

TOWN COUNCIL MINUTES

September 17, 2002

This meeting of the Malabar Town Council was held at the Town Hall at 2725 Malabar Road.

ROLL CALL:	MAYOR/CHAIR:	PHILLIP CREWS - EXCUSED
	VICE-CHAIR:	STEVE RIVET - CHAIR
	COUNCIL MEMBERS:	BOBBI MOCCIA
		BOB ROSSMAN
		NANCY TINIO-BORTON
		FRANK BALLOU
	ATTORNEY:	CLIFF MCCLELLAND
	CLERK:	SUSAN KABANA

Also present were Jim Phelps, Building Official, Chuck McClelland, Fire Chief, and Carl Beatty from Public Works.

The meeting was called to order at 7:30 p.m. by Mr. Rivet. The prayer and pledge were lead by Mr. Rivet.

Rivet suspended the regular meeting and opened the public hearing.

PUBLIC HEARING:

1. ORDINANCE 02-05, SECOND READING: 2002/2003 FINAL MILLAGE

Rivet – read Ordinance 02-05 in its entirety:

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.

WHEREAS, public hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

SECTION 1. The Town Council, in regular session duly assembled adopted the millage rate of 1.7642, to be levied for the General Fund upon all real and tangible personal property located within the boundaries of the above named taxing authority.

SECTION 2. The final levy of 1.7642 mills will result in a 3.2% increase of the rolled back rate of 1.7095.

SECTION 3. This final millage rate of 1.7642 is to fund the expenses for the fiscal year commencing October 1, 2002 and ending September 30, 2003.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 6. This ordinance shall become effective immediately upon its adoption.

Rivet – asks for public comment. McClelland (attorney) – restates the rolled back rate as 1.7095 to be increase 3.2% and a millage rate of 1.7642. Notes that the Florida Statutes require that the first comments be in regard to the percentage increase of the rolled back rate necessary to fund any specific purposes which the ad valorem tax revenue will be used. Rivet – with that noted, he asks for any comments from the public. Being none, he closed the public hearing.

MOTION: Tinio-Borton/Rossman to accept Ordinance 02-05. No discussion.

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

2. ORDINANCE 02-06, SECOND READING: 2002/2003 FINAL BUDGET

Rivet opened the public hearing. He read Ordinance 02-06 in it's entirety:

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.

WHEREAS, the Town of Malabar has compiled a budget for the period from October 1, 2002 through and including September 30, 2003; and

WHEREAS, public hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

SECTION 1. The Town Council, in regular session duly assembled adopt the final Budget of ~~\$1,038,096.00~~ \$2,023,326.00 for the proposed expenditures from October 1, 2002 through and including September 30, 2003, reflecting the general operating millage rate of 1.7642 mills.

SECTION 2. This budget may be amended during the year if necessary, by resolution.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 5. This ordinance shall become effective immediately upon its adoption.

Editor's note: the reading of the ordinance was for a budget totaling \$1,038,096.00. Kabana – the budget amount is not \$1,038,096.00, the correct amount is \$2,023,326.00. She repeated \$2,023,326.00. The \$1,038,096.00 is only the budget in the general fund. Rivet – so the budget will be \$2,023,326.00. Rivet asks for public comment, being none, he closed the public hearing.

MOTION: Tinio-Borton/Moccia to approve Ordinance 02-06. No discussion.

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

Rivet – resumed regular Council meeting.

ADDITIONS AND DELETIONS TO AGENDA

Rivet – agenda item 11 will be Resolution 19-02, FRDAP grant application. Agenda item 12 will be policies and procedures discussion.

MOTION: Tinio-Borton/Moccia to accept amended agenda. VOTE: All aye.

CONSENT AGENDA:

MOTION: Rossman/Tinio-Borton to accept the consent agenda. VOTE: All aye. Council minutes 8/20/02.

REPORTS:

ATTORNEY: Nothing at this time.

