

**MALABAR TOWN COUNCIL REGULAR MEETING
SEPTEMBER 7, 2005 8:00 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. The meeting was called to order at 8:00 pm by Chair Bobbi Moccia. The prayer and pledge were led by Chair Bobbi Moccia.

<u>ROLL CALL:</u>	MAYOR/VICE-CHAIR	TOM ESCHENBERG
	CHAIR:	BOBBI MOCCIA
	COUNCIL MEMBERS:	FRANK HICKSON
		BRIAN VAIL
		STEVE RIVET, excused
		PAT DEZMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	ENGINEER:	BILL STEPHENSON
	TOWN CLERK/TREASURER:	SUSAN KABANA

ADDITIONS AND DELETIONS TO AGENDA:

Kabana – remove action items 9, 12, & 13.

Eschenberg – after the proclamation, Mrs. Eschenberg would like to make a presentation.

MOTION: Dezman/Vail to approve amended agenda. VOTE: All aye.

CONSENT AGENDA:

(A) Town Council Minutes 8/15/05

MOTION: Hickson/Dezman to approve. VOTE: All aye.

PROCLAMATION:

1. COMMODORE JOHN BARRY DAY

Eschenberg read proclamation and presented it to Patrick Reilly.

PRESENTATION:

1. SHEILA ESCHENBERG

Mrs. Eschenberg - is here to pay tribute to Sr. Agnes. Her family was one of the first 104 families to settle in Malabar. Sr. Agnes' mother is the only one still alive from the original Catholic community. Mrs. Eschenberg presents a book on the history of the area. Recounts a few stories from the book. Mayor & Mrs. Eschenberg will purchase the set of three books and donate them to the Town. Moccia – has fond memories of Sr. Agnes.

REPORTS:

ATTORNEY

Bohne – the Gentile issue is in discovery, which may last three months. Then it will be set for trial, trials are taking six months to schedule. Gentile responses are due in a few weeks.

Council should feel free to contact Bohne regarding this issue.

Dezman – can the Town stop any future building on the Gentile land? Bohne – that would be called a temporary injunction and that probably can not happen.

ADMINISTRATOR:

Booth – regarding code enforcement – states that the Council direction he first received was not to be pro-active, the Town does not pursue fines, we try to get cooperation. Asks Council if this is still the case? Moccia – yes.

Dezman – asks if this is all Council sentiment? Moccia – yes, the past code enforcement officer was pro-active and caused problems.

BILLIE PROPERTY

Booth – it appeared that this property was too expensive, now it may not be. Moccia – why would we buy this? Vail – to join the two properties. Council is not sure this a worthy venture. Booth – will bring this back to Council later.

EFFECTIVE DATE REGARDING EMPLOYEE VACATION TIME

Bohne – there is one employee who has over the maximum vacation time, this has been allowed to slip in the past. Booth is asking Council to make a motion regarding the cut-off date for this lapse.

MOTION: Dezman/Hickson effective October 1, 2005 only the maximum vacation amount is allowed to be carried. VOTE: All aye.

PROPOSED WATER SYSTEM ORDINANCE

Bill Stephenson, Town Engineer – he understood Council wanted an impact fee to get back some revenue from the Malabar Road water line and to make the Water Utility profitable. He states that Bohne recommended using a connection charge in lieu of an impact fee. Stephenson states that this ordinance sets a connection fee for all new water customers. It also sets a site-specific connection charge for the Malabar Road water line, and also a fee for those who connect with in a 2,700 foot radius of the Malabar Road line. This ordinance also establishes the water utility in the code book.

Bohne – it is not a mandatory to hook up, it is voluntary for all existing well and septic customers.

Vail – asks about the connection fee. Stephenson – this is to make sure the Town makes some money on the Malabar Road water line.

Stephenson – feels that in the future the Town will obtain a major water utility system. It will be a community asset.

Hickson – are new subdivisions required to hook-up? Stephenson – there is no mandatory connection language in this code, that language would be found elsewhere, or if you are doing a bond it is found in the bond covenants.

