

**TOWN COUNCIL REGULAR MINUTES
SEPTEMBER 3, 2002**

This meeting of the Malabar Town Council was held at the Town Hall at 2725 Malabar Road. The meeting was called to order at 7:30pm by the Mayor. The prayer and pledge were led by Mr. Rivet.

ROLL CALL:

COUNCIL MEMBERS:	NANCY TINIO-BORTON BOBBI MOCCIA FRANK BALLOU BOB ROSSMAN STEVE RIVET
MAYOR/CHAIR:	PHILLIP CREWS
BUILDING OFFICIAL:	JIM PHELPS
CLERK:	SUSAN KABANA

Also present were: Ms. Helen Voltz, former County Commissioner, and Ron Hanson, Director of Utilities.

ADDITIONS AND DELETIONS:

Crews – delete Item #3, Sue Hann will not be here tonight. Mayor approves agenda without objection.

PROCLAMATION: JOHN BARRY DAY

Crews – reads and presents proclamation proclaiming Sept. 13, 2002 as Commodore John Barry Day.

PRESENTATION:

Jade Coldren, Business Information Systems – demonstrated the FTR Gold digital recording system to replace the tape recording unit that is used to capture minutes of Town Council meetings, hearings etc., price: \$6,972. Rivet – everything sounds great except 7,000 bucks. Crews – thanks Coldron for a good presentation.

CONSENT AGENDA

MOTION: Rivet/Rossmann to approve. VOTE: All aye.

Council Minutes 8/5/02.

REPORTS:

CLERK:

Health Insurance:

Kabana – Brevard County is self-insured. They're looking at a creative way to add on the people here but it's not looking good. If we joined the administration part of their program we'd have to be self-insured and with nine employees that is not feasible.

Security System:

Discussion of installing a security system at Town Hall.

MOTION: Tinio-Borton/Rivet to approve buying the ADT System. VOTE: All aye.

Tinio-Borton – there's a \$50 fee that she and her husband would get for suggesting ADT, requests it be donated to Parks and Recreation. This eliminates the thought of any kickback from the contending agency. Rivet/Crews – say thanks and it is an excellent idea.

Computer Purchases:

Kabana – two computers per the budget workshop are on order. One goes to the building department and the other to public works.

Malabar Dock:

Kabana – the dock should be in Malabar's name by the middle of next month. Rivet – who currently owns it? Kabana – we think it is owned by the County. Moccia – asks about two grants that may go together, one may take care of the other. Deadline is Sept. 18th.

Unemployment Compensation Hearing:

Kabana – former employee, Vivian Murray had an unemployment compensation hearing on August 26th and her appeal was denied.

Fire Dept Grant:

Kabana – the grant application was denied and will be taken out of the budget.

Phelps Request to Purchase Old Computer:

Kabana – states that Council has a copy of Phelps letter requesting to buy a broken computer, monitor, and CPU from his office for \$50.

MOTION: Rossman/Rivet to approve. VOTE: All aye.

Candidate Qualifying:

Kabana – candidate qualifying ends this Friday. Four packets have been picked up: Nancy Tinio-Borton, Steve Rivet, Jane Havet and Frank Ballou but Ballou has since stated that he is not going to run. Reminds all candidate that they must make an appointment with her this week to qualify.

Kabana – Mansur has registered for a clerk permitting class in October.

Town Attorney:

Rossman – there is no attorney present tonight and he feels we should have an attorney here when Bohne cannot be present. Kabana – Bohne doesn't have a fill-in when he is not present and though Cliff McClelland may be available, he would cost more. Kabana suggests Council allow her to contact other municipal attorneys and ask about their availability. Crews – thinks Bohne

could help if we asked. Tells Kabana to put this on the next agenda.

Rossman – wants to see an attorney sitting at next meeting on Tuesday night. Doesn't matter who. Council – agrees.

Crews – notes that even without an attorney present action can be taken tonight. Jason Hollister from the audience – wanted to present tonight but if an attorney isn't present he finds it silly to present anything.

Crews – suggests Hollister be moved to another meeting. Hollister agrees. Crews recalls it not being the first time Council has conducted a meeting without an attorney present but it can't be done on a regular basis.

PUBLIC HEARINGS:

1. REQUEST TO VACATE RIGHT-OF-WAY, ROBIN REESE FOR UNDEVELOPED PROPERTY AT 1975 COREY ROAD.

Mayor – opens public, asks for comments. Citizen from Quarterman – has heard that Reese presumes to take over the right-of-way adjacent to his.

Crews – asks for additional comments, being none he closes the public hearing.

MOTION: Tinio-Borton/Rossman to approve.

Tinio-Borton – reiterates presence of septic and sewer if utility maintenance is needed. Crews – this is a big vacating of right-of-way but does not include the easement.

VOTE: All Aye.

2. FIRST READING OF ORDINANCE 02-05, 2002/2003, MILLAGE RATE.

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

ORDINANCE 02-05

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2002 THROUGH AND INCLUDING SEPTEMBER 30, 2003.

Crews – this sets the final millage rate at 1.7642 mills which results in a 3.2% rollback rate, basically the same millage rate as last year. Crews asks for public comment, being none he closes the public hearing.

MOTION: Tinio-Borton/Rivet to approve.

Rivet – definitely wanted to hold taxes steady.

Tinio-Borton – agrees with Rivet's suggestion of doing a bond to complete drainage and road paving without taxes going up.

VOTE: All Aye.

3. FIRST READING OF ORDINANCE 02-06, 2002/2003 BUDGET.

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

Crews read: ORDINANCE 02-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET FOR THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2002 THROUGH AND INCLUDING SEPTEMBER 30, 2003.

Crews – the budget is for \$1,038,096 and conforms to the millage rate just passed. Crews asks for public comment, being none, he closes the public hearing.

MOTION: Tinio-Borton/Ballou to approve.

Tinio-Borton/Moccia – don't agree to the 2% raise, plus 1% for Kabana to compensate for loss of comp time/overtime pay. The fact that she came in and helped iron out problems while on disability doesn't matter. They are concerned about setting precedent for everybody when she wasn't here.

Crews – she was a full-time employee for the full year while she was out on medical disability. Moccia – understands that she was here but not here.

Tinio-Borton – doesn't think things were done properly, she shouldn't have been here being on disability. Kabana – thinks loyalty and going above and beyond should count for something. Rossman/Moccia – feels there should be no raise.

VOTE: All aye.

4. RESOLUTION 16-02, ADOPTING FUND 105 STORM WATER UTILITY BUDGET FOR THE 2002/2003 FISCAL YEAR AND CERTIFYING THE ASSESSMENT ROLL.

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

VOTE: All aye.

Crews – asks for public comment.

Bill Withers – are the fees changing?

Jim Helmer, Surface Water Improvement, Brevard County – there's a slight increase in fees but per Statute you don't need to adopt a rate resolution each year. The assessment role is required per Statute and must be done prior to September 15th.

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

PUBLIC COMMENTS

This item was not on the agenda but public comments were taken at this time.

- Bill Withers, Candy Lane – has 8 comments.

#1 Street Lighting

Corner of US-1 and Malabar Road Mr. Patel, owner of convenience store, requested a street light. External security lighting is a normal business expense for the owner, not for the citizens.

#2 Use of Official Town Vehicle

Use of town vehicles sets a dangerous precedence and should not be granted. Attending after-hour meetings is simply part of the job. It should be included in every job description.

#3 Authority to call Attorney

Wants to know which town employees have authority to call attorneys without prior approval since this an expenditure of town funds.

#4 Health & Welfare Policy & Procedures

What is status of list each Council member received of the published health and

welfare policy and procedure.

#5 Restricting Appearances in Public Matters. Withers states that the Mayor stated he would appear at the County Commission meeting as a private citizen and support the Berri Patch issue and Council is opposed to supporting them in front of the commission. Withers asks the Mayor if he can wear two hats? Then he states that was it not the Mayor who asked Council to have one voice on the EELS incident?

#6 Decided to skip

#7 Refinancing Loan

Has anyone considered refinancing the loan on the road grader? Would it save us any money? Rates are low right now.

