

**TOWN COUNCIL  
WORKSHOP  
MINUTES  
March 4, 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:	CHARLENE HORTON
	COUNCIL MEMBERS:	BOBBI MOCCIA
		BOB ROSSMAN
		NANCY TINIO-BORTON
		STEVE RIVET
	ADMINISTRATOR:	WILLIAM HALL
	ATTORNEY:	KARL W. BOHNE, JR.
	CLERK:	DEBBY FRANKLIN

Also present were Jim Phelps, Building Official, and Chuck McClelland, Fire Chief.

The Mayor called the workshop to order at 6:20 PM. Vice-Chair Horton led the prayer and pledge.

Mayor explained that the workshop was called to discuss proposed Ordinance 02-01 to permit some outside consumption of alcohol beverages.

SRX license has a minimum requirement of 150 people. Tinio-Borton said the minimum is 250 person and 51% in food sales is required. It is beyond any business' capability in Malabar.

Horton said the current ordinance is vague. Mayor asked if it would be possible to define restaurant for purposes of this ordinance. Atty. Bohne stated that in Indian Harbor Beach, that is what they have done. Mayor thought the Ridge House in Palm Bay qualified. Tinio-Borton said you could spend 95K and buy a liquor license and still not qualify. Didn't think business should be stifled. Rivet thought they all needed to step back. The intent is to allow business owners to use their property to its best capacity without negatively impacting the neighboring community. Rivet asked what Council was trying to accomplish. Mayor explained that errors made in the past had created the problem of not requiring buffering between zoning classifications. Rivet said that was the point he had tried to get out. Mayor thought it would be virtually impossible to regulate noise. Rossman stated that the people behind Hotel California complain vigorously against that place. Atty. Bohne stated that even with a 4COP they still couldn't serve outside. He then read the requirement for SRX 2500 square feet, 150 seats and 51% food sales. Then he read an exception that makes Brevard more restrictive. Mayor suggested limiting outside drinking to restaurants or limit to commercial zoning. Will Carmine, Malabar Mo's, has been serving outside for 15 years - on the patio. He has a COP (consume on the premise). Mayor said the ordinance needs to address all possible restaurants – not focus on one business. Tinio-Borton asked what the zoning was before. Mayor wants the buffer to be a zoning of a lessor classification. Rivet wanted more freedom for business owners – would like Malabar to encourage business. Suggested tree planting for buffering and prohibit outside amplification. Rossman stated he is not opposed to outside consumption. He would like to see something that would be business friendly without being Town unfriendly. Atty. Bohne stated he appreciated this type of forum and would look at Melbourne, West Melbourne, and Palm Bay City codes. Rossman asked him to see how they address noise. Mayor asked if Malabar could use distances. Rivet suggested a ten-foot fence with sound absorbing capabilities. There will still be complaints. Tinio-Borton asked about the noise ordinance. Phelps explained that it was virtually impossible to enforce because the decibel readers don't measure base. Phelps stated that Malabar Mo's premise by Malabar code is the building itself; its State license "premise" includes the patio. Rossman stated it should be contiguous or abutting. Atty. Bohne suggested setting a time limit that alcohol could be consumed outside in order to reduce or eliminate the noise problems. Mayor stated that residential zoning abutting commercial zoning was still an issue.

If noise continues after time allowed has passed, what can be done. Rossman stated using time limits would reduce or eliminate the noise. Atty. Bohne suggested allowing with a special exception permit. If the conditions are violated then the permit can be pulled. A condition could be

Atty. Bohne asked for a definition for the time limit alcohol can be consumed outside. It might reduce or eliminate the noise problem. Mayor asked what could be done if noise is still going on after time allowed has passed.

