

TOWN OF MALABAR

TOWN COUNCIL MEETING
MONDAY JANUARY 23, 2012
7:30 P.M.

REGULAR COUNCIL MEETING
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

A. CALL TO ORDER, PRAYER AND PLEDGE

B. ROLL CALL

C. ADDITIONS/DELETIONS/CHANGES

D. CONSENT AGENDA :

- 1a. **Approval of Minutes** Regular Town Council Meeting – 12/19/2011
Executive Town Council Meeting – 12/19/2011
Exhibit: Agenda Report No. 1a.
Recommendation: Request Approval of Minutes
- 1b. **Budget Adjustment - none**
- 1.c. **Acknowledgement of Receipt of Monthly Financials for November, 2011**

E. **PUBLIC COMMENTS:** Three Minutes Limit. Comments may not address subsequent Agenda Items. Do not require Council response. (Speaker Card Required)

F. **ATTORNEY REPORT**

G. **BREVARD COUNTY SHERIFF'S OFFICE REPORT**

H. **PUBLIC HEARINGS**

2. **Amendment to Code Related to Gaming Establishments (Ord 2012- 48)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.C. 3, LAND USE CLASSIFICATIONS; PROVIDING FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; ESTABLISHING ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AND ALSO AMENDING REFERENCES IN TABLE 1-6.1 (B) IN THE "ACCESS REQUIRED TO STREET" COLUMN FROM "WESTLAND" TO "WEST RAILROAD AVENUE"; AMENDING ARTICLE XX RELATING TO LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

I. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**

3. **Request from Resident Charles "Bud" Ryan regarding Request to Amend Code to Provide Meeting Absence Procedure**

Exhibit: Agenda Report No. 3

Recommendation: Request Action

4. **Request from Resident Bernadette “Bunnie” Knudson for Purchase of Riverfront Property for Town Use**
Exhibit: Agenda Report No. 4
Recommendation: Request Action

J. ACTIONS ITEMS:

ORDINANCES: none

RESOLUTIONS: 2

- 5 **Support FLC Advocacy against Repeal of F.S. 205, Local Business Tax (Reso 01-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING THE FLORIDA LEAGUE OF CITIES ADVOCACY ON OPPOSING THE REPEAL OF FLORIDA STATUTE 205; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

6. **Approve Change of Bank Depository to BB&T (Reso 02-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ESTABLISHING BRANCH BANK AND TRUST (BB&T) AS AN ADDITIONAL DEPOSITORY FOR FUNDS COLLECTED BY THE TOWN OF MALABAR; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

MISCELLANEOUS: 2

7. **Consider use of Transportation Impact Fee Money for Right Turn Lane at Corey Road**

Exhibit: Agenda Report No. 7

Recommendation: Request Action

- ~~8. Approval for EELs to Place Signage in Cameron Preserve~~ **PULLED**
By Town Administrator

(No Recess – Attorney Excused)

K. PRESENTATIONS:

L. PROCLAMATION:

M. STAFF REPORTS:

ADMINISTRATOR – Fire Chief Report - December
CLERK

N: DISCUSSION ITEMS:

9. **Warning Signs for Horses**

Exhibit: Agenda Report No. 9

O: REPORTS – MAYOR AND COUNCIL MEMBERS

P. PUBLIC COMMENTS: General Items (Speaker Card Required)

Q. ADJOURNMENT:

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1.a.
Meeting Date: January 23, 2012

Prepared By: Debby K. Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meetings:

- Regular Town Council Meeting – 12/19/2011
- Executive Session Meeting – 12/19/2011

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Minutes of Town Council Meetings – 12/19/2011

Draft Executive Session Meeting – 12/19/2011

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Town Council and shall not be considered the official minutes until approved by the Town Council."

MALABAR TOWN COUNCIL REGULAR MEETING

December 19, 2011 7:00 PM (following Executive Session)

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

A. CALL TO ORDER:

The meeting was called to order at 7:40 pm by Chair Thomas Eschenberg. The prayer and pledge were led by District 5 Council Member Marisa Acquaviva.

B. ROLL CALL:

MAYOR/CHAIR	TOM ESCHENBERG
VICE-CHAIR:	MARISA ACQUAVIVA
COUNCIL MEMBERS:	CARL BEATTY
	DAVID WHITE
	STEVE RIVET
	JEFF MCKNIGHT
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

C. RECESS FOR EXECUTIVE SESSION (Separate minutes) back in session at 7:42pm.

D. ADDITIONS/DELETIONS/CHANGES: Need to add K.5. to set a January Council Meeting. Also have info on Briar Creek Boulevard bridge repair.

E. CONSENT AGENDA:

1.a. Approval of Minutes

Regular Town Council Meeting – 12/05/2011

Exhibit: Agenda Report No. 1.a.

Recommendation: Action on minutes

1b. Budget Adjustment (Reso 112-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2011-2012; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1b.

1.c. Approve NIMS Brevard County Coordinator (Reso 113-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS); PROVIDING FOR APPROVAL OF THE BREVARD COUNTY EMERGENCY MANAGEMENT DEPARTMENT AS THE NIMS IMPLEMENTATION COORDINATOR; PROVIDING FOR MALABAR COMPLIANCE TO THE NATIONAL INCIDENT MANAGEMENT PLAN; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.c.

1.d. Acknowledgement of Receipt of Monthly Financials for October, 2011

1.e. Support FLC Advocacy for Police and Fire Pension Reforms (Reso 114-2011)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING POLICE OFFICER AND FIREFIGHTER PENSION PLAN AND DISABILITY PRESUMPTION REFORMS TO MAKE THE PLANS SUSTAINABLE, SOUND AND SECURE FOR CURRENT AND FUTURE POLICE OFFICERS AND FIREFIGHTERS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1.e.

Recommendation: Request Action on all

MOTION: Rivet / Acquaviva to approve the consent agenda.

Discussion: Chair asked if Council had anything they wanted to pull. None.

ROLLCALL VOTE: 1) Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

F. PUBLIC COMMENTS: General Items not related to agenda items; Speaker Card Required
Speaker's Cards:

Chair stated he would use the 3-minute rule.

- Bridget Ports: 1340 Hall Road, in reference to 11/11/2011, fire incident on Marshall Drive. She handed out copies of irrefutable evidence to conflict with Chief's report. She also had copies of statements from everyone involved but only had six (6) CD discs. Chair said for Clerk to keep his copy so she could make copies.

McKnight referenced the complaint that had been made about him and asked her if he is classified as her friend and has he ever been to her house over past two years? No. He represents the residents and is not carrying a torch for anyone.

- Joseph Hooker, Lt at Fire Dept., he personally has never been harassed or intimidated while working here.
- Paul Aliano, officer with Fire Dept., he has not been harassed or intimidated by anyone at Fire Dept or Town.
- Aaron Collins, Lt with FD, said the Town has given him great experience, started with Malabar fresh out of fire school, it has allowed him to gain a lot more experience and make him more marketable. He has not been harassed or intimidated, and had not witnessed any harassment or intimidation of others. He reiterated that he had not experienced any or witnessed any.
- Kevin Plunkett, is the Volunteer Asst. Chief. He watched the last Council meeting hearing about a lot of complaints and he wanted to say he has never been harassed or intimidated at the fire department but he has been subjected to harassing calls from others outside of the fire dept. He and the other volunteers give their life for this community. He has never seen any of that stated at last meeting. He said to Council to feel free to come in and talk. Chief Covey and Asst Chief will also talk to anyone. They all feel the same way. Felt we had to come here tonight to say that tonight. He said we need to see in the light who is saying this stuff. There is harassment towards the fire dept.

CM David White asked TA if anyone had submitted harassment statements or reports since the last meeting. No. TA said she had also handed out harassment policy for Town employees and FD personnel and had them each sign for it. She also asked them to come forward if they had a problem. No one and no statements have come forward. They have stated there were numerous and over many years,

- Steve Morris, Weber Road, over water damage coming into his pond and killing his fish. Wants to know if there has been an inspection done since the last meeting. Mr. Morris said PW Dir Miliore was out there. Tom said he only took pictures. Morris said the barbed wire Foley put out there has done nothing - the cows have gone under it. Where all the water is at is his property. He sent pix down the dais showing the cows have trampled down the swale. Work that was done recently. Last picture shows the fence is 4 foot tall. Last 2 pix are Richard Cameron putting a swale in. Building a berm and Town Eng doesn't know water doesn't go uphill. There was an effort and he put one strand of barbed wire up and the cows go underneath it. Mayor asked what he wants town to do. Make him do what his eng said should be done - mirror the swales on Mr. Morris property. Not the town eng. The town needs to tell him to manage the first inch of rainfall.

Mayor asked what staff had done. TA said they held their meeting, that morning they received the memo from the Town Eng. Draft a letter to Mr. Foley based on what Atty Bohne. The meeting after from the last complaint, got a call that Mr. Foley had already mowed the grass. Tom was taking pictures behind the fence. How soon will this happen. She will draft it and send to Bohne. Could happen this week.

- G. **ATTORNEY REPORT:** nothing
- H. **BREVARD CTY SHERIFF:** Sheriff Deputy spoke – vehicle burglaries on Hall Road, 2 or 3. Also one on Lett Lane, all cars were unlocked. That is all he knows about. Rivet asked if they had any leads.
- I. **PUBLIC HEARINGS:** none
- J. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**

K. **ACTIONS ITEMS:**
ORDINANCES: First Reading:
 2. **Amendment to Code Related to Gaming Establishments (Ord 2011- 48)**
 AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.C.3, LAND USE CLASSIFICATIONS; PROVIDING FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; ESTABLISHING ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AND ALSO AMENDING REFERENCES IN TABLE 1-6.1 (B) IN THE "ACCESS REQUIRED TO STREET" COLUMN FROM "WESTLAND" TO "WEST RAILROAD AVENUE"; AMENDING ARTICLE XX RELATING TO LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2
Recommendation: Request Action

Chair read the ordinance by title only.

