was \$22,750.

Bob Wilbur-when Brook Hollow, Phase I, was being built out, this parcel was to be used to put a foot bridge to the park. This was done in lieu of recreation. He does not believe it was to be deeded to the Town, it is land-locked. It was to be used by Brook Hollow.

Booth-Parcel 2, I thought that belonged to the EELs, it's on the west side off of Marie Street. It squares off their land. Parcel 3, I need to look at this and ask why they want this piece of land. It does not square off any of the land that they own, we will have to negotiate. What the County Commissioner has said is that before any purchase of land, this Council has input to the County to buy or not. Right now, there is no issue because all the funding is going to the north to buy some islands.

Moccia-would like for Mr. Booth to point out where Parcel 3 is located.

Booth-this is an area that we would like to purchase. Jordan Boulevard and Atz Road is in this area. Parcel 5 is mostly a lake and it will square off the twin lakes. Doesn't think that any development can go there. Parcel 4, I would have a question as to what they are doing. This is the Cochran property. The Cameron Preserve may be turned over to EELs so that they can manage it. The EELs has money to put into this property. Mr. Cochran feels that he has about 80 acres that he can develop here. We've always felt that all the land was mitigated. In a recent conversation, he feels that he has the 80 acres to develop. He want to talk about that and develop around the lake. It is zoned industrial right now. In Valkaria, the EELs own a lot of pieces of land. Now they don't know what to do with it. They are looking at possibly swapping some land to make large parcels. Where we fall into this, is the Town is looking at five acres over by the park for the new Town Hall. This came from a conversation with them last week. We are now helping them with the management of the property.

- **COREY ROAD CLOSING FOR REPAIR**

The south end of Corey Road at Malabar, will need to be closed for approximately one week to get the repairs to the culvert done.

Eschenberg-do you have a date on the closing yet?

Booth-not yet, but it will have to be soon because it will be within the next couple of weeks. It's being done emergency wise, because it's beginning to fall in. If I don't do it, I may have close the road because of the situation.

Moccia-could we post some signs so that people know they have to make arrangements?

Booth-all they have to do is go around.

Moccia-we need to post something out there to let people know that this construction is coming.

Booth-we'll put something up.

- **STOP SIGNS**

The solar stop signs are \$2,000/each, which would be \$8,000/intersection. That's too much money. There was a request to do a study and I went to the County. They said they couldn't do it. They referred me to a consultant, who said it would be \$2,500 for a study, and that's at the low end. A Council member, who works for the State, is trying to assist me with this at a reasonable rate. You will have a study within the next thirty days to see if we need stop signs at Atz or Hall. Some positive action, we have gotten new stop signs that we are putting up. They are more reflective. We are putting all the signs up at that have "STOP AHEAD" painted. We have also trimmed the intersections. We are now cutting down and cutting back all the intersections. Hopefully, that will solve the problem. If not, we will have to put out flashing lights.

Eschenberg-I still haven't heard about the "STOP AHEAD" being painted on the road. I have heard that it is truly affective.

Booth-it is and we have ordered the stencil. The County did not have it. They don't use it. The State uses it sometimes. That was one of the actions that we are taking. That will be painted on the pavement, the signs showing a stop sign is ahead and then the actual stop signs; that are new and reflective will be at the intersections. The Public Works Department had moved the signs because they kept getting knocked over by trucks. If you can't see the signs though, that doesn't do any good. So they have since moved them back to where they need to be. If they get knocked over, we will have to put them back up.

- **CODE ENFORCEMENT**

Has no Special Master meeting but Tarzia did receive a management letter. Regarding 2630 Malabar Road, the trailer is to be moved immediately. The Fire Department will burn down the middle house, 2640 Malabar Road. It must be checked for asbestos. On Marie St. there is a FEMA trailer without a permit and he needs to get a permit to fix his house. Also there is a used-car business that has to come into compliance. We are taking care of these through normal management, not the Special Master at this time.

Hickson-there is a house a Blanch that is falling down.

Booth-the individual who lives there may have some issues so this has been turned over to the County Health Department, there is definitely some problems at this household. The house may have to be condemned.

