

TOWN COUNCIL MINUTES
October 6, 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 Mr. Rivet.

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

ADDITIONS AND DELETIONS:

MOTION: Crews/Rivet to approve agenda. VOTE: All aye.

CONSENT AGENDA:

MOTION: Rivet/Crews to approve consent agenda. VOTE: All aye.
Council Minutes 9/22/03.

REPORTS:

ATTORNEY

Nothing at this time.

ADMINISTRATOR

- BEAUTIFICATION, UPDATE ON BRAD SMITH AND ASSOCIATES

Will comment on next meeting.

Booth –

- the attorney from Melbourne is working on a second opinion for our lot split ordinance and Booth will have comments for our next meeting.
- our planner was appointed Assistant City Manager in West Melbourne but will still work for us.
- we need a Government in the Sunshine class for all Board members.

- ZONING AND LAND USE IN FLORIDA CONFERENCE

There is a class for Planning and Zoning in Orlando, feels this is our focus and it needs to be addressed.

- the subject for the next joint meeting will be Highway 1.
- the Space Coast League of Cities is looking for a Council member for a photo opt who is in favor of the proposed 1 cent sales tax at next SCLC dinner meeting.
- the delegation from Tallahassee is coming in next week and will address major legislative issues.
- we are developing a nasty political season here and Booth is being dragged in, he states that he is not part of the politics.
- we need a Sargent at Arms, not someone to physically remove the public but someone to give one warning then call the Sheriff. Booth states that the crime for

disrupting a public meeting is more than a traffic ticket.

MOTION: Rivet/Rossman to appoint Booth as Sgt. At Arms. VOTE: All aye.

- Booth needs a statement for the next meeting that we are not in favor of the EEL's continuing to purchase land in Malabar. The County is not aware of Council's feelings in this regard. Rivet – wants Booth to write a statement and present it to them next meeting.

- DRAINAGE ON WEIR

We can finally get dirt, the quarry has been flooded. Now that we're in a dry spell Public Works will work more on roads and cleaning ditches four days a week.

- there has been some damage to the Corey Road drainage project, but it is not major. We will have our own engineer write a letter to the contractor to get some small washouts fixed.

- there is a resolution on this agenda that changes Exhibits A&B of the Road Ordinance. This will build a road that is low cost and easy to maintain. This is for a road that won't be paved in the next 5 years. The majority of roads built now fall in this group.

- PROPOSED TREE ORDINANCE

Booth put together a draft of the Tree Ordinance, he is looking for comments from staff and Council. He went to a class and learned that 80% of the communities have tree ordinances, including Palm Bay. The other 20% were all in that class because their communities are being clear-cut and they are rushing to adopt tree ordinances. The developers feel the lots are more marketable if they are clear-cut.

The idea is to have four different types of criteria: one for the developer, one for new single-family homes, one for trees in the ROW, and one for the established home.

Under this ordinance you must have a permit to cut down a desirable tree 10 inches or larger, no matter if it's dead or alive. This ordinance also establishes grand trees, which are very large trees with big canopies, these trees are protected. He notes that code enforcement will view each development before trees are cut down. Booth states that the revenue generated from tree permits will go into a beautification fund, as opposed to the building fund. Discussion. Rossman – when someone comes in will they be given a packet regarding trees? Booth – yes.

Rivet – in the proposed ordinance the definition of dicotyledonous is incorrect, Rivet also has some other small items of concern. Discussion.

Crews – something about disclosure when selling property should be enclosed, you could buy a piece of land with a grand tree and not be able to build. Does not want to see ordinary citizens victimized. Discussion.

Hunter – if a development comes in, will they have to do a survey of the trees? Booth – yes. Hunter – is concerned about how we will enforce the 10 inch rule but he feels this is a necessary thing. Discussion.

- Booth states that we are just putting together the Pond Ordinance, there are not too many pond ordinances to look at for comparison. One suggestion is that if someone wants to put in a ¼ acre pond then they can do that, there is no reason to engineer it. St. John's recommends no deeper than 12 feet. This is so the sunlight can reach the bottom of the pond, past 12 feet there is negative growth and algae multiplies. In Malabar there is a lot of strata between the surface and the aquifer so depth is not a concern for that reason, only for the sunlight.

