

TOWN COUNCIL MINUTES
February 4, 2002

This meeting of the Malabar Town Council was held at the Town Hall at 2725 Malabar Road.

| | | |
|------------|------------------|--------------------|
| ROLL CALL: | MAYOR/CHAIR: | PHILLIP CREWS |
| | VICE-CHAIR: | CHARLENE HORTON |
| | COUNCIL MEMBERS: | BOBBI MOCCIA |
| | | BOB ROSSMAN |
| | | NANCY TINIO-BORTON |
| | | STEVE RIVET |
| | ADMINISTRATOR: | WILLIAM HALL |
| | ATTORNEY: | KARL W. BOHNE, JR. |
| | CLERK: | DEBBY FRANKLIN |

Also present were Jim Phelps, Building Official, and Chuck McClelland, Fire Chief.
The Mayor called the meeting to order at 7:30 PM. Vice-Chair Horton led the prayer and pledge.

ADDITIONS AND DELETIONS

Rivet asked the Chairman to move Item 6 to Item 1 on the agenda since there were a large number of people here for the discussion on the EELs Program proposal. Without objection, it was moved to just after the Public Hearing.

Tinio-Borton also asked that Item 2, Open Container be changed from First Reading to a discussion item. Without objection, it became a discussion item.

CONSENT AGENDA:

MOTION: Rivet/Tinio-Borton to approve. Mayor clarified for the audience that the resolutions that were on the consent agenda are related to ROW issues in Melbourne Heights that were non-controversial and were approved at the last Council meeting. They are all a matter of public record if anyone cared to read them. **VOTE: All aye.**

REPORTS:

TRAILS AND GREENWAYS COORDINATOR

Richard Cameron reported that they had had a busy January. The first fencing along the Briar Creek Boulevard was accomplished in just six hours. He had good help from the Brook Hollow residents. He thanked Bill Withers for mowing at the trailhead while they were working on the gate. He has gone out for bids for materials to fence the north end of Corey Road in March. That gate will be bigger with a double gate. He is hosting a luncheon for all the volunteers and Town officials and staff on February 16, from 11– 2 pm. The volunteers have donated their time and equipment for over the past year and he felt it was time to say thank you.

Rossman asked Hall about the status of the appointment Cameron was seeking. Hall said the appointment had not been made yet. He has contacted everyone that might be able to influence this appointment.

ATTORNEY:

Bohne reported that he delivered two recorded documents to the Town Clerk's office. One was the easement related to the Berri Patch facility and the other was the quit claim deed regarding the Malabar Ditch project.

He also wanted to brief Council on ex-parte communications. Occasionally, Council and Board members may be approached by people who may come before the board in a quasi-judicial matter such as a variance request or zoning question. There is no prohibition against a Council/Board member speaking to people involved, viewing sites, discussing matters with anyone involved with the proceeding. Ex-parte means outside the confines of a public meeting. So long as at the next meeting, when the matter comes up, you disclose the nature of the communication, whom it was with and when

it happened. If it was a site visit, when you visited it, what you did, and that is it. That is all that is required. He referenced Florida Statute 286 that explains further (attached) what you should do but the point is that is that there is nothing wrong with it, so long as you disclose it. Once you have disclosed it, it is no longer deemed prejudicial to anyone who comes before them and wants to address a quasi-judicial item. If there is ever any question, his phone number is in the book.

ADMINISTRATOR:

Nothing –

CLERK:

Nothing.

PUBLIC HEARING:

1. ROW VACATE PROCEDURES ORDINANCE 01-06 SECOND READING

Chairman opened the hearing to the public. He then read the ordinance in its entirety. Someone asked what the purpose of this ordinance was. Hall explained that the Town has been approached with requests to vacate right-of-ways and we have no procedure in place. This ordinance defines a policy and procedure. Mayor closed the Public Hearing.

MOTION: Tinio-Borton/Moccia to approve. No discussion. **Roll Call Vote: Borton, Horton, Rivet, Moccia, Rossman – all Aye.**

ACTION ITEMS:

1. **DISCUSSION OF PROPERTY IDENTIFIED BY THE ENVIRONMENTALLY ENDANGERED LANDS PROGRAM FOR ACQUISITION WITHIN MALABAR.**

The Chairman commended the Clerk for the minutes of the prior meeting – she did a good job of capturing the comments surrounding the issue. They are public record and he invited members of the audience to get copies if they wanted to get some insight into this issue. The meeting this date did not have representatives from the EELs Program. They were at the last Council meeting which inspired all the comments. With that, he opened the item for discussion.

Tinio-Borton wanted to thank all the people who were there. She said whether they agreed with her or not, her main objective was to encourage them to come to the meeting so they could tell her what they thought of the issue. She added that by purchasing one of the properties that the EELs want would make one of the Town's major problems with the Brook Hollow issue. She apologized saying that she believed it was a wonderful parcel of land and she would like to see homes like Brook Hollow built on it. Whether the people agreed with her or not she said her night was made by the fact that so many came to the meeting and she thanked each of them.

Moccia said she had called constituents in her area and there was an overwhelming consensus; there is much concern regarding the loss of tax base. Out of the 20 she spoke with, nineteen were against the EELs aggressive purchasing efforts. Only one was in favor of them. There have been no surveys on these properties to determine just what type of animal lives there. The EELs say the birds are going to fly over these lands.

Rivet stated that what is at issue here is balance. He is in favor of protecting environmentally endangered lands; however, he is also in favor of controlled and limited development in our Town. He felt that the proposed purchases by the EELs Program are excessive. No one in Malabar was consulted before the State and the County began their plan to purchase all of this property. He would love to have a preserve bordering his property, but again, it is an issue of balance. It appeared to him they might have the opportunity to solve some other problems we have had with the property owners adjacent to Brook Hollow. It may be a good idea to let that particular purchase go through, however he did not think it made sense to allow all of the lands the EELs Program has designated for purchase. He stated he had met with County Commissioner Higgs, as did the rest of Council and the Mayor. He felt Ms. Higgs was willing to work with us on coming to some type of compromise, and he would like to do that. He encouraged the audience to attend the County Commission meeting and express your opinions there.

Rossman echoed Rivet's sentiments. When he met with Ms. Higgs, she agreed that they had moved a little too fast and too far and that they had not consulted us, and that is what prompted this meeting tonight. They did move too fast and too far. She is willing to work with us and he agreed with Rivet that we have the opportunity to put an end to an issue that could cost the Town somewhere around 200K in legal fees regarding the Brook Hollow property. But he did not think they should allow one third of the Town to be given away to the EELs. He had asked Ms. Higgs about the area in Viera known as Bay Tree if any of that would be bought for EELs property and her response was negative he (Rossman) thought it was because that area in the unincorporated County and that would come off their tax rolls, and homes there go for ½ mil to 1 mil. He felt we could meet with EELs and the County and benefit both Malabar and the County. He thanked the people for coming and said it was great to see so many people. He wished they would continue to come to meetings because everything they do as Council affects them.

Horton agreed with everything that had been said. What precipitated this was that one third of the property in Malabar would be off the tax roll and that was unacceptable to all of Council as she felt it would be to all of the residents. She thanked everyone for coming. When they appear in front of the County Commission, it will be nice to know the residents are backing them. Horton also said that Ms. Higgs said she would work with us and it wasn't too late to negotiate on certain parcels of land.

Chairman told the audience that at the last meeting when Ms. Birch the Director of the EELs was present, he had asked her to cease and desist during this discussion phase, so that they (Council) could speak to the elected officials of the County and the State, and she assured that she would – it is a matter of public record. Also, Commissioner Colon, from District 5, wrote a letter to Tom Jenkins, the County Manager, basically indicating that she was in support of the effort to put everything on hold until the County Commission had the opportunity to take this up, and that would be February 26. In his discussion with Commissioner Higgs, his big beef in this whole issue is with chartered government and home rule. He believed that the citizens of Malabar should have the input on how Malabar is developed, and they do that through their elected representatives and not through a bureaucratic agency that does not answer to the people. He has no fault with setting aside endangered lands or sensitive lands, as he told Ms. Higgs, it is probably good science, but he has not seen the science. He asked her if they could set up a public work shop with the EELs people and the Council and have the science behind this effort presented, in written form, at least two weeks prior to the work shop to each Council member, so we can see just what the scientists see, that is important with these lands and wildlife. She has pledged to do that. We have not scheduled a work shop yet. He felt we may get to a point where we can compromise. There may be some lands where they are looking to buy 600 acres and really only 200 acres of that is sensitive, but they feel like they need more of it to provide a buffer. In those cases, perhaps they can settle on 200 acres and the Town could impose buffering requirements that would still allow development. He also discussed with her the need to look at what the Town is trying to do with the trails system. If they want to buy sensitive land with tax dollars, perhaps they could look at areas where we plan to develop trails so that two purposes would be served. He thought they had a good dialogue. He said the audience was welcome to contact her office. He also encouraged them to come to the County Commission meeting on the 26th and make your voices heard. Unless there was further comment from Council, he was going to open it up to public comment. Rivet asked to comment. After he talked with Commissioner Higgs, she did send some background information. Its central theme was that we should have concentrated clusters of development separated by wide-open spaces. It was his opinion that the increased value of property abutting the set aside property would not compensate for the overall loss of revenue. That did not fit his model of how Malabar should be. He wanted Malabar to remain rural. Again, he stressed that we need balance. Most people want the large lots, rural setting, type of development, have elbowroom, as opposed to cluster developments. Chairman thanked him for bringing that point up. He also got that same packet and it was basically anecdotal evidence and really was not science. He did not see anything that related specifically to this issue, it was general platitudes of the benefits of setting aside land. It was not relevant and it was not what he asked her for. Rossman also received and read it and found some of it to be outdated (1996.)

Borton was not fortunate to get the warm and fuzzy feeling when she met with Commissioner Higgs. She announced she may be committing political suicide and the people in Brook Hollow may be

mad as sticks at her but she would like to live in an environment like Brook Hollow. She thought the 150K and 200K homes should be able to be built there. If we hadn't let Brook Hollow be developed we wouldn't have that great group of people we have there today. She lives in a great little area of Malabar, it is quiet and secluded. She believes in taking care of all the little animals, the indigo snakes, the turtles, the rabbits; she even feeds them; but she believes in taking care of people too and she believes they should be able to have nice places to live. With the great turnout at this meeting, whether they agree with her or not, she encouraged them to call their commissioner. Mayor asked if they did call their commissioner, to ask for the science behind their selection process.

PUBLIC INPUT:

Bill Withers: He was at the meeting in January and felt the EELs presentation was poorly and unprofessionally done and he thought that is where a lot of the resentment came from. The EEL Program is administered by the County government at their most arrogant – completely ignoring our standards and goals. Last Monday he called Nancy Higgs and short of begging her, attempted to get her to have a public meeting on the EELs program coupled with the goals of Malabar. She wouldn't hear of it. The following day she met privately with each of our elected officials, one at a time, and no record was kept. Arm twisting at its best. These lands will be removed from our tax roll but we still must provide fire protection and storm water drainage. The potential of surrounding lands increasing in value, as Ms. Higgs likes to elaborate to, is unsubstantiated at this point. What other city would allow itself to be reduced by 33% without its consent. Malabar has long term goals and plans for controlling growth. The EELs Program is good, but it must be a partnership with our long-term goals. We need to remind Nancy Higgs that she not only works with us, but damn it, she works for us - we elected her.

Dominick Vitaliano: He also had talked to Commissioner Higgs. He suggested to all that if your elected officials are not supporting your town, then don't vote for them. You have to vote for people that are for your community. Commissioner is not going to worry about you because you don't have enough votes. Regardless of whether you are Republican or Democrat, they are going to have to raise taxes if they are going to take all this land. Taxes will double. He was here since 1980 when the roads were bumpy and we had an old grader and an old fire truck right behind this building. All the new people don't realize what Malabar was like. You have to vote for people that will look out for your town.

Stuart Borton: Yellow Dog Cafe: His concern on this is the potential for higher taxes. He has a small business in town and with so much of our land being purchased by a County entity, he felt that everyone's taxes would go up quite a bit. It is not going to impact just those around the project site, it is going to impact everyone in Town. If you happen to be one of those property owners whose property abuts the area and your property value goes up, that is all well and good if you want to sell it, but if you are living there and all of a sudden you have to pay higher taxes just because the County came in and bought a few hundred acres of the property next door. The idea that the property values go up really doesn't help the landowner that lives there, so that argument is moot. He thought the Council should really think about this before allowing the County to buy so a large amount of property especially in such a small municipality. We have less than 3,000 people here. It is not like they were doing this in Palm Bay or even in the unincorporated area of the county. They could absorb losing several thousands of acres. But we are a small town and we don't have that much property. We probably have more people in this room tonight than we have had at any official function in a long time, as long as he has lived here. He attends some of the meetings and doesn't recall ever seeing this many people. He doesn't know if they are for or against the purchase. He thought it was bad economics to have a government agency use so much of designated funding to buy up one little town.

Nona Swan: Thanks the council and thanks Borton for her passion. She thinks the Town is better off for having a Councilwoman who cares. She is a licensed real estate agent and would like to present another point of view. As a realtor, she has done her job and earned her commission when the seller and the buyer have a meeting of the minds, in other words, the seller has agreed to sell the property at a set price and the buyer agrees to purchase that property at that price. At that time she has a contract. A property owner in Malabar has the right to be a seller and sell their property to an individual, a corporation, or the EELs program. People either invest in real estate to live on it, invest in the future or possibly pass it down to relatives. She does not know anyone who invests in real estate with the intention of losing money. This is another form of investment. She does not feel the Town Council has the right to tell the landowner who they can and cannot sell their land to. The EELs is not

forcing the property owners to sell, nor are they eminent domaining the land. They are acting like a buyer, willing, and able to buy if the seller agrees on a price. As for losing properties from the tax rolls, she offers another view. The light industrial that would be purchased has been available for some time yet there has been no interest in developing it. She thinks it is because the city cannot provide the water and sewer that most companies would expect. As for the residential areas, we don't have the revenue. It has been vacant land for quite a while. Malabar receives a small portion of the taxes from these properties. She asked Council to look at what the cost of providing services to these areas would be.

