

**TOWN OF MALABAR
TOWN COUNCIL MEETING
MONDAY MARCH 2, 2015
7:30PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. ADDITIONS/DELETIONS/CHANGES
- D. CONSENT AGENDA: none
 - 1. **Approval of Minutes** Regular Town Council Mtg – 1/5/15
Special Town Council Mtg – 2/17/15
Exhibit: Agenda Report No. 1
Recommendation: Request Approval of Minutes
- 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:**
- G. **BREVARD COUNTY SHERIFF'S OFFICE REPORT:**
- H. **PARK & RECREATION ADVISORY BOARD CHAIR REPORT**
- I. **PLANNING & ZONING ADVISORY BOARD CHAIR REPORT**
- J. **PUBLIC HEARINGS: 0**
- K. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**
 - 2. **Resident Ms. Laura Mahoney re: Burning of Yard Waste**
Exhibit: Agenda Report No. 2
Recommendation: Request Direction
 - 3. **Recommendation from Planning & Zoning Board – Maximum Bldg Coverage**
Exhibit: Agenda Report No. 3
Recommendation: Request Direction
- L. **ACTION ITEMS:
RESOLUTIONS: 2**
 - 4. **Authorize Joint Agreement with FDOT (Reso 02-2015)**
Exhibit: Agenda Report No. 4
Recommendation: Request Action
 - 5. **Adopt Reso 02-2015 opposing Seismic air-gun Testing off the Atlantic Coast in the Search for Oil and Gas**
Exhibit: Agenda Report No. 5
Recommendation: Request Action

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: March 2, 2015

Prepared By: Debby 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 – 1/5/2015
- Special Town Council Meeting – 2/17/15

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Minutes of the following meeting:

- Regular Town Council Meeting – 1/5/2015
- Special Town Council Meeting – 2/17/15
-

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

January 5, 2015 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 Mayor Carl Beatty. CM Ball led the prayer and pledge.

B. ROLL CALL:

COUNCIL CHAIR:	MAYOR CARL BEATTY
VICE-CHAIR	MARISA ACQUAVIVA
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DON KRIEGER
	DICK KORN
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the Record, the Fire Chief Christopher Robinson was also present.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT: held after ROLL CALL

Mayor moved BCSO Report to this point in meeting. Lt said that he has been back on road after long stint. You get statistics regularly. He went over Dec stats. He introduced Dep Star. Stolen property none reported. CM Acquaviva said she noticed the increased patrolling on Corey. CM Korn said there were two Deputies on Weber Road today. CM Ball said what about the new lower speed signs on Hwy 1. Dep Star said he and the other four Deputies that patrol this area regularly would not ticket. CM Korn said the prior Council requested the speed reduction. He added that when Malabar added stop signs at Atz Road, they put up signs weeks ahead of time. TA said she left msg with FDOT office to ask why no postings were done. She has not heard back yet.

Mayor Beatty then introduced Pastor Paul Rosbury and called him to podium. The pastor said he has been in this area for many years. He is here tonight to give the Kings James Bible and workbook to each CM and the Mayor. He then handed them out by name and thanked them for their service. He has 48 active ministries in Brevard County. He is happy with our prayer.

C. ADDITIONS/DELETIONS/CHANGES – BCSO report moved to top of meeting

D. CONSENT AGENDAS: none

1. **Approval of Minutes** Regular Town Council Mtg – 12/15/14
Exhibit: Agenda Report No. 1.
Recommendation: Request Approval of Minutes

Discussion: Corrections: none.

MOTION: CM Vail / CM Ball to approve the Minutes as presented. **VOTE:** All Ayes.

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.**

Speaker's Card: Dr. Seybold, Corey Road, wanted to talk about the letters sent out by Town before the election re: the MSTU referenda. It seemed to him to be one-sided in favor of the MSTU. He said it should have been more balanced if you are using public money. Should have given both sides.

TA said they were done as directed by the seated Council at that time. (Clerk's Note: BCSO Sheriff Wayne Ivey sent separate letters to each CM, Mayor and TA in response to our intention to put the MSTU question on our ballot. Council then directed TA to work with BCSO to produce an article on what the MSTU pays for; but alerting residents to what the millage increases have been since the MSTU inception in 2007. The Town of Malabar has no negotiation ability in this determination.)

CM Acquaviva stated the main reason for these letters to residents was to give the public the info on how much it has increased since it was originally approved in 2006.

F. **ATTORNEY REPORT:** none

H. **PUBLIC HEARINGS:** (3)

2. **Development Agreement between the Town of Malabar and Kellwill, LLC** as a condition for approval of Ord 2015-01 re: land use map and zoning map change for a portion of Parcel 28-38-31-750, Malabar, Florida Lying on the WEST side of Highway 1.

Exhibit: Agenda Report No. 2

Recommendation: Request Approval of Development Agreement

Mayor Beatty read the portion of Agreement dealing with the restrictions requested by previous meetings.

Mayor said anyone wishing to speak should provide their name and address and provide any handouts to Clerk and Council before speaking.

Mayor then asked if there is any need for disclosures for conversations held with any parties or site visits by CM. Mayor declared none being heard. Mayor called up the petitioner to podium.

Mr. William Carmine, 1310 Stack, wanted to thank Town staff, this Council, the previous Council and the P&Z Board on behalf of him and his family and his employees. He thanked Atty Bohne for putting the Dev Agreement together to deal with restrictions on uses some Council and Board members had concerns. He will answer any questions.

Chair Opened PH:

No public.

Chair asked for staff comments: Atty Bohne explained what he and Carmine did in going over uses that they were going to restrict on the subject property per the Land Development Code District Provisions. Atty Bohne said Council may want to add additional restrictions. The LU and ZC ordinance is up for 2nd reading and it was approved at 1st reading with the stipulation that this Development Agreement be in place before 2nd reading.

Chair Closed PH:

Chair said to Council that if you make a motion you are expected to support the motion. The Secunder does not have to support the motion. Both can vote against the motion.

MOTION: CM Acquaviva / CM Vail to approve the Development Agreement.

Discussion: CM Krieger asked Atty in re: Development Agreement, Section 8; can this be amended? Atty said it would have to be by mutual agreement. CM Krieger said the wording does not state that. Atty said that any change must be signed by both parties. Krieger said so three (3) votes (of Council) could end this Development Agreement? Atty said any change would require mutual agreement. CM Krieger then asked how this affects 'similar uses'. CM Krieger said he recalls seeing drive thru facilities, open 24 hours. Was that discussed at P&Z? No not really. CM Krieger said what about funeral homes. Once this zoning is changed it could be up to 20% of coverage. Yes. CM Krieger said there are so many uses.

CM Korn, there are several areas in Town that are CG. If we need to list the undesirable uses it would be a long list; we need to show good faith to this Malabar business owner. CM Acquaviva still supports this. You can have bars in RLC. There are things in place to require

regulations on site plan. CM Acquaviva asked why funeral homes would be a bad thing. Why is drive thru a bad thing; what about banks.

CM Korn called the question.

ROLL CALL VOTE: 1)CM Ball, Aye; CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 4 to 1 (CM Krieger).

3. 2ND Reading and Public Hearing on Ord 2015-01 Request for a Land Use Map Amendment & Zoning Change, 1300 Highway 1, Malabar, FL lying on the WEST side of Hwy 1; Request to change from Residential/Limited Commercial to Commercial General; Applicant: KellWill, LLC. Represented by Mr. William Carmine.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE COMP PLAN MAP AND ZONING MAP FOR THE THREE (3+/-) ACRES OF LOT 750 LOCATED ON THE WEST SIDE OF HIGHWAY 1 IN TOWNSHIP 28, RANGE 38, SECTION 31, NORTH OF MALABAR ROAD, AKA 1300 HIGHWAY 1, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR A DEVELOPMENT AGREEMENT; PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3
Recommendation: Request Adoption of Ord 2015-01

Mayor Beatty read Ord 2015-01 by title only.

Mayor then asked for speakers to give their name and any handouts need to be given to Clerk. Then asked for disclosures since last meeting. None heard. Mayor called on petitioner.

William Carmine wanted to thank Council and staff. You are going to be really impressed with what he does to that corner.

Open PH: none Close PH: No staff Mayor said motion maker should support the motion.

MOTION: CM Korn / CM Krieger to adopt Ord 2015-01 on 2nd reading.

Discussion: none

ROLL CALL VOTE: CM Ball, Aye; 1)CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 4 to 1 (Krieger).

4. Elhoim Christian Church Site Plan Review for a 15,000 sf Sanctuary on three (3+/-) acres located on north side of Malabar Road on Lots 759 & 760 in Section 36, Township 28 and Range 37 aka temporary address: 2170 Malabar Road, Malabar, Florida. Applicant: Ms. Ana Saunders for Mr. Scott Glaubitz, P.E. with BSE Consultants, Inc. representing Elhoim Christian Church.

Exhibit: Agenda Report No.4
Recommendation: Request Approval of Site Plan

Mayor Beatty called applicant to podium.

Ana Saunders, BSE Consultants, Inc., 312 S Harbor City Blvd. The project is for a 10K sanctuary and an additional 5K at a later point. Ms. Saunders told Council they went through all of staff comments and addressed them. CM Krieger asked if the parking includes the addition. Ms. Saunders said they are working with FDOT on minor comments. Parking takes in the addition. CM Acquaviva asked about the fire review. Franklin explained the 3rd party review. Ms. Saunders said the expansion area will be seeded and stabilized at proper elevation. Perimeter swale to catch storm water. CM Krieger said what about landscaping – Saunders said they will do all required landscaping plus install a fence on west side.

Open PH: none Close PH:

MOTION: CM Krieger / CM Ball to approve the Elhoim Christian Church Site Plan as presented.

Discussion: CM Krieger said the extended use of the millings. He worries about dusting. With grass parking, you can assist that with echo stone. Mayor Beatty made statement about dusting.

