

MALABAR TOWN COUNCIL REGULAR MEETING
October 6, 2014 7:30 PM

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 7:30 pm by Council Chair Steve Rivet. The prayer and pledge were led by Council Member Wayne Abare.

B. ROLL CALL:

COUNCIL CHAIR	STEVE RIVET
VICE-CHAIR/MAYOR:	CARL BEATTY
COUNCIL MEMBERS:	JIM MILUCKY
	WAYNE ABARE
	DICK KORN
	MARISA ACQUAVIVA
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For record Fire Chief Christopher Robinson, PW Director Tom Miliore and Town Engineer Morris Smith are also present.

C. ADDITIONS/DELETIONS/CHANGES: Chair said he recognized there were many people here to speak but the Public Hearings must be held first. Mayor asked for Discussion by Council before a motion is made by Council on Agenda Item 2 - the Land Use and Zoning change request; he is afraid once the motion is made someone will call for the question and discussion won't be allowed. Marisa said there is always discussion after the motion. Chair said it is a Public Hearing and they should have that before Council discussion. Mayor said they can decide to vary from the rules. Someone can call for the question. Chair said it takes a 4/5 vote to end debate. Attorney spoke up that if there is an objection to the call for the question. Chair said then they can make a motion to end debate and that requires a 4/5s vote. Jim said he would support suspending Robert's Rules to allow discussion before the motion. Chair asked for objections; none voiced. Jim also asked to remove the discussion item since the Attorney had already provided a legal opinion. No objections.

D. CONSENT AGENDA:

(Any Council Member may request an item on the Consent Agenda to be removed and placed on regular agenda immediately after new business to be discussed and voted on separately by the Town Council)

1a. Minutes of: RTCM 09/22/14
Exhibit: Agenda Report No. 1a.

1b. Budget Adjustment (Reso 31-2014)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2013-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1b.

Approval of Consent Agenda with roll call vote on Reso 31-2014

Chair read by title only.

MOTION: Korn / Abare to approve the consent agenda as corrected (pg 4 of minutes, top of page. add "build a new town hall". **ROLL CALL VOTE: 1)**Milucky, Aye; Abare, Aye; Korn, Aye; Acquaviva, Aye; Rivet, Aye. Motion carried 5 to 0.

- E. **PUBLIC COMMENTS:** Comments may not address subsequent Agenda Items. Comments do not require Council response. (Speaker Card Required) **Five (5) Minute Limit per Speaker**
- F. **ATTORNEY REPORT:** none
- G. **BREVARD COUNTY SHERIFF'S OFFICE REPORT:** none
- H. **FIRE CHIEF REPORT:** New truck delivered and is at Palm Bay Fleet services to get lights changed over.

I. **PUBLIC HEARINGS: 1st of 2 for 2nd readings**

2. **Land Use Amendment & Zoning Change for Parcel 28-38-31-00-00750** aka 1300 Highway 1, Malabar, FL 32950; Request to change from Residential/Limited Commercial (R/LC) to Commercial General (CG); Applicant: KellWill, LLC, represented by Mr. William Carmine. (Ord 2014-14)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RECLASSIFYING THE COMP PLAN MAP AND REZONING THE PROPERTY AS FOLLOWS: THE 3.22 ACRE PARCEL IN TOWNSHIP 28, RANGE 38, SECTION 31, LOT 750, LYING ON THE WEST SIDE OF HIGHWAY 1, NORTH OF MALABAR ROAD, AKA 1300 HIGHWAY 1, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Adoption of Ord 2014-14

