

TOWN COUNCIL MINUTES
December 16, 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 7:00pm by the Chair, Bobbi Moccia. The prayer and pledge were lead by Mr. Rivet.

ROLL CALL: MAYOR:	PHILLIP CREWS – EXCUSED
CHAIR:	BOBBI MOCCIA
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	JANE HAVET
	BRIAN HUNTER – ARRIVED AT 7:25
	BOB ROSSMAN - EXCUSED
ADMINISTRATOR:	ED BOOTH
ATTORNEY:	KARL BOHNE
CLERK:	SUSAN KABANA

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

ADDITIONS AND DELETIONS:

None

MOTION: Chair approved agenda without objection. VOTE: All aye.

CONSENT AGENDA:

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

REPORTS:

ATTORNEY:

- Bohne sent the Town a copy of the Special Masters order regarding the Gentile matter. To summarize: the Special Master did find some violations in regard to some areas of the odor abatement, and confining the horses to a small area, and issues with the trees. The Special Master chose not to impose a fine at this time but he did impose a continuing obligation for Gentile to comply with the order. Bohne feels that this order defines some of the ambiguities in the previous three orders. The Special Master states that Gentile did not comply with the spirit and intent of the order when he planted the required trees and then he let them die. With this order the Special Master gave Gentile another chance to comply but if there is any further non-compliance then Bohne feels that the Special Master will begin fining Gentile.

Havet – does he have to replace the dead trees? Bohne – yes, and it must be within 30 days. Gentile is also required to obtain a fence permit within 30 days. Rivet – is he required to only apply, or is the fence supposed to be accepted within 30 days? Bohne – the order states that he shall apply and obtain a permit within 30 days. If Gentile's fence does not comply then it is up to the Building Department to tell him just how long he has to get it done right. Rivet – is worried that another excuse is on the way.

- Bohne – at 7:30 tonight we are having a social and he cautions Council not to discuss town business during the social.

- Bohne – suggest making the draft copies of the road ordinances a part of the upcoming workshop since there is not a full Council tonight. Rivet – feels that tonight we can have a few comments but not a full debate.

- Bohne – was finally served with the conditional use denial appeal from Gentile. We now have 30 days from today to file that brief. He will file the response soon. This is Gentile's 'appeal of right', if he loses at this level then his next appeal is 'discretionary' and Bohne states that most of the time discretionary appeals are denied. Rivet – are we proceeding quicker than the 30 days? Bohne – yes, he does not want this to drag on and on.

ADMINISTRATOR:

- Booth – Bill Withers has graciously agreed to be the Town of Malabar property coordinator. He will look at surplus local and state property that is available to the Town at little or no cost. Withers expertise with the military will be valuable as well as his ability to talk his way into a good deal. There are many items available this way.

- Booth – we will be asking for a workshop to cover drainage and roads in February. One of the more pressing issues is how to deal with culvert pipe installation pay-back. In most cities the property owner pays for the pipe and the Town provides the labor.

Booth notes that Friday's will be used to deal with drainage and Public Works will come across pipes that need to be replaced, Booth needs guidance on how the dollars work.

- Corey Road drainage project: the pipes are on Corey Road and though this project doesn't provide for that much more water flow it will provide for problems to be solved in the future. The idea is to fix pipes back to the source of the problem.

Rivet – the water along Corey Road flows into Turkey Creek, Rivet asks if there are any problems down stream of Corey Road. Beatty – after the water flows under Malabar Road there really is no problem because it flows into 'back country' area then under the bridge at Brook Hollow and into Turkey Creek. Rivet – so there is enough of a discharge/holding area so that the water won't back up. Beatty – that is correct.

Booth – regarding mitigating for the pond for this project: if Malabar doesn't get the money from HB851 to purchase and install baffles Booth has learned from our engineer that we can scope that project so that the cost won't be as great, the sides of the ditches can be reinforced and that will meet the requirements, which is a lot cheaper than the baffles.

- Booth – we are working with the City of Palm Bay on a matching grant for pepper busting along US1. The grant is for \$200,000 and the match is 20%. In this case the 20% can be in-kind and in our case we are looking for the 20% to be prison labor, Palm Bay may just hire out their 20%. We hope to also put in plantings as part of our match.

- Havet – a long time ago, on her property, Malabar wanted to put a canal through. Would that be of any help at this point? Beatty – after a rain event the water just sheet flows and he does not feel that a ditch is necessary.

- Booth – if there is no objection he would like to take about 4 days unpaid leave during the holiday. Council does not have an issue.

- Bill Withers – he is willing to put the time into being the procurement officer. He has been told that he will be reimbursed for expenses and may be going as far north as Savannah and as far west as Eglin Air Force Base in Pensacola. Withers wants Council to think about these thoughts: what if he puts his time and effort into purchasing something and he comes across a good deal for \$5,000, how does he determine if he can purchase it? Will there be a list with a cap on it?

Booth – the State receives discontinued items for free from the military and they put an administrative fee on it. He notes that sometimes the purchases will be on the spur of the moment so Withers will need to have some type of cap to work with, maybe \$2,500 or so. Havet – feels some purchases will be a judgement call. Rivet – but Withers doesn't want to be in the position of doing something he feels is right and have the Council not agree. Booth – Council can give Booth the authority and he can pass that on to Withers and Booth can take the responsibility. Rivet – we need a list of things that are needed.

Booth – we are required to keep the items for one year and after that we can sell them. Council – likes this entire idea more and more. Withers – needs to know parameters to work with so that if he does buy something like a bulldozer he knows that it is all right to pay for it and have it shipped here. He also needs parameters for the spontaneous finds, what is his limit? He wants something in writing. Booth – will work on this. Havet – commends Booth on beginning this endeavor.

CLERK:

Nothing at this time.

PUBLIC WORKS SUPERVISOR:

Havet – is Beatty's title changing to better suit his position? Booth – Beatty now gets the information first and reports to Booth. His position is basically the utilities superintendent.

Beatty – presents a list of items that could be used for beautification. Moccia – reads list: 1) paint water tank at Harris to read Town of Malabar. 2) enclose front porch to create a reception area. 3) convert old public works yard to a parking lot. 4) convert old school house lot to a municipal parking lot. 5) light both lots with matching lighting. 6) finish improving public works building site and Xeriscape everything. Moccia – these are not things that we are doing but we can discuss them.

Rivet – feels we have some real pressing financial items to work on but has no real problems with the list. Carl – some of these items are low cost, like the front porch enclosure. And some items, like the fence around public works will secure the area. Moccia – the concern, as always, is money. Beatty – and we can use the Eagle Scout program to help do some things. Havet – put a project together and bring it to us.

BUILDING OFFICIAL:

Nothing at this time.

PUBLIC COMMENTS: GENERAL ITEMS

- Bill Withers, Candy Lane – notes that we are not on the 'State and Local Government' network on the internet. Booth – will look into.

- Bill Withers, Candy Lane – proposes that if Hunter's meeting with Harris Corporation is not favorable in getting assistance with the recording system for Town Hall that Council authorize staff to purchase the dual deck tape recorder for approximately \$1,600. Council – agrees that this should be done.

- Bill Withers, Candy Lane – Bob Rossman said that he is available for workshops every night in January except January 6th.

- Bill Withers, Candy Lane – two years ago when the citizens group came to Council to ask that roads be paved they were very specific as to what roads were to be paved. Recently Withers was given a memo that was signed by Bill Hall and Eva Lane is on the list. Withers notes that Eva Lane is just a lane and there was absolutely, positively, no

intent to add Eva Lane to the paving schedule. This is an example of manipulation by Bill Hall and he is requesting Council make a motion to remove Eva Lane from the current list of roads to pave. We cannot afford to pave any lanes.

Withers – reads the list as follows: year 1 – Hall and La Court, year 2 – Old Mission and the west end of Atz, year 3 – Benjamin, year 4 – Eva Lane. Havet – so who lived on Eva Lane? Withers – John Detwiler. Rivet – so what have we added to this year's budget? Booth – Benjamin and Booth, Eva was never mentioned. Withers – agrees that Booth should be done because it is a 'Road' and it is an artery that serves Lett Lane. Booth – we are in the process of prepping all the roads and we should pave in January or February. Withers – when that is done we need to put a cap over what we already did because it is deteriorating.

MOTION: Rivet/Havet to adopt the fore-mentioned list deleting Eva Lane and adding Booth Road. VOTE: All aye.

- Mr. Vitaliano – feels that though we are improving things by doing the drainage project on Corey Road but there is still standing water on Malabar Road and that is coming from the way the water is managed in Palm Bay.

DISCUSSION ITEM:

1. ROAD ORDINANCE REVISION

Rivet – draft I states that you have to build the road perpendicular to the end of your structure. He likes the intent because he feels that it is overly burdensome to have to pave to the end of your property but he still prefers defining this as to the middle of the lot. Bohne – one concern is if in the mid-point if the lot there is a wetland and the house is further down the road. Stating that the mid-point is the stopping point for a road may not be the best solution due to construction problems.

Rivet – we need the variance provisions written in the drafts. Bohne – and in that variance provision he removed the 'hardship' terms and replaced them with 'reasonable' terms. He likes the variance procedure, that is why one draft contains only that. The second draft contains the variance procedure and the perpendicular build clause. At this point we need to work on the language. He reiterates the practical problems with building a road to a mid-point.

Rivet – if we do define the length of the road based on the farthest edge of the structure, he feels that accessory structures should not even figure into the equation.

Bill Withers from audience – what happens if someone builds a barn farther down the property line (past the ending of the road)? Who pays for the rest of the road if the first person only pays to pave to a certain spot in front of his house, who pays to pave to get to the next house? Rivet – the next person. Withers – then what your are doing is letting the first guy off easy and sticking it to the second guy and that is wrong. Bohne – that is one of the problems that he and Phelps discussed and they believe it is wrong too.

Havet – but to build a house on 20 acres and to have to build a road is a burden. Withers – and what if I build on the 21st acre, am I going to have to pay for 20 acres? That is wrong. Bohne – that is the equity argument.

Brian Vale from audience – he can see an exception if you needed to build 1000 feet of road but he does not see a problem with having to build 200 feet of road, most people won't have a problem with that. He feels that the owner should have to build the entire length of his property if it is a small amount. He personally paid for 644 feet. He does think there could be exceptions for large parcels.

Withers – this discussion all began with a gentleman who wanted to continue a road that was already there. But we can't start a program in Malabar where this person only has to build his road so far and then the second owner has to build the rest of the first guys lot and then his own lot. Withers notes that this gentleman was not focused on the length but the cost to build the sub-base.

Rivet – the reason he brought this up is because the first person to pave is generally not the first person on the corner. If it's the owner on the corner lot, or the owner one lot in, then they should have to pave for their total frontage. But if it's in two or three lots then they are paving in front of other peoples property. Withers – but the first builder gets reimbursed from the others who eventually build. Rivet – the only difference is that you may be dead before it gets built. Withers – feels we have to be consistent with all people. Rivet – is willing to discuss different ways to be consistent but he wants a better way to share the burden equally.

Kabana – what is being suggested here would be a logistical nightmare. Trying to figure out who owes what to who would be unfair to someone. Withers – Kabana is right, if the first person only had to build a 15 foot road, and then the next guy down wants to build it would be unfair. Kabana – the second guy would never get his money back from what he paid for in front of the first guys property because the first guy has already built. Withers – so the second guy is paying for 285 feet and the first only paid for 15 feet. Cautions Council that they must realize that people will play games with this and take advantage of the situation.

Havet – what a mess this is. Withers – agrees, feels we need to leave the ordinance the way it is and change the sub-base. Moccia – feels the sub-base standard could be more reasonable.

David Rich from audience – he is the one who approached Council and he never asked to pave only a portion of the lot frontage. He asked Council to change the depth and the width of the road base. He does not know where the half-way-down idea came from. Havet – the idea of paving half way down does not seem fair to her.

Withers – and what happens if there is a fire and the fire truck can't reach the woods at the edge of your property because there is no road base for the truck to travel on. Havet – does the bank require a paved road? Council – no, only an improved road.

David Rich – the reason he approached Council is because the requirements to build a road in Malabar are astronomical, 8 inches of rock and 24 inches of stabilizer are way more than the roads built around here. He works for Palm Bay and they put in 6 inches and 6 inches and the roads have taken all the traffic just fine.

Bohne – looking at the exhibits provided by our engineer shows that the required improved road within a 25 foot right-of-way has been reduced to 18 feet. And the sub-base has been reduced to 8 inches and 12 inches respectively. Rich – that still is a very strong road, in Palm Bay we have been doing 6 inches and 6 inches respectively for years and they have yet to have a problem with their roads failing.

Havet – is this what GDC did in Palm Bay? Rich – no, they did soil-cement, and the City of Palm Bay did experiments and found that 6 inches and 6 inches, mixed with asphalt (on top), gives a strong road. Rich notes that 8 and 24 is not anywhere in Brevard. Bohne – but there is a revision for 8 and 12. Rich – that is still overkill. He notes that Brian Vale was allowed to put in a road at 6 inches and 6 inches, now why can't he continue that same road-base on down the line? The first 644 feet of road is 6 and 6. He is asking for leniency on the base of the road and Council turned it into a nightmare.

Rivet – there are two parts to this issue. The width and depth, which needs to be addressed, and then the length. Rich – reminds Council that this road is not a collector,

it is a Lane and as such is used for traveling to and from home, it is not going to receive heavy traffic.

Booth – he will talk to our engineer. Engineers have a tendency to build to the highest standard and he will ask them what the minimum standard would be. Rich – wants Council to know that he has no problem with paving the 200 feet, it is just the depth that he is questioning. His problem now is that he can't lock-down prices on materials and the cost of the materials continues to go up, they are fighting a losing battle and need a decision made soon.

Phelps – he feels that our engineers input is imperative for a decision in this matter. Havet – Rich is trying to build so we need to have a workshop on this soon.

Buddy Chadwick – is involved in this issue and suggests that the conversation for the workshop should be confined to the road depth. He understands that there is more involved but he asks if this one issue can be expedited. Withers – could we have two standards, one for lanes and one for arteries? But we would have to consider what happens if a lane turns into an artery.

Havet – asks if we could have workshops with Planning and Zoning either before or after their meetings. Rivet – it wouldn't work mainly because of the timing, we wouldn't start the meeting until 11:30 p.m. Havet – feels that a Council person should be at the Planning & Zoning, Park Board, and Board of Adjustment meetings. Bohne – it would be better to have joint meetings but you will have to restrict the topics to joint topics.

ACTION ITEMS:

1. SCHEDULE WORKSHOPS: ROADS, POLICIES AND PROCEDURES, CULVERT REPLACEMENT, HEALTH AND WELFARE, PROPOSED CHARTER REVIEW COMMITTEE

The following workshops are scheduled:

January 2, 2003, 7:00 pm – Road Ordinance, and Culvert replacement costs.

January 16, 2003, 7:00 pm – Policies and Procedures, and Health and Welfare

January 30, 2003, 7:00 pm – Charter Review. Rivet – liked the process that was used to select the administrator. Havet – likes the idea of only one member required to be from each district.

MOTION: Rivet/Havet to set up a charter review committee consisting of Council and two representatives appointed by each Council Member. At least one of who is from that Council Member's district. VOTE: All aye.

Council is to submit their choices for names at the next regular Council meeting (January 6th).

There is no regular Council meeting scheduled for the second Council meeting in January at this time.

Bohne – what meetings should he attend? Council – the road ordinance.

2. LEGAL REPRESENTATION BY CLIFTON MCCLELLAND, JR.

MOTION: Rivet/Hunter to retain Mr. McClelland, Jr. as our attorney. VOTE: All aye.

REPORTS: MAYOR, COUNCIL

- Rivet – is Booth our representative for the Space Coast League of Cities. Booth – yes.
- Havet – nothing at this time.
- Hunter – there is still some trouble in the Jordan Scrub. And there is a pile of brush that may need to be removed. We need to secure our entrance at Jordan Road.

- Havet – will Beatty be at the road workshop? Beatty – yes.
- Moccia – she attended the League of Cities dinner and Bill Hall was there and he stepped up to the Malabar table and was invited by our Mayor to sit down and have dinner with Malabar. Moccia feels that this was in poor taste. It sends a bad message to the other cities and towns because we have already started the process of prosecuting him. He is not welcome to come to our table and break bread. She wanted to disseminate this information but without the Mayor being here tonight she does not feel further discussion is proper at this time.
- Phelps – regarding the trash pile mentioned above: that pile was there, it was removed by Waste Management and now it is back again. He believes the pile is coming from a local business that has an issue with Waste Management. Phelps also notes that there was some damage to the road from the last prescribed burn that will need to be addressed. Hunter – understands there may be issues but he is concerned about the combustibility of the pile. Booth – will see that the pile is removed.

ADJOURN FOR SOCIAL – MEET AND GREET NEW ADMINISTRATOR

Meeting adjourned at 8:45.

BY:

Chair Bobbi Moccia

ATTEST:

Susan Kabana, CMC
Town Clerk/Treasurer

DATE:
