

MALABAR TOWN COUNCIL REGULAR MEETING
MAY 3, 2004 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 the Vice-Chair, Steve Rivet.

<u>ROLL CALL:</u>	MAYOR:	PHILLIP CREWS
	CHAIR:	BOBBI MOCCIA
	VICE-CHAIR:	STEVE RIVET
	COUNCIL MEMBERS:	JANE HAVET
		BRIAN HUNTER
		BOB ROSSMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	CLERK:	SUSAN KABANA

ADDITIONS AND DELETIONS TO AGENDA

Kabana – delete items under consent agenda, those minutes were approved last meeting. Move Proclamations to consent agenda. Also delete Brad Smith, he had a family emergency. Add Brook Hollow under the Administrator's Report.

MOTION: Rivet/Rossman to approve. All aye.

PROCLAMATIONS:

(A) CODE ENFORCEMENT OFFICERS APPRECIATION WEEK

(B) MUNICIPAL CLERKS WEEK

Moved to consent agenda.

CONSENT AGENDA:

(A) COUNCIL WORKSHOP 3/15/04 (B) COUNCIL MINUTES 3/15/04

PROCLAMATIONS:

(A) CODE ENFORCEMENT OFFICERS APPRECIATION WEEK

(B) MUNICIPAL CLERKS WEEK

MOTION: Mayor to approve by unanimous consent. The Chair approves without objection.

REPORTS:

ATTORNEY

Gentile's oral argument was last month. Bohne attended as did Havet, Hunter, and Rossman. Bohne felt the oral argument went well. The opinion has not been rendered. He understands that it is being circulated between the judges. If the Court affirms the decision of the Council the matter will end. If the Court reverses the judgment then the worst that will happen is that we will have to hold the hearing again, but the judges have no authority to force the Town to issue the permit. Gentile's attorney tried to add something at the last minute, Bohne objected and had 20 days to respond which he did.

ADMINISTRATOR

- BROOK HOLLOW

- Booth – Brook Hollow has seven acres of land as open space and they have offered to let the Town use it as mitigation so the Town can purchase land adjacent to the fire station for a new town hall. Needleman said he would introduce legislation to claim the land back from the State. But since the time this offer was made there has been a request to annex which may

change the location of the town hall. Booth feels that since Brook Hollow has been offered a considerable amount of money for the land they should sell.

Rossman – at one of the Council/P&Z planning meetings it was discussed that the new town hall should go near the fire station and he feels this is where it should go. Rossman states that we should swap our ROW on Briar Creek for the Brook Hollow land.

Mayor – has always felt that the road should not go through on Briar Creek and if we trade properties then that would achieve this goal. Feels this is an excellent opportunity to gain the Brook Hollow land to use as a bargaining chip.

Hunter – can we trade public ROW to a private association like that? Bohne – is not sure of that answer. This is different from a vacate and abandon where the ROW is split and goes to the owners adjacent to the ROW. Rossman – could we vacate the land to the EELS and have Brook Hollow donate the seven acres to the town? Bohne – it can be vacated, he is just not sure about the swapping.

Ben DeBose – would have to ask the homeowners association regarding the trade but if they agreed, the ROW would be kept as open space, just like the seven acres they currently own. DeBose came here tonight to find out if the Council was willing to go forward with using the Brook Hollow land as a bargaining chip to gain land to build a town hall and he is hearing from Council that this is a dead issue. What he would like is for Council to discuss this and get back with him in the next 30 days. DeBose thinks Rossman's idea is very good, he states that the Brook Hollow Homeowners Association is more interested in helping the Town than just getting the money. Moccia – Bohne needs to research the swap issue as soon as possible, Council agrees. Discussion.