CLERK:

- Kabana – is working on a newsletter, when does Council want the newsletter printed? Rivet – before the election with the Malabar ballot printed. Rossman – agrees that only the Malabar ballot info should be in newsletter. Kabana – will put info on the new administrator in newsletter if applicable.
- Kabana - our bank branch has closed, would Council entertain the idea of moving to Riverside National Bank just down the road? Council – yes. Kabana – will have a resolution on the next Council agenda. Rossman – agrees. Also, he asked Riverside and one other bank about refinancing our loan and it turns out that we are best staying with what we have for now. If we need additional money, Riverside would refinance at our current rate.
- Kabana – the Reese ROW issue will re-appear at the next Council meeting in the form of a resolution.
- Kabana – we are too late to apply for the League Bond Pool. It will open again in the spring. Suggests Council give staff direction so we can explore the possibilities and be ready in the spring.
- Kabana – John Baker from Rent-A-Space stopped in to talk to Jim and left \$20 with Debby and told her to buy lunch for the office, it was his way of saying thank-you for all we do.

PUBLIC COMMENTS:

Don Helenburg – states that the Fire Department did blow out his neighbor's culvert pipe but he thinks that much more work is needed. He would like to know where we stand on this issue.

Phelps – made an attempt to contact the property owners immediately to the north of Mr. Helenburg to tell them to obtain culvert permits and install new culverts. He knows that the ditch work is to be done by public works very soon. Phelps states that the house just south of Helenburg has dug a small swale at the north end of their property line to try to alleviate the standing water in the back of their property and will probably help Helenburg. There is also some other work that will join with the Atz Road ditch which should give some additional help.

Rivet – asks Beatty when public works will be on Homestead. Beatty – probably next week but there will be standing water until the culverts are installed. Rivet – that would not be good. Helenburg – there is standing water now anyway. Rivet – he has been trying to contact the property owners with the problem culverts but has had no luck yet. Helenburg – does not think they live there right now. Rivet – if Helenburg has an alternate number then Rivet will call.

Tinio-Borton – is there a time limit involved? Phelps – he has only tried to contact the property owners but he can expedite the issue and move it along. Tinio-Borton – she has seen other places that only allow you so much time, after that they

just do the work and send out a bill. Can we do that? McClelland – if you wanted to set up a procedure to assess a property owner then it should be by ordinance. Tinio-Borton – should we look at doing that? Rivet – if the property owners are not contacted by the next Council meeting then we should look at an ordinance.

ACTION ITEMS:

1. SUE HANN, ACTING CITY MANAGER OF PALM BAY, REGARDING THE PROPOSED PALM BAY BELTWAY

Sue Hann – the limits of the study area for the project are from Malabar Road north to 192 then to Ellis Road. The project is in Brevard County, it is not in the City of Palm Bay. It is being funded with transportation funds that are administered through the Florida Department of Transportation. DOT has done the initial alignment study and the preliminary development and environment report. There are various alignments being studied at this time and the map Council has gives a few of those choices.

The beltway serves from Malabar Road to the north. There is, at some point in time, an opportunity to extend the roadway south around the City of Palm Bay and ultimately hook into Interstate 95. There are no plans, alignments, studies, or intentions of doing that at this point. Just for future consideration they asked the consultant to look at the location of the E1 retention ponds and make sure that it is feasible to continue to the south. But for now there is no activity south of Malabar Road.

The issue that brought this to the municipalities attention from the City of Palm Bay is that at the MPO level there was quite a bit of discussion about the character of the roadway. Would it be an 'at grade' type of roadway, similar to Malabar Road, or would it be more of an interstate quality roadway with interchanges. The City of Palm Bay feels that to build an interstate quality roadway with interchanges would cause the cost of the project to be so excessive that the road would never be built. Transportation funding is very, very limited so Palm Bay felt that if there was any chance of having a roadway out there then it was important to proceed with an 'at grade' roadway with 'at grade' intersections. In the future, if traffic projections warranted a higher quality roadway, then that could be done. But for right now the City of Palm Bay's initiative is just to get the project moving and to proceed as quickly as possible.

