

**TOWN COUNCIL MINUTES**  
**June 3, 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 - EXCUSED
COUNCIL MEMBERS:	BOBBI MOCCIA
	BOB ROSSMAN - EXCUSED
	NANCY TINIO-BORTON
	STEVE RIVET
ADMINISTRATOR:	WILLIAM HALL
ATTORNEY:	KARL BOHNE
CLERK:	SUSAN KABANA

Also present was Jim Phelps, Building Official.

The meeting was called to order at 7:30pm by the Mayor. The prayer and pledge were lead by the Mayor.

**ADDITIONS AND DELETIONS TO AGENDA:**

Mayor – adds Resolution 13-02 without objection. Tinio-Borton – would like to discuss the truck ordinance and also support of the beltway. Mayor approves without objection.

**PROCLAMATION: NATIONAL SMALL CITIES DAY, JUNE 14, 2002**

Mayor read the proclamation.

**CONSENT AGENDA:**

**MOTION: Tinio-Borton/Rivet to remove minutes from the consent agenda.**

Kabana – the minutes listed on the agenda did not make it into the packets – will put these minutes on the next agenda.

**VOTE: All aye.**

**REPORTS:**

**ATTORNEY:**

Bohne – Resolution 13-02 is a DOT requirement and the resolution designates who will sign the maintenance agreement with DOT. He notes that the agreement needs to name Malabar as a town, not a city.

Rivet – the dismissal of the BML/PRN lawsuit was part of the contract with Brevard County – has that happened? Bohne – no.

**ADMINISTRATOR:**

Hall – at the last meeting there was discussion about a hole in the road where a new house was built in Country Cove – Hall passes out a picture of this hole. It is at the edge of the driveway and Hall is not sure that the developer caused it.

- Regarding resolution 13-02 – Hall's name is on it but Council should designate whoever they want to sign the agreement.

- We are getting requests for water and sewer and Hall is working on avenues for grant funding. Our engineer is creating some proposals that we can use when making

application for grant funding. When Hall has something more concrete he will inform Council. We have requests for water at the north end of Malabar on US1 and coming down US1 to Harris. We have water at Country Cove that can go down Corey Road. We have the Brook Hollow ROW and a water line could come down from there. At this point we know that we qualify for at \$1.5 million – 3% loan, this is just something we are investigating.

- Hall and the Mayor met with a landscape consultant and they gave him a tour of the town. The consultant (Brad Smith) said that there is DOT money available for clearing all the pepper trees along US1 through the Scenic Highway program. Smith cannot make our June 11<sup>th</sup> workshop due to other commitments. He is willing to come to the July 15<sup>th</sup> Council meeting and give us some ideas – of which he has many.
- Hall talked to Charlene Horton and she asked to be excused from this meeting, she is on vacation.
- Hall asks for approval for vacation time the last two weeks of June. Mayor approves without objection.
- Tinio-Borton – would really like to see water and sewer come down US1. She talked to people today who are interested in doing this. Rivet – has no objection to water lines on Malabar Road and on US1.
- Tinio-Borton – what happened to the fines? Phelps – that is an issue from this point on that will probably have to be pursued by the attorney. Tinio-Borton – does not want to see this fall by the wayside. Bohne – the issue is whether or not another branch of a local government can be subject to code enforcement fines. Tinio-Borton – why not? Bohne – there is a thing called sovereign immunity. Tinio-Borton – she would like to have an answer to this by the next Council meeting. Bohne – there are some things that certain governing bodies are immune to and he just wants to make sure we don't start something we can't finish. Tinio-Borton – does not want to let this go and she does not want to wait any longer for an answer. Rivet – agrees.

#### **CLERK:**

Kabana – is ready to set the workshop for redistricting. Council set this for June 11<sup>th</sup>.

#### **ACTION ITEMS:**

##### **1. SET AN AGENDA FOR THE BEAUTIFICATION WORKSHOP**

Mayor – would like to discuss what we want on the agenda for June 11<sup>th</sup>. Feels that Council should begin with the overall picture and decide where we want Malabar to be in the future, and then break that concept up into portions that are manageable. Since all the beautification grants are matching, we will need some money to begin the process.

Crews - the workshop will be an opportunity to decide if Council wants a non-binding architectural theme. Public buildings could all match this theme and we could encourage businesses to do the same. Tinio-Borton – what is the history of Malabar? Mayor – we had the mail boat, a railroad station, and a large saw mill. Tinio-Borton – what about a railroad theme? Mayor – discussing the theme is what he thought the second part of the agenda for the workshop could be. It may be possible to use the outside of town hall to begin the theme.

Rivet – feels that we need to understand what plans DOT's has for the major roads so we can work around that.

Mayor – notes that Brad Smith is good at looking at the end product and can help breaking down ideas into manageable projects, he will also assist with the funding. If we

can fund one project, and see it through, then we are more likely to get the next project funded. He thinks that building water lines down the major roads is important.

Crews – would like to see some use of the river front. Hall – we are asking for funding from DOT and that land belongs to them. Notes that Malabar owns the pier at the end of Orange Avenue.

Bill Withers (from the audience) – states that on May 6<sup>th</sup> the Mayor said he was in favor of this if there was no cost to the town, is that still the case? Mayor – he would prefer to do business that way but some of this requires a match and in that regard there might be some cost to the Town. Withers – so we've gone from no money to matching a grant? Rivet – if we have the money Council may choose to spend it on matching, if there is no money then this can't happen.

## **2. RESOLUTION 12-02 MALABAR PARK USAGE RATES**

**MOTION: Tinio-Borton to read by title only. Mayor approves without objection.**

Mayor read:

### **RESOLUTION 12-02**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 1-02 REGARDING THE POLICY FOR THE USE OF PARKS; AMENDING FEES AND DEPOSITS PER CHAPTER 12.5 SECTION 20 AND 22 OF THE CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

**MOTION: Tinio-Borton/Rivet to approve the resolution.**

Hall – this adds section 5, the Park Board found that we were charging people who probably should not be charged, like the Boy Scouts.

**VOTE: Aye – Rivet, Moccia, Tinio-Borton. Nay – none.**

## **3. RESOLUTION 13-02 TRAFFIC SIGNAL MAINTENANCE**

**MOTION: Tinio-Borton/Rivet to read by title only. Mayor approves without objection.** Mayor read:

### **RESOLUTION NO. 13-02**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, APPOINTING THE TOWN ADMINISTRATOR AS THE DESIGNATED OFFICER TO SIGN THE TRAFFIC SIGNAL MAINTENANCE AND COMPENSATION AGREEMENT FROM THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING AN EFFECTIVE DATE.

**MOTION: (editors note: no motion was made see July 1<sup>st</sup> minutes)**

Hall – DOT is going to pay Malabar on a graduating scale for a period of 5 years to maintain the traffic signals on US1. He explains that the state installed the traffic lights and now we maintain them. Hall challenged DOT stating that the traffic signal at the corner of Malabar Road and US1 is at the intersection of two state highways. After negotiations the state agreed to reimburse the Town for each traffic light - \$347 for the Harris light and \$518 for the Malabar Road light – and then these amounts gradually increase over the next five years.

Crews – does maintenance costs include replacement costs? Hall – no, the state will still do the replacement. Notes that we budget about \$2,300 for traffic light maintenance, this money will help off-set those costs.

**VOTE: All aye.**

**DISCUSSION ITEMS:****1. DISCUSSION OF TRUCK ORDINANCE**

This is something that Tinio-Borton feels should be addressed, Rivet agrees. Hall – feels that this is a Council decision but cautions that this will be difficult to enforce. Bohne – we can use a citation program or use code enforcement. Mayor – feels that the ordinance from 1988 (that did not pass) looks pretty good but he does not see anything about boats, it does mention trailers. Phelps – we currently have an ordinance dealing with recreational vehicles which is shortly to be revised due to the difficulty in enforcement. We lost twice on that ordinance, once with code enforcement and once in court. Mayor – if we adopt the 1988 ordinance then we need to make sure it does not conflict with any ordinance revision.

Hall – if Council is interested in doing this then Bohne should look this over and present something that Council can workshop. Tinio-Borton, Moccia, and Rivet all support that idea. Bohne – can have this ready when Council chooses. Council – would like this as soon as Bohne can get this to them.

**2. DISCUSSION OF THE BELTWAY**

Tinio-Borton – talked to Pat Wollard from the City of Palm Bay today and he is looking for support for the beltway because he feels that the County wants to squelch it. Mayor – was at a fundraiser for Governor Bush and learned that since the funding for the beltway does not fall within a certain category that it will not pass the veto process.

Rivet – what is the route? Hall – from Ellis Road in West Melbourne to Malabar Road out near the Regional Park, currently the route is the only thing certain at the MPO level. The County is not against this project and even though the Governor will veto this, the County will continue working on this project. Tinio-Borton was told that Nancy Higgs is very much against this project, Hall is not sure about that.

Hall – the future thoughts, which are not stable at this point, are that there are three different ways to go from Malabar Road, through Palm Bay, to US1. One of the proposals was to exit at Grant Road, another is to exit at Atz Road with an interchange at I-95 and Atz Road becoming like Malabar Road, and the third choice is at Fountainhead. Hall stresses that the section from the west end of Malabar Road to Ellis Road is the only project that has been approved and is being engineered. Tinio-Borton – so what is Palm Bay asking from us? Hall – the letter he received from them basically says that they want to move ahead with this project and they feel that the County is basically dragging their feet, so Palm Bay wants support from other cities to tell the County to hurry up.

Rivet – we need to understand what the plan is for getting to US1 because if there is an interchange at Atz then he is not in favor. He does not want to give blanket support and then have Palm Bay say that Malabar supports whatever they do – and then Palm Bay does something we don't like.

