

TOWN COUNCIL MINUTES
August 18, 2003

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 Mrs. 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

ADDITIONS AND DELETIONS:

None.

CONSENT AGENDA:

Council minutes 8/7/03 and workshop minutes 8/11/03.

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

REPORTS:

ATTORNEY

Nothing at this time.

ADMINISTRATOR

- Booth – received another unhelpful letter from the City of Palm Bay regarding our water utility. One of their problems is that Palm Bay does not believe that Malabar has a water utility. They state that they use our wells and should be charging 25% more than they do. Booth feels that we are paying closer to an industrial rate. Moccia and Hunter – both tried to speak the Palm Bay manager but were given the impression that he felt that there is nothing to discuss. Discussion. Booth – is not sure why Palm Bay is so upset about the water issue, it is a very small amount of money to them.
- Booth – is concerned that Palm Bay wants to mitigate 500 acres of land in Malabar. They want to allow a subdivision to be built in Palm Bay but must first mitigate a scrub jay problem. Palm Bay would be paying EELS for the mitigation. Discussion.
- Is still working on the road ordinance.
- Council Member Jane Havet is considering digging a 2 ¾ acre pond that will comply with St. Johns requirements. If she digs the pond then our engineer recommends Malabar take this over for stormwater use. We can start equating this to the 25 acre pond that was not built for the FEMA grant. Havet's pond is part of an area that is wet. We would suspend the permitting costs but she will be permitted. Rossman – what are the St. John's requirements? Havet – it is below their threshold. Booth – it will have to

go through our pond permitting procedure. Havet – can she begin her project? Booth – she needs to turn in her engineering packet.

- Booth – from now on both he and Bohne will mediate when the Council begins to disagree, there is a lot of work to be done and we need to move forward.

CLERK

- Candidate Qualifying is September 5th through September 19th. Two seats up for election, District 4 (Moccia) and District 5 (Rossman).

- August 27 is the meeting for comprehensive plan discussion.

- Kabana thanks Council for the opportunity to go to the FLC Convention on Friday. She went on a redevelopment tour of Kissimmee and learned much.

PUBLIC COMMENTS: GENERAL ITEMS

- Tom Eschenberg, Beran Lane – regarding action item 4. Do you have to adopt an ordinance to do put this on the ballot? Bohne – yes. Eschenberg – the ballot is very vague and he does not know how this can be presented to the voters. Does not see how anyone can vote on this intelligently, feels most of it will be voted down. He does not understand how Council can pass this ordinance in its current form. Rossman – what about a public meeting? Discussion, Council is in favor of a public meeting to discuss the ballot questions. Kabana – is planning a newsletter that will come out shortly before the election and it will explain, in depth, the issues on the ballot. Council – likes this idea and also likes the idea of a public meeting.

AGENDA REQUEST FORM:

DANIEL WELTON, 2635 HUNTER LANE, MALABAR, REGARDING ATV RIDING IN MALABAR

Welton – wants to talk about Council member Hunter approaching ATV riders while they are on private property. The group that Welton rides with have only been in the scrub one time and they were approached by Hunter, Hunter told them to leave so they did. Since then they have been approached three to four times by Hunter on private property, there are no postings of 'no trespassing' and there are no homes where they ride. Welton wants to know why the riders keep getting approached by Town officials asking what they are doing and where have they been. Asks what are Hunters law enforcement powers?

Hunter – he does not have any law enforcement powers, nor has anyone imposed that he has. To set the record straight, the off-site property that Welton is speaking of is at the border of the scrub. Welton – it is on the west side. Hunter – the border actually runs down that road and when the fence goes up that road will disappear because it is actually on EELS property.

Hunter has approached Welton twice, not three or four times. Asks if he (Hunter) was anything but cordial during those times. Welton – on one occasion Hunter was a little forceful. Hunter – sometimes he has to be forceful.

Hunter has never proposed a ban on ATV's, nor would he. What he has a problem with is people like the ones he caught on tape on Sunday afternoon from 4 pm to 8 pm. These are people going across other people's front yards and entering into the scrub sanctuary. One man actually stopped, read the sign, and continued on. Hunter

notes that that gentleman was one of the ones with Welton when Hunter stopped them in the sanctuary. Hunter also has video of children with no helmets, with their parents on ATV's.

Hunter is not saying that every ATV rider is a bad egg, nor does he feel that the use of ATV's should be restricted in any fashion, other than to areas that they are supposed to be used, where that is in Malabar he does not know.

He sees the County taking large areas of Malabar and making it into preserve and the County is not going to allow ATV's in those preserves, it's going to be as simple as that. He is not the one setting these rules, nor is the Town. He feels that maybe a club would be the way to organize the group. Discussion of Memorial Day bond-fire.

He takes no umbrage with any riders but there are some riders that take umbrage with him. He mentions that he gets complaints when there are riders at the 'mud hole' but Hunter cannot do anything about this, it is private property. Hunter names the owners of some of the land that the ATV's use and notes that though he does not have any jurisdiction on private property he will continue to question people who ride unless somehow they can guarantee to Hunter that they will not go into the sanctuary.

Welton – his question is not whether it is illegal to ride in the scrub area, or if it illegal to ride on Marie Street, or in front yards, they are law-abiding citizens. He is talking about been approached by Hunter on private property. Hunter – states that he has not stopped Welton unless he was bordering the scrub.

Moccia – states that Welton had mentioned a ditch to her and Moccia notes that Hunter got two flat tires from a ditch, so obviously he is not the one digging. Welton – he is not blaming Hunter for the ditches but he is very concerned about the booby-trapped areas. Along the border there is one strand of bob-wire about neck high if you are on an ATV. Hunter – it was wrapped with caution tape and it is in plain view, there are no booby-traps set out there. Welton – also someone had dug some trenches in the trails, it could have been done by residents self-policing. He states that putting people in danger is not acceptable.

Havet – feels that Hunter is doing a great job. She feels that the riders know what has historically happened at the twin lakes and it is quieter out there now. It sounds to Havet like the riders don't like Hunter to question them about riding on private property. Welton – this is correct, they want to follow the law. He feels like they are being targeted by Hunter.

Rossman – do you feel that the riders have the right to ride where ever they want as long as it is not posted? Welton – no, they don't want to ride everywhere. His question to the Council is where can he ride? Rossman – we don't have an ATV park in Malabar. Rossman supports Hunter's efforts. He feels that the problem is that Welton's group may be sensible but that is not the case for every ATV rider out there. Rossman notes that even if Welton is sensible, Welton does not have the right to ride ATV's just anywhere even if houses are not seen in that area, there may be a house that they don't see and they could be disturbing someone's peace. Rossman notes that this is how the problem began. Welton – there is an ordinance for that. Rossman – but the Sheriff cannot enforce it due to the way it is written. This entire issue started because citizens complained about the ATV's and the only solution Council had was to take back control of the posted areas. Rossman feels that they could get permission from someone who

owns a large tract of land and ride there, but to ride on a small 5 acre lot would disturb someone's peace. Council is not against ATV's, you just have to ride where it is allowed.

Welton – so if we find a place, we can ride without being bothered by complaints? Bohne – maintains that a citizen can still file a complaint, that is their right. Rossman – but we would not come out to that property. Discussion of property ownership.

Hunter – is all for this form of recreation but states that there must be a compromise. He notes that there has been no harassment, that has never been his intent.

Crews – they could form a club, have dues, and lease property on which to ride. Or they could contact their legislators, like Mitch Needleman, and sponsor a bill to put some funds aside to purchase areas just for ATV's. It's been done for boats, skate ramps and other recreational activities. Rossman – there have to be enough ATV riders who could back such an effort.

Welton – feels that Malabar is large enough to accommodate all types of recreation. What the solution is he does not know but he does think that there is enough intelligent people within the Town of Malabar to come up with some sort of arrangement. Moccia – feels that the riders coming here tonight is a beginning. States that she will approach the County Commission with this problem if the ATV riders will go with her, she can speak all she wants but she will need back-up to be convincing. Discussion.

- Mary Ann Marsh, LaCourt – they bought their ATV with the sole intention of fishing at the twin lakes but have since sold it because of what Hunter is doing. Feels that as a Town we have to meet in the middle.

- Frank Zeno, Corey Road – works for Bobby Cochran who owns about 125 acres in the scrub area. Zeno was told by Hunter to leave the area, that Zeno was on private property, so Zeno left. The next day Cochran told Zeno that the land was not owned by the EELs yet and that Zeno could ride out there. He feels that Hunter is overzealous about this issue.

- Bill Rich, La Court Lane – who owns the EELs land? Hunter – it is owned by the State, administered by the EELs and he is an EEL guardian and what he does is to ask people to leave the area, he does not confront people. Rich – what is allowed? Hunter – horses are allowed but not ATV's. Rich – this is discrimination. Hunter – the group needs to ask the County what the County can do for him.

- Mrs. Welton – has seen Hunter in a Town vehicle, who authorized it? Moccia – the Council approved it.

Moccia – does the Town have a liability if Hunter uses the Town vehicle and something happens to him? Bohne – yes. Moccia – is concerned about the liability.

Havet – find someone with a big hunk of land and form a club. Welton – we bought property here so that we can enjoy the woods. Mrs. Welton – feels that Hunter is very defensive when Hunter approaches them outside the area.

Moccia – states that if they will be there for her then she will be there for them.

ACTION ITEMS:

1. STORMWATER UTILITY INTERLOCAL AGREEMENT WITH BREVARD COUNTY

Ron Jones – this action item is a renewal of the agreement with the County for the Stormwater Utility.

MOTION: Rossman/Havet to approve.

Jones – there was an old section regarding attorney fees that was removed.

VOTE: All aye.

2. ACCEPTANCE OF 200' OF MACDONALD LANE

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

3. CERTIFICATION OF COSTS FOR 200' OF MACDONALD LANE

Kabana – the cost is \$25.08 per liner foot.

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

4. FIRST READING: ORDINANCE 03-07, CHARTER REFERENDUM

MOTION: Havet/Hunter to ready by title only. VOTE: All aye.

Moccia read:

ORDINANCE NO. 03-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; CALLING AND SCHEDULING AN ELECTION UPON AMENDMENTS TO THE CHARTER OF THE TOWN; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING FOR PUBLIC NOTICE OF SUCH ELECTION; PROVIDING FOR THE AVAILABILITY OF COPIES OF THE PROPOSED AMENDMENTS TO THE TOWN CHARTER; PROVIDING AN EFFECTIVE DATE.

MOTION: Crews/Rossman to approve.

Bohne – per the last meeting regarding the charter, he inserted a new question 3, qualification for Council seat.

VOTE: Aye – Rossman, Moccia, Hunter, Havet. Nay – none.

5. FIRST READING: ORDINANCE 03-06, PIGGYBACK OTHER AWARDED GOVERNMENTAL BIDS

Rossman/Havet to read, all aye. Moccia read:

ORDINANCE 03-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING SECTION 2-101 OF THE CODE OF ORDINANCES OF THE TOWN; AUTHORIZING THE TOWN ADMINISTRATOR TO "PIGGY BACK" CONTRACTS OF OTHER GOVERNMENTAL ENTITIES UNDER CERTAIN CONDITIONS; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Rossman/Havet to approve.

Bohne – this is being done at the request of the auditors, it was originally done by resolution but they felt that it should be in ordinance form.

VOTE: Aye – Rossman, Moccia, Hunter, Havet. Nay – none.

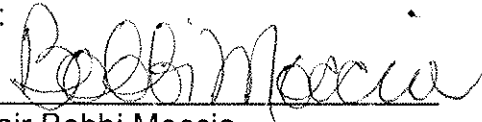
REPORTS: MAYOR, COUNCIL

- Havet – has decided that she is going to further investigate regarding the Crews issue before making further comment.
- Havet – can she start on her pond? Booth – she must apply for a permit.
- Hunter – spoke to the Petrillo's and to the Patels but he cannot seem to speak with the neighbor to the south. Would like a meeting at Town Hall with all the neighbors involved. Mr. Petrillo – when he bought the property he tried his best to improve it and the restaurant but he has had problems on both sides. His neighbor to the south wants to park U-Hauls so that they obstruct the view of his property when coming from the south. The property to the north has two mobile vendor trailers, one which sells food, the other sells wood carvings on the weekends. Rossman – feels that a meeting with all parties would be advisable. Booth – we don't have ordinances to enforce this, we are going to try to influence the parties involved and find a happy medium. Petrillo is here to try to do the right thing.
- Rossman – he will pick up a packet for re-election.
- Moccia – will also pick up a packet.
- Moccia – had a good time at the conference, she learned a lot.

ADJOURNMENT

Meeting adjourned at 9:07 p.m.

BY:



Chair Bobbi Moccia

ATTEST:



Susan Kabana, CMC
Town Clerk/Treasurer

DATE:

9/8/03