Right now, in the five year work program for DOT, all that is funded is the study they are doing now. There is no ROW acquisition funded. The DOT will not provide funding for those activities until this study is finished. So at this time the City of Palm Bay is encouraging the municipalities to support Palm Bay in asking the MPO to move forward and drop the interchange idea. This has since happened and they are moving ahead with the 'at grade' roadway. There will still be some discussion as to the roadway access, which will mainly be handled by Brevard County. The project is now moving forward and Palm Bay would appreciate Malabar's support on this project in the conceptual stage it is in right now.

Rivet – is this a two lane or a four lane road? Hann – the initial studies state that from Emerson Drive north a four lane road would be warranted, and two lanes from Malabar up to Emerson. They are not totally sure yet but they will probably acquire ROW for four lanes. Rivet – this is miles from the boarder of Malabar and he sees no negative impact to the town. Feels it will increase the efficiency of traffic flow. Tinio-Borton – supports this, so does Rossman. Kabana asks Hann to send a resolution for the next Council agenda.

2. APPROVAL OF BID FOR FEMA 1062 GRANT

Tinio-Borton – are we using Jobear? Rivet – that is what the engineer proposed. McClelland – recommends awarding this to the lowest bid subject to an appropriate performance bond and payment bond in order to protect the town.

Barry Proctor from the audience – what does this FEMA grant include?

Richard Clemens from Frazier Engineering – the contract originally was for a series of 14 culverts on Atz Road continuing to the north on Corey Road, and including a retention pond. The retention pond is out of the project so we will be replacing 14 culvert pipes and the head-walls. And at White's nursery we are just replacing head-walls. DEP and SJRWMD have approved the modification and in the future they expect Malabar to do more improvements down stream from the project.

MOTION: Rossman/Tinio-Borton to approve subject to an acceptable performance bond and payment bond. VOTE: All aye.

Tinio-Borton – thanks the Mayor and Moccia for saving this grant.

3. RESOLUTION 18-02 ESTABLISHING THE MALABAR EAGLE CORP PROGRAM

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

Rivet read: RESOLUTION 18-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA CREATING A VOLUNTEER CITIZEN PATROL ORGANIZATION CALLED EAGLE CORPS; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Tinio-Borton/Moccia to approve.

Rossman – asks McClelland where the liability would be if there was an accident? McClelland – the town would be liable and the insurance would need to cover the accident. Rossman – what if they get hurt? McClelland – it would depend on the nature of the injury and circumstances surrounding the accident. The town could be liable for the injuries, there is exposure on behalf of the town. Rivet – so what do you suggest in terms of insurance? McClelland – make sure the insurance covers the particular situation.

Rossman – what about a hold-harmless agreement? McClelland – the problem with a hold-harmless agreement is that if they get a top-notch attorney, and the town asserts the hold-harmless agreement as a defense in court, then he or she will argue that the person was not sufficiently advised of the nature and extent of the risk when they signed the hold-harmless clause and therefore it is not valid. Malabar would be on the losing end of that argument. That is the reason we need to cover ourselves with insurance.

Rossman – he favors the program but feels this should be tabled until we contact our insurance carrier. Beatty – would they have to be covered under workman's comp? McClelland – you very well may need to do that. He knows that there are some volunteers that are outside that coverage but we are going to need to check that out.

MOTION: Rossman/Tinio-Borton to table until next meeting until we find out where we legally stand. VOTE: All aye.

4. APPOINT TOM ESCHENBERG AS THE MALABAR EAGLE CORP COORDINATOR

MOTION: Rossman/Ballou to appoint Tom Eschenberg as the Malabar Eagle Corp Coordinator. VOTE: All aye.

