

TOWN COUNCIL MINUTES
January 5, 2004

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

ROLL CALL:	MAYOR:	PHILLIP CREWS
	CHAIR:	BOBBI MOCCIA
	VICE-CHAIR:	STEVE RIVET - EXCUSED
	COUNCIL MEMBERS:	JANE HAVET
		BRIAN HUNTER
		BOB ROSSMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	CLERK:	SUSAN KABANA
	TOWN ENGINEER:	BILL STEPHENSON

ADDITIONS AND DELETIONS:

MOTION: Rossman/Havet to approve to agenda. The chair approved by unanimous consent.

CONSENT AGENDA:

MOTION: Rossman/Havet to approve. The chair approved by unanimous consent.

Council Minutes 12/1/03, Council Workshop Minutes 12/9/03.

REPORTS:

ATTORNEY

Bohne – will attend a Planning and Zoning meeting regarding a conditional use and a Board of Adjustment meeting regarding an building official decision appeal this month.

ADMINISTRATOR

Booth – the “Orange Alert” letter that went out has ambiguities and should be discounted, it wasn't even signed.

MSTU

MSTU – the Malabar MSTU issue was sent back to the County staff by the County Commission. The County staff want to discuss two levels of support with Malabar. One with more support and officers who are assigned to Malabar if we pay the MSTU and the other deals with reduced support with a reduced tax. Booth told the County that he is not in the position to negotiate because the Malabar Council said a very clear ‘no’ to the MSTU. Booth’s question is what does the Council want him to do? Hunter – have we seen reduced police activity around Town? He personally has seen more activity along US1 in the past two months than what is normal. Crews – he does not think the Sheriff would change anything if we paid or not so just leave things they way they are. Moccia – feels it is unanimous from Council to keep saying no.

Rossman – reads from a memo which states that before the County can pursue enforcement against us then there must be a joint meeting between the two government bodies. Bohne – yes, there must be a mediation process to see if it can be resolved. Rossman – the Florida Constitution makes the Sheriff the chief law enforcement for the County and he is required to provide law enforcement under the taxes that we already pay. He knows of no other County that has MSTU’s, it is just another way for the County to create revenue. Hunter – the

County is also asking for our traffic citation fines for this year and they say this is their second request, he has not even seen the first request.

The Space Coast League of Cities dinner is next week and we co-host with Palm Bay, Booth takes reservations.

Feasibility study re: Valkaria

The State of Florida requires that we look at the water and sewer and that is not an issue so the feasibility study Council will get will be from the staff side. Booth has gathered the first draft of numbers for our Planner to write the feasibility study. He reviewed both revenues and expenses, and only the larger items, not all items, it's a conservative view.

To provide Valkaria with their current services, we need another crew and two dump trucks and a gradall so that at least once a year all ditches will be cleaned. The crew will be made up of three full time employees and one temporary employee four months of the year. Additional paving and capping would be needed on some roads.

The building department would add employees if warranted, their size is based on their revenue.

Booth feels that revenues would exceed expenses allowing for contracted fire protection and additional roads. This is only a thumbnail view and more detail is needed. The impact to the Town is no taxes collected by us in the first year and the expenses will be absorbed by the Town. States that once we'd be up and running the clerk/treasurer would have to split into two positions and additional office equipment would be needed. Discussion.

Hunter – if the County fights us on the legal aspect of this what are we looking at? Discussion of the West Melbourne annexation. Bohne – when the annexation is approved by the voters it get sent up to the State and it is at that point where the interested parties can challenge the annexation. He does not see us having the same issues as West Melbourne but the feasibility study must be solid. Moccia – the study must be exact, what Booth has presented is rough and must be perfected. Booth – the Planner will work on exacting the numbers and will look at fire and police protection

Rossman – have we designated a southern boundary? Rossman – yes, Rambleboook. Rossman – what about the golf course, he does not want it. Booth – we don't have to take that or the airport, they are County facilities. Havet – wants the correct information about this subject in the newsletter. Booth – will do this. Discussion.