Richard Cameron: He felt Ms. Swan brought up a good point between buyer and seller, but he felt the democratic process is what is best for the majority. He believes that what the County is asking for is entirely too much for one town. He is for the trails and conservation. He felt the County should have come forward to the Town prior to their offers. We were already working on some of those lands they made offers on. He had met with some of them and they agreed to set aside areas for our trail system. Asking for a third of our Town to be set-aside for conservation is simply too much. If the County had to come forth to the Town of Malabar prior to their making offers they would have found that we were already working on some of those lands. With their present plans, we will not be able to continue our trail south to Leghorn; we will have to stop at Atz. He has worked hard along with staff and Hall to bring together the lands that are along the east side of Marie Street into a larger rural area that would also develop ranchettes, while maintaining a safe area for the animals, preserving the lands and keeping the theme of Malabar alive.

Mike Stork: Thanked Withers for sending him an email alerting him to what was going on. He lives on Howell and he doesn't live there so he can sell it and make a lot of money; he lives there so he can live his life, play with his kids, play in the woods, without worrying about getting run over by a car. He doesn't want a thousand neighbors. I don't even want it as tight as Brook Hollow and he certainly wants it like Palm Bay. If the EELs succeed in purchasing all this land in Malabar and it forces the congestion of what we have left then that would be a terrible thing. If you could sit down with them and work it out so that the area is not developed in a congested manner, that would be great. But if you can't then you should fight even if it means paying 200K in attorney's fees.

Drew Thompson: Thanked Council. Noted that with very few exceptions, everyone in the room was a Malabar resident, a taxpayer, and desired to maintain the rural nature of the community. Having said that, he pointed out that by allowing the Brook Hollow area to be sold would resolve an issue that the Town has been dealing with for a long time. The developer wants to sell it to EELP. On the flip side, their desire to purchase a third of the town comes down to a communication problem and he felt Council had presented a very serious issue and the fact that there is such a great turnout tonight, will get back to the county Commission. The County needs to work together with the Town. One does not outrank the other. What we are after, as a Town, is to protect our interests. He hoped we could find some point of balance with the County. EELs is basically interested in the Atlantic Sand Ridge and he felt they would provide scientific evidence for that.

John Geil: He has lived in Malabar for 30 years and had occasion to sit on Council for four years. It is good to see such a great turnout. He reflected the last time he saw a big turnout was when they were renaming streets for 911. There is a history of things happening between various government agencies on the QT. and by the time they emerge into the public eye it is often times too late. When he was on Council, as with every council you had to do certain things that you really didn't want to do but you did them because the greater good demanded it. In order to have a voice in dealing with the State and Federal and County government, they hired Mr. Hall. We have ordinances and continue to pass them as necessary. It has become more and more difficult to buy and build a home in Malabar. It is not the small little town it was. It is his opinion that when an outside entity comes into our Town they have as much responsibility to observe all of our ordinances, our comprehensive plan (which we put together at an extremely great expense, and sent it to the State, where it goes through a long complicated approval process.) For them to come in and say they are not going to pay any attention to that, if it is not illegal then it is grossly discourteous. He thought the EELs should be brought to task for lack of courtesy. They cleared the area by Jordan and made that horrible eyesore, without permit, without looking at the tree ordinance, which we also passed during that period (when he served) they ought to be sued. It is just unconscionable that the County could come in here and bulldoze their way around, both literally

and figuratively, as if they owned it and we didn't exist. We should demand some cooperation. He appreciates what Council is doing and with them well.

Bill Radencic: He was on the first Council in the Town of Malabar. Many a night they would have to go down to the bar to get two of their councilmen so they would have a quorum. That bar by the way was called the Shack – so things can improve. Malabar became incorporated to protect itself from being swallowed up by Palm Bay. Palm Bay became incorporated to protect itself from being swallowed up by Melbourne. What gives them the right to come in here and buy on third of our town? We knew what we had in Malabar and wanted to protect it and we knew we weren't qualified. So they called Val Steele, Chairman of the County Commission and Val told him that there was a young man who had just recently graduated from Georgia Tech with a Masters in Planning & Zoning. His name was Pat Bar and he laid out what you have today. Rural Residential had never been heard of. He said you want to keep it a rural community. The homes are being built just like they were laid out and it is just fabulous. You are doing a wonderful job. So why let the County come in here and handle our projects. He suggested the next meeting be held in the Fire Station and with a little more notice, they could expect even more people. If there are any questions Council has about it was in the past, just call.

Pat Benington: She loves animals. She also doesn't like crowds. That is why she moved here. She has gone before the County Commission when Palm Bay annexed the property at Babcock and Valkaria. There was a huge turnout, including Hall and the Mayor. If you want the County to know what Malabar thinks, you have to go to the commission meeting, sign the speaker card, and get up and talk. The more people there are the less time you will have to speak. She encouraged all to go and take the opportunity to make a difference. She doesn't think the EELs should come in here and take the land. They should take selected lands, after proving beyond a shadow of a doubt that those areas need to be preserved. But just to come in and take the land to solve a problem with a developer of Brook Hollow, that is not an answer. She believes the way they are going about it is wrong. We may need some EELs land but not the percentage they are after.

Scott Glaubitz: He is not a resident of Malabar, but he owns 40 acres inside of Malabar. He owns a producing citrus grove. He will challenge the science produced by the County. His grove has been mapped as a scrub jay habitat for several years and they refuse to take it off the map. You need to challenge their science. The planning concepts that were mentioned earlier, clustering and different things. Over the last twenty years, every time the planning community comes to a new seminar, they come back with a new concept that we are all supposed to develop to. First it was P.U.D.'s with no access, then it was P.U.D.'s with connectivity, then it was clusters. The latest is you can't have any straight roads, everything has to be on a curve, with houses on only one side of the road. He concurs with Council that the County is being way too aggressive. He showed a map he got from the Internet showing that somewhere between 60 and 65% of Brevard County is already public land. The County when they have an agenda item will give you lip service and go about what they intended. He asked that Council be bold and not back away from legal action if that is what it comes to.

Laura Hottendorf: She felt from listening to the other speakers that Malabar residents all have similar desires, to live in a rural community where they can let their kids out in the yard to play without worry of road traffic. Their biggest worry is to have a thoroughfare through their neighborhood and she asked for the same consideration as other residents enjoy.

Kathleen Pitts: She echoed the comments made by most speakers, especially Geil and Radencic. She does not agree with the real estate agent. Not a normal transaction. The buyer is a government. The buyer is buying with our money. Nothing that she said applies in this case. We need to pursue this as aggressively and legally as the County has. It greatly disturbed her to hear that Commissioner Higgs had spoken to each Council member and reassured them of their good intentions. We have a sunshine law for good reason. Do we wait until the 26th only to find that we have waited too long. Our attorney needs to do whatever he can do as immediately as he can do it to guarantee our right as a Town and our wishes and plans and dreams are upheld.

Liz Ritter: She resents what is happening to the EEL Program. When they first came down here for the scrub jay, they did numerous public meetings so that every one had input. That has not happened this time. She also shared her concern that in five or ten or so years, the State will realize they have bought too much land, and they find somebody they know and they sell it to and it gets developed. The

Town is out all the tax money and the control of what gets built there. She felt the EELs need to provide more detail in their plan and get more open and public about it. She would hate to see the Town go through another big battle and if the citizens are behind it and go to the County Commission meeting and let their voices be heard it would be better than legal action.

Murray Hann: He is not as suspicious of EELs as many of the other speakers were. He didn't like some of the things the EELs did with the way they treated the sanctuary. He doesn't think it is a conspiracy, it is more laziness with their lack of coordinating with the Town. He suggests Council look at their trail plan and work with the county and maybe there are some properties that could be bought by EELs and then used with the trail system. Encourage the EELs to work more closely with Town staff. He is not a member of Brook Hollow, but the property just south of there has been the subject of controversy for years. The Town Council has toggled on how they want that area treated. Years ago they wanted a road put through and a couple years ago they decided they didn't. He would look at letting EELs buy that property as a good way out – it may sound like a bad compromise. Can you imagine paying a ¼ of million in legal fees and have the Town go bankrupt fighting this battle.

Mayor had a few comments. He felt the Council was in general agreement with the residents. He has had discussions with Representative Needleman of District 31 as well as Senator Posey. He stands ready to take this issue to the Department of Community Affairs and after hearing from everyone this night, he will press on to get the State agency that has oversight responsibility to review it. It is not just for Brevard County – there are 15 other similar programs throughout the State and there appears to be some flaws in it. There does not seem to be any limitation on the amount of land from a geo-political district. He believes the EELs have violated the administrative procedures. In talks with the Chairman of the Procedures Committee, Rocky Randals, they are in firm agreement that they have violated their own Charter. They are working this on several fronts. He would like to keep it in the political arena, without incurring a lot of legal expense. He thinks the County government is willing to listen to us, but he hears from Hall, that they are moving forward with their acquisition efforts, despite their assurances they would stop. Regarding the willing buyer and willing seller – it appears we may not be the willing buyer, since it is the taxpayer who is paying for this. He also recognized former State Senator Patsy Kurth.

