

TOWN COUNCIL MINUTES OCTOBER 21, 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 7:30 pm by the Chair, Phillip Crews. The prayer and pledge were led by Mr. Rivet.

ROLL CALL:

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

Also present were: Jim Phelps, Building Department, Fire Chief Chuck McClelland, Carl Beatty, Public Works Supervisor and Richard Cameron from Planning & Zoning.

ADDITIONS AND DELETIONS:

None.

REPORTS:

ATTORNEY:

Bohne - at the last meeting the issue came up about variances to the Code of Ordinances regarding the Barr's. There is no authority from the Board of Adjustment to issue a variance to the Code of Ordinance. The Chairman said they issued variances historically. Since that last meeting Kabana checked as far back as the recorded variances and the Town has not granted any variance to the Code of Ordinances.

Bohne's concern is: We haven't established that precedent so let's not do it, i.e. allowing the Board of Adjustment to grant a variance to the Code of Ordinances as opposed to land development regulations.

Secondly, there was discussion about vacating the right-of-way and getting the easement back. Kabana is not sure if we would be in violation of our grant money that was used to purchase the Cameron Preserve because some of stipulations on the grant is for the Town to plan and provide access to the trails. Apparently this right-of-way is an access to that trail. So we have to be mindful and see whether or not you may inadvertently, in vacating that right-of-way, be jeopardizing the grant.

Bohne does not want, inadvertently, to jeopardize something when you're trying to create a situation that pleases everybody. We could amend our Code Ordinances or land development regulations, down the road, to allow variances of this sort to be granted by the Board of Adjustment. Right now, we don't have

that power, so suggests being cautious and not over react and create a problem for the Town.

Richard Cameron: That property was purchased with grant funds and he doesn't recommend vacating the right-of-way due to trails and the water line. It would handicap us tremendously. Not paving from the last drive to the beginning of the preserve would be great for the environment as a possible alternative.

Bohne states we have to look before we take because we can't vacate and take an easement back.

CLERK:

Kabana – the ending year Sept. Financial Reports, prior to the year-end adjustments, are from \$20,000-40,000. We have \$112,519.00 revenue surplus going in the bank. The General Fund is in better standing than previously thought.

Minutes – is nine sets behind in minutes, asks Council for approval to stay home every other Wed. and get caught up. Would take longer to train someone. Consensus of Council – does not agree, feels Kabana should close office door. Kabana – it doesn't work that way when she is here, which is why she wants to work at home.

Kabana – Danielle McCain interested in being hired by the Town. She was offered \$8.50 hr, and asked for \$9/hr due to health matters. This position was created out of need. Consensus of Council – positive reactions, good addition but defer until arrival of new Administrator – he can make decision. Kabana – her salary is from temp line item and will run over budget due to waiting.

PUBLIC WORKS SUPERVISOR:

Native/Noxious Plants

Beatty – attended a meeting on native/noxious plants and was given a list of plants to be eradicated. Attorney doesn't recommend we opt out of County ordinance and write own ordinance. Beatty suggests piggybacking with County.

Richard Cameron – notes developer must continue to do most of the removal unless the Town owns property.

Crews – doesn't like unfunded mandate from the County. Beatty – developer or owner is responsible but not until they want to develop it. Crews - Suggests Council revisits this in depth.

Paving of West Atz

Beatty – at the "Ranch" – do we pave the other 30 ft. for the guy for \$214 more?

Council – ask if he wants to pay for it, get the road accepted, and then it's no issue to continue paving and would be built under new road ordinance. Withers (audience) – suggested going to 18' road, put down bahia (sod) to protect the edge. Cameron – feels the Town needs to take responsibility to accept roads and go forward. For \$214, pave the road and one road problem will go away.

Crews – Town has liability on some short roads and has maintained on occasion. Cameron – we should finish these roads at minimal cost then you have an approved road and can get permits for the lots not built on. Beatty – notes that some roads got left off the list of accepted roads.