Eschenberg – this resolution came about at the suggestion of the Eagle Corp instructor. Malabar has an Eagle Corp course that is currently under the way and the instructor highly suggested that this be made official by resolution. He does not feel the answers we are looking for would be difficult to come by since Titusville, the Sheriff's Department, and the City of Palm Bay all have similar programs.

Eschenberg – the training program is for 20 hours and will be spread over 7 Saturday mornings. We have completed 3 sessions and have 4 to go, we finish on October 12th. At the last session we plan to have ID cards for the people who have completed the course. Eschenberg has asked the Mayor to be here to present the cards and he invites any members of Council who may want to meet those who will be driving the streets, the presentation should be about 11:00 a.m. Moccia – how may volunteers? Eschenberg – 10. Rossman – feels we will have all the issues resolved before the graduation.

Kabana – can she order hats? Council – yes. Eschenberg – also vests? Council – yes.

5. CONTINUING NEGOTIATIONS WITH BERMAN, HOPKINS, WRIGHT & LAHAM FOR TOWN AUDITOR

Ross Whitley, CPA – they have reduced the offer to the town by \$2,500, which is the first year set-up fees. Rivet – he had conversation with Whitley today and feels the reduction is a good-faith gesture and supports accepting the proposal as amended.

MOTION: Rossman/Tinio-Borton to accept the proposal as amended. VOTE: All aye.

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

Moccia – states that at one point Rivet had asked where Phelps had 'looked the other way' at the direction of Hall and she was hoping to get Phelps to elaborate on that issue now that an attorney is present. Rivet – asks McClelland if we are getting into a dangerous area by commenting on things that may end up being the subject of future litigation. Rossman – is this the proper forum? Rivet/Moccia – does not want to sweep this under the rug but wants to make sure it is done properly.

McClelland – if Council has an area that they feel needs some counsel over-site then it can be talked about now. But if the litigation is going to be against the town then Council may want to direct the town attorney to investigate and then report to Council. That report to Council may be able to be a 'government in the shade' meeting due to pending litigation.

Moccia – should we have Karl Bohne dispose Mr. Phelps? McClelland – no, a conversation would be fine for Bohne to do an assessment of potential exposure with regard to the town. Rossman – will call Bohne tomorrow and set this up. Moccia – would like to have something done before the next Council meeting.

7. RESULT OF TOWN ADMINISTRATOR FIRST ROUND SELECTION

Kabana – there are two applicants who never returned calls. The yes's are at the top of the list and the no's at the bottom.

Rossman – wants each Council member to appoint someone from their district to sit on a committee to help in the selection. Rivet – has a couple of people in mind. Rossman – then use one or two people from your district. Moccia/Rossman – wants to name their citizens tonight. Tinio-Borton – can we legally do this?

Rossman/Moccia/Rivet – does not see a problem with naming names tonight – this is how we are choosing to narrow our list. Kabana – do the volunteers have to be sworn in? McClelland – no. He notes that the Sunshine Law will apply to their meeting.

The workshop is set for October 9, 2002, at 7:00 p.m.

Rivet – we can narrow the list down to 3 possible candidates that night, but how do we interview? McClelland – after you've narrowed it down you can talk to them one-on-one and then you can do a group interview. Tinio-Borton – she has also seen applicants taken out in public to see how they act socially. Rivet – has no problem with Council individually contacting any or all of the 12 candidates on the phone.

Rossman – appoints Pat Dezman. Tinio-Borton – is it a conflict to appoint her husband, Stuart? McClelland – no, a conflict occurs when there is personal gain. Tinio-Borton – will also find someone else from District 1. Rivet – he is trying to get a hold of Don Krieger. Moccia – appoints Skip Hard and Gregory Purden. Ballou – has a couple of people in mind and will call them.