MOTION: McKnight / Rivet to approve Ord 2011-48, dealing with Electronic Gaming.

Discussion: McKnight thought being more detailed was better in this case. Attorney said the P&Z Board had a question about the language in ordinance not referencing less than 50 units. Attorney changed wording to state less than 50 units are not allowed as a permitted use or as a conditional use.

ROLLCALL VOTE: Beatty, Aye; 1) White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

RESOLUTIONS:

MISCELLANEOUS:

3. ~~Approve Repair to Bridge on Briar Creek Boulevard~~ — **PULLED**

4. **Employee Holiday Schedule**

Exhibit: Agenda Report No. 4
Recommendation: Request Action

MOTION: White / Rivet to approve the additional half day for Christmas Eve and New Year's Eve.

Discussion:

VOTE: All Ayes.

5. Set January Council Meeting**Exhibit:** Agenda Report No. 5**Recommendation:** Request Action

Discussion: Mayor said Jan 4th could be an option. Mayor said the 4th and 23rd. McKnight said just do one. Not a lot happens over the holidays. They decided on 23rd.

(No Recess – Attorney Excused)

K. PRESENTATIONS:

Mayor read Jack Little's and Scott McLachlan's. They were not present. CM White said he would give Scott his. Clerk's office will give Jack his certificate. Mayor read one for CM Beatty for Ethics.

L. PROCLAMATION:**M. STAFF REPORTS:****ADMINISTRATOR:**

- Chief reported on the Fire Dept – good response to December Sunday breakfast – biggest yet.
- Had live fire training – went very well. Also had aerial operation course and it is starting to get some use. They are going to take their time getting used to it.
- They do have Christmas ornaments for sale as fund raiser.
- He told Council he didn't tell anyone to come here tonight to speak. After last Council meeting he had meeting with FD personnel and reiterated the Fire Dept and the Town's harassment policy. He has an open door policy. All five officers, to the man, spoke tonight and said they were harassed. Chief wanted that out there.
- Chief asked Council if the additional half day for Christmas Eve and New Year's Eve could also be given to his secretary. She works part time and works very hard. He couldn't do his job without her. She also hasn't had a raise. He would like her to also get those half days off with pay. Council agreed.

CLERK:

- We will need to do a budget amendment that would increase the bottom line of the budget. The reason is three fold: We have no money in budget to cover the adding of a spouse to health insurance; cost is 11,400.00. We will need funds to cover repairs to bridge on Briar Creek Boulevard, price TBD and repairs to Country Cove culvert, price TBD.
- Rec'd first flag design entry.
- FDOT will have speed study results within 60 days. 45mph may have been appropriate in prior years but subsequent improvements may have resulted in increased speed.
- Have been working on banking services and would like to present a resolution under consent agenda at next meeting to move banking operations to BB&T. Council consensus was to allow me to choose the bank that I felt provided the best services for Malabar. I believe that to be BB&T. They already handle our investment banking. They were not involved in the sub-prime mortgage issue. They have reviewed what we pay Wells Fargo in service charges and can reduce that by 50%. I would like to get a consensus now to place it on the consent agenda at next meeting. Otherwise I will place it under Resolutions on the agenda if you feel there is discussion needed.
- Auditors were here Dec 5, 7, 8 and 9th. Having audit at this time reduced the number of post yearend adjustments. They found some areas we needed improvements on; errors again in utility reports and a couple in AP. In defense, the requirements are the same for accounting and reporting whether you are small like Malabar or large like Palm Bay. We have very limited staff and handle multiple jobs during any given day. We have adequate checks and balances but do make mistakes. Part time Accounting

- Completed the required eight (8) hours of investment training through seminar conducted in Cocoa by Cutwater Management. It was an excellent seminar.

N. DISCUSSION ITEMS:

REPORTS - MAYOR AND COUNCIL MEMBERS:

- 1) Beatty: referenced the memo that was hand delivered and the person that alleged that he was friends with the Ports. He has never socialized with them. The friendship issue is an example of why he wanted an outside investigator. Now that it is public he may have questions after he reads through everything. He has only received four emails on this issue and three of them were from TA.

TA said she was also accused of mishandling the situation and being unprofessional. It would normally not be on an agenda. She was not rude to that employee. She works for Council and they had the item on the agenda.

- 2) White: nothing
- 3) Rivet: nothing
- 4) McKnight: hopes everyone has a happy holiday. Asked Tom about the hole at Atz and Weber. He also said he has a bores scope camera. It has 7/16" and 18 in long. It was Engineer Morris Smith that mentioned it.
- 5) Acquaviva: Out front looks nice and inside. Thought staff did a good job of decorating.
- 6) Mayor: regarding the Fire Dept Christmas ornament. This is the first year issue for the ornament. Everyone should get one. It will become a collector's item.

