

**Town Council Minutes  
July 15, 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
ATTORNEY:	KARL BOHNE
CLERK:	DEBBY FRANKLIN

This meeting was called to order at 7:30pm by the Mayor.

**Motion: Horton/Rivet** to approve agenda. Vote: All Aye.

Mayor then read a Proclamation for Eagle Scout Zachary Beard and presented it to him. Bradley Smith, President of Brad Smith Associates, Inc., then made a presentation to Council on a phased plan to beautify Malabar. Some of his suggestions were to pursue grant funding to clear the river of pepper trees, spruce up the medians, rebuild the town dock, acquire additional land, continue the equestrian trails, etc. Council thanked him for his presentation and stated they would discuss it and invite him back to another meeting.

**Motion: Tinio-Borton/Rivet** to approve the consent agenda. Vote: All Aye.

COUNCIL MINUTES 6/20/02

**REPORTS:**

**Attorney:** Nothing specific. He did ask to address Council on procedural items prior to public hearings.

**Clerk:** Nothing.

Rossman suggested moving the last two public hearings to the end of the agenda. Without objection the Public Hearings #2 and #3 were moved to after the Action Items.

**PUBLIC HEARING:**

1. Ordinance 02-04 second reading: REDISTRICTING OF COUNCIL MEMBER SEATS.

**Motion: Tinio-Borton/Rivet** to read by title only. Vote: All Aye. Mayor read.

**Motion: Tinio-Borton/Horton** to approve Ordinance 02-04.

Mayor opened the meeting to the public and explained why this redistricting had to be done. No public comment. Mayor closes public portion. Rivet felt all the riverfront should be in one district.

**Roll Call Vote: Tinio-Borton, Horton, Moccia – Aye; Rivet, Rossman – Nay.** Ordinance 02-04 passed.

**ACTION ITEMS:**

1. WILLIAM FOLEY: CONDITION OF BOOTH AND LETT LANES

He is in the west end of town and feels forgotten. He wanted it in the record that Booth should be paved. He felt that there was enough interest from the residents on Lett Lane that they would be willing to pay an assessment in order to get Lett paved also. The headwalls at Booth and Lett need repair; also at Babcock and Booth. Booth Road goes all the way back to the

gas pipeline. He has caught the mosquito control back there cleaning out their trucks. There is also shooting going on back there – he has called Sheriff's office on more than one occasion. The roads need gray sand right now. Moccia said she has visited the site and Foley is correct – it is poorly maintained and has been for 15 years. Mayor suggested Foley start at the building department on his paving request. Rossman suggested a workshop with Carl Beatty of Public Works. The workshop would be to prioritize roads and drainage issues. Foley would also like the area beyond Lett on Booth to be chained off to prevent motorized traffic. Workshop is set for July 23, 2002 at 7:30pm.

2. FIRST READING, ORDINANCE 02-03, REPEALING THAT PORTION OF SECTION 1-3.3 OF THE LAND DEVELOPMENT CODE OF THE TOWN CONCERNING THE AUTHORITY OF THE PLANNING AND ZONING BOARD TO ISSUE WAIVERS TO SETBACKS

**Motion: Tinio-Borton/Horton to read by title only. Vote: All Aye.** Mayor read.

Attorney Bohne explained that this section of the code had mistakenly given Planning and Zoning variance authority. **Motion: Tinio-Borton/Horton to approve Ordinance 02-03.**

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

3. FORM DR-420, CERTIFICATION OF TAXABLE VALUE

**Motion: Horton/Rossman to approve 1.7950 for the proposed millage.** The Mayor explained the process to the audience. If Council did not propose some amount over not raising taxes there would be no reason to have two public hearings prior to adopting the budget. The public hearings will be held on the Council meeting dates of September 3 and 17. Discussion. Tinio-Borton doesn't want to raise taxes but how else are the roads and drainage issues going to be corrected? Rivet stated that the Town has raised taxes every year for the last 4-5 years; it is time for a holding pattern. Mayor doesn't like to raise taxes. Consensus to start discussions with ½ the increase possible. Tinio-Borton would like to start with the maximum and work down.

**Vote: Rossman, Rivet, Moccia, Horton – Aye; Tinio-Borton – Nay.** Proposed millage rate is set at 1.7950.

**PUBLIC HEARINGS:**

**2. CONDITIONAL USE, COMMERCIAL STABLE, CYNTHIA BURKE, 2085 OAKRIDGE LANE, IN RURAL RESIDENTIAL ZONING**

Burke made statement that she has lived here ten years, has ten acres on Hall, Corey, and Oakridge with a ten-stall barn. This issue has been hanging on for past two years. It is a simple set up – the 4-H use her place. Mayor opened to the public.

K. Reilly, Howell Lane, spoke in support of her facility. Burke provides a wonderful service. It is perfectly located. It is low-density usage of property.

C. Shook, spoke in favor and stated it is a clean and safe stables.

R. Cameron, State at the P&Z meeting Burke had lots of support from the community. It is within the flavor of what Malabar is – open.

E. Burke, 2360 Corey, Stated Burke takes good care of horses, supervises all activities, 4-H kids love her.

Public portion closes.

Councilpersons Moccia, Rivet, Rossman, Horton and Mayor disclose that have talked to resident Durand within the last two – six months regarding dust. Tinio-Borton disclosed she had met at Burkes with Burke, Hall and Phelps.

**Motion: Rivet/Rossman to approve the conditional use for Cynthia Burke.** Discussion. Mayor explained that there were criteria that they had to go by in granting a conditional use. He referenced Chapter 7 on site plan review. Moccia concern is the dust. Another neighbor has also complained. Burke explained that the dust issue is an old issue. Irrigation has been put in, industrial strength and it goes 15 feet outside the ring. Mayor read from page 375 regarding berms, tree line, opaque screening.

Short break for clerk to make copies of criteria. Reopen at 9:12 pm.

**Motion: Horton/Tinio-Borton to table. Vote: Horton, Tinio-Borton – Aye; Rossman, Rivet, Moccia – Nay.** Rivet asked John Eccles, Atz Road to speak. Eccles explained that he holds a BA in science and wanted to put the dust issue into perspective. The two dirt roads adjacent to her property are approximately 70,000 square feet of dust, compared to 15,000 SF arena. The dust was an issue long before the arena. He suggested Durand should petition to pave the roads. Rossman said that Section 1-7.3 pertains to new construction and hers is done. Everything is done. To delay issuing this any longer would be wrong. Rivet voted no to tabling and he stated council needed to quit procrastinating and follow the letter of the law. The site plan as submitted is not sufficient. Burke stated that Hall and Phelps said that no other drawing was needed. Phelps stated that the site plan requirements for a conditional use permit are more for a Berri Patch facility – they are not directed to low density use. Attorney Bohne stated the code requires a site plan – more like an as built survey. He explained that council could not do a provisional approval. Mayor stated that the conditional use required the applicant to meet the 15 items listed in the criteria. Rivet withdrew his motion to approve. He apologized to Ms. Burke for having to put her through this but there is no way they can approve without the required documents.

**Motion: Rivet/Tinio-Borton to reconsider motion to table. Vote: Rivet, Moccia, Horton, Tinio-Borton – Aye; Rossman, Nay.**

Rivet request Phelps to work with Ms. Burke. Rossman directed clerk to provide criteria to Ms. Burke. (Note: provided copy that night.) Mayor stated that any member could bring this back up at a future meeting. Consensus of Council to have this on next agenda. Phelps said it depends on when he receives it because both he and planner Washburn will have to review it. Rossman said this needs to be expedited. Burke asked for mediation in dealing with Phelps. Rossman volunteered.

### 3. CONDITIONAL USE, COMMERCIAL STABLE, STEVE GENTILIE, 1200 COREY ROAD, IN RURAL RESIDENTIAL ZONING

Attorney Bohne swore in all that would give testimony. Chair recognized Dr. Gentile. Attorney Victor Watson, real estate attorney representing Gentile introduced himself and began the presentation. He is requesting approval of a conditional use for a commercial stable on 14 ½ acres of property in RR 65 zoning – the only zoning that allows commercial stables. He described the property as west of Corey and one mile north of Malabar. They have assembled a package with all the various reports from the various experts Gentile has hired. He introduced experts, Rochelle Lawandales, Land Planning consultant, Sans Lassiter, traffic consultant, JoAnn Van Adam, real estate appraiser. He acknowledged a call from Malabar Town attorney Bohne regarding the new site plan. He has provided opposing council with same. He understands about due process but explained that none of the changes were a surprise, they had all been discussed at P&Z and would like to proceed. They incorporated all the recommendations the P&Z board made at their meeting of 6-12-02. Atty Bohne explained to council that because of the lack of review of the revised plans opposing council might have an objection to proceeding. Watson explained that all changes made were discussed at the

P&Z meeting where all opposing council was present. Chair directed Watson to continue. Watson explained that Gentile came to town hall and asked if he could do what he proposed and was told yes. Gentile applied for a landclearing permit, using his legal description and was issued one and started clearing in October. Gentile did not get a stop work order until February, when suddenly people started complaining. It was brought to the Special Master and the Special Master found that there was a misunderstanding. The Special Master did require 40 trees to be planted. The site plan has always shown the red cedars to be planted. Phelps wasn't sure they could be approved and it went back and forth and eventually to Council and they approved the trees and the tree planting plan. They were ordered the next day and delivered later that week and are in place, Gentile intends to plant them. He has requested Phelps to come out there and approve the location prior to digging. He is presently waiting on Phelps. Tinio-Borton asked when Gentile had asked for an extension. Watson turned it over to Gentile. After the Special Master rendered his opinion it took three weeks for Phelps to give the go ahead to continue clearing the land. Gentile lost his land clearing contractors and had to wait, then lost window of opportunity to burn, and had to get a contractor to grind the debris. That took another 2 ½ weeks. Then he had to wait on the tree plan to be approved. He got a letter from Phelps on June 3 approving the red cedars, ordered on 4<sup>th</sup> and picked up on Wednesday and they are on site at 35 foot intervals waiting for Phelps to approve the location. Watson then entered into the record the transcript from the Planning and Zoning meeting (handed a copy to each Council and the Clerk.) He then turned presentation over to Lawandales, Lawandales Planning Affiliates, 2200 Front Street, Melbourne.

She had worked for the town 20 years ago. Actually got the lay of the land on horse back. She also wrote one of the town's early comp plans. She is asking for a favorable decision. A conditional Use Permit allows for commercial stable in RR-65 zoning. She handed out presentation booklet. Stated that they made changes to the proposal based on input from P&Z and citizens at meeting of 6-12-02. She then reviewed the changes on the site plan displayed on easel. Stated that applicant Gentile wants to be a good neighbor, as are the seven or eight other horse stables within the community; he wants to live here. He will offer lessons, training and boarding. He intends to have 28 stalls, the barn will be 9,000 SF, the house 5,000 SF, two paddocks, pasture area, compost area and a riding ring. They added a buffer strip across from Corey to block lights from shining into the backs of the homes in Country Cove, deleted the pasture area up in the front and removed the free standing sign. There will be no lights out front. They flipped the riding ring and the pasture. The lights around arena have been lowered to 20 feet. They changed the hours to 8am to 10pm. They will preserve the wetland areas, offer ample parking and retention. The site will be served by city water. What they propose is more than code requires for site buffering. All uses are separated by minimum of 400 feet, with most at 1000 feet. No uses within 100 feet of property line. Odor abatement plan is included in site plan.

Rivet asked if the odor abatement plan was in response to the Special Master requirement. Lawandales stated yes. Rivet asked if she was familiar with the recommendation from P&Z. Yes, and she read recommendation. The character remains the same as surrounding areas. They are maintaining 98% impervious surface with over 90% open space. Gopher turtles will remain or be removed to conservation area. She stated when the preliminary site plan was submitted there was a lot of miss-information out there and hopes this presentation will clear that up so the community will recognize he wants to be a good neighbor.

Tinio-Borton asked how much of the 14 ¼ acres are wetlands. Gentile states less than ½ acre – less than 2000 SF per BKL Environmental. Rivet asked if the driveway permit was approved for a commercial use. Gentile stated he applied to DEP in September and it was issued in late January. During that time things changed which required him to apply for the CUP. DEP was contacted, as was St Johns, and the Army Corp of Engineers. DEP stated that as long as the driveway did not deviate from their approved plans, then that was adequate and St Johns concurred. St. Johns is less stringent than DEP in wetland impact issues. Rivet asked if he had any documentation of what he had just said. Gentile said he could contact Arron Watson. They didn't feel further documentation was necessary – the permit was clear and they have been out to his site several times. Because of the out-cry people have called their office. Rossman said he had a letter from DEP dated February 22, 2002 stating additional permitting may be needed due to his proposed use. St. Johns may also need to be contacted. Gentile said he has that letter and has contacted St. Johns and the key word is "may" and that was only if additional retention areas were needed and they are not.

