

## MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

DECEMBER 17, 2018

7:30 PM

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

### A. **CALL TO ORDER:**

Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. CM Rivet led P&P.

### B. **ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

MATT STINNETT

KARL BOHNE

DENINE SHEREAR

TOD MOWERY

MORRIS SMITH

MIKE FOLEY

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

ADMIN ASST TO B.O.

TOWN PLANNER

TOWN ENGINEER

MALABAR FIRE CHIEF

TOWN CLERK/TREASURER:

There was also a BCSO Deputy in attendance.

### C. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** none

### D. **CONSENT AGENDA:**

#### 1. **Regular Town Council Meeting Minutes of 12/03/18**

**Exhibit:** Agenda Report No. 1

**Recommendation:** Request Approval

**MOTION:** CM Vail / CM Rivet to approve the 12/3/2018 minutes as presented.

Discussion: **Vote:** All Ayes.

### E. **ATTORNEY REPORT:** None.

### F. **STAFF REPORTS:**

**ADMINISTRATOR:** Noted that PW has paused on the Hall Road project. They will be doing maintenance projects and catching up on road grading. CM White asked about the other Hall Road project that was mentioned in the workshop that just needed locates. TA is working with Engineer to prioritize projects.

**FIRE CHIEF:** Year to date they have responded to 480 calls for service. Chief reported that the five sets of self-contained breathing apparatus (SCBA) they submitted a grant for have been received. The State Department of Financial Services funded this grant at 100%. Chief reported they had a structure fire Friday night.

**CLERK:** Christmas Tree Lighting was held on Wednesday, December 5, 2018 at 6PM and was a great success. Residents enjoyed posing with Santa and the new fire truck. The State Department of Economic Opportunity has completed their review of the Comprehensive Plan Amendment to Town submitted in October. They had one objection to the language in the Coastal Management Element and recommended the Town add redevelopment regulations in flood prone areas to the *Goals, Objectives and Policies* in the Comprehensive Plan. The Town's Planner has begun working on this. The State had one comment related to the Future Land Use Map and that was to add a legend and a planning horizon. The Planner will add those items. When those items are complete it will be ready to go before Council.

### G. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items

come up. Public comments do not require a Council response. (Speaker Card is Required)  
**Five (5) Minute Limit per Speaker.** Speaker card: none

H. **PUBLIC HEARINGS/SPECIAL ORDERS: 2**

**2. Land Use and Zoning Change Request at 2405 and 2415 Malabar Road  
Ordinance 2018-07**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING LAND USE MAP AND ZONING MAP FOR THE FIVE (5.18+/-) ACRES AT THE SOUTHEAST CORNER OF MALABAR ROAD AND MARIE STREET IN TOWNSHIP 28, RANGE 38, SECTION 31, LOT 54-B AND 54-B-1.01, AKA 2405 AND 2415 MALABAR ROAD, MALABAR, FLORIDA, FROM OFFICE INSTITUTIONAL AND RURAL RESIDENTIAL TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Applicant: Slate Property Management LLC, represented by Mr. & Mrs. Slate

**Exhibit:**

Agenda Report No. 2

**Recommendation:**

Action on Ord 2018-07

Chair read Ordinance by title only.

Chair asked applicant to present their request. No one was present to speak for the applicant.

Chair asked Staff to speak. The Attorney said although the applicant is not present, Council should still proceed with the review. Attorney advised Council this is a legislative action of the Town Council to consider a change to the Future Land Use Map and Zoning Map change. Attorney explained the *Fairly debatable standard* that is used in such cases. Reasonable persons could consider the request consistent with the Comprehensive Plan, capable and compatible and not in conflict with the items listed in the Land Development Code (LDC). The Attorney referenced the Comprehensive Plan and the general policy statement. Council should consider the compatibility with the surrounding area. Commercial General would permit anything listed in the Land Development Code in Article II or Article III under Commercial General. He read from part of the code stating what commercial general is not intended to allow. Attorney stated that the applicant opened this up since they posted a picture of the proposed use on the sign on the property announcing this public hearing; they have interjected their intended use.

