

TOWN COUNCIL REGULAR MINUTES
August 19, 2002

This meeting of the Malabar Town Council was held at the Town Hall at 2725 Malabar Road. The meeting was called to order by Mayor Crews who led the prayer and pledge.

ROLL CALL:

COUNCIL MEMBERS:	NANCY TINIO-BORTON
	BOBBI MOCCIA
	FRANK BALLOU
	BOB ROSSMAN
	STEVE RIVET
MAYOR/CHAIR:	PHIL CREWS
ATTORNEY:	KARL BOHNE
CLERK:	SUSAN KABANA

Also in attendance were Carl Beatty, Public Works Supervisor, and Jim Phelps, Building Official.

ADDITIONS AND DELETIONS:

Tinio-Borton – asks to move items 9 and 1 up to Mr. Bohne's report, Mayor approves.

CONSENT AGENDA:

MOTION: Mayor approves without objection.

Council minutes 7/15/03.

PRESENTATION:

ROSS A. WHITLEY, CPA, FROM BERMAN, HOPKINS, WRIGHT, & LAHAM
REGARDING ANNUAL AUDIT PROPOSAL

Ross Whitley – states that Berman Hopkins was formed in 1958, they have two offices and approximately 40 employees. They're a full-service strictly accounting auditing and tax firm. They've done numerous jobs in the County and State. They have accounts in surrounding towns, and are currently involved in audits for over 30 charter schools across the country. They do a lot of HUD work and State grants and have considerable experience with implementing the GASB 34.

Rivet - Feels comfortable with his resume. Tinio-Borton - Asks for a quote for the coming year. Mr. Whitley - He could have one by next week.

MOTION: Tinio-Borton/Rossman to approve. VOTE: All aye.

REPORTS:

ATTORNEY:

Bohne – will discuss items 9 and 1.

9. RECEIPT OF CHECK FROM BILL HALL

Bohne is hoping Council has seen his memos on August 14th. On August 13th his office received a check for \$225.36, payable to the Town of Malabar, from William P. Hall for a credit card purchase at Vic Osman Lincoln Mercury. Enclosed with that check was a memo that Hall offered to Kabana addressing the Vic Osman issue.

Frankly, Bohne does not know what to do with it, he immediately contacted Moccia and the Mayor. It looks like it's an attempt to pay back some credit charge charges that were made to Vic Osman that should not have been made. Council needs to tell Bohne what to do with it.

Moccia - on August 12th, at 2:00 p.m. she had an appointment with two agents from the Brevard County Sheriff's Department. The question came up, does the Council want to prosecute? Since a private investigator is too expensive for the Town, she felt it was her responsibility as Council to get involved and spend her time and effort instead of the Town's money. Moccia prefers to go forward with guidance from her constituents and fellow Council members. When the Sheriff's Department is done investigating, this issue will go to the State Attorney, as Council originally wanted. Before we could not subpoena records but now we can.

Moccia returned to Town Hall on August 12th and she told Kabana about the visit to the Sheriff's office and about the receipts she found from Vic Osman. Moccia asked Kabana a question on one of them, it was about a person's name which Moccia did not recognize, it was an "Andrew J. Memick" at 528 Krazner Road NW and Kabana didn't know who this was. It was for a white '96 Mercury Marquis. Moccia notes that our attorney, Karl Bohne, also knew of her visit to the Sheriff's office.

Moccia is very suspicious of the fact that they day after her visit to the Sheriff's office, Mr. Hall emailed the Town saying he was wanting to pay something back.

Moccia notes that we received the credit card statement on May 4, 2002 and Mr. Hall wrote "TC" which means 'Town Car' directly aside the transaction. Hall did not pay the Town back for what she found to be work done on Hall's wife 2000 Mercury Villager Minivan. This statement went out on May 15 and Mr. Hall approved the final part of this bill.

There was another Vic Osman receipt for \$21.15 also for the same 2000 white Mercury Villager Minivan. There was an oil change on January 2, 2002, and another Vic Osman on January 9, 2001 when Mr. Hall dropped off a '96 Mercury Grand Marquis, 4-door. It was in the name of Andrew J. Memick. Mr. Hall signed the receipt for \$91.29, Moccia still did not know who this was and it was not until the 13th that Debbie Franklin told Moccia that this was an in-law of Halls. This statement was not paid.

