

TOWN COUNCIL MINUTES NOVEMBER 25, 2002

This meeting of the Malabar Town Council was held at the Town Hall at 2725 Malabar Road. The meeting was called to order at 7:30 pm by the Chair, Phillip Crews. The prayer and pledge were led 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

Also present were Carl Beatty, Public Works Supervisor, Jim Phelps, Building Official, Ross Whitley, Town Auditor.

Crews – welcomes Ed Booth, new Town Administrator, introduces him to public. Mr. Booth welcomes citizens to come in to see him, wants to keep the quality of life here.

ELECTION OF CHAIR AND VICE- CHAIR

Crews - Floor opens for nominations.

MOTION: Rossman/Havet to nominate Moccia as Chair.

MOTION: Rossman/Moccia to re-nominate Rivet as Vice-Chair.

MOTION: Hunter to nominate Crews/Chair, Moccia/Vice Chair, dies for lack of second.

Rossman - Mayor has done an outstanding job. Charter states to re-elect the Council President and he feels it is best for the Council Chair to be different each year to the benefit of the Town.

MOTION: Rossman/Moccia to close nominations. VOTE: All aye.

VOTE ON MOTIONS: All aye.

Summary: Moccia is the Chair and Rivet is the Vice Chair.

ADDITIONS AND DELETIONS TO AGENDA

Kabana – requests to move Ross Whitley, Town Auditor, to speak before the Town Attorney. He has update and comments on current audit.

MOTION: Rivet/Hunter to accept agenda as amended. VOTE: All aye.

CONSENT AGENDA:

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

Fire Chief's report, Building Official's report.

REPORTS:

TOWN AUDITOR:

Ross Whitley discovered that according to FEMA the Town is to have a single audit. It's a federal requirement when a Town expends with \$300,000 in federal funds. Became aware of this when he got into their paper work. It's a higher level of reporting, testing, and audit work required. The money for this wasn't in the RFP submitted by the Town because at that time the Town didn't know the single audit was an issue. Due to required test controls, additional reporting is required and we need to add \$2,000 in fees for the audit ending 9/30/02.

Rivet – how many additional hours of your firm? Whitley - 20, 25.

Kabana – this is the very first time the Town has ever spent over \$300,000 on a Federal Grant (construction down Corey and Atz). And we'll run into the same thing next year. Whitley – the Feds want to make sure systems are in place in the entities they give money to.

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

Whitley - Also, field work on current audit is going well and will be done tomorrow. There will be comments but they haven't flushed them all out yet. Could start addressing now – won't get better by waiting a month.

Comments:

Item #1: One person is doing too many of the tasks, need to rearrange duties.

Item #2: There is no policies and procedures manual. Strongly recommend we adopt one, can't hold someone to a standard if it doesn't exist.

Recommendation:

When auditing all travel and credit card debt several didn't have adequate documentation. When personnel uses the credit card backup is needed as to why someone was taken to lunch.

These will be in a formal management letter. All is going well.

ATTORNEY:**Annual Sunshine Law speech:**

Bohne - Florida Statutes govern the meetings. Chapter 286, FS urges Council to look at book 1st Amendment Foundation puts out.

Briefly: Sunshine Law governs a meeting of 2 or more individuals of the same board or council where they discuss a matter that could easily come before the board for a future vote.

Basically: Any discussion between 2 or more council members on Town business should be done at a public meeting with notice and public attendance. If there is ever a question concerning conversation you may have with another Council member regarding a sunshine matter, then it probably is. Always err on the side of caution. It's an area you can be crucified for violating. Perfectly acceptable to socialize with another council member when you're dealing with business that's not Town business.

Caution: Using an intermediate/conduit to discuss Town business. For instance, Council member Jones can't use a 3rd party to convey information to Council member Smith. Can't use that intermediate person. Administrator,

Clerk, Building Official and Attorney do not come under Sunshine because they're not members of the board. P&Z and BOA are also okay for Council members to talk to but you are prohibited from talking to this Council except at a public meeting.