#8 Bond Issue vs Low-cost Loan

If a bond issue fails to raise needed funds in paving our primary roads, what would Council do? Wouldn't a low-cost loan be better in the long run?

- Mrs. Foley – Reads thank you letter to the Town.

- Jason Hollister, 2520 Weber Road. Asks the Mayor, regarding refinancing, why he immediately said no within one second after it was proposed? Crews – if he shook his head it was for some other reason.

ACTION ITEMS

1. DRAINAGE ISSUE ON HOMESTEAD, DON HELENBURG

Crews asked staff to talk to Maria Parkhurst, our Engineer. As requested, Beatty gives Council a list of top drainage projects in the Town.

Beatty – the issue on Homestead could be drawn out for years. It can be worked on in between other projects. Crews – used map to explain/discuss Helenburg issue. Beatty – Booth and Lett is the next project.

Crews – Council needs to decide whether it's the property owner's responsibility to pay when culverts fail. Council – feels that it is. The property owner will contract for the work to put in the culvert.

Crews – without objection he directs Phelps to issue letters to the property owners to install proper culverts that meet code.

Helenburg – the pipes in there are clogged and when it rains he floods. Crews – the Fire Department can blow them out. Beatty – will dig/clean the swales out.

2. JASON HOLLISTER, 2520 WEBER ROAD, TOWN GOALS AND OBJECTIVES

Hollister – proceeded to read list he passed out to Council. Will return at next scheduled meeting to put this all together.

3. SUE HANN, PRO-TEM CITY MANAGER OF PALM BAY, REGARDING THE PROPOSED PALM BAY BELTWAY

This items was removed from the agenda.

**4. APPLICATION AS AN ALTERNATE TO THE BOARD OF ADJUSTMENT:
CHARLES A. RYAN, 1923 HOWELL LANE**

MOTION: Rivet/Moccia to approve. VOTE: All Aye.

**5. TOWN POLICIES AND PROCEDURES: TOWN CREDIT CARD,
COMPENSATORY TIME, AND USE OF TOWN VEHICLES**

Rivet – thinks first draft of the policies and procedures are good. Wants the Town credit card used only for Town business. Kabana - To secure a hotel room you need a credit card or to order computers.

Mr. Driver from the audience – wants checks and balances to prevent a repeat of the past incident. Moccia/Rossman – don't think Town Administrator should have credit card. Crews – suggests having one credit card for the Town with stringent controls. Sees need for Workshop on policies.

**6. QUOTE FROM BERMAN, HOPKINS, WRIGHT & LAHAM FOR TOWN
AUDITOR'S**

Kabana – the GASB 34 statement will have to be complied with and we will run two sets of books in order to verify we're doing it all correct.

Rivet – is not satisfied with job last auditor did, wants very critical audit but this is too much money, maybe we should talk to another auditor.

Kabana – Council ranked Berman, Hopkins, Wright and Laham as number one from those who responded to our RFP. We asked for a quote and this is what they've come back with, that's the process, it's not standard operating procedure to now get into negotiations with another company at this time.

Rivet - He will negotiate with these people.

MOTION: Mayor approved without objection.

**7. LOOK INTO BUILDING OFFICIALS ACTIVITIES AS THEY RELATE TO
PAST ADMINISTRATOR**

Rivet – Phelps answered yes to question of any improprieties involved in two pieces of construction. After discussion, it would be beneficial to the Town to wait for the attorney. There's possible litigation.

Rossman – if we are to schedule a workshop for that we should lump items 8 & 9 together. Council agreed.

**8. SCHEDULE WORKSHOP REGARDING THE JORDAN SCRUB AND
POSSIBLE PURCHASE OF RIGHT-OF-WAY** and

**9. RESULTS OF RANGE RIDER SELECTION FOR TOWN ADMINISTRATOR
AND DISCUSSION OF THE NEXT STEP IN SELECTING A TOWN
ADMINISTRATOR**

Rossman – suggested each Council member pick a citizen from their District to comprise a Board to get Town involved in picking next town administrator. Council - discussed schedules and possible dates.