Hall shipped a parcel to his daughter on December 18, 2001 for \$32.59, this was not paid back either. And there were many purchases of film at Eckerd Drugs that were referred to as film. This is what Moccia found: One contained film but also had hair color. Others had two rolls of film, but there was also Theraflu, Diet Coke and a 12-pack of Bud Lite. Another was a prescription for \$10 and Hall stated this was film too. And another he said was for film was for a 12-pack of Bud Lite. The last one had a 3-pack of video tapes, he said this was for film also. Out of nine transactions, only one of them contained exactly what he said they were for. I think Mr. Hall used his public position for personal gain and the people we have in place to protect our finances allowed the poor behavior by not insisting on receipts. Our Town needs to know why all this went on and the State Attorney will find out.

Rossman/Moccia: What does Council want to do? Rivet - We have no choice but to turn it over to the prosecutor. We can't let this type of thing go on. He's not only concerned with correcting a past wrong, but is worried about setting a precedent for the future. This type of behavior cannot be tolerated and must be pursued vigorously.

Moccia - Agrees.

MOTION: Moccia/Rivet to turn the investigation over to the Sheriff's Department.**VOTE: All aye.**

Tinio-Borton – would the Town incur any more attorney fees? Bohne – he doesn't think so, it's turned over to the Sheriff's Department, then they submit the paperwork to the State Attorney's office and a decision is made whether or not to prosecute. If they prosecute, there's no attorney's fees for unless you want him to attend proceedings, but there's no need for that. If there's a determination of guilt, they would impose a condition of probation, possibly restitution. Whether it's probation or not there will be a restitution.

Rossman – who is the credit card in the name of? Kabana - William P. Hall, Town of Malabar.

Mr. Bohne – the State Attorney's office has the power to issue an investigation.

Rivet – there were nine receipts and eight of them were false, he is concerned that this is only the tip of the iceberg, he thinks Council needs to know the whole story. Tinio-Borton - Is this situation big enough for the Attorney General? Rivet/Crews - Yes.

Bohne – this check becomes evidence, asks if Council wants him to hold on to it. Council – yes.

1. TRUCK ORDINANCE

Bohne – there is a proposed truck ordinance in the package for tonight's meeting. He worked on this with Phelps. States that this will have to go back to P&Z because it involves a change in zoning and the land development issues associated with it. At this point he wants to present P&Z with something the Council is comfortable with so we don't have to keep trying to invent the wheel. It does mirror, in some respects, the Palm Bay ordinance. It includes unique things for the Town of Malabar. Bohne notes that he and Phelps feel they have covered all bases concerning the parking of commercial and recreational vehicles in residential areas.

Rivet – can they be stored behind the front, or along side of a house as long as they don't stick out past the front? Crews – No, right now they're allowed in the front yard but not in the "required front yard". So, we're moving it back behind the frontage of the house. Bohne - we exempt those residential areas that are zoned with MH, RMH.

Crews - Feels it's a well-written ordinance. Bohne - Then we'll move to P&Z and back to Council.

CLERK:

- Kabana - Friday begins candidate qualifying. The seats up are: District 1 - Nancy Tinio-Borton, District 2 - Vacant, District 3 - Steve Rivet. Qualifying ends September 6th. Packets are available in the clerk's office

- Can she pay the lobbyist? Yes, Council is satisfied with itemized items.

- On the agenda for September 3rd is our first public hearing on the millage and budget, and we will approve Fund 105, stormwater utility.

- Mrs. Patel, current owner of the convenience store at the corner of US-1 and Malabar Road, is requesting a street light. She says it's very dark at night and potentially a hazardous situation. She's asking Council if they would consider it. Council asks Kabana to find out what it costs.

- Tomorrow night we're having another budget workshop at 7:30 pm.

PUBLIC WORKS SUPERVISOR:

- Beatty – we’ve mowed and graded the entire Town and were cleaning the ditches. We’ll only deviate if we have small emergencies or too much rain. The ongoing project is cleaning ditches problem areas. Moccia – how long does it take to do the entire Town? Beatty – three weeks. Last week they cut brush and made a clean sweep of mowing and now we are digging, then on to filling-in pot holes.

Rivet – asks about the washout on Corey Road near Malabar Road that has been filled in. Beatty – we’ll have our engineer look at it. We might have to do a real fix next budget year.