Public Records: Everything you receive in your official capacity as a Council member is public record. If you receive it at Town Hall or your mailbox at home if it's addressed to Council Member Jane Havet or Council Member Brian Hunter concerning ditches on Corey Road you must give it to the Town Clerk as a public record. That includes e-mails you may receive in that capacity. Anything that can be in the form of a document, on official business, must be given to the Town Clerk. A Christmas card from a constituent is not a public record but anything dealing with public business is. If you're in doubt, err on the side of caution, give it to Kabana.

Two instances when we don't have to have a public meeting: One is called an Executive Session – Council sits to discuss litigation strategy with the Attorney. There's a procedure you go through. For instance, if you were discussing settling a case we can meet in private to discuss the case. Once the case is over, the negotiations and discussion do become public record. A Court Reporter attends to record the session.

The other one time you don't have to have a public meeting is labor negotiations. And since we don't have a union we don't worry about that. When you get the Sunshine book, look through it, it's very good. It has the exact question spelled out, "What is a meeting?" There are exemptions to the public records law but none have application here. Mr. Phelps has some information as a Building Official or Code Inspector.

Discussion:

Road Ordinance Discussed:

Rossman – asks Bohne about road ordinance talked about at last meeting.

Bohne – is working on a draft whereby under certain conditions (not hardship conditions) a relaxed variance procedure is used; we'll keep it consistent with the BOA, if they think there's an unreasonable difficulty imposed on someone to build that road that goes nowhere they could basically waive/vary that requirement.

Rivet – wants 2 key points met – to equitably share the cost of building the road and encouraging reasonable building rates.

Bohne – there are issues that need to be resolved. Engineer is working on it and the two exhibits that are needed to be attached to the ordinance. It should be ready in December.

Moccia – Suggest the need for a Workshop. Rivet – agrees.

ADMINISTRATOR

Booth – states that he has a policy not to pass on anything. What you say to him stays there. Senses Council would like more informal meetings, one on one.

Small Beautification project outside Town Hall:

Booth – plans to take down barriers, FEC railroad will allow xerascap in the area and we can use the barriers as we like. Moccia has agreed and will start beautifying this particular area. Important for City Hall to look well before we start enforcement on other people. We have some housekeeping things to do at minor cost.

Workshops:

Booth – after Christmas he wants to work on fines, and how we want the community, personnel issues.

Would like council to consider assigning a council member to a particular area:

Booth – would like a Council liaison for areas of finance, personnel, utilities, P&Z, economic development, parks, and others as they arise. This allows him to work with one Council member because two breaks the Sunshine law. Council may want to assign a few members of the public. This process also allows more than just the Administrator to look at a particular issue, and at least one Council member and a few citizens to be knowledgeable in a particular area. Meeting monthly, informally, would alleviate information problems. Budget process will have much detail. There are more adjustments but it gives Council the ability to look at specific projects, costs, cost-overruns and reasons for that. He likes a detailed budget but takes some budget amendments to change as we go along and define different projects or different problems.

Rossman – zero-based budget? Booth – without a doubt, sees a lot of needs and would like to do a little moving of money.

CLERK:

Zoo Project:

Kabana - memo form in packet to enter the Zoo Contest from Jennifer. Need permission to spend money on new decorations. Is Council interested in entering us once again. Council – yes.

Need voting member for Space Coast League of Cities and alternate:

MOTION: Rossman/Rivet Booth as voting member and Crews as alternate.

VOTE: All aye.

Discussion. Others can attend? Yes. Kabana – Hopes to have great showing at January Dinner, Palm Bay and Malabar are hosting. Crews – December 14th is annual Christmas Party, Officers Club, with talent.

Budget:

Kabana – Booth mentioned more budget adjustments. Will have line item adjustments at the next Council meeting and we'll have a resolution for bottom line budget adjustment. The important issue is the funding sources, where is the money coming from? In this case \$1200 is coming from Wal-Mart, someone in community applied for grant for the Fire Department and they were awarded. \$32,000 is coming out of money in reserves to pay for Old Mission Road. Resolution needed December 2nd to get out of reserves and into budget.