Planner Tod Mowery stated for the record the applicant, Slate Property Management LLC and that the request was properly advertised in Florida Today on 11/29/18 and 12/6/18 for the public hearings before Malabar Planning and Zoning and Council. He further explained the applicant's request involved only the two parcels closest to Marie Street. The Town had already submitted to the State Dept of Economic Opportunity (DEO) a request to change those parcels from the existing OI and RR to a mixed use designation of residential limited commercial (R/LC) and that is why some of the references in the notices mailed to residents within 500' of the subject parcels referred to change from R/LC to CG but the sign posted on the property refers to both the existing land use and zoning designations and the Town's proposed changes. Planner again reminded Council that the request to change the land use and zoning, if approved, would allow any permitted use currently listed in the Land Development Code for Commercial General. That is why, for this request, Council should consider the permitted uses for this area and not the applicant or user. He also referred to the three "C's" – consistency, compatibility and capability. Are those the uses you would feel comfortable with any of the CG uses. Size of building is not relevant. This is not the site plan stage.

Planner Mowery then went through the colored map on the overhead and showed the two lots on the application. He referred to the three “C’s” of the Comprehensive Plan and the ten items in the LDC that the P&Z Board used for their factual basis supporting their motion for Council to deny. He stated that Council should also word their motion with supporting rationale.

Chair opened the PH.

*Jeff Darby*, 1285 Hall Road. Strongly opposes request.

*Colleen Nowlin*, 1285 Hall Road, sent letter opposing this request. Why does Peay’s want them to change this unless they want to flip it. Enjoy eco-tourism. Stick with the Comprehensive Plan Amendment submitted by Council to the State. Malabar insists on keeping it rural. Please deny rezoning.

*Drew Thompson*, 940 Holloway Trail, is the Chair of Trails & Greenways Committee and they have put a lot of effort on the trails and trail system and connectivity, and undisputed support to their approach to the trails. They are holding the line. Sept 14, 2018, they went to Titusville and challenged the State on why the natural trails are important – preserve the rural residential concept. This is the Town the residents wanted. The land use and zoning change can be anything allowed on CG. They told the State that they do have a downtown, it just isn’t developed yet. Implore Council to consider the people that elected them.

*Karen Moser*, 1775 Atz Road, agrees with Drew and the others. The vision of Malabar is the rural concept – that is why they all moved here. Would like to see small businesses that would support the people that come here to hike the trails. Accommodate the environment and the wildlife they want to see. Drainage is what they all complain about. Keep in mind the vision they want to keep for the town.

*Holly Yolles*, 2365 Corey Road, Murray Hann, took a picture of her and her neighbor on their horses and ride to a nearby trail. As far as revenue Peay’s have land that currently have schools on which don’t pay tax.

*Glen Williams*, 1346 Positano Drive, moved here because he likes trees.

*Richard Kovach*, 1690 Hall Road, the land use and zoning change flies in the face of the Comp Plan and Zoning and preamble to the Charter. Such a use should only be allowed on sites that about Babcock Street, West Railroad Avenue and Highway 1. Warehouse is only allowed in Industrial Zoning. With the P&Z Board’s 5 to 0 vote to deny, please take it to heart. If you ignore the vote of the P&Z Board, you will be reneging on the voice of the people.

*Dorthea White*, 1770 Atz Road, loves this Town. Opposes request. So proud that we are a trail town. If we start putting big commercial development next to trails, it is not creating a pretty site.

*Scott Lurkin*, 700 Hall Road, Been in Malabar ten years. Lost a family member who was waiting to turn left onto Weber Road from Malabar Road and was rear-ended and killed. Moved here to get out of Palm Bay. Enjoys the rural acreage. That is the passion he brings to this meeting. Commercial development brings problems. Hopes it is denied.

*Barb Cameron*, 665 Hall Road, wants Council to know the rural residential character. Was thinking about her options to simplify and decided she wants to die here. No commercial. Keep it rural.

*Mike Kiefer*, 1957 Positano Drive, neighbor of Glen. Elected to keep his yard as natural and native as possible. Loves to see the horses riding through on the trails.

*Vicki Easterling*, 1400 Blanche Street, 30 years ago drove through Malabar to get to work. She recalled the family that used a satellite dish for a pond in their front yard on Malabar Road. There were old buildings that were boarded up. There were pepper trees along river blocking the view. They took a chance and bought a house on Blanche – they are in the old residential neighborhood. Many new homes have been built in the neighborhood and the new growth is improving the overall area. The Town demolished the boarded up building. The Town fixed the drainage in 2000. The pepper trees were removed from the riverfront, so you could see the river when stopped at the light at Malabar and Highway 1. The school house had peeling paint and now the Banyan Estate is a beautiful asset. Same with the Palm House. The Town is moving in the right direction. She walks Marie Street. Having a big business will be uncharacteristic for the rural desire. They seem to be a good family business but not here. Stick to the proposed Comprehensive Plan amendment that P&Z Board worked on for so many years.

*Jose Merino*, 1720 Benjamin Road, strongly opposes this.

*Pat Picornell*, 1500 Delaware Avenue, most business run good, repeatable causes. The P&Z Board decided this did not fit. Hope they listen to the Board's recommendation, if they vote for this what is the benefit to the Town and the people? If you allow, you will open a can of worms. What about Parcel 2? Do not consider rezoning.

*Evelyn Maddox*, 233 Harvey Ave NE Palm Bay. She is the buyer of Parcel 2 on the map. She lives in Palm Bay and she wants to build her home in this rural community.

*Bob Wilbur*, 2500 Glatter Road, turned in some historical maps with old homes and old trails from a long time ago. He thinks the request is a big mistake. The CG to the west was done in the 1980's when FDOT was going to widen Malabar Road and do a fly over the tracks and then build a causeway. That then went away. He was on P&Z Board for 20 years and during that time did all the applications for the trails and conservation land and eco-tourism and now the trial town certification. Finally, are seeing it happening in his time. We need to keep this mixed use district and have shops, bike hostels and a walkable community. He went through the unintended consequences.

*Larry Davis*, 1475 Marie Street. That is what he will see if he looks south. Once you allow this it is all downhill. Opposes request.

*Dawn Danielson*, 1690 Hall Road, requested the Chair to do a show of hands similar to what was done at P&Z meeting to show the residents were against the request.

Chair closed the PH.

Chair requested a Motion to approve – none made.

**MOTION:** CM Rivet / CM Korn to disapprove Ord 2018-07 to change Land Use and Zoning request from OI and RR to CG for parcels at 2405 and 2415 Malabar Road for the following, but not limited reasons: it does not meet the compatibility to the existing area and not consistent with the Comprehensive Plan and is inconsistent with the recommendation of PZ and the ten points listed in LDC. Attorney Bohne added language from his memo to add to the grounds for denial and the applicant's failure to meet the requirements.

The Attorney stated the presentation by the applicant provided information and made a part of this process to the Council on the actual use they desire if the rezoning and future land use map amendment is approved. The proposed use and as voluntarily supplied by the applicant is not permitted in the CG zoning and land use.

Article XII, Section 1-12.5 C of the Code provides in part the following considerations:  
*Consistency with Plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.

*Conformance with Ordinances.* Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances.

*Land Use Compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The Comprehensive Plan Provides:

1-2.2.4 Policy:

*General Commercial Development (CG)* The general commercial areas are designated on the Future Land Use Maps for purposes of accommodating **general retail sales and services...**

The areas designated for general commercial development are specifically not adaptive to permanent residential housing...