Atty. Bohne suggested making it a special exception and if they violate the conditions, the permit can be pulled. Prohibit sound amplification outside. But you must define the requirements. You cannot define arbitrarily. Atty. Bohne will develop. Horton asked if this would allow for multiple opportunities. Could be daily. Atty. Bohne suggested limiting to 10 pm during the day and 11 or 12 on Friday and Saturdays. They can start with 11pm and possibly change to midnight. Rivet asked if there was a minimum distance from ROW. Yes, don't want to be restrictive if we don't need to be. Mayor asked about shielded lighting. The Town's zoning created this situation. Atty. Bohne asked if it should be linked to food sales. That would limit it to the four restaurants currently in Town that hold a restaurant license. Bldg. Official Phelps stated that the discussion has been on residential and there are other areas in Town that are zoned something else but used for residential and are non-conforming. He cited the property across the street as an example. Mayor confirmed with atty. Bohne that the intent of the alcohol ordinance would not center on residential use but would be based on the conditions imposed regardless of the property zoning. Mayor said that the time constraints should apply to lights, except for security type, as well as noise.

7:15pm – Open to public.

Bill Withers, Candy Lane, said it was an issue of community standards versus four businesses. There are issues to be addressed, materials and manner of construction is to current code, drainage, distance from the approved structure, lighting, audio-video capabilities, fire and safety evacuation, zoning. The COP is the premise itself. What of unattached patios. Who is going to enforce. Tinio-Borton is lobbying for this.

Dominick Vitaliano, Corey Road, said you have to respect the taxpayers. This Council is spinning its wheels. This same type of meeting was held ten years ago. Malabar Mo's used to be a Chinese restaurant with a bar. He asked if the Council was going to control how much booze individuals have in their houses. Or on their patio. If you don't want to move next to a bar, move some place else. This has been going on for years. Regarding zoning, his property at one time, 660' from Malabar Road south was zoned commercial. It was zoned commercial all along Malabar. East Coast Plumbing wanted to put a day care center there. That was back in 1981 and it was 660' all the way to town hall and then went to 400' on both sides. There were bars and restaurants. Those things were there prior to this container law. If residents don't like it they should move. He knows who is complaining and when they got their property zoned commercial they were real happy that they were going to get a lot of money for their property and then they found out there was a bar next door or something.

Stuart Borton, Riverview Drive. Will the new rules supercede current. Will they loose their current ability to serve outside. He thought they were getting away from the original intent. Don't re-invent the wheel. There is already an ordinance that deals with drinking outside, being outside, and patios. He wants to move forward, not back. Give them some space. Allow the liquor-licensing bureau to determine what the serving area is. Malabar Mo's and Hotel California both have outside patios. Ordinance needs to have more leeway.

Will Carmine, Malabar Mo's owner, asked what would amplified music be defined as. His business relies heavily on music. He is not willing to loose what he is already doing. There have been no complaints, police calls, drug activity or violence since he has been running the business. Mayor acknowledged he had not had any recent complaints. Carmine is willing to shut down the music at 10pm. Horton asked who would be available to enforce the conditions of the special exception. Rivet does not want to be overly restrictive. Rossman said if Carmine wants to have a special event, such as a wedding outside, and he complied with the conditions of the special exception, then he would have to comply. Carmine usually has his entertainment on Sunday afternoons outside. If he has a band on

Friday night, they are inside. Tinio-Borton said she might have opened a can of worms. She was only trying to help him so he could hold his horseshoe tournaments. Rossman and Horton said the special exception would allow him to do that.

Mayor recognized Mr. Vitaliano. Vitaliano said that the Council needs to stop wasting money on these meetings. Next year they may have different feelings. Need to get the laws in place and follow the rules. If he ran for Mayor he would have different rules. Mayor and Horton thank him for his comments.

**Without objection the Mayor adjourned for a ten-minute break before the Council meeting.**

Workshop adjourned at 7:30 P.M.

BY:

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Mayor Phillip R. Crews, Chair

ATTEST:

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Debby K. Franklin, CMC  
Deputy Town Clerk

DATE:

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