Workshop December 2nd at 7 PM"

Kabana – she will give a class on the monthly reports and how each relates to one another, and how to read them.

Meet and greet for New Administrator:

Kabana – Dec. 16th informal evening, citizens are invited, holiday theme.

Eagle Scout Project:

Eagle Scout, Robert Scheverle, asking to do a project at the FD.

- Moccia – asked question on roads. Rivet – suggests Beatty attend all workshops. Carl – situation on Atz and Old Mission needs roadwork that's more involved than before. Explains procedure in doing work. \$50,000 ballpark figure to fix but no money for that right now.
 - Rossman – a 15 mph speed limit sign was posted on Corey it's in effect until you pass Hall Road. This is Ludicrous.
 - Kabana – reminder: tree lighting is Saturday, Dec. 7th, 6 p.m., at Fire Dept., santa, singing carols, and cider.
- Rossman - Dec 7th is also Palm Bay's Parade.

PUBLIC COMMENTS:

Bill Withers, Candy Lane – suggests the need for a Charter Review Committee. Wants to discuss at next meeting. Council person could appoint two citizens within his/her district.

Withers – asks about the status of Bill Hall investigation. Rivet – called newspaper to stir up interest – had no response.

Rivet – Charter Review Committee – likes the idea of having citizens on it. Should not be more than ten years between reviews. Kabana – last charter review done in 1995.

Withers – regarding lunch meetings – feels employees can have meetings before or after lunch. Using his tax money to pay for their lunch.

Withers – policies: health and welfare, overtime, city equipment, use of Town credit cards. Town needs to be reimbursed when performs emergency services-but only cost of service. Rossman - likes the idea, also need policies and procedures manual. Rivet – requests Workshop date. Crews – we should do this with the new Town Administrator.

DISCUSSION:

1. TOM ESCHENBERG, REGARDING AN EAGLE CORP PATROL DURING EVENING HOURS

Eschenberg – has heard the Council wants night time patrols. Rossman – asks about 2 pm – 9 pm. Eschenberg – explains schedules of the ten volunteers – eight are retired, suspect they would not want to work evenings. Eschenberg feels we need a new recruiting drive, training session. And he thinks that if there were people who would want to patrol after hours then the logistics of the keys and radio could be worked out.

Havet – what about handicapped people? They could do this if they used their own car. Council – does not want to get into this area.

Council decides that it may be best to perfect what we have.

2. DISCUSS TOWN PLANNERS MEMO RE: BURKE CONDITIONAL USE.

Phelps – at the time the Burke conditional use was approved Phelps did not have the comments from the town planner. Rossman – read fax from Phelps, all items addressed. Rivet – nothing in these comments makes him change his mind. Crews – the application fee was added to engineering fee, these need to be itemized. Kabana – will do this. Rivet – the conditional use stand approved, this is only for information.

ACTION ITEMS:

1. RESOLUTION 26-02 TIMOTHY AND KIMBERLY BORER, DEDICATION OF RIGHT-OF-WAY TO THE TOWN OF MALABAR ON LEGHORN ROAD

MOTION: Crews/Rossman to ready by title only. VOTE: All aye. Crews read: RESOLUTION 26-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ACCEPTING THE DEDICATION OF CERTAIN REAL PROPERTY FROM TIMOTHY J. AND KIMBERLY F. BORER.

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

2. RECOMMENDATION FROM PARK BOARD TO CHANGE SODA MACHINE VENDORS

Dan Osterhout, Park and Recreation Board member – changing vendor from Coke to Pepsi will provide many benefits to the Town, especially and beneficial on “Malabar Day.”

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

3. RECOMMENDATION FROM PARK BOARD FOR BALL FIELD MAINTENANCE

MOTION: Crews/Rossman to approve.