This policy returns us back to the Town's zoning policy which is the zoning/land development code. Section 1-3.1 provides an overview of the zoning policy as it relates to all zoning districts including CG. Section 1-3.1 L provides:

The general commercial district ***is not intended to accommodate manufacturing, processing, or assembly of goods, sales and services of heavy commercial vehicles and equipment, or related services or maintenance activities; warehousing; uses requiring extensive outside storage; or other activities or trades which may generate nuisance impacts, including glare, smoke, or other air pollutants, noise, vibration or major fire hazards.*** Finally, no permanent residential housing shall be located within the general commercial district.

The Attorney said furthermore, the Code states, as it relates to the general commercial activities, provides us to consider:

- Compatibility with and impact on other surrounding commercial activities;
- Relationship to surrounding land uses and natural systems as well as other considerations as the general zoning policy for CG.

Attorney said therefore the foregoing is part of the basis for the motion to deny.

CM White, came here a few years ago, the realtor wanted them to look at property in Titusville, but they had to drive by a huge abandoned industrial structure and they didn't want to have to drive by that every day. Even a good place can fall into disrepair. The area across is bounded by roads. This Town is so unique. Has to show visitors Ribbons, the zebra. That is what this Town is. Need more volunteers. Commented on all of the residents turning out tonight and last Wednesday and asked them to make it a little more regular in your life to attend meetings. Council can't meet everyone's expectations.

CM Vail agreed with CM White, without residents input, they don't know what they want – Council needs to hear from residents. He knows everyone is busy. Help us make good decisions. Supports motion to deny based on – Consistency, Compatibility and Public interest.

CM Ball, the public interest is overwhelming – drive it home further – go through it month after month after month. It would be so nice to get 15-20 people at the rest of the Council meetings. Council is here to serve the people and they need your input. Should be like this at every meeting.

**Roll CALL Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion carried 5 to 0

**3. Budget Amendment for FY 2017/2018 (Ord 2018-08)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2017/2018 TO PROVIDE FOR ADDITIONAL REVENUES RECEIVED; PROVIDE FOR UNSPENT FUNDS REMAINING IN CERTAIN DEPARTMENTS; PROVIDE FOR ALLOCATION OF THOSE FUNDS TO THE DEPARTMENTS OVER BUDGET DUE TO EXPENDITURES AS APPROVED BY COUNCIL; PROVIDE FOR CONFLICT; AND PROVIDE FOR AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No. 3

**Recommendation:**

Adopt Ord 2018-08

Chair asked for the Ordinance to be read by title only.

Chair opened the PH.

none

Chair closed the PH.

**MOTION:** CM White / CM Vail to adopt Ord 2018-08. Discussion: TA explained the need for the amendment. Kudos to staff.

**Roll CALL Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion carried 5 to 0.

**I. UNFINISHED BUSINESS/GENERAL ORDERS**

**ACTION ITEMS:**

**ORDINANCES for first reading: 0**

**RESOLUTIONS: 0**

**MISCELLANEOUS: 0**

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**L. DISCUSSION/POSSIBLE ACTION:**

**M. PUBLIC COMMENTS: General Items (Speaker Card Required)** none

**N. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: WS with PW – wildly successful. Have plans around those meetings. Be more transparent to the people so they can tell the public. Before they didn't have that. TA is working to improve that.

CM Vail: Noting

CM Rivet: Stated the Town has not changed much from 30 years ago. Slow to change. Boarded up buildings have been torn down, but the character of Town has stayed.

CM Korn: Has been here 31 years. Town has not changed much. Need to concentrate on that. Times when they can all be together.

CM White: nothing.

Mayor: Thank town staff for the tree lighting and open house. The packet was 80 pages. Thanked staff.

O. **ANNOUNCEMENTS:** There are openings on volunteer advisory boards and committees.

**P. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned at 8:50 PM.

BY: Patrick T. Reilly  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin

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

Date Approved: 1/07/2019