

TOWN COUNCIL MINUTES
November 3, 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
		BRIAN HUNTER
		BOB ROSSMAN
	ADMINISTRATOR:	ED BOOTH
	ATTORNEY:	KARL BOHNE
	CLERK:	SUSAN KABANA

ADDITIONS AND DELETIONS:

Moccia – item number three is regarding the Malabar boat dock, not beautification in general.

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

CONSENT AGENDA:

MOTION: Rossman/Rivet to approve consent agenda.

Havet – is concerned that her project has been in the minutes in great detail but she did not see mention of the fact that at the last meeting Council said that they are settled with this issue and do not want to discuss it again. Kabana – it was discussed under Council reports and is reflected there.

VOTE: All aye.

Council Minutes 10/20/03.

REPORTS:

ATTORNEY

- The attorney from Melbourne researched our lot split ordinance and agreed with Bohne's opinion that this is unconstitutional. At this point, Bohne is going to look at it and see if it can be adjusted. Moccia – if someone splits a lot smaller than 1½ acres do you have to let them build in RR65? Bohne – no.

- Bohne – wrote a letter to Booth regarding a phone call Bohne received from Bob Wilbur who called to discuss Havet's land and her mortgage holder. Bohne states that the Town should not be involved in this. Bohne notes that he did not charge for the phone calls. He notes that Town will defend itself, not the actions of someone going outside their authority or pretending to be something they are not.

Havet – her mortgage holder was called 5 days in a row by someone. Havet was told by Bohne that the someone was Wilbur. She states that is going way out of the parameters of what a P&Z member should be doing. Discussion. Booth – has turned this issue over to the State Attorney's Office because he feels this action was taken in response to a Sunshine complaint filed by Havet.

Bohne – this issue is only important to the Town if the mortgage is being foreclosed on, and that is just not happening.

Hunter – Council should not be discussing this again, we are done with this issue. Feels the P&Z member should be admonished that this cannot go on. Bohne – he does not know how the first mortgage holder was approached, was Wilbur representing himself as a P&Z member? He does not know. But if people are doing this then the Town could get dragged into a litigation

we don't want to be in.

Havet – did Bob Wilbur tell Bohne that he personally called her mortgage holder?

Bohne – Wilbur explained to Bohne that the mortgage holder was going to foreclose, Bohne told Wilbur that he needed proof. Rossman – feels that Council should address the two P&Z members in the very near future. Discussion.

ADMINISTRATOR

- Needs reservations for the League of Cities, Havet will attend with Booth.
- Regarding roads - shows a portion of Oakridge Lane that is accepted, then shows the unaccepted end with a house that just changed hands. The new owners want to build a shed but our ordinance states they have to build a \$30,000 road in order to get a building permit. Booth is asking Council to 'open the season' on accepting roads that are brought up to a minimum standard. This would be at the homeowners cost.

Kabana – explains that in the 80's the rule was: if you can get in with a bush hog then you could build. But then there was a liability when fire trucks could not get down those roads. So, the Council accepted roads (for Town maintenance) that were brought up to a minimum standard up until 1991, and this is when they enacted Ord 91-2, Road Ordinance. Prior to Ord 91-2 if you came forward you could build a 'minimum standard' road. But this still cost money and many people chose not to come forward. These people ran out of time when 91-2 was passed and the 'open season' was closed.

Ord 91-2 stated that you had to have a 50' ROW in order to build. The Town was sued (and lost) for not allowing someone to build on a 25' ROW; hence, the birth of "one ordinance to build new roads" (91-2) and "one ordinance to improve already existing roads to a minimum standard" (92-5, the Cinderella ordinance).

Next, in 2001, former Town attorney Rick Torpy wrote a replacement ordinance (Ord 01-01) for the two existing ordinances and hence, once again the 'open season' was closed. Now Booth is asking for Council to consider opening it again. Discussion.

