

TOWN COUNCIL MINUTES
September 8, 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
COUNCIL MEMBERS:	JANE HAVET
	BRIAN HUNTER - EXCUSED
	BOB ROSSMAN
ADMINISTRATOR:	ED BOOTH
ATTORNEY:	KARL BOHNE
CLERK:	SUSAN KABANA

PUBLIC HEARINGS:

1. ORDINANCE 03-08, FIRST READING, 2003/2004 PROPOSED MILLAGE RATE

Moccia read:

ORDINANCE 03-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2003 THROUGH AND INCLUDING SEPTEMBER 30, 2004.

WHEREAS, public hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

SECTION 1. The Town Council, in regular session duly assembled adopted the millage rate of 1.8488, to be levied for the General Fund upon all real and tangible personal property located within the boundaries of the above named taxing authority.

SECTION 2. The final levy of 1.8488 mills will result in a 9.9% increase of the rolled back rate of 1.6823.

SECTION 3. This final millage rate of 1.8488 is to fund the expenses for the fiscal year commencing October 1, 2003 and ending September 30, 2004.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 6. This ordinance shall become effective immediately upon its adoption.

Moccia – opened the public hearing and asked for public comment.

Vicki Thomas, Country Cove – asks what increase in tax dollars does this mean?

Kabana – on a \$120,000 home with at \$25,000 homestead it's about an \$8 a year.

MOTION: Rivet/Rossman to approve.

Rivet – it is his intent to have no tax increase and keep the 1.7642 mills. He intends to make this motion at the next meeting. Rossman – agrees.

VOTE: Aye – Havet, Rivet, Moccia, Rossman.

2. ORDINANCE 03-09, FIRST READING, 2003/2004 PROPOSED BUDGET

Moccia read:

ORDINANCE 03-09

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2003 THROUGH AND INCLUDING SEPTEMBER 30, 2004.

WHEREAS, the Town of Malabar has compiled a budget for the period from October 1, 2003 through and including September 30, 2004; and

WHEREAS, public hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

SECTION 1. The Town Council, in regular session duly assembled adopt the final Budget of \$1,715,233.00 for the proposed expenditures from October 1, 2003 through and including September 30, 2004, reflecting the general operating millage rate of 1.8488 mills.

SECTION 2. This budget may be amended during the year if necessary, by resolution.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 5. This ordinance shall become effective immediately upon its adoption.

Moccia – opened the public hearing and asked for public comment. Being none, she closed the public hearing.

MOTION: Rivet/Rossman to approve.

Rossman – has some questions for the next meeting.

VOTE: Aye – Havet, Rivet, Moccia, Rossman.

ADDITIONS AND DELETIONS

MOTION: Rossman/Havet to approve agenda. VOTE: All aye.

PROCLAMATION: ANCIENT ORDER OF HIBERNIANS, COMMODORE JOHN BARRY DAY

Moccia read proclamation. Mayor presented proclamation to Patrick Reilly.

CONSENT AGENDA:

Council minutes 8/18/03.

Mayor requests approval by unanimous consent. Council agrees.

REPORTS:
ATTORNEY

Bohne – has a few items and two of them deal with problems in our Land Development Code. Our code is confusing and ambiguous at times.

- NORMA JEAN RITTER PROPERTY

Bohne – this property was once a six acre parcel and it was divided into two parcels, three acres a piece. It's zoned RMH, which is residential mobile home. The intent of the residential mobile home district is to regulate high density mobile home development, the max is 6 units per acre. Our district provisions state 'residential mobile home development site 5 acres, lot 7000 sq. ft.'

We have a request from someone who wants to buy one of the 3 acre parcels in order to build one single family residence. Bohne has given the opinion that because it's not a mobile home residential development that the density requirement isn't there.

Next, there was a question as to whether the site has to be a minimum of 5 acres to develop. Bohne gave the opinion that if it's going to be an intense mobile home development or an intense residential development (which is allowed in the RMH zoning district) then it would have to be 5 acres. Bohne took a practical approach and gave the opinion that if someone is going to build one home on three acres that we should let them do it. Discussion.