10. SALE OF TOWN VEHICLE, 2001 DODGE INTREPID

Kabana – has already entered into a contract, and a contract is signed.

The auction company is already doing ads and brochures. They'll only take free and clear title. Kabana needs permission to pay off the car loan.

MOTION: Mayor, without objection, to pay off car loan and proceed with car auction.

DISCUSSION:

1. RECOMMENDATIONS FROM P&Z REGARDING BOATS, MARINAS, AND WATERWAYS, AND ALSO TRAVEL TRAILERS

Phelps – there have been concerns about our current ordinance. We need concurrence from Council so the planner and the attorney can proceed. The truck ordinance is on the P&Z agenda for review and then will come back to Council.

Mr. Driver from the audience – objects to the Town engineer making recommendations. Is not sure the Town has the right engineer. Wants to make it a matter of public record. Thinks Town needs to look for another engineer.

REPORTS: MAYOR, COUNCIL

- Rossman – nothing at this time.

- Ballou – nothing at this time.

- Tinio-Borton – nothing at this time.

- Rivet - Responds to items Mr. Withers brought up:

#1 Street Lighting - agrees we should not pay for a business to put up a light.

Tinio-Borton/Rossman – agree.

#2 Official Use Only Vehicle – we need to discuss, he can see pros and cons.

Moccia agrees.

#3 Employees Have the Authority to Call the Town Attorney – the Clerk's call to the attorney, regarding some liability to the Town, was appropriate use of the attorney. The answer to the question is the Town Administrator and Town Clerk.

Phelps – calls the Town Attorney frequently on legal issues during the normal course of business, many times he can't proceed without advice. Mr. Driver from the audience – just making it public that the Town gets a reduced rate from the very same Attorney that the citizens have to pay full price for. He feels that there is no excuse for an attorney not being here tonight.

#4 The Overview & Challenge To Provide The Health & Welfare Policy

Rivet – adds to Friday's agenda.

Kabana – items for the agenda – EELs, H&W Policy, Town Administrator.

Crews – we don't need Attorney for workshop because the public doesn't speak at those. He asks the audience to work through Chair during meetings if they want to speak. He also asks that Council does the same thing but notes that sometimes that is relaxed.

Citizen from the audience: Would you relax it one more time? We make citizens wait until the very last to speak.

Crews -We provide three options other cities do not:

#1 You turn in your cards before the item comes up. #2 You can speak at the time just before we start that item. #3 You can speak at the end of the meeting. No other City does all that, how could it be more fair? We can't allow

everyone to speak at once.

- Rivet – getting back to answering Wither's list:

#5 Issue of Mayor and/pr Council Members Attending Other Issues Claiming To Be Private Citizen – Rivet feels that Withers is correct. Crews – this is a legal issue. We need our attorney here. Rivet – suggests when representing ourselves as private citizens to any government body to regulatory body we at least identify ourselves as a member of Malabar's government.

- Moccia – She and Rivet were at the County Commissioner's meeting. Wants apology because agenda item was pulled at the last minute (after they were up in Viera). Others knew, she didn't.

- Rossman – with the Council's approval he will call and find out about refinancing the road grader.

- Crews – recognizes Tom Eschenberg. Eschenberg – regarding the Eagle Corps: he has ten people lined up for training, 80 hours on six Saturdays in Town Hall. The Trainer suggests that the Town institute this by resolution. Also, Council needs to assign a point of contact for this group.

- Crews – regarding the FEMA grant. Feds have approved it and turned it over to the State. We are assured the money is there. Parkhurst is working with the State tying up details. Should be done by middle of the month. Kabana - we had a bid opening but we can't award the bid until we get the contract from the State. The low bidder was Jobear, who did Camelot Ditch. The Engineer has to make the recommendation to award the bid to Jobear then Council will need to approve them or one of the other bidders. Kabana notes that we may need a special meeting to approve the contract.

ADJOURNMENT

Meeting adjourned at 10:30 p.m.

BY:

Mayor Phil Crews, Chair (on 09/03/02)

Chair Bobbi Moccia (on 06/16/03)

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