Chair read the title only and then allowed discussion by Mayor per Mayor's request. Mayor said he is not against the issue per se but several things have to be addressed. We are changing the land use plan at the same time as the zoning. The maps he sees don't show similar zoning on contiguous parcels. The only issue he saw there was that they were limited to 4000sf. What he reads is no matter how large your lot is you are limited to 4000sf. If that is true then it is not fair. If you have ten acres you are stuck at 4000sf MBC and if you have one acre you can do the same; so we need to look at that. It shows a rezoning from whatever it is to a heavy commercial and it includes the strip of land on the river, so are we now spot zoning on the river? Does that allow them to put a billboard down there? If it meets the criteria we can't stop him. Mayor is really adamant do they want to include the property on the east side as commercial when everything else is coastal preservation. Mayor said final thing is he believes if they look at the ordinance, they need to amend the light commercial/residential zoning to allow more than 4000sf, based on the size of the lot. He is not advocating for that he is just saying maybe they should look at that first. Bar none, the coastal preservation shouldn't be part of it and the size of the building could be addressed with a change to the zoning instead of change to land use.

Franklin asked Chair to respond. The request is specifically for the west side of Highway 1 and the east side would remain Coastal Preserve. She explained that the map the Mayor was looking at was from the Property Appraiser showing the entire site for the radius package for notification of adjacent property owners within 500 feet. The request was specifically for the west side.

Dick said the request is to relocate his marine business; it is not strictly a marine business. There is much more to it; it would not be dependent on marine access. Applicant agreed. Dick said Mayor referenced "heavy" commercial and that is not one of their classifications. Dick said the way he is looking at this application he is looking for a way to build a more than 4000sf building. Chair stated they would get that answer when they open the public hearing.

Franklin said the applicant should be able to present before the public hearing. Chair called the applicant to podium. Jim said to allow applicant to speak but he would also like to speak.

Applicant, William Carmine, introduced himself; he grew up in Malabar and has been a business owner here since 2000. They have been looking at the subject property for several years and came before the Planning and Zoning Board last year and asked for an informal opinion on the possible rezoning and everybody was on board to do that. Last year they put a contract on the property; and closed on property last May. They are looking to relocate their power sports business to this location. They have outgrown their current location in G-V. They opened it in 2007 and have grown every year since then. They appeared before P&Z Board last week and received a favorable recommendation. He has always considered bringing this other business to Malabar and thought it would be a complement to the Highway 1 corridor. This second business would then be close to Malabar Mo's which they also own. He is just asking for Council support in reaching for his dreams.

Mayor said he read through packet and understands that applicant wants to develop $\frac{3}{4}$ of an acre. If there is an adjustment to the current zoning it would allow him to do what he wants without opening it up to one big commercial endeavor. He could have a change of heart, or lose his franchise and sell and that person would want to build something way outside of our land use plan. If it is not in the land use plan and not contiguous then we need to evaluate that. Mayor is trying to figure out a way he can build a 10,000sf building and that is something that P&Z can recommend and Council can do without changing the category. All he had to work with was the maps so he didn't know the request wasn't for the property on the east side so it will stay as coastal preservation and he was afraid that would be spot zoning. To change the zoning to something heavier if there is nothing contiguous that is spot zoning. He is looking at reevaluating to allow someone to have a larger building on a larger lot. That is his consensus.

Applicant said the $\frac{3}{4}$ ac that he referred to is what they are currently on. The parcel they purchased it 3.25 acre. The 10,000sf building is what their original intent was. They have not gone through any civil or structural engineering yet; this is the step they must cross before they get to that point. He went for the zoning change because that is what was in black and white in the Code when he met here with staff. In order to operate the business he currently operates in Grant the zoning needs to be General Commercial (CG).

Marisa said she asked Clerk about this and asked her to speak to the CG. Franklin said that it does abut CG on the west and is the only zoning that would allow retail sales and service of vehicles. Franklin said when they did the Future Lane Use update in the Comp Plan Council expanded the R/LC to other areas along Malabar Road and Babcock Street, so if you are changing the definition to allow a larger footprint, it would require a text change to the Comp Plan which would be considered a Large Scale Comp Plan Amendment requiring State review. This request is very straight forward, if you want to do this permitted use you need this CG zoning and that is why Town staff gave applicant that direction. Also, the Town Planner stated that this is not spot zoning.

