

**MALABAR TOWN COUNCIL REGULAR MEETING
JUNE 6, 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 Bobbi Moccia.

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

ADDITIONS AND DELETIONS TO AGENDA:

Addition: Commission Helen Volz and County Manager Busacca are here to make presentation.

Deletion: Light Ordinance discussion – postponed to 6/20/05 meeting.

Deletion: Action Item #1 to be removed. To be at a later date, goes to P&Z.

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

CONSENT AGENDA:

(A) TOWN COUNCIL MINUTES OF 5/16/05

MOTION: Rivet/Dezman to approve.

Dezman—on page 9 of the minutes, the disposal of non-usable fire department equipment, any equipment that is not working, if passed on to someone that could cause a hazard needs to be disposed of differently or a waiver must be signed that releases the Town of Malabar from any liability regarding the equipment.

Rivet—on page 10 of the minutes, stating the intersection of Hall & Atz, this should be Atz and LaCourt.

MOTION: Rivet/Dezman to approve the minutes as amended. VOTE: All Ayes.

PRESENTATION:

KEEP BREVARD BEAUTIFUL – TRASH BASH AWARD

Larry Weber, Mike Hazelet and George Geletko were at the Council meeting to make the presentations for the awards won for Trash Bash. Mayor Eschenberg was presented with the plaque for 2005 award for Trash Bash two checks, one for \$300.00 for the Boy Scout Troop #37 and the other check for \$200.00 for Girl Scout Troop #1437. This is the sixth year that the Town of Malabar has won this award. Mike Hazelet and George Geletko came forward and made the presentations to Mayor Eschenberg. The Town had 96 volunteers this year and they picked up 1,241 bags of trash, which weighed almost 2,700 pounds.

COMMISSIONER VOLZ PRESENTATION:

Commissioner Volz came forward and introduced the new County Manager to Council. Peggy Busacca, Brevard County Manager addressed Council regarding the MSTU with the County Sheriff's Department. The reason for her visit this evening is to make a request that the County, the new Sheriff and the Town Administrator, along with Mayor Eschenberg, have a meeting to resolve this issue. Town Council stated that there would be no objections to holding a meeting regarding this issue. Ms. Busacca advised Council that the County could be called upon if there were any questions or concerns that may arise regarding County services. At this time, several Council members brought the issue of the EELs property maintenance and protection to Ms. Busacca's attention. Their property needs to be properly gated. Mr. Rivet stated that the citizens of Malabar don't really want to pay more taxes for an MSTU when they feel that they don't get adequate protection now. We've been told that if we pay the MSTU, this wouldn't change. Ms. Bussaca stated that she had spoken to the Sheriff regarding these issues. Chief Farmer would like to have a meeting to discuss these issues so that he can understand them. Ms. Busacca stated that the Sheriff wanted her to express his anxiousness to Council to have a meeting and, hopefully, come to a compromise regarding this issue. Ms. Bussaca stated that as far as the EELs property is concerned, the County and the Sheriff are trying to put additional people in the field. The County staff has actually requested an additional person be placed in the field. Mr. Vail stated that the fences have been down for quite a while. Mrs. Moccia stated that when someone comes out, they are going to need a four-wheel drive vehicle to get through. Mrs. Volz asked where these damaged fences are. Mr. Vail stated that the entrance behind Harris was cut and the main entrance at the northwest corner at the end of the Marie easement. Mrs. Volz asked Council to get with Mr. Booth and advise of these areas, then the County can address them. Mrs. Moccia stated that this is the problem with someone out there supposedly maintaining the properties; they should know where the problems lie with the fences. They said that they would be maintaining the property all along and they have purchased all this property and there has been no maintenance. This shouldn't even be our issue. Ms. Busacca stated that the County would be more than happy to hear from us so that they can address and take care of any problems immediately. Mr. Vail stated that the amount of land that EELS have in Malabar is quite sizable. Do they have a routine monitoring schedule coming into our area where we can anticipate them coming into our area? Ms. Busacca stated that she would find this information out and report it back to Mr. Booth. Mrs. Volz stated that the County would have someone come down and address Council regarding these issues. Mrs. Moccia advised Mrs. Volz and Ms. Busacca that someone from the EELs is supposed to be coming before Council quarterly to keep them abreast of what is going on and what maintenance is being provided for these lands. They come rarely, usually when we have a problem. Ms. Busacca stated that she would check into this and have someone report to Council. Mr. Rivet brought a very good point to light. The Town has provided fire protection for this big area. This is a benefit that we are providing to the County, out of our budget from the fire department. Perhaps this is an issue to discuss, to compensate for lack of the MSTU, we are providing a valuable service of fire protection and the Sheriff is providing a valuable service, just not enough of it. Ms. Busacca stated that this is from two different budgets. Maybe we can offset some in-kind services. Mrs. Volz stated that this is probably something we should talk

about and work out. Mr. Vail stated that our fire department is covering that area. We need to put all the issues on the table and work it out. Chief Farmer has not yet met with Mr. Booth. He is going to meet with all the Managers at some point to discuss the issues at hand. A meeting will be set up.