P. PUBLIC COMMENT: General Items related or not to agenda items (Speaker Card Required)

Q. ADJOURNMENT:

There being no further business to discuss, **MOTION:** Acquaviva / White to adjourn this meeting.

VOTE: All Ayes. The meeting adjourned at 8:35 PM.

BY: _____
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin, C.M.C. Town Clerk/Treasurer

Date Approved: _____

**TOWN COUNCIL MEETING
THURSDAY, DECEMBER 19, 2011
7:00 P.M. AND CLOSED ATTORNEY-CLIENT SESSION
TO COMMENCE AT 7:00 P.M. OR AS SOON THEREAFTER AS POSSIBLE
MALABAR COUNCIL CHAMBERS
2725 MALABAR ROAD
MALABAR, FLORIDA**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road. Chair Eschenberg called the meeting to order and lead in the Prayer and Pledge.

A. CALL TO ORDER, PRAYER AND PLEDGE

B. ROLL CALL

Town Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Marisa Acquaviva
Council Member:	Carl Beatty
Council Member:	David White
Council Member:	Steven Rivet
Council Member:	Jeffrey McKnight
Town Clerk/Treasurer	Debby K. Franklin
Certified Court Reporter:	King Reporting Service

C. RECESS FOR CLOSED ATTORNEY-CLIENT SESSION

Pursuant to Florida Statute 286.011(8), the Town Council will hold a private attorney-client session, **which will not be open to the public**, with the Town Attorney, Karl W. Bohne to discuss pending litigation in Town of Malabar v. City of Palm Bay, Case No. 05-2009-CA-049231, filed in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida. The following persons will be present at said meeting:

Town Attorney:	Karl W. Bohne, Jr.
Town Administrator:	Bonilyn Wilbanks
Mayor/Chair:	Thomas M. Eschenberg
Council Vice-Chair:	Marisa Acquaviva
Council Member:	Carl Beatty
Council Member:	David White
Council Member:	Steven Rivet
Council Member:	Jeffrey McKnight
Certified Court Reporter:	King Reporting Service

A verbatim transcript of this meeting shall be transcribed by King Reporting. The transcript will be filed with the Town Clerk and open to the public for inspection **after** the conclusion of the litigation.

There being no further business to discuss the Chair announced the termination of Closed Session at 7:30PM.

BY: _____
Thomas M. Eschenberg, Chair

ATTEST BY:

Debby K. Franklin, Town Clerk/Treasurer

Date Approved: _____

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2.
Meeting Date: January 23, 2012

Prepared By: Debby K. Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Amendment to Code re: Electronic Gaming Establishments (Ord 2012-48)

BACKGROUND/HISTORY:

Council approved the ordinance drafted by the Attorney at their meeting on Nov 7, 2011. Council directed that Clerk go forward with the advertisement for Public Hearing on the Attorney version of the ordinance.

The Public Hearing was held on December 14, 2011 at P&Z. Council had the first reading of this ordinance at their meeting on December 19, 2011.

The Public Hearing for Council was advertised for January 23, 2012.

ATTACHMENTS:

Ordinance 2012-48

FINANCIAL IMPACT:

N/A

ACTION OPTIONS:

Staff requests action on the Second Reading of Ord 2012-48

ORDINANCE NO. 2012-48

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.C.3, LAND USE CLASSIFICATIONS; PROVIDING FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; ESTABLISHING ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AND ALSO AMENDING REFERENCES IN TABLE 1-6.1 (B) IN THE "ACCESS REQUIRED TO STREET" COLUMN FROM "WESTLAND" TO "WEST RAILROAD AVENUE"; AMENDING ARTICLE XX RELATING TO LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Sections 1-2.6.C.3 is hereby amended to read as follows:

"3. Commercial Amusement, enclosed. Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities. Facilities as defined herein as Arcade Amusement Centers and/or Electronic Gaming Establishments are permitted as conditional uses as provided for in Table 1-3.2. For purposes herein the following definitions apply:

'Arcade Amusement Center' as used in this section means a place of business which shall have at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.

"It is specifically intended by this definition that any place of business that does not have at least 50 coin-operated amusement games or machines on premises shall not be a permitted use nor be granted a conditional use permit to operate such a business"

The provisions of Section 849.161, Florida Statutes shall apply to an Arcade Amusement Center.