Havet asks Bonnie Salee to inform Council regarding the County Zoning meeting regarding a proposed subdivision in Valkaria. Salee – the attorney was asking for quarter acre lots in order to build his 178 homes and leave the buffers required by the State. The board voted 7 to 4 in favor of the development. Their recommendation will go to the County Commission on the 5th. Discussion. Richard Cameron – states that the lot sizes started larger and have shrunk over time, feels Palm Bay will provide water. Salee – the developer said it would come from Palm Bay. Discussion.

Architectural Committee

Booth – there was an indication that P&Z and Council wanted to start forming an architectural review committee, if this is what Council wants he will get info on this. Rossman – if we are going to have a committee then he would like to see the Council each appoint someone to it.

Trails

Booth – took the trails and put it into the Park Board budget. Does Council want a committee for trails or just keep it within the Park Board? Discussion of where it would belong. Moccia – Richard Cameron has done a great job with our ecotourism. Booth – there is a market for large amount of horse back riding and boating from the cruise ships but we don't have the large numbers that they are looking for.

Redevelopment District

Booth – we will create a Redevelopment District with Highway 1, will be surveying the residents to get information.

US1 waterline

The water line going down Highway 1 will work with the Architectural Committee and the Redevelopment District.

Stormwater maintenance

Will look at this with our Engineer. Moccia – Bamburger's lot will get a lot of water from the Pence project off Marie Street, what are we going to do to keep him from flooding? The big drain was replaced with a much smaller one and will cause the water to back up onto Bamburgers. Booth – both the Corp of Engineers and St. Johns have taken a close look at the Pence project and required additional drainage to keep the water flowing and have requested an easement so the Town can get to the drain and unblock any debris. Discussion.

Roads

Booth – as soon as we are reimbursed by Pence for the paving on Marie Street we will continue the paving on Hall Road. Next year Atz is scheduled and some issues at Country Cove.

RR-65

There is another request to put a commercial stable in a residential area. Booth does not think that is compatible. Bohne – does not want Council to discuss the particulars. Booth – do we want to take the conditional use permit out of the ordinance? That is not to say that we are not a horse community but does Council want to allow commercial stables? We are becoming more residential and less agricultural.

Nuisance Ordinance

Shows picture of abandoned cars, discusses different nuisances from abandoned homes and cars, discussion.

Hunter – he has a memo from the EEL's, wants to know if Ann Birch will be at the P&Z/Council meeting at the end of the month. Notes that the work on the fence at the Jordan Scrub has come to a halt.

CLERKMemo from Deputy Clerk

There was a memo to Council to from Debby Franklin clarifying a motion made at a previous Council meeting.

The Council must appoint a voting delegate for the League.

MOTION: Rossman/Crews to keep Booth as the voting delegate for the League of Cities. The chair approved by unanimous consent. Rivet is selected as alternate. VOTE: All aye.

MLK day is the day of the next meeting and is a holiday, Town Hall is closed. January 26th is chosen. Bohne can attend.

There was only one entry for the t-shirt contest and she won.

PUBLIC COMMENTS: GENERAL ITEMS

Buddy Chadwick – gave background on the building of his road, Smith Lane. He was not notified that his project was postponed due to rain. His road was not built to the contact and he was blown off by Frazier engineering more than once. He wants to know where the money he spent on the road. The road was cleared an extra 215', did he pay for this?

Havet – did this effect your house loan? Chadwick – that is another story but this road effected him all the way around. He has been jumping through hoops to get what how the money was spent on this road. The problem is between the Town and Frazier. Booth – our Attorney will

get that info from Frazier. Chadwick – does not feel responsible for the construction of the road after the was built.

Chadwick – has some technical issues: who paid for the clearing of the extra land? Kabana – that was in the bid and was a set amount. Chadwick – has contacted St. John's and they are looking to see if the additional clearing was permitted. Chadwick notes that he obtained a clearing permit and clearly noted to the contractor that the ROW was cleared.

Brian Vail from the audience – it was a mistake, a property owner further back put up flags and the contractor cleared to the flags. Chadwick – where is the accountability? He was looking at pure vegetation from his land and now his is looking at a mud pit. You can't even take out one tree without a permit but someone pulled up 200' of trees.

Chadwick – states that the density tests were not done correctly, they were done at 12" for an 8" test. Also there are not LDR test procedures as required by our ordinance. Chadwick feels that certifying this road was a mistake because the ordinance was not followed. Stephenson – this is a significant issue, expands. Notes that we adopted an alternate to the crushed coquina which will help in the future.

Dave Quadrozi – in regard to Valkaria, what about the tax money that is collected by the County prior to a proposed annexation? Booth – if we should happen in November there will only be a short overlap.

Richard Cameron, 650 Hall Road – he has been told that he cannot be on two boards, currently he is on P&Z and is the P&Z liaison to the Park Board. If the trails are going to be part of the Park Board the he will be out of trails. If trails is separate from the Park Board he can still work on trails. He kicks around a lot of ideas with the Park Board and they generally come up with ideas to benefit the Town. He does not vote at the Park Board meetings.

He wants to know how Council wants to handle this. Moccia – this is something that the Council will have to think about address the next meeting, she wants to be fair. Cameron – notes that the money for trail and greenways came from grants, not from within the Town.

Cameron – in regard to the Conditional Use in the RR65 zoning: he has a conditional use and notes that are many currently existing, it is a good zoning he has had people move near him so they could see the animals. It has not be a deterrent in the past but it seems to be now. He notes that the people who apply for a conditional use have spent a considerable amount of money and understand that that since it is in the ordinance it would be allowed. If Council is not going to allow this conditional use then it should be taken out of the ordinance. Moccia – Council should look at each application individually. Discussion.

AGENDA REQUEST FORM:

1. HANS KEMMLER, 920 ATZ ROAD, MALABAR

Kemmler – is the chair of the Parks and Rec board. Shows some great old photos from Malabar's past. States that Malabar Community Park needs shade trees and has heard that there are some owed to the Town, Kemmler hopes the Park Board can use them. Notes that the Florida Arbor Day is in January so it is too soon to plant. With Council's permission they would like to plant on February 1 as a memorial to the Columbia Astronauts. They will work on the types of trees. Moccia – there is a laurel oak in front of the Town Hall that will have to be removed because it was planted in a bad spot – they can dig up that tree and use it at the park.

Kemmler – there is a person who has a small train about the size of the one at the zoo and he wants to donate to the park. Havet – is not interested, states that this is a nature sanctuary and we don't need a train going through it.

Kemmler – miscellaneous: they are working on the mower bids. States that Booth suggested that we have a grand opening for the park in the spring because the soccer fields will be complete. And Kemmler notes that the black cemetery near the railroad tracks is rapidly disappearing.

Kemmler – on the role of the Park Board: he wants to know what the role of the Park Board is? The gate issue began a contentious issue that he did not want to begin. He feels that the park

Board is an advisory committee charged to do their best to plan and develop the parks in Malabar. Discussion about the gate. Rossman – agrees that the Park Board is advisory and does not want to see a turf war and feels there was a communication problem. He would like the Park Board to keep making recommendations and that the ultimate responsibility lays with the Council. Kemmler – would like to see any future information regarding any major implements in the park be in the minutes so they could at least read about it. Kemmler – notes that Malabar Day will be April 3rd. Rossman – expects Withers and the Park Board members to get along and wants Withers to be involved with the tractor purchase. Kemmler – wants to involve him and thinks he is doing a very good job. Booth – the Park and Rec board will be very involved in which groups will be allowed to play on the field.

PUBLIC HEARING:**1. SECOND READING, ORDINANCE 03-17, TREES PRESERVATION**

Crews request to read by title only, Moccia approves without objection. Moccia read:

ORDINANCE NO. 03-17

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE XV, TREE PROTECTION, OF THE TOWN OF MALABAR LAND DEVELOPMENT CODE; PROVIDING FOR A SHORT TITLE; PROVIDING FOR AUTHORITY AND POWER; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR THE ESTABLISHMENT OF A BEAUTIFICATION TRUST FUND; PROVIDING FOR DEFINITIONS; PROVIDING FOR GENERAL PROHIBITIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR A PERMIT AND CRITERIA FOR ISSUING PERMITS; PROVIDING FOR PERMIT SUBMITTAL REQUIREMENTS; PROVIDING FOR AN APPLICATION PROCEDURE; PROVIDING FOR THE ADOPTION OF A FEE SCHEDULE BY RESOLUTION; PROVIDING FOR THE PROTECTION OF TREES DURING DEVELOPMENT OF LAND; PROVIDING FOR TREES OF SPECIAL SIGNIFICANCE; PROVIDING FOR A VARIANCE; PROVIDING FOR EMERGENCY TREE REMOVAL; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR SPECIAL HEARING MASTER JURISDICTION; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Moccia – asks for public comment, being none, she closes the public comments.

MOTION: Crews/Rossman to approve.

Rossman – notes a typo on page 3. Crews – would like to make it easier if a tree has overgrown.

Booth – that could be considered under health and safety.

VOTE: Aye – Rossman, Havet, Hunter, Moccia.**DISCUSSION ITEMS:****1. TO APPROVE ENGINEER'S RECOMMENDATION TO CHANGE THE ROAD IMPROVEMENT PROCEDURE**

Bill Stephenson – he is accessible for the staff and the contractors. Notes that what many cities do is to provide the option of allowing someone to hire their own engineer when building roads. The costs can be based on reasonable costs as stated in our ordinance. This offers the person building their road the opportunity to control their own destiny. Is not suggesting that we delete what we have, just add the choice. Kabana – just wants to make sure the owners money is protected during the process. Council – wants Bohne to write this.

ACTION ITEMS:**1. APPROVAL TO GO TO BID FOR ROAD IMPROVEMENT OF 1285.94 FEET OF TREADWELL LANE – applicants: Drs. O'Carroll**

MOTION: Crews/Rossman to approve. VOTE: All aye.

2. RECOMMENDATION FROM PARK BOARD FOR TREE MEMORIAL

MOTION: Crews/ Rossman to approve. VOTE: All aye.

3. FIRST READING OF ORDINANCE 04-01 NUISANCE

MOTION: Crews request to read by title only, Moccia approves without objection. Bohne read: ORDINANCE NO. 04-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 11 NUISANCES; AMENDING SECTION 11-1 DEFINITIONS; AMENDING SECTION 11-7 REMOVAL OF GARBAGE AND THE LIKE; AMENDING SECTION 11-18 PENALTIES; PROVIDING FOR SUPPLEMENTAL REMEDIES; AMENDING ARTICLE II JUNKED, WRECKED OR ABANDONED PROPERTY; AMENDING SECTION 11-26 DEFINITIONS; AMENDING SECTION 11-31 RELATING TO PENALTIES; ADDING A NEW SECTION 11-32 RELATING TO SUPPLEMENTAL REMEDIES; CREATING A NEW ARTICLE III TO CHAPTER 11 RELATING TO OVERGROWN VEGETATION; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REMOVAL OF CERTAIN GROWTH OR VEGETATION; PROVIDING FOR NOTICE OF VIOLATION; PROVIDING FOR A HEARING; PROVIDING FOR THE CORRECTION OF VIOLATION BY THE TOWN; PROVIDING FOR ASSESSMENT OF COSTS OF CORRECTION AND NOTICE OF LIEN; PROVIDING FOR THE FORECLOSURE OF LIEN; PROVIDING FOR A REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

Bohne – the provision about the penalty in the title should be removed.

MOTION: Crews/Rossman to approve. VOTE: All aye.

Second reading will be January 26th.

REPORTS: MAYOR, COUNCIL

Havet – she pulled a packet to run for District 3 seat for County Commissioner, she will not be running for her Council seat this November.

Crews – nothing at this time.

Hunter – nothing at this time.

Rossman – there is a datagram regarding additional fire fighter's education requirements. Now is the proper time to review what we have. Discussion.

Rossman – has a request regarding a fence that is too high on Gilmore, asks Booth to look at.

ADJOURNMENT

The meeting adjourned at 9:39 p.m.

BY:


Chair Bobbi Moccia

ATTEST:


Susan Kabana, CMC
Town Clerk/Treasurer

DATE:

1/26/04