

**MALABAR TOWN COUNCIL REGULAR MEETING
MAY 2, 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 7:35 pm by the Chair, Bobbi Moccia. The prayer and pledge were led by Mayor Tom Eschenberg.

<u>ROLL CALL:</u>	MAYOR/VICE-CHAIR	TOM ESCHENBERG
	CHAIR:	BOBBI MOCCIA
	COUNCIL MEMBERS:	FRANK HICKSON (excused)
		BRIAN VAIL
		STEVE RIVET
		PAT DEZMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE (excused)
	RECORDING SECRETARY:	CINDI KELLEY

ADDITIONS AND DELETIONS TO AGENDA:

Moccia-doesn't see where Mr. Booth will be making a report to Council. Is there any way that I can have Mr. DuBose speak this evening?

Mayor Eschenberg-made suggestion to Council to add Reports: Mayor, Council & Public Comments.

MOTION: Rivet/Dezman to accept as amended. VOTE: All Ayes.

CONSENT AGENDA:

(A) TOWN COUNCIL & WORKSHOP MINUTES FOR 4/4/05

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

PROCLAMATION & PLEDGE OF CIVILITY

Mayor Tom Eschenberg read the proclamation to Council and the audience.

PROCLAMATION HONORING EARL & JACKIE FORRISTALL

Mayor Tom Eschenberg read the proclamation to Council and the audience. Mayor Eschenberg presented the proclamation to Mr. Forristall.

Moccia-asked Mr. Forristall if he would like to say a few words.

Earl Forristall-came forward and addressed Council and the audience. He thanked the Mayor for the Eagle Corp program. The Forestalls' have enjoyed being participants with this program. He also thanked the Council, Mr. Booth and Town Staff for doing the great job, particularly with the annexation of Valkaria.

PUBLIC COMMENTS: GENERAL ITEMS

Ben DuBose of 950 Falls Trail-I gave everybody a three page position paper regarding the sale of the 7 ½ acres of common property to EELs. A copy of this document is hereby made a part of these minutes. Mr. DuBose read the first paragraph on page one. These are the words used by the Council and the response from the Council was that we could sell it with their blessing. A copy of the tape from the June 31, 2004 has been requested by Mr. DuBose. I gave you a brief run-down about the recent background of the sale, progress of the sale, we have spent over \$3,000 on this already, ownership of the property (when it became ours), and we have been paying taxes on it. A section of our original Articles of Incorporation saying that

we can sell the property, the basis for this position and a letter from our attorney stating that we have the right to sell this property. In conclusion, Mr. DuBose read the last paragraph on page three of his hand-out. What we are looking for from Council is a letter of consent saying yes you own the property and you can sell it. The letter also must have a portion stating that we can sell it to EELs, which you did agree to because you've already made a position that you are not going to sell any more property. But on the night of June 21st, there are four people here tonight that were in attendance that night and remember this very well. We were told, with blessing, to go ahead. We got our lawyer to start working; we sent out ballots, we spent almost \$500 just on postage and a big package we had to send out. It cost over \$1 per person to send it out. Who is going to replenish that \$3,000 at this point if we can't sell the property? We own it, we would like to be able to sell it; it's in our covenants that we can. Mr. DuBose gave information to Mr. Booth for him to forward it to Mr. Bohne.

Booth-we really don't have a dog in this fight. I talked to the attorney. There was a discussion last time, at the last Council meeting, that the land didn't really have any value as far as there is no egress or ingress to it. The question that Mr. Wilbur had brought up was apparently the development, at the time, had set this land aside for recreational reasons but it was all set aside for the entire three phases. One could make an argument that this is recreational because it's not going to be used for anything else.

Rivet-I would make the point that it can be used for passive recreational.

Booth-it can, that's what EELs do. There were a couple of other pieces of property that I had indicated that I didn't see a problem with the EELs, they were small. I would be glad to write them a general letter. I think that the opinion of the attorney is that if they have the deed to it; they can do whatever they want with it.

DuBose-we have almost 7 ½ acres set aside throughout the community. We have 3 ½ acre lake site with a pond and benches that is open to everyone. We have another one that is really not open but there is a retention pond. We have another 2 ½ acres that you can walk on in the southwest portion of the property. The lake is fully developed. People come in from Glenbrook, the new senior center. Everyday there is five to six people there. We don't tell them that they can't sit on the benches. Anyone that wants to can come into the area can do so.

Booth-he who has the clear title can do whatever they want. We will write them a letter saying Council doesn't have an objection to them selling it to the EELs. If they have a clear title to go ahead.

Rivet-for the record, I would move...

Moccia-make a motion.

MOTION: Rivet/Vail that we authorize Mr. Booth to write the letter saying the Town has no interest in the property and no way to limit its sale and we do not have a problem selling it. VOTE: All Ayes.

REPORTS: MAYOR, COUNCIL:

Mayor-I have a story to tell tonight. My wife was coming home Saturday, heading south on Weber from Malabar Road. As she approached Hall, she observed this huge cloud of smoke, she thought something caught fire. As she got closer to the intersection, a truck was stopped, had actually turned the corner and had stopped in the left hand lane heading south on Weber. There were two cars pulled off to the right watching what was going on. Mrs. Eschenberg stated that there were long skid marks on Hall Road. So on Sunday, I went up there to look for myself and I notice that the big "STOP AHEAD" had been painted on the roads. I think that they were painted there just in time because the skid marks started just about where the

"STOP AHEAD" was. Now if someone coming down Hall and they spotted that painted in the road and there's a reaction time involved, slammed on their brakes, and those skid marks went from about that "STOP AHEAD" to within about ten feet of Weber Road. I would estimate that distance at roughly 100 feet. I don't know where the signs were placed, but the skid marks were, and there was piles of rubber granduals right at the end, so someone really laid on the binders. As a further experiment, I drove down Hall and turned around and headed back toward Weber, set at about 30 mph, which is the speed limit, waited until I got right to the "STOP AHEAD" and stepped on the brakes. Without skidding the tires, I stopped about half way to Weber. What does that tell you about the speed of that truck approaching Weber Road? Apparently, according to what Mr. Hickson said previously according to the State's study, the "STOP AHEAD" is very affective.

Moccia-I think they are pretty good. Everywhere I went, they were there. They did a good job.

Rivet-is this the temporary version until we get the reflective paint or is this the final?

Booth-right now this is the final. We are looking for some reflective paint that will go on. I do have a negative to say there. Somebody is starting to take the stop signs out. I got a call early...

Moccia-what do you mean, somebody?

Booth-somebody has removed the signs on Corey Road.

Rivet-not running them over, stealing them?

Booth-no they pulled them out and so on Saturday, I had a call and came down here. That's the reason the signs are way up in the air. That's as far as I could bury them in. We have since fixed it. We have people out there vandalizing. In this case, though, they didn't destroy the signs; they just simply took them out, both of them, and laid them on the ground. I would warn people that if there is an accident and there is a death; that is manslaughter to do something like that. You are culpable.

Moccia-we should list that in the Mailboat at some point. If anyone sees anybody taking out the stop signs to call immediately.

Booth-if it continues, we will.

Moccia-we should put it in the Mailboat anyway.

Vail-would concreting them in be an alternative?

Eschenberg-I have one more thing. I passed a piece of paper on to Nancy Conklin, Eagle Corp Coordinator. I have asked that she have the Eagle Corp, while they are riding around, to observe all the stop signs at all the major intersections in town. I have put some questions on there, so they can look at all the stop signs, see how well they show up, see if they are visible; are they obstructed by something or disguised by something. Maybe we can get some kind of feed back from the Eagle Corp to see if there is anything else we can do to improve this. That "STOP AHEAD" in the road certainly almost, in all probability, saved an accident.

Booth-those stop signs are new and they are highly reflective, which will help at night.

Vail-they are larger in size, aren't they?

Booth-no they are about the same size because they have to be to DOT standards. They are the highly reflective signs. We actually bought them from DOT.

Eschenberg-sometimes it would appear that the stop signs may be a little bit high and they are kind of disguise a little bit even though they are sitting in front of a telephone pole. We'll see what the patrols say about it.

Vail-nothing at this time.

Dezman-nothing at this time.

Rivet-just a couple of minor things. I did see the mowing at the Tarzia property. What is the status response to the other issues? What is the response of the other issues? You've given them a list.

Booth-I did give him a list. We have plans for the house, but I also know that he's trying to sell the house. My thing with him is to keep it up. Just keep it mowed and stop coming back to Council saying you don't have any money. If you don't have any money, sell some of the stuff in the back, but you have to keep the property maintained. He doesn't have an option not to. So that's it. I told him that I'm not going away and neither are the neighbors. So, keep this mowed. The goat people are at it again. Now it is with trash, the goats are over with and now they are fighting over piles of debris.

Moccia-can I say this again? Never, never a flag lot.

Booth-we are going to solve that immediate problem by picking up the debris. We are going to go around town and pick up all the piles. Waste Management has indicated that they want all debris, sheet rock and house debris in containers now. You just can't put it in a pile. You can put your waste debris can be piled. So we are going to make a sweep through, using the prisoners, next week. We are in the process of ditching again and start working on the roads. Working on the roads is different than grading them. That is, they will go down and spend some time on each road and pull them in, try to get materials, which is still a problem. We will do whatever we can to keep those dirt roads from becoming a puddle. Those are the priorities.

Rivet-next thing I have on the list is another workshop for the Fire Department scheduled. I don't think we have one on the schedule. We should probably do that fairly soon.

Booth-I will have a recommendation to the Council at the next meeting for a Chief. I have also opened it up for anyone else that wants to make a presentation. I saw it similar to the way that Council did it to fill one of your seats. Only this time, the staff, current, former Chiefs and the Corporation, together will make one recommendation. Then, anybody else can make a presentation that feels that they are better qualified or better suited. This opens it up to everyone, but we will make a recommendation so Council can understand it. We would like a workshop to happen a little in the future so we can get everyone back into the building. I have the contractor working, a promise that the roofing contractor coming next week. I am hopeful that I will get them into the bottom and out of the trailer within two weeks. Then, they can start on some of the deficiencies. I can tell you that they are moving ahead. They have gotten many more members, at the chagrin of one of the other Fire Departments beachside. They have started the process of getting their equipment and I am in the process of doing inventory of their equipment. There is a lot that is occurring. I would like to see this go forward awhile before we sit down and say that we are at this milestone.

Rivet-the reason that I asked about a workshop is because the one that we had was almost completely consumed by the two presentations. I had a lot of questions and I wanted there to be a lot more back and forth. I still think we need to that and I think that might be a good idea before the recommendation for a Chief.

Booth-I definitely need to get a Chief. The individual who is filling this capacity is the Deputy and he really has no desire to be the Chief, he has no time and he is really looking for somebody who can spend the time needed for this position. Why don't I set up a 7:30 workshop for thirty minutes.

Moccia-you mean a 7:00 meeting. We usually do a meeting before our regular meeting, like the next meeting.

Booth-if we did a 7:30 to 8:00, you want more of an hour?

Moccia-we need 7:00 to 8:00 because I think what Steve is saying is that we didn't have a lot of time to ingest what they were saying. The presentations came right then, going home and going through the paperwork.

Booth-that was done deliberately because the TD Group made their presentation and the Fire Department needed to also. I wanted you to hear both sides. I will certainly get the leadership people here.

Moccia-so our next meeting is scheduled for May 16th. Does anyone have a problem meeting at 7:00?

Booth-I will have the leadership team here from the Fire Department.

Moccia-is that okay, Steve?

Rivet-I will be out of town the 16th and 17th of May.

Moccia-when is the next meeting scheduled?

Kelley-that would be the first Monday in June.

Booth-do we really want to delay selecting a Fire Chief?

Rivet-I don't want to wait that long.

Moccia-we could do a meeting just by itself.

Booth-I have some of the Firemen here that can answer your questions.

Moccia-we could do it before the 16th. Is that an option for you Steve?

Rivet-that would work, any time before the 16th and 17th of the month.

Moccia-what about next Monday, the 9th?

Eschenberg-that is the Space Coast League dinner.

Moccia-how about next Tuesday, May 10th.

Eschenberg-if we do it by itself, can we have the meeting at 7:30?

Vail-I would prefer the meeting to start at 7:30.

Moccia-we have scheduled a workshop for Tuesday, May 10th, at 7:30 p.m. Let's make sure that they can make it.

Booth-there will be enough leadership here to answer all of your questions.

Rivet-one last thing. I have been doing a little bit of research for the light ordinance, trying to come up with a reasonable measure of light trespass. The measurement of light intensity, the metric unit is a lux. Full moon is about 0.1 lux, so therefore, I am recommending for your consideration to think about that we have a light trespass limit of .03 lux. I don't think that's overly restrictive. It's three times the amount of light when there is a full moon. This is for your consideration, we don't have to take any action on this at this time, but I would like to make some progress in closing out this issue.

Vail-did you find these measurements in any other light ordinances that are out there?

Rivet-the ones that I looked at, I don't remember what they said. I based it on what I thought it should be not what other people have done. I am certainly willing to discuss this.

Booth-the beaches have such an ordinance, they do it because of the turtles. Certainly, the lighting on the beaches is still sufficient to see, but not so bright to cause any pollution.

Rivet-and again, when I'm outside in the full moon, I can see enough to get around. I don't want to be overly restrictive.

Moccia-I noticed the new sign up selling the property at Whisper Woods. Is that the name of the new development?

Eschenberg-Weber Woods

Moccia-they are selling the property. Are they going to develop as they sell?

Booth-they don't actually sell, they take reservation fees. So, it has not yet gone through Planning & Zoning or anyone else.

Moccia-was kind of curious about that. It seems like it just came before us and then, boom, it was up.

Booth-it didn't actually come through you.

Rivet-we did discussed it.

Moccia-we really didn't discuss it, it hadn't hit Planning and Zoning yet. Did they ask you to do that?

Booth-yes they did. We have had our first meeting where we charge them \$500. We know what their concept is. It is, certainly, be an acre and a half and they will bring the water down. Really what's happening here, because property is in such a demand, they get these reservation fees, which is not considered a sale of the property. Then they move on and start the development of the property, using other people's money to do some of the development. This seems to be a common and a legal practice. My question is, I know that some things have occurred on Highway 1, whether they are actually going to do development because they have not come in for preliminary. We don't even know who they are. We know nothing about them. That's usually the first step to find out if you are zoned properly or even if you can do it.

Moccia-can I ask how our blight control study is going? Have you spoken to them?

Booth-I've got a call into them to sit down and talk. We actually started that blight study before the water lines come in is a way of getting it paid for. So we have some of the information that they are looking for.

Moccia-I'm curious to know if we are going to make that deadline.

Booth-we will make the deadline.

Moccia-just call to let them know that we would like an update regarding this.

Booth-they have more of the information with the exception of the numbers that I have. I do have a call into them for a sit-down meeting.

Moccia-I have another question. I have noticed a lot of new construction homes, I know of one in particular on Benjamin Road, that has gotten a C/O before he fixed the road that was so badly torn up with his construction.

Booth-on which side?

Moccia-this is on our side. I know he's gotten the C/O because he's living there.

Booth-he also has a letter in the file describing the amount of damage.

Moccia-I just want to make sure, that as they are building, the people take care of the roads that we have put it. Otherwise they will destroy them.

Booth-without a doubt. In fact, we have a letter that has built along on the County side saying...

Moccia-we have County as well as one down on the far corner, Mr. Levy. He had kind of ripped out his road. We need to go around and make sure we keep an eye on new C/Os as they come in, explaining to them that they indeed have to fix the roads that have been damaged by the construction because we haven't put a top coat on it yet. It's really going to go down hill.

Booth-they also need to put in cement driveways, the front that abuts the road. They have not done that and we have letter out for that. I expect, next year, that we will top that particular road.

Moccia-not only ours, there is also Atz, which was done on one side. Is that right?

Booth-no, we just patched Atz. I look, in October, to do Atz and Benjamin Road. We'll get more impact money next year to finish all the paving. Then Council will have some decisions to make after that.

Vail-on the blight study, we didn't really give her a definitive line on the west limit of the blight study.

Moccia-on the west limit on Malabar?

Vail-Malabar Road. We had various discussions and to the best of my memory we didn't give her it.

Moccia-it's very iffy.

Booth-to Weber Road. You had talked about going all the way up there.

Vail-Weber at the city limits or where were we going?

Booth-just Weber because past that, there isn't any blight.

Vail-we have the trailer park that is just west of Weber.

Booth-believe it or not, I looked at that one too.

Vail-it's not blight?

Booth-no, they are temporary, most of them are temporary RVs.

Vail-and then the lady mentioned that we may be charged accordingly for expanding the area of the blight from where it's proposed, but you've also done a lot of homework in the past that would eventually offset the additional costs.

Eschenberg-the railroad crossing at Jordan, that's the one, since it amounts to so many dollars floating around out there, do you have anything on it? I have one thing, it's sort of vague.

Booth-yes sir, we are doing research in trying to find it in our records. We have the agreement between the railroad and the City. That really lays out our requirements. What we are really looking for is the agreement between Harris Corporation and ourselves. We are going to have to research it in our Orlando storage area and go back and try to find it.

Eschenberg-what does the agreement between the Town and the Railroad say?

Booth-between the Town and the Railroad says that we're responsible. This came up in 1991 when some maintenance was done. Actually, the railroad turned into a collection agency because we didn't pay them. Harris finally came up with the money, stating that they would pay this but they weren't going to pay any more. I really need to look at our agreement between the two. According to our attorney, our agreement with the railroad is pretty binding. It says that we are responsible for all maintenance and when it is going to happen. They haven't given me a clue. It was ready and then they didn't have the materials. Now it's just on hold. But I have written the letter and, in fact, I budgeted this year for only ¼ and told them that they weren't going to get all the money at once. They were going to get it 25% at a time because that's all we could afford in our budget.

Eschenberg-the only thing I had on that is I spoke to Mr. Torpy last week to see if he had any recollection of anything and he really didn't other than it was his opinion, based on his recollection and the 1984 Resolution, that Harris was probably responsible.

Booth-we need to see that.

Eschenberg-we don't have anything concrete on that yet.

Booth-the only thing that I can say that will help on that is Harris wants the water and sewer. They were going to budget for this coming year and now that it's been brought down pretty close to them, their costs have been reduced considerably.

Eschenberg-his opinion was that when the crossing was put in, it benefited no one but Harris and the Town certainly wouldn't have taken on the responsibility of maintenance of that crossing when it's no benefit to the Town.

Booth-that is absolutely correct. However, we did have an Industrial Park there but that was bought up. So, right now Harris and Data Management are the only ones.

Vail-has Data Management been contacted to maybe participating?

Booth-we have to look at all the agreements first and then we will solicit donations. That's my next thing.

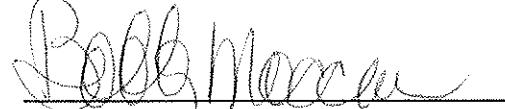
Moccia-does anyone else have anything to add?

Cindi Kelley-reminded the Council that the Space Coast League dinner is May 9, 2005. The dinner has been moved to the Palm Café @ Kiwi Tennis Club off of Eau Gallie Boulevard and S. Patrick Drive. Anyone wishing to attend needs to let the Clerk's office know by Wednesday, May 4, 2005 for reservations.

ADJOURNMENT

The meeting adjourned at 8:10 p.m.

BY:



Chair Bobbi Moccla

ATTEST:


Cindi Kelley, Recording SecretaryDATE: 5/16/15