Rivet: Regarding comment that the EELs are not out to “get us,” he agreed, but they are also not out to look out for Malabar. We need to continue to show that we have a lot of people that are concerned with the way they are doing business and we are not going to stand for it. He agrees with the general goals of the EELs Program. The rights of the buyer and seller need to be respected but he thinks the rights of the people in the community where the property is also needs to be respected.

Hall: The real reason this was on the agenda was to give him direction. He is the logical speaker to go before the County Commission. If he goes there with the comments of the audience and Council, he would be pretty accurate in relaying everyone's issues. Consensus of Council - yes.

Tinio-Borton asked if he (Hall) could move quickly to prevent any possible sales. Rivet was also concerned that deals would be closed before the 26th. Hall related that he witnessed the person in charge of acquisitions appear before this Council, Council told her to hold up and she agreed and then the next morning she was told that she works for the County Commission and her job is to go out and purchase. The priority seemed to be the BML package. The other property is at the corner of Marie and Malabar (20 acres) and on south Marie there is some property owned by the railroad. Those are the properties they are pursuing most aggressively. The Town is negotiating with two developers on the RR property and one developer proposed large home tracts and was working with us to put our trails through there. Mayor said that Commissioner Higgs assured him that while they may continue to try and line up some discussions, they would certainly not conclude any sales. He found it odd that the director of EELs would think she had the majority of Commissioners when Commissioner Colon wrote in her memo she hoped that no further activity would occur before February 26th. Tinio-Borton spoke with Higgs and Colon and she got the feeling that Colon was not aware of the widespread efforts in Malabar. She also asked about a burn the EELs wanted to do on Tuesday. Did they have a permit? Fire Chief explained that the burn would be a good thing. Did they have a permit? No the area they

cleared off US 1 was done without a permit. Phelps had to issue a stop order. They later asked if they could do a fire lane up by Country Cove only around the perimeter. He approved that for safety purposes, but they went beyond that which was reported by Mr. Hann and he has had discussions with Brevard County but he has not taken any action depending on Council's direction. Other residents of Malabar who have cleared land without a permit have had to appear before the Special Master Code Enforcement Hearing and have had stiff fines. Hall said that before any land could be purchased it had to be approved by the full County Commission and that hadn't happened. Hall said this came about because they had an issue with the Park entrance road and he went to the EELs selection Committee to express the Town's frustration and he learned then they were not aware that we had a problem. That is why he feels the full commission is not aware of all that is going on. Borton asked Bohne if she could disclose what Higgs had said. Higgs told her it was a "done deal." Rivet said she told him the same. Horton said she was told by Higgs that it was basically a done deal. There could be some negotiation over the 200' to put up a strip center. Tinio-Borton said she did not get that response when talking to the other Commissioners. Horton then asked Higgs how much land was purchased and set aside by EELs in Palm Bay. Higgs replied she did not know but it wasn't enough. Mayor said he drew the conclusion that Higgs thought it was a done deal.

Mayor will continue his contacts with the State and Sen. Posey's office. The next step is to appear in front of the Count Commission. Citizen asked if the attorney could file a writ to prevent them from moving forward. Attorney Bohne already asked Mr. Hall to get together all the EELs administrative documents and the statutory authority for him to review. Horton asked if Zach Pruzak had contacted the Town regarding the burn set for the next day. Phelps said they got a fax that morning. The neighbors in Country Cove were all notified, the Post Office was notified, only Town Hall was not notified.

Council took a short break at 9:30 pm so those that wanted could leave. Council resumed at 9:40 pm.

2. DISCUSS NEED FOR A SPECIAL EVENT ORDINANCE

Mayor explained that this issue came out of the 9-11 incident when the Carmines asked to hold a special event at their business and that issue has expired. He asked Hall if there were others. Rivet asked this to remain because he felt, rightfully or not, that they were discriminated against and prevented from holding a special event because this was not passed. If you want to have rules then let's get them on the table; if you have concerns let's address them. Mayor did not think we should have special events scattered throughout the town. He certainly did not want to appear that he was discriminating. He just thought that special events should be held at the park and that ordinance gives Hall discretion. Tinio-Borton said if she had a special event at her restaurant, she just holds it. Rossman agreed with Rivet. If you have something in place then you can control and guide it. What if someone wants to hold a Veterans parade or a horse facility wanted to hold a special function. Rossman Every city has something on the books to control. Rivet did not mean to cast aspersions at anyone's motivation and apologized. There is a draft ordinance that the attorney has plus the additional information the Mayor had provided from other municipalities. He can have it ready for the next council meeting. Clerk is directed to have this on the agenda for the next meeting as an action item.