- **MALABARFEST**

Susan Kabana indicates that I need to create a line item for the Malabar Fest. We brought in a fair amount of money from donations. I think it was a successful event. The more I look at it, I really don't want to grow it into the Melbourne Art Festival. It has the flavor of a small town festival and I think we need to keep it that way and be fairly successful. We need to keep it that way. It will grow on it's own but we don't want to do it exponentially.

Kabana-this money, has traditionally, gone to the Park Board Fund. So what we are asking is what do you think about having a Malabar Fest Fund? It will be the tracking of the money, as opposed to filtering the funds through the Park Board fund.

Vail-will the funds be disbursed or part of the funds be used for the park?

Kabana-this is something that Council would need to decide.

Vail-this year was exceptional. It's Council's decision, but if it is a good yield, personally, I don't think it should all in the Springfest. It should be used to make improvements to the park.

Booth-I don't think you're there yet. They have the funds to operate next year, but if they should have a fund growing, then we need to look at it.

Rivet-if we want to account for it and keep track of what the Springfest is costing us, it makes sense to account for it that way. If we have surpluses in the funds, I would certainly be in favor of transferring those to the park fund. I think this is what everyone is getting at.

Booth-this is still Town money so you have full control over it. If you want to take and move it over, you have the authority to do so. It's more of how we're tracking it and to say how much money we're spending. I think that it's self-sufficient now because I think we are going to get enough money through donations into this fund.

- OAKMONT PRESERVE

You extended the Oakmont preliminary plat for six months. But there was another section in that I didn't recognize in the land planning that I also needed to extend to allow them to continue working. We will probably change that because it's not smart to extend for six months and then not let them finish their project. My understanding is that when you authorized the six month extension, you also authorized them to finish their project. Council-yes.

Booth-I just needed to clarify that.

- PARK

We are now getting people interested in the park for teams. In this next Mailboat, I am going to promote heavily the development of teams within the Town of Malabar, our community teams, both soccer and baseball. It will be about sixty to seventy days before the fields are completely ready. A lot of the work is being done by the County. Currently, the Public Works has been spending Tuesdays on the Park. I really want to pull them back to start working on the roads and cleaning the ditches. Therefore, I will probably come up with another part-time hire for the park. The funds are there within the budget because we haven't expended all the funds and because I'm getting money back for some of the salaries that we paid out from FEMA. I'm just looking at that. I haven't approached the Parks Board yet, but I'm wanting to focus Public Works on drainage and roads and less on the other things.

- CLERK

There was \$87.07 missing from the petty cash drawer. Susan Kabana thinks it happened when she opened another drawer during the hurricanes, which these funds were used by the Eagle Corp for gas in the vehicle while the Patel's convenience store didn't have gas available. The Eagle Corp member would pay cash for the gas they purchased and provide receipts to the Town. Some of these receipts have not been accounted for. This is the reason for the missing funds. The petty cash box now has a lock on it and is only accessed by Susan Kabana.

REPORTS: MAYOR, COUNCIL

Eschenberg-on Saturday, April 9, 2005, I attended the Palm Bay Boundary Canal dedication. The Town of Malabar was presented with a plaque, showing the trails throughout the Boundary Canal.

Vail-would like to get this in some form of pamphlet.

Eschenberg-we can take a picture of this and put it on the web site.

Hickson-in everyone's packet, I hope you received a copy of an email sent to Town Hall. A couple of meetings ago, there were several complaints against Bill Withers. Unfortunately, he didn't get a chance to speak. I was kind of disappointed because I wanted to hear what he had to say. Due to family matters, I wasn't able to attend the next meeting to see how we resolved this matter.

Moccia-Mr. Withers will be speaking during the reports, so if you wanted to hold that thought so that you could speak back and forth.