Beatty - on Old Mission we can only do so much for \$75,000. We piggy back on the current quote. Ray Jackson anticipates being here in mid-November to pave.

Tinio-Borton - Suggested a large loan to get roads done. Discussion - finding funding/acceptable rates to pave.

Council decides to leave “lanes” alone and pave feeder roads only.

Rossman - \$112,000 is left over from this year. Take that money and do Old Mission, 20 ft wide, 100 ft, \$29,000.

Trash Bash

Beatty – asks permission to do “trash bashing” this year 3rd Saturday in April. Council – yes and please.

PUBLIC HEARINGS:

1. RESOLUTION 02-17: RICHARD & ROBIN REESE VACATE UNNAMED RIGHT-OF-WAY.

MOTION: Tinio-Borton/Rossman to read by title only. VOTE: All aye. Crews read: RESOLUTION 02-17

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA VACATING AND ABANDONING A CERTAIN RIGHT OF WAY LOCATED IN THE TOWN OF MALABAR, AND DEDICATED FOR PUBLIC USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE FOR AN EFFECTIVE DATE.

Crews – this is returning the right-of-way and maintaining the easement. Rivet - It's not where a road could go. Phelps – the owner will return 20 ft. back to us as easement. Large piece property split and not exactly in center. In piece that it came from, prior owner had to apply to BOA for variance to sell, it being too narrow. Results, owner wants to move house further south by vacating right-of-way and then getting it back as easement which allows him to change point from where he measures his set backs. This has been through P&Z. Tinio-Borton – the Town has everything they need.

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

2. RESOLUTION 02-22: RICHARD WIEBELT VACATE ROW ON HENBANE STREET AND GEORGIA STREET.

MOTION: Tinio-Borton/Rivet to read by title only. VOTE: All aye. Crews read: RESOLUTION 02-22

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA VACATING AND ABANDONING A CERTAIN RIGHT OF WAY LOCATED IN THE TOWN OF MALABAR, AND DEDICATED FOR PUBLIC USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Crews – is right-of-way off Corey, far south, Delaware, north of Benjamin. Mr. Wiebelt called and he is out of town.

Phelps – explains Mr. Weibelt, Mrs. Benington and other area residents requested to vacate certain right-of-way's. We asked they dedicate additional right-of-way along side streets and Corey Road. Mr. Weibelt wasn't prepared to make those agreements. Since then he reconsidered and will dedicate 25 ft. on Corey and 5 ft. on Delaware. Phelps feels it meets the Town's needs.

Phelps – the Town's desire has been to vacate some right-of-way's being used by residents. We encourage those who want to vacate do so in accordance with the plan that Mr. Washburn drew up to meet Town needs. This one falls in all categories.

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

Tinio-Borton will call Mr. Wiebelt per his request.

ACTION ITEMS:

Comments by Crews – sometime he'll hear what sounds like a request for unanimous consent. And he takes it in stride and sometimes without objection. In the future, he will ask that it gets stated as unanimous consent so that it's heard on the tape and it's a little bit clearer so there's not some after-the-fact and someone disputes it.

Point on discussion: When Council is in debate comments from the public are not appropriate. Public comment is permitted and encouraged on any subject but on a subject that relates to one of the items on the agenda, even an action item, before we discuss it, we'll allow you to speak. Rivet agrees.

1. PATRICIA F. PARKER, 1285 HOLLOW BROOK LANE RASH PICKUP CHARGES

Wants to eliminate stickers on mailboxes for trash pick-up. Feels it is convenient not writing a check every 3 months.

Discussion. Harris has a credit program and as part of our contract with Harris we (Phelps) act as bill collector. Council made it universal to sign up because people were dumping trash on vacant property and we cannot impose a Code Enforcement or Special Master's lien on homestead property in order to get people to use the trash service.

Kabana – Harris makes their money commercially. Their assurances to make money in Malabar was for the Town to collect from non-payers. We're not stuck with Harris but we were given a \$20,000 vehicle (Isuzu Trooper) for Phelps to drive as bill collector. Harris did not pay us a franchise fee. Discussion continued.

2. DAVID RICH, SMITH LANE ROAD EXTENSION REQUEST

Citizen who would like to build on Smith Lane – the new road requirements make it impossible to afford putting in a road bed 12 inches/12 inches and 22 feet wide. Requests to do what Mr. Vail did several years ago with the 6 inches/6 inches vs. 12 inches/12 inches. And wants to build using a 22 ft

road as opposed to a 24 ft road, he wants to continue the current road bed that is there with the same road requirements that Mr. Vail used.

Phelps – will check, is not sure what ordinance Vail built under. Bohne – or we could address this issue by changing the ordinance. Rossman – suggests Phelps check this out and make this agenda item number 9.

MOTION: Rossman/Ballou to table until item #9 VOTE: All aye.

3. APPLICATION FOR PARK AND RECREATION BOARD: HANS KEMMJER, 920 ATZ ROAD

Crews - Spoke to him last week, an engineer at Intersil. Seems very enthusiastic, sharp. He would recommend him, we have a recommendation from the Park Board.

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

4. CONTINUATION OF TOWN ADMINISTRATOR SELECTION

Crews - Interviews were held Saturday for four candidates: Ed Booth, David Jackubiak, Kenneth Knight and George McMahon.

Rivet – suggests hearing from Citizens Committee because they were not allowed to speak at interviews.

Consensus of Committee - Ed Booth #1 - Purden, Withers, Borton, Baker. George McMahon is their second choice.

Consensus of Council:

Rossman – Ed Booth is his 1st choice because he has experience in grants, organizational skills, people skills, and was knowledgeable on storm water and prioritized. McMahon 2nd choice, older but had knowledge.

Ballou - Ed Booth – 1st choice because he has experience in grants, storm water, energetic, wants to be here 10 years. Knight 2nd choice.

Moccia - Ed Booth – 1st choice because he had good ideas about land use maps, liked his presence. Would be here 10 years. Knight 2nd choice.

Tinio-Borton - Ed Booth 1st choice. McMahon is 2nd. Impressed with both.

Rivet - Ed Booth – 1st choice because he stood out above others; wanted to live in Town, personable and sincere. Residents were called “Customers”. He’ll work to serve. McMahon 2nd choice –had experience, Knight had better presence.

MOTION: Rossman/Moccia to offer Ed Booth T/A position.

VOTE: All aye.

Consensus of Council – Mayor to call him now and offer job.

9:10 – 9:20 p.m. – took a break to call Booth.

Crews – it appears we have a City Manager. Mr. Booth stated he does not need health insurance, Town does not have to provide. He would need dental and vision but not medical. Directs Kabana to contact him, send package and ask for documents.

Council is very pleased that Booth accepted position.

5. PARK AND RECREATION BOARD: REQUEST FOR SIGN FOR MALABAR COMMUNITY PARK

Crews – the Park Board is requesting a sign for Malabar Community Park. Rossman – thinks this is a good idea.

MOTION: Rossman/Ballou to approve sign. VOTE: All aye.

Council – funding is to come out of the General Fund beautification line item. Park Board voted to pay for half the sign if that would give them a nicer sign.

#6 - RESOLUTION 21-02, SUPPORT OF THE PROPOSED PALM BAY BELTWAY

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

#7 - APPOINTMENT OF BOARD MEMBERS WITH EXPIRING TERMS

Crews - Appointment of Board Members with expiring terms in your packets shows each of the P&Z, Park Boards, and the terms.

MOTION: Tinio-Borton/Rivet to approve all those interested in returning and to move the alternates up into the vacancies. VOTE: All aye.

#8 – IMPROVEMENTS ON BENJAMIN ROAD

Discussion of how to best take care of Benjamin. Council wants to know how much the County would charge us for improving.

Tinio-Borton – should would like to see Benjamin improved and to split the cost with the County or have County do it as a “freebie.”

Crews – would like the engineer to review and wait for their input.

Tinio-Borton – does not feel it would hurt to see what they are going to charge us. Just wants to get an offer.

Cameron – Benjamin is wet and he can’t believe it would be inexpensive to improve. We will have to take care of the drainage before the road will be buildable.

MOTION: Tinio-Borton/Rivet to bring this item back to the County Commission. VOTE: Aye - Rossman, Rivet, Ballou, Moccia. Tinio-Borton – abstained.

Bohne - Can’t abstain unless you received monetary gain or conflict.

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

9. (FORMERLY #2) DAVID RICH, SMITH LANE ROAD EXTENSION REQUEST (continued)

Phelps – Mr. Vail built his road under Ordinance 01-01. Bohne – so in order to get a building permit Mr. Rich would need to build a road. Rich – building costs have doubled and can't go forward with plans until he gets an answer. Rivet – will do everything possible to help him. Bohne – suggests Rich apply for an "exempt status" once the ordinance has changed.

Crews – reiterates the same idea. States that Council cannot help Rich until they hold a workshop and revise/modify the ordinance. Suggest Council work on this as soon as possible.

DISCUSSION ITEMS:**1. HOUSE BILL 851, FUNDING FOR STORM WATER IMPROVEMENTS**

Crews – regarding the FEMA 1062 Grant – we have approval from St. Johns and the State to proceed under current permit with provision we mitigate the loss of the pond. Mitigation will amount to silt boxes and traps. We received package on HB 851. The Governor wants no pork belly projects and all must go through a State agency.

Crews – met with DEP to discuss possibilities and feasibility of the project, looks good at this time. Wants to schedule a public hearing in December before going to legislative body. Can submit application on-line, hopefully getting up to \$500,000.

2. ROADS AND PAVING

Crews – perhaps State can help. Have good rapport with the legislation. Asked Maria to make presentation on the 1062 at next Council meeting. This is only for mitigation, not for Corey Road pipe. Rivet – thanks Mayor for his efforts.

3 - OFFER TO MR. BOOTH

Rivet - In making an offer to Mr. Booth we should decide how much.

MOTION: Rossman/--- to offer \$50,000 and only up \$1500 (This means \$50,000 + \$1500 negotiating room OR \$50,000 + moving expenses up to \$1500 EITHER/OR not both).

Discussion.

MOTION DIED FOR LACK OF SECOND.

MOTION: Moccia/Tinio-Borton approve \$50,000, car allowance \$200/month, dental/vision insurance (25% is employee responsibility), \$1500 additional for moving expenses. VOTE: All aye.

Council – this is all contingent on background, criminal, financial and reference checks. Crews is to present the offer to Mr. Booth.

Rivet – will be a "point of contact" and recommended all Council members' numbers be given to him.

REPORTS: MAYOR, COUNCIL

Moccia – the Country Cove Homeowner Association extended an invitation to Council members to "meet & greet" people, talk about issues, plans for next year.

Be there at 8:00, change Council members every 15 minutes so there will be no "sunshine violation." Date is week from today.

Rivet – Any update on Hall investigation? Moccia - Asked Mayor to sign letter she'll take to Fishbeck and Satafora requesting to continue investigation.

MOTION: Moccia/Rossman to approve drafting letter, and for the Mayor to sign as soon as possible and delivered for ongoing investigation of Bill Hall. VOTE: Aye.

Rossman – will rewrite the letter to the Honorable Phil Williams and drop it off to Kabana. He will copy it to Earl Petty, South District Commander, who is the person responsible for this. Rivet – there needs restitution but can't determine the amount until all the facts are known, and probably not without a subpoena. Bohne – even the newspaper reporter did not have positive feedback. It's an on-going investigation.

ADJOURNMENT

Meeting adjourned at 10:40 p.m.

BY:

Mayor Phil Crews, Chair (on 10/21/02)

Chair Bobbi Moccia (on 06/16/03)

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