Chair opened public hearing:

Pat Reilly, P&Z Chair, the P&Z Board recommended approval of this request 4 to 1. The no vote wanted a lower commercial zoning. He pointed out that the material in the packet clearly showed that this use would only be allowed in CG zoning. Pat said as Franklin and the Planner have stated, it is not spot zoning as there is similar zoning in the area. The setbacks are a little stricter.

The buffering and other issues are part of the site plan review and are not part of this request. He asked Attorney about this at their P&Z meeting; this request is strictly land use change and rezoning; not a site plan review.

Leeanne Saylor, 1280 Highway 1, is the property owner next she lives in and it adjoins, abuts and faces the property they are discussing. Saylor said as Reilly said there are two things they can do; change it to commercial or make it a conditional use. She doesn't think anyone has considered or evaluated the conditional use. Not only do she and her husband own 1280 Hwy 1 but they own 1270 Hwy 1. No one from the Town of Malabar made any effort to reach out to them before this went before P&Z, not a Clerk, not a Manager. It was also a surprise to Mr. Carmine because no one had made contact with them before meeting. Saylor admits she was serving on P&Z Board last year when Mr. Carmine came before Board but at that time but there was no discussion that there was going to be a change to such a liberal, open use. If something were to happen to Mr. Carmine, the commercial zoning would allow it to become a car lot, a package store open seven days a week, 24 hours a day. That is commercial zoning and it is right beside her home. She doesn't think there is a single person on the dais that would appreciate having a 10,000sf commercial building next to their homes. It is not what Mr. Carmine is proposing that they are opposing, it is the blanket of commercial zoning that would allow just about anything on this property should something happen to Mr. Carmine. God forbid something should happen to them tomorrow and that would be what happens. She asked if they would like to have Callagy Tire next to their homes. (Clerk's Note: Callagy Tire was located at 950 Highway 1 in front of and abutting Riverview Homes for 11 years 1977-1988.) She said that she thought they were doing this backwards; instead of changing the zoning, they should be considering keeping it as R/LC. Right now they have no idea what the use is going to be. Once it is commercial zoning they can't say...she doesn't understand why they can't consider a conditional use. She said Mr. Carmine said he has outgrown his space in Grant; he has also outgrown the parking at his Malabar Mo's; what is to prohibit him from using his land across the street for overflow parking. What's to prohibit him from moving his restaurant next to us as a 7-day a week operation going until all hours. We live next to this property. We have lived there twelve (12) years and never thought the property to the south would be developed CG. They think that Mr. Carmine would probably be a good neighbor but they don't know who would come after that may not be a good neighbor. They think the blanket jump to commercial (general) is too great.

Liz Ritter, 2860 Orange Avenue, also on the P&Z Board. Stated that they struggled with that and said there are ways to restrict the use; there is a contractor's agreement that states that if it is not developed as he proposes then the zoning would revert back. It is Residential / Limited Commercial so it is not just residential but they did have a lot of discussion on it and concerns. There is a contractor's agreement that they can propose so if he doesn't do what he says he'll do, then it would revert to R/LC.

Jim Milucky, CM, stepped down from dais and stood at podium as the resident of 1280 Hwy 1. He said his father purchased the property they live on in Dec 2002. In 2003 he opened his accounting business and it has operated there since then. In 2005 his father Quit Claimed a portion of the land to him for their legal, homesteaded residence. Wants to correct a few conceptions / impressions. The property to the north and south is residential light (limited) commercial and to the east is the river. The part he wants to correct the misconception that the property to the west and he challenges anyone to come walk the property with him; first you have to cross East Railroad right of way, then the railroad and then West Railroad road and then you hit commercial property. That is a huge buffer between his property and the commercial to the west. It is disingenuous to say there is commercial adjoining the property because that is not correct. He said to the south there is just a little sliver that is commercial and is not buildable he is told and then there are little houses, not skyscrapers and factories. Milucky then went through a series of pictures he had taken along Highway 1 starting at the southwest corner of SR515 and Hwy 1, a commercial business with Malabar Mo's behind it. He pointed out a boat dealer on US 1 saying this is what a marine business looks like. He showed the metal building across the street from the Yellow Dog Café, it is also commercial (commercial general). The restaurant is zoned commercial (commercial