- Moccia - Councilman Woodard from Palm Bay called to say they had road material they would give it to us if we would truck it. Asked Beatty if it would be useable to us. Beatty - will check it out and let you know.

- Discussion of Bonsai Gardens drainage.

- Crews – on north Marie the ditch was dug up, asks if public works is waiting for the debris to dry out before picking it up? Beatty – yes.

- Beatty – the State bid price to pave Atz is \$71,345.79 or 4,680 per liner foot. They buy rocks and supply the materials. Moccia – in the past we bought the rock? Beatty – yes, we prepare it, they come in with rock, and oil, and do the job, then they walk away. They use smaller rock that gives a better road like the repaired one, the cost is about \$75,000, Old Mission is another \$21,900. Kabana – both roads will cost close to \$100,0000 and we budgeted \$75,000.

ACTION ITEMS:**1. FILLING OF VACANCY IN DISTRICT 2 SEAT**

MOTION: Rivet/Rossman to appoint Frank Ballou. VOTE: All aye.

Kabana – swears in Ballou.

2. ELECTION OF VICE-CHAIR FOR TOWN COUNCIL

Rossman – nominates Steve Rivet as Vice-Chair to replace Charlene Horton who moved out of Malabar.

MOTION: Rossman/Moccia. VOTE: All aye.

3. BILL FOLEY, LETT LANE & BOOTH ROAD, REQUEST FOR DIRT AND DITCH CLEANING

Crews – is Mr. Foley here? Kabana – they faxed me this agenda request form so I put them on the agenda but they are not here. Crews - in Beatty’s report we heard that this request in on the top of the public works to-do list, proceed with that.

4. DON FOLEY, BERRI PATCH IMPACT FEES

Mrs. Foley (AKA “Strawberri”) says they were here on August 5th and at that time Council authorized a letter of support for a waiver of the Transportation and Correctional Impact Fees to the Brevard County Commission.

After that meeting the impact fees were again discussed. This time at a budget workshop on August 13th at the beginning of meeting. The Foleys were totally unaware they were being placed on that agenda and had no opportunity to speak. Strawberry attempted to listen to the tape of the meeting, but the portion of tape covering the Berri Patch agenda item is inaudible.

In an effort to put everything on record she requests each Council member to explain, for the record, several things: #1 Who placed the item on the agenda, #2 Why? #3 What discussion is due? #4 Who made the motion to rescind the letter? #5 Most importantly, why was she not informed that she would be placed on the agenda so she could speak on the issues that Council had with writing the letter in the first place and #6 Why was she not given a copy of the letter like everyone else? She had to come to Town Hall today to and pick one up herself.

Moccia – she states that originally she acted with heart and not her head. She feel this action on her part was an injustice to the Town. Strawberry – wants to know who placed this on the agenda. Rivet – he did because he felt the Council erred in voting to write the letter.

Strawberry – why wasn't she notified that the item was on the agenda so that she could speak to the issue? Rivet – because time was critical, it had to be done at that meeting before the County Commission met. Strawberry – the County Commission meeting wasn't until the 27th.

Rivet – the whole point is that you could have found out when the impact fees went into effect by calling the appropriate people in the County. Strawberry – feels that the employees in Malabar that are hired by the Council would know what the impact fees are were going to be. The Foleys knew to contact Brevard County about the waste impact fee, which they did.

Rivet – he states that he made the motion to rescind the letter. He feels that the Council erred in making the request to waive the impact fees. He felt that we had to correct it, and we did it as expeditiously as possible. We received legal advice that the developer is responsible for finding out what the impact fees are. He does not believe it's the responsibility of the Town of Malabar to indemnify the Foleys against not getting their applications in on time.

Tinio-Borton – the County misinterpreted in telling you the right thing, the Town didn't tell you the right thing. She feels that the Foleys should not have to pay this but she is outvoted on this issue.

Strawberry – feels that if they had known about the June 2nd deadline they could have made it, feels that they were dealt a severe injustice by the Town.

Moccia – asks Mr. Foley his intent in giving our past administrator approximately 21 bottles of wine and 7 bottles of liquor last Christmas?

Mr. Foley – it was a Christmas present. Says it was 12 bottles of wine, he gives several people Christmas presents. Moccia – notes that employees are not allowed to accept anything in excess of \$50. Mr. Foley - is not sure that it was even \$50, it wasn't over \$5 for each bottle of wine.