REPORTS:

ATTORNEY

As a follow up to this, it would be good to have the Mayor and Mr. Booth attend a meeting with the County in a strategy session regarding this matter. Mr. Bohne suggests that we keep it consistent. There has been no change. We have two opinions, one from the Department of Agriculture and the other from the Attorney General. Mr. Gentile did contact the Department of Agriculture. The opinions that we have received are conflicting. Neither of the opinions is binding opinions on us. The Department of Agriculture has a strong opinion on this. The only way that we are going to fix this or to find out how we can fix this is through a court finding. Mr. Bohne's opinion is to file a Declaratory Judgment Action. Have the court declare and tell us whether we can or cannot do what we want to. Once we get ruling, then it will allow us to proceed with either Code Enforcement or whatever we can do. Mrs. Moccia asked Mr. Bohne if this is just an opinion. Mr. Bohne stated that it is, in fact, just an opinion, as is the Attorney General's opinion. None of the opinions are binding to anyone. Mr. Bohne advised Council that Mr. Gentile doesn't believe the Attorney General's opinion. None of the opinions is binding to anyone. He believes the Department of Agriculture's opinion. The only way we are going to resolve this is to receive a judgment from the court telling us what we can and cannot do. Mayor Eschenberg asked Mr. Bohne for a dollar figure for the judgment. Mr. Bohne stated that litigation would be costly, if Mr. Gentile fights the action, which he has every right to do, the cost would be, worst case scenario, at approximately \$10,000 to \$15,000. Mrs. Dezman asked Mr. Bohne to clarify who "he" is in the last paragraph of the letter that was copied and provided to Council. In the letter, the last paragraph states "as I understand them". Mr. Bohne stated that he could only assume that Mr. Gentile contacted the Department of Agriculture because he didn't make the initial contact with the Department. Mr. Bohne believes that Mr. Gentile contacted the Department of Agriculture and then they contacted Mr. Bohne. Mrs. Dezman asked Mr. Bohne if we were to go to court for the judgment, does it become part of the Town's evidence that we have an opinion from the court already, Mr. Bohne advised her the opinion was from the Attorney General. She asked to be corrected if she was wrong, but wasn't the Town taken to court over the original judgment from Council that the Town Council could turn down his proposal for his property. Mr. Bohne advised that she was correct and it would be made part of the record. Mr. Rivet pointed out the fact that we have two seemingly different opinions. Mr. Rivet feels that the Attorney General doesn't have an agenda here but the Department of Agriculture does. Therefore, an unbiased opinion would prevail. Mr. Rivet thinks we should proceed with the Declaratory Judgment, as aggressively and quickly as possible.

MOTION: Dezman/Rivet approves to go for the Declaratory Judgment. VOTE: All Ayes.

ADMINISTRATOR**- GROWTH**

A.) SUBDIVISIONS-we have only two subdivisions at this time, which have been through the process of approval. The first one is Stillwater Preserve and has about 50% of the infrastructure complete. They are moving very fast. They will be starting the process of home building within 60 to 90 days. In conjunction with Stillwater Preserve, the property across the street (southwest corner of Malabar & Corey is 1.1 acres) is what the Town of Malabar owns. This is our newest nature park. The property is from the stream to the road. We have cleaned out much of the vegetation. Once the ditch is cleaned out, the water will flow better. We want to put benches in, but the first thing that needs to go in is mulch. Mrs. Moccia offered to design the park, as she has a landscaping business. We could do all natural things in the park. Mrs. Dezman brought to Mr. Booth's attention that the north end of Corey Road, with the two homes being constructed and the development of Stillwater Preserves, it's very difficult to get through there with all the construction trucks blocking the road. Mr. Booth stated that he would check into this. The subdivision on the south end of Marie Street, Oakmont Preserve, asked Council for a six-month extension for this project. Mr. Booth advised Council that this project is only about 20% complete with the infrastructure. The delay was due to the hurricanes from last year. It looks like we are going to have to set up a meeting to see where this project is at and if they will meet the six month extension.