Rivet – if a house has been built with a valid permit then that person has allowable access and they should be able to build sheds or pools without anymore road work. Discussion. Mayor – if this is going to be pursued he would like to see Cliff McClelland brought in to help because he has such good knowledge of land use. Discussion. Rivet – this minimum should be affordable. Rossman – but we have required others to put a lot of money into a road, is not sure this is the way to go. Booth – every situation would be different. Moccia – would like to see something in writing. Booth – there will be a lot of discussion before this is resolved.

CLERK

- We have one entry for the T-Shirt Contest. Prize is \$100. If you know anyone who is artistic, please have them call Town Hall. The deadline is December 1st.
- This Thursday evening, we will have a Council Meeting at 7:30pm, to swear in the new Council members.
- The next regular Council Meeting will be on November 17th. Deputy Clerk, Debby Franklin will be taking minutes, Kabana will be at the Florida Government Finance Officers Institute.
- November 18th is the tentative meeting between Council and the Valkaria Homeowners Association.
- Kabana secured a domain name as was requested at the last joint Council/P&Z meeting.
- Mindy Baker gave her 2-week notice. We already have an ad in the paper for her position.
- We have money missing out of the front cabinet. All cash is now kept in a more secure place.

PUBLIC COMMENTS: GENERAL ITEMS

Tom Eschenberg, Beran Lane - there was a letter read into the record at the last meeting. Is asking Council not to allow anonymous letters read into the record. Rossman – if you can't sign

your name then it has no credibility. Hunter agrees. Bill Withers from the audience – read this into the record because many thought he was the author but he is not.

Mike Linnell, Railroad Ave – Council should set an example as to how ordinances should be followed. If the pond project goes thorough then the road will have to be taken into consideration. He states that the project cannot stage in his driveway.

Valerie Carter – it has been her understanding that there has been 2½ acres cleared without a permit. Council should follow all the rules. When she didn't get a permit she was fined. Reads from old minutes. Discussion. Bohne – by Florida Statute the Carters can only appeal their fine to the appeals court and the time limit to appeal is over, it is only 30 days. Discussion. Rossman – there is no legal way to give restitution to the Carters. Carter – Havet's clearing is a slap in her face. Bohne – the Council has the inherit power to do whatever they want but to act on something three years later is a very dangerous precedent.

PUBLIC HEARING:

1. COMPREHENSIVE PLAN CHANGE REQUEST FROM JIM LEDBETTER, SOUTH OF HAWTHORNE AVENUE ON US HIGHWAY 1

This item will be on the next agenda.

DISCUSSION:

1. DISCUSSION OF PROPOSED ORDINANCE REGARDING MINING

Bohne – many years ago there was a mining ordinance that was passed but never codified, this is the rebirth of that idea. Havet – in thinking that she could build a subdivision she learned that most of the people who want to build subdivisions use the dirt from digging a pond to pay for their infrastructure and then use the pond for drainage. Would a mining ordinance limit the Town? Crews – if a subdivision was approved then the mining ordinance will not apply. Discussion. Kabana – Municipal Code wouldn't always codify everything that was sent to them and our old mining ordinance was one of those items. Discussion.

Zindel – did P&Z have any input into this ordinance? Asks if Council knows what is in the Comprehensive Plan that states this same thing.

2. DISCUSSION OF PROPOSED ORDINANCE REGARDING PONDS

Booth – this exempts ¼ acre ponds on 1 ½ acre lots as long as they are not over 12 feet. This will save on engineering fees. Crews – in order to control the contractor that does the job, pond filling should be added to the ordinance. Havet – she does not have to donate anything to the Town in order for it to use her pond for drainage. Bohne – but the permit states that as a condition to get the pond she has to give it to the Town.