**Motion: Tinio-Borton/Rivet to extend meeting 15 minutes. Vote: all Aye.**

Attorney Beadle, representing the Drivers objected stating hearsay. Atty Bohne rules it is hearsay. Watson objected stating they are not in court and it is admissible. Bohne agreed and stated that council should give it the weight they consider it deserves. Lawandales recognized that additional permits must be issued and that prior to getting a building permit those permits must be in hand, but there is nothing in Malabar code that states that all permits must be in hand at this moment. They have every intention of procuring all permits necessary. Questions were then allowed from audience.

John Eccles, from audience asked if the parking was calculated at four persons per vehicle. No, two persons per vehicle. He asked about restroom facilities. She said yes, they were shown on plan. He asked about similar uses – what came first the houses or the stables in these similar uses? Lawandales didn't know. No further questions from public.

James Beadle for the Drivers, asked Lawandales about the statements she made about similar use and other horse farms. He asked what the general use was in the surrounding areas. She referred to the aerial photos. She doesn't know how old they are. He asked which came first, the homes or the stables. She didn't know. Re: odor abatement that was the response to the Special Master ruling. This has to do with how he is maintaining the property now. She pointed there had been horses on the land before. He asked her about the recommendation from P&Z didn't it state that applicant was to work with staff to make the plan more compatible. She read the recommendation. He mentioned two additional changes regarding future and proposed. She said it meant nothing.

**Motion: Tinio-Borton/Rivet to extend meeting 15 minutes. Vote: all Aye.**

He asked where the conditional use would start and stop. She said it would go with the whole property. He asked if that would make it a mixed-use proposal. He said the commercial stable is not an allowable use. She said it is allowable with conditions. He asked her what the paddocks would be used for. She said individualized attention and lessons. He asked if they would be accessory uses to the accessory use. She said they would be part and parcel of the conditional use. He asked if on all the applications submitted to regulatory agencies the driveway that comes out on Corey Road was referred to as a driveway. She said yes that was probably true. He asked how it got to be considered a private road. She considered them the same. The code says that access can be from either a public or private road. They have chosen to consider it a private road. He asked her how much acreage the road takes up. She didn't know. He asked her about parcels A and B. She said that one of the things the residents had asked was that horses not come out on Corey Road. The horses will go through there to access the trails. He asked her about the buffering. She said it will be Type B as

required by the code, one tree every 35 feet. He asked her about traffic. She deferred to the traffic consultant. He asked about drainage. She said it is over 90% open space. The pervious use of the areas should not pose a problem. He had no further questions. Tinio-Borton asked about where the septic would be located. Gentile showed on site plan where the septic would go and also which way the water drains. He said there is a tributary within the EELs property that the eventually all the water drains to. His land needs to have the final grade done and they will grade it to make use of the natural lay of the land.

(Unknown), Hanson Appraisal Services, retained by the Drivers, asked Lawandales about her statement regarding similar horse farms in the area. He asked if she knew the density of animals per acre on those other seven horse farms. She doesn't know. Watson objects to him, he is not an interested party and he is not an attorney. Bohne over rules.

Atty Bohne also cautioned Gentile on feeding answers to Lawandales while she is answering. He will have an opportunity to re direct or rehabilitate the witness, but because this is a quai-judicial meeting he can not continue feeding her info.

(Unknown) from Hanson Appraisal asked if she knew of any other horse farm in Malabar that is within 1300 feet of three residential subdivisions? She said her handout speaks to that and most are closer. He became argumentative and was cautioned by Bohne. He was referring specifically to Pt. Malabar unit 47, Country Cove and Brook Hollow.

**Motion: Horton/Tinio-Borton to extend meeting 15 minutes. Vote: all Aye.**

Mayor asked if there were any other questions for this witness.

Steve Safidi, asked if Phelps gave approval to go ahead. He was advised to bring that question up to either Gentile or Watson – it was not part of her testimony. He asked about engineered drainage. Lawandales explained that if they get past this phase, they would go for engineered drainage calculations. No further questions.

Watson calls next witness, Sans Lassiter; traffic expert and consultant, registered engineer with Florida and has been doing traffic studies for 24 years. The trip generation for an equestrian facility vs. single family homes. With 14 acres that would come out to 9.6 units (homes). Using ITE trip generation rates it would mean 86 daily trips for the single family use. There are no ITE rates for equestrian facilities. Agrarian types of use are not studies because there is so little traffic associated with them. He contacted Marian and Palm Beach counties because they have equestrian facilities. He was told in Marian County that there have never been any studies because the acreage is so large and the traffic count so low there is no need. Beadle objected. Bohne reminds Council to weigh what they hear because it is hearsay.

Lassiter contacted Palm Beach County and they did have a study. Beadle asked for a continuing objection. Lassiter continued that the equestrian facility had 120 stalls, which equaled 1.6 trips per day, per stall which equaled 33. Considering that 50% would be boarded and 50% would be rented. There would be five riders plus two staff each time. The calculations come out to be 61 trips per day for the equestrian facility proposed vs. 86 if the land was developed into single family homes. The study is attached to the project application. Rossman said he thought there was no real science to the study. Lassiter stated that he holds a Masters Degree in this field and it is indeed real science. Rossman asked if any study had been done in Brevard. None that he is aware of. Chair asked for questions.

Beadle for Drivers, asked Lassiter if the document date 1995 was what he predicated his study on. No, he also used the Institute of Transportation Engineers trip generation reports. He asked if the ITE reports had rates for equestrian facilities. No. How did he determine the number of employees. Estimate. Referring to the traffic study, asked about peak hours. Weekends are not considered peak. Has he ever given testimony on commercial stables. Yes, the west Orange trail study in Orange County.

**Motion: Horton/Tinio-Borton to extend meeting 15 minutes. Vote: all Aye.**

Gary Frese, attorney for Country Cove Homeowners. He asked if Lassiter reviewed other similar use facilities. Wouldn't rented horses generate more trips per day. Lassiter did not agree. Frese asked if rented horses would generate more week end traffic. Lassiter disagreed. In their studies the worse case conditions and they are not on the weekends. Frese asked about considering a recreational facility, shouldn't the weekends be considered. He did not do it from that stand. Frese asked if he would do a traffic study for a church wouldn't it be done on a Sunday. Yes.

Watson re-directs. Asked how often the horses could be used. Lassiter said it was his understanding that the ability of the horses would affect the amount of traffic – not the other way around.

Richard Cameron, asked if all the studies show that with people coming to the barn it would still be less than if nine houses would be built and have that traffic up and down the road. Yes.

Applicant's next witness is JoAnn VanData, Real Estate Appraiser. She stated she did not do appraisals, she did research. She went through her presentation package on the properties she researched. Gentile stated that this indicated that the properties actually appreciated – not depreciated. Watson asked if she had taken pictures and she had and passed those on to Council. Watson asked her about the properties in Brandywine and Beadle objected.

**Motion: Rossman/Horton to extend meeting 15 minutes. Vote: all Aye.**

Watson continued that the lots in Lake Washington close to the stable sold for 70K and the further away the less they cost. Bohne said the objection was overruled. Watson asked her for her overall opinion of stables with houses. Beadle objected and Bohne overruled. Watson continued that most people moved here because they wanted rural country. Opened to public. Jim King asked about the one-time impact.

Ben DuBose stated that the percent of people living north of Malabar Road that kept horses or had other lifestyle was very low.

Atty Frese (CC Assc) stated that Brandywine has similar homes but it was designed to be built around horses. That is not the case here.

Council took break and reopened at 11:40PM.

**Motion: Tinio-Borton/Horton to extend meeting 15 minutes. Vote: all Aye.**

Watson made a statement that the appraisal information is not part of the CUP requirement. They included it in response to a P&Z member who stated that properties around a commercial stable would depreciate and have an adverse impact on surrounding properties. She is not an expert.