8. REVIEW AND JUDGE EACH OF THE CANDIDATES' QUALIFICATIONS FOR COUNCIL MEMBER FOR THE NOVEMBER 5, 2002 GENERAL ELECTION

Kabana – the qualified candidates are as follows: District 1: Jane Havet and Nancy Tinio-Borton, District 2: Brian Hunter, District 3: Steve Rivet. She states that they have met the qualifications as set out in the Town charter.

MOTION: Rossman/Ballou to accept and qualify the candidates. VOTE: All aye.

9. REQUEST FOR EXTENSION OF NORTH COREY ROAD

Phelps – the owners of the property intend to split the existing lot creating two lots, creating two driveways. Based on that, the ordinance would require that the road be completed and accepted by the Town to the northern most property line, which is basically up to our trail entrance. What Tucker (the property owner's engineer) was supposed to be going to Frazier Engineering for was to answer some questions pertaining to drainage and the crushed coquina on the road bed. At this point Phelps is not satisfied that question posed to Frazier Engineering was exactly what they were supposed to been posing.

Phelps - our ordinance specifically states that the road abutting the property has to be accepted by the Town in order to obtain a building permit. He can appreciate the comments that were made regarding the fact that it is the end of the road, and the road will not go through to another ROW. But there will still be required road access to our trail head, and at some point the Council may determine that it may be necessary to put in a cul-de-sac at the trail entrance at which time additional ROW would be needed. Feels Council should follow our current ordinance as it is set out currently and require the road go to the end of the property line.

Phelps – he has concerns if Council were not to require the road be improved all the way to the end of the property. Whether or not a variance is applicable is a question for Karl Bohne. This is a code of ordinance issue, not a land development code issue. Phelps feels that the ordinance requires that the road be built and that we should follow the ordinance. Rossman/Moccia/Rivet – agree. Phelps – the question Phelps is going to pose to Karl Bohne is whether Bohne feels that there is latitude for Council to make some kind of adjustment on the ordinance or not.

Rossman – would like to see the two houses be built but he does not like exceptions. Phelps – he has explained to the applicants all along that the road has to be extended to the north property line.

Rossman – please keep the owners (the Barr's) informed. Richard Cameron – feels it would be beneficial if the driveway could be to the south of the property. If the drive is put at the north end near the entrance to the trail head there might be some problems between the property owner and the users of the trail head. Rossman – it would be presumptuous of us to think we can tell someone where to put their driveway. Cameron – only wants to avoid conflict.

Mrs. Dezman – the east side of that road backs up to County Cove – it is their back yard. They did not plan to have parking behind them. Rivet – he feels that if there is going to be a trail entrance there then there has to be some provision for parking. Cameron – the ROW in front of the trail entrances is supposed to allow for parking. There is to be no parking on private property.

10. CONSIDER LETTER OF SUPPORT FOR THE LEAGUE OF CITIES LITIGATION AGAINST THE STATE REGARDING THE PRESUMPTION LAW

Rivet – is not in favor of supporting the League. This law corrects an inequity between the police department and the fire department. Fire personnel have been covered for about fifty years by a law that says if they have a heart attack while working, or not working, the law is that the heart attack was a result of the job. The police now have the same law. McClelland – and the municipalities find it very difficult to defeat those claims.

Rivet – agrees that there should be equal treatment for both fire and police. But he also feels that maybe the law is wrong for the fire fighters and adding police to the list isn't making the situation any more 'right'.

Rossman – feels that there is a better way to remedy this situation and that is to take it back to the legislature. Rivet – agrees. Tinio-Borton – has mixed feelings because it was a law that was passed and we are to follow the laws but if someone abuses their bodies and has a heart attack are we responsible? The payoffs affect each and every one of us. Rivet – he does not feel that it is a good law. The League is not asking us to join the lawsuit – they are asking us to support their position. However, we don't employ law enforcement people. Rossman – feels this is a flawed bill but what the League is doing is flawed more-so. Rivet – agrees, the Town should not support the Leagues position.

MOTION: Rossman/Moccia to decline support for the League of Cities position.

Tinio-Borton – is not so sure that is a good idea. Rossman – feels we should also suggest to the League of Cities, during the next Legislative session, that they address this problem.

VOTE: All aye.

11. RESOLUTION 19-02: SUPPORT OF FRDAP GRANT APPLICATION

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

Rivet read:

RESOLUTION 19 - 02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADDING THE RECONSTRUCTION OF THE TOWN MAIL BOAT DOCK FOR HISTORICAL AND COMMUNITY ENHANCEMENT PURPOSES TO THE CURRENT FIVE YEAR PLAN OF THE CAPITAL IMPROVEMENT SCHEDULE NOW BEING UPDATED BY COUNCIL; PROVIDING SUPPORT FOR OUR GRANT APPLICATION TO THE FLORIDA RECREATIONAL

DEVELOPMENT ASSISTANCE PROGRAM FOR 112,000.00 TO COMPLETE THIS PROJECT; PROVIDING FOR THE ALLOCATION OF CONTRIBUTING FUNDS OF 37,500.00 FROM MALABAR IN FISCAL BUDGET 2003-2004; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Moccia/Rossman to approve resolution 19-02.

Moccia – has been working on this with Debby Franklin, it was about to get lost in the shuffle of hiring a new administrator. The application is for the rebuilding of the dock. We will need to have a meeting regarding just this issue which is one of the grant requirements. And there is another grant to apply for in December.

Rivet – his only concern is that is this the right priority for spending \$37,000? Moccia – she would not support this at all if she couldn't find a satisfying grant to cover the \$37,000. She understands that there are two grants and she can play one off the other.

VOTE: All aye.

12. POLICIES AND PROCEDURES

Rivet – we have been talking and have some boiler-plate documents and feels that we need to put together a policies and procedures manual for the town. We need to schedule a workshop. Kabana – we can schedule this at the October 7th agenda. Council agrees.

REPORTS: MAYOR, COUNCIL

- Rossman – asks Phelps about a complaint on Hall Road. Phelps – there are permits for the concrete and building, there is a building that is supposed to be coming down. We have had code enforcement action on that property in the past. There is some concern that they are welding almost like a commercial operation but the owners state that they are welding only on their own equipment. He will follow up on the complaint.

- Rossman – asks Phelps about Gentile issue. Phelps – there was a Special Master hearing for yesterday, the 16th, but the certified mail receipt had not been returned to the town, nor have the mail items been returned to us. As soon as we get something back in the mail we can proceed and Phelps will work out what to do next with Karl Bohne.

Tinio-Borton – can we hold them to a time period? Phelps – the procedure is to send them a notice by certified mail and if they receive the notice less than five days prior to the hearing then they have justification to ask for an extension. But if you don't have a notice, either posted or mailed, so the statutes are satisfied, you cannot proceed with the hearing. Tinio-Borton – so we can't serve his attorney? Phelps – there are other ways of serving but Phelps needs to talk to Karl Bohne about this but the certified mail must be the first thing they try. Tinio-Borton – would like to see this moved on right away, our attorney needs to do something now.

Moccia – has been out to the Gentile property and there are now two stalls that have roof structures added to them. She understands that there is not supposed to be any horses there, nor stalls, and now the stalls have a roof. Tinio-Borton – had a call today stating that the horses may be malnourished. Rossman – he has seen the horses and they don't look good at all. Notes that yesterday there was a load of dirt dumped there.

Tinio-Borton – what can we do? McClelland – you can't do anything until they are served. Tinio-Borton – let's expedite this. Rossman – agrees. Phelps – the

subject of the animals has not been related to him, he will call animal control. Pat Dezman from the audience – had to pick up horse manure in the road. She feels that something needs to be done. Rivet – are we documenting everything? Phelps – yes.

- Ballou – nothing at this time.

- Moccia – just wanted Council to know she stopped by and looked at the roofs on the horse stalls.

- Tinio-Borton – regarding the Balkany letter. She has tried to call them and they have not returned her call. Asks Phelps what is up. Phelps – is confused about the letter. There were references in it that he had not responded and not returned phone calls but the previous letter he received from them stated that they would study the information that Phelps had provided and that they would contact Phelps when they were ready to proceed. Phelps had provided them with sections of the land development code.

Phelps – this is a piece of property off of Jordan Blvd. It has a lake on it and you cannot access one side of the lake without going off the property. Tinio-Borton – do you have documentation that you responded to them? Phelps – yes. And the last thing he had from them was dated January 29th. Rivet/Tinio-Borton – can we respond to them? Phelps – will send a certified letter.

- Tinio-Borton – we have a news release from Keep Brevard Beautiful, can we use this for grants? Moccia – we need access to the river from private land owners and Keep Brevard Beautiful does not want to work on private property. She was hoping to get volunteers. Tinio-Borton – what about Pepper Busters? Moccia – they will treat the stumps but they do not do the work. She would like to get approval from all those land owners and have volunteers take down the trees. We can work on it little by little. But we would have to make sure we are insured.

Beatty – we have used prisoners in the past. Moccia – but we have found that that won't work. Beatty – we also need permission from DOT to work in their ROW. We can get the prisoners through Keep Brevard Beautiful and pay a fee per year for their use. Feels we could schedule prisoners once a month and knock out those trees. Rossman – and we could use them to help clean ditches too. Beatty – we have used them in the past. Rossman – asks Beatty to write down all that information and have it for Council at the next meeting.

Moccia – and could Beatty contact DOT and ask what information we need in order to work in their ROW.

- Rivet – has a complaint on Booth and Lett from the Foleys. Beatty – should have the ditches cleaned out in two days, after that we will haul in dirt. Tinio-Borton – spoke with Mrs. Foley today and Foley is very happy that work is being done.

- Rivet – has a letter from David Hoene and it brought up some fairness issues. We talked tonight about taking the hard line with one potential horse facility. And we have to enforce the ordinances across the board.

Rivet - asks if Cynthia Burke has provided an updated site plan. Phelps – no she has not. Burke was concerned that meeting with Phelps would not solve her problems so Rossman agreed to mediate. At this time Phelps has received no contact from Burke. Jerry Durand has been complaining to Phelps that the irrigation system is not being utilized and the dust is prevalent again. At this point Phelps needs direction from Council because the previous motion was to table this issue.

Rossman – will come in Friday at 10:00 a.m. and meet with Burke and Phelps to discuss the issue. Moccia – Burke has had sufficient time to resolve this. Phelps – Burke is in violation of the Special Master order. Rossman – let's proceed with this. Rivet – feels we need to be consistent.

- Phelps – asks Moccia if she is satisfied with the result of the action taken on Duncil. Moccia – it doesn't look like too much dirt was taken. Phelps – we received a call from someone on Duncil Lane that the new dirt that was put down to build up the road and improve the surface was being 'borrowed' by someone with a box blade on a tractor. They were using it to fill a low spot in their driveway. Phelps notes that the young man on the tractor was not the resident and Phelps told him that he had to stop because he was stealing public property. The man was doing a nice job on the road but none the less, he stopped and put the tractor away. Phelps wanted to know if Council wanted to pursue the issue. Council was happy with the fact that he stopped.

- Rossman – thanks McClelland for being here. The rest of Council agree.

- Beatty – we now have Columbus Day off and work on Veterans Day. Could we switch the days? Council discusses the issue and agrees that we will switch the days. On Columbus Day we will be open and on Veterans Day we will be closed. It will be noted in the employee manual.

Meeting adjourned at 9:45 p.m.

BY:

Mayor Phillip R. Crews, Chair

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