'Electronic Gaming Establishment' means a business operation, which shall have at least 50 electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to Section 849.094, F.S., including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. It is specifically intended by this definition that any place of business that does not have at least 50 electronic machines or devices shall not be granted a conditional use permit to operate such a business. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, and cybercafés or sweepstakes cafes. This definition is applicable to any Electronic Gaming Establishment, whether or not the electronic machine or device utilized:

(a) is server based;

- (b) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (c) uses software such that the simulated game influences or determines the winning or value of the prize;
- (d) selects prizes from a predetermined finite pool of entries;
- (e) uses a mechanism that reveals the content of a predetermined sweepstakes entry;
- (f) predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (g) uses software to create a game result;
- (h) requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;
- (i) requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
- (j) requires purchase of a related product, regardless if the related product, if any, has legitimate value;
- (k) reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
- (l) determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or
- (m) a slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any Electronic Gaming Establishment that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. Electronic Gaming Establishments do not include Arcade Amusement Centers, regulated pursuant to Section 849.161, Florida Statutes, or the official Florida Lottery.

The term *Prize* as used herein shall mean any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize."

Section 2. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	C P
COMMERCIAL ACTIVITIES														
ENCLOSED COMMERCIAL AMUSEMENT										P				
ARCADE AMUSEMENT CENTER/ELECTRONIC GAMING ESTABLISHMENT										C2				

2. Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

Section 3. Table 1-6.1(B) is hereby amended to provide for Arcade Amusement Centers and Electronic Gaming Establishments to read as follows:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
<u>ENCLOSED ARCADE AMUSEMENT CENTER/ELECTRONIC GAMING ESTABLISHMENT</u>	<u>1 Acre</u>	<u>120</u>	<u>Highway 1 and Babcock Street only</u>	<u>100/30</u>	<u>N/A</u>	<u>Type A/C</u>	<u>(7)</u>

Section 4. Table 1-6.1(B) is hereby amended to replace references to "WESTLAND" in the "Access Required to Street" column to "WEST RAILROAD AVENUE".

Section 5. Article XX of the Malabar Land Development Code is amended to change the definition of "Commercial Amusement, Enclosed" to read as follows:

"Commercial Amusement, Enclosed. A commercial amusement establishment, the operations of which are conducted entirely within the confines of an enclosed building or structure, excluding necessary off-street parking facilities. This definition includes, but is not limited to, the following: bowling alleys, billiard and pool establishments, skating rinks, video arcades, arcade amusement centers, electronic gaming establishments and indoor theaters."

Section 6. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council, of the Town of Malabar, did not intend to enact such invalid or unconstitutional provision. It shall be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 7. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 8. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 9. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member

_____. The motion was seconded by Council Member

_____ and, upon being put to a vote, the vote was as follows:

- Council Member, Carl Beatty _____
- Council Member, David White _____
- Council Member, Steven (Steve) Rivet _____
- Council Member, Jeffrey (Jeff) McKnight _____
- Council Member, Marisa Acquaviva _____

This ordinance was then declared to be duly passed and adopted this ____day of _____, 2012.

BY:
TOWN OF MALABAR

Mayor Thomas M. Eschenberg
Council Chair

PH at P&Z: 12/14/2011
First Reading: 12/19/2011
Second Reading: 01/23/2012

ATTEST:
By _____
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

1/23/12

OFFICE OF THE TOWN CLERK
PHONE (321) 727-7764
FAX (321) 722-2234



TOW
2725 M/
MALABAR, FL #3

AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL

Please mail completed form to:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: CHARLES "BUD" RYAN

ADDRESS: 1923 HOWELL CANK

TELEPHONE: 321-676-5418
(Home) (Business)



Please state the item you wish to have placed on the Town Council Agenda:

NOTIFICATION PROCEDURE FOR TOWN
ADVISORY BOARDS

Please summarize pertinent information concerning your request Agenda item and attach applicable documents:

Notification procedure for excused absence from Board meeting.

Please state desired action by Town Council:

ESTABLISH PROCEDURE ??

Signed: C. Ryan

Date: 12/21/11



TC 1/23/12

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2725 Malabar Road
Malabar, FL 32950
321.727.7764 (Office) 321.722.2234 (Fax)
www.townofmalabar.org

**AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL**

Please submit the completed form to the Clerk's Office:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Buwinie Koudson

ADDRESS: _____

TELEPHONE: _____
(Home) (Business)

Please state the item you wish to have placed on the Town Council Agenda: Agenda Request Forms are not permitted for campaign purposes.

Purchase of River front property
1670 Highway 1, Malabar

Please summarize pertinent information concerning your request Agenda item and attach applicable documents:

Owner has reduced price

Please state desired action by Town Council:

Purchase for Town use - possible community ctr.

Signed: _____

Date: _____

Attorney said TA Wilbanks had something to tell Council. TA Wilbanks stated that during the ARRA projects when the cost came in more than the allotment, the FDOT did not hesitate to support shifting other funds to pay for the \$2800.00 increase in the project costs.

Franklin showed on the overhead the email showing FDOT did invite the Mayor, Council and TA to the meetings where this could have been negotiated and no one from Malabar attended the meetings for the five years it was under discussion.

Borton called for the question.

VOTE: 4 Ayes; 1 Nay (Rivet)

Motion approved 4 to 1.

4. Allow Local Business Owners to Advertise on Town Website

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Rivet, point of order, need a motion in order to discuss. Chair said no, you need information before you can make the motion.

MOTION: Rivet / Borton to allow local businesses to advertise on our website.

TA introduced this by stating that this could help many local businesses by giving them an alternative location for getting the word out about their business. Cost to each business would be \$100.00. It would be hosted by E-City services, the company that does our website.

Rivet asked if there would be any restrictions on types of ads. Conditions could be Malabar resident or Malabar business. Attorney said that Rockledge restricted it to the businesses with the CRA.

Add a statement/disclaimer that Town is not held responsible. Do we censor the ads? When you click on them it would take you to their website. E-City said it would not be labor intensive to staff. Acquaviva said with the current economy this would be a way to get the word out. Vail said it is the hub for our website and would want to make sure nothing inappropriate could be accessed from our website. Rivet said if it is a risqué ad that would be legal. Wilbanks said she could get more info from E-City services for next meeting.

MOTION: Borton / Rivet to table to next meeting. **VOTE:** All Ayes

5. Form Committee to Consider Purchase of Logue Property

Exhibit: Agenda Report No. 5

Recommendation: Request Action

MOTION: Borton / Rivet to form a committee and appoint Mrs. Liz Ritter as Chair and allow her to recruit the rest of the committee.

Borton said Mrs. Ritter would be a good person to look into the possibility of this purchase. Acquaviva said the letter received was very thoughtful, timely and was very good. Let Liz be Chairwoman and let her get the other members. Rivet pointed out the email was from Canada.

VOTE: All Ayes.

M. DISCUSSION ITEMS:

6. Review of Article for Newsletter Regarding Referendum Questions

Exhibit: Agenda Report No. 6

Recommendation: Discussion

Does anyone have any objections to written explanations given for the residents? None.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 5.
Meeting Date: January 23, 2012

Prepared By: Debby K. Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Oppose Legislation to Repeal F.S. 205 to Eliminate Local Business Tax (Reso 01-2012)

BACKGROUND/HISTORY:

Revenues authorized for local governments to pay for general fund expenditures are very limited. The property tax or Ad Valorem is authorized from the State Constitution. The other sources specifically authorized by State Legislature for municipalities are the Local Business Tax (formerly Occupational License), Communication Service Tax and Municipal Utility Tax.

HB 4025 and SB 760 were introduced this session and propose to repeal Florida Statute 205 which authorizes municipalities and counties to levy Local Business Taxes.

This would be a significant reduction in local government's revenues as well as another attack on Home Rule authority. For Malabar, it would represent a revenue reduction of about \$20,000.00. In committee, they have offered amendments to allow those cities that have pledged the BTR revenue against debt to continue to collect the tax. This would mean that municipalities like Malabar would be punished by losing this revenue source simply because we have not pledged the revenue against debt.

Many cities feel that this repeal of F.S. 205 is no guarantee that this tax would not come back as a State assessment. Tallahassee is in need of revenue.

Local governments are the best positioned to monitor the businesses operating within their jurisdictions. Malabar has been levying this tax on businesses operating within Malabar since 1974, 37 years, and this ability should manifest itself as an expression of Home Rule.

Many municipalities and counties have opposed this legislation and the FLC has taken a position of opposing this legislation.

Legislators must hear directly from their cities on the importance of opposing this legislation. If Council approves this Resolution, we will send this resolution to the Brevard Delegation as well as the Senate President and the Speaker of the House.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Resolution No. 01-2012

ACTION OPTIONS:

Staff requests action on the Resolution.

RESOLUTION 01-2012

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, OPPOSING HOUSE BILL 4025 AND SENATE BILL TO REPEAL CHAPTER 205 OF THE FLORIDA STATUTES, WHICH WOULD ELIMINATE THE LOCAL BUSINESS TAX ACT RESULTING IN A LOSS OF REVENUE TO THE TOWN OF MALABAR, PROVIDING FOR AN EFFECTIVE DATE.

- WHEREAS,** the Town of Malabar, incorporated in 1962 has had a local business tax (formerly Occupational License) program in place since the early 1970's; and
- WHEREAS,** Malabar like most municipalities and counties require businesses operating within their jurisdictions to obtain a Local Business Tax Receipt and revenues collected in this form assist in sustaining services provided for its citizenry; and
- WHEREAS,** the Florida Legislature is considering legislation in the House and Senate to repeal F.S. 205 eliminating local governments ability to collect a tax on businesses operating within their jurisdictions and have offered amendments to allow local governments that are using the revenue from this tax as a pledge on bonds to continue collecting it, thus financially punishing local governments that are debt free; and
- WHEREAS,** the Florida Legislature has proposed this legislation to remove financial regulation on local businesses without any guarantee that they won't approve later legislation to require local businesses pay such a tax to the State; and
- WHEREAS,** the Florida Legislature provided this revenue source to local governments in 1972 and it has become a integral part of local government's budgeting; and
- WHEREAS,** the Florida League of Cites is assisting local governments by opposing this legislation and any legislation that would modify, restrict or eliminate the Home Rule authority of municipalities to levy and collect Local Business Tax Receipts and maintain programs that promote the health, safety and welfare of its citizenry; and
- WHEREAS,** the Town of Malabar is requesting the Florida Legislature to oppose the repeal of Chapter 205 of Florida Statutes eliminating Home Rule authority to impose Local Business Taxes.

NOW, THEREFORE, Be It Resolved By the Town Council of the Town of Malabar, Brevard County, Florida as follows:

- Section 1.** That the above Whereas clauses are true and correct and are hereby ratified and confirmed.
- Section 2.** That the Town of Malabar opposes Florida House Bill 4025 and Florida Senate Bill 760 to repeal Chapter 205 of Florida Statutes, which would eliminate the Local Business Tax Act resulting in a loss of revenue.
- Section 3.** That the Town of Malabar hereby requests its Legislative delegation to oppose the repeal of Chapter 205 the Florida Legislature eliminating Home Rule authority to impose Local Businesses Taxes.
- Section 4.** That the Malabar Clerk is directed to transmit a copy of this resolution to Governor Rick Scott, the Brevard Legislative Delegation, and the Florida League of Cities, Inc.
- Section 5.** That this resolution shall be effective upon adoption.

This Resolution was moved for adoption by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

- Council Member Carl Beatty _____
- Council Member David White _____
- Council Member Steven (Steve) Rivet _____
- Council Member Jeffrey (Jeff) McKnight _____
- Council Member Marisa Acquaviva _____

This Resolution was then declared to be duly passed and adopted this 23rd day of January, 2012.

TOWN OF MALABAR

By: _____
Mayor Thomas M. Eschenberg, Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 6.
Meeting Date: January 23, 2012

Prepared By: Debby K. Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Approve BB&T for Bank Depository (Reso 02-2012)

BACKGROUND/HISTORY:

Since changing to Wachovia, a division of Wells Fargo N. A., in April of 2010 we have yet to resolve issues regarding proper public funds accounts, service fees, account services and assistance for problem resolution.

In the beginning, they charged us low fees and even waived monthly fees until the take over by Wells Fargo was complete in June 2011. Since that time we have been charged a service fee on a variety of services available whether the Town used them or not.

We have also had issues with errors on bank statements and information missing from statements. There was also an incident where the bank paid more than the amount on the check presented. Then we had to make the adjustments later after the bank made good on the error. We have also been charged excessive service fees on account profiles whether used or not, at times exceeding \$900.00 per month. One of the bigger issues is the lack of contact with the account representative. Banks have a significant responsibility when they agree to hold public funds and their requirements for collateralization and reporting to the state are much more intense. It is not a simple matter of asking a teller at the bank to look into an issue.

BB&T has staff dedicated to their customers that have public funds accounts. The rules and requirements are much different than for private money. We have met and talked with representative from many local banks and feel very confident that a relationship with BB&T to handle our operating accounts in addition to some existing investment accounts we currently have will be in the best interest of Malabar.

FINANCIAL IMPACT:

The service fees will be offset by an earning credit they will give us. This is what some banks offer when the interest rates are so low.

ATTACHMENTS:

Resolution No. 02-2012

ACTION OPTIONS:

Staff requests action on the Resolution.

RESOLUTION 02-2012

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ESTABLISHING A DEPOSITORY AT BRANCH BANK AND TRUST (BB&T) FOR FUNDS COLLECTED BY THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar must have a depository per the Town Charter and has used a number of local banks for that purpose over the years, SunTrust, Nations Bank, Huntington, Riverside and Wachovia; and

WHEREAS, the Town Council approved the move to Wachovia Bank in 2010 when Riverside Bank lost its ability to collateralize public funds and was losing its status as a Qualified Public Depository. Riverside National Bank had been the primary depository for those funds; and

WHEREAS, the Town of Malabar has had continual issues with lack of support from Wachovia in providing cost effective public funds; and

WHEREAS, the Town Treasurer and Town Administrator have talked to representatives of many of the local banks with headquarters in the U.S. and have determined that the Town would be well served to move the operating accounts to Branch Bank and Trust (BB&T) due to its experience in dealing with public money accounts, its closer proximity, their willingness to provide earnings credit to offset service charges and their commitment to service.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Malabar, Brevard County, Florida that:

Section 1: The Town of Malabar will open public funds operating accounts for Town expenditures at Branch Bank and Trust (BB&T).

Section 2: The public funds operating accounts for Town expenditures at Wachovia will be closed in a timely manner.

Section 3: All disbursements of monies from this depository shall be made in accordance with the Town Charter.

This Resolution was moved for adoption by Council Member _____. This motion was seconded by Council Member _____ and, upon being put to vote, the vote was as follows:

Council Member Carl Beatty	_____
Council Member David White	_____
Council Member Steve Rivet	_____
Council Member Jeffrey McKnight	_____
Council Member Marisa Acquaviva	_____

This Resolution was then declared to be duly passed and adopted this 23rd day of January, 2012.

TOWN OF MALABAR

By: _____

Mayor Thomas M. Eschenberg, Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 7
Meeting Date: January 23, 2012

Prepared By: Bonilyn Wilbanks, Town Administrator

SUBJECT: Cost Estimate for Right Turn Lane on South Side of Corey Road

BACKGROUND/HISTORY:

Council requested that I research the cost of a turn lane for south side of Corey Road. I requested the information from Goodson Paving as they do a lot of work in the FDOT ROWs. The cost without engineering is estimated between 80,000 – 130,000. I was told I could add another 20,000 for engineering and design.

FINANCIAL IMPACT:

100,000 – 150,000

ATTACHMENTS:

Email from Goodson Paving.

ACTION OPTIONS:

Staff requests Council discussion and action on this matter.

From: Bonilyn Wilbanks [<mailto:bwfree@townofmalabar.org>]
Sent: Monday, January 02, 2012 8:53 AM
To: Goodson Paving, Inc.
Subject: Re: Assistance Please

Thanks Phil

Sent from my iPhone
Bonnie Wilbanks

On Jan 2, 2012, at 8:04 AM, "Goodson Paving, Inc." <goodsonpaving@bellsouth.net> wrote:

Bonilyn,

Good morning we just received your email after being shut down for the holidays.. Depending on the length of the turn lane and if utility relocates are required or installation of utilities are required, or fill dirt is needed, etc.. From what we have seen turn lanes typically run between \$80,000 and \$130,000...That is a rough guess, not having seen the plans. I would go on the higher side to be safe..... I hope this helps..

Thank you,

Phil Stiffler-VP

GOODSON PAVING, INC.
630 CIDCO ROAD
COCOA, FLORIDA 32926

PH: 321-631-5523
FAX:321-639-0497

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 8
Meeting Date: January 23, 2012

Prepared By: Bonilyn Wilbanks, Town Administrator

SUBJECT: Approval for EELs to Place Signage in Cameron Preserve

BACKGROUND/HISTORY:

Malabar Scrub Manager, Chris O'Hara, has requested permission to put up signage in the Cameron Preserve, warning equestrian riders that Malabar West is not for equestrian use for the safety of the riders and the pedestrian traffic. Presently the riders end up having to backtrack out.

I recommend that if approved, EELs would be responsible for cost and maintenance of the signage.

FINANCIAL IMPACT:

Unknown

ATTACHMENTS:

Email from Chris O'Hara

ACTION OPTIONS:

Staff requests Council discussion and action on this matter.

PULLED

TOWN OF MALABAR

9

MEMORANDUM

Date: January 12, 2012
To: Debby Franklin, Town Clerk/Treasurer
From: Karl Bohne, Town Attorney
Ref: Legal Opinion – Warning Signage

I see that there may be a request for the Town to install some type of warning signs concerning horses. That decision is a council decision. My caution to the council if they are asked to consider this request is that the Town must consider the legal implications of posting a sign. Yes I mean liability. Generally, there is no liability on the part of the Town concerning the discretionary/planning decision to install a sign. There is liability for the operational function of failing to maintain a sign such as this. There is a limited exception where the government **creates** a known dangerous condition which is not readily apparent to persons that could be injured then it is considered an operational function and liability could attach. The Town in this instant would not be considered as creating a known dangerous condition. Put another way if the Town creates a dangerous condition it has a duty to warn. An example of the creation of a dangerous condition on the part of a governmental body giving rise to the duty to warn is where the government builds a road that it knows has a dangerous curve. The initial decision to put the curve in is not actionable; however, if the government knows that this curve creates a known hazard then there is a duty to warn. Another example which is more pertinent here is if the Town owned horses and built a stable near a busy road. The decision to do so is not actionable; however, if the town knows that there is a propensity for these horses to escape then there probably needs to be warning signs erected. The focus is clearly on the Town's creation of the dangerous situation. The Town is not liable for the negligent acts of third parties who are not the agents of the Town. Some may argue that the Town allows horses in this area under its zoning code so therefore they have created the situation. I believe this is without merit. Taking this position to its logical extreme then the Town would be liable for any person who negligently backs out of their driveway and causes an accident. The liability, under this argument, arises because the Town permitted a house to be built. Fortunately, the Town under that example is not liable.

If the council decides not to install the sign then in my opinion no liability would attach if another tragic incident like this occurs. If the council wants to install signs and the signs are not maintained and another tragic incident occurs liability on the part of the Town would probably attach.