ACTION ITEMS:

1. ORDINANCE 03-10, FIRST READING, AMENDING CHAPTER 11, NUISANCES

Crews – requests unanimous consent to read by title only. Moccia read:

ORDINANCE NO. 03-10

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 OF THE TOWN; PROVIDING FOR ASSESSMENT OF COSTS OF CORRECTION AND NOTICE OF LIEN; PROVIDING FOR THE FORECLOSURE OF LIEN; PROVIDING FOR PENALTIES; ~~PROVIDING FOR IMMUNITY FOR TOWN CODE ENFORCEMENT OFFICERS AND TOWN EMPLOYEES;~~ PROVIDING FOR A REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

Bohne – Deletion in title where it states “providing for immunity for Town Code Enforcement Officers and Town Employees”. Also, the e-mail showed 3 question marks, when it should have been 3 large black dots; indicating something in between.

MOTION: Crews/Rivet to approve.

Discussion- Rossman – page 3 of 8 at bottom Sec. 5-e. Shows the enforcement for those penalties. Bohne – yes, it gives us the options to proceed.

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

2. RESOLUTION 14-03 CONDEMNING FUTURE PURCHASES OF LAND IN MALABAR BY THE BREVARD COUNTY ENVIRONMENTALLY ENDANGERED LANDS PROGRAM

MOTION: Rossman/Rivet to read by title only. VOTE: All aye.

Moccia read:

RESOLUTION 14-03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, CONDEMNING ANYMORE FUTURE PURCHASES OF LAND IN THE TOWN OF MALABAR BY THE BREVARD COUNTY ENVIRONMENTALLY ENDANGERED LANDS PROGRAM ADMINISTERED BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Crews/Rossman to approve.

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

Booth – they will have this tomorrow.

3. RESOLUTION 15-03 TO APPOINT BRAD SMITH TO WRITE BEAUTIFICATION GRANTS

Motion: Crews/Rossman to read by title only. Moccia read:

RESOLUTION 15-03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, DIRECTING ED BOOTH, TOWN ADMINISTRATOR, TO COORDINATE GRANT APPLICATIONS FOR THE REBUILDING OF MALABAR MAIL BOAT DOCK PROVIDING AN EFFECTIVE DATE.

MOTION Rivet/Rossman to approve resolution.

Discussion of what grants can be used for this. Hunter – we will have to consider parking.

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

4. RESOLUTION 16-03 BUDGET ADJUSTMENT, UTILITY FUND FISCAL YEAR END

9/30/03

Crews – by unanimous consent Moccia read:

RESOLUTION 16-03

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO AN ADJUSTMENT IN THE FISCAL YEAR 2002-2003 MALABAR WATER UTILITY FUND 400 BUDGET; PROVIDING FOR AN ADDITIONAL INCOME, PROVIDING FOR ADDITIONAL EXPENDITURES, PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE

MOTION: Crews/Havet to approve.

Discussion. Rossman – does not want to do this again next year.

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

5. BUDGET LINE ITEM ADJUSTMENTS FOR FISCAL YEAR ENDING 9/30/03

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

6. CANCEL SECOND COUNCIL MEETING IN DECEMBER (DECEMBER 15TH)

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

REPORTS: MAYOR, COUNCIL

- Havet – her mortgage holder has never had a problem with Havet and is asking if Bob Wilbur can call her mortgage holder. Bohne – when Wilbur called him he did not imply that he was a P&Z member. Moccia – Council is all aware of what is going on but it is a civil matter. Havet – was hoping to handle this without all this.

- Crews – nothing at this time.

- Hunter – nothing at this time.

- Rossman – the pond issue is dead as far as this Council is concerned. He will not address this again. He wants Booth to address Mr. Wilbur to discuss this. This is a civil matter. He wants this issue to be dead. If there is involvement from employees or other members of Boards there should be a severe punishment. It is time to pull together as a City. Moccia agrees.

- Rivet – wants Council approval to send this letter to the Postmaster General and to Consumer Affairs Dept. as well as to our Senators and Representative. Wants Kabana to do letter. Rivet – also has a petition to remove Post Master to pass around.

- Moccia – please vote tomorrow.

ADJOURNMENT

Meeting adjourned at 9:10pm

BY:


Chair Bobbi Moccia

ATTEST:


Susan Kabana, CMC
Town Clerk/Treasurer

DATE:

11/07/03