Osterhout – the soccer field is still a mess and is a liability. We still have soccer field we can't play on. At the November 20th Council meeting the Park Board recommended that Council approve subcontracting for maintenance of the softball field at Malabar Community Park. The soccer field mess caused the grant to be rewritten to fix that field.

Havet – asks Beatty what are the options. Beatty – he and the Administrator looked at it, Public Works worked on both fields but needs more. Rossman – a league wanted to use it but was too awful for kids. Booth – the soccer field needs top soil and seeding, wouldn't take much to improve it. Wilbur – the past Administrator was to make the contractor come back and fix it. Council would like Booth to find out the story on the soccer field and report back to Council at the next meeting.

Crews – issues regarding chemical use should be addressed before any application. Hunter – since Osterhout would come in and provide everything would liability insurance also be provided? Council - yes. Rivet – charges \$15/hr for 2 hours/week. Crews - \$15/hr for 2 hrs/week to maintain fence free of weeds, cut grass, clear infield put insecticide, fertilizer, hedge, mow is reasonable.

Osterhout - Would Council provide the chemicals or would he buy his own chemicals?

Paul Marpil (from the audience) – he must have a chemical license and it is their responsibility to display.

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

5. ADOPTION OF TOWN POLICIES: VEHICLES AND EQUIPMENT, COMPENSATORY TIME, AND USE OF TOWN CREDIT CARD

Bill Withers, Candy Lane – states that a written policy on culverts is needed. Reads statement and uses map to describe problem. Brings up because of what people on Homestead are faced with.

Phelps - Parkhurst wanted to spec this in elliptical pipe, metal is cheaper than reinforced concrete.

Withers – suggests that maybe the Town should pay for Homestead.

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

Rivet – policy on comp time shall not accrue for future use but feels that a 1-2 week pay period is a little too fast to be forced to take comp time. Crews – comp time cannot push beyond current pay period. Booth – recommends comp time not be accumulated – will research Fla Statutes. Fed Statues state “reasonable time “.

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

MOTION; Crews/Rossman to table all policies. VOTE: Aye – Rossman, Hunter, Moccia, Havet. Nay – Rivet.

PUBLIC COMMENT:

Mr. Vitaliano – do neighbors have to be notified when there’s a conditional use permit? Clerk – a letter is sent to surrounding homes.

REPORTS MAYOR, COUNCIL:

- Hunter – regarding the Sunshine Dodge request. Asks why Council is opposed to this. Rivet – Council discussed wanting a car dealership in Town, answer was a resounding no. Sunshine Dodge approached Palm Bay about buying property and having Palm Bay annex. They basically said if you’re not going to play ball with us we’ll steal part of your town. Now they have the audacity to come back and ask us again. He thinks that the answer should be a resounding no again.

Rossman – the site didn’t meet the Comp Plan. That type of business has to have ingress/egress off US-1 as defined by our comp plan. Crews – the biggest issue was zoning. Hunter – this is a great idea, think of the sales tax revenue.

Phelps – Sunshine Dodge looking for consensus before spending time and energy on this. Crews – this might be okay if they choose another location. Rossman/Rivet/Hunter agree. Crews – there is appropriate property on Babcock.

- Crews – regarding House Bill 851 – the application has been submitted to the State. We will seek endorsement from Senator Futch and Representative Weldon. Total cost is \$690,000. Rossman – recognizes the amount of work the Mayor put into this. Town owes him a debt of gratitude.

- Havet - Nothing at this time.

- Moccia – supports Locks of Love - human hair is donated to children who have cancer. Crews -Is behind Relay For Life, annual cancer fund raiser in March. Will explain more at the next meeting.

- Moccia – several citizens have begun a campaign to disparage her. Won't name any names regarding unsubstantiated activities. So it doesn't happen again, those individuals will be put on notice. This happened since the last campaign. Am just letting it be known.

ADJOURNMENT

Meeting adjourned.

BY:

Mayor Phil Crews, Chair (on 11/25/02)

Chair Bobbi Moccia (on 06/16/03)

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