general). He then went south past the commercial to Camelot which he said looked very nice. He pointed out Discount Marine, opened on a Sunday and taking delivery on a Sunday. He went through more pictures and then pointed out several more marine businesses along Highway 1 with boats in the front yard. He then said he had showed them what commercial, marine commercial, restaurant commercial and gas station commercial. He then showed a picture of a number of residences along Highway 1 in the residential light commercial (limited commercial). He said some of these lots are so small it would never be possible to develop them into commercial. He then showed Mike Linnell's property with a house and a five plex. Then he showed his home with plantation shutters and a cupola and a big setback with green grass and nothing parked in the front yard. Then he showed Danny's Open Storage with the stuff parked in front of property. He said the marine business belongs in commercial general; it does not belong next to his house. He then referenced P&Z Board's recommended changes to the FLUM and it did not reflect CG it referred to a current use of R/LC and no proposed changes. He doesn't know how they got off track thinking they could put a commercial property in the middle of a residential area. Milucky referenced what Mayor Beatty had said and also P&Z Member Krieger re: some of the uses allowed in CG zoning. Milucky told Council they have to stop listening to what someone is "gonna do" because that will get them in trouble. He read through a list of uses permitted in CG and then got to "adult entertainment" and bars and lounges. Milucky said Mr. Carmine owns a full liquor bar and restaurant and he hears the music wafting through the air every Friday and Saturday night and Sunday afternoon. Once Council votes, if they vote, to change the zoning to the 3.22 acres south of his home then a bar, restaurant lounge could go there. He could improve East Railroad Avenue to access the new property and then Milucky will have a bar next to his home. Would that be permitted next to Mr. Rivet, Abare, Acquaviva or the Mayor's house? He said that is where the rubber meets the road. He said that they are being asked to change the zoning next to his house to allow CG use and it is entirely out of place. He has shown them an example of what marine looks like. He will show more pictures in two weeks if he needs to; commercial zoning is not the correct zoning for this area. He doesn't care that staff has told Mr. Carmine that CG is the only zoning that would permit his marine business. Nobody put a gun to his head and said you have to buy that property. It was what it was when he bought it, gopher turtles and all. Milucky said his property used to be a tattoo parlor. Look where he has taken it. There are other properties along this corridor where you can have a correctly zoned marine business. It just doesn't happen to be the 3.22 acres south of his home. Thank you.

Wayne asked him if he also has hours on Sunday's during tax season. Milucky said he did not think he had ever seen a client on a Sunday. Wayne has seen many cars there on Sundays. Milucky said he has three cars, he has seen his cars. Wayne asked about what P&Z Member Ritter had said about the contractor agreement; if such an agreement could be drafted would that allay his concerns? Atty said that is what Liz said but that is not what can be done with a developer agreement. Atty said the Dev Agreement is designed to clarify how a property will be developed; it is not designed to state what can be done in a particular zoning. Once the zoning change is approved it runs with the land and whatever is permitted in that zoning can be done on property; you can't put a restriction on the zoning. Franklin stated that they had this concern at the P&Z Board meeting on 9/24/14 and Board asked her to get a legal opinion. Franklin contacted the Attorney the next day and he said you can't word the agreement to state the zoning would "revert" for reasons expressed by the Attorney but they could word the agreement that if the project wasn't developed in a stated amount of time then the land use change and zoning change would not be approved.

Leeanne Saylor, if they do a developer's agreement, and he builds a 10,000sf building and he does what he says he is going to do; it would already be zoned commercial (general), what prohibits him from changing what he originally agreed to and doing something else or selling it and it being used for whatever falls within commercial (general) zoning. Nothing precludes him from

selling the property or transferring the property and it has new ownership and then it can be utilized as something else. She said once you change the zoning to commercial (general) and have a 10,000sf building and she doesn't understand why they can't do a conditional use and keep the R/LC zoning. She said nothing in the Code Book or nothing in their Planning and Zoning is carved in stone.