B.) REPORT ON COUNTY GROWTH INITIATIVE-we have met with Commissioner Volz and the County on the subject of growth. There have been plans to make Corey Road a major thoroughfare going south with all the growth coming in. The expected growth for Grant and Valkaria is over 1,000 homes in the next few years. If the County has that kind of growth, they need to provide the roadways. The traffic flow is partly the responsibility of the developers. Making Corey Road a major thoroughfare at Malabar Road is not going to happen. The County didn't like that answer, but that is just the way it is. This is something that will greatly impact the Town of Malabar, whatever they decide to do.

C.) INCREASE IN TOTAL VALUATION- when Mr. Booth first came to the Town of Malabar, the property value for the town was just over \$100,000,000. Since then, the property value for the Town has increased to almost \$200,000,000. We've had almost \$6,000,000 worth of growth. The reason for the increase is the value of land and homes. This may be the first year that we have to lower our taxes because the State law that only allows you to be 10% from the rollback. Mrs. Moccia asked if this would affect the blight study. Mr. Booth advised Council that it would not. The Building Department is working very hard. They are getting building permits out within a week's time. Palm Bay Building Department is taking up to nine weeks to get permits out and in some areas of Central Florida, you can't even get the inspectors, they are not available. We are keeping up with this because it is important.

D.) ROAD POLICY-in the past, we have stated that the Town would have a certain number of paved roads. I have met with the Town Engineer, Bill Stephenson, and over a ten-year period the dirt roads will cost more funds. We no longer have a mining company in the area. Blackhawk sold to a developer. We now

have to go a long distance to get the materials needed for the upkeep of the roads. We are not advocating the paving of the roads because there are a lot of citizens that do not want the paved roads. However, there seems to be a fair number of the public on Eva Lane and Waring Lane that would participate in the payment of putting down the material for the roads. We have to go through this process but in some roads it's not bad, it holds up pretty well. On some of the roads, we have to put a cap on it. It may make economical sense to participate with some of these areas that really want it. We would like Council to think about this. The Town is going to ask these people to come forward with a petition and an agreement from all the people that live on those streets that they would be willing to pay \$1,500 to \$1,800 for their fair share of the expense. We have put off the purchase of a dump truck for Public Works due to the hurricanes. We are in the process of having to go and pick the materials needed for the road repairs. All of our roads are in bad shape. None of them, with the exception of the newer ones, have any any new materials on them within the last fifteen to twenty years. They are basically dirt roads. We can't take the grader out with all the rain because of creating mud bogs. We have put money in the budget for road repairs. We will have a list of road repairs, by priority, prepared for you at the next Council meeting. Coquina only lasts five to ten years at the most then it breaks down to sand.

E.) **COMP PLAN CHANGES**-we need to move forward with this and get the major changes in. By the next meeting, you will receive an amended budget for this year and we will start setting up workshops for the 2005/2006 budget. Since Berman/Hopkins is an independent group, they cannot do the work themselves. They will be working closely with us on this matter.

- **CODE ENFORCEMENT**-there are two areas to bring to your attention at this time. The two-story home on Malabar Road has been taken down and the home just up the street from Town Hall has been removed. We have a worksheet for citizen's comments that can be made available to Council. This will allow for follow-up phone calls. We are in the process of getting some additional employees for the Public Works Department. The same kinds of issues can be said for this department as the fire department. This is the next area that we will be focusing on. Mr. Booth will be spending a little more time with the Public Works Department to get them up and running on the upcoming projects. The Fire Department has been able to start to move back into the fire station. They are in the process of purchasing the contents for the building that are needed.

- **TWO-MONTH PROJECT LIST FOR STORM WATER**-this is a major issue in the Town. We will have a listing of the priority areas at the next Council meeting. We will be working on Atz Road and parts of Weber Road. At Atz Road, we have cleared out all the trees and found no ditches. We have to start clearing and creating ditches. As our priority for the next month, we will be working our way up Atz Road. The Public Works Department will be working solely on mowing, clearing ditches (creating ditches if necessary) and fixing the roads. Along Hall Road, there is a long section with no ditches as well. In several areas of town, people have culverts but no ditches for the culverts to go to. One of the major areas in the town is the Turkey Creek Tributary. The question was raised to Mr. Bohne about eminent domain. Mr. Bohne advised Council that if you exercise eminent

domain the Town would have to pay to trespass on the property. Mr. Booth stated that we need to improve the drainage so when the time comes, we will have to pay the fees. The question was asked if the Kreiger's had been contacted regarding this issue. Mr. Booth stated that a meeting would be set up to discuss this.

