

TOWN COUNCIL MINUTES
October 7, 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:	STEVE RIVET
COUNCIL MEMBERS:	BOBBI MOCCIA
	BOB ROSSMAN
	NANCY TINIO-BORTON
	STEVE RIVET
ATTORNEY:	KARL BOHNE
CLERK:	SUSAN KABANA

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

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

Since the council chamber is overflowing with people the Mayor announces the exits for safety reasons.

ADDITIONS AND DELETIONS

Tinio-Borton – would like to move agenda item 4 to the beginning of the action items. Council agrees.

Mayor – would like to add item 1a, Robert and Emily Barr regarding their property at the north end of Corey Road.

MOTION: The Mayor approves the agenda without objection.

PROCLAMATION: HONORING ALANNA K. FOLEY

Mayor read the proclamation and presented it to Ms. Foley.

CONSENT AGENDA:

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

Council Minutes 9/17/02.

ATTORNEY:

Bohne – states that Steve Gentile filed an appeal for the denial of his conditional use. To date we have not been served with a petition. There is also an amended petition and we haven't been served with that either. Bohne states that the amendment change was to add the appendix which is about three inches thick. Bohne did tell Gentile's representative that he (Bohne) would be able to receive the papers when they are served so that the Mayor would not have to be tracked down.

Bohne – will be attending the Eagle Corp meeting this Saturday to give a lesson on what they can and cannot do while patrolling the Town. He also has a Special Master meeting this Thursday and will be representing the Town against Mr. Gentile regarding his alleged violations of Town ordinances.

CLERK:

Kabana – she has several items tonight and asks Council if they would like her to wait until later in the meeting due to the crowd. Council – yes.

4. FIRST READING: ORDINANCE 02-07 COMMERCIAL AND RECREATIONAL VEHICLES

Tinio-Borton – would like to make an opening statement. This ordinance was intended to be based on 18 wheeler's, not a work-type truck. She feels this version is way off the mark. This looks like a Palm Bay ordinance and we are not Palm Bay. She asked for this ordinance due to a complaint regarding an 18 wheeler parked in front of someone's house, Tinio-Borton did not mean for this ordinance to include smaller size trucks.

Mayor – asks for comments from the public.

Howard Maxy – wants his friends to be able to park on his property with no problem and is here to find out what this ordinance entails.

Mayor – to clarify where this ordinance came from: it was requested by Council, it went to P&Z, and Council has a recommendation from P&Z to not approve the ordinance. Rivet – feels the citizens are preaching to the choir because he also does not approve of this ordinance. There is a unanimous agreement on the Council to disapprove of this ordinance.

MOTION: Moccia/Ballou to reject ordinance 02-07, Commercial and Recreational Vehicles. VOTE: All aye.

Tom Eschenberg, Beran Lane – states that this ordinance in its current form is unacceptable to everybody, but the question for Council is are they going to re-write this ordinance to still address this complaint about an 18 wheeler, or are they going to fully drop this? Bohne – the only way this ordinance can come back up is if three Council Members want to bring it back for discussion. Right now it is done and dead but years from now another Council may want to bring it back up.

Council – are all in agreement that this is a dead issue.

Bruce Fletcher, Flashy Lane – feels that one day this issue will have to be addressed and when it is addressed he wants to make sure that it is recognized that people moved to this area because this is the environment they want to live in. They moved here for a certain amount of freedom and that needs to be remembered. If a person has enough land to accommodate a truck or RV then that shouldn't be a problem, and when an ordinance is written then there shouldn't be a uniform ordinance for the entire Town, it needs to recognize the different areas in Town and treat each section accordingly.

Tom Taylor, Waring Lane – is in the process of building his home and he agrees with the other citizens that each person should be able to have their own 'toys' on their property.

Connie Gardner, Duncil Lane – she is mad because she has lived here for 22 years and now her neighbors complain when her husband fires up his air boat. She is fed-up, if the people who moved here want restrictions similar to those in Sun Tree then they should have moved there and not to Malabar.

Debby Kicniski, Ski Lane – tells Council to deal with the people who are making the problem. She has a Tahoe that weighs 8,000 lbs and according to this ordinance she'd have problems parking it in her yard. Most people are not problem makers. Asks Council what is going to take the place of this ordinance and states that Council needs to keep the citizens informed.

Reed Shultz – he used to live in Palm Bay and was told he could not park his truck in his driveway so he had to sell his house and then he moved to Malabar. He moved

here so he could park his truck in his driveway once again. His truck is his means of living and he feels that there are many other people here who are in the same place as himself.

Jim Roulst – agrees with all that has been said except that all commercial vehicles need to be able to park in Town, not just the subject few.

Pat Benington, Corey Road – she moved to Malabar because she and her husband liked the area. She has a horse and states that you can't haul feed and bales of hay in a Jeep – you need a truck. They also own an RV and now that their dreams are all in place this ordinance is like having all your dreams pulled out from under you. She is wondering what is going to be next. Also, she feels that proper notice should be given on issue like this.

Wayne Marshall, Florence Street – has lived here all of his 54 years and built his own house when he was 19 years old and this whole time he does not think he has ever complained about a single thing. He takes pride in his land and he loves boating and has a boat and he does not feel it is anybody's business what he does with his boat. He notes that there are many more people here than the ones crammed into this room. There are many, many people outside this building right now because they cannot fit in here. There are cars parked in every direction for a couple hundred yards. States that if one person is a problem then address that problem, there is no need for a blanket law.

Tom Gehman, Atz Road – is not present.

Lawrence Dow, Atz Road – feels Council has the message and passes.

Albert Keith, Corey Road – passes.

Ray Harken, Corey Road – does this mean this will not come up again? Mayor – any member of the Council could choose to bring this back to Council at a later date. Rivet – it won't be himself. Harken – asks how many names on a petition would it take to replace Jim Phelps? Feels the petition could be started right now. Tinio-Borton – this is her fault, when she asked for this ordinance she had no idea that we would get Palm Bay's ordinance. But she asked for it because there was nothing on the books to regulate the parking of 18 wheelers. This is her fault and she has apologized several times and wants it known that Jim Phelps had nothing to do with this. She was trying to help someone, not hurt many.

Bohne – the history of what happened was that Tinio-Borton brought the one issue to Council and asked that an ordinance be drafted and we did not know where to begin. So, rather than reinventing the wheel, one Council member suggested that we look at the Palm Bay truck ordinance. So Bohne obtained a copy of that ordinance and drafted what is before Council tonight. Bohne states that Tinio-Borton did not say she wanted to use the Palm Bay ordinance.

Crews – states that this ordinance is going through the normal legislative process, nothing has been done at midnight or in secrecy. We are not trying to leave anyone out of the loop. It went to P&Z and they recommended to dump the entire issue and then it came to Council with that recommendation, which is the proper procedure for an ordinance.

Rick Whitworth, Weber Road – this was a problem for someone but what ended up happening was that we used a sledgehammer to drive a tack. He would like for Council to look at the health, safety, and welfare of the Town and determine if Council should be doing a certain thing (like a truck ordinance) or not. It is good to help the citizens but Council needs to remember that people do have a right to their property, and as people we have a responsibility to be considerate of one another. He asks Council to consider that theme when an ordinance is put before them.

Eileen Penhart, Sandy Creek Lane – wants to know if it was her neighbor who complained. Mayor – do you have an 18 wheeler? Penhart – no. Mayor – then it was not your truck.

Dick Koab, Weber Road – asks if this was a procedural problem, asks what the first reaction was to the initial complaint. Tinio-Borton – when we first received the complaint it went to code enforcement. The response from the citizen who owned the 18 wheeler was that Malabar does not have an ordinance that addresses the parking of their 18 wheeler. So, with all good intent, they were trying to help the citizen who initially complained. Koab – so if the neighbor had been a good neighbor, then none of this would have come to pass. Tinio-Borton – yes. Koab – he feels that everyone tried to do the right thing but notes that the citizens who are here tonight are not the bad guys and they don't need any Council member telling them how to live their lives. Feels that a better procedure could be in place so all the people here would not have to come out on Monday night to protect their lifestyle.

Bruno Dispenza – moved here to have some elbow room and have a place to park his RV and does not want to lose that right. Wants to know if the ordinance will change. Phelps – not unless Council changes it.

Vicki Easterling, Blanch Street – in fairness to both sides she must speak. She is not for this ordinance and she lives here because she is out of Palm Bay and she loves the rural nature of the area. However, she thinks it is fair to say that all of Malabar is not equal. If she lived on two acres she would have every big toy she wanted and still not bother her neighbors. But, she lives in old Malabar and her lot is between a third and half acre. She loves her neighbors and they are on both sides of this issue, but for those who live on smaller lots she does not feel they should be able to have an RV because it might bother their neighbor. Though she does not agree with this ordinance, for those people who live closer together, she does not feel the same should apply as those who live on large tracts of land. So, in fairness, something should be considered for smaller lots.

Richard Cameron – passes.

Mr. Vitaliano, Corey Road – when people move here do you tell them the ordinance? Mayor – all the ordinances are a matter of public record and are on the web. Mr. Vitaliano – the people need to know the laws.

Citizen – does this mean that this is over? Rivet – the only way this could be brought up again is if a Council member brings this up again and tonight it was unanimous to turn this down. He, for one, will not bring this up again.

1. EARL RUNGE, 2335 COREY ROAD, FENCE HEIGHT REQUEST

MOTION: Rivet/Moccia to approve the higher than 54" fence. VOTE: All aye.

1A. ROBERT AND EMILY BARR, PROPERTY ON NORTH COREY ROAD

Rossman – has been thoroughly educated by the Barr's on this issue. Rivet, Moccia – also spoke with the Barr's.

Robert Barr – when they purchased the property they knew they would have to improve the road. Feels that Phelps bringing this to Council on September 17th was premature. The normal procedure for their request would have been to go to P&Z or the BOA. They did not know what Phelps was going to present to Council on the 17th and they felt that the letter Phelps wrote to Council on that night was only the code as it is written. Barr states that the intent of the Frazier engineering letter to the Barr's engineer, Mr. Tucker, was not presented that night. The Barr's believed that Council's decision to follow the code eliminated any possibility of deviation other than to follow the code.

On September 24th during a meeting with Phelps, himself and his wife, and Mr. Tucker (the Barr's engineer) Mr. Tucker resigned. At this point the Barr's are asking for clear direction to give to their next engineer.

The Barr's respectively request that Council reconsider the decision of September 17th and allow them to proceed with a deviation that would be acceptable to all parties. This is an unique situation.

Emily Barr – she and her request that Council revisit the letter from Frazier Engineering that was presented to them at the last Council meeting. The letter states that this is a unique situation. In 1980 there was a pond where this road once was before Country Cove was built. They are going to have problems with building this road because of some errors that took place when the pond was filled in. They want to do everything possible to be cooperative and help get this situation taken care of as Council requests. She notes that Council has a copy of the road survey and that the north end of the road shows the entrance to the trail.

Moccia – why did your engineer resign? Barr – frustration due to delays. One delay was that there had to be a change to the road ordinance because the amount of crushed coquina was incorrect. And Phelps brought up the fact that Council may want a cul-de-sac or to extend Corey Road into the preserve, which their engineer thought was inappropriate. Barr feels that this is mainly a neighborhood access.

Ken Adams – it has taken a year to build a road. A letter was written by the Town Engineer and all he is asking is that the recommendation be followed.

Rossman – spent much time with the Barr's and he believes that the engineer is correct and this is an unique situation and that the Barr's should be able to build.

Bohne – they want to 'vary' the code but the way the code is written the BOA can only hear variances in regard to the 'land development code' section of our code, not the 'code of ordinance's' section. And the road ordinance that they would need to 'vary' is in the 'code of ordinances', so Bohne is not sure anything can be done by the BOA unless a precedence to hear variances on the 'code of ordinances' has been set.

Carl Beatty – you could vacate the ROW and solve this problem.

Paul Marpil – is the Chair of the BOA and they have heard and rendered decisions on the 'code of ordinances' many times, so he feels that a precedence has been set. What happens to those decisions that have been render regarding roads? Bohne – there is a thing called an estoppel, which means it has been done and can't be stopped, so there is no going back. Bohne is unaware if a precedence has been sent because he has not been here, but if precedence has been set then he feels that it must be abided by. We need to keep with what has been done in the past, but the code does not address variances on the 'code of ordinance' and in the future we may need to address that problem.

Marpil – so now Council has to decide whether the (the Council) just want to take care of this themselves or make the Barr's pay \$175 to go through the BOA.

Phelps – at the time that Maria Parkhurst from Frazier Engineering wrote the letter to Mr. Tucker she was not aware that the property involved a lot split. And our subdivision ordinance for both lot splits, and minor subdivisions, requires that the property be on an accepted street. So that is another issue that we need to talk about. If the Barr's plan to split that lot, they cannot split the lot until Council accepts that road.

Tinio – Borton – how long has this been going on? Rossman – over a year. Phelps – the surveyor and the engineer have only looked at this recently.

MOTION: Tinio-Borton to vacate the land and let them get on with their lives.

Kabana – you can't do that, you have to hold a public hearing and there has to be advertising.

Cameron – there is a main waterline for County Cove that goes through the preserve and goes along that ROW on the east side of the road, so you wouldn't want to vacate that portion. Also, if there is a problem with parking we can always move the parking inside the preserve and re-fence the area. Kabana – if you vacate the ROW then you can't get to the trail entrance.

Crews – what is the length we are talking about. Adams – there is 417 feet total. 250 feet would be improved and 175 feet would remain unimproved.

Kabana – who would be applying for the vacate? The Town or the Barr's? Wants to know because there are fees to be paid. Rossman – the Town would be applying for the vacate.

Rossman – what is the quickest way to do this? Kabana – a vacate must go to P&Z for a public hearing, then it must be advertised, and then Council must hold a public hearing. Marpil – it would be quicker to go to the BOA. Rossman – then go to the BOA. Crews – then what is the motion?

MOTION WITHDRAWN.

MOTION: Rossman/Rivet to send this to the BOA.

Rivet – has a lot of sympathy for the Barr's because it took almost a year before he could build on his land. Would like to see this done as easily as possible.

VOTE: All aye.

Bohne – would like a consensus of Council to review the code and come back with a recommendation for the Council. Council – agrees.

PUBLIC COMMENT:

Don Helenburg – what is going on with the culverts on Homestead? Mayor asks Beatty what is happening. Beatty – we are waiting on the homeowners to replace their culverts. Mayor asks Phelps what is happening. Phelps – we are in the process of getting the two on the north end done. Phelps was waiting on feed back from Beatty. Beatty was going to meet with Maria Parkhurst from Frazier Engineering and they were going to make a determination on which way they were going to make the water go on the west side of the road, whether they were going to split it, or make it all go to the south. We have a preliminary culvert inverts set by the engineer.

Mayor – asks Beatty if he met with Parkhurst. Beatty – she specked it out already. Phelps – asks Beatty if the sheet he got was acceptable. Beatty – yes, it works. Mayor – state that we will divide the water on the west side and south of that would flow into Atz. Mayor asks when will the work begin? Beatty – Public Works can go there and dig but if it rains there will be two lakes until the property on the south replaces the culverts. Mayor – when will that happen? Phelps – he will notify the property owners that they are to put the culverts in tomorrow. Tinio-Borton – wasn't that supposed to be sent out last Council meeting? Phelps – it has been worked on to try to get the engineers opinion. Phelps met with Beatty and Moccia and he was waiting on knowing what exactly to tell the people who need to replace the culverts.

Phelps – the water flows south from Helenburg now because the people south of him dug their ditches out and the next house on the corner will be digging theirs very shortly and putting their driveway culvert in. Mayor – that will provide Mr. Helenburg the greatest relief, is that correct? Phelps – yes. But now the concern is that the water that goes to the north is a problem because it does not flow well. So the idea was to take as much of that water south as possible but it still needs to be checked by Beatty to make sure it is acceptable.

Phelps – the house on the corner is very close and when he sets his culvert then there will be a lot of relief for Helenburg.

Helenburg – wants to know what it would take to get a traffic light at Weber Road and Malabar Road? Rivet – a traffic study was done and DOT determined that there wasn't enough traffic to put a turn signal there but it did justify a right turn lane. Mayor – we can query the State again.

Kabana – back to the Barr issue. At this point the Barr's will have to apply to the BOA, not the Council, and we had mentioned waiving fees. Tomorrow when the Barr's come in she does not want any confusion as to the fees. The Barr's need to hear from Council tonight as to whether they have to pay a fee or not. Rossman – we did not waive the BOA fees and he does not feel the Barr's have a problem paying the BOA fees.

Citizen – who's responsibility is it to call FPL when a street light is working and not working? Kabana – we can call or you can call FPL yourself.

Mayor – asks Bill Withers if he wants to speak per his pink card. Withers – will wait until the end of the meeting.

2. PATRICIA ANN SELF, 2420 MALABAR ROAD, MALABAR FIRE DEPARTMENT

Self – she made a complaint against the Malabar Volunteer Fire Department, she was a volunteer there. The Department served her with a suspension letter and she had written two letters back, one to Chief McClelland and one to the Town Council. At that time Bill Hall was Town Administrator and he was looking into this. She requested a hearing because she felt the charges were unfair and she wanted answers as to why she was being charged.

Self – this all started in November 2001 when she and Captain Joe Buhler began a relationship. Soon after comments were made and in December she was put on suspension for not making truck check. She missed truck checks in October but had put in for a leave due to attendance at paramedic school.

In December there was a confrontation with another member regarding her relationship with Buhler and she was put on suspension. She then asked President Futch why she was suspended and she was told that it was easier to remove her than it would be to remove the other members that were involved. She was told that if things continued that disciplinary action for her would follow.

In February through April she put in for another leave of absence because she felt that the personal feelings of the other members could endanger her life on a fire scene, she could not trust those she worked with.

In June she responded to a call. At that call a fire fighter passed out and she caught him as he fell. Rescue 88 agreed that there were changes in the heart monitor on this fallen firefighter and Rescue 88 agreed with Self that the fallen fire fighter needed to be medically treated. The fire fighter said he would not go to the hospital, but he would let another member take him in a private vehicle. When Self arrived back at the department she and Captain Buhler took the fire fighter to the emergency room.

Self wrote a complaint on June 1st. A suspension letter was written on June 4th. She was told that everyone was tired of the 'B.S.' and she was put on suspension pending an investigation. That is where the letter from Chief McClelland came in stating the 7 accusations and charges, that letter was dated June 4th but she did not receive it until June 10th. She was given the letter by her boyfriend at their home. She feels that the letter should have come from the Chief, not from her boyfriend and not at her home.

She wrote a letter on June 13 asking why she was on suspension. And she still has no answers. It has been 125 days since her suspension and 90 days since she was

terminated. She was terminated for missing truck checks in June. When you are suspended you can't participate until your suspension is over so how was she supposed to do truck checks? Self mentioned the Fire Fighter Bill of Rights and has been told that Malabar does not follow this. She has simple questions and wants some answers.

Mayor – he was brought into this after Hall resigned. Crews notes that we have a fire chief who is employed by the Town and the remainder are volunteers. The Town then has a contract with the Malabar Volunteer Fire Fighters to provide fire protection in our Town and in that respect we have no authority in their business. The Fire Fighters Bill of Rights only applies to employees, not volunteers. Crews did meet with Self and Buhler. Crews notes that there were documents that were posted then thrown away, with the understanding that the copy on the computer would be kept. At this point that hard drive has crashed and they have had no success in restoring the data, and in Self's mind she is not satisfied.

Self – she has never received answers to her questions. There are loose ends that are still hanging and she wants those resolved. Mayor – he recalls telling Self that even if the loose ends were resolved it wouldn't change the outcome. Self – she still wants to know who, what, when, where, and why to each of the seven allegations. Self was told that the Fire Chief won't reveal the 'who' but Self feels that she deserves to know who is accusing her.

Mayor – the volunteers are governed by a board and that board makes the policies and the Town Council has no control over those policies. Like any other volunteer organization the volunteers come and go at the will of the governing board. This may not be what Self wants to hear but there is nothing more the Council can do.

Self – feels there is obviously something wrong at the Fire Department because so many people have recently resigned. There is only one paramedic in the entire Fire Department. We are paying taxes for services that we cannot provided. Why not let the County take control of our fire department? Feels that there are so many things wrong at the fire department and no one wants to acknowledge the problems, they only want to cover them up.

Bohne – feels that there is no 'action' to be taken by Council even though this is an action item. Self – she is asking for an impartial investigation. Bohne – but the Council cannot order that. Bohne tells Self that if she perceives a problem then she needs to file a lawsuit. Self – the Chief is an employee of this Town and he suspended Self and she asks why can't Council do anything.

Mayor – states that with all due respect it is imperative for the Chief, and the Fire Department Incorporated, to maintain order and to discipline within the organization, and we have to let them do their jobs. And overall, after looking at all the issues, Crews concluded that there really was no wrong-doing by either the board, or the Chief, and Crews feels that if Self has other issues then that is a civil issue.

Bohne – they are a non-profit organization and we have a contract with them to provide fire service and if they are not doing that then there is a problem. But as far as the internal workings that is not something we can control.

Self – so she still doesn't have her answers. Mayor – we have answered everything we are capable of answering.

Joe Buhler – we asked for a written explanation from the Chief and the President and we still have not received this letter. Mayor – that is an issue to take to them then. Buhler – the bylaws state that if there is a problem with the Chief they are to take those to the Town Administrator, and right now we don't have one so now it has to come to the Council and he asks Council to make a decision. Was there wrong doing on the way the

case was handled or not? Mayor – he a through review of everything he saw no wrong-doing.

Buhler – he himself was suspended for not making truck checks, returned to duty, and has since resigned due to the hostility at the fire department. When Self was suspended she asked for written explanation as to why she was suspended and never received that, within a month, she was terminated for not making truck checks when she was suspended. How is she supposed to make truck checks when she was suspended?

Mayor – those issues were looked at by the board and there was a unanimous decision to terminate Self. And Self was not alone, there were quite a few members who were terminated at that same time. This is a common occurrence.

Buhler – she asked for an appeal but was denied and unfortunately Self could not be there when the appeal was denied.

Bohne – if you don't feel that the process at the fire department followed their bylaws then that would mean that Self has a private cause of action to compel them to comply. The Council cannot compel the volunteer-not-for-profit organization to do anything other than to abide by their contract. Buhler – suggests we check the contract because they are not abiding by it. Bohne – what you are saying is that you want us to compel them to do something, and we can't compel them to give you the documents. If Self feels that she was treated unfairly, arbitrarily, or capriciously in the hearings, or lack thereof, then it would be up to a court to enjoin them from terminating you and putting you back on. If this was our fire department it would be a different story.

Self – what about the Fire Fighter's Bill of Rights? Bohne – the Florida Statutes says that the Fire Fighter's Bill of Rights only covers paid employees and Self is not a paid employees. Buhler – thanks Council for their time.

Debby Kicinski – she is pretty sure that the contract between the Malabar Volunteer Fire Department Incorporated and the Town of Malabar provides for a certain number of fire fighters, she would like to know if we have enough fire fighters to come to her house if it was on fire or would she have to wait for Brevard County to come out? Why not just have Brevard County man the fire station and let Malabar have real paid fire protection. She'd be happy to pay taxes to make sure her house doesn't burn to the ground. There is not even an EMT on our department. Buhler – how many active members do we have? Self – how many actually show up? How many are EMT's and how many are paramedics? Mayor – that discussion is not for this meeting. Kicinski – that is what she wants, she wants Council to discuss this as an agenda item for another meeting.

3. CYNTHIA BURKE, CONDITIONAL USE

Phelps – Council had looked at this conditional use application previously and because the plan did not meet the requirements, it was tabled. After that Burke did submit another site plan with very little change to it. In the packet tonight there is a memo from Phelps and a note from our engineer who reviewed the site plan. On the revised drawings there is basically no landscape shown at all, the parking is not dimensioned out, nor does it identify how much parking is needed. There is still a dust issue that has not been addressed on the site plan other than the fact that there is now a well. It shows the location of the manure pile in the SW corner. It appears to Phelps that the requirements of the site plan and the conditional use have not been met.

Crews – how long has Burke been operating her business without a conditional use? Burke – has been in business for three years.

Tinio-Borton – needs to disclose that she received a phone call from Mr. Durand today. All of Council received calls from Mr. Durand.

Mayor – there is an issue with the dust. Burke – notes that everyone should be aware that Mr. Durand was out of town for three or four months. She also notes that she does not want to beat a dead horse.

MOTION: Tinio-Borton/Rossman to remove this issue from the table. VOTE: All aye.

Burke – is not really sure what is being asked for other than what Mr. Phelps asked for last April or May.

Phelps – to the best of his knowledge when this originally started there was a copy of the conditional use and the site plan requirements provided to Burke. Those specify what has to be on the site plan in order for it to meet the minimum requirement. Mayor – and was Burke asked to bring those requirements? Phelps – yes. In Phelps opinion and the engineer's opinion this site plan does not meet those requirements.

Burke – why does it not? Mayor – it does not meet them as laid out in the ordinance. Burke – would like to hear Phelps tell her of the deficiencies because she has been told that she was in compliance and then she was told that she was no longer in compliance. Would like to go through the issues individually.

Phelps – the last time she was here he told her that landscaping was required on the site plan. He apologizes to Burke if he is missing it but asks her to show him where the landscaping is located.

Burke – excuse me if I could ask you where the landscaping was required. Phelps – that was specified in the documents that were given to Burke. Burke – it is not. She reads a portion of the code. She states that no where does it say that we have to have landscaping. She asks Phelps to tell her where the landscaping is required. She has natural trees, oaks, and flower beds. Phelps – under the provisions of the conditional use the table specifies that it has to meet a type 'B' landscaping for the perimeter of the property. It then refers you back to another section of the code which tells you what trees and what type of material needs to be around the perimeter of the property. There is nothing shown on this site plan. Burke – that happened because it is not in the code. Phelps – yes it is. Burke – if Phelps will look at the code it does not follow in the code. Phelps – in what way? Burke – states that Phelps and herself has been through this so many times.

Phelps – this is why Rossman wanted to meet with Burke and Phelps. Burke – but she never received a call about that meeting until a half hour after the meeting was supposed to take place. Burke then tells Phelps 'don't even go there' several times. Rossman – he was here at 10:00 am on the morning of the meeting. Burke – she does not feel she was notified, the letter was delivered to her daughter, not to her. Rossman – did your daughter give you the letter? Burke – no, her daughter is not herself, the letter should have been given directly to Burke.

Burke – she wants to review the conditional use. Mayor – that is not the order of business right now. In order to approve the conditional use you must first have a good site plan. The site plan is what we are talking about. What Crews understands is that the site plan is not in compliance. Burke – disagrees. Phelps – reads a letter from Frazier Engineering stating that "the applicant has not complied with the request for information ... therefor, there is not adequate information to evaluate the submittal." Burke – states excuse me, how is she not in compliance and why was she not told about this? This is a building that exists, how is it not in compliance? Mayor – but you are asking for a conditional use, which has not been granted. Burke – Phelps told us at the last meeting that it wasn't the same thing because it does not matter.

Rivet – states that Council is trying to work with Burke. Burke – interrupts Rivet and states that she has all the building permits and everything. Mayor – asks Burke to

suspend and recognizes Rivet. Rivet – states that Council is trying to work with her and asks her to please cooperate. Burke interrupts Rivet again. Rivet – states that this (the interruptions when someone else is speaking) is a symptom of what is happening. We've been trying to communicate and trying to work with Burke so she can get a conditional use permit, however, we have to meet the letter of the law. Rivet asks Burke to please try and cooperate and that she will probably get the conditional use.

Burke – states excuse me, excuse me but she has been put through the special master for stuff that Phelps was in error over and it's coming back on her and she is not going there again. She has had enough, states that 'you guys' are coming back on her and she is not going there. Phelps is telling her that she did not have a unity of title, why did he give her a friggin building permit? Mayor – that is another issue. Burke – enough, she just wants to get past this. Mayor – if she will just respond, then Council will try to resolve this issue. Burke – she would like to go past Mr. Phelps.

Mayor – Council wants to see this issue resolved and it is inherent that we set some kind of a deadline to make sure that happens. Tinio-Borton – we only need a site plan. Mayor – there was a requirement to submit a revised site plan to the Building Official for his review and that was done but it doesn't meet the requirements. Phelps – the best he can do is to provide the ordinances that state the requirements, it is up to the applicant to follow those requirements. He cannot do this for them. Mayor – we cannot go forward until we have a good site plan.

Burke – asks if we have a copy of her current site plan. Rossman – did the engineer review this site plan? Phelps – he tried (was interrupted by Burke). Burke – so the engineer hasn't even seen this? Mayor – asks Burke to suspend and asks Phelps to continue. Phelps – reads conditional use info from code book that states that the approval is based on the criteria in the code book. This site plan doesn't indicate how many horses are being stabled and there are other items listed in the ordinance that are not on this site plan. Phelps elaborated on what else was missing and that he previously tried to provide this information to Burke.

Mayor – states that the code is readily available and questions as to why the site plan does not comply. Burke – she went site by site through the codes and she would like to go through them. She reads Sec 1.72(a), (b), (b)1, b(2), and she states that she complies with all of them. She states that Phelps sent a letter regarding her manure and it turns out that her manure is 30 feet from anyone and her neighbors manure is on Burkes property line right near the neighbors house. Burke quotes other code sections that she is in compliance with. These are all the things she was hammered on the last time she was here.

Mayor – asks Phelps if a traffic study has been done? Phelps – that is not an issue for a small commercial site but the engineer will have to approve that issue. Burke – eight of the ten horses are owned by her and there is very little traffic impact. Mayor – begins to speak. Burke – begins speaking. Mayor – tells Burke to suspend because she does not have the floor. He tells Burke to hit the high points and if she has submitted a traffic study then say so. Burke – tells the Mayor that she is sorry but she has been hammered on a lot of the items that she has submitted over and over and now one more time she is going over it again. Mayor – have you submitted the traffic study? Burke – been there, done that. She continues going through the code. Mayor – asks Phelps if he is following what Burke is saying. Burke – she is talking to the Council, not the Building Official. Phelps – he reviews conditional uses during working hours as to what is needed and what is not needed. When a site plan is near completion comments are requested from Phelps, the Town engineer, and the Town planner. And at this point

Council has a memo from the engineer that states that there is not enough information to review.

Mayor – so basically what we have is a recommendation from the Town engineer that the site plan does not contain enough information, and we have a memo from the building official that states basically the same thing. Burke – she would like to understand Phelps asked her to spend over \$400 again and once again she does not have an applicable site plan. Mayor – Phelps will delineate those for us now. Phelps – he has them in narrative form, not item by item. He suggests another meeting with Burke, a Council Member, and Phelps so we can go item by item and determine exactly what is needed to conclude this request because Burke does have code enforcement action on these issues that need to be satisfied.

Mayor – that sounds like a fair resolution and with the consent of Council he feels this would be the best path to follow. Rossman – would be glad to mediate. Burke – why wasn't this done before? Tinio-Borton – we tried to do that. Burke – but she only had about two hours notice. Why couldn't Phelps have called her? Rossman – asks what is a good time for her. Burke – that is not the point, the point is that everything is done, it is a done deal. Mayor – be that as it may, Council has not been provided with a site plan that is complete. Rossman – we be more than glad to meet with her. Burke – do you acknowledge that Phelps did not give me adequate notice? Rossman – that is not the issue. Burke – she wants this issue acknowledged because he did not do that. She repeats her request more than once.

Mayor – states that Burke is out of order. Rossman – we have something we can resolve. Burke – does not think we will resolve anything. She states that Phelps has already done this many times. Mayor – if Burke will schedule a time.. Burke – interrupts the Mayor by saying don't do that, don't do that. Mayor – he is about to rule her out of order and tell her to take her seat. Rossman – he will set a time and a date with Burke. Burke – agrees but will not acknowledge that this was done before and are we going to acknowledge that this was done out of order? Mayor – does not think Council has that information. Rossman – feels that Burke and himself are two reasonable people and they can reach a conclusion. Burke – asks Rossman why he couldn't call her. Rossman – because it was not his responsibility but if he knew there was going to be a problem then he would have called her. Now all he wants is to have a face to face with Burke and resolve the issue. The meeting is set for 2:00 on October 8th.

Council took a short break.

5. PRN INVESTMENTS AND BML INVESTMENTS: RELEASE AND TERMINATION OF CERTAIN AGREEMENTS IN REGARD TO LITIGATION CONCERNING THE BROOK HOLLOW PHASE II PROPERTY

Bohne – originally what happened was that the proceeding Council choose to close a road and we got sued over it, and then it went through the appeal process. And the Circuit Court dodged the bullet saying that we didn't give proper notice to BML/PRN on closing that road. Obviously, BML sold the property to the EELS. Tonight there is a release in front of Council which will basically close the road permanently, which is what Council wanted in the first place.

Moccia – can the EELS ask us to vacate? Bohne – yes. Bill Withers from audience – when Ann Birch from the EELS was in front of Council one of the stipulations was that the ROW would continue to belong to Malabar. Bohne – the

release states that we won't develop this as a thoroughfare but we will still use this for emergency purposes.

Bohne – notes that there is a release for Malabar, and one for Palm Bay, and one for the Audubon Society. And once all of those are released then BML will release all the parties. Rivet – are you happy with the way this is written. Bohne – basically. He notes that the Council needs to authorize the Mayor to sign the consent. Mayor – asks for unanimous consent without objection. Council approves.

6. RESOLUTION 18-02, ESTABLISHING THE MALABAR EAGLE CORP PROGRAM

Bohne – he wants to make sure the resolution states that the Eagle Corp members will have no law enforcement authority including no authority to arrest, and no authority to use force. He feels that it is very important that this is spelled out in this resolution.

Tom Eschenberg, Eagle Corp coordinator – his plan tonight was to have copies prior to the Council meeting but he has them now and passes them out. Eschenberg – Bohne has reviewed this agreement and agrees with its contents.

MOTION: Mayor – will read the resolution by title only without objection. Mayor 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/Rivet to approve. VOTE: All aye.

7. RESOLUTION 20-02, ESTABLISHING DEPOSITORY AT RIVERSIDE NATIONAL BANK

MOTION: Mayor – will read the resolution by title only without objection. Mayor read:

RESOLUTION 20-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ESTABLISHING AN DEPOSITORY AT RIVERSIDE NATIONAL BANK FOR FUNDS COLLECTED BY THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA AND PROVIDING FOR AN EFFECTIVE DATE.

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

8. RESOLUTION 21-02, SUPPORT OF THE PROPOSED PALM BAY BELTWAY

MOTION: Mayor – will read the resolution by title only without objection.

Bill Withers from audience – when this beltway first came about there were two topics of discussion. One was from Malabar Road north and the other was Malabar Road south, curving around, crossing I-95 and coming out on US1. He is concerned that if the Council gives their stamp of approval for the section heading north to Ellis Road, and then the second segment falls into place, and we've already blessed the first phase. The second phase may come down Valkaria Road, Micco Road, or Grant Road. If it comes down Valkaria Road then we don't want it. He notes that one of the ties to put in the second phase would be to put in a new causeway to the grown south beach area. And we don't want that traffic because a lot if it will cut up Weber and Corey Roads. So he asks Council to be careful of what they endorse. He is worried about what the lawyers call 'implied consent'.

Mayor read:

RESOLUTION 21-02

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA SUPPORTING THE CONSTRUCTION OF A PARKWAY FROM MALABAR ROAD TO ELLIS ROAD AND ENCOURAGING THE BREVARD METROPOLITAN PLANNING

ORGANIZATION AND ALL MUNICIPALITIES IN BREVARD COUNTY TO TAKE ACTION IN SUPPORT OF THE DESIGN AND CONSTRUCTION OF THE PARKWAY; PROVIDING AN EFFECTIVE DATE.

MOTION: Rivet/Rossman to approve.

Rivet – we are giving Palm Bay something they want, he'd like a little quid pro quo. He has heard that Sunshine Dodge wants to build a dealership next to the Berri Patch and the rumor is that they will try to be annexed by Palm Bay so that they can build. Rivet would like to strike a deal with Palm Bay that they will not entertain that if we support their beltway.

Bohne – an annexation is a legislative decision and you cannot contract away legislative decision rights, so they may not be able to do that. Mayor – he has talked to a Council Member in Palm Bay and Palm Bay can annex because they can offer services that we cannot, and under Statute they are permitted to annex under those circumstances.

Tinio-Borton – that is what she was talking about when she brought this issue before Council and now we are going to have the problem with out having the tax base.

Rivet – we also have the ability to picket them for eternity. Citizen from audience – what does Palm Bay have that we don't have to offer? Mayor – sewer. Phelps – supposedly we have sewer capabilities when we allowed Berri Patch to tie in. Mayor – we may need to research whether we can provide sewer or not. Tinio-Borton – is meeting with a Palm Bay council member tomorrow night and will ask about this. Rivet – wants to remain on good terms with Palm Bay. Tinio-Borton – are we looking at trouble in the form of a lawsuit if we don't do this? Rivet – does not want to look at a lawsuit but doesn't want to look at a car dealership either.

Kabana – as long as we are talking about sewer regarding Berri Patch she notes that she received an impact fee bill from Palm Bay for wastewater for the Berri Patch. Kabana feels that Palm Bay needs to bill the Berri Patch directly and Palm Bay doesn't exactly agree. She will meet with them next week.

Rossman – feels that this proves we can provide sewer at that end of Malabar Road.

MOTION: Rivet/Rossman to extend the meeting. VOTE: All aye.

MOTION: Moccia/Rivet to table this issue for now.

Moccia – is not comfortable with this right now. Tinio-Borton – but didn't we commit to them already that we would do this? Mayor – we haven't called it off we've only postponed it. Tinio-Borton – do we want to go back on our word? Rivet – no, we've only tabled it.

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

9. CONSIDERATION OF WHEN TO COLLECT IMPACT FEES

Mayor – notes that a town in Indian River County has agreed to allow business up to one year to pay their impact fees as a business-friendly jester. Notes that there are two side of this issue.

Phelps – what typically happens is when the contractor is finished building and they are trying to get the CO they are running up to the County to pay their impact fees in order to get us to issue the CO. Phelps reminds Council about the Berri Patch issue and how they were told several different amounts along the way until they ultimately did not have to pay anything. Phelps knows of two communities (West Melbourne and Rockledge) that require that impact fees be paid before building permits are issued. This helps resolve the 'how much' issue because we have no control as to when the

contractor pays the impact fees, we just have to have a paid receipt before we can issue the CO.

So tonight Phelps wants to ask Council if they are interested in looking into this, and if so, he will contact the impact fee office and see if they are interested in amending our interlocal agreement to allow this to be done first.

Rossman, Rivet – likes the idea of paying first. Mayor – there would be no surprises after-the-fact. Asks if there is unanimous consent of the Council to proceed? Council – yes. Phelps – will talk to them.

Stuart Borton from the audience – as a potential builder he wants to state that to put out a bunch of money up front that you might not need to pay until you are done building, which might be a year, or a year and a half, really takes Malabar another step backwards as far as development is concerned. You are really making the developer come up with a lot more money up front than he should have to come up with. Right now a developer doesn't have to come up with that money, and can use the interest on that money, until the day before he opens. People know they have impact fees and he notes that the Berri Patch was a very unusual circumstance. Why put more burden on business development in the future by amending the interlocal agreement. It will make it harder for people to come to Malabar to do business.

Mayor – that is the other side of this issue.

Bill Withers from the audience – feels that Berri Patch played the Council like a well-tuned violin. He feels that it would be best to pay up front. Rossman – agrees with Phelps idea.

Phelps – the only thing he is proposing at this time is to discuss this with Brevard County and see if they are interested in changing the interlocal agreement, and then if so, then all the pros and cons need to be examined. Mayor – agrees.

10. SCHEDULED A WORKSHOP FOR THE POLICIES AND PROCEDURE MANUAL

Council – would like to schedule this for the first meeting that we have a new Town Administrator.

11. POSSIBLE USE OF PRISONER WORK FORCE VIA KEEP BREVARD BEAUTIFUL

MOTION: Mayor – without objection we will extend for 15 minutes.

Beatty – we have used Keep Brevard Beautiful and it would cost \$500 a year to use the prisoner workforce. There are grants coming up that will help pay for the clearing of pepper trees. Crews – what supervision do we supply? Beatty – someone from public works has to be there at all times. We have to supervise traffic and supply the tools to do the removal. Mayor – is there a consent of Council to spring for the \$500? Council – yes. Rivet – even two or three days before the end of the year would be good.

MOTION: Mayor – approves the \$500 fee for prisoner use to be paid to Keep Brevard Beautiful with out objection.

Kabana – it is the new fiscal year and we have a road that we can't afford to pave. Can Beatty report on the paving now? Tinio-Borton – it is late, he can report next meeting.

CLERK'S REPORT

- Kabana – where do we stand on the FTR Gold? Rossman – I thought we told you to do it. Rivet – he thinks it costs too much. Moccia – agrees. Rivet – feels we

need some reliable method of recording the minutes but we don't need all the features in that system. He thinks that for \$1,000 to \$1,500 we should be able to buy an amplifier, some mics, and a tape recorder. Mayor – and we may need better speakers because people can't hear. Rivet – volunteers to do the research for a system. Moccia – has a paper on a recorder for \$600 and she will bring that in so it can be looked at. Rivet – feels that it is reasonable to spend \$1,000 or so. Mayor – the FTR Gold may be a big financial investment but it takes a big load off the clerical staff in transcribing minutes. Rivet – and one of the requirements for the new system will be to make the clerks job much easier and he thinks we can do that for a lot less than \$6,000.

- The Malabar Boat Dock issue is settled with the County. The County says that because our legal description does not exclude that small area they have no claim on it. They consider the area as belonging to Malabar even though the plat map will continue to reference the County Commission Minute Book.

- The Dodge Intrepid was auctioned. The payoff was \$11, 693 and we received \$7,800 for the car.

- Notes that Jennifer and Danielle had training on the IMS Utility Billing program last week.

- Jennifer is going to a class later this month for permit clerk.

- The 'car allowance' that Council wants to give to the new Town Administrator cannot be called a car allowance unless Council agrees to pay taxes. Otherwise the Administrator would have to hand in a mileage log that would be reimbursable up to \$200. If Council wanted to just pay the allowance the check would be for \$216.57 per month. Moccia – if we went with a log who would keep track of the log? Kabana – the Administrator. Mayor – an allowance would be much easier to do. Rivet – for the little extra it costs it would be better to just pay for it. Council agrees – an allowance will be paid.

- Kabana – does payroll accrue comp time at time and a half? Rossman – it has to be at time and a half.

- Mayor – the League of Cities is going to send the Mayor a packet of info on the bond financing, they will do the financing again in the spring and we can be ready for them.

- Mayor – has a citizen request to put the solid waste bill on the tax bill, she will be on the next agenda.

PUBLIC COMMENTS:

Bill Withers from audience – 13 months ago the public works department said they would get the residents of Candy Lane a small amount of gray sand to fill in holes, how much longer do they have to wait? Beatty – they will order some and take care of this.

Withers – the culvert on Corey Road south of Malabar is still sinking, what are we going to do about it? Beatty – that culvert will take \$36,000 to replace and he is not sure it is still sinking, now that the water is down they will take a better look at it.

Withers – word on the street is that our former Administrator is working for the School Board and he obtained his position from stellar references from Mayor Crews and Council Member Tinio-Borton, is this true? Crews – that is strictly a rumor, he has not discussed this at all. Tinio-Borton – there is no truth to that at all, somebody needs to get a life.

- Phelps – we continue to get to requests to build on lots. The language in the lot split ordinance and in the subdivision ordinance states that they have to be on an

accepted street in order to do a minor subdivision. Is there any consideration that Council might give to do a modification to that? If Council is inclined to remove that requirement then the lot split and the minor subdivision would have meet all other criteria. And the improvement to the road would be tied to the actual building permit. If Council has an inclination to do that he would like to present this to Planning and Zoning and see how they feel. Rivet – he thinks that sounds reasonable. Mayor – without objection, Phelps may proceed.

REPORTS: MAYOR, COUNCIL

- Rivet – nothing at this time.
- Moccia – she spoke to this gentlemen outside the door and he would like to suggest a way to better get the information to the citizens.

MOTION: Moccia/Rossman to extend the meeting. VOTE: All aye.

Bruce Fletcher – the citizens outside were trying to devise a better way to inform the citizens of what is going on at Town hall. He was thinking that everyone who wants an agenda can be on a list and it can be emailed out to them. In the newsletter you can put a note that this option would be available.

Crews – the agenda is on the website. Fletcher – but this way the citizens could get the information without a lot of effort. And the problem is that the agenda changes and when you find out on Friday that something is on the agenda for Monday it gives you no time to find out what is going on.

Crews – he does not know all the issues that we will face with mass mailings but with a potential 1,500 to 2,000 email addresses that could pose a problem. There are technical problems with this idea but we can look into it.

Fletcher – if we had more notification there wouldn't be such hysteria over ordinances and what is in them and the citizens wouldn't feel that things are being done without their knowing about it. Crews – there are issues with outdated email addresses as well as the volume issue, and he reminds everyone that the current agenda is on the web. Kabana – the agenda on the web on Wednesday by 4:30 pm.

- Ballou – nothing at this time.
- Rivet – nothing at this time.

MOTION: Mayor adjourns the meeting without objection.

Meeting adjourned at 11:15 pm.

BY:

Mayor Phillip R. Crews, Chair

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