Rossman – what if someone comes along later and wants to put trailers on the other three acres? Bohne – you have to have 5 acres to develop in RMH, and they don't have that. Rossman – which is his point, it's zoned for mobile homes but it cannot be developed.

Rossman – historically we have fumbled this football drastically and his concern is that somebody will come along and buy those three acres, then come to Town Hall and be given a permit. Then this person with their big house on three acres sits next to six or twelve trailers and Council ends up with irate people. Bohne – that is why, at staff level, we have to address a lot of the problems we have with our ordinances.

Rossman – maybe we should rezone the entire six acre track. Bohne – we can administratively rezone as long as we make it consistent with the comp plan. Rossman – then that is something we need to look at. He does not want to see any more mistakes made. He feels that our tract record is abysmal and so he asks that the other three acres be administratively changed to commercial or anything other than mobile home. Bohne – this is why he is bring this forward, everyone needs to know about this, we can't have any surprises.

Bohne – his second item has to do with the same parcels but it's in regard to the administrative lot split. Our code states that if someone wants to split their lot into less than three parcels, they must go through an 'administrative lot split' and that is defined as 'any subdivision of land that results in less than three lots.' The definition of the word 'subdivision' in our code is 'the division and recording in accordance with law of a parcel of land into two or more lots or blocks for the purpose of transfer of ownership, or for development, sale, or lease.'

Bohne – the problem is that there is a Florida Supreme Court case 1958 that dealt with platting and mapping. A person was required, before he sold his lot, to plat or

map the land. The Supreme Court said that's unconstitutional. The Court said that 'it is not necessary that a plat or a map of a person's property showing lots and blocks be recorded before it can be sold. It may be more convenient to do so, but a person may sell his land by the inch, by the foot, or by the yard, and describe it by meets and bounds without having to plat or map it.'

Bohne feels that our administrative lot split is just a small plat and if John Smith wants to sell a piece of his land to John Doe then he should be able to do so without going through this thing called an administrative lot split. If a developer or person wants to come in and develop their land, then platting has a purpose. There are boundaries, infrastructure, and roads, etc.

Havet – what was the idea behind this? Bohne – he thinks the idea was to keep people from selling non-conforming lots. Moccia – exactly. Bohne – but it is not our job to police that. There is due diligence on the part of the buyer. Based on the Supreme Court case Bohne does not think that we can require someone to do this every time they sell a bit of land.

Rivet – so our ordinance is unconstitutional? Bohne – only in that situation.

Moccia – what is to stop someone from splitting smaller lots and creating non-conforming lots? Bohne – nothing. Havet – they can sell it, split it, and do what they want, they just can't build on it. Rivet – so they can buy a square foot of land. Moccia – but they can't build on it. Discussion.

Bohne – states that the administrative lot split has some relevance. For example, if a person owns 5 ½ acres and wants to split it in two and then develop it then at this point Bohne understands the rationale behind the administrative lot split because now you are talking about development, about roads, about infrastructure. But if they are just selling pieces off to someone, who in ten years might build a house, then he does not feel that an administrative lot split is relevant. Discussion.

Moccia – is an administrative lot split expensive? Kabana – no, but in this particular case the lot split must be done by the original owner, and this particular owner does not want to do a lot split. Bohne – does not think they have to do it. Rivet – however, the person who wants to build the house on the three acres would have to? Bohne – his opinion is no.

Moccia – she understands why we would want to make it easier for people but she can also understand why we would want to make it harder for them to create non-conforming lots. Havet – agrees with the Supreme court. Bohne – notes that it was the potential owners' lawyer who brought this case law to Bohne's attention.

Moccia – how does Council feel? Rivet – we can't fight the Supreme Court ruling. Rossman – agrees with Rivet, he will pick fights he can win. Crews – feels we won't win this one.

Bohne – he spoke to all Council individually about a possible sunshine violation. There was a discussion between two P&Z members and a representative from the Pence project. Havet – who was there? Rossman – we don't need to name them at this point, Moccia agrees.

Bohne - what happened at that meeting can be cured as far as the Pence development is concerned by discussing it at the next P&Z meeting. Minutes need to be taken as to what occurred at that meeting. Doing so can cure this as it relates to the

project but it doesn't necessarily cure the potential civil or other liabilities. Discussion.