The parking lot speed will be much lower than that on local roads. Mayor said the parking area is elevated and engineering provides drainage. CM Acquaviva said so we don't inspect new commercial construction? Franklin said the 3rd party review provides what is required for construction but Council did away with any inspections after that. Mayor called for vote.

ROLL CALL VOTE: CM Ball, Aye; CM Vail, Aye; 1)CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. Motion carried 5 to 0.

Break at 8:30pm - 8:40pm.

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

5. Report by Park & Recreation Advisory Board Chair, Mr. Hans Kemmler

Exhibit: Agenda Report No. 5

Recommendation: Request Direction

Park Board Chair Kemmler said the Malabar Madness Disc Golf Competition on the 1st Saturday of January was a great success. It is held each year. He thanked them for approving the expenditure for the elevation survey. They need it so they can see if trails could be installed on property. They are moving forward on restroom grant at Sand Hill trailhead.

TA explained how Jim Clevenger, a local resident and owner of Sweetwater Custom Homes volunteered to set the donated flag poles. TA explained how the poles would be installed. Mayor said you should use sand and not concrete in posts after flag poles are inserted; that would provide easy extraction of flag poles in future. TA said the contractor is following the instructions. CM Ball asked about the roadway between the Brook Hollow SD and Malabar Road and asked Kemmler if that was part of Parks Dept. No, the right-of-way belongs to the Town and the property on either side is EELs Malabar Scrub West.

CM Acquaviva said she and her family, friends and those visiting for the holidays play turkey bowl at Malabar Community Park over Thanksgiving holiday. She said many people attend; more every year. They have been doing it for 15 years and each year everybody complements the park and how nice and clean it is kept. She wanted Kemmler to know how much it is appreciated.

6. Resident Mr. Charles Ryan re: Slope Mower Repairs & Maintenance

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Mr. Ryan, resident on Howell Lane, Malabar. He said he had 60 years of electronic, mechanical and electronic engineering. While in military service he did one year in Philippines working and taught himself to weld. Also while in service worked on power plants and steam plants and learned diesel equipment and what was needed to keep them running. Also was a machinist and that is how he funded his college. He had heard some concerns on Council and by non-Council residents regarding the slopemower. He did this just like he did the old school house when Council was considering that purchase.

Based on some questions about why we are replacing this. He met with Tom and this is when the pictures were taken. He is only dealing with slope mower, not the tractor. He showed pictures of the arm and the pin. He showed the way the arm is used. He pointed out there was no indication of being greased. He stated the grease keeps them from wearing.

He stated he did a public records request (PRR) on 11/19 for maintenance records on the slope mower. Eventually found out that there were no maintenance records, only miscellaneous receipts. He said Council can draw their own conclusions. The people in the Fire Dept and in

Public Works are custodians of Town property. Mr. Ryan said TC was under impression that Everglades was going to do the inspection and then found out it was done by Robinson.

CM Acquaviva asked Mayor Beatty what records he kept when he was in charge. Mayor said trip tickets were done. They did not do maintenance logs. Mayor Beatty said for the record, we, PW, back in the day; they had a log book and every piece of equipment. They hired two secretaries that were supposed to input all the records into an Excel spreadsheet. The one was sent to school to learn Excel on a Tuesday and then was let go on a Thursday.

TA said no records of trip tickets or any other records were found when Tom took over. CM Acquaviva said Council started with the FD with the two workshops last year and requested logs be kept; we need to do this for PW equipment also. CM Acquaviva asked Mr. Ryan what is the bottom line of his presentation? What is his conclusion? Mr. Bud Ryan said he will not make a recommendation. CM Korn said they are getting away from Mr. Ryan's report. All employees that operate equipment owned by the Town are responsible to maintain it. (Note: While Mr. Ryan was at the screen showing and speaking to the pictures his comments were not picked up by microphone.

TA reported on why they used Robinson Equipment. She explained the attempt to get the John Deere dealer to certify that the five heads we had could be used on that unit. They finally got back to her and said no the heads would not work. That is why they asked for the additional 12K so they could get the model with the arm that would allow us to use the Town owned heads. At budget time they discussed buying a new slopemower and using the old tractor to operate another head that would not have to be switched out and would save PW from three (3) hours of downtime while the heads are changed. Council asked her to get a professional inspection. Separate boom from tractor. She reported to Council that the inspection would be done by Robinson.

CM Acquaviva said they want to know how it is going to be fixed. What is the bottom line? Should they get the kit? Mr. Ryan said that it is an all inclusive kit. She said it seems Mr. Ryan is saying that maintenance wasn't done, and he didn't get requested records in a timely fashion. CM Korn said a 23 year old tractor is not old for a tractor. Mr. Ryan said he had to leave the meeting.

TA would like to afford the professional representative from Robinson Equipment the opportunity to speak. Brian Bresshard, came to podium. He lives in Mims; He is here on his own time. Gave a little background; was Chief Mechanic for 280 pieces of equipment at Titusville for 14 years. They had the exact same machine. Every 200 hours it is greased from top to bottom. In between other things need to be done. In nine years the boom was rebuilt several times. Where he worked if a piece of equipment needed work the piece was sidelined until it is fixed. When he arrived at Malabar PW to look at it, it turned over but did not start. Tom told him PB repaired the fuel system. He went over it best he could. The hydraulic pump had wrappings because it leaked. The last picture showed that the bad wear and is so worn that no bushing replacement kit will fix.

He showed the three feet of boom removed. That is substantial – he would have gotten a full replacement. After repeated welding's the metal fatigues. It is dangerous to the operator and is a liability for the Town.

He then went over the prior pictures. Regarding the pins, once it is worn out there is no fixing this. And until you pull it apart you don't know.

TA said that we do have all of the receipts for parts so our PW could do repairs. TA said since the recession the budget has not provided for any improvements in PW. We did everything possible in house to save money. Things changed in 2011 and we signed contract with Palm Bay Fleet Services. CM Acquaviva confirmed that.

CM Korn said it spent 8 weeks at PB. TA said it is not the only piece they work on. If we did that and if it is broke again did we contact Palm Bay? CM Ball how long do you expect a piece to last. Tractors, dump trucks, 15 years. They replaced the boom at 11 years. The cost of the tractor back then was 48K. You can get 12 to 15 thousand hours if it is operated properly. One bad operator in first two years could shorten the equipments life years later. Brian said it is 10 years of use – not misuse.

CM Acquaviva stated she is not a mechanic, but it is not always operator error. She relates analogy of her new dryer breaking down and her being at fault. Turned out there was a piece in the dryer that didn't fit and it jammed the drum. There are probably things that could be similarly wrong with any piece of equipment; we can pontificate all night, but that is not going to resolve this.

CM Vail is a mechanic and has worked on this machine. Bushings could be fabricated for this. The welds are nothing more than throwing bubblegum on it. Is the 8K kit for the mast? The bottom line is that 6K hours is not old. CM Vail said the 6450 John Deere they had to change fuel filters every three years. They cleaned out the fuel tank. He said Felix greases it twice daily. It is not operator abuse. Do we invest the money to repair what we have?

Mr. Bresshard said it is a catch 22; you can spend 20K and three months later it stops running again. PW Director Tom had told him it was like that since he was here.

Mayor wanted to address a few points. Has 20-25 years experience with Alamo and then John Deere. Explained how it was.

CM Vail – point of order. Can Attorney leave? Yes 9:50pm.
(No Recess – Attorney Excused)

Mayor said he has extensive experience with this. There are issues with this tractor that should have been brought up three (3) years ago. He has pulled them apart and changed things and put in bushings. The boom doesn't swing fast. Mr. Bresshard said the expenses can just mount up. At Titusville they caught it before it got this bad. TA asked what Council wanted.

CM Vail said they want the refurb on the boom, remove the welds, so we have 3-5 years of extended life. Fuel system problem TBD. Worst case scenario, the arm can be mounted on something else.

Mayor said the fuel tank has never been cleaned. It should be run down and cleaned or replaced. Mayor wants to look at tractor when it is available.

CM Korn asked Mr. Bresshard if he could get Robinson to give us a quote to refurb the slopemower. Mr. Bresshard said yes.

J. ACTION ITEMS:

MISCELLANEOUS: 4

7. Cancel or Reschedule 2nd Meeting in January & February

Exhibit: Agenda Report No. 7

Recommendation: Request Action

MOTION: CM Korn / CM Acquaviva to cancel the 2nd meeting in January and February, 2015
Vote: All Ayes

8. **Request Ford Explorer used as Eagle Patrol be Declared Surplus**

Exhibit: Agenda Report No. 8

Recommendation: Request Action

MOTION: CM Acquaviva / CM Vail to surplus vehicle and bring back to next meeting on how disposal is to be done.

Discussion: TA explained how staff handles it. CM Krieger called the question. **VOTE:** All Ayes

(No Recess – Attorney Excused)

K. **PRESENTATIONS:**

L. **PROCLAMATIONS:**

M. **STAFF REPORTS: ADMINISTRATOR:**

Detour signs for work on Corey and Atz. The concrete pipe needs to be wrapped. Work will start on 19th. She will look at sign on Glatter Rd for CM Krieger. She has put out the contract for bridge repair. The pre-construction meeting will be tomorrow. Tomorrow night the Brk Hollow HOA has asked for Eng to repair. **CLERK:** nothing.

N. **DISCUSSION ITEMS:**

9. **Space Coast League of Cities, January Mtg. (Acquaviva)**

Exhibit: Agenda Report No. 9

Recommendation: Request Action

CM Acquaviva said this was her item. In the past we took turns with Palm Bay hosting the January meeting. It is the one meeting a year that we all attend. It seemed to her that this was changed in the second week of December, after our staff had already started the preparations.

Mayor explained how they could not afford to use The Tides for the Christmas dinner. Cape Canaveral CM Georgia Phillips found the Cocoa Civic Center to use. Also Cocoa Mayor Parrish wanted to do in Cocoa. Marisa asked who broached it - did Mayor Beatty ask to be separated from Palm Bay? The proposal was if Cocoa did Christmas. How did that change our month of January? Ours was already in the works as it was coming up the next month. CM Acquaviva said Mayor Beatty is the person that attends those meeting as our Delegate. She wanted to know how they determined to remove Malabar from January meeting. Mayor Beatty said he talked to Betty Walsh, President of SCLC. The next day he came in and told Clerk. CM Korn – he caught wind of this at last meeting. He mentioned it to CM Betty Walsh. He then got with G-V Mayor Del Yonts. Del said Palm Bay Mayor wanted to go alone and be on same level as Melbourne.

CM Acquaviva / CM Korn to extend 15 minutes. All Ayes.

Mayor Beatty stated that the next morning after the meeting at approximately at 9 AM he spoke to Franklin about everything he knew regarding what was coming up. It was positive with everyone on Board; all were in agreement with the change. Del was going to take it to his Council (and has) and they had no objection. He said he would take it to his Council but they ran out of time at last meeting. Next Monday (Jan 12) it will be on the SCLC Board agenda and there is no guarantee because they could change their minds and it not go through. CM Korn asked to finish what he was saying as well. If there is a loser in this, it is the Malabar Clerk because she did a lot of work to get this all lined up for January; arranging for the restaurant and everything. He asked if Palm Bay picked up on everything that we had lined up. Franklin stated we gave it all to them. CM Korn said but without Franklin knowing ahead of time, it probably felt

like a slight; unintentional but I would say, he was not in on it but he took the initiative to ask a few people questions. It wasn't his responsibility to come to the Council but he would have if he had remembered it at our last meeting because he felt that Franklin should have been given notice and thanked for all the work that she put into it. Now she has to do it all again in March if we are going to do it this way. He wants to be sure that Franklin gets credit where credit is due.

Acquaviva stated that she brought this up; she's not bashing Mayor Beatty, but she does think that it is something that we have done as a Town and as a Council; it was not just on the Mayor to say yes to such a change. That's fine if Council wants to agree to the change, but how this all happened; the fact that we are doing this in January of the year we host the meeting and our own Council didn't know about it was embarrassing to me; this is our turn. We do it, we take pride in it and our Council is well aware of it. To go and make all these changes; say by the way we are going to do it in March, which would have been fine but to make all the changes so quickly, that decision didn't just fall on you. It's a courtesy to ask the Clerk and this Council; I'm sorry but part of me was so confused after seeing the memo. This is now the second week of December and she's thinking "Oh my God, Palm Bay dropped us?" She didn't know what happened; she wanted to hear it from Mayor Beatty as he attends the meetings. We are all busy but we take pride in doing this with Palm Bay; it's a goodwill thing. She doesn't have an issue with doing it with Grant-Valkaria but that was nobody's decision here; it would have been nice to have it brought to Council. That's all she's saying about that. Mayor Beatty made comment; Acquaviva stated that she felt Mayor usurped power.

Franklin spoke and stated that after the Dec meeting Mayor Beatty came in and told her of what may be happening, she called Palm Bay and asked their Clerk; they checked with their Palm Bay Mayor and it was his opinion, whatever the decision was, that the changes would take place in 2016. Then she was really confused so she got back with Mayor Beatty and then he had all the back and forth telephone conversations. What appeared to be a done deal in December wasn't a done deal because there were people that didn't want December Christmas meeting at the Cocoa Civic Center. So that's why it's back on the agenda for SCLC Board action to decide at January meeting. CM Korn asked if the meeting was to be in Palm Bay on 1/12/15. CM Acquaviva stated that it's at the Melbourne Rialto; CM Korn asked if it's hosted by Palm Bay. Franklin stated yes. He thinks the ball got dropped as far as bringing it to Council but he does not think, he can't speak for Carl, but his opinion was Carl was approached. CM Acquaviva asked "right before Christmas"? Korn stated that what is done is done and we need to be careful in the future.

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Korn – will be gone most of month. He suggests that Brian Vail be his backup.
 CM Acquaviva – nothing
 CM Ball – nothing
 CM Vail – nothing
 CM Krieger – Corey Road bump in the road needs attention
 Mayor - nothing

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

Q. ANNOUNCEMENTS:

Two (2) vacancies on the Board of Adjustment
 Two (2) vacancies on the Park and Recreation Board
 Two (2) vacancies on the Trails & Greenways Committee
 Two (2) vacancies on the Planning & Zoning Board

R. ADJOURNMENT:

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

MOTION: CM Korn / CM Krieger to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:43 PM.

BY: _____
Mayor Carl Beatty, Council Chair

ATTEST BY:

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

Date Approved: _____

DRAFT

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 F.S. 286.26 and 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.

"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 SPECIAL MEETING
February 17, 2015 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 Mayor Carl Beatty. CM Acquaviva led the prayer and pledge.

B. ROLL CALL:

COUNCIL CHAIR:	MAYOR CARL BEATTY
VICE-CHAIR	MARISA ACQUAVIVA
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DON KRIEGER
	DICK KORN
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE, excused
TOWN CLERK/TREASURER:	DEBBY FRANKLIN
DEPUTY TOWN CLERK:	CYNTHIA KELLEY

For the record, Chief Robinson is also present.

C. DISCUSSION ONLY ON FOLLOWING ITEMS:

Mayor gave a brief explanation of why we are here; second meeting was cancelled due to holiday and the attorney was ill for the first meeting. Mayor spoke to attorney and it is okay to do this as a special meeting for discussion only; a think tank. It is items that he put together and Dick Korn also provided topics. Look at the items and see about input one way or the other. If enough interest, items will be added to an agenda at a later time. At the end, will open to see if anyone wants to say anything about the agenda items only. Acquaviva stated that if someone wants to speak to a certain item, she has no issue with that. It would be like a budget workshop. The Charter does not say we have to meet; he, the attorney, led her to believe that we don't have to have a meeting once a month.

Korn asked if everyone received the letter he sent out; Franklin stated that she only sent out the agenda. He wanted to put six items on the agenda; not created with this meeting in mind. He stated that it would be his fault; he didn't ask the clerk to send the information to everyone. Korn stated that he was under the impression that we do need to have one meeting a month.

Mayor stated that this is a special meeting subject to call. This is a think tank and will have the items in a formal manor at a later date.

1. Draft minutes or recommendations sent out in a timely manner

Discussion: Mayor stated that he remembered that it was discussed that minutes were not done in a timely fashion. He was under the impression that they would be done within a five-day period and sent out to Council so the person doesn't forget what took place with transcribing the minutes.

Vail stated that we are supposed to get the draft minutes in the packet the Wednesday before the next Council minutes. That is about 7 days between the packets coming out. Not sure that it's a common problem. Vail asked how often he feels this happens. Mayor stated that he wants to see if anyone agrees with him and discuss this. Getting the minutes within 8 days should be consistent on a two week cycle.

Wilbanks stated that that when we pull a budget workshop within a couple of days within each other, it can be hard to get both sets of minutes done in a short time. Vail stated he thinks everyone should be able to get them done within 8 days. Acquaviva stated she would like to hear from Franklin. Franklin offered to do research to see when minutes are done. She usually gets the minutes done within 3 days and has them to TA to put on website within that time frame.

Wilbanks stated that that draft minutes are placed on the website; once the minutes are approved by Council, the draft minutes are taken down and the final minutes are put up in their place. Vail asked if a time frame is needed, 8 days would be a good time. Franklin stated that the minutes are the top priority of herself and the Deputy Clerk. It is the most critical information that Council puts out. Korn stated that he wasn't aware that the draft minutes were on the website. He feels that the boards/committee minutes should be provided to the Council. What we do affects them and what they do affects Council. Franklin stated that the dates need to be provided if they have had to wait two months for minutes as the Mayor stated. Korn stated he wouldn't provide the dates. Wilbanks stated that she gets the minutes from the Boards/Committees from Franklin/Kelley and Sherear does her own posting of the P&Z/BOA Boards. Korn stated that he would like to have the draft minutes be sent to the Council. Franklin stated that the direction was given two meetings ago and both Kelley and Sherear do this.

Mayor stated that we don't need to go over this; the minutes are now on the website and accessible to everyone. He feels that this is no longer needed to be discussed. Acquaviva stated that this needs to be an action item; Wilbanks stated that we don't need an action item; if you want it, you will see it. Mayor said this discussion cleared a lot of stuff up.

2. Discussion of item prior to consideration by council to vote on

Discussion: Mayor put this on agenda. Council needs to discuss to see if it's gone far enough to spend the money for a final document. Acquaviva stated we discussed a lot before we do any spending of money. The discussion portion is there before the vote. You can't force people to discuss a subject.

Vail stated we beat things a lot of the time. Do you want to discuss it before the attorney leaves? When do you want to discuss it? Mayor stated that before we pay anyone to write an ordinance or referendum vote, discuss it before it goes to final document. Have a discussion item on the agenda before you vote to send to final disposition.

Acquaviva stated that this isn't about us; the public has a right to hear and we have that right to discuss. Information is brought to light during the meeting that can affect the outcome of the vote. The Council is here to serve.

Korn asked if he is referring to having a discussion before a vote. We have never lacked discussing issues before voting. He thinks the Council does a lot of discussion and we don't need to mandate more discussion. Vail stated that some of the topics do need

more discussion than others. We do this and there are certain items that are brought up that need attention and action in the same meeting.

Mayor gave an example of "buying a helicopter". An example of changing the council terms from 2 years to 3 years. He doesn't remember any discussion. Multiple Council Members stated that there was discussion about this. Acquaviva stated she can pull up the minutes in her head.

Wilbanks stated that one of the things that has been missing since Mayor has become Chair; the previous Chairs have come in and spoken to staff regarding the information prior to the meeting to gather information. She was not slamming him; he doesn't come in and speak to staff. This could be leading to some of the reasons you feel this way. She gave the example of the ladder truck.

Acquaviva stated that the agenda is broken down; we all have things that we want to discuss. The meeting is set up for action items and discussion items. We've never had a problem saying we aren't going to discuss the topic. You can't force people to discuss if they don't want to. The public input is huge to her. She wishes the chambers were filled with people.

3. Cancellation of council meeting to set alt date

Discussion: If we have enough to discuss or something came up, we would have an alternate meeting date. Acquaviva stated that the attorney has a Tuesday commitment. She asked if he is thinking of meeting on holidays.

Vail stated that when we knew there wasn't a meeting, we usually do have an alternate meeting date set or feel that we don't need to have an alternate meeting. Mayor stated this will show up as an agenda item so no one gets confused. You can call an emergency meeting but you don't know if people would be available. We have solved a bunch of issues and clarified a lot of information.

Acquaviva stated that we take a look at it and know that staff won't be here. We do the best we can and she's proud of us. Action item is alternate date. Wilbanks stated that we have it as an action item. Mayor stated that he needs to expand on it. Korn stated that when this is on the agenda; January's meeting. When we do that voting, also state should we talk about an alternate date. Do we want to have a make-up meeting or not?

4. Sequence for meetings leading up to Budget Workshops

- a. Inventory of each Department
- b. Capital Improvement – 5 year plan
- c. Vision – Long Range Plans
- d. Budget Workshops

Discussion: Mayor threw this out because sometimes we haven't done all these steps. Inventory needs to be done before the budget workshop; didn't get that from PW last year. Wilbanks stated that we did provide that. Acquaviva stated she wants all the research for the budget workshops. We had 3 (actually we had 4) workshops; doesn't get it, Mayor was here for those meetings. Wilbanks stated that we did the FD and PW inventory to keep it separate. Again, it was discussed with the Chair. Vail stated that when the FD was done, Mayor stated that we need to do with PW. We did this. Agenda

item; it needs to be pulled out. Wilbanks stated that we have to show the 5 year plan to the auditors; can't be the same one that they have seen before.

Korn stated that he doesn't read this agenda as there are issues; maybe we are trying to tweak the way things are done. He doesn't see that this is complaining of how things are done; do we keep it the same or do we tweak it. Acquaviva doesn't understand what he meant by this item.

Vail stated that he is asking that we do this but we need to make sure it's done in this order. Mayor stated that this is something that needs to be brought to light before it comes to Council. Council Member Acquaviva stops in to sign checks and asks questions. She works with people who call her and with staff. The more information gathering that happens would benefit all. It would be a great suggestion to use the website more. The information is there and available to us; we need to use it.

5. Disposal of surplus goods – inventory

Discussion: Mayor put this on. We don't have a policy and he wasn't aware of it. We need look at the policy that GV and County has and see if we want to adopt one or the other. The surplus items need to be presented to the public first. This is open to the public and you get to go through and look at the inventory and bid or purchase equipment. Wilbanks stated that if we need a policy, she will do the research. We should stay with towns the same size as us. She stated that she went with what Susan and Mayor Eschenberg told her how do to it. She will bring it to the agenda.

Korn spoke about disposal of a vehicle, he bought a trailer at a sealed bid auction. That's the way we used to do it; do it once a year. Wilbanks stated that it must be brought to the legislative body to say its surplus. He stated, down the road, that we set a specific time period each year that we will list the items and have a sealed bid auction. The equipment should be made available for the public to view and inspect. Franklin reiterated what Wilbanks stated; there are several surplus websites that saves time and money. It is very extensive to do sealed bids; someone needs to be available to be on site for the viewing of the materials. The first step is to have it declared as surplus to get it off the insurance. Mayor Beatty made a reference that a piece of equipment was missing; the Gradall is no longer there. Council Member Acquaviva stated that sounded like innuendo. Wilbanks stated the Gradall is not missing; it was sold to CDM as he was the only one who wanted the machine. It was brought to Council and Council said to sell it but to keep the tires. That is what we did; it sold for \$2,500. Council Member Ball asked if we have rules that we need to follow for this. Wilbanks stated she asked the attorney; municipalities are not addressed in the statutes. She will get with other municipalities to gather information. If it has a fair value, we bring it to Council. Franklin stated that we have had a capital asset list since the 1990's; Grant Valkaria doesn't own their equipment as they sub the work out. Wilbanks stated that they do have a policy but they haven't had to put it to use. Ball stated that we need to have a policy that we follow for disposal of surplus. We do need to have a policy in place. Wilbanks stated that the old Z-tracks were used to cannibalize the parts for the new tractors the Town bought. This was after they were listed with a surplus website and had no takers.

6. Note book for resolutions

Discussion: Mayor stated that he now knows that we have notebooks in the front office. Debby elaborated and stated that we have notebooks for minutes, ordinances and resolutions. She showed some of the notebooks they keep. It is all in the front office on

the bookcase. Town Clerk Rose Lasky started keeping copies of ordinances and resolutions in the 1980's. They are there for the public as well as staff to reference during the work day. We keep a notebook for all meetings, grants, minutes, etc. Franklin stated that biggest problem is lack of communication between staff and Council. Krieger never comes in; Mayor comes in and won't answer her calls. Until this day she did not know that the Mayor wanted a table of contents by title for the resolutions. She started this project on her own in 1995 and has kept it up as a tool for her. It is easier to search by Subject matter than by number. Now she knows he wants it so it will be cleaned up and put on the website.

Acquaviva stated that this is our home here; you can come in and have information available. Mayor stated that he wasn't aware of the library. He tried to start one 30 years ago.

Mayor stated that he needs to come in for staff meetings. Wilbanks stated that we don't have staff meetings anymore. She meets with department heads. Communication is great between staff members and we keep the door open to anyone who wants to come in.

7. Copy Board Members on all Town Related Communications

Discussion: Korn put this on the agenda; he communicated with some residents and was able to speak to them regarding the matters they asked about. He feels that the FYI is very helpful; now WAG, week at a glance. Need to extend this information to all the boards and committees. Wilbanks stated that she uses this document to communicate to Council and sometimes it has information regarding personnel issues. She will not send it to everyone. It is a public record and can be requested that way but there is information she communicates to Council that other boards/committees don't need to know about. Korn stated he would like to have this on an agenda as an action item. Board/Committee Members are volunteers and Council should make a decision regarding this.

Council Member Acquaviva stated that she was voted into office; we answer to the public. He considers every board member just as important as Council. They need to be treated with the same kind of courtesies as us. Wilbanks stated that she does communicate with the Boards/Committees via email regarding things that pertain to them and what they are working on.

Drew Thompson came forward and addressed Council. He is here as a citizen tonight. He came up with an idea; we are the people that represent the town. The thing is, we are on the same page. He came up with an IT idea for Town. CATV – community accessible television. Everyone gets the same information all at the same time. Some people want to see it on paper as some aren't on the web yet. Timeliness is very important. Version; version of document, draft or final. Sort the information two ways; by date and by item. Use what you have.

8. Discuss Limiting Truck Access to Weber & Corey Roads

Discussion: Korn stated he would like to defer this item to an agenda item as an action item for Council.

9. SpringFest Liability Insurance Cost for Alcohol Sales; stop supplying the beer

Discussion: Korn put this on the agenda for discussion. He stated that Kelley has done a remarkable job putting the event together; he spoke to people today who are excited

about the event and wants to know the date. This insurance is for liability coverage for the event. We don't allow beer in the parks at any other time; why is the Town providing it for this event. The question was asked if it is too late to cancel selling beer at this year's event; Wilbanks stated yes as we have already paid for the insurance. Korn stated this will be placed on an agenda as an action item for Council. If the Town doesn't provide the beer, it will not make or break the success of the event.

10. Inventory of Town owned Surplus

Clerk's Department has 16 computers, 2 servers, 1 camera, and 1 overhead projector. I will have to go through S/Ns to determine which computers were town, PW and FD.

Discussion: this topic was discussed earlier in the meeting.

11. Council to Approve all Expenditures over \$999.00 Not Specifically Included in Budget

Discussion: A speaker's card was presented to the Chair; Steve Rivet, 2005 Rivet Lane, came forward and addressed Council. He stated that this is a classic case of micro-management. Council needs to let the professional people that are in place do their jobs. He has been associated with the budgeting process for 12 years under 3 administrators. There has never been mismanagement of funds. If you don't let the people you have in place do their jobs, you won't get innovation; you won't get the best from the employees and it shows you don't respect them in their positions.

Korn brought this up to help save the employees. This is the best way to answer this. In reviewing the bills, the mowers were not operational. We have spent an awful lot of money bringing in outsiders to do the work. It would be for the protection of the TA. The Administrator does as asked by Council.

Acquaviva stated we have a process in place; we do over-look the bills. Korn stated that if we hire someone to do a job, we can't say not to pay a bill because the work has already been done. If we buy a piece of equipment, Council needs to discuss it. Acquaviva and Wilbanks both stated that all purchases come before Council. Sometimes things happen and needs to be addressed immediately. Korn stated he wanted this as an action item for Council and he wants the attorney present when it's on the agenda.

12. Council to Conduct Performance Review for PW Director and Fire Chief

Discussion: The Chair had a speaker's card on this topic. Steve Rivet came forward and addressed Council. He stated that Council needed to review the Charter and Resolutions/Ordinances. It is not appropriate for Council to review the Public Works Manager or the Fire Chief. The Town Administrator is who needs to do these reviews as she works with them on a daily basis. There is a lot of micro-management taking place. The Town Administrator and Town Clerk are very good at their jobs; they are better than anyone up here and out in the town.

Mayor Beatty thanked everyone for being here this evening; got a lot of discussed and worked out. Council Member Acquaviva asked how she would be able to be a part of the next special meeting like this; how does she get to place items on the agenda? Franklin stated that each Council Member receives a memo with the meeting dates on it in November. Council can review the list of dates and add meetings if they choice to do so. Council needs to communicate directly to her and then she will make contact with the Chair about meeting information.

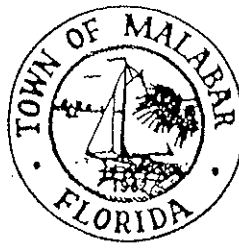
TOWN OF MALABAR
TOWN COUNCIL SPECIAL MEETING
TUESDAY, FEBRUARY 17, 2015
7:30PM
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. DISCUSSION ONLY ON FOLLOWING ITEMS:**
 - 1. Draft minutes or recommendations sent out in a timely manner.
 - 2. Discussion of item prior to consideration by council to vote on
 - 3. Cancellation of council meeting to set alt date
 - 4. Sequence for meetings leading up to Budget Workshops
 - a. Inventory of each Department
 - b. Capital Improvement – 5 year plan
 - c. Vision – Long Range Plans
 - d. Budget Workshops
 - 5. Disposal of surplus goods – inventory
 - 6. Note book for resolutions.
 - 7. Copy Board Members on all Town Related Communications
 - \ 8. Discuss Limiting Truck Access to Weber & Corey Roads
 - \ 9. SpringFest Liability Insurance Cost for Alcohol Sales; stop supplying the beer
 - 10. Inventory of Town owned Surplus. Clerk's Department has 16 computers, 2 servers, 1 camera, and 1 overhead projector. I will have to go through S/Ns to determine which computers were town, PW and FD.
 - 11. Council to Approve all Expenditures over \$999.00 Not Specifically Included in Budget
 - 12. Council to Conduct Performance Review for PW Director and Fire Chief.
- D. PUBLIC COMMENTS: Related to Agenda Items Only.**
- E. ADJOURNMENT**

No Action will take place at this meeting.

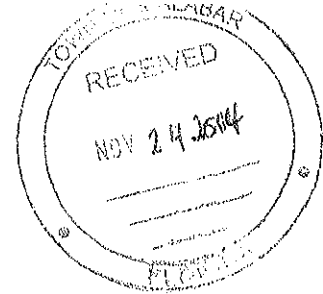
OFFICE OF THE TOWN CLERK
(407) 727-7764
FAX (407) 722-2234



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AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL



Please mail completed form to:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Laura Mahoney

ADDRESS: 2475 Malabar Road
Malabar, FL 32950

TELEPHONE: cell (321) 693-4314
(Home) _____ (Business)

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

~~BORA~~ amending Ordinance 2014-03

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

Lots of Palm Trees in yard
Palm fronds

Please state desired action by Town Council.

approve burning waste when needed
to keep safety
concerns minimal

Signed: Laura Mahoney

Date: Nov. 24, 2014

precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land management objectives.

(g) "Prescription" means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a prescribed burn.

(h) "Yard trash" means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.

(2) NONCERTIFIED BURNING. —

(a) Persons may be authorized to burn wild land or vegetative land-clearing debris in accordance with this subsection if:

1. There is specific consent of the landowner or his or her designee;
2. Authorization has been obtained from the division or its designated agent before starting the burn;
3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire;
4. The fire remains within the boundary of the authorized area;
5. An authorized person is present at the burn site until the fire is extinguished;
6. The division does not cancel the authorization; and
7. The division determines that air quality and fire danger are favorable for safe burning.

(b) A person who burns wild land or vegetative land-clearing debris in a manner that violates any requirement of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) CERTIFIED PRESCRIBED BURNING; LEGISLATIVE FINDINGS AND PURPOSE. —

(a) The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. The Legislature finds that:

Outdoor Burning TIPS

- Check with your local Florida Forest Service office to make sure it is legal to burn in your area.
- Make sure you meet the required setbacks.
- Burn only yard waste, no household garbage (includes paper products and newspapers).
- Don't burn on windy days.
- Never leave a fire unattended.
- Keep a water hose or shovel handy in case your fire escapes.
- Make sure your smoke does not obstruct visibility on nearby roads.
- Be sure your fire is completely out before you leave.

-Remember-

If your fire escapes, you may be liable for costs of suppression and damage to the property of others.

FLORIDA FOREST SERVICE FIELD HEADQUARTERS (By Counties)

Blackwater Forestry Center 859/657-6100
Escambia • Okaloosa • Santa Rosa
Chipola River Forestry Center 850/547-7284
Bay • Calhoun • Gulf • Holmes • Jackson • Walton
• Washington
Tallahassee Forestry Center 850/438-1874
Franklin • Gadsden • Jefferson • Liberty • Leon • Wakulla
Perry Forestry District 850/838-2259
Dixie • Lafayette • Madison • Taylor
Suwannee Forestry Center 386/756-5780
Baker • Bradford • Columbia • Hamilton • Suwannee
• Union
Jacksonville Forestry District 904/288-6001
Clay • Duval • Nassau
Wachussassa Forestry Center 352/265-2010
Alachua • Gilchrist • Levy • Marion • Putnam
Sunnil Forestry District 351/448-8788
Flagler • St. Johns • Volusia
Wichita-Clay Forestry Center 352/754-5777
Citrus • Hernando • Lake • Pasco • Sumter
Orlando Forestry District 407/856-6512
Brevard • Orange • Osceola • Seminole
Lakeland Forestry District 852/648-3160
Hillsborough • Pinellas • Polk
Myakka River Forestry District 347/517-7627
Charlotte • DeSoto • Hardee • Manatee • Sarasota
Greenwood Forestry District 850/452-5160
Glades • Highlands • Indian River • Martin
• Okeechobee • St. Lucie
Caloosahatchee Forestry Center 239/690-3660
Collier • Hendry • Lee
Everglades Forestry District 954/475-4120
Broward • Miami-Dade • Monroe • Palm Beach

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES

ADAM H. PUTNAM, COMMISSIONER

FLORIDA FOREST SERVICE
JAMES R. KARELS, DIRECTOR

FOREST FIRE LAWS & OPEN BURNING REGULATIONS
REVISED 2009, DACS-P 02198 - PAMPHLET 2100

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ORDINANCE 2014-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO FIRE PREVENTION AND PROTECTION; AMENDING CHAPTER 8, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING DEFINITIONS; REMOVING REFERENCES TO DOF AND DEP AND REPLACING WITH REFERENCES TO FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND FLORIDA FOREST SERVICE; PROVIDING FOR AN OPEN BURNING MULTILATERAL OPERATING AGREEMENT; PROVIDING FOR SEVERABILITY, REPEAL AND CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. Article III of Chapter 8 of the Code of Ordinances of the Town is amended in full to read as follows:

“Sec. 8-71. Purpose.

The purpose of this article is to set certain requirements and criteria to regulate and control all types of open burning within the town so as not to pose a threat to health, life, adjoining properties or public ways or to endanger natural vegetation and wildlands, or cause an "unfriendly fire" within the town.

Sec. 8-72. Definitions.

For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Words in the present tense include the future; words in the masculine gender include the feminine and the neuter; the singular number includes the plural and the plural the singular.

Agricultural and silvicultural fires includes all burning for agricultural, silvicultural, or forestry operations related to the growing, harvesting, or maintenance of crops or in connection with wildlife management. This includes the burning of plant material by plant nurseries and for grove operations.

Air curtain incinerator means a combustion device that directs air at high velocity through a manifold head into a pit with vertical walls in such a manner to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.

Air pollution means the presence in the outdoor atmosphere of the state of any one or more substances or contaminants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

→ *FDACS* means the Florida Department of Agriculture and Consumer Services

FFS means the Florida Forest Service

Sec. 8-73. Permit required to burn.

(a) It shall be unlawful for any person to conduct open burning of any kind within the town without first obtaining a written permit from the chief of the fire department or his assigned designee.

(b) Only those persons who are involved in land clearing for future construction purposes will be considered for burning permits.

(c) All persons obtaining burnings permits will follow all FDACS regulations, FFS regulations, and/or the requirements of this article. If the requirements of this article differ from the requirements of the FDACS or the FFS, the more stringent requirement shall apply.

Sec. 8-74. Hours of burning.

Burning will be permitted only between the hours of 9:00 a.m. and one hour prior to sunset, excluding special permits.

Sec. 8-75. Name of property owner, township, section, range, to be provided.

Prior to the issuance of a burn permit within the town, the person desiring the permit shall provide to the fire chief or his designee the name of the owner of the property, the township, section, and range upon which the material is to be burned. This information will also be required by FDACS and/or FFS.

Sec. 8-76. On site survey required.

(a) The fire chief or his assigned designee shall conduct a survey of the proposed burning site to determine if it meets the requirements of this article and/or FDACS and FFS regulations.

(b) The fire chief or his assigned designee shall conduct a visual inspection of the forced air device required by FDACS and/or FFS, to insure that it meets specific standards that will accomplish complete combustion with a minimal amount of smoke. The forced air system shall provide a minimum air transference of 14,000 cubic feet per minute (CFM) and maintain a minimum static pressure of ninety (90) miles per hour (mph). This information shall be provided to the fire chief or his assigned designee by the permittee. Manufacturer's specifications or written statements by an approved testing agency are acceptable.

(c) The site must meet the FDACS and/or FFS requirements of one hundred fifty (150) feet from any road and one hundred fifty (150) from any occupied structure, with a minimum fifty (50) feet clear area around the piles.

Sec. 8-77. FDACS and/or FFS burn permit number required.

After inspection by the fire chief or his designee DOF will be notified for approval to issue daily permit numbers for the site. The person desiring the permit will call FDACS and/or FFS to obtain a daily permit number. After obtaining the FDACS and/or FFS number Malabar Fire Department will be notified for final approval to burn for the day.

Sec. 8-78. Materials which may not be burned.

The burning of tires, rubber material, asphalt, roofing material, tar, railroad cross ties, other creosoted lumber, plastics, or garbage (except approved waste pesticide containers), or any other material listed by the FDACS and/or FFS or this article is prohibited.

Sec. 8-79. Means of controlling unfriendly fire.

Any person conducting burning operations shall have a means of controlling an unfriendly fire immediately available on site. Example:

- (1) Front end loader;
- (2) Pumping water from wells or holding ponds; or
- (3) Other means acceptable and approved by the fire chief or his assigned designee.

Sec. 8-80. Extinguishing of fire by fire department personnel.

(a) If burning sites are left unattended while debris is still burning, the fire department will respond to extinguish said debris and the permittee will be subject to incur all costs of extinguishment.

(b) If debris piles are not extinguished by stated time, the fire department will respond to extinguish said debris and the permittee will be subject to incur all costs of extinguishment.

(c) If debris reignites after extinguishment by the permittee, and the fire department is required to respond and extinguish said debris, the permittee will incur all costs of extinguishment.

Sec. 8-81. Burn permit denied or revoked.

A burn permit may be denied or revoked at any time by the fire chief or his assigned designee for any one or more of the following reasons:

- (1) Failure to provide FDACS and/or FFS permit number;
- (2) Failure to provide immediate means of controlling unfriendly fire;
- (3) Wind speed is in excess of ten (10) miles per hour;
- (4) Extremely dry conditions as determined by the fire chief or his assigned designee;

(5) Failure to provide a competent person to attend to the burning operation while burning is in progress.

(6) Two (2) or more complaints are received from nearby residents or building occupants in reference to health reasons, possible damage to property, smoke hazard, any other legitimate reason which would interfere with the health or well-being of a person in the vicinity of the burning operation;

(7) Any time the burning operation is found to be in violation of FDACS and/or FFS_regulations or in violation of any part of this article; and

(8) Any time the fire chief, or his assigned designee, determines that a fire may cause a threat to health, safety and welfare.

Sec. 8-82. Permit suspended and criminal prosecution.

(a) Any person found to be burning without a permit issued by the fire chief or his assigned designee within the town or conducts a burning operation after the denial or revocation of a burn permit will be issued a suspension from the privilege of receiving a burn permit within the town. The suspension may apply to and be honored by the individual named on the suspension, and any other individual company, firm, contractor, or organization that said individual is employed by or in any way affiliated with while conducting such burning operation and said suspension shall remain in force for a period of:

- (1) Fourteen (14) days—first offense;
- (2) Thirty (30) days—second offense; and
- (3) Permanent suspension—third offense;

The suspension may also be applied to the property upon which a violation is located.

(b) The suspensions and/or criminal prosecution listed in paragraph (a) above, shall be in addition to any other penalties, fines, etc., imposed by the FDACS and/or FFS or any other enforcing agency as permitted by the law.

Sec. 8-83. Types of burning permitted.

(a) Agricultural and silvicultural fires will be permitted per FDACS and/or FFS regulations and any other requirements of this article.

(b) Rural land clearing fires will be permitted per FDACS and/or FFS regulations and any other requirements of this article.

(c) Non-rural land clearing fires will be permitted per FDACS and/or FFS regulations and any other requirements of this article.

(d) Yard trash fires are prohibited.

(e) Burning of household trash is prohibited.

(f) Burning for cold or frost protection will be permitted per FDACS and/or FFS_regulations and any other requirements of this article.

(g) Special burning permits may be issued by the fire chief or his assigned designee for camp fires or bonfires for special events within the town when weather conditions permit.

Sec. 8-84 Open Burning Multilateral Operating Agreement

Then Town and the FDAC and the FSS may from time to time enter into an Open Burning Multilateral Operating Agreement or like agreement outlining the rights, responsibilities and the duties of the parties to such an agreement concerning open burning. Any permit issued pursuant to this Article III shall be deemed to incorporate the terms and provisions of such agreement."

Section 2. 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 3. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 4. Codification. The provisions of this ordinance shall become part of the code of ordinances of the Town of Malabar.

Section 5. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member Abare. The motion was seconded by Council Member Acquaviva and, upon being put to a vote, the vote was as follows:

- Council Member Wayne Abare
- Council Member James Milucky
- Council Member Steven (Steve) Rivet
- Council Member Dick Korn
- Council Member Marisa Acquaviva

Aye
Aye
Aye
Aye
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3 day of Feb, 2014.

TOWN OF MALABAR

By:

[Signature]
Steve Rivet, Council Chair

First Reading 1/06/2014
 Second Reading 2/03/2014

ATTEST:
 By [Signature]
 Debby K. Franklin, C.M.C.
 Town Clerk/Treasurer

(Seal)

Approved as to form and content:

[Signature]
 Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR BURN PERMIT INSPECTION FORM

Date: _____

Malabar Fire Permit # _____

Name: _____ Burn Site Location: _____

TYPE OF PERMIT: [] Residential Landscaping [] Agricultural [] Non-Residential Landscaping [] Acreage _____

Company Name: Company Address: Contact Name: Burner Name:	Complete Mailing Address of Company
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Phone Numbers	Home Cell Office	Complete Mailing Address of Burner
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Property Owner Signature	Date:
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FIRE DEPARTMENT INFORMATION

Section, Township, Range/Lat & Long/Burn Location Address	Any Burn Restrictions?
	If Denied, Why?

62-256.500 (1) The fire must take place between 9AM and (1) hour before sunset. No night burning is permitted. The fire must be extinguished before leaving fire. There should be no visible smoke or emissions.

- All fires must meet the following set back requirements:**
Residential land clearing - 300 feet from any occupied building/structure.
Land clearing with an air curtain - 300 feet
Land clearing without an air curtain - 1000 feet
Agricultural / silvicultural - 300 feet

All piles must set back 100 feet from any road and winds must not blow the smoke to any roads or occupied

62-256.500 (2) All materials must be burned on site of the inspection and of generation.

62-256.500 (4) The burning must not create a nuisance or a fire safety hazard.

590.125 All fires must have adequate firebreaks, manpower, and equipment on site to control and suppress the fire in case of escape.

Property owner must call the Orlando Division Of Forestry at 407-856-6512 each day an obtain a Burn Authorization # for that day. Once authorization has been received from DOF, you must notify the Town of Malabar Fire Department at 321-725-1030, or the Fire Chief at 321-505-6070.

BURN APPROVED

Circle

BURN DISAPPROVED

Fire Department Signature	Date:
---------------------------	-------

Notes:

DOF Burn # _____

The Florida Senate

2011 Florida Statutes

TITLE XXXV AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY	CHAPTER 590 FOREST PROTECTION	VIEW ENTIRE CHAPTER
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590.125 Open burning authorized by the division. —

(1) DEFINITIONS. — As used in this section, the term:

(a) "Certified pile burner" means an individual who successfully completes the division's pile burning certification program and possesses a valid pile burner certification number.

(b) "Certified prescribed burn manager" means an individual who successfully completes the certified prescribed burning program of the division and possesses a valid certification number.

(c) "Extinguished" means that for:

1. Wildland burning or certified prescribed burning, no spreading flames exist.

2. Vegetative land-clearing debris burning or pile burning, no visible flames exist.

3. Vegetative land-clearing debris burning or pile burning in an area designated as smoke sensitive by the division, no visible flames, smoke, or emissions exist.

(d) "Land-clearing operation" means the uprooting or clearing of vegetation in connection with the construction of buildings and rights-of-way, land development, and mineral operations. The term does not include the clearing of yard trash.

(e) "Pile burning" means the burning of silvicultural, agricultural, or land-clearing and tree-cutting debris originating onsite, which is stacked together in a round or linear fashion, including, but not limited to, a windrow.

(f) "Prescribed burning" means the controlled application of fire by broadcast burning in accordance with a written prescription for vegetative fuels under specified environmental conditions, while following appropriate

precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land management objectives.

(g) "Prescription" means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a prescribed burn.

(h) "Yard trash" means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.

(2) NONCERTIFIED BURNING.—

(a) Persons may be authorized to burn wild land or vegetative land-clearing debris in accordance with this subsection if:

1. There is specific consent of the landowner or his or her designee;
2. Authorization has been obtained from the division or its designated agent before starting the burn;
3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire;
4. The fire remains within the boundary of the authorized area;
5. An authorized person is present at the burn site until the fire is extinguished;
6. The division does not cancel the authorization; and
7. The division determines that air quality and fire danger are favorable for safe burning.

(b) A person who burns wild land or vegetative land-clearing debris in a manner that violates any requirement of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) CERTIFIED PRESCRIBED BURNING; LEGISLATIVE FINDINGS AND PURPOSE.—

(a) The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. The Legislature finds that:

1. Prescribed burning reduces vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of wildfire, thereby reducing the threat of loss of life and property, particularly in urban areas.

2. Most of Florida's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems.

3. Forestland and rangeland constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on forestland prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens. On rangeland, prescribed burning improves the quality and quantity of herbaceous vegetation necessary for livestock production.

4. The state purchased hundreds of thousands of acres of land for parks, preserves, wildlife management areas, forests, and other public purposes. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired.

5. A public education program is necessary to make citizens and visitors aware of the public safety, resource, and economic benefits of prescribed burning.

6. Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public.

7. As Florida's population continues to grow, pressures from liability issues and nuisance complaints inhibit the use of prescribed burning. Therefore, the division is urged to maximize the opportunities for prescribed burning conducted during its daytime and nighttime authorization process.

(b) Certified prescribed burning pertains only to broadcast burning for purposes of silviculture, wildland fire hazard reduction, wildlife management, ecological maintenance and restoration, and range and pasture management. It must be conducted in accordance with this subsection and:

1. May be accomplished only when a certified prescribed burn manager is

present on site with a copy of the prescription from ignition of the burn to its completion.

2. Requires that a written prescription be prepared before receiving authorization to burn from the division.
3. Requires that the specific consent of the landowner or his or her designee be obtained before requesting an authorization.
4. Requires that an authorization to burn be obtained from the division before igniting the burn.
5. Requires that there be adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire.
6. Is considered to be in the public interest and does not constitute a public or private nuisance when conducted under applicable state air pollution statutes and rules.
7. Is considered to be a property right of the property owner if vegetative fuels are burned as required in this subsection.

(c) Neither a property owner nor his or her agent is liable pursuant to s. 590.13 for damage or injury caused by the fire or resulting smoke or considered to be in violation of subsection (2) for burns conducted in accordance with this subsection unless gross negligence is proven.

(d) Any certified burner who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) The division shall adopt rules for the use of prescribed burning and for certifying and decertifying certified prescribed burn managers based on their past experience, training, and record of compliance with this section.

(4) CERTIFIED PILE BURNING.—

(a) Certified pile burning pertains to the disposal of piled, naturally occurring debris from an agricultural, silvicultural, or temporary land-clearing operation. A land-clearing operation is temporary if it operates for 6 months or less. Certified pile burning must be conducted in accordance with the following:

1. A certified pile burner must ensure, before ignition, that the piles are properly placed and that the content of the piles is conducive to efficient

burning.

2. A certified pile burner must ensure that the piles are properly extinguished no later than 1 hour after sunset. If the burn is conducted in an area designated by the division as smoke sensitive, a certified pile burner must ensure that the piles are properly extinguished at least 1 hour before sunset.

3. A written pile burning plan must be prepared before receiving authorization from the division to burn.

4. The specific consent of the landowner or his or her agent must be obtained before requesting authorization to burn.

5. An authorization to burn must be obtained from the division or its designated agent before igniting the burn.

6. There must be adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to control the fire.

(b) If a burn is conducted in accordance with paragraph (a), the property owner and his or her agent are not liable under s. 590.13 for damage or injury caused by the fire or resulting smoke, and are not in violation of subsection (2), unless gross negligence is proven.

(c) A certified pile burner who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The division shall adopt rules regulating certified pile burning. The rules shall include procedures and criteria for certifying and decertifying certified pile burn managers based on past experience, training, and record of compliance with this section.

(5) WILDFIRE HAZARD REDUCTION TREATMENT BY THE DIVISION.—The division may conduct fuel reduction initiatives, including, but not limited to, burning and mechanical and chemical treatment, on any area of wild land within the state which is reasonably determined to be in danger of wildfire in accordance with the following procedures:

(a) Describe the areas that will receive fuels treatment to the affected local governmental entity.

(b) Publish a treatment notice, including a description of the area to be treated, in a conspicuous manner in at least one newspaper of general circulation in the area of the treatment not less than 10 days before the treatment.

(c) Prepare and send a notice to all landowners in each area designated by the division as a wildfire hazard area. The notice must describe particularly the area to be treated and the tentative date or dates of the treatment and must list the reasons for and the expected benefits from the wildfire hazard reduction.

(d) Consider any landowner objections to the fuels treatment of his or her property. The landowner may apply to the director of the division for a review of alternative methods of fuel reduction on the property. If the director or his or her designee does not resolve the landowner objection, the director shall convene a panel made up of the local forestry unit manager, the fire chief of the jurisdiction, and the affected county or city manager, or any of their designees. If the panel's recommendation is not acceptable to the landowner, the landowner may request further consideration by the Commissioner of Agriculture or his or her designee and shall thereafter be entitled to an administrative hearing pursuant to the provisions of chapter 120.

(6) DIVISION APPROVAL OF LOCAL GOVERNMENT OPEN BURNING AUTHORIZATION PROGRAMS.—

(a) A county or municipality may exercise the division's authority, if delegated by the division under this subsection, to issue authorizations for the burning of yard trash or debris from land-clearing operations. A county's or municipality's existing or proposed open burning authorization program must:

1. Be approved by the division. The division may not approve a program if it fails to meet the requirements of subsections (2) and (4) and any rules adopted under those subsections.

2. Provide by ordinance or local law the requirements for obtaining and performing a burn authorization that complies with subsections (2) and (4) and any rules adopted under those subsections.

3. Provide for the enforcement of the program's requirements.

4. Provide financial, personnel, and other resources needed to carry out the program.

(b) If the division determines that a county's or municipality's open burning authorization program does not comply with subsections (2) and (4) and any rules adopted under those subsections, the division shall require the county or municipality to take necessary corrective actions within 90 days after receiving notice from the division of its determination.

1. If the county or municipality fails to take the necessary corrective actions within the required period, the division shall resume administration of the open burning authorization program in the county or municipality and the county or municipality shall cease administration of its program.

2. Each county and municipality administering an open burning authorization program must cooperate with and assist the division in carrying out the division's powers, duties, and functions.

3. A person who violates the requirements of a county's or municipality's open burning authorization program, as provided by ordinance or local law enacted pursuant to this subsection, commits a violation of this chapter, punishable as provided in s. 590.14.

(7) DUTIES OF AGENCIES.—The Department of Education shall incorporate, where feasible and appropriate, the issues of fuels treatment, including prescribed burning, into its educational materials.

History.—s. 9, ch. 99-292; s. 41, ch. 2002-295; s. 21, ch. 2005-210; s. 56, ch. 2011-206.

Did You Know?

- Escaped Debris Burning is one of the leading causes of wildfires in Florida.
- The Florida Forestry Service administers Florida's outdoor burning and forest fire laws.
- Some types of burning require an authorization from the Florida Forest Service while others do not.
- Burning yard waste does not require an authorization but you must follow the rules for your area.

Burning Authorization Required

Agricultural, silvicultural, landclearing, pile and acreage burning all require a burning authorization from the Florida Forest Service.

Burning Authorized NOT Required

Authorization is not required to burn yard waste as long as you meet the required setbacks and there are no local, city or county ordinances in place that prohibit burning.

Check with your local, city and county officials to find out if there are any restrictions in your area.

What is Yard Waste?

Yard waste is vegetative debris such as grass clippings, brush, leaves, tree limbs, palm fronds, etc., that are a result of yard maintenance.

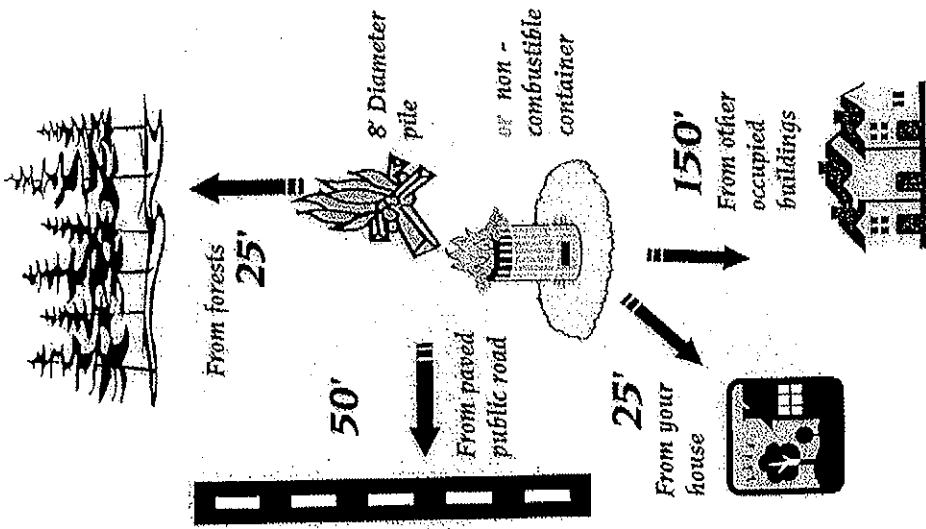
You may burn yard waste as long as:

- you meet the required setbacks and no local, city or county ordinances prohibit burning,
- the yard waste was generated on your property and it will fit in an 8-foot diameter pile or non-combustible container,
- your fire is ignited after 8:00 AM Central Time or 9:00 AM Eastern Time and is extinguished one hour before sunset,
- smoke is not a hazard or nuisance.

Note

Piles greater than 8 feet in diameter will require an authorization from the Florida Forest Service. You must have suppression equipment on hand and need to meet additional setback requirements.

It is illegal to burn household garbage (including paper products), treated lumber, plastics, rubber materials, tires, pesticides, paint, and aerosol containers.



Clear an area down to bare soil around your pile to prevent the fire from spreading.

Cover a non-combustible container with wire mesh to keep sparks from flying out and starting new fires.

If you have questions on outdoor burning, please contact your local Florida Forest Service office or visit our website:

www.fl-dof.com

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: March 2, 2015

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

SUBJECT: Recommendation from Planning and Zoning Board

BACKGROUND/HISTORY:

FINANCIAL IMPACT:

ATTACHMENTS:

ACTION OPTIONS:

Staff requests direction.

TOWN OF MALABAR

MEMORANDUM

Date: January 29, 2015 15-AABO-001

To: Debby Franklin, Town Clerk/Treasurer
Town Council

From: Denine M. Sherear, Administrative Assistant to the Building official DS

Ref: Recommendation from P&Z to Council Increasing the MBC Permitted in R/LC (Residential/Limited Commercial) District.

The PZ Board received a directive from Council in December 2014 in reference to increasing the Maximum Building Coverage (MBC) in R/LC district. The PZ Board discussed this at the last few meetings.

On January 28th, 2015 the Planning and Zoning Board made a Motion after much discussion and debate. The four options recommended were:

- 1.) 0.20 no matter what size (MBC) Max. Building Coverage—foot print (below diagram *portion* of Article III District Provisions "D")
- 2.) 4,000sf max no matter how big lot size (gross)
- 3.) 4,000sf max first ½ acre with a factor for a ½ acre or acre TBD and every acre after that
- 4.) Any building larger than four thousand (4,000) square feet would be considered Conditional Use.

Motion: Abare/Ritter Recommend to Council to pick Option #1, after much deliberation and debate.

Roll Vote: Foster, Aye; Abare, Aye; Reilly, Aye; Ryan, Aye; Ritter, Aye Motion passed 5 to 0

The PZ Board wanted to include a *portion* of Article III District Provisions "D" see below for clarification:

D.

Maximum Building Coverage. The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

1.

Calculation of MBC. The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.

All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: March 2, 2015

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

SUBJECT: Approve Joint Agreement with FDOT (Reso 03-2015)

BACKGROUND/HISTORY:

The FDOT requires a resolution authorizing the Town Administrator to sign the Joint Agreement. For the lighting project along Highway 1 between Riverside Drive and the Town's northern boundary. Since FDOT and FPL cannot contract directly with each other The Town is the agent. FPL has or will be installing upgraded lighting on four (4) FPL poles between Riverside Drive and the northern Town boundary. We will pay FPL the contracted amount of \$21,248.00 and then submit an invoice to FDOT for the full reimbursement within two to four weeks.

Chapter 2 of the Code of Ordinances states that the Town Administrator shall execute contracts on behalf of the Town.

FINANCIAL IMPACT:

None – Funds will come from contingency and be returned to contingency.

ATTACHMENTS:

Reso 03-2015 and Joint Agreement

ACTION OPTIONS:

Staff requests approval of Reso 03-2015.

RESOLUTION 03-2015

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A JOINT PARTICIPATION AGREEMENT BETWEEN FLORIDA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF MALABAR AND PROVIDING FOR AUTHORIZATION FROM COUNCIL FOR THE TOWN ADMINISTRATOR TO EXECUTE SAID AGREEMENT; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is necessary for the Town of Malabar to facilitate the work being done by Florida Power and Light and the Department of Transportation on Highway 1 as these two agencies cannot contract directly with each other. Since the improvements are within Malabar jurisdiction, it is customary for the Town to be the agent listed in the agreement. In this case, the Town will pay the project cost of \$21,248.00 to Florida Power and Light and the Florida Department of Transportation will reimburse the Town of Malabar the full amount of \$21,248.00 within thirty (30) days.

WHEREAS, the State of Florida Department of Transportation and Florida Power and Light are working on the Construction of Highway Lighting on U.S. 1 from South of Riverside Drive to the North Town Limits.

WHEREAS, the Town of Malabar has an Agreement for Services and a Franchise Agreement in place with Florida Power and Light; and also has a Traffic Signal Maintenance & Compensation Agreement in place with Florida Department of Transportation.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF MALABAR OF BREVARD COUNTY, FLORIDA that;

SECTION 1. The Malabar Town Council approves this Joint Participation Agreement between the Town and FDOT for Project known as FM #437229-1-58-02.

SECTION 2. The Town Council hereby authorizes and directs the Town Administrator to make, execute and deliver to the Florida Department of Transportation the Joint Participation Agreement. This resolution shall become EXHIBIT "C" of the Agreement.

SECTION 3. Conflict
All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 4 Effective Date.
This Resolution shall take effect immediately upon passage.

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 Grant Ball _____
- Council Member Brian Vail _____
- Council Member Don Krieger _____
- Council Member Dick Korn _____
- Council Member Marisa Acquaviva _____

Financial Management No.: 437229-1-58-02 Agency: Town of Malabar Contract No:	Fund: DDR Function: 215 Contract Amount: \$21,248.00	FLAIR Approp: 088716 FLAIR Obj.: 55054010508 Org. Code: 320024 Vendor No.: F591032996 003
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JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE TOWN OF MALABAR

This Agreement, made and entered into this _____ day of _____, 2015, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the DEPARTMENT) and **THE TOWN OF MALABAR**, a municipal corporation organized under the laws of the State of Florida (hereinafter referred to as the LOCAL GOVERNMENT),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT by Resolution No. _____ dated the ____ day of _____, 2015, a copy of which is attached hereto as Exhibit "C" and made a part hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program, to undertake the Project described as the "Construction of Highway Lighting on U.S. 1 from South of Riverside Drive to North Town Limits", in Fiscal Year 2014/2015, said Project being known as FM #437229-1-58-02, hereinafter referred to as the "Project"; and

WHEREAS, the Project is on the State Highway System, is not revenue producing, and is contained in the adopted Five Year Work Program; and

WHEREAS, the implementation of the Project is in the interest of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to perform the services to complete the Project; and.

WHEREAS, the intent of this Agreement is to establish the terms and conditions of the funding and the production of this Project.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. TERM

A. The term of this Agreement shall begin upon the date of signature of the last party to sign. The LOCAL GOVERNMENT agrees to complete the Project within 24 months from the date of the execution of this agreement. If the LOCAL GOVERNMENT does not complete the Project within the time period allotted, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the LOCAL GOVERNMENT and granted in writing by the DEPARTMENT prior to the expiration of the Agreement, which grant of extension will not be unreasonably withheld. Expiration of this Agreement will be considered termination of the Project.

2. SERVICES AND PERFORMANCES

A. The Project consists of the: Construction of Highway Lighting on U.S. 1 from South of Riverside Drive to North Town Limits. The LOCAL GOVERNMENT shall perform or cause to be performed all necessary work to complete the Project, as specified in Exhibit "A", Scope of Services attached hereto and by this reference made a part hereof. Nothing herein shall be construed as requiring the LOCAL GOVERNMENT to perform activity which is outside of the Scope of Services of the Project.

B. Construction of the Project shall be in accordance with the terms and conditions of a Utility permit that the LOCAL GOVERNMENT'S electric utility company contractor (the "Contractor") will secure from the DEPARTMENT to allow the Contractor to enter onto the DEPARTMENT'S right of way to perform the work required by the Project.

C. The LOCAL GOVERNMENT shall hire the Contractor using the LOCAL GOVERNMENT'S normal procurement procedures to perform the construction work for the Project.

D. The Contractor shall be responsible for obtaining clearances/ permits required for the construction of the Project from the appropriate permitting authorities.

E. The Contractor shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the terms and conditions of the Utility permit issued by the DEPARTMENT.

F. The LOCAL GOVERNMENT shall provide to the DEPARTMENT a copy of the agreement that the LOCAL GOVERNMENT enters into with the electric utility company for

said work.

G. If the LOCAL GOVERNMENT utilizes its own work force for any services for the Project, all costs and expenses thereof shall not be subject to reimbursement.

H. Upon reasonable request, the LOCAL GOVERNMENT agrees to provide progress reports to the DEPARTMENT in the standard format used by the LOCAL GOVERNMENT and at reasonable intervals established by the DEPARTMENT. The DEPARTMENT will be reasonably entitled to be advised, at its request, as to the status of work being done by the Contractor and of details thereof. Either party to the Agreement may request and shall, within a reasonable time thereafter, be granted a conference with the other party. Coordination shall be maintained by the LOCAL GOVERNMENT with representatives of the DEPARTMENT.

I. Upon completion of the work authorized by this Agreement, the LOCAL GOVERNMENT (or the Contractor) shall notify the DEPARTMENT in writing of the completion, the form of which is attached hereto as Exhibit "B," and the LOCAL GOVERNMENT shall require that the Contractor comply with all terms and conditions of the Utility permit associated with closing out the permit.

J. Upon completion of the Project, the LOCAL GOVERNMENT shall be responsible for the maintenance of the Highway Lighting constructed under this agreement in accordance with the terms of the "State Highway Lighting Maintenance and Compensation Agreement" previously signed by the parties hereto.

3. COMPENSATION AND REIMBURSEMENT

A. Project Cost: The total estimated cost of the Project is **\$21,248.00 (Twenty One Thousand Two Hundred Forty-Eight Dollars and No/100)**.

B. DEPARTMENT Participation: The DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount not to exceed **\$21,248.00 (Twenty One Thousand Two Hundred Forty-Eight Dollars and No/100)** for actual costs incurred, excluding LOCAL GOVERNMENT overhead. The funding for this Project is contingent upon annual appropriation by the Florida Legislature. Travel costs will not be reimbursed.

i) Invoices shall be submitted by the LOCAL GOVERNMENT in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable, and verifiable deliverables as established in Exhibit "A", Scope of Services. Deliverables must be received and accepted in writing by the Department's Project Manager or designee prior to

payment.

ii) Supporting documentation must establish that the deliverables were received and accepted in writing by the LOCAL GOVERNMENT and must also establish that the required minimum level of service to be performed as specified in Paragraph 2. E. was met, and that the criteria for evaluating successful completion as specified in Paragraph 2. I. was met.

iii) The DEPARTMENT will reimburse the LOCAL GOVERNMENT for deliverables upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice, proof that the Contractor has been paid by the LOCAL GOVERNMENT and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.

iv) All costs charged to the Project by the LOCAL GOVERNMENT shall be supported by detailed invoices, proof of payments, contracts or vouchers evidencing in sufficient detail the nature and propriety of the charges.

C. The DEPARTMENT shall have the right to retain all or a portion of any payment due to the LOCAL GOVERNMENT under this Agreement an amount sufficient to satisfy any amount due and owing to the DEPARTMENT by the LOCAL GOVERNMENT on any other Agreement between the LOCAL GOVERNMENT and the DEPARTMENT.

D. The LOCAL GOVERNMENT which is providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice, the DEPARTMENT has twenty (20) working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the LOCAL GOVERNMENT requests payment. Invoices which have to be returned to the LOCAL GOVERNMENT because of LOCAL GOVERNMENT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from

a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at (877) 693-5236.

E. Records of costs incurred under terms of this Agreement shall be maintained and made available upon reasonable request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL GOVERNMENT'S general accounting records and the Project records, together with supporting documents and records, of the Electric Utility Company and all subcontractors performing work on the Project, and all other records of the Electric Utility Company and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the LOCAL GOVERNMENT to the DEPARTMENT.

F. In the event this Agreement is in excess of \$25,000.00 (TWENTY-FIVE THOUSAND DOLLARS AND