- **ROAD PROJECTS**-Mr. Booth advised Council that this topic has already been discussed. A listing of the priority streets will be provided to you at the next Council meeting.

- **COUNCIL SHIRTS**-Mr. Booth advised Council that he would be taking orders for the shirts that the Town provides to Council. Please call the Clerk's office and let them know what color you would like and the size. Also, please advise if you would like a shirt with a pocket or not.

FIRE CHIEF

- **REPORT ON PROGRESS AT FIRE DEPARTMENT**-Chief Joe Gianantonio came forward and made his presentation to Council. He is working with Bob Rowan with regards to the budget. Town staff has provided information regarding the fire department budget and they are going line by line to see what has been spent and where as well as what is left in the budget. Chief Gianantonio advised Council that the Fire Department is going to become better stewards of the Town's funds.

CLERK

- **SPACE COAST LEAGUE DINNER**-Ms. Kelley advised Council that the Space Coast League dinner would be held next week at the Imperial Hotel on Wickham Road. All reservations must be made by Wednesday, June 8, 2005. Please call the Clerk's office and advise if you would like to attend this meeting. It is being hosted by West Melbourne and Melbourne Beach Municipalities.

- **NEWSPAPER COPIES OF AGENDA PACKAGE**-Ms. Kelley advised Council that upon making the copies of Council packages, a copy is always made for the newspaper. They never come to pick up this information. It is a waste of time and money for copies if they don't want the information. Would it be possible to send a copy of the agenda via email and make the copies that are requested by the newspaper? Mrs. Dezman stated that this would be fine but a letter from Mr. Booth should also be sent as a courtesy.

DISCUSSION:

1. **BRAD SMITH – US #1 LANDSCAPE IMPROVEMENTS**-there was no one present from Brad Smith's office to discuss this issue with. This was moved to the next Council meeting. Mr. Booth stated that we had an initial meeting with Mr. Smith's office regarding the blight study and we have provided a lot of information to them. Mrs. Moccia asked Mr. Booth what the status is regarding the blight study and feels that they need a little push to get things moving along.

2. **TD GROUP STUDY MILESTONES** (Pat Dezman)-based on what she has read in the TD Group study, Mrs. Dezman made a suggestion to Council that a committee of five people be established to look at the deficiencies listed in this report. She commended staff for the way they responded in getting the information

provided for this study. **Mrs. Dezman feels that the committee should consist of the following people: Chief Gianantonio, Bob Rowan, John Futch, who is the President of the Corporation, Ed Booth, Bob Rossman and she herself would be happy to serve on this committee.** The Council was in agreement with setting up this committee. If we can get to the bottom of these deficiencies, we may not need to have an independent group come in and do another review of the fire department. We have the resources in this town to get the deficiencies addressed at no cost to the Town. This would be in the Council's jurisdiction, the budget would be set and spent wisely for taking care of these issues found in this report. Council would need to approve the list of committee names.

MOTION: Dezman/Rivet to approve the six person committee as listed above.

VOTE: All Ayes.

MOTION: Dezman to take these two lists and combine them as the milestones for the Fire Department. VOTE: Unanimous consent.

ACTION ITEMS:

1. **RESOLUTION 07-2005 UTILITY CONNECTION CHARGE**-this item was deleted from the agenda. This needs to be in Ordinance form.

2. **RESOLUTION 10-2005 QUALIFYING DATES FOR ELECTION**
By unanimous consent, Mrs. Moccia read Resolution 10-2005 Qualifying Dates for Election by title only.

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

3. **CONCURRENTLY DEVELOP ROAD & HOUSE – PROSPERITY LANE**
By unanimous consent, Mrs. Moccia read by title only.

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

4. **APPOINT CARL CONKLIN TO BOARD OF ADJUSTMENT**
MOTION: Rivet/Dezman to appoint Carl Conklin to the Board of Adjustment.
VOTE: All Ayes.

5. **DUMP TRUCK PURCHASE FOR PUBLIC WORKS**
Mr. Booth advised that we have budgeted \$10,000 for the lease payments for a year on the dump truck. Most of the year is gone so it won't be that much this year. Mr. Booth advised Council that the cost of the dump truck is \$68,566.00. This truck is needed to get the materials for the road repairs that are coming. We will be doing a lease to own, just like it was done for the fire truck and the gradall. This truck would be a full-size 14 yard dump truck.

MOTION: Rivet/Dezman move to approve the purchase of the dump truck.
VOTE: All Ayes.

6. **GENERATOR PURCHASE FOR FIRE DEPARTMENT**-a copy of the bid was put in the packets for Council's review. We currently have a 1960 army model. This generator did not work for the hurricane season last year and there are no parts available to fix it. We really need this piece of equipment for operations after the storms. It is a 40 kilowatt generator, the size needed to handle the fire department. This will come out of the fire department's budget. Mrs. Moccia stated

that she had spoken to several people regarding this. There is no shed required and it comes with a lock for protection. This unit will come on once a week for twelve minutes to keep it on task and it also has an automatic ten-second delay. If the lights flicker, it won't come on. Mr. Booth advised Council that this is the State bid price for this particular piece of equipment and Rural Water has the same prices. We are only looking for one generator at this time. Once this generator is in place, we will be looking into getting a generator for Town Hall and using this as a holding place since we have no shelter in town. The type of generator that would be needed for Public Works could be purchased at Home Depot or Lowes, the size needed would be five kilowatts. The engineer is looking into the type of generator needed for the lift stations.

MOTION: Dezman/Rivet to purchase the generator for fire department at a price of \$13,520. plus reasonable installation costs. VOTE: All Ayes.

REPORTS: MAYOR, COUNCIL

Mayor-it would seem that the Council committed to spending approximately \$98,000 this evening. The over-turned truck on Glatter Road caused even more problems on this road. Is this going to get the road fixed? This road is torn up very badly and needs some attention. Mr. Booth advised Mayor Eschenberg that Glatter Road is one of the roads on the priority list, at the top.

The Mayor received a memo from Curt Lawrenc regarding the Valkaria airport. Florida Institute of Technology is going to try to move their flight school to this airport. There are two active runways and they are talking about putting night lights out on them so that practice of flights can happen any time of the day or night. Mayor Eschenberg is not sure that this is critical at the present time. The Mayor advised Council that we should have a voice with the Airport Advisory Committee. He is not sure who our representative is but Pat Winegar does live in Malabar and has expressed an interest for being on this committee. The Town should probably find out who the representative is and see if that person is still actively participating in the meetings. If not, do we want to appoint someone else to the position? Mrs. Dezman stated that she has an idea of who the representative is and will speak to that person and find out what is happening with this.

Hickson-nothing to report at this time.

Vail-Mr. Vail advised Council that he may have a line on some Frisbee golf course equipment. He is working out the details and if we have a good home, it could become ours. Frisbee golf is every environmentally friendly and lots of fun.

Dezman-Mrs. Dezman stated that it has been said that Council doesn't listen. We need to be more mindful of the way we handle ourselves. We need to be very careful about the way we use the email. First and foremost, we must maintain professionalism. Mrs. Dezman asked Mr. Bohne if there was anything that could be done in the mean time while waiting for the Declaratory Judgment. Mr. Bohne stated that until we have an answer from the court, there is nothing that can be done.

Rivet-Mr. Rivet stated that he would be sending out some additional information regarding the light ordinance before the next meeting. Hopefully this can be discussed at the next Council meeting and we will know where to go from here.

Moccia-Mrs. Moccia advised Mr. Booth that somewhere along Waring a lawnmower has been buried. This equipment was put out as garbage. It was buried by our gradall and we should take care of this for him. Also, Mrs. Moccia wants to make sure that the list of roads is taken care of in a timely fashion.

PUBLIC COMMENTS: GENERAL ITEMS

Emily Barr, 1100 Corey Road-she and her husband own property at the north end of Corey Road. She has come before Council to get clarification of the Town's action regarding the Gentile ranch. Mr. Bohne advised her that the Town Council, just this evening, voted on going to court to get a Declaratory Judgment so that the Town of Malabar would know what can and cannot be done. Mrs. Barr stated that they are having second thoughts about coming into Malabar. Mr. Bohne stated that it will be going into litigation and there really is no time frame for this. It will be moved along as quickly as possible.

Steve Gentile, 1200 Corey Road-Dr. Gentile came forward and addressed Council. He stated that he has complied with all that has been asked of him regarding the agricultural exemption. If the Town wants to spend the funds to go to court, so be it. It will be fought to the end.

ADJOURNMENT:

There being no further business, this meeting was adjourned at 9:40 p.m.

BY:


Chair Bobbi Moccia

ATTEST:


Cindi Kelley, Recording Secretary

DATE: 7/11/05