Beadle asked her what she knows of these stables; how many are rented or how many horses are boarded? She does not know. Regarding the houses on Hidden Lake – the stables were there first, so horse people came there. Timberlake is a horse subdivision. He asked her if she had inspected any of the stables in Carriage Creek, Bear Creek, Cypress Creek? No.

Watson stated that it is not the applicants burden to prove. Gentile stated that Country Cove is zoned RS21 and does not allow horses. A veterinarian lives in Country Cove and has his three horses on Corey on the other side of the road. The Kings have two horses because it is zoned for them on this side. The appraiser has demonstrated that an equine facility will not depreciate surrounding properties. He bought 14 and ½ acres and is entitled to 28 horses. There is conservation land to the north and west of his property, pasture land to the south of him, access to trails without getting out on Corey Road.

**Motion: Rivet/Horton to extend meeting 15 minutes. Vote: all Aye.**

Gentile continued that he plans on having two to four employees including him. The entire area will be grassed. The horses diet will be augmented with hay and feed. The horses will be

stalled, supplemented and exercised. It is not natural to keep them in stalls all day; that is why he has turn out areas. He plans to bring city water down Corey Road from the north. He has tried to meet with the people of Country Cove and was refused. He tried to talk to the other neighbors and was asked to sign a non-disclosure form. He has a natural vegetative buffer, which is two to three times what other facilities have. The issue about the arena. Arena is a term for where you train your horse. There will be no noise associated with it. The lights will not bleed over into the subdivision or any other neighbors. At the P&Z meeting they discussed limited the trail riders and boarders. It is not going to be like Wickham Park. In the winter it gets dark early and you need lights to train. He did not clear to his property lines; he left the natural vegetative material. He has tried to accommodate his neighbors; he has come up with solutions and documented them on the CU site plan. He assured Council that people in the surrounding area will embrace his facility. Beadle objected. Gentile wants to embrace eco-tourism, remain rural and horse friendly. Rossman asked him if he owned all four parcels. Yes. Rossman asked him about the Special Master ruling regarding the amount of area for the horses. Gentile stated he has two acres fenced presently. Tinio-Borton asked when the horses got moved to the back. Gentile stated ten days prior. He can't move stalls until the back is graded.

Ben DuBose asked if he was going to grade so that his water drained onto Brook Hollow property. No, it will drain to the SW and NW.

**Motion: Rossman/Horton to extend meeting 15 minutes. Vote: all Aye.**

Beadle, for the Drivers, asked if he was going to allow people to bring their own horses to his property. Gentile said possibly, he has not decided. Beadle asked if he would allow people to trailer in their horses. No, absolutely not. He wants to grade ASAP. Beadle asked him if he has ever operated a stable before. No. Has he owned a horse before. Yes. Did he have a business plan in place. No. Beadle asked him what his compost consisted of. Manure, hay and possibly bedding. Did he plan to have 28 horses. Yes. Beadle asked him if the access parcel was depicted as a driveway. Yes.

Bill Withers asked why he couldn't close at dusk.

Chris Norton, 1611 Country Cove Circle stated those signs had to be erected by the town because people were parking along Corey Road to access his facility.

Atty Frese, (CC Assc) asked about the odor abatement plan. Was it a typical program for equine facilities. Yes. Asked how he knew. Gentile stated he had been to 150 barns. Will abatement program work. Yes. Frese asked if he was an expert. Gentile stated he is a biochemist and a surgeon. Asked how long horses would remain in stables. Gentile stated it was impossible to say.

Delry Humphrey asked if he could differentiate between "swamp or sour" soil and manure. She has ridden around Country Cove subdivision and it smells and it is from sour soil – not manure. Emily Barr, said Gentiles compost is under water and asked that it be moved closer to the barn. Gentile asked to be given the benefit of the doubt until is able to make some progress on clearing.

Steve Scadafi asked if was planning to do events bringing in riders from the outside. Gentile stated no one from the outside – only boarders would be using facility. Asked if he had gotten approval from Phelps for this commercial facility. No. He got clearing permit for house and barn and then had to apply for the CUP. RR65 allows for this use; for agricultural use or rural residential on 1 ½ acres. Country Cove is not zoned the same.

**Motion: Moccia/Rossman to extend meeting 15 minutes. Vote: all Aye.**

Watson summarized. Gentile can have horses, cows in this zoning; it has always had this use. It is an appropriate use. He asked that Council find that all the conditions have been met. Atty Beadle, for Drivers, stated that before he begins his refute he asked Council to deny



application on basis of technical requirements not being met. Regarding planner Washburn's comments regarding front footage, the code requires 325 feet. If Gentile plans on using it as a road, he can't use it in his calculations. The site plan is supposed to include finish floor elevations and there are no to-scale drawings.

**Motion: Rossman/Horton to extend meeting 15 minutes. Vote: all Aye.**

The utilities need to be located, stormwater addressed, legal certification. Parcels A and D are protected areas and he referred to the enhanced burden of proof on page 320 of the codebook.

Watson rebuts. Asked Lawandales to respond. She stated that if the CUP is approved then further engineering will be done. All of Malabar farms include a home. She stated that the code does not state 325 feet along Corey.

**Motion: Rossman/Moccia to extend meeting 15 minutes. Vote: all Aye.**

Watson continued that planner Washburn stated it was approved. It is not a requirement to have 325 feet along road. Rossman stated that Malabar code does not provide a definition for private road. Rossman stated that it is not normal to use a private road to cross one's own property to get to one's own property. Atty Bohne generally agreed. Lawandales that private roads are roads that have not been dedicated to the public and are maintained by the owner. She also said that if the applicant needed to widen the road five feet he would. Rossman stated that the area is not compatible to the neighbors. He has visited the other farms in Malabar and none of them impact as many neighbors as this one would. It would impact Country Cove, Brook Hollow and a Palm Bay neighborhood to the north. He also stated that the private road is a driveway and has been indicated on every other document as a driveway. We are dealing with intensity, density and quality of life for the people that would surround it on the east, west and north. Mayor cautioned Council to keep in mind that there was another stable on the north side of Malabar Road and it has 20 horses. He is hearing some hysteria which may just be from not knowing about horses. Mayor commented that he has a horse farm within 200 feet of his property. Many homes are near horse farms.

**Without objection, the meeting is continued 15 minutes.**

Some discussion on whether the public had been given an opportunity to speak. The Mayor and Bohne both explained that yes the public had been allowed to speak throughout the evening.

Beadle interrupted and asked if Council was going to move into discussion on compatibility was it because they thought applicant has met his burden of proof. Atty Bohne explained to Council that Atty Beadle had made a motion to dismiss earlier because he didn't meet his burden of proof and Council needed to decide if that was the case – if it is then the matter is over now. If Council felt he had met his burden of proof then they could proceed with discussions. Rossman felt he had not met his burden. Bohne cautioned Rossman to be factually specific when addressing what items he did not meet.

**Motion: Rossman/Horton to deny conditional use application for Gentile for 1200 Corey Road because it does not meet compatibility requirements, traffic generation, and don't agree that it is a private road and that he has made a prima facie case. Discussion.**

Rossman stated referencing page 142 of transcript of P&Z meeting of June 12, 2002, Rossman quoted P&Z member Cameron as stating that applicant should work with staff and planner to bring the thing down to make compatible to neighbors and he hasn't. He stated that Cameron voted for it but appeared to recognize it wasn't compatible. Rossman does not think Gentile has made a prima facie case and recommends denying the application. Rivet voiced concerns about the use particularly the public/semi-public essential service requirement. Moccia made disclosure regarding who she had spoken to regarding this (read list of neighbor

of the area) and stated that she did not feel it was compatible to neighborhood. Rivet disclosed he visited the Drivers three months ago and also met with Pat Dezman early this week. Rossman disclosed that he had met with all parties including Gentile and the overwhelming opinion is that they don't want this in their neighborhood. Tinio-Borton disclosed she also had spoken to all parties and visited the site. Mayor disclosed that he had spoken to Driver and Gentile. **Vote: all Aye.**

PUBLIC COMMENTS - none

REPORTS: MAYOR, COUNCIL - none

**Motion: Rossman/Rivet to adjourn. Vote: all Aye.**

Meeting adjourned at 1:30 AM

BY:

\_\_\_\_\_  
Mayor Phillip R. Crews, Chairman

ATTEST:

\_\_\_\_\_  
Debby Franklin, CMC  
Deputy Clerk

DATE:

\_\_\_\_\_