3. OPEN CONTAINER ORDINANCE 02-01 DISCUSSION

Tinio-Borton explained that she could discuss this item but would be filing a conflict of interest form if/when it comes up for a vote. She would like to expand their serving area and have an open patio area where they could serve drinks and enjoy the beautiful Florida weather. This would also benefit other businesses in Town. Rossman asked if she could serve food and drink on her patio with the way the code is currently written. Atty. Bohne said no – it would be outside the primary structure - not the way the code has been interpreted in the past. Rossman said that is not the way he read the current code. Rivet had the opposite opinion after reading both. The ordinance needs further clarification. The Mayor thought it depended on the definition of what is considered attached to the primary structure, a patio, or a pier. Tinio-Borton is supporting this not just for her business but the other businesses that would benefit. She felt that Malabar Mo's should be able to drink beer out by the horseshoe pit. And if

the new owners of Diegos wanted to serve, and also Hotel California. Mayor suggested work shopping this; is there something in draft? Rossman thought the copy in the package needed to be tightened up. Atty. Bohne reiterated that Tinio-Borton can discuss this but when it comes to a vote she will have to abstain because there is the potential for her own personal gain. He researched this and she can discuss and even make a motion, she just can not vote.

4. Resolution 01-02 User Fees at Park

MOTION: Horton/Rossman to accept.

MOTION: Horton/Rivet to read by title only. All Aye.

RESOLUTION 1-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ESTABLISHING A POLICY FOR THE USE OF PARKS; SETTING FEES AND DEPOSITS PER CHAPTER 12.5 SECTION 20 AND 22 OF THE CODE OF ORDINANCES; PROVIDING FOR WAIVER OF SAID FEES AND DEPOSITS; PROVIDING FOR CERTAIN PROCEDURES FOR USE AND RENTAL OF THE PARK; PROVIDING FOR THE REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

Rivet stated that he was comfortable with the fees the Park Board recommended. Horton was glad this has finally got this far.

Roll Call Vote: Tinio-Borton, Horton, Rivet, Moccia, Rossman – all Aye.

5. Resolution 02-02 Withholding CO on Berri Patch until FDOT approves driveway and ROW improvements.

MOTION: Rivet/Tinio-Borton to accept..

MOTION: Tinio-Borton/Rivet to read by title only. All Aye.

RESOLUTION 02-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING THE BUILDING OFFICIAL THE AUTHORITY TO WITHHOLD THE BERRI PATCH CERTIFICATE OF OCCUPANCY UNTIL THE IMPROVEMENTS TO MALABAR ROAD ARE COMPLETE AND APPROVED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION; DIRECTING THE TOWN CLERK TO FORWARD A COPY OF THE RESOLUTION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Rossman asked why this is before Council. Phelps explained that this was a process FDOT uses now. In the past, they accepted a letter from the Town Manager but in one city the Mayor and Council over rode the Manager's letter and issued the CO. That is why they require a resolution. Rossman continued that he felt the bond was appropriate. FDOT would not give this special treatment to citizens. Rivet stated that we should be helpful to businesses moving into Town. The Mayor recognized Don Foley, the owner of the property under discussion. Foley explained that the State is requiring extensive modifications and improvements along Malabar Road costly approximately 77K. He said they were a small business and if they were to get a performance bond to satisfy FDOT that those improvements would be done, we would have to take money out of our construction fund. FDOT offered this remedy so that those funds would not be tied up and could be used on construction. Mayor wanted to be business friendly. When we get businesses in Town that are in tune with the nature of our community, he is in favor of trying to help the developer. Tinio-Borton said other towns give tax breaks and other incentives. This wouldn't cost the Town anything. Rossman still thought he should pay. Rivet thought Rossman's concern was the appearance of special treatment. Rivet thinks it should be approved. Hall said that Foley has been more than agreeable with anything we

have asked him to do at this point. He saved us 30K on the waterline by giving us easement to run the waterline. With no more discussion the Mayor directed the Clerk to call Roll Call:
Roll Call Vote: Tinio-Borton, Horton, Rivet, Moccia - Aye; Rossman - Nay.

5. Resolution 06-02 Support the Melbourne International Airport

MOTION: Rivet/Rossman.

MOTION: Rivet/Tinio-Borton to read by title only. All Aye.

RESOLUTION NO. 06-02

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ENCOURAGING THE USE OF MELBOURNE INTERNATIONAL AIRPORT; ENCOURAGING BREVARD COUNTY COMMISSION AND ALL MUNICIPALITIES IN BREVARD COUNTY TO TAKE ACTION IN SUPPORT OF THE MELBOURNE INTERNATIONAL AIRPORT; REQUESTING THAT THE BREVARD COUNTY TOURIST DEVELOPMENT COUNCIL EMPHASIZE THE USE OF THE MELBOURNE INTERNATIONAL AIRPORT IN ITS ADVERTISING CAMPAIGNS; ENCOURAGING COMMERCIAL AIRLINES AND CHARTER FLIGHTS TO UTILIZE THE EXCELLENT FACILITIES AT THE MELBOURNE INTERNATIONAL AIRPORT; PROVIDING FOR AN EFFECTIVE DATE.