5. GEORGE GELETKO FROM WASTE MANAGEMENT

Geletko – thanks Council and citizens for their business in collecting solid waste and recycling. Gave update on yard debris and waste collection. They used sub-contractors and additional trucks to catch up on collections.

Council - Thanked him for responding to a citizen on Malabar Road.

Geletko – We found out there are two '978 Malabar Road' addresses. One's in Palm Bay and one's in Malabar. Then he introduced his District Operations Manager, Joe Pisaro.

6. SCHEDULED WORKSHOP REGARDING THE JORDAN SCRUB AND POSSIBLE PURCHASE OF RIGHT-OF-WAY.

EELS requested to reschedule this when they had a map.

7. RESOLUTION 14-02. AMENDING EXHIBITS A & B OF THE MALABAR RIGHT-OF-WAY ORDINANCE.

MOTION: Tinio-Borton/Moccia to read by title only. VOTE: All aye. Crews read:

RESOLUTION 14-02

AN RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING EXHIBIT "A" AND "B" OF ORDINANCE 01-01 KNOWN AS THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; IN ORDER TO CORRECT AN ERROR IN THE INITIAL EXHIBITS AS THEY RELATE TO THE DEPTH OF CEMENTED COQUINA AND STABILIZED SUBGRADE, PROVIDING FOR CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

MOTION: Tinio-Borton/Rossman to approve. VOTE: Aye - Tinio-Borton, Rivet, Moccia, Rossman, Ballou.

8. RESOLUTION 15-02 BUDGET ADJUSTMENT FOR FUND 107 AND FUND 400.

MOTION: Tinio-Borton/Rivet to read by title only. VOTE: All aye. Crews read:

RESOLUTION 15-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO AN ADJUSTMENT IN THE FISCAL YEAR 2001-2002 TIFT 7, FUND 107 BUDGET AND THE MALABAR WATER UTILITY, FUND 400 BUDGET; PROVIDING FOR ADDITIONAL INCOME; PROVIDING FOR ADDITIONAL EXPENDITURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE

MOTION: Tinio-Borton/Rossman to approve.

Kabana – this adjustment allows for additional funds from the transportation impact fees that were spent, and for the water line on Malabar Road. When the water line was approved Hall planned to fund it with funds from those citizens who were to hook up on that water line, thinking he'd have many hook-ups before September. It didn't happen, so we had to fund \$113,000 toward the water line from the General Fund. This resolution allowed for the unplanned increase in the Utility Fund for this expense. Utility Fund will be paying General Fund back with interest.

VOTE: Aye - Tinio-Borton, Ballou, Rivet, Moccia, Rossman.

PUBLIC COMMENTS:

- Judith Hard – there are expenses in starting a new business and feels that we should not waive impact fees. It's part of being in business. Tinio-Borton - agrees, but her decision was based on being misinformed by us and County.
- Holly Lindell, 3420 Weber Road - Good faith promotes business. Mr. Foley's point was well taken, in a lot of cases you just do things because you want to keep that good community feeling.
- Jason Hollister of 2520 Weber – has been here two years, loves Malabar but sees no accountability. Feels that the employees need job descriptions. Rossman – we are working on this. Crews – and we need a mission statement.
- Kim Slivinski, 2560 Billie Lane – thinks there should have been something in

writing that the Foleys could have seen.

- John Kyth, 488 Corey Road – came for moral support of the Foleys.
- Sandy Taldo, 4880 Corey Road – regarding gift-giving, it is not always true that people give because they want something in return.

REPORTS: MAYOR, COUNCIL

- Rossman – asks about the FEMA grant. Crews – we should have an answer on the 23rd of August.
- Mr. Ballou – thanks Council for voting him in. Wants to help out the citizens of Malabar and improve the drainage.
- Moccia – wants to see Town policies and procedures done soon.
- Tinio-Borton – went to the Florida League of Cities convention, gathered much information, will put a package together for Council.
- Rivet – welcomes Ballou to Council.
- Crews – also attended Convention, it was very productive. One seminar on Storm Water Management made the whole trip worthwhile.

ADJOURNMENT

Meeting adjourned at 9:05 p.m.

BY:

Chair/Mayor Phillip R. Crews

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