Attorney stated they could have a developer's agreement that would limit the size of the 10,000sf building, but you cannot use a developer's agreement to restrict a proper zoning use. Attorney said the Mayor is correct and if the property gets rezoned to CG then it runs with the land. They could turn around and sell it tomorrow and construct whatever is permitted in CG zoning. To be clear, the Attorney said a marine commercial activity is a conditional use activity in CG zoning. If he decides to put in a restaurant that is a permitted use and he just goes in and gets a building permit. (Note: Before any development permits could be issued all projects must go through the Site Plan requirements in Article VII.)

Chair acknowledged Mr. Carmine: He would like to address and clarify a couple of things. He asked Council to refer back to the P&Z Board meeting of Aug 28, 2013. He then read from the minutes of that meeting where he clearly stated his intent and Mrs. Milucky, who was on P&Z Board at that time, clearly supported his proposition. He told Council he did his due diligence before purchasing this property and he did ask Mr. and Mrs. Milucky and he did speak to them on several occasions at Malabar Mo's. He said they did ask him over to talk about his plans for the property and he didn't make it over until after the P&Z meeting. Carmine said Jim and Leeanne know/knew what his intentions of the land were. He is a straight forward guy and a straight shooter; he grew up in this Town and he believes a man's word is his worth. His intention is not to move Malabar Mo's there. He wouldn't even have that business if he wasn't bred into it. The pictures Jim showed of marine businesses on Hwy 1 have been there for 20+ years. He could not build that at this location; it would never get through the site plan review process. He has to comply with the Malabar Vernacular. What he builds here will complement the area and complement the neighbor's property much better than the property to the north. Also he wants to say that this parcel of land has been for sale for many many years and the Milucky's had the opportunity to buy it and do whatever they wanted with it if they didn't want to see anything change with it.

Mrs. Milucky said that she was sure Mr. Carmine would build a nice building and she meant what she said before but on the other hand she still doesn't think zoning it Commercial General is the right move. She is not opposed to what Willy wants to do she is concerned that when you do a blanket zoning that travels with the property and stays with the property; if something happened to Willy and he was no longer her neighbor then you have opened the door for anything permitted in CG zoning.

Juliana Hirsch, 1035 Malabar Road, thinks if Council can allow Mr. Carmine to do what he wants with a conditional use that is the way to go.

TA asked Chair if she could respond to prior comment about the Town Clerk and Town Administrator or any other Town staff not reaching out and making contact with Milucky's or any other residents. It is not in their purview or a requirement to do so; the Clerk's office sends out radius notices to all property owners within 500' before both the P&Z Board meeting and the Council meeting giving the time and date of the meeting, the applicant and their request. She always ensures that the letters go out and she does read the minutes of the board meetings and she is aware that this was discussed last year and the willingness to have them as a neighbor was clearly stated in the minutes. The applicant did what is recommended and came before the Board before proceeding with the purchase and all processes were followed in our code. There is no

requirement to have staff or the applicant personally contact the adjacent property owners. Some cities may have such a requirement but Malabar does not.

Chair closed public hearing and brought it back to Council.

Wayne asked Franklin or P&Z Chair to speak to any possible way to allow Mr. Carmine to proceed with his project without the zoning change.

Franklin said that it could not be done without setting a precedent. It would also require a change to the Comp Plan. Attorney said that the proposed use could not be done in R/LC. If you wanted to allow this you would have to change the Comp Plan, the Land Development Regulations and the language in the Zoning map to allow this as a permitted or conditional use. Nothing larger than 4000 sf is allowed in R/LC. It currently is not allowed in R/LC.

Dick said he has a good bit of history on that piece of property. In 1999 he considered buying that land with his brother. They decided against it primarily because it was Highway 1 and it was a business street. Dick said (directed to Milucky) it was not a home at that time; there was not a bathroom in that building at that time. Dick complemented Milucky's on what they have done with the property and how they have improved it. But it was not a house back then, it was a business area. Dick said Grant Ball runs a business out of his house; there was also a lady that did alterations out of the house Linnell owns. That is a business area.