Booth – this ordinance is more about the finances. Moccia – wants to make sure that all new subdivisions must hook up. Bohne – this language should be in the sub-division code. Moccia – wants Bohne to address this next meeting.

Eschenberg – as far as the mandatory connection, is it only for new construction? Bohne – yes.

Moccia – the next meeting will be first reading.

NAMES FOR SITE SELECTION COMMITTEE

Booth – Rivet chooses Bill Withers. Vail choose Bob Wilbur. Hickson choose Phil Crews. Dezman choose Allen Wollard and Vicki Thomas. Moccia chooses herself. Dezman chooses Greg Purden.

Dezman – does not want to see this dragged out.

PROPOSED NEW PARK

Booth – we own the land across from the entrance to Malabar Park. Booth proposes a park there. A pond would be dug. The dirt for the pond would remain in town, public works will dig it. The pond will take care of some local drainage problems. Additional parking will be put in up front. Moccia – is the pavilion grant worthy? Booth – yes. Moccia – then we need to document all work done on this such as these minutes and any pictures. Dezman – agrees with keeping track but it should be done electronically. Also, can there be a walking track? Booth – yes.

Booth – roads – they have worked on Glatter and it is in good shape. They will go to Benjamin, Kramer, and Kelley next. Then he will come back to Council. Osage is doing fine. Someone now wants to put in a sub-division on the County side. We will be in contact with the County regarding this.

Booth – ditches – while Beatty is on vacation ditches will be a priority. We are cleaning out Glatter over to the train trestle. Once it is all cleared we will look at the drainage at the train trestle.

Booth – Pence Subdivision – Council approved this subdivision and Pence started to dig a mandatory pond. The Town requires the contractor use this dirt if he needs material to build the subdivision. In this case there was an excess of dirt afterward which Pence took out of Town. Moccia – there is concern that Pence will take the dirt he needs then leave a mess. Booth – tells Council that Pence is putting in the infrastructure and building the roads.

Stephenson – Pence added a deed restriction requiring a land owner in this subdivision to buy fill-dirt from him. Vail – so are we going to change this? Bohne – the ordinance determines that a certain amount of dirt was required on site and there was an overage so it could be taken. Vail – is the engineer comfortable with the current sub-division ordinance? Stephenson – feels this won't happen again. Vail – feels it could happen again. Stephenson – you can change the rules.

Stephenson – updates Council on the Pence subdivision – they have all the stormwater drainage installed, they have worked on the roads. 95% of the underground drainage is installed. The roads are roughly at final grade. There are 4 or 5 ponds. They have finished the side slopes on all ponds but one. They have almost finished the land clearing.

Dezman – questioned why the dirt was leaving. One person followed a truck to a house pad in Palm Bay. Did Council agree to this? Stephenson – it is in our code. Vail – do we want to leave the ordinance as is?

Bohne – does not think we can keep them from selling the dirt, it is a constitutional problem. You can't tell them they can't sell the excess dirt that can't be used in the subdivision.

Booth – has some items to be sold by auction on September 17th. You can see the items on Friday and the auction is on Saturday. The auction is by sealed bid.

Booth – Fire Department dispatching system – a 911 call goes first to the Sheriff who then either dispatches the call to the police or sends it to an EMS or Fire Department. For Malabar they only send to the Fire Department. The Sheriff's Department will provide dispatch for Malabar for a reasonable price.

Hickson – what about the lighting ordinance? A workshop is set at 7:00pm on October 3rd.

CLERK

CANDIDATE QUALIFYING

Kabana – candidate qualifying begins September 9th and ends September 23rd. The seats up for elections are District 4 and District 5.

Kabana – is sending out board member expiration letters this week. This item will be on an upcoming agenda.

PUBLIC HEARING:

1. RESOLUTION 18-2005: ADOPTING FUND 105 STORM WATER UTILITY BUDGET FOR THE 2005/2006 FISCAL YEAR AND CERTIFYING THE ASSESSMENT ROLL

MOTION: Dezman/Hickson to read by title only. Council agrees.

Moccia read: RESOLUTION NO. 18-2005

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING AN EFFECTIVE DATE.

Moccia opens the public hearing and asks for public comment, there being none she

closes the public hearing.

MOTION: Hickson/Vail to approve. VOTE: Aye - Hickson, Vail, Moccia, Dezman.

DISCUSSION ITEM:

1. AGENDA ITEM REQUEST FORM: CHARLES RYAN

Charles Ryan – states that Patrick Reilly is also to speak regarding this. Reilly – he and Ryan have suggestions on how to improve the Special Master process. Feels the Special Master does not work. One owner was told to pay \$200 a day in fines for the past year but he did not pay a thing. Regarding this issue then were more Special Master meetings.

Reilly and Ryan propose the following: the resident who is making the complaint should document the complaint. Code Enforcement should have specific dates in which to comply. There should be definitive and quantitative evidence.

Reilly states that the special master process seems to work but the orders do not work. The Council should be kept informed on a monthly basis what is happening in Code Enforcement. They feel the Council should either enforce the ordinance or get rid of it.

Bohne – technically, the order was enforced but it was not filed in the public records, feels the process slipped. First we try for compliance then we deal with fines.

Booth – asks if Council wants to be pro-active. He states that the property would not have been sold with a fine on it. Moccia – we can't not do what we say we will do. Booth – but Council can't have it both ways. Eschenberg – what Reilly is saying is to just follow the orders given by the Special Master. Dezman – agrees with Booth, we either need to be pro-active or re-active, we can't be both.

Ryan – Booth has told him that he (Booth) was told to back off this issue by one or more Council Members. Dezman – it was not her. Moccia – it was not her. Ryan – this is terribly wrong. Moccia – agrees. Booth – this person came before Council and wailed the blues and Council took his side.

Moccia – feels that Council should make a decision regarding their stand on this at the next meeting.

ACTION ITEMS, NEW BUSINESS:

1. APPROVE 400 FEET OF SMITH LANE

Stephenson – recommends approval.

MOTION: Hickson/Vail to approve 400 ft of Smith Lane. VOTE: All aye.

2. CERTIFICATION OF COST FOR 400 FEET OF SMITH LANE

MOTION: Vail/Dezman to approve. VOTE: All aye.

3. PROPOSED CAR ALLOWANCES

Booth – currently we pay \$100, \$200 and \$300 for car allowances, would like to have \$200, \$300 & \$400. Moccia – suggests \$150, \$250 & \$350. Dezman – would like to table this until there is more information, any increase can be retroactive. Eschenberg – there could be a gasoline conversion clause put in. Booth – will have everyone keep mileage for the next month then bring this back.

4. WASTE MANAGEMENT REQUEST FOR RATE ADJUSTMENT

MOTION: Hickson/Eschenberg to raise the rate. VOTE: Aye – Moccia, Hickson, Vail. Abstain – Dezman.

5. RESOLUTION 19-2005: PURCHASE DITCH MOWER

MOTION: Moccia requests unanimous consent to read by title only, Council agrees.

Moccia read:

RESOLUTION 19-2005

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA;
PERTAINING TO THE ACQUISITION OF A JOHN DEERE DITCH MOWER; MODEL

#6415; AUTHORIZING THE TOWN ENTER INTO A MUNICIPAL LEASE AGREEMENT WITH RIVERSIDE NATIONAL BANK TO PROVIDE THE FUNDS REQUIRED TO SECURE THIS ACQUISITION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Hickson/Vail to approve.

Dezman – do we have any resolutions in conflict with this? Bohne – no.

VOTE: Aye – Hickson, Vail, Moccia, Dezman

6. RESOLUTION 20-2005: REPEAL RESOLUTION 09-2005

MOTION: Moccia requests unanimous consent to read by title only, Council agrees.

Moccia read: RESOLUTION 20-2005

AN RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPEALING RESOLUTION 09-2005, BUDGET ADJUSTMENT; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Hickson/Vail to approve. VOTE: Aye – Hickson, Vail, Moccia, Dezman

7. RESOLUTION 21-2005: BUDGET ADJUSTMENT

MOTION: Moccia requests unanimous consent to read by title only, Council agrees.

Moccia read: RESOLUTION 21-2005

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2004-2005. CREATING FUND 108 MALABAR FEST; CREATING FUND 109 HURRICANE DISASTER OF 2004; CREATING FUND 110 DEVELOPER RECREATION IMPACT FEES; PROVIDING FOR ADDITIONAL REVENUE; PROVIDING FOR ADDITIONAL EXPENDITURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Hickson/Vail to approve. VOTE: Aye – Hickson, Vail, Moccia, Dezman

8. TOWN AUDITOR POSITION, BID OR TAKE OPTION

MOTION: Hickson/Vail to take the option. VOTE: All aye.

9. ORDINANCE 2005-05, FIRST READING: COMMERCIAL SPEECH

Removed from agenda.

10. APPROVAL OF BID FOR PUBLIC WORKS PICKUP TRUCK

Booth – this item is postponed for now.

ACTION ITEMS, OLD BUSINESS:

11. PROPOSED RECOMMENDATIONS FOR THE USE OF DEVELOPER RECREATION FEES

MOTION: Hickson/Vail to approve.

Dave Ruip, Park & Recreation Board – reviews the items listed. Booth – this will have to be done in the next budget year, states that some of the items are in the proposed budget.

Kabana – the amount listed is greater than the cash that has come in. The budgeted amount should not be greater than the amount of cash. Discussion of amending the list. Dezman – wants clarification on list.

MOTION TO AMEND: Hickson/Vail to approve the amended list.

SECOND MOTION: Dezman/Vail to ask Park & Recreation for a specific budget.

VOTE ON AMENDMENT: VOTE: Aye – Hickson. Nay – Moccia, Vail, Dezman.

Eschenberg – when there are other line items in the budget that we don't ask for an item by item breakdown. He feels the Park Board should be able to spend the budgeted amount. Dezman –

needs clarity. Hickson – are we going to make them come back to Council or are we going to give them the authority? Dezman – they are only an advisory board that is not elected, we have the responsibility.

VOTE ON SECOND MOTION: Aye – Vail, Dezman, Moccia, Hickson.

12. PROPOSED DISPATCHER FOR THE FIRE DEPARTMENT

Removed from the agenda.

13. 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

Removed from agenda.

REPORTS: MAYOR, COUNCIL

- Eschenberg – has Booth heard from anyone on Hardway Lane who wants to pave the road? Booth – yes, they have a 100% participation. He will bring this back to Council.
- Eschenberg – at some of the school bus stops the kids don't have a good place to wait for the bus. Can we put in a gravel pad at some of the more used stops? Moccia – will get bus stop info for Booth. Mrs. Eschenberg – recommends safety first. Some of the stops are in a dangerous place.
- Hickson – nothing at this time.
- Vail – nothing at this time.
- Dezman – Stillwater Preserve on the west side, will they be able to get on to Malabar Road? Booth – only in an emergency.
- Dezman – what are the cones marking on Corey Road? Booth – the turn lane Stillwater must put in on Corey Road.
- Dezman – is there going to be a code review? Booth – we are doing it on a ordinance-by-ordinance basis. Kabana – we did a complete code review years ago and is not sure what it accomplished.
- Dezman – thanks Eschenberg for chairing the last meeting, feels he did a superb job.
- Moccia – Booth's evaluation is coming up, everyone needs evaluation forms.
- Moccia – would like to spend money out of her discretionary fund, \$200 for the Red Cross and \$200 for a reading program at Port Malabar Elementary.

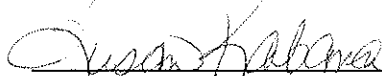
PUBLIC COMMENTS: GENERAL ITEMS

Brian Keith, Corey Road – his family has lived here for over 30 years. He is part of the working class. He drives a dump truck home. Feels that the citizens want our code to be re-active, not pro-active. Wants Council to remember they are voted in by the majority. Moccia – ask if Keith has a violation. Keith – yes, thinks he has done the things he has to do to be in compliance. Does not want to see us become like Palm Bay.

ADJOURNMENT

The meeting adjourned at 10:30 pm.

ATTEST:



Susan Kabana, MMC
Town Clerk/Treasurer

DATE: 10/3/05

BY:



Chair Bobbi Moccia