If a pond is over ¼ acre it must be engineered and have the approval of P&Z and Council. Any pond over 40-acre-feet needs approval of St. John's. Rivet – translated, that equals a 4 acre pond 10 feet deep. Discussion.

Booth states that both the tree ordinance and the pond ordinance have to meet the site plan review criteria. And he notes that we adopted the County's stormwater program so now we need to adopt the ordinance that goes along with that program. Discussion.

Booth states that the one controversial pond that we currently have is engineered at 16 feet and St. Johns will accept this as a storm water retention area. They will come out next week to look at this entire area. Hunter would like to know when they will be here. Discussion. They will also look at the CITA property. They indicated that the aquifer is not a problem in this area.

Bohne – needs to know what to do about borrow pits. He states that at some point in the past we had an ordinance that addressed mining and borrow pits. It is hard to track the history of that ordinance, it just fell away at some point. He feels that the Council should consider a borrow pit or mining ordinance because we don't have a commercial class for mining in our ordinances. We don't even have a occupational license for mining.

Bohne feels that Council needs to address the removal of dirt from a borrow pit. Currently there is an absolute prohibition from removing the dirt from the site and Bohne has a problem with that. He questions: what do you do with it? We have to allow the removal of dirt under certain circumstances. It should be used on site if possible, if not, then an engineer should state that it cannot be held on site. Bohne feels that Council really needs to readdress the old mining ordinance. Rossman – likes the idea of an engineer looking at this. Bohne – noticed that other like ordinances state that any topsoil must be used on site but muck can be hauled off. Discussion.

- MSTU FOR SHERIFF PROTECTION

Booth – the County wanted us to budget this year for Sheriff protection in lieu of an MSTU but Booth told them that we don't have that kind of money. The Sheriff said that he would not stop Sheriff protection. Booth will have an MSTU ordinance ready soon. Discussion.

- Moccia – when will Homestead be finished? Booth – next week.
- Rivet – how about dirt on Eva Lane? Booth – also next week.
- Rossman – what about pepper trees? Booth – this week.

CLERK

Kabana

- request to appoint board members with expired terms will be on next agenda.
- takes league dinner reservations.
- has signed Havet up for the Legislative Conference, Hunter wants to go also.
- the newsletter is at Data Management, it will mail out soon.
- is ordering the Christmas decorations tomorrow.

PUBLIC COMMENTS: GENERAL ITEMS

Bob Wilbur, Glatter Road – regarding the proposed pond on Marie St. He talked to St. Johns and they indicated that a retention pond is designed no deeper than 12 feet in order to function correctly. States that originally our pond ordinance was designed with St. John's specs so that if you dug a fish pond you ended up with a retention pond.

States that the 12 inch depth error in our code book was caught by the Code Revision Committee, it was supposed to be 12 feet. He does not want the Town permitting ponds that won't function properly. Rivet – why will it not function past 12 feet? Wilbur – the pond has to clean itself and if it is too deep it will get a red algae

bloom.

Moccia – will St. John's walk the property before anything is allowed to happen?

Booth – no, there is already a permit. Moccia – she does not want this to be a problem, feels that St. John's should have been out there in the beginning. Booth – they declined because this is below their threshold. They are considering the entire area, not just the pond. They are coming to look at that area at Booth's request because there is no flow of water in that area, it simply just drains.

- Barbara Kibbling, Hall Road – wants Council to stop work on the pond until all the issues have been heard and are answered, does not want to see the Town have problems with this after the fact.

- Mike Linnell, Railroad Avenue – owns the property at the end of Railroad Avenue and his land is directly next to this pond project. He feels there are a lot of problems with the project and that there is a natural retention area north of Havet on the CITA property.

He states that he can deny access to the project through his property because the ROW down Railroad Avenue does not extend to Havet's property. The easement has been closed for such a long time that he can deny Havet access which would force her to bring the dirt out via Marie Street. He states that he does not have a problem with the lake, he just has a problem with the way this situation has been handled, he does not feel it has not been thought out. He feels that the engineering needs to be such that the water will run down the streets and into the lake and not depend on makeshift drainage to get there.