Dick said the pictures Jim showed were a damn lie; he picked out the very worse things he could show as pictures. If you look at the business location of Mr. Carmine currently; it looks nice and he has done a good business down there; it is kept clean and neat and he is a good neighbor to those people.

Dick said we have one of the very lowest millage rates at 1.8 and the average is 4.6+. One of the ways to keep it low is to allow businesses with which we are comfortable that provide tax revenue. Dick said we are debating this because someone bought a business and turned it into their house in a business district. So you want everyone else's millage rate to go up so you can keep a business from building next to your commercial property. That is wrong. If you don't want to live in a business area, then don't live there. Dick is angry because he was on P&Z Board when Mr. Carmine came before them, and LEEANNE was on Board and they received him very well. He was willing to do whatever. He was impressed with him then and is impressed with him now and how he has kept his cool better than Dick.

Chair recognized Mayor: Mayor said several things, factoids if you will. The previous junkyard was a gas station and when the guy died they cleared it off. Just north of there was a home with a death in the family, it was not good, he will not advertise what happened but they tore the building down because of what happened. Next to it is another house, which the Milucky's bought. The next building Milucky's bought was a cabinet shop. Behind them is a residence. She's like 80 years old and has diabetes so bad she can't drive because she can't feel her feet but she is a very smart woman. He would suggest they put this request in abeyance and look at changing the current zoning to allow him to do what he wants without increasing the zoning. If they find out they can't change the permitted uses then they can pick up with the rezoning request.

Wayne asked the Attorney if all the Council Members were ok to vote on this. Attorney stated he was listening very carefully and Milucky did not say anything to show any financial gain or detriment. Wayne called for the question. Jim and Marisa still want to speak. Marisa said she read through the entire package and the applicant came before P&Z Board before he purchased it

and explained what he wanted to do; Milucky's wife was on P&Z Board at the time; the Board, including Leeanne, supported the applicant's request. She thought it was pretty cut and dried.

Jim said to Korn it is not the first time he has been called a liar and told Korn that he was so far out of line. He took pictures of the businesses as they are; not in the worst possible manner as Korn implied. Milucky asked P&Z Chair Reilly to lower his hand as it was distracting when he was speaking. He said Council had it all wrong; he shouldn't have to defend his property rights. He doesn't care what Leeanne said or what was in the building before he renovated it. Mr. Carmine should be here pleading for his life to get the zoning changed. He is in the proper zoning for his home and not a marine business. He is surrounded by the railroad, the river and residences. He said they can scream until they are blue but his is a residence and not a business. He is talking about General Commercial property abutting his residence. He is asking for the property to remain R/LC. He feels the pain; he can't fix the past; but the decision you will make will affect not only Malabar, but me, for the rest of my days. Milucky said Council is making this decision about what to do next to me. He wished Korn did not take this issue so casually. Korn said he wouldn't tell a man to go forward with their support. Chair gaveled him. Korn said Milucky addressed him. Korn would not have deceived a man in to spending his money.

P&Z Chair Reilly addressed Council and said that per Reso 29-2008, Quasi-Judicial Procedures, Abare is 100% correct and read from Exhibit "A" of that Reso, Subsection II.7.c "However, no discussion amongst Council Members shall be made unless and until a motion and a second have been made." These procedures have not been followed. Attorney said the Council had suspended the rules. Reilly said that can't be done on quasi-judicial proceedings. Chair and several Council Members said that Council agreed to suspend the rules.

MOTION: Abare / Korn to approve the request in the Ordinance 2014-14 providing the land use and zoning change to CG as presented by KellWill, LLC.

ROLL CALL VOTE: 1)Abare, Aye; Korn, Aye; Acquaviva, Aye; Milucky, Nay; Rivet, Nay. Motion carried 3 to 2.

3. Request to Vacate 375' of Fins Lane Right-of-Way Between Malabar Road and Hall Road: Applicants Federico & Teresa Calderon. (Reso 25-2014)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA PARTIALLY VACATING AND ABANDONING THE 200 FEET OF RIGHT OF WAY KNOWN AS FINS LANE ADJACENT TO AND BETWEEN PARCELS 66 AND 65 AND THE NORTHERN 175 FEET ADJACENT TO AND BETWEEN PARCELS 78 AND 70 FOR A TOTAL OF 375 FEET OF FINS LANE RIGHT-OF-WAY; LOCATED IN THE TOWN OF MALABAR; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Approval of Reso 25-2014

Chair read Resolution by the title only.

Chair called applicant to podium to present the request.

Mr. Calderon introduced himself. And stated the reason for their request. He explained that the BOA had granted them a variance to build the road shorter than required since they own all the affected property and the two parcels north of theirs can be accessed from the current terminus of Sandy Creek Lane. It was general consensus that they did not want the road to become a thoroughfare similar to Eva Lane.

Chair opened Public Hearing:

P&Z Board Chair Pat Reilly stated at the public hearing at their meeting on 9/24/14 the Board voted 3 to 2 in favor of the vacate. The two that voted no did so because they felt the applicant should be responsible to construct cul-d-sacs at the south end of Sandy Creek Lane and the north

end of Fins Lane. The residents on both Sandy Creek and Fins Lane did not want the road to go through; they don't need another thoroughfare similar to Eva Lane. Further, he stated that the drainage, easements, road improvement requirements will be handled at the site plan step in the Building Department. The request before Council is the vacate request and they should stay on subject. Wayne said requiring them to construct a cul-d-sac (or 2) would be an uncommon occurrence. Reilly said it is a good idea but there is no requirement and you can't force them. Dick asked if the mail truck could get down there? Reilly said yes.

Chair closed Public Hearing and brought it back to Council and asked for a motion.

MOTION: Abare / Korn to approve the vacate as requested and adopt Resolution 25-2014. Discussion: TA said she knows the fire trucks are getting bigger not smaller. She said during the recent negotiations with WM it was determined that 60% of Malabar roads are "back down" roads meaning they can't turn around at the end. She suggested that Council may want to start requiring cul-d-sacs so emergency vehicles can turn around.

Mrs. Calderon stated that if the fire truck is coming to their property they would have plenty of room to access their property and turn around on their property. TA said it would depend on where the fire is located. Mr. Calderon said the request is regarding the vacating of ROW. They just completed the topography survey and they haven't determined the location of the home.

ROLL CALL VOTE: 1)Korn, Aye; Acquaviva, Aye; Milucky, Aye; Abare, Aye; Rivet, Aye. Motion carried 5 to 0.

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

Council then discussed the drainage problems since the heavy rains we have had. Wayne showed two slides on the overhead showing the top level issues with Quarterman Lane. Chair Rivet was interviewed on the problem after a resident of Quarterman called them. Wayne explained that this is the first time a Council has committed funds to address the stormwater projects that were prioritized during the budget workshops. All of the projects rated "A" were determined to be projects that would do the most good for the money. Council approved funding them all. Wayne referenced the handout of reference material that Clerk Franklin had provided to Council over the week-end and Council commended her for her work. Dick said perhaps the residents at the end of the street didn't understand what "accepted and approved" meant. Franklin explained the Cinderella ordinance 92-5 which allowed property owners on unaccepted roads to pay \$100.00 and do an absolute minimum to the improvements and Council would "accept" the road and then it would be maintained by the Town. It was supposed to sunset in 1994 but was used in 1998 when the second 930' was asked to be accepted. Wayne explained the properties are all in Flood Zone "A" which is the worst for this area. Engineer Morris Smith then went over some data that gave an overview to the problems the residents are facing on Quarterman. He also said this is not an isolated case. That is why the Council instructed him to come up with a plan of action/order of magnitude. He would be happy to meet with any of the residents to discuss things they could do to help reduce the flooding problems they are experiencing. This was a very unusual rain event. He showed the magnitude of water that was crossing under the Turkey Creek bridge on Pt. Malabar Blvd. and also on the St. Johns river. It was equivalent to an Olympic swimming pool every 50 seconds.

K. ACTION ITEMS:

ORDINANCES: First Reading – 0
RESOLUTIONS: 0
MISCELLANEOUS: 1

4. Review of Administrator Eval and Contract per Council Meeting of 5/19/2014

Exhibit: Agenda Report No. 4

Recommendation: Request Action

No action taken. TA was complemented for her performance improvement. Wayne said TA has done an exceptional job of improving her performance and how she manages her subordinates. Marisa said the communication has gotten better between TA and Council on both sides. Dick said it was agreed that the reviews be done separately for Clerk and TA and said this is not a good time to review the contract. Wayne said the TA and Clerk are both independent thinkers and when they bump heads they are professional about it and Town benefits as neither are "yes" people. TA thanked Council and said the communication was the turning point. TA then said she was going to be starting a morning meeting with residents to listen to their concerns; like an open house. Marisa thought that would be a great idea but she would probably hear more negative. TA said that is to be expected but it will give her another method to reach out to residents.

Attorney Bohne was excused at 9:20 pm.

STAFF REPORTS:

Town Administrator: reported that they have moved their electronic records to MS Cloud. They are doing Town Hall first and then will do the Fire dept. This is because the servers at both locations are out of warranty and out of space. This is the more economical method.

Town Clerk: nothing.

L. DISCUSSION ITEMS: 0 - PULLED:

5. Review of Council Member Voting to Appoint Himself to a Board

M. COUNCIL REPORTS: Acquaviva: nothing;

Korn: nothing; Abare: nothing; Milucky: happy to report he met with auditors and they are more than qualified; he is very satisfied. TA said they complemented her on the way out on how knowledgeable and helpful Debby and Cindi were in getting everything together for the pre-audit.

Beatty: nothing; Rivet: nothing

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

R. ANNOUNCEMENTS:

One (1) vacancy each on the Planning & Zoning Board, Board of Adjustment, Park and Recreation Board and the Trails & Greenways Committee

S. ADJOURNMENT:

There being no further business to discuss, Chair asked for a motion.

MOTION: Marisa / Wayne to adjourn. **VOTE:** All Ayes. The meeting adjourned at 9:50 PM.

BY: _____

Steve Rivet, Council Chair

ATTEST BY:



Debby K. Franklin, C.M.C.

Town Clerk/Treasurer

Date Approved: 10/20/2014

Quarterman Lane South Of Hall Road

- Flood Zone A (worse flood zone category)
- 1986 first 900 feet accepted by Council
- Oct 1997 Quarterman opened to Atz
- Jan 1998 closed to Atz thru traffic (health & safety)
- 1998 next 930 feet accepted under Ordinance 92-5
 - \$100 Cinderella Ordinance 1992-1994?
- Currently the first 1830 of Quarterman feet is maintained by the Town
- Southern four homes **NOT ON APPROVED ROADWAY**
 - Lots 2415, 2425, 2445, 2465 (the lowest lot)
 - If funded road this section can be improved and accepted by Town
 - Funding would be by Special Assessment (3 year payments)
 - Raise roadway
 - Cut ditches
 - Add driveway culverts
- There are many homes in Malabar on unapproved roadways
- The Town's goal is to maintain drivable access to your driveway
- The County Health Dept permits your Septic System not the Town

Town of Malabar Drainage Efforts

- Town Engineer (PE Civil Engineer) is DEP certified with extensive drainage experience
- In July 2014 Town held a Drainage Workshop
 - Participation from Town was limited to three residents
 - Town Engineer presented Malabar topographical drainage maps
 - Town Engineer detailed a list of needed improvements
 - Proposed improvements were rated A, B & C.
 - “A” projects provide most cost effective improvements
 - Most “bang for the buck”
 - Council funded all A drainage projects in FY15 Budget