Bill Withers (from audience) – he went to a lot of meetings on the beltway and one of the end tails as to why they cannot figure out where to have the beltway meet US1 is that five years ago the County Commission put a proposal to the State to build another causeway. The State said OK but the causeway would have to line up with the beltway because they want more of an evacuation route. South Melbourne Beach is growing and Floridana Beach down there is growing by leaps and bounds. So Withers cautions that whenever Council hears about the beltway they should think of the causeway, and the exit on I-95, which is supposed to be built where ever the beltway crosses it.

Crews – if Palm Bay wants to provide us with a sample resolution we can look at it. Rivet agrees.

**PUBLIC COMMENT:**

- Bill Withers, Candy Lane – is asking Council to look at future controlled growth from a leadership position. Feels that we are fortunate so far but we don't need the type of growth Palm Bay is experiencing.

Notes that in Malabar we have a problem with the 'minor' and 'major' subdivisions, they can be played with and this needs to be repaired. On Weber Road we had one person who kept applying for minor subdivisions over and over so that he would never come under a major subdivision. Withers asks Council: if he came before Council after meeting all the requirements of the building department would Council be obligated to rezone RR-65 into greater density? Bohne – as long as it meets the comp plan. Tom Eschenberg (from the audience) – the key word here is 'obligated'. Bohne – if the Council denied such a request then they would be looking at a lawsuit. Withers – this is why this Council needs to take a stand and keep our living standards as high as they are today.

- Steve Gentile – just wants to give Council an update on what is happening with his property. The land is virtually cleared, by the end of the week the final rake should be complete. The land then needs to be graded and seeded. There is the issue of the forty trees he is supposed to plant and he wants Council to be aware that he was held up about three weeks waiting for the stop-work order to be released. Then there was an issue as to whether or not red cedars comply with code – and in the course of all this, the sixty days has lapsed. Since the land is not even graded yet he feels that he is going to get into a situation where he is going to be taken back to the Special Master. He does not want the Town to keep spending money on something that is going to get done. With fifteen acres he is going to need a deep well to water the forty trees, he also needs electricity to pump the water. He is presenting a conditional use to Planning and Zoning and then that will be before Council. He is asking for an extension for the order from the Special Master, if he plants the trees now it will be a worthless effort.

Bohne – Council cannot give this extension, Council has no jurisdiction. Gentile needs to go back to the Special Master. Gentile – OK, he notes that he submitted a request for extension today to Phelps. Bohne – then you are on the right track.

**MAYOR, COUNCIL**

- Rivet – does not feel that the letter lobbying the Council by Florida Today newspaper regarding education spending is appropriate. Mayor agrees.

- Moccia – have all the ditches been finished that are going to be done? Hall – no. Moccia – when do you think they will get to Quarterman? Hall – it may be done, public works is west of that area now. Moccia – three days ago it was not done, she just wants to know the accurate timing of the project so she can report back to the citizens. Hall – notes that this is the current project and we are making progress and public works will work on Quarterman.

- Tinio-Borton – nothing at this time.

- Mayor – has added a few things to the website, encourages Council to check it out. Also asks for pictures of old Malabar for the website, he can scan them in. Withers – are we going to have a citizens comments corner on the web page? Mayor – will look at other cities and see if, and how, they have done this.

- Hall – asks Moccia and Tinio-Borton if they are satisfied with the EELS information he provided? Moccia – yes, she wanted to make sure they were within the boundaries they

asked for. The main thing is that she does not want an EELS issue to slip past them again, Council needs to know every detail.

Phelps – notes that we have had a number of people call regarding development of that piece of property, nothing has materialized at this time. Hall – Flagler has a number of projects they are looking at, the most recent proposal is to develop and have preserve intermingled in the development. Hall notes that developers tend to do a lot of ‘what if’s’. Tinio-Borton – feels that Withers has a good point – we need to preserve our nice big lots. Hall – only Council can change the zoning. Rivet – and our attorney just told us that if all the requirements were met we’d be forced to change the zoning. Hall – feels that Council would have to have a reason for denying the rezoning.

Bohne – the process is quasi-judicial and if Council is going to deny an application that meets all the requirements of our code then there better be a substantial reason behind the denial. Rivet – so we need an ordinance that makes it very hard to change the zoning? Bohne – correct. Tinio-Borton – so what do we have to do to really deal with this issue? Bohne – get in touch with Ed Washburn. Mayor – now is the time to review this. Bohne – if Council makes a change to the comp plan it is a very long process. Rivet – feels that our charter makes a strong defense in that it states that we want to maintain our rural atmosphere. Phelps – it is not so easy to rezone because most of our zoning is in accordance with the comp plan and so to re-zone they have to re-do the comp plan. Rivet – so that is a deterrent to change the zoning. Bohne – it just depends on how the comp plan is designated in terms of density levels. With permission Bohne would like to talk to Ed Washburn and discuss this issue. Council agrees. Moccia – we just want to make sure we don’t end up with clustered homes. Rivet – we want to maintain our rural atmosphere and do whatever is legislatively necessary to do that.

Meeting adjourned at 8:50 pm.

BY:

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Mayor Phillip R. Crews, Chair

ATTEST:

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Susan Kabana, CMC  
Town Clerk/Treasurer

DATE:

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