Bohne – there is a tape that is inaudible in a lot of respects, but to him it looks like the initial meeting was to discuss something that had nothing to do with anything that would go before P&Z. What happened is that the discussion sometimes seemed to roll into discussing the actual plans. The conversation drifted in and out.

The state attorney told Bohne it would be very hard to show that those persons intended to violate the sunshine law because it started out as a non-sunshine law issue. Bohne states that this is a problem because everyone knows that two members of the same board shouldn't be sitting down with a developer at Town Hall.

Moccia – who called the meeting? Bohne – isn't really sure, what he heard was that they were called to the meeting, they didn't call the meeting. Moccia – apparently the developers did not know the law. Havet – disagrees, she states that the developer knew what could be violated. Discussion.

Bohne – his point is to let the public know what is going on and that the Pence development issue can be cured.

Havet – feels that historically the state attorney has not taken part in any of the sunshine violations, they are handled at a local level. Bohne – but we can't prosecute. Havet – so that puts the onus of responsibility on Council to handle this. Booth – and we have the cure. Crews – feels we need to execute the cure and get this behind us. Discussion.

Havet – is concerned that she is hearing a lot of 'no names', 'no nothings', and 'cures', a lot of terms. Why didn't one of the P&Z members excuse themselves? Rossman – because the topic of the discussion was trails and greenways. While they were discussing that the representative from the developer drifted into the other discussion and then came back.

Havet – if she were to show up at a meeting with another Council member what would happen to her? Bohne – he would hope that someone would have enough sense to leave. Rossman – if this did happen, then Rossman would like to think that the Town is past some of the problems that it had and Council would discuss the problem, just like they are doing now. If there was a solution then Council should look at that solution. Even with that solution there is always the possibility of recourse beyond our control. So Rossman's recommendation is to take the recommendation given to Council. Havet – can she be at the P&Z meeting? Booth – yes.

ADMINISTRATOR

- FIRE MARSHALL COVERAGE

In the past we contracted with the County for \$7,000 per year for fire inspections. We were not getting our money back from occupational licenses so we won't be contracting with the County any longer. The large corporations will contract directly with the County for fire inspections.

- OFFER OF DIRT TO THE MAYOR

Has offered dirt from 'Carl's hill' at the park to the Mayor and all Council members and citizens, there is no charge for the various appliances located in the dirt.

- HAVET'S PROJECT

Booth – on Havet's project we found egress along the railroad and they will be using the railroad ROW instead of Marie Street. Havet – has Mike Linnel been informed yet?

Booth – not yet. Havet – is ready to work so she needs the fence down.

- NORTH BOOTH DRAINAGE PROJECT

Shows overhead of Lett Lane. This project provides drainage and helps to block the people from getting back into the woods.

- HELENBURG PROJECT ON HOMESTEAD

Moccia – when will Homestead be done? Booth – weather permitting, very soon.

- HIGHWAY 1 NEIGHBORS - CONFLICT RESOLUTION

Booth – kudos to Hunter for the resolution of this situation. The neighbors came to a solution, will plant trees and work together.

- PURCHASE OF USED VAN

Hunter is looking for used van, Booth will have to bring the cost to Council because of the way our ordinance is written.

- ORDINANCE FOR OVERGROWN GRASS

Is looking to propose an ordinance to deal with overgrown grass, has a house that needs attention. Discussion.

- JOINT PLANNING MEETINGS REGARDING COMP PLAN

The last meeting was loose and open but the next meeting will be more structured. Need meeting the early part of October. It is set for October 8th with the P&Z meeting at 7:30 pm.

- PROPOSED COUNTY ORDINANCE REGARDING ENVIRONMENTAL AREAS

Booth is going to a meeting at the County tomorrow and will report to Council regarding this. Havet would like to go with. Crews – notes that part of the penny sales tax would go to this.

Booth – there is going to be another legislative delegation meeting and it is time for Council to discuss what they want brought up. Last year Palm Bay's number one request was to four-lane Malabar Road.

Crews - also in the penny sales tax is money for an ATV park.

CLERK

- The newsletter arrived today and will be in mailboxes this week.

- We are having a T-shirt contest with at \$35 cash prize. Due date is December 1st. Council wants to up the ante to \$100 cash, additional funds to be divided between Havet, Moccia, Rivet.

- Candidate qualifying District 4, Moccia, and District 5, Rossman. Each Council member has picked up a packet and one other packet is out.

- Will be sending out requests to board members with expired terms, Council will see this at the last meeting in October.

- Deleted fund 300 from budget and will ask Council to create another fund balance to hold money for capital improvements.

PUBLIC COMMENTS: GENERAL ITEMS

Chuck Leedy – is not here. Moccia reads card. Leedy is asking for work on Smith Lane. Booth – we are behind in getting materials, the pits are flooded. Once we have access to fill we will grade and fill.

Cindy Zindel, – is asking Council to come up with an ordinance to protect the

original homes in a subdivision where the floor elevation is 18 inches above the road. There is no ordinance that allows the Town to control finished-floor elevation, so in order to accommodate septic field drain the developers are building up the lots, making lots like hers lower. The Town only controls the drainage in the front, not the sides or the back.

Booth – they have to control all the water on new construction. Zindel – what about over time as the silt fills the swales, who is responsible to keep them cleaned out? Booth – the property owner. Zindel – is there code to enforce this? Booth – no, our ordinance pertains to the building requirements drainage plan. The problem has to do with the County's requirement to put in a septic system. When Zindel built, the requirement was 18 inches, now it's higher and it may go higher in the future. And they do so to keep the septic from flooding. Discussion.

Crews – the point Zindel is making is that people will fill the entire lot for the drain field, the house and everything is up high. The County would like us to adopt their ordinance, which is to allow filling for the house, drain field and driveway, but not in low areas. As long as the Town has no restrictions, and people are allowed to fill high, it will be a continuing problem.

Booth – part of this is a civil matter. He notes that we do not allow them to fill from lot line to lot line any longer. Havet – but for somebody who is already there and soaked do they have to hire an attorney to get their neighbor to clean out their swale? Booth – the owner is required to maintain it but we don't enforce it.

Rivet – we have a requirement when you build but Zindel is asking for an ordinance to require maintenance.

Zindel – the County has code to protect against this and in there it speaks to people like her where the elevations are set 18 inches above the road and states that new houses have to match her floor. The developers have to pump the lot or put the house on pilings or do whatever, it's in the County code. The County code also says that after the house is built that the property owner has to maintain the swale.

Rossman – asks Bohne if, in the County ordinance, is there an enforcement phase with a penalty phase? If they have an ordinance and there is no penalty or enforcement then their ordinance is no different than us having no ordinance.

Crews – you'd almost have to have a provision as to where if it wasn't maintained then the Town has the authority to maintain it. Bohne – but you can't put a lien on a homesteaded property. Havet – so we can fine them. Rossman – we can't touch them if the property is homesteaded.

Zindel – can we find out what the County uses? Discussion. Moccia – we can talk about this all night and not come to a resolution. We need to look into this.

Zindel – section 1-5.20, Residential structure on lots less than one acres in area, states that no residential structures shall be constructed on lots less than one acre, unless there is public water or sewer. There are two lots in her subdivision that are being built and they are on less than one acre. With out central water and wastewater the density is one unit per acre. How are these people building without city water? Feels we are in violation of our own code. Moccia – wants Bohne to look into this.

PUBLIC HEARINGS:

1. SECOND READING: ORDINANCE 03-07, CHARTER REFERENDUM**MOTION Havet/Rivet to read 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.

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

MOTION: Rivet/Havet to adopt.

Kabana – one of the things this will do is keep the clerk from signing checks, this will create a logistical nightmare for her office. Discussion.

Council takes a five minute break.

Rossman – reads the section in question. Suggests changing this to the Town Administrator, the Town Clerk, the Mayor and a delegated Council Member as authorized signers of checks. This would resolve the problem. Moccia – we would change the number of authorized signers from 3 to 4. Rossman – and then we would require 2 of the 4 signatures to sign checks.

Crews – feels this was there because the auditors were writing us up for this. The clerk is also the treasurer and therefore should not sign checks. Kabana – called the auditors and asked this question and they said they have not written us up for this. Discussion.

Crews – is not suggesting that Council not allow the clerk to sign checks. He is saying that it is a matter of convenience that the clerk is signing checks. Policy would dictate that the treasurer not sign checks. Kabana – does not approve or write out the checks. If she isn't a signer on the account she can't call to get information on the account, it would strangle her job. Discussion.

Rivet – in the accounting policies and procedures Council can have the clerk sign as a last resort. Council agrees.

MOTION TO AMEND: Rossman/Havet to amend to include the clerk in signing checks and change the number of signers from 3 to 4.**VOTE ON AMENDMENT: All aye.****VOTE TO APPROVE: Aye – Havet, Rivet, Moccia, Rossman.****2. SECOND READING: ORDINANCE 03-06, PIGGYBACK OTHER AWARDED GOVERNMENTAL BIDS****MOTION: Crews/Rossman to read by title only. VOTE: 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: Crews/Rossman to approve.

VOTE: Aye – Havet, Rivet, Moccia, Rossman.

Moccia - opened the public hearing, asked for comments, being none she closed the public hearing.

ACTION ITEMS:

1. RECOMMENDATION FROM PLANNING AND ZONING REGARDING MR. DISPENZA

Rossman – asks about the memo from Norm Smith. Can this go back to the special master? Bohne – yes, and the P&Z recommendation should go along with it. If Dispenza doesn't like that decision the can appeal it to the circuit court. Crews – or we could drop the whole thing.

Booth – a previous building official was involved and P&Z suggested that Council give back the money.

Rossman – our recourse is to forward it to the special master, with the recommendation from P&Z, along with an approval or disapproval from Council.

Crews – we are beating this thing to death.

MOTION: Crew/Rivet to approve the motion of Planning and Zoning.

Moccia – feels that Council sent him to P&Z for an answer and now we have it. She notes that he did break the code. Rossman – does not want to set a precedence.

Bohne – that is a valid concern. Havet – would like this to go away.

Kabana – what is she to return? Council – only the permits and fines, not the plan review fee.

Richard Cameron from P&Z – P&Z looked at it and agreed to refund the fine.

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

2. RESOLUTION 08-03: ADOPTING FUND 105 STORM WATER UTILITY BUDGET FOR THE 2003/2004 FISCAL YEAR AND CERTIFYING THE ASSESSMENT ROLL

MOTION: Crews/Rivet to read by title only. VOTE: All yes.

Moccia read:

RESOLUTION NO. 08-03

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.

MOTION: Crews/Havet to approve.

VOTE: Aye – Havet, Rivet, Moccia, Rossman.

3. REQUEST TO CREATE A DESIGNATED FUND BALANCE FOR FUTURE CAPITAL IMPROVEMENTS

Kabana – this creates an account to hold the money for capital improvements.

MOTION: Crews/Rivet to approve designated fund balance for capital improvements.

VOTE: All aye.

Kabana – Council now needs to move the funds from last year's budget that was dedicated for this reason to the fund balance for capital improvements.

MOTION: Rivet/Crews to approve the \$17,373.00 from general fund balance to the fund balance for future capital improvements.

VOTE: All aye.

REPORTS: MAYOR, COUNCIL

Havet – nothing at this time.

Crews – is looking for anyone who can haul dirt.

Rossman – nothing at this time.

Rivet – is it possible to get an injunction against the EELS to keep them from acquiring more land? He thought he had a contact at FIT that could study our situation and give us an objective opinion, but that gentleman was part of the group that wrote the plan for the EELS. We need an environmentalist that will look at this from outside the EELS organization. Havet – has an environmentalist, Tim Scott, who can help, but it will cost. Discussion.

Moccia – met with the City of Sebastian city manager and asked how they apply for grants. She will have things to share at the next meeting.

Rivet – at the League of Cities convention he attended a seminar on quasi judicial hearings, it was very good. It is critical that Council know about this. He has a handout that the clerk will copy for the rest of Council.

ADJOURNMENT

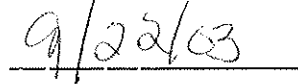
9:50 pm

BY: 
Chair Bobbi Moccia

ATTEST:


Susan Kabana, CMC
Town Clerk/Treasurer

DATE:


9/22/03