- Booth – two meetings ago he let a developer talk to Council regarding development along Rocky Point and then found out that the developer hadn't even talked to the land owner. That was his mistake and he will not let it happen again.
- Booth will start the budget this month, if Council has ideas please let him know.
- Booth will have to start working in the evening in order to get the information he needs to begin the redevelopment project along US1.
- Stormwater and street project – Booth gave Council a list of projects and showed overheads of those projects. Public Works continues to work on drainage and repairs. In June they will complete the paving of Hall Road, and will heat and roll Country Cove for no additional cost.
- Booth – we have applied for grants for pepper busting but we will go ahead and complete the pepper busting along US1. The grants can be use for additional clearing.
- Booth – we will add an advance warning stop sign on Corey Road due to a Sheriff's Dept request.
- Booth – he will have a committee for Malabar Day, the list will be out next month.
- Booth – we will have to maintain the trails.

-TRAFFIC LIGHT AT COREY ROAD & MALABAR ROAD

The State said that a light there would cause more accidents, they are not for this. They suggested turn lanes. Booth will ask the developer at Corey Road and Malabar Road to assist with turn lanes. Discussion.

-BUILDING DEPARTMENT MANUAL

Will be published next month, it requires some editing but it is almost there.

-PROPOSED COUNTY CHARTER AMENDMENT

The County is proposing to change their charter to basically say that whatever is in their charter overrides any ordinance that the town might pass. Havet – was at those meetings, states that normally the proposed changes to the Charter come from within but now this process has been opened to the citizens. As a result there are about sixty different proposals, each with a special interest. The one Booth is mentioning is one that was brought about by a lady in Mims who had an issue regarding property rights. But that particular proposal failed and will not go any further. Booth – states that there is a lot going on with the County's charter and it will have to be watched.

-PROPOSED ADDITIONAL \$25,000 HOMESTEAD EXEMPTION

Booth – more than likely this will pass, there is much support. It will give us about a \$12,000 loss of revenue. Rivet – he read that this is supposed to be a revenue neutral due to a small tax increase. Booth – new construction will make up the difference also.

-COMMERCIAL STABLES

Booth – we currently have five commercial stables and we also have some that are proposed. If the Council does not want additional commercial stables then they should think about revision to our code or establish rules regarding them.

Havet – is very conflicted about this, she bought her property because it was a commercial stable. She feels that we have to be very careful if we limit this because of the make-up of the board members and the Council members, some of which would be adversely affected by a commercial stable. Also, Malabar has many trails and people are going to want to use them, we are going to be an equestrian community.

Booth – he is only talking about commercial stables. Havet – and some of the people on Council would be personally affected, we have to be careful.

Hunter – has watched this Council go through extraordinary events regarding commercial stables and feels that an ordinance should be drafted as to what a commercial stable should be and should not be. Discussion.

Crews – his concern regarding this is that we have pending litigation, feels this is bad timing.

MOTION: Crews to table. Motion fails for lack of second.

Rossmann – he agrees with Hunter. He represents an area that is directly affected but he thinks that Crews has a point also. Rossmann is not in favor of banning this but feels that we need to define it. A good example is the fact that a development on Corey Road may go in right next to a possible proposed commercial stable. At this point in the Town's growth we need to clearly define what a commercial stable is.

Rivet – feels that the biggest problem would be with the density and feels that if we can keep it in the realm of reasonability then that would be acceptable.

Bohne – Council could put a 'pending ordinance doctrine' on this issue which would put a freeze on commercial horse stable applications.

Havet – that would be calling it something else but it would be achieving almost the same thing. Does not feel that Council should do anything that could be construed as a change of ordinance to prevent someone who presently has an application in. Bohne – then those people would not be affected, it is those who come after this. Discussion.

Moccia – people are saying that they didn't buy in an area with a commercial stable and they don't want one now.

Havet – it is her understanding that one of the stables that is submitting for a conditional use is in Moccia's area, which is causing an issue. Moccia – states that this stable has been discussed at Council before. Havet – Moccia's issue is why she is concerned. There are so many people in Town who have horses and then there are those on Council who don't want horses around them. She just wants Council to be very careful in dealing with this issue.