Tinio-Borton asked what was the purpose of the resolution. Mayor explained that when the airport goes out to various airlines to request they locate here, it is nice to show them that they have resolutions from all the cities supporting the use of the airport. With no further discussion the Mayor directed the Clerk to call Roll Call:

Roll Call Vote: Tinio-Borton, Horton, Rivet, Moccia, Rossman – all Aye.

Workshop to discuss open container is scheduled for March 4, 2002 at 6pm prior to the regular Council meeting.

**Mayor pointed out that the second meeting in February falls on President's Day.
Consensus to cancel the second meeting without objection.**

PUBLIC:

Speaker card: Beverly Driver, 1280 Corey Road. She has an issue with her neighbor. It was discussed by Mr. Hall at the Jan 7 meeting and elaborated on by Jim Phelps. She handed out a packet to each Council member and stated that it contained all the violation her neighbor had been cited for. She said her neighbor was to have gone before the Special Master on Jan 28. When she asked Mr. Phelps if he was going to be going he replied in the negative and said the neighbor was in compliance. She listed several points she thought were violations. Atty. Bohne cautioned Council that this issue may come before them after a recommendation from Planning and Zoning and at that time, they will have to disclose that they heard this on this date. Mayor agreed and stated that this is simply the public dialogue segment of the meeting and requires no comment from Council. Mayor extended her time due to the interruption. She said she would be before Planning and Zoning and before Council again.

Speaker card: Dr. Gentile, 1200 Corey Road. Realized this is not the proper forum. He has tried to do everything within his power to appease his neighbors. The original complaint was smell. He holds a unity of title on his 14.5 acres of property. He regularly cleans and limes the stalls. The compromise was to keep the horses out of the stables during the day and in at night. Now they have more issues. One of them is the vegetative barrier. He is trying to put in a commercial stable that will be adjacent to the EELs property and the 100 acres Malabar owns. He wants to go about this in a dignified, well thought out manner so as to have as little impact on his adjoining neighbor. Let it be known though, that the Drivers purchased land in RR65 zoning next to 14.5 acres and had the opportunity to purchase the land themselves.

Mayor discloses that he has had phone conversations with both parties and has walked Gentiles property. Rossman also discloses same. Horton has talked to one of the parties. Atty. Bohne reminds them that when this comes before them again they will need to make similar disclosures about this meeting.

Speaker card: Stuart Borton, Yellow Dog Cafe, 905 US 1, would like to talk on the open container issue. He has read the existing ordinance many times and he does not see where it would allow serving drinks outdoors. What the proposed ordinance would do, it would allow establishments that serve liquor and have a 2-COP license or above to engage in an activity that is concurrent with there business and on their property. They aren't talking about drinking in the parking lots; they are talking about specific areas that are or will be approved by the Department of Alcoholic Beverages. They will be the agency that defines what areas are allowed and what protective measures, such as fencing or railing to keep people from wandering into the parking area. They plan to start holding weddings at the Yellow Dog and the floor will actually be the ground. They are not looking for an outside deck, they are looking for a garden with a cobblestone surface in order to be more environmentally friendly. That is why he is asking for their support. It will also help other businesses. Hotel California...

Speaker card: Willie Carmine, owner of Malabar Mo's, 2805 Malabar Road, would also like Council to support this. Malabar Mo's has been there for 15 years, although some think otherwise, it is actually a nice friendly, relaxing place and he invited everyone to stop by there. He has had outside drinking there over that period and there has been some confusion on whether it was permitted. He did have the Alcohol, Tobacco and Firearms officer come down, and he did direct that there is no drinking in the parking lot allowed. The existing premises do have a small outdoor area, which is fenced off now, and it is permitted out there now. He felt the existing ordinance was made to prohibit drinking outside a 7-11 and there are State laws to prohibit that. He has been before Council before requesting that his premises be extended for a small function and it was denied based on the current ordinance. Before he came before Council he had the State and the Health Department out to inspect the area desired to be expanded and it was approved by both agencies. People like to enjoy the beautiful sunny weather Florida offers. Since he has been prohibited from serving out by his horse shoe pits, he estimated losing 500K in revenue. Horse shoe leagues all up and down the coast – big money; and now he can't participate.

Mayor stated he would need a motion to extend meeting. There are no more speaker cards. Or a motion to adjourn.

Motion: Rivet/Tinio-Borton to adjourn. Vote all Aye.

Meeting adjourned at 10:40 P.M.

BY:

Mayor Phillip R. Crews, Chair

ATTEST:

Debby K. Franklin, CMC
Deputy Town Clerk

DATE:
