

**TOWN COUNCIL  
MEETING  
MINUTES  
March 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 7:45, following a break after the workshop.

The agenda was approved. The Mayor read a Proclamation honoring Irish-American Heritage Month and presented it to Bill Moroney and Pat Reilly. Horton stated that there would be a parade on Saturday, March 16, in Melbourne, and asked if Council and the Mayor would be interested in riding in it. The Mayor said he would. Hall said he could not make it but would make arrangements to have a car if Rossman would drive. Rossman agreed. Rivet said he would also attend. They would meet at Town Hall. Moroney would get details on when and where to line up.

**ADDITIONS AND DELETIONS:** none

**CONSENT AGENDA:** Minutes of 2/4/02.

Mayor asked if there was a motion on the consent agenda. Rossman pointed out there was a mistake on the resolution 02-02. He voted no. Clerk made correction. Mayor also had several corrections. Page 3 on bottom, anecdotal, should be anecdotal, and two lines down, "not" should be added. Page 4, should be "moot," and at bottom, ...she does "know" anyone and add "not." Horton noted on page 3, they moved too fast and too far, should be "far."

**MOTION: Rossman/Rivet to approve minutes of 2/4/02 as corrected. Vote: all aye.**

**REPORTS:**

**ATTORNEY:**

Bohne reported on that the Supreme Court refused to hear a case from Tampa involving a company called Voyeurdom. It involved a 24-hour access via the Internet of adult situations in residential zoning in Tampa and selling this access via the Internet. The Middle Court ruled this was a violation of Tampa's adult entertainment ordinance. Voyeurdom appealed. The 11<sup>th</sup> Circuit Court ruled that this was not covered under the adult entertainment code and were particular to point out that no member of the public went to the house to view these activities; they were all seen in cyberspace. They ruled that Voyeurdom could continue to operate. Bohne has looked at our code and stated that this activity would not be covered by our code and suggested amending our code to change the definition of adult entertainment to prevent a house being located in Malabar being used this way. He can't prevent the cyberspace, but he could prevent the house from being located in Malabar. He asked for a consensus from Council to review the code. Rivet asked what harm would they be preventing. Rossman said that if a house in a residential neighborhood was being used for a commercial Internet business, it would not be being used as a residence, and he did not feel that many people would want this type of thing in

their neighborhood. Mayor thought it might be beyond regulating. Council gave their consensus to look into it.

**ADMINISTRATOR:**

Hall reported that he accompanied two Council members to Tallahassee. He has gotten money for paving roads, for fire department training and money for a shelter/town hall. These things are contingent if they remain in the State budget.

Florida Highway Products recently was out and did the repairs to the recent paving. The COP car is awaiting the light to be installed on top. The BCSO COP car has been seen around Malabar for the last two weeks. He has not heard anything yet on the request to appoint Richard Cameron to the trails committee. He needs dates for the workshop with the EELs so he can request the science at least two weeks in advance.

Rivet said we have repeatedly voiced our concerns to the County; are they just humoring us? He would welcome a dialogue. Horton is for having a meeting. Rossman wanted to go forward with meeting. March 25, 2002 at 7:30pm, at Town Hall was chosen for the workshop. Hall will notify Anne Birch.

Horton asked about the fines for the clearing; had they been set; also for the building permit for the work set for the Malabar Scrub; Zach is waiting. Phelps explained he could go ahead, but needed Council direction regarding fining them. Rivet, Moccia, and Tinio-Borton all said to fine them, just as an individual would be. Phelps said he must notice the owner and if the title has transferred to the State that could affect his ability to levy fines.

**CLERK:** Nothing.

**PUBLIC HEARING:**

1. Ordinance 01-06, Vacating ROW Procedures – Second Reading.  
Tinio-Borton/Horton to read by title only. Mayor read Ordinance 01-06 by title only.

**ORDINANCE NO. 01-06**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE XII OF THE LAND DEVELOPMENT CODE RELATING TO ADMINISTRATIVE PROCEDURES; PROVIDING DEFINITIONS; ESTABLISHING PROCEDURES FOR VACATING AND ABANDONING PUBLIC RIGHTS-OF-WAY; PROVIDING PROCEDURES FOR A TOWN INITIATED VACATE AND ABANDONMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Mayor then opened the Public Hearing to the Public. For benefit of public he noted that there was an error in the notice requiring it to be re-advertised.

Mr. Vitaliano, Corey Road, stated that when Malabar was platted years ago...need definition of a real road versus a paper road. Also need to notify other residents that may be effected. He is concerned with grandfathered ROW. Public Hearing closed.

**MOTION: RIVET/ROSSMAN to approve Ordinance 01-06. Roll Call Vote: Tinio-Borton, Horton, Rivet, Moccia, Rossman, all aye.**

**ACTION ITEMS:****1. ORDINANCE 02-02 SPECIAL EVENTS.**

**MOTION: Tinio-Borton/Rivet to read by title only.** Mayor read Ordinance 02-02.

**ORDINANCE 02-02**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE TOWN OF MALABAR CODE OF ORDINANCES BY ADDING NEW SECTIONS 10-1 THROUGH 10-9 TO CHAPTER 10 OF THE CODE OF ORDINANCES OF THE TOWN TO BE TITLED "SPECIAL ACTIVITY PERMITS"; PROVIDING FOR PURPOSE; PROVIDING FOR AUTHORITY TO ISSUE PERMITS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PENALTY; PROVIDING FOR TIME FOR SUBMITTING AN APPLICATION; PROVIDING FOR FEES; PROVIDING FOR AN APPLICATION PROCESS; PROVIDING FOR REVOCATION OR SUSPENSION OF A SPECIAL ACTIVITY PERMIT; PROVIDING FOR A PERMIT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

**MOTION: RIVET/TINIO-BORTON to approve. Discussion:** Horton asked about waiving fees. Rossman said it could be for weekend events, not just one-day events. Mayor thought we might be letting in bad with good. Horton clarified this is for events not held in the park. The fees would be set by resolution.

**VOTE: Roll Call: Tinio-Borton, Horton, Rivet, Moccia, Rossman, Aye.**

**2. RESOLUTION 10-02 SUPPORTING MALABAR'S RIGHT TO HOME RULE**

**MOTION: Tinio-Borton/Rivet to read by title only.** Mayor read Resolution 10-02.

**RESOLUTION 10-02**

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING MALABAR'S RIGHT TO HOME RULE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**Public Discussion:**

Stuart Borton, River View Drive. He stated that at the meeting on February the County Commission displayed Home Rule at its worst. Rossman thought this was just a feel good thing. Mr. Vitaliano said the resolution is before Council because we got wounded by the County. If the County ignores our Home Rule the Town should just be dissolved.

Tom Eschenberg: Said the Council was doing this to get even with the County. Because Tinio-Borton sent out a letter and got everyone all fired up. The claims were not backed up with facts. He was on Council for six years. Growth does not pay its way. Income doesn't just come from ad valorem taxes. He asked what rule are they breaking. This has to do with people wanting to buy land. Problem may be in communication. We should know what they are doing. Not accomplishing anything with this resolution.

**MOTION: TINIO-BORTON/RIVET TO APPROVE** Discussion. Horton objects to the third line – cease and desist. Tinio-Borton said it might not be everyone's opinion. Mayor said the resolution supports home rule and mentioned what County Commissioner Randy O'Brien stated at the meeting in February, they, the County, would be upset with the State if they came in. Rossman said we bear a portion of the responsibility. He thought the resolution was wrong; that it will bear no weight. We are asking other cities to do this also. Rivet stated it appeared to work upwards but not downwards. This is a legitimate concern – they should be able to have control on what goes on in the Town. Horton said we should get past this and move on. Have the workshop. Rivet said it is a useful resolution. It

reiterates their belief in Home Rule. Horton said she thought the County got that message at the Commission meeting. Rivet and Tinio-Borton said that was all that they were offered. Horton said she thought that is what Council wanted.

**VOTE: Roll Call: Tinio-Borton, Rivet, Moccia, Aye. Horton and Rossman, Nay.**

**3. RESOLUTION 11-02 SUPPORTING BREVARD CROSSINGS MALL**

Mayor explained that this was a resolution of support for the City of Cocoa.

**MOTION: TINIO-BORTON/RIVET to read by title only. Mayor read Resolution 11-02.**

**RESOLUTION NO. 11-02**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING BREVARD CROSSINGS MALL AS A REGIONAL FACILITY THAT WILL BRING NEEDED DOLLARS AND JOBS TO BREVARD COUNTY; PROVIDING FOR AN EFFECTIVE DATE.**

**MOTION: HORTON/ROSSMAN TO APPROVE** Discussion. Tinio-Borton wants further explanation. It is basically a resolution of support for the City of Cocoa. The major objection is from Merritt Island. They feel it will take away from their mall.

**VOTE: Roll Call: Rivet, Present. Moccia, Horton and Rossman, Aye. Tinio-Borton, Nay. [ April 15, 2002: Tinio-Borton changed her vote to Aye ]**

**4. REQUEST APPROVAL TO CONSTRUCT SIX-FOOT COLUMNS AND FENCE**

Dan Michael, 2265 Atz Road, is the applicant. Hall explained that this had been to P&Z and had a favorable recommendation. Horton asked Phelps if he had problems. No. The columns will be concrete.

**MOTION: HORTON/RIVET to approve. Vote: All Aye.**

**DISCUSSION:**

**1. APPOINT REPRESENTATIVE TO VALKARIA AIRPORT ADVISORY BOARD**

Mayor explained that in the past all members have been from Council, with the exception of the most recent applicant. He suggested putting something in the next Mailboat newsletter. Rivet had someone that might be interested but never heard back from him. Hall doesn't have any volunteers.

**2. APPOINT LIAISON TO EEL COMMITTEE**

Horton wanted this on because there is interest. Rossman volunteered to sit on both the EELs and the Intergovernmental Boards. Without objections, he is appointed to both.

**3. CARLENE CONROY – COUNCIL ACCOUNTABILITY**

Carlene, Conroy, 1865 Alexander Lane, Malabar. Read attached statement.

Rivet asked to respond to the statement read. Mayor asked that comments be directed to Chair. Rivet did not ask about the impact to his residential property, which is not within a couple of miles of the proposed purchase. He wore the badge because he is on Council. He did not feel he needed to keep that secret at a public meeting. Attorney Bohne instructed them all on Sunshine Law and regarding what they can and cannot do. He did not speak to any topic other than as a private citizen. He did not speak to any other Malabar elected officials regarding how they should vote. He wants that in the record. Tinio-Borton said the letters went out in good faith. Said what the EELs are proposing does not effect her property at all. Rivet said that of the people he has had contact with, 4 to 1 opposed the plan. Moccia had also contacted people in her area and the majority of them also opposed it. Mayor did not want to stifle anyone's right to speak. He thought we had a good Council. Mayor did not want to pass judgement. He suggested rules or guidelines on mailouts. There was controversy on this particular letter. Last minute mailouts – they have a right to reach. Mayor does not want animosity amongst Council. Tinio-Borton said we had an agency do the mailouts, and we were lead to believe that those

letters would get out on time. They did not. The Mayor said in hindsight we should have used first class postage. Exercise good judgement. Horton questioned when it arrived at the Post Office in Malabar. Rossman said he has had contact with two citizens and it has become adversarial and he wants it settled properly. He understands that Gentile has to have 325' of property frontage. Phelps said it is an issue the applicant is addressing. It is one of the reasons he withdrew his application. Rossman said it appears there is a communication problem, either inside town hall or outside. He does not want a lawsuit. Mayor said the issue would be addressed on March 26 at the Special Master Hearing. Rossman said we need to address it properly.

### **REPORTS: MAYOR, COUNCIL**

Rossman: nothing

Rivet: Asked about dock permits. DEP issues permits then Town issues building permit. Get DEP permit first and then apply for conditional use. The MMA has not submitted an application. The determination needs to be made if it is residential use. He has had conversations with a past president. MMA has for many, many years maintained their operation there and it would be considered grandfathered in – the question comes up if they are looking at doing something similar at a different location. Regarding the EELs he asked the attorney if he knew of any other methods we could take. Not short of a lawsuit. He asked if he had heard anything regarding the lawsuit being dropped as part of the purchase plan. Attorney Bohne had not heard of that possibility. Rivet would support that particular purchase only if it made the lawsuit go away.

Moccia: She had also spoke to Mark Thoe regarding the MMA plans and got him the necessary paperwork to him. Now it is up to them to submit it.

Tinio-Borton: Wanted to thank everyone for coming out and supporting the BCSO fundraiser for Tinio. They raised over 2400.00. She had received a call from Scott Glaubitz who wants a meeting with Hall. Also Cindy Burke wants to meet with Hall and herself. June Rhine is complaining about tractor-trailers parking on her street for long periods of time.

Horton: She also has spoke with someone from the Malabar Mariners. The next Town meeting is set for March 13. She will have someone from the County come and talk about how to prepare animals for emergency. She thanked the Malabar Fire Department and expressed a desire to give some of her discretionary fund to them. She also asked about the mailing again. Tinio-Borton told her to forget it. The greater issue with the letters is that Council speaks with one voice. It is not always possible. In the future, he would prefer to see letters go out that our non-advocacy type. Council agreed.

Bill Hall said that each November, when there is a change in Council there is a change in how code enforcement is handled. In the past, we have had councils that request we go softer on enforcement and others that want more enforcement. They need to know if it is to be enforced or not enforced. Rossman said as long as he is fair and impartial. Moccia said she certainly wanted it enforced. Mayor thinks it is sometimes hard to maintain the perception that you are being fair. Mayor suggested that Jim not take on making rulings on things, turn them over to the Special Master. Rivet doesn't want him out looking for violations, but if there is an obvious one that is seen, as you are out to do an inspection, then you have to follow up.

Jim said that in general majority doesn't know it is a code enforcement issue. Education is the approach he uses. Once they are made aware the problem goes away. A small minority will challenge. And those go before the Special Master. He explains that approach. Mayor agreed that is a fair approach.

Horton said she had spent almost two hours with Jim on the MMA issue and some other things. Mayor suggested that Council contact Hall first, although he realized his time is also sparse.

Jim also commented that the new Southern Building Code went into effect as of March 1, 2002.

**Without objection the Mayor adjourned the Council meeting at 9:45pm.**

Adjourned at 9:45 P.M.

BY:

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Mayor Phillip R. Crews, Chair

ATTEST:

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Debby K. Franklin, CMC  
Deputy Town Clerk

DATE:

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