Moccia – this issue was brought to Moccia by her neighbors, she is not going to be the one to initiate anything because she is the chair and cannot make a motion. She can speak her opinion but she can choose to recuse, not that she has to but she probably would. Rossman – in his area there is a commercial stable, especially one with lights, which is exactly why this was proposed.

MOTION: Rossman/Crews to direct Bohne to give Council guidelines and direction as to what is a commercial stable.

Rossman – is not against a commercial stable but he would like some direction as to what a commercial stable is. Rivet – feels this is entirely appropriate, that right now is the time to explore guidelines, it is too early to discuss an ordinance. Rossman – agrees. Hunter – so we will not use the 'pending ordinance doctrine' that Bohne discussed, is that correct? Council – yes. Hunter – wants to make sure that those who wish can still apply for a commercial stable.

VOTE: All aye.

-PROPOSED ORDINANCE REGARDING SEPTIC SYSTEMS

Booth – we cannot give permits for septic systems, there will be an ordinance to repeal it.

-DEVELOPMENT (IN GENERAL)

Booth – has already talked about this. We will only deal with the owners of land, everything else is pure speculation.

-MITIGATION GRANT FOR FEMA 1062 PROJECT

Booth – thanks to the Mayor we were notified that we have \$200,000 for mitigating the Corey Road pond project. We will use this money wisely for projects that are visible and actually have impact.

-Hunter – regarding the septic permitting, he asks why we don't want to do this. Booth – this item is discussed in our code and states things we have no control over, we have no way of enforcing it, we never did, and we must remove the conflicting verbiage.

-Rivet – the development off of Marie, what is the time frame? Booth – maybe begin late summer.

-Rossman – what about the Corey Road and Malabar project? Booth – maybe the fall.

CLERK

-Takes reservations for the League Dinner.

-Does Rossman want to participate in the purchase of the Fire Department laptop/projector purchase? Rossman – no. Kabana – then it will be split four ways at \$542.49 each.

-Asks Council if they like the new website. Hunter – it is great but it has issues, Kabana will check out. Rivet – would like email to go directly to the Council members. Kabana has a problem with that due to public records law. Hunter – but he would like to access email himself. Crews – the email should be sent simultaneously to Kabana and the Council members. Havet – what if someone wants to send her confidential email? Bohne – they can talk to you but if they correspond with you by email it is a public record. Kabana – tells the Council if they have ever received email to their personal address they must send her a copy.

-Is anyone going to attend the class for municipal officials? Council – no.

PARK AND RECREATION BOARD CHAIR

Hans Kemmler – Chair Parks and Rec Board. Thanks all the people involved with Malabar Day, especially thanks Elaine and Nancy. Thanks all the sponsors.

The soccer field may need work. The park is looking good. Next meeting they will choose the playground equipment.

PUBLIC COMMENTS: GENERAL ITEMS

William Withers, Candy Lane:

–reads a statement regarding the liaison for the Park and Recreation and the positions' authenticity. Asks why board members are not held to term limits. Withers asks when did Council permit advisory board members to be appointed by an authority other than their own? And when did Council approve a liaison between two advisory boards?

-Wants Council to know that dogs are running all over the park.

-Also notes that ATV's are becoming dangerous at Corey and Atz.

Havet – regarding the first item, asks Booth if that is the way it is? Booth – yes, Richard Cameron is the liaison. Crews – he recalls that a while ago Cameron was very involved with the trails and he does not know if a motion was made by Council or if Council was just briefed on the fact that Cameron would become a liaison to P&Z. Kabana – will research.

Rivet – wants to know if that was ever agreed to and also wants to know if it is appropriate at this time. The charter is clear that no one will serve on more than one board.

Hunter – he does not feel the past is as important as the future, Council needs to decide what is best now. Bohne – the charter does state only one board at a time and there is statute backing this up. There is no prohibition of a person being a liaison but serving on two boards violates the charter.

Crews – thinks that maybe because we knew that he couldn't be on two boards we created the liaison. Just like a Council member is a liaison to the fire department. Crews feels that it is most likely that there was no intention for him to be a member of the park board.

Havet – has he voted or made motions? Kemmler – has not seen this since he was on the park board. Rossman – but it is in the minutes.

Havet – Cameron and Wilbur have been on those boards for twenty-five years. She takes issue with several things they have done that go far above the duties of their appointed positions. She asks Council to take a very hard look at this complaint. Moccia – agrees.

Rossman – at one of the recent Council meetings he thought we did create a trail board and removed this from the park board. He would suggest that if this is a liaison then there should be no input from the liaison. Tells Havet that she should make a motion as to the judicial process that she would like to see this Council take. We need legal guidelines as to how to follow the alleged violations. Discussion.

Bohne – if there is going to be action taken to remove a Board member it would be only for cause and they would have to have due process. Rossman – and that would clear the air for them. Bohne – the first action needs to be some type of complaint. Rivet – board members are appointed at the pleasure of Council, are they subjected to 'cause'? Bohne – yes, there is statute regarding this. Rossman – they are entitled to their day in court.

MOTION: Rossman/Rivet there is no liaison between the boards.

Hunter – does not know enough about this to say yea or nay, has seen enough good come from Cameron that he is not sure this is the right thing. Rossman – thinks Cameron has done an outstanding job with the trails and he would like to see him stay with trails. Hunter – Cameron is a volunteer and is an asset to the Town. He is not sure this is the time to call for this vote. Havet – she believes that the Park Board would listen to and pay attention to any recommendation made by anybody as far as what goes on in our trails.

VOTE: Aye – Rossman, Havet, Rossman, Moccia. Hunter – nay.

-Pat Reilly – Tom Eschenberg could not be here and proposes that the name 'Old Mission' east of Corey should be changed because the road will probably not go through.

-Pat Reilly – under 'conditional use' in the code there is a definition for a commercial horse stable.

-Kathleen Reilly – 1985 Howell Lane, owns a commercial stable. Did Council ask Bohne to give Council a definition of a commercial stable or an ordinance for commercial stables? In the past when Council has asked Bohne to draft a controversial ordinance the chamber fills to capacity and the overflow fills the parking lot. So if Council is asking Bohne to come up with an ordinance she suggests asking the current commercial stable owners for input. She is willing to

make suggestions. Moccia – we need comments from the stable owners and the citizens. Rossman – Bohne is to come up with definitions. Rossman – feels we may choose to have an advisory committee, would Reilly like to be involved? Reilly – yes.

PRESENTATION:

1. BRAD SMITH OF BRAD SMITH AND ASSOCIATES, BEAUTIFICATION GRANT

ACTION ITEMS:

1. OLD MISSION ROAD, EAST OF COREY ROAD, REGARDING ROAD BUILDING

SPECIFICATIONS

Booth – has worked for a very long time with this landowner in her effort to build a road. Shows overheads. The problem is if the road is built as wide as our code states then the road will be into wetlands and is completely cost prohibitive. Booth is asking Council to approve a narrower road. Havet – feels Wainuskas should be able to build her road. Discussion. Rossman – also has tried to help Ms. Wainuskas for the past year, he feels that St. Johns is being difficult, they want 5 of her 6 acres for mitigation. Hunter – has no problem with Wainuskas building but is concerned that we are talking about an exception to an exception. Rivet – he went through a lot of what she is going through when he built his road. He ran into one problem after another and it was extremely frustrating, he feels there are many unnecessary delays put on Wainuskas. It sounds like Wainuskas has tried to meet the letter of the law and he does not see any other way to let her build her house than to approve a narrower road. As long as fire trucks can get in and turn around he would agree to do what it takes to allow her to build her house.

MOTION: Rossman/Havet to follow Booth's recommendation.