He states that the reason this project is so desirable is because there is septic tank sand there which came from millions of years of sand washing up on dunes. He asks Council to look this over thoroughly.

- Brian Vale, Smith Lane – wants to discourage borrow pits, he feels it is something we don't need. Also, he wants Council to stick to 12 feet depth.

- Richard Cameron, Hall Road – has looked at the permit for this pond and there are three conditions in order for it to be dug, one of them is that there should be an agreement in place stating how this is going to be handled and that the Town intends on taking ownership. He does not know how the Town will transfer the ownership of the Havet's land to the Town with the amount of issues there are on the property.

Cameron asks Booth if there was a clearing permit required. Booth – no.

Cameron – is concerned about previously made comments about cutting down trees and is concerned that the grub has been pushed to the side, and that it has debris such as tires, that should be removed.

He states that there are two buildings, and a power line that runs directly over the middle of this pond-to-be, that need addressing. He has no problems with someone having a pond on their property as long as it is done within the rules and regulations of the Town. He does not want to see tax dollars used to clean up a mess.

Also, as part of the application it states that the contractor is going to be J.A. Baker, Cameron thinks this is no longer the situation. He feels that many people have been brought in for the disposal of this sand. He feels that it will be many, many truck loads of dirt and \$5,000 is not going to repair Marie Street to the condition that it is currently in. He asks the Council to address all the issues and then let Havet build her pond if she so chooses.

Bohne – speakers have referred to encumbrances on the property, Bohne states that he wrote a letter to the Town explaining the encumbrances on the land and he states that those would have to be resolved before the Town gets a clear title to the

property. Cameron – this means the Town cannot have ownership and there has been no paid permit application. He would like Council to have all the facts before going further.

Rossman – has some concerns about this project, how can we resolve this to benefit the Town? Bohne – thinks that 16 feet deep is a problem, it should be 12 feet. Rossman – agrees. Bohne – feels that the 16 feet was void from the beginning because we had no authority to issue it for that depth.

Mayor – this issue is not on the agenda. Would like this to be on the next agenda as a discussion item. Rossman – wants to know if we can stop this for now. Rivet – agrees, there are two weeks before the next Council meeting. Booth – does not think there is any digging going on, we can modify the permit to 12 feet. Rossman – wants no more trees knocked down, there was not a permit. Booth – it is not a requirement when applying for a building permit or a pond permit and these trees are where the pond would be dug. Rivet – it would be best to discuss this with Havet present, Council agrees.

DISCUSSION:

1. PROPOSED ORDINANCE AMENDING NUISANCE ABATEMENT

Bohne – this is what he assembled from other like ordinances, tonight is for discussion. Rossman – does not feel that we can add the section for 'reasonable-faith trespass'. Bohne – this exists in other like ordinances. He can remove this. He notes that we cannot grant immunity for trespassing. Discussion. Rivet – questions section 2, burning trash. Bohne – this exists currently, he just added household trash and litter. Chief Chuck McClelland – states that bond fires are only allowed with first-time land clearing, household trash cannot be burned. Bohne – all he did was add to the list of what cannot be burned.

Rivet – also questions page 4, weeds, he is assuming that we are not talking about an uncleared lot. He does not want to make people with unimproved property be imposed on. Discussion. Rivet – would like to see unimproved property taken off this list. Crews – notes that in RS10 an uncleared lot could be a fire hazard. Somewhere this has to be covered. Discussion

Bob Wilbur – does code enforcement contracts for overgrown lots. He notes that Palm Bay is requiring a clear-cut of nuisance vegetation for 25 feet from the lot line on the sides and 15 feet front and back, the grass cannot be more than 16 to 18 inches.

Rivet – does not want the people across the street to have to clear into his lot, feels it would be a huge burden. Moccia – agrees. Rivet – would like to exempt unimproved lots. Moccia – would like to mull this over before it is brought back up. Bohne – will revise this and bring back to Council.

2. SALES SURTAX OVERSIGHT COMMITTEE INTERLOCAL AGREEMENT

Booth – if the sales tax issue goes through then this committee will oversee the expenditures. This is a way to make sure there are no changes to the wish list. Rossman – as usual he feels that we will be on the outside looking in. Rivet – sounds like a classic example of taxation without representation.

AGENDA REQUEST FORM:

1. BRUCE WECHSLER, 1412 DRUCKER CT. SE, PALM BAY, INFORMATION ABOUT THE SALES SURTAX REFERENDUM

Feels that the proposed sales tax has been nothing less than a joke from the beginning.

The oversight committee will have no authority, it will be recommending only. Feels that revenues have been growing due to new construction. There is not a revenue shortage, there is spending excess.

2. TIM BORER, 885 TARR AVENUE SW, PALM BAY, TOWN ENGINEER'S CHARGES FOR ROAD DEVELOPMENT

Kim Borer – feels that \$1,928 was too much to pay for the Town's engineering, especially when her engineer had already engineered the road. She wanted more detail. Borer feels that the Town engineer just made amounts fit when he was pushed for an answer.

Rossman – he does not want to set a precedence but can we refund part of their money?

Bohne – if Council grants a refund to one person then it is likely that others will come in and ask for money also. Council could take this on a case-by-case basis and determine if there was a specific overcharged amount. Does not want Council to pull a number out of the air, it must be factually specific. Because, while you are setting some kind of precedence by allowing people to ask for refunds, you'd be determining them on a factual case-by-case basis. Discussion.

Rivet – agrees that Borer was overcharged but notes that the Town does not have a lot of leverage with Frazier. We can contact the Better Business Bureau or the Florida Department of Professional Regulation. Borer – did not want this to go this far. Hunter – feels that the real umbrage is with Frazier engineering. Discussion.

Bohne – Council needs to get substantiation before approving a refund. Notes that the contract is between the Town and Frazier, Frazier does not have to talk to Mrs. Borer.

Bohne – the agency with the teeth is the Department of Business and Professional Regulation. Crews – states that the Better Business Bureau is toothless. Rossman – can we contact Frazier and ask for a refund of the money and if we don't hear from them then contact DBPR. Bohne – before he calls he needs to know what the redress will be. Discussion. Rivet – we need to find out what the overcharges were and ask for a refund. Crews – Booth has tried that, it probably won't work.

ACTION ITEMS:

1. RESOLUTION 12-03, AMENDING ROAD ORDINANCE EXHIBITS A AND B **MOTION Crews/Rossman to read. Vote: All aye. Moccia read.**

RESOLUTION 12-03

AN RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING EXHIBIT "A" AND "B" OF ORDINANCE 01-01 KNOWN AS THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

2. RESOLUTION TO THE ALEXANDER LANE MAIL BOX ISSUE

Moccia – the residents have agreed to use a lock box but we need to build a turn-around at the end of the road. Rivet – feels that the real solution is the replacement of the postmaster. Moccia – that probably won't happen. It would need maybe two loads of dirt. Rivet – thinks that once this is improved then we need to work on the unresponsive postmaster. Thinks he has treated our citizens poorly. Hunter – agrees

with Rivet, the postmaster has drawn a line in the sand and it affects people's lives.
Discussion. Rivet – will write a letter.

REPORTS: MAYOR, COUNCIL

Crews – nothing at this time.

Hunter – attended a National Heritage meeting. And on Oct 31st at 9:00 a.m. there is a meeting at the entrance of the Malabar Scrub and he cannot attend. Would like someone from the Town to attend.

Rossman – nothing at this time.

Rivet – nothing at this time.

Moccia – the Patel's from the Citgo market at the corner of US1 and Malabar Road said that if the FD needs water they have about 10 cases that they will donate.

Moccia – is donating \$100 out of her discretion fund to the American Heart Association.

Rossman – how many Council members have done their evaluation of the Town Administrator? Moccia – she has. Rossman – one of the problems with our last administrator was not doing evaluations. Kabana is to give each Council member a new copy of the evaluation for the Administrator.

ADJOURNMENT

Meeting adjourned at 9:48 pm.

BY:


Chair Bobbi Moccia

ATTEST:


Susan Kabana, CMC
Town Clerk/Treasurer

DATE:

10/20/03