

**MALABAR TOWN COUNCIL REGULAR MEETING
AUGUST 1, 2005 7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. The meeting was called to order at 7:30 pm by the Chair, Bobbi Moccia. The prayer and pledge were led by Brian Vail.

<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
RECORDING SECRETARY:	CINDI KELLEY

ADDITIONS AND DELETIONS TO AGENDA: None

Unanimous consent to approve the agenda.

CONSENT AGENDA:

- (A) TOWN COUNCIL MINUTES OF 7/11/05
- (B) TOWN COUNCIL WORKSHOP MINUTES OF 7/11/05

Unanimous Consent to approve the Town Council Minutes and Town Council Workshop Minutes of 7/11/05 and Town Council workshop minutes of 7/11/05.

REPORTS:

ATTORNEY

At this time, Karl Bohne addressed Council. Mr. Bohne advised Council that an ordinance with amendments to the sign code will be coming before them in the near future. This is because there have been federal court challenges recently with regards to commercial and non-commercial speech. What has happened is that some municipalities provide for commercial speech and advertising for commercial businesses but prohibit non-commercial speech to be included on those signs. There have been court challenges and the federal courts have upheld the challenges saying that you have to allow the non-commercial speech along with the commercial speech or in lieu of commercial speech on commercial signs. We need to change our ordinances to track how the federal courts have ruled and to prevent the possibility of a challenge. Mr. Rivet stated that non-commercial speech has a higher priority. Mr. Bohne stated that this is correct and that political speech has an even higher priority. This will be coming before Council to keep in compliance with recent federal court decisions.

ADMINISTRATOR

Ed Booth came forward and addressed Council at this time. The topics of discussion were as follows:

- MEETING WITH COUNTY MANAGER & STAFF ON 7/21/05

This meeting turned out to be a much larger meeting than was anticipated. Mr. Booth stated that he started out aggressive as he did not want to be overwhelmed by the number of people that were in attendance. Basically, the position about the EELs was there was a failure to communicate from the individual from the last meeting that they

can buy whatever land they want. They can buy whatever land they want, but if they buy land in the Town of Malabar, they will have to comply with our zoning. It's going to be very costly for them. The County is going to have to take down all the invasive trees and do a yearly report to Council. We can make it extremely expensive for them. Through the County Attorney, they understand that they fall under our ordinances. This is how this will be dealt with. The County will come and address Council stating that no land will be purchased without the consent of this Council.

The real meeting was on the MSTU. Mr. Booth presented an idea to Council that he has to get over this hurdle of the MSTU. Mr. Rivet asked Mr. Booth to go back to the EELs discussion for a moment. Mr. Rivet stated that he thought the letter from the County stated that the County Commission could still override our wishes to not have land locked. Mr. Booth stated that this was not what the Commission stated. Mrs. Moccia asked when the County would be coming to the Council to speak on this issue. Mr. Booth stated that he would have them come to the next scheduled meeting. At this time, Mr. Rivet stated that Mrs. Volz is in the audience this evening. Mr. Booth stated that he would have Mrs. Volz address Council this evening.

A way of getting around the MSTU is basically, we are trying to re-establish a re-development district. We cannot do this without the County's approval because of the type of County they are. What was agreed upon in concept was signing an MSTU for just the re-development district only. This is like a small town within the Town. The Sheriff and everyone at the meeting were in agreement. You have already agreed that you would be the board to the re-development district, but in sense, you will have two entities with two budgets. It's somewhat separated from the Town even though it's in the town. It's its own authority basically and will have its own budget. Legally, you could put an MSTU just there and then sign a contract for the rest of the town. What happens with the re-development district is that a lot of the expenses that the town would have would be bourn within the re-development budget and it also keeps many of the taxes that the County gets, so it's plused up. It's plused up so that you can do things to attract new businesses or condominiums, or whatever the Council would like to come into the town. Also within that district is the new Town Hall. It's a little bit of creative financing but because the main Town budget isn't going to bear all the expenses, you will have some additional monies in your budget to create this contract with the Sheriff's Department. This is just a concept. One thing that you need to know is the Sheriff's Department has reduced the MSTU. It was going to be 1.7, it is now at .99. This is a considerable amount in reduction. We haven't even talked about the contract for the rest of the Town. It is a major issue with the County. If we decide not to do this, they won't approve the re-development district and they will only send general fund officers to respond. Keep in mind that most of the general fund pays for the administrative costs and there are only a few Deputies' in the general fund. Mr. Rivet asked the question of if there is a non-general fund Deputy in the area and a crime is in progress that this Deputy is not going to respond. Mr. Booth advised Council that the Sheriff would be coming to Council to address any questions that they have. He will also advise that if we do go into the MSTU, then more services would be provided to the Town. Mr. Rivet asked Mr. Bohne for his opinion on this type of scenario. Mr. Bohne doesn't feel that the Sheriff's Department is going to pick and choose in this type of scenario. We are looking for speeding offenses, traffic violations, etc. If a Sheriff's Deputy witnesses something going on, he would be, more than likely, compelled to respond. If it's a call after the fact, Mr. Bohne feels that a general fund Deputy would be sent to respond. If it's a life, limb or property issue, they will more than likely respond. Mr. Booth stated that he is not

looking for a decision this evening. This is a possible way of not taxing the main body of the Town.

At this time, Mr. Booth asked Mrs. Volz to address Council. Mrs. Volz stated that during this meeting, they really didn't come up with any plans of how to handle the MSTU and the County did not say that we were going to use the re-development district agency as leverage. Mrs. Volz doesn't think that this would be fair. Mrs. Moccia stated that she didn't feel that this would be fair either. This is something that Mrs. Volz thinks that all interested parties can work out ahead of time. As far as the EELs are concerned, Mrs. Volz stated that she would not support any land purchase in Malabar without the Council's consent and support of the purchase. The EELs think that they can do whatever they want. The bottom line is the County Commissioners will do what they think is right.

Brian Vail posed a question to Commissioner Volz. As far as the Sheriff's coverage for the Town, are they currently obligated, with or without the MSTU, to protect this Town? Mrs. Volz stated that the general fund revenues were obligated. Mr. Vail asked if any of the MSTU officers are currently responding. Mrs. Volz stated that they are and the concern for this is coming from the municipalities that are paying the MSTU. They feel they are not getting the services needed because the Deputies are responding to Malabar. Mr. Vail asked what the ratio of MSTU officers to general revenues is. Mrs. Volz stated that this would be a question for the Sheriff.

Mr. Booth stated that he has asked Mr. Bohne to check into condemning the five acres of State land over by the park. We have asked Mr. Needleman to put this in a bill, but it might be easier to do it this way. It's not environmentally sensitive and we have a need to put the Town Hall in this area. Mr. Vail asked if the EELs had been approached for this land. Mr. Booth stated that this land is not owned by the EELs, they sold the property to the State. Mr. Bohne stated that we are going to have a very hard time condemning State property under eminent domain. Mr. Booth stated that we would then find another method.

- ALEXANDER LANE (Trees in ROW) -

Mr. Booth advised Council what is happening with the road projects. One road that they will be hearing about is Alexander Lane. We are building a real road there. The positive of this is that the Post Office will be able to use this road. The negative that you will hear is that there is a line of Australian Pines that will have to be removed. These trees are invasive and they are on the right-of-way. Mrs. Moccia stated that these trees are restricting garbage detail as well.

We are currently working on Glatter Road. We are widening it and putting a lot of material on this road. We are negotiating for asphalt grindings. Getting coquina is just impossible. We are checking into the washings from the cement plants, but this is very dusty. We are going to use Glatter Road as an experiment, to roll it with the asphalt grindings and it will also make a very good base. We will also be putting chip and seal on this road, as it is going to be a secondary road into the new subdivision.

The list of the ten roads next is Lett Lane. We have someone in the audience to speak about Osage as well. While we are up in this area, we will be doing Osage as well. Osage, because the individuals have put in their funds to build this road, we will probably, once we have the crew, be putting chip and seal on this road as well. We

have about \$8,000 from the individuals. We are going to upgrade this road now and in the future do the chip and seal process.

Mrs. Dezman stated that the road in Country Cove has not been fixed. The consensus is that the road doesn't need to be painted but they need to come back and fix the road. Mr. Booth stated that this would be looked into.

Osage was taken over from the County a number of years ago. The County feels that this has been an accepted road. Mrs. Moccia asked if there is someone living on this road. Mr. Booth advised that this is, on the County side. The County issued all the permits to the homeowner. The County is building roads off Benjamin and Osage. They have to provide pads to protect our roads. We are being fairly aggressive with this. We will, within the next few weeks, be working on these roads.

- TOWN CLERK POSITION

Mr. Booth asked Council for guidance regarding the Town Clerk's position. Mr. Booth advised Council of the progress with Susan Kabana. We are doing okay, but we really need to have a Financial Director in place. Based on the report given by Mr. Booth to Council, Council has given Mr. Booth authority to seek a Financial/Director or Clerk/Treasure. Mr. Vail asked that we get guidance from Susan Kabana as well. Mr. Booth advised Council that he would have a meeting with Susan to discuss Council's wishes. Mrs. Dezman stated whatever is discussed in the meeting should be put in writing. Mr. Booth stated that he would do this and would bring it back to Council.

- CODE ENFORCEMENT

We have a Special Masters meeting set up for the 18th of August. Mr. Tarzia is being brought before the Master as a repeat offender. At this time, Mr. Booth handed a copy of a personal email that he received stating that the property had been sold and that they want to proceed with removing the violations and are looking to have the Fire Department burn the house as a training exercise. We have a few other properties that we are looking at.

FIRE CHIEF'S REPORT

Bob Rowan and Chief Gianantonio came forward and addressed Council at this time. They gave a brief overview of what is happening with the fire department and what plans for the future have been made. Tim Downey has spent a lot of his time working with the Fire Department. Council has asked that Mr. Downey be invited to the next meeting so that he can be recognized for all his efforts.

Mrs. Dezman gave kudos to the Fire Department for how far the department has come. A packet will be provided for Council in the next meeting's package. There has been a request from the Chief to have a Council meeting at the Fire Department so that Council can see all of the progress that has taken place.

PARKS & RECREATION BOARD CHAIR

Hans Kemmler came forward and addressed Council at this time. Malabar now has a soccer team. Mr. Booth authorized the spending of approximately \$2,000 for soccer equipment. The Town owns the equipment but the soccer teams are using the equipment. Mr. Kemmler gave a brief overview of what the Parks & Recreation Board has been discussing. Mr. Kemmler is to provide a list of expenses to Council that the

Board would like to spend the funds coming in from the developers. Right now, between the 2004/2005 and 2005/2006 budgets, there is approximately \$29,000. Mrs. Moccia asked, as well as all the Council members, that the list of expenses be put in priority order so that they can make a decision as far as the spending of the funds and what it would go to.

Mr. Kemmler stated that the writing of a grant for the 2005/2006 fiscal year was not looking to good. There are certain guidelines that have to be followed and some items are considered support expenses that do not fall under the grant. If anyone has any ideas regarding this grant, please contact the Clerk's office and speak to Sharon White. She will know how to get in touch with Mr. Kemmler.

CLERK

- **SPACE COAST LEAGUE DINNER** – Ms. Kelley advised Council that the League dinner would be August 8, 2005, at the Cocoa Beach Country Club. All those who would like to attend need to let the Clerk's office know by this Wednesday, August 3rd, so that reservations can be made.

- **MEMO** – This memo was addressed to Council by Debby Franklin, Town Clerk, Pro Tem, regarding several changes, for the good, that have been made around Town Hall. If anyone has any questions, please call the office and we will be happy to assist you in any way possible.

PRESENTATION:

1. ROCHELLE LAWANDALES – FINAL BLIGHT STUDY

Rochelle Lawandales came forward and addressed Council at this time. Ms. Lawandales made a PowerPoint presentation to Council as well as handing out a copy of the presentation to Council. Ms. Lawandales feels, based on the information and research that was completed, that the Town of Malabar does have blight and we do qualify for a re-development district. The fact finding portion of the project is over. We now have to go to the next step and have the County approve the re-development district. After approval from the County, then the ordinances would be drafted by Mr. Bohne for Council's approval. We only have approximately three to four months to get this completed. A copy of this presentation will be placed on the Town's website. Cindi Kelley is to be the contact person for any questions regarding this matter. Mrs. Dezman stated that any and all question/concerns or comments be documented in writing.

DISCUSSION:

1. NEED FOR ORDINANCE – SEXUAL PREDATORS

Mr. Booth brought this to Council for discussion. With the activity at the park recently, he feels that we should have an ordinance in place. Mr. Booth has had a conversation with the Sheriff's Department. They would like to see the Town have an ordinance stating that all sexual predators cannot come within 2500 feet of the park. If this happens, the Sheriff can be called and the Town can have the predators arrested under our ordinance. With this ordinance in place, we will have the power to call for police protection. Mrs. Dezman posed the question of how this affects the three offenders that live in the Town. Mr. Vail asked if this would also cover daycares and schools in the Town. We don't have any schools in the Town but this should be addressed for the future. The offenders would have to stay 2500 away from the parks

and from any daycare/school facilities within the Town of Malabar. This ordinance would take care of all the parks and trails within the Town of Malabar.

2. SECURITY AT PUBLIC PARK – (Charles Ryan)

Charles Ryan – Howell Lane, came forward and addressed Council at this time. With the activities at the park, Mr. Ryan was horrified that this was brought to light at a public meeting. Now that it is out in the open, the Town has to do something. The liability to the Town is far too great to do nothing. The first suggestion that Mr. Ryan made to Council is to close the bathrooms at the park and place port-o-lets by the playground equipment. There is only room for one person in this type of facility and as soon as you open the door, you can see into it. Mr. Booth advised that this has already been taken care of. The second suggestion that Mr. Ryan made was to have Florida Power & Light, he has these types of lights at his home, install a light that they put in, they maintain and it costs \$9/month. It illuminates a tremendous area. Mr. Vail stated that this may not be the way to go because the park is locked at night. Mr. Ryan stated that people are getting in and using the park at night. They are using the park because of the seclusion it provides. If the seclusion is taken away, then this makes it very difficult for these activities to happen. A well lit area will also keep vandalism down. Security cameras, they could be wireless, should be strategically placed throughout the park with signs stating that all activities are being recorded. Put the surveillance equipment at the fire department, which is now manned 24/7, time and date stamp the activities and you now have an official record of where and when things took place. Even if the cameras get stolen or damaged, the person(s) doing this will be recorded up until the camera is no longer functioning. This is a very dear subject to Mr. Ryan as he had a very close encounter with a predator as a younger man.

3. CODE ENFORCEMENT – (Charles Ryan)

Charles Ryan – Howell Lane, addressed Council at this time regarding the Tarzia property. This started in September of 2003 and is still going on. Mr. Tarzia has been taken to the Special Master. Mr. Tarzia has not done what he was supposed to do. We are now scheduling the third meeting. Now we are being told that the property has been sold. A contract is not a sale; the changing of money is not a sale. When the deed is recorded, we have a sale. Until the deed shows the new owner, the owner of record is still responsible for the property. Having been to several Master's meetings, I would make a suggestion that the Master make revisions that if the requirements are not met, the fines are automatic. There is no subsequent hearing necessary. You either do this by a certain time or the Town code specifies this penalty and it will be enforced.

Mrs. Moccia brought the discussion back to Council regarding the security in the park. Mr. Booth advised Council that we have done everything that we can without having a police department. We have limited resources. Mrs. Moccia expressed concern for the safety of the Town staff. Mayor Eschenberg, on the subject of the park, believes that Mr. Ryan has made some very important points, especially now that this has been made public. We need to protect the children that are using the park during the day. This is where the focus ought to be. The security cameras are one of the best suggestions that the Mayor has heard. As far as closing the bathrooms at the park, that particular restroom was paid for by the County. We would share it with them, we would use it from the park side and the County would use it from the trails side. Mr. Booth stated that this was not a permanent action. Mrs. Moccia stated that the cameras, in various locations, would be good. Mr. Vail is also in favor of the cameras but also stated that there is money allocated for sheriff's patrolling. Could we make arrangements to get

coverage for a certain amount of time with these funds? The presence, at random, will help deter these activities.

Mrs. Dezman asked to speak with regards to not having a police department and limited resources. We need to have a meeting and get this taken care of. There has to be a way to get what we need as far as protection of the children in our community. Maybe we need to have a workshop regarding this issue.

Pat Reilly came forward and addressed Council regarding the Land Development Code. Mr. Reilly stated that Chapter 11 was amended and approved with Ordinance 04-02. The Council was given several reasons why we needed to change this ordinance. The old ordinance was very vague and unenforceable. Chapter 11-42 gives the Town authority to do something about problems that the Special Master gives a ruling over. Nothing ever happens. The problem is the Town does not act or enforce the rulings set by the Special Master so why have all these ordinances when there is all talk and no action. Even the Town knows that nothing is going to happen. This is the problem; no one is going after the offenders of the codes.

Mrs. Dezman asked Mr. Booth if he received a letter from Country Cove. Part of what is in there with regards to Code Enforcement issues and fines against another case. This was brought to the Special Master four years ago and it's still going on. This relates with what Mr. Reilly is addressing this evening. Country Cove is under the impression that those fines were levied and we didn't collect a dime. Mr. Booth addressed this. Several years ago, our attorney stated that we needed to start the process all over again. We are in the process of going to court. Mrs. Dezman stated that Country Cove has the fines levied in their transcript. Mr. Booth advised Council that we have looked at our records and we cannot find any information regarding fines.

Mrs. Moccia brought the discussion back to the park security. She would like for Council to come to some decision about what is to happen regarding the security of the park. Mr. Rivet stated that we have consensus to use some of the budget for the sheriff's patrol. Mr. Vail is also for the cameras. Mr. Ryan stated that he would be happy to assist with bids for the surveillance equipment. Mr. Rowan also has some information regarding this. Mayor Eschenberg stated that a camera needs to be in the area of the playground. Also, the bathroom area would be another place to have a camera. Mrs. Dezman asked if this security system would fall under the grant that Mr. Kemmler was speaking of. Mrs. Moccia stated that this would be something worth checking into. This situation is high priority and we already have funds available. Mr. Vail asked if there were any funds available through FDLE or some of the law enforcement agencies for problem areas such as this.

MOTION: Mayor Eschenberg/Rivet to direct the Town Administrator to install surveillance cameras at the park. VOTE: All Ayes.

Mr. Booth asked Council about the bathrooms. Mr. Vail suggested a six foot gate be put in from of the bathrooms. Mr. Rivet stated to do whatever it takes. Mrs. Dezman asked if Mr. Ryan would be involved in getting the bids for the surveillance equipment. Mayor Eschenberg stated that this would be up to the Town Administrator to make that decision. Mrs. Dezman stated that there should be a time frame involved in this that says it will be done by such and such date. Mr. Booth stated that this would be taken care of within the next few weeks. Mrs. Moccia asked about putting doors on the bathrooms.

MOTION: Dezman/Vail to put a door that can be locked on the bathrooms at the park. VOTE: All Ayes.

Mrs. Dezman asked to have a door put on the entrance of each bathroom, one for the men's room and one for the ladies room.

Mr. Ryan asked Mrs. Moccia how soon the bids were to be given to Mr. Booth. Mrs. Moccia stated as soon as possible and this does not have to wait until the next Council meeting. You have the permission of Council to install the cameras as soon as possible. Mr. Vail stated that there should be some tapes by the next meeting.

4. OSAGE ROAD – (Ruth Damico)

Ruth Damico came forward and addressed Council at this time. Mrs. Damico and her family are putting a portion of Osage Road in along with two other families. Mrs. Damico gave a handout to Council regarding letters and documentation of this process. Mrs. Damico came before Council this evening to get some clarification as to what she and the other two family's responsibilities are for putting in this road. Mrs. Damico stated her thanks to the Town staff that has been very helpful during this process. She wanted Council to know that the Building Department and Mr. Booth have done there best to give the correct information and to assist her when it was needed. This road was taken over from the County several years ago while Mr. Hall was the Town Administrator. Per Mr. Booth, this road is not an accepted road at this time. The owner at the end of Osage, on the County side, has been grading the road and he has damaged this road. Mrs. Damico's developer couldn't do anything because of the water standing on the road. The Damico family, along with the other two families building the road, went out on a Saturday and took care of getting the water off the road. Mrs. Damico stated that she wants clarity as to what she and the other two families are responsible for while building this road. Mr. Booth stated that signs will be placed along the road to keep the trucks off the road. The funds that these families have put down are being used to bring the road to an acceptable level so that Council can accept this road. Once the road is accepted, the Town will become responsible for it. Mayor Eschenberg, based on the requests from the homeowners of not paying for the upgrade of the road, asked Mr. Booth who is paying for the upgrade? Mr. Booth stated that the families are paying for the road. Otherwise, they would be paying for Osage Road and their road, Prosperity Lane. This is what our ordinance states. Mayor Eschenberg stated that the ordinance was a little murky to him as this road had been accepted. Mr. Booth advised Council that this road was never accepted by Council. Mrs. Moccia stated that this road was accepted by Mr. Hall and Mr. Phelps, someone blessed this road. The decision this evening would be up to Council to decide on. We took over Benjamin at the same time as we took over Osage from the County. Mrs. Moccia wants to be fair to these families. Mayor Eschenberg stated that the issue is whether previous administration had the authority to accept this road without coming to Council. In the past, there have been roads that come to Council in worse condition and they were accepted. Mrs. Dezman stated, based on the information provided by Mrs. Damico that Benjamin, Reese and Osage Roads are in this situation. Mr. Booth advised Council that there is no problem with Reese Road. Mr. Vail asked Mr. Bohne if this road is accepted. Mr. Bohne asked in what way you saying are accepted. He is looking at the term "accepted" as that the Town accepted the title to the right-of-way. Mayor Eschenberg stated that there is a list of accepted road. Mr. Booth advised Council that this road is not on the list. Mr. Bohne advised Council that it would be their decision. Mrs. Dezman asked if the families on Prosperity are being asked to pay \$2,000 for road improvements to Osage? There are three families that are going to be on Prosperity Lane, with a fourth person who has trucks, is he the only person on Osage? Mr. Booth advised Council that there are more

families coming in on the County side. We are requiring them, before they connect to the road, to pay \$2,000. Mr. Vail asked the question of per family or split between families. This fee is charged per new household or new construction. Mrs. Dezman asked where this figure came from. Mr. Booth advised that it came from the Engineer. This is the amount that would bring the road up to acceptability. From Prosperity Lane, we are asking \$2,000 from each family, so we are receiving \$6,000 total from the people who are connecting to Osage with the exception of the person who is already there. Mrs. Dezman asked if the person that is already there ever paid any funds? Mr. Booth advised Council that he did not. Mr. Bohne stated that he built on the County side, probably when the County owned the right-of-way; he has paid the Town of Malabar no money. Mayor Eschenberg stated that this is a hybrid situation due to the way the road was acquired. We cannot use the normal road requirements. Mr. Vail asked if the new people coming in would be assessed a fee as well? If they are, would the families that have paid so far receive a road payback? Mr. Booth stated that this could be set up. Mrs. Moccia stated that we have to follow what Mr. Booth is saying. He is stating that this is the least amount of money to make your road acceptable. Mrs. Damico asked if they could receive a payback from any new homeowners coming onto Prosperity Lane. Mr. Booth stated that this could be done. Mrs. Dezman asked that a letter be sent to each of these homeowners stating that if any new homeowners come into Prosperity Lane, they would be entitled to a road payback. Mr. Booth advised Council that the Town has a Road Agreement. We keep a file on each of the roads in Malabar. Mr. Booth stated that he would have Ms. Franklin get this started. Mrs. Dezman would like a letter to each family stating what Council has agreed to. Mr. Vail stated there should be a time frame to pay these funds. Mrs. Damico stated that these funds were to be paid prior to C/O, as discussed with Mr. Booth.

5. CHARTER CLARIFICATION – (Mayor Eschenberg)

Mayor Eschenberg brought this Council because he had a meeting with a small group that wants to be incorporated with Valkaria and Grant. He brought up some issues that need to be considered before becoming incorporated. While reading over the Charter, Mayor Eschenberg found a couple of things that he feels need to be clarified. First, under the Mayor's duties, he asked Mr. Bohne to define "instruments". Mr. Bohne stated that, from a legal point of view, instruments would mean things like deeds, easement documents, notes, promissory notes. Traditionally, resolutions and ordinances are signed by the Mayor. Mayor Eschenberg brought this up because he feels that this isn't clear to him. Has the Council given direction in the past as to what instruments the Mayor is to sign? Maybe Council should have an ordinance to make all of this clear so that there would not be any problems in the future. Mr. Bohne is in agreement. He would rather clarify by resolution than by ordinance because you're not going to codify that type of document. Have the Council spell out, by resolution, what the Mayor should sign, if anything.

Mayor Eschenberg brought up the possibility of a special election due to a vacancy on the Council or to the Mayor's seat. There will never be a special election because of the way that this is written because it is always less than one year until the next election. He thinks the original intent of the writers was that if there is less than one year remaining in the vacant term, his suggestion would be that we should put this revision in the ballot in November. Mrs. Moccia asked if everyone is in agreement. Mrs. Dezman stated that she didn't read it this way, but it could be read that way. She likes the checks and balances, not just one person signing everything.

Mrs. Moccia stated that we want to look into a resolution to state the specifics for the Mayor. Also, we need to look at having this placed on the ballot. Mr. Bohne stated that we have to get with the Supervisor of Elections. Ms. Kelley stated that everything with the election is very time sensitive. Mrs. Moccia stated that we need to notify the Supervisor of Elections ahead of time to be able to put items on the ballot. All of the election information has to be scheduled.

ACTION ITEMS:

1. CANDIDATE FOR VALKARIA AIRPORT ADVISORY BOARD

Mrs. Dezman introduced Ivan Castrillo to the Council. Mr. Castrillo is one of the candidates that received a letter from the Council through Mr. Booth to come and address Council. At this time, Mr. Castrillo addressed Council. Mr. Castrillo is an airline captain; he started out in an airport very much like Valkaria. He did address the question of being able to attend meetings. Mr. Castrillo, with his current position, is out of town for four to five days a month. When he is in town, he will attend the meetings. Mr. Vail asked if he would be able to address the Board through correspondence. Mr. Castrillo stated that this would not be a problem. Mayor Eschenberg asked him if he knew of the issues that are happening at the airport. Mr. Castrillo advised Council that he knows that there are some problems and he is willing to research and become familiar with all that is happening there. Mr. Rivet asked about his position with Valkaria trying to bring in FIT and having a flight school on the premises with flights at all times of the day and nights. Mr. Castrillo stated that the airport needs to have a balance with the residents around the airport. He feels that the Melbourne airport is a good training facility and this is where it should stay. Mr. Castrillo advised Council that he would do his very best to represent the Town and the citizens of Malabar. Mrs. Dezman stated that she has known Mr. Castrillo since living in Country Cove. She feels that we would not find a better qualified individual to represent the Town of Malabar on this board.

MOTION: Rivet/Vail to extend the meeting for an additional fifteen minutes.

VOTE: All Ayes.

MOTION: Vail/Rivet to approve the appointment of Ivan Castrillo to the Valkaria Airport Advisory Board. VOTE: All Ayes.

**2. REQUEST TO BUILD HOUSE CONCURRENTLY WITH ROAD – EAST
END OF ATZ ROAD - APPLICANT: LIFESTYLE HOMES FOR
ARTHUR AND JOY PEREZ**

Mr. Booth advised Council that we have been allowing this and an ordinance will be forthcoming so that this issue doesn't keep coming before Council

MOTION: Dezman/Rivet to approve building the house concurrently with the road at the east end of Atz Road. VOTE: All Ayes.

**3. REQUEST FOR EXCEPTION TO HEIGHT LIMIT IN RMH ZONING
APPLICANT: ROBERT RITTER HAS SUBMITTED A PERMIT
APPLICATION FOR A 5' HIGH BLOCK WALL ALONG HIS FRONT
PROPERTY LINE, 1630 HIGHWAY 1, MALABAR, FLORIDA.**

Mr. Booth advised Council that the Planning & Zoning Board took a long hard look at items 3 & 4 and had a detailed discussion and found it acceptable.

MOTION: Vail/Rivet to accept the exception for height limit in RHM zoning for applicant Robert Ritter to place a 5' high block wall along the front property line at 1630 Highway 1, Malabar, Florida. VOTE: All Ayes.

4. **REQUEST FOR EXCEPTION TO HEIGHT LIMIT IN RR-65 ZONING. APPLICANT MARYANNE MARSH SUBMITTED A PERMIT APPLICATION FOR 5' HIGH ALUMINUM FENCE AND A 6' HIGH SHADOW BOX FENCE ALONG FRONT OF PROPERTY, 2170 ARNOLD LANE, MALABAR, FLORIDA.**

Mr. Booth advised Council that the Planning & Zoning Board took a long hard look at items 3 & 4 and had a detailed discussion and found it acceptable.

MOTION: Vail/Rivet to approve the exception to height limit in RR-65 zoning for applicant Maryanne Marsh to place a 5' high aluminum fence and a 6' high shadow box fence along the front of property at 2170 Arnold Lane, Malabar, Florida.

VOTE: Vail, Rivet, Moccia – Ayes, Dezman – Opposed.

5. **DR-420 - CERTIFICATION OF TAXABLE VALUE & SETTING THE UPPER LEVEL OF THE PROPOSED MILLAGE**

Mr. Booth advised Council that this results in a tax rate of 1.59 as opposed to 1.79, but this is the highest level.

MOTION: Rivet/Dezman to approve Certification of Taxable Value and setting the Upper Level of the Proposed Millage to 1.59. VOTE: All Ayes.

6. **RES 14-2005 PURCHASE OF 2005 STERLING DUMP TRUCK**

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

MOTION: Rivet/Dezman to approve Resolution 14-2005 for the purchase of the 2005 Sterling Dump Truck. The roll was called: Hickson (excused), Vail, Rivet, Moccia, and Dezman – All Ayes.

7. **RES 15-2005 WATER UTILITY AUTO WITHDRAWAL PAYMENTS**

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

MOTION: Vail/Rivet to approve Resolution 15-2005 for water utility auto withdrawal payments.

Mayor Eschenberg asked what brought this on. Mr. Booth advised that the customers have requested this service. It's the convenience of the service to the customers that is what they are paying for with the additional \$.50 in service charge.
The roll was called: Hickson (excused), Vail, Rivet, Moccia, Dezman – All Ayes.

8. **RECOMMENDATION FROM THE BUILDING OFFICIAL THAT COUNCIL AMEND THE OCCUPATIONAL LICENSE ORDINANCE TO PROHIBIT CUSTOMERS AT THE HOME AND LIMIT THE LICENSES TO ONE PER HOUSEHOLD.**

Mrs. Moccia stated that she has a problem with this. Mr. Booth advised Council that this is just a recommendation. The Building Official is concerned that we are receiving multiple Occupational License Applications for one household. The way the license ordinance reads is that you can have a home occupational license. We need to look at that because the intent was that the license was to run the office out of the home without having customers coming into the home. Mr. Vail has suggested that this be put on the next agenda for discussion. Mrs. Dezman asked the question of how this would be enforced. Mr. Bohne stated that he had asked the same question. Mr. Vail stated that it will have to become a problem before we know the answer to that question. Mr. Booth stated that we will come back to Council to reduce the number of customers to the home. Mr. Vail stated that staff is requesting that we fix this because they are getting

requests that they can't answer. Let's grant staff's wishes and make it clear on the next agenda. Mr. Booth stated that we will look at the numbers and maybe come back with a different request.

MOTION: Vail/Dezman to extend the meeting for an additional fifteen minutes.

VOTE: All Ayes.

REPORTS: MAYOR, COUNCIL

Mayor: A question for Mr. Booth. The Mayor received a call from a woman who lives in Palm Bay. Are we doing anything up at Edgewood? This borders our northern border. Mr. Booth advised that we were not doing anything in that vicinity. Tillman may be doing some clearing. Mr. Vail stated that they are doing the trails that you went to the ceremony for. Mr. Booth stated that she has seen people walking on the path that Palm Bay created. That's west of Marie Street, she needs to talk to Palm Bay.

Mayor Eschenberg asked Mr. Booth if the Eagle Corp is still closing the gate at the park. His night is Thursdays and he has not heard anything from anyone with regards to this. Mr. Booth advised the Mayor that he has hired an individual to close the park, the Eagle Corp is out of the picture on this.

Vail: The police department, we keep going back and forth on this. Are we going to have a workshop and have a feasibility study, an in-house study? Mr. Booth advised Council that he has spoken to the Chief of Police for Melbourne Beach. We'll sit down and give Council an idea for the absolute minimum cost for a police department. Are we there yet, no.

Billboards – food for thought – what do we have controlling billboards along US #1? Mr. Booth stated that we have sign codes. Mr. Bohne stated that we have to be very careful because US #1 receives federal aid and we may have some limitations on our abilities to regulate billboards. There are actual criteria in the Florida Statutes about this. Mr. Booth stated that he feels we will see less of these types of signs.

Referendum on the ballot for the police department – this needs to be worded so that people understand. It was confusing the last time around. It wasn't real clear. Mr. Booth stated that this could be done by ordinance. Mr. Bohne stated that if we do it by ordinance, the next Council could repeal it and the police department would be gone. Mrs. Moccia stated that the need for the police department needs to be explained.

Lighting Ordinance – is this going to Planning & Zoning? Mr. Booth advised Council that this would go before Planning & Zoning before coming back to Council.

Dezman: Needs some guidance from Council, she has received a certified letter from Heidi Rain, with a second name on it as well, Mrs. Hirsch. Mrs. Dezman had already spoken to Ms. Rainn on the phone and to Mr. Booth as well. I asked Mr. Booth to follow-up with her in person and then to have written follow-up acknowledging what was talked about, etc. She also received another letter from a resident in Country Cove documenting drainage problems. You all received copies of the letter and asked Mr. Booth to also follow-up in writing about what the Town is doing regarding these issues.

Mrs. Dezman has asked for job descriptions for Cindi Kelley and staff so that she is clear on who does what and to address things to. Mrs. Dezman had a meeting with Country Cove, Board of Directors, regarding the possible mediation with Dr. Gentile. They were asking questions about the meeting times with the Special Master. They have written a letter and they want a response. One of the issues that the Board of Directors from Country Cove has brought to my attention is Pence taking out truck loads of dirt from the Town. It was my understanding that fill dirt was to stay within Malabar. This is being brought back to you.

Bob Wilbur called and asked what specifically we wanted in the letter from Planning & Zoning regarding the hiring of Solin & Associates. I told him that I wanted to know the reasons for their request. Another thing Mr. Wilbur stated was that the Town needs to have a vision and we need to make a plan. What she got from the conversation is to be proactive, not reactive. We need to re-visit this issue with Solin & Associates.

The last thing that she brought to Council this evening is that she received two emails in her package. These emails were received after the fact. We need to let these people know that Mr. Rossman is no longer on this Council, therefore, we don't know if he will still be serving in other capacities. We need to get these things before the fact. Mrs. Dezman doesn't want to see what happened with the Valkaria Airport Advisory Board happen to these positions. When she was asked to step in for Mr. Rossman on the Council, she did not agree sit in on any other board seat he holds. School has started and she cannot attend these other meetings.

Rivet: Nothing to report at this time.

Moccia: A couple of weeks ago, I took George Gleckto around town for 2 ½ hours to show him where there are trash piles. Mr. Gleckto stated that the reason the "white trash", which is old appliances or furniture, aren't being picked up is because they are not receiving phone calls from the homeowners. All residents must call Waste Management if they need to have something of this nature picked up.

On Treadwell Lane, someone is putting "No Trespassing" signs up. These signs need to be removed. Mr. Booth stated that this would be addressed.

Mr. Booth advised Council that every other Thursday, our Public Works crew will be picking up the trash on the empty lots.

Mayor Eschenberg reminded Council about the Budget Workshop meeting scheduled for Wednesday, August 3, 2005 at 7:30 p.m.

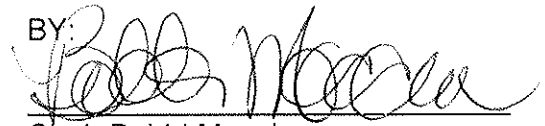
PUBLIC COMMENTS: GENERAL ITEMS

There were none at this time.

ADJOURNMENT

There being no further business, this meeting adjourned at 11:00 p.m.

BY:

A handwritten signature in cursive script, appearing to read "Bobbi Moccia", written over a horizontal line.

Chair Bobbi Moccia

ATTEST:

A handwritten signature in cursive script, appearing to read "Cindi Kelley", written over a horizontal line.

Cindi Kelley, Recording Secretary

DATE: 9/13/05