VOTE: All aye.

2. REQUEST FOR SUPPORT FOR BREVARD COUNTY SHERIFF'S OFFICE BYRNE GRANT PROPOSAL

Rossman – since we are not seeing exactly eye-to-eye with the Sheriff's Department why are we doing this?

MOTION: Crews/Hunter to approve.

Rivet – if we can get some cooperation for enforcement from them then we would love to assist. Discussion. Crews – does not think this is the proper issue to do this. Moccia – agrees.

VOTE: Aye - Hunter, Havet, Rivet. Nay – Moccia, Rossman.

REPORTS: MAYOR, COUNCIL

-Havet – apologizes to Moccia, was under the impression that the stable near her home had not been discussed so anything that she might have intimated she wants to apologize for.

-Havet – thanks Rossman for supporting her on her complaint.

-Crews – nothing at this time.

-Hunter – the EELs have erected posts with guidelines and they have limited the large vehicles but the ATV's are still out there. Would like Booth to have an officer out there one weekend to hand out tickets.

- Hunter – establishes that we save a lot of money using the prisoner program and states that Public Works had to go to class to learn how to handle the prisoners. Asks Booth if he was aware that someone had taken a prisoner from the detail and used them without permission. Booth – to a degree, yes. The prisoners were working in the park and one prisoner was taken to another part of the park. Hunter – was the prisoner's supervisor notified that one of the prisoners was taken from his supervision? Booth – that he does not know. Hunter – wants this issue taken care of properly and then it is over, feels this needs to be brought before Council.

Beatty – one day a couple of prisoners were borrowed and the next day one was 'missing' (when the count was done) but another prisoner said that the missing prisoner was 'over there'. This is what was related to Beatty. Havet – where is over there? Beatty – in the park with Bill Withers, he had borrowed one of them. Withers – he had asked for them.

Hunter – the reason he asks is that our people were trained to handle the prisoners and he can't let this program be jeopardized because it means a bunch of money to this town. If a prisoner is missing are there certain procedures? Beatty – yes. Notes that they have to have a head count every 15 minutes, they did a head count, one was missing, and another prisoner said that he was 'over there', which was not visible at the time.

Hunter – does Beatty have a problem with this? Beatty – was not there. Notes that all Public Works employees took the class. States that the prisoner was not truly missing. Havet – who made the complaint? Hunter – that does not matter, he just wants this addressed. Booth – that situation only happens once a year while we are preparing for Malabar Day and from now on we will have tighter control. Most of the time the prisoners are not even in the park area.

Hunter – served as an officer in a correctional facility and if someone would have 'borrowed' one of their detail members the entire base would have been activated. We must run a tight ship. Rossman – it will not reoccur.

Havet – it is always important to know who makes what complaint and she would like to know who made the complaint. Hunter – it was something that was brought to his attention, but not as a complaint, by Beatty but he felt that this needed to be addressed due to the cost to the Town.

- Hunter – where do we get our water to fill the fire trucks? McClelland – the last fire hydrant in County Cove. Hunter – was there a recent opportunity to put a fire hydrant near the fire station? Booth – thought there was one now. McClelland – it is useless.

Hunter – it was his understanding that we recently had an opportunity to put a cheap fire hydrant in by the fire department, is that correct? Booth – it was only a line. Hunter – at minimal cost. Bill Withers from the audience – the fire department did not want to do this. Hunter – this needs to be dealt with and then we need to move on. Asks if this opportunity was presented to McClelland. McClelland – no. Hunter – asks Booth the same thing. Booth – it was his understanding that there was a setup so they could fill up their trucks. McClelland – the way it was originally planned to be installed was not used and in its current configuration it is useless.

Hunter – feels that this is a health and safety issue, who was going to do this for us? McClelland – the idea was brought to him by Beatty and the person installing the pump said they could install a connection that would give the fire department access to a good quantity of water. Hunter – and did we choose to do this? McClelland – yes, but it was plumbed-in in a direction that is useless. He was told that the original plan would have installed it in a useful manner but it was modified by Bill Withers.

Hunter – asks Withers if he gave directions to someone at the park. Withers – he talked to a fire fighter that drives a grey pick-up truck. He went into the office and told this fireman that he (Withers) was told that they (the Fire Dept) could get 100 gallons a minute out of this free-flowing well, they could run a 4 inch pipe under the ground to the fence and put a valve there, which sounded great to him, but the gentleman from the fire department said no, they'd just use the hose.

Hunter – that does not make sense. McClelland – Withers did not approach McClelland, he approached the wrong person. Booth – will put together a meeting regarding this.

Havet – feels that there is more at play here than anyone realizes and feels that we need to ease off some of the dissention.

- Rossman – had a meeting with the city manager of Palm Bay (Feldman), the Mayor of Palm Bay (Mazziotti), and the owner of Enchanted Lakes, Ann Varco. Feldman said that due to laws they cannot waive impact fees. They said they would assess her like an apartment house so part of it would be done at 6.7% and another part at 3%, which added up to about \$58,000, which Varco said she still could not afford to pass on to her residents. Feldman and Mazziotti said they felt that there was some grant money through the State and through the County that would assist her. And they will be more than willing to help write the grant.

- Rossman – one of his concerns about the annexation is can we provide fire service? Would like Council to direct Booth to work with Palm Bay on an unbiased fire survey. He was willing to use his discretionary fund to hire someone to do this, but now Palm Bay has offered to have a professional assist us.

Havet – feels we should help Ann Varco with city water but feels that any research that goes into annexation issues should stay 'in house'. Discussion. Rivet – he thinks a free study is great but he feels that if Palm Bay is paying for this study he is very suspicious that it will be biased in Palm Bay's favor.

Rossman – we can go to the Brevard County Fire Chiefs Association who could look at the survey and say good or bad. He states that it is possible that Palm Bay is very shortly going to provide ambulance service and the County may pull out of this area. Discussion.

Havet – she learned from experience that professional studies are not all they claim to be. Moccia – we just need to get the information, we would still be the decision makers. Discussion.

Hunter – there is no such thing as a free lunch, and if there is do you really want to eat it? He is not comfortable with this.

Rossman – has no problem if Palm Bay does this or not but that is why he did not use his discretionary funds to pay for the computer, he was saving the money for this. He would like to hire a professional.

Crews – this is a politically sensitive issue and the credibility of the information coming from Palm Bay is not a good idea, 50% of the population might not accept it, he does not think it is a good political move.

Rossman directs Booth to find someone to do this using his discretionary fund. At this point he is not sure he is in favor of annexation, he wants to make sure we don't do a disservice to those people.

-Rivet – currently there are no additional road paving plans. He feels that there are two roads that he believes should be paved. Lett Lane and Eva Lane should be paved, as they are heavily traveled. Bill Withers from audience – lanes were not originally in the paving plan.

Moccia – understood that the people on Lett were going to pay for this themselves. If we do this then we are going to open up Pandora's box. Crews – the word 'lane' has no major distinction, it is just what you choose to call something. Rivet – this is only something to think about.

-Rivet – has Burke been resolved? Booth – it will go before the special master.

-Rossman – Gentile's trees? Booth – he will contact him.

-Moccia – the Bill Hall matter is finally over, she read the final order regarding the former Town Administrator. He was fined and will be publicly censured and reprimanded.

ADJOURNMENT

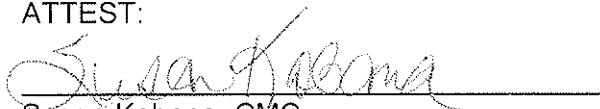
The meeting adjourned at 9:55.

BY:



Chair Bobbi Moccia

ATTEST:



Susan Kabana, CMC
Town Clerk/Treasurer

DATE: 5/17/04