Hickson-like I said, before we came into the last meeting, I did receive a memo from Mr. Booth stating how he's going to take responsibility for Mr. Withers direct contact and to limit the complaints. My question was, at that time, what is the responsibility? There's no mention of what the repercussions would be if there are complaints, and they are founded. Does the Council take action against Mr. Booth? Does Mr. Booth have a plan in place to work with that contract? Working with the State, we always have it spelled out that if you are in breach of contract, you could lose it. It was like a memo with no teeth in it to me, so I wanted to bring that up. I fielded some of those complaints, so I went to the Town and asked for a copy of the contract to see what was in the scope of services and what his responsibilities actually were. As I was reading the contract, with having read over hundreds of contracts with the State, I was almost appalled at what was actually written here. As you see my email, I have a list of items like how we came up from the dollar value to the hours. It was done by the last Council, so I wasn't here. That's why I was trying to get the answer of if he's renting the Town's equipment for a dollar. Is this a dollar a month? Are we collecting this dollar, where is it in the budget? Does that dollar cover the maintenance that the tax payers are paying on the equipment? I just have a various amount of things and I was hoping to get copies of these things answered. What it really boils down to is that we need to re-write this contract, which I think is setting the Town up for big liability. Or we should just go ahead, it's been two years, we can pick a date to end the contract, maybe re-advertise. Mr. Withers would still have a chance at it. I think he's doing a great job at the parks. Put it out there for competitive bids and spread the wealth out to everybody. This is just an idea that I wanted to present to Council. I don't know if everyone got a copy of the contract, you could request one from the Town. I don't know if we actually have a signed copy of the contract; that was the first thing. I don't even think there is one present.

Bohne-that is the only document I had.

Hickson-it's just an email.

Bohne-it's a kind of a memorandum of understanding.

Hickson-as far as this document, I don't think this would hold up in court.

Booth-we came up with one because there was some questions, we had the attorney look at it. We'll conduct a records search in the office.

Hickson-there are no complaints in the work that is being done at the parks, it just the administration of it. We need to clean it up. We had a great time at the Springfest. My son loves the new playground equipment. You had mentioned that a permit was needed for the tarp. Has that been taken care of yet?

Booth-the permit has been obtained, we have the tarp, but the color is tan and it's supposed to be green. One of the colors is wrong and we are trying to determine what the Park Board wants.

Vail-what did the color of the tarp turn out to be?

Booth-we have one, but it is tan.

Vail-as far as the blue, we are all in agreement with that. I'm in favor of earth-tone colors out at the park.

Withers-it is supposed to be green to match the columns and to match the rest of the equipment.

Vail-when are we going to work on the water fund issue? Can we have another workshop for this?

Moccia-could we have some calendars at the next meeting?

Booth-I thought we left it with you that staff was to come with a resolution that increases the impact fees for \$250.00 and then we were going to wait for any increases in the rates until the budget year and you were able to advertise it in the Mailboat to let the citizens know about the change in rates. I didn't know that you wanted more.

Moccia-that was Mr. Mayor's concern.

Vail-I just wanted to make sure that the ball was rolling along with this.

Booth-I think our time line is to do the impact fees, take advantage of the new homes coming in and then notify everybody about the decisions and why we are going to increase the rates by 10% the next budget year.

Vail-I don't have the figures in front of me, but bringing it up 10% would equal Palm Bay's retail rates?

Booth-it will probably go over it a little bit, but with the study that you saw, it will bring it up to their rates. They have a higher fee up front without the usage.

Vail-they charge for different services then we do not charge for.

Dezman-Brook Hollow and Country Cove will need to understand that they are not paying for the new development.

Booth-we are not raising the rates until the new budget year. This will all be put into the Mailboat so that everyone is notified of the changes in the Water Utility.

Vail-that would all be in the Mailboat, reflecting all the impact fees and increases in rates.

Dezman-is that the only notification or explanation that they are going to receive on this?

Booth-we can send out a letter, but the Mailboat would be the first notification that would go out. The rates won't take affect until after October.

Dezman-I don't mind challenging my comfort zone, but not in the first month I'm on Council. Both Brook Hollow and Country Cove are in District 5.

Booth-it won't be the first month; it will be in October.

Vail-it would be simple to send them out with the water bills.

Booth-we could do that, too.

Moccia-a letter from the Town on letterhead to be read at the HOA meetings.

Dezman-a question for Mr. Booth, the Code Enforcement on the house going from Malabar Road going north on Corey was mentioned. Has there been any action?

Booth-has begun the process, a letter is first.

Dezman-the letter has been sent out?

Booth-yes it has been sent. We try to take care of the issues personally, one on one, until it gets to a point where they are not going to take action. Then I notify them that they will be going before the Special Master. So far, it has gone very well.

Dezman-in one of the meetings, I'm not sure, we received a response from the Attorney General on the Gentile situation. What is the stand on that? I got the impression that the ball is back in our court. Is that correct?

Booth-it was to a point where if he does commercial ventures, we have the right to regulate him. We certainly have the right to regulate him if he violates our codes. But

as of this time, he hasn't done anything. He has advertised, but he hasn't done anything yet.

Dezman-that is why I'm asking because I've gotten several calls regarding the advertising for May 1st.

Booth-I can't control this, he has the right to advertise whatever he wants. When he starts doing what he's advertised, that's when we can regulate.

Rivet-we will shut down the non-farming activities.

Booth-we all know that Mr. Gentile can be very argumentative.

Dezman-I can only hope she has the same integrity my predecessor had.

Rivet-I am still working on the light ordinance.

Vail-I spoke with a couple of electricians. There are two different ways of measuring light. There seems to be a grey area in the enforcement of this ordinance. We are going to have to do a little more homework. I have someone looking on the internet for lighting ordinance from other municipalities. Melbourne is supposed to have a very good ordinance; it is not on the internet so I'm trying to obtain a copy of this document.

Bohne-some use candle power and some use lumens. I don't know the difference between one lumen and one candle power.

Rivet-they are measuring the same thing, they are different units. I will try to have something at the next meeting.

Vail-my concern is on the illuminated signs, the upper directed lights versus the downward. I don't think that would be too hard to enforce. It's just a matter of what fixture they buy to use on the fixture itself.

Rivet-I would like to respond to the email from Mr. Hickson. This looks very much like some of the issues that a certain former Mayor had and, you talk about the appearance of impropriety, and there's an appearance of impropriety here and I don't think it makes sense to pursue this. If we're going to have hard and fast rules for contracts for the Town, those need to be enforced. If we look at the broader scope at some of the things that the Town does, I think we'd see some equally ineloquently worded contracts and if you want to embark on a review of all of our contracts and fix them, I'm all for that. I think that if there are certain things that are becoming huge problems, then they should be put at the front of the line. But, again, I don't think this merits that. This is my opinion and Council can make whatever decision it wants to.

Hickson-so like would it take a child being killed by our equipment and the Town being liable, would that be moved to the front of the pile? We hold our contractors that do roads do any pipe work, and we hold them to these standards. We write these contracts and make them have this type of information. I think as a municipality, a government with deep pockets who go after when we see things happen, we need to cover our basis. I'm not saying we need to end the contract and get rid of Mr. Withers. I'm saying we need to have a contract. We need to have a signed contract.

Rivet-we need to have a discussion on that.

Hickson-to Susan, write that up.

Booth-the contractor has insurance.

Withers-yes, a million dollars.

Hickson-the write-up that I have states that Mr. Withers is a contractor. Does he have insurance?

Withers-yes, a million dollars. I pay \$450.00 a year

Hickson-that's what I was asking. I asked for a copy of the insurance and didn't receive it. If you could give a copy of the signed contract, that would be good too. We don't

have it on file; it's been over a month. I'm just guessing that the contract we have really doesn't hold any water regarding liability.

Bohne-it's a terminable at will contract. It was designed by Council way back when not to have a specific time limitation. If things didn't work out at that point, it was going to be terminable. As the years progressed and things went on, Council felt satisfied with the performance of the contractor. When the initial opinion was given, I believe that he was an independent contractor. If facts have changed, I need to know it. I didn't get a copy of the email, so I don't know what it says.

Hickson-the only point is that I believe that we should have a signed contract.

Bohne-I agree with you.

Hickson-if Mr. Withers has a signed copy of the contract, we should get a copy of it from him. The second think was the issue with the insurance. He says he has insurance, which I am all for it.

Moccia-we had a fit over that.

Hickson-I did get some of the information from my father-in-law. The big news to me, and I don't even think my father-in-law knew, was the rental of equipment for \$1.

Withers-there is no rental.

Eschenberg-called Point of Order. There shouldn't be arguing between Council and someone from the audience.

Hickson-the contract states that the rental of equipment is \$1. When I asked Mr. Booth how much the rental is he stated it was \$1.

Moccia-I believe that we even set that at the Council meeting.

Hickson-my question is, if the Town's taxpayers are paying for equipment, does \$1 adequately cover the maintenance, the wear and tear, and the depreciation of equipment? Is there a rental agreement? Where is it in the budget? We're not even collecting the \$1 that we're supposed to be collecting. If someone got a hold of this, say the media or something, it looks like favoritism. It's not even a good contract. That is just my stance on this. I think we need to put it as an action item to re-write the contract that's a little more plausible then what I'm seeing on this piece of paper. We just cover our basis and we go on. The parks are in better shape then when I first moved here. I still think that you are doing a fantastic job. We just need to cover ourselves.

Booth-the reason for the \$1 was, and we could charge him rent and then we would pay him more, so the idea was that he was going to use our equipment.

Hickson-when we looked at the bids, why did we go with this bid when we had bids with people using their own equipment. 99% of the time, we go with the low bid and this is the only time we didn't; it could also set us up for liability. I think we need to fix things that are broken. This contract is broken. If the Council, in general, doesn't want to pursue it, then I've at least said it and brought it out. I will be fine with the action that the Council takes. I'm just trying to voice my perspective on this.

Vail-may I ask a question? What does the State say about contracts? How often do we need to go out for bids?

Bohne-there is none.

Eschenberg-first Frank brought it up and then Steve brought it up. Whenever a Council member brings up an issue, and it doesn't matter where the information comes from or what the issue is, someone has to answer the Council member and, in my opinion, it should be staff that answers these questions. Obviously the Council is happy with the services of Mr. Withers. If it takes a contract to fix this, then let's do it.

Bohne-he never received a signed copy of the contract. We will go forward with this.

Moccia-nothing to report at this time.

PUBLIC COMMENTS: GENERAL ITEMS

Withers—has donated another computer to Port Malabar Elementary through the Town of Malabar.

Moccia—we have not given the computer to the child yet, but when he receives it, he will really shine.

Withers—as everyone has said, Springfest was a great success. One committee member rose above all. For a job well done, I would like to ask that Council take \$25/each out of their discretionary fund and reward Cindi Kelley for her excellence. There is precedent for this. We did the same for Debby Franklin when she got a grant for the Town back in 2002. I was on the Committee and she was so far ahead of me.

Moccia—does the Council agree with this, those who want to?

Vail—I'm in here about every other day and she was going. She was a fireball. She was heading in ten different directions and ran with this.

Moccia—when I first got to the Springfest, there was a little discrepancy and she cleared it up immediately. I am more than happy to do this.

Dezman—who does this have to go to?

Rivet—we each have a discretionary fund to use for Town business.

Vail—did Bob Rossman spend his fund?

Kabana—I will have to check because Mr. Rossman paid the TD Group with his fund.

Moccia—if it's not in her fund, then you can take it from mine.

Rivet—assuming you agree with that Pat

Dezman—I agree with that.

Carmin Tarzia, 2060 & 2080 Howell Lane—there are two members of this community that have attacked my property and myself. Just to give you a little background information, these two members of the community have personal issues with me. One has tried to purchase the property before me by outbidding me. The other person, I have a legal matter with. Both members have threatened me stating this is their Town and their community. I always assumed that Malabar was for us, my family. When I purchased my three acres in Malabar, that's was my dream to bring my family here to live and have land. These people have prohibited me from doing so. When I came to Florida, I'm an ex-Navy decorated Veteran, I am a retired New York Police Officer and I am now the president of the Palm Bay Jaycees, which I have been for over ten years. Just to give a brief summary, let's see on your last hearing May to September 2003, prior to purchasing the property, I was accused of bringing many vehicles, trailers and RVs. The gentleman that accused me of this said he could prove it. Well, let him come here and prove it. I didn't own the property, so I didn't have anything there. I did get, from the homeowner, permission to have two horses on the property with the Town, which a letter was sent to the Town dated May 30th. The horses only stayed on the property approximately about a week to week and a half because the property was not secured. At the time, I didn't know that the lady next door had a problem with the same individuals. There are many different things, and three minutes just won't cut it, but as a Police Officer, I had learned that there are three sides to a story. And what I asked the Town Council was to investigate the allocations and to find out the truth. I am not a rich man. I have been accused of not doing my fair share on the property. To be honest, I bought "Pandora's Box". When I bought the property, and as the old photographs, which the Town gave me, shows that the property is overgrown. Mr. Rivet drove by the property every day, so he knows the condition of the property. What is an acceptable time? I have six children, this hurricane has devastated everyone. I don't have the finances and resources to go rehab the houses.

I have also been accused of not doing anything with the house. That's not true. I hired Dixon Design Associates. Several months ago, I had Mr. Booth, Mr. Vail and Mr. Norm Smith meet me at the property. We sat down and went over it. Mr. Robert DeSelli, from the engineering company, came out and met with them. I left it in their hands to design. Here's a blueprint of the house as they proposed to build, which they said nothing was done. I also heard on the tape that I listened to that the house is in disarray. Maybe it would be better, I have spoken to the Fire Chief, to burn one of the houses down, cost affective. If I bring in a contractor in, it would probably cost about \$100,000 to re-build 2060 Howell. On the other side, if I bring in contractors, it will probably cost about \$50,000 to re-build the other house. Doing it myself with the help of friends and pulling the permits, the estimated cost on 2060 would cost me \$41,653.30 and 2080 Howell, which is a smaller house, would cost me approximately \$24,016.60 for materials to rehab these houses. I, along with my family, have put a lot of time and effort in this property. I have spent over \$20,000 in cleaning up this land. This garbage isn't mine, I bought it. Unfortunately, when we bought the property, Mr. Booth didn't even know there was another building in the back because it was so overgrown. I didn't know all the trash was back there, but I did haul it all out. It's to the point now where I just don't have the funds. I've tried to sell the property. One of the individuals offered me \$77,000 for the property six months ago. Then there's rumors that I sold the property for \$200,000. Then there's rumors that I sold the property for \$240,000. Well, the plan of record was to sell the property for \$210,000. The man buying the property, he met with some people, and he said, while he was looking at the property, he was going to refurbish the house. He was going to take 2060 Howell Lane and make is a 2,500 square foot home and re-do the house. He was told that he would run into a lot of problems, the he would not be able to do it. You are going to have to take the house down. Then there was a variance problem that was brought to his attention. The property is five feet short; no one explained to him that he could apply for a variance. There were some other issues brought to the buyer's attention, so now the deal is done and gone. So now I'm taking back possession of the property. There has been no complaints for the last four months. By looking at the pictures, you can see that a lot has been done to the property.

Booth—are you asking the Council, by State Law 160.5, allows Town Council to modify, change or throw out any findings. You received a management letter that stated you had ten days to cut the grass, you had two weeks to make arrangements to burn those piles of trees, and you have thirty days to decide what you wanted to do with the property. Isn't that what the letter says? Are you asking Council to change the letter?

Tarzia—I would ask Council to look into the letters to see if the Town is being used as a pawn by the two individuals to get even with me. And also to change the letter because when I originally pulled the permit for clearing the land, I was told I didn't need the permit. Then I was told that I did need the permit. Then the people that cleared the land had requested a burn permit, they were denied. I was then told that I had to get rid of it, I hired Frank D. Whittaker to come in and clear the land. He requested a burn permit and was also denied. Now on August 25th, I received a letter stating that I could burn. Why couldn't I burn in the beginning? This stuff would have been gone, the problem wouldn't have been here and I would have saved myself \$8,000 to \$10,000 from clearing the stuff and put it back into the house or to better use.

Moccia—okay, I think we need to, obviously, clarify this because there are people here tonight that have stated that there so many things that haven't been met for your property. You have been placed on the Special Master's agenda.

Tarzia—the first time I was placed on the Special Master's was because a dumpster being in front of 2060 Howell.

Moccia—we need to address these things. We need to address the situations.

Tarzia—what do you mean by situations?

Moccia—the different things that have been posted.

Tarzia—I have been accused falsely. The dumpster is now being emptied. Harris sent the bill saying that they have emptied the dumpster six times in five months.

Moccia—do we have that information.

Tarzia—I provided that to the Special Master. That is all done and gone.

Moccia—so you are coming, more or less to let us know what's going on.

Tarzia—more or less. I will sit with Mr. Booth to discuss what is going on. I can't finish cutting the back of the property. Those pictures are from today. That shows you the condition of the property. I have been accused of junk vehicles on the property.

There's no junk vehicles on the property. My motor home and boat are on the property.

Moccia—have you been out to see the property Mr. Booth?

Booth—do you mean today? No.

Moccia—I mean recently.

Booth—I have given him time to take care of things and then I would make an inspection of the property.

Moccia—are you willing to have Mr. Booth come out and look at the property?

Tarzia—I have asked Mr. Booth and Mr. Vail to come out to the property.

Moccia—to Mr. Rivet, you have stepped on the property to see it?

Rivet—I have looked at the property from the road. There have been some improvements lately. The question is whether the conditions in the management letter were met. I'm not making judgments on this.

Moccia—Mr. Booth, could you please do this? We could keep going and be here all night long. We need to get this rectified. Something isn't being done, whether is on your part or on our part.

Tarzia—my request to Council is, I'm an honest and fair man, and there is always three sides to a story. I am being accused and harassed from two individuals that I have a personal matter with. They constantly harass Mr. Booth, which he has plenty on his plate to do as it is. I was a Code Enforcement judge for the City of Palm Bay and I know what it's like and I know he has a busy schedule.

Moccia—well we're going to put it to him where he needs to do it. You've said your piece, so fair enough.

Tarzia—thank you and fair enough.

Moccia—Mr. Booth, let's put this one to bed. Let's figure out what needs to be done.

Booth—this will not go away until the neighbors are satisfied. Another thing, Code Enforcement does this from the easement. The neighbors have property abutting and they go around and take pictures. I have to look at it from the street and from the street, if he's cut his grass, it may be alright. I know the piles are still there. The piles were, at one time, too big for them to burn. They were afraid that it would get out of control. They are now manageable and he can make arrangements to burn them. As far as the house is concerned, there is thirty days to come up with a plan.

Moccia—we have it now and we have everything there.

Booth—there is nothing there that is unreasonable.

Tarzia—well there is, financing.

Moccia—let's just get it done. We have to figure something out.

Tarzia—do one house at a time and they want them both done yesterday. It's not going to happen.

Moccia—let's just get this handled, one thing at a time. We will deal with you when we cross that bridge.

Moccia-Mr. Withers come on up. I will give you more than three minutes because you didn't get to speak last time. This is on rebuttal.

Bill Withers-Mr. Hickson, this is just for you. It's what you wanted. First of all, on the job that I have with the Town, it was advertised and Brian Vail has a copy, it says that all equipment shall be furnished. I will get you a copy. I do carry, thanks to a mutual friend of ours, \$1,000,000 worth of insurance. It runs from June to June. The Town has a copy of each, the policy and the papers. I pull the maintenance on the mowers, Mr. Booth and I talked about me being responsible for a 1986 mower. That's the first mower that this Town had, that we went to Stark and bought. That was before you got here. It just wasn't practical for me to be responsible, if a generator went out on something that old. Unbeknown to you, all the monies that I make from this job goes to an orphanage, none of it goes into my pocket. At this time, Mr. Withers read a letter that he submitted to the Council. A copy of this letter is hereby made a part of these minutes.

MOTION: Eschenberg move to extend for 15 minutes.

MOTION: Rivet/Hickson move to amend motion to extend for 5 minutes.

Moccia-discussion to Council.

Kabana-the Mayor needs to agree to the amended motion.

Bohne-Mr. Mayor would you agree to amend your motion?

MOTION: Eschenberg/Rivet move to amend extension of meeting for 5 minutes.

VOTE: All Ayes.

Vail-Obviously, I'm the focus of this report. As this is only politics, as I'm told by Mr. Withers, I can't differentiate politics from being a citizen that I chose, I don't sit here with any mal-intent. Whose been sitting out there for how many years for the meetings, who's been out in those chairs for Council meetings? Me, Bill and who else? I don't have any personal gain issues. I talked to people who called me on this matter. If he wants to say that I orchestrated this, he's wrong. I reacted to input and questions that I got. The answer to that is no, I did not orchestrate it. And as far as me challenging the conflict of interest, obviously I'm not the only one who questioned that. There are other people on different Boards and other citizens that question it. It's an issue. It has to be clarified that it's not a problem and Mr. Bohne has done that. Frank Hickson has brought it up, so obviously I'm not the only one that sees it. At this point, I'm dropping it, as Mr. Bohne says it's not a problem. I really don't want to bring this into another meeting; we really need to resolve this tonight. As far as the issue with Town employees or subcontractors, what is the final say on that?

Booth-we have changed the policy on that. Mr. Beatty and I will be closing the park.

That's where the "rub" was. Mr. Beatty takes care of the Boy Scouts and I take care of the all teams. So that sort of takes the public out and if there any problems at the park, Mr. Withers will call me. If I am there, I'm not always there because of meetings, and then I will go.

Vail-you stated, in a letter to Council, that Mr. Withers has the tact of a drill sergeant. It's not only me. There have been several people...

Booth-he is focused.

Vail-and I admire him for that. His efforts are, you couldn't find anybody else that put his heart more into it. I have to give him kudos on that but there's issues. We can't ignore the issues that we're confronted with.

Booth-and I think that we've taken that out.

Vail-and if he wants to consider that a personal attack, then you go right ahead. I'm just forwarding the concerns that were asked of me. If I'm supposed ignore those because you're here and I'm supposed to be afraid of speaking, you're wrong. I'm doing my job. Booth-that Town employee that will be working over there will take care of the gates and all that.

Eschenberg-point of order, 5 minutes are up.

Moccia-we have 1:29 minutes, we have it timed. So go ahead and finish it up.

Booth-that other employee will work over there and close the park and deal with those teams.

Vail-I took a consensus of the group, I made a suggestion that Mr. Wilbur help Mr. Withers. Mr. Withers, being the thin-skinned or misunderstanding, whatever you want to call it took offense to it and didn't talk to me for three weeks after I apologized to him three times, twice on the phone and once in public. He still didn't talk to me. I don't have bad intent for people. I don't want to be the "Good Ole Boy" system and I think everyone knows that.

Moccia-okay Steve, we'll let you talk and sum it up.

Rivet-I'll be very brief. We are going to have differences of opinion. I have a difference of opinion with Frank Hickson. I'm not calling you a bad guy, Frank; I disagree with what you said. That's just an example; let's not take it personally.

Moccia-that how Council works.

Vail-I'm sorry, I cannot differentiate the two. I'm not a politician.

Moccia-as a very fine gentlemen said,

Dezman-we can disagree, but we do not have to be disagreeable.

ADJOURNMENT

This meeting adjourned at 10:40 p.m.

BY:

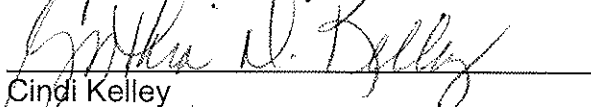


Chair Bobbi Moccia

ATTEST:

Susan Kabana, MMC
Town Clerk/Treasurer

Minutes transcribed by:


Cindi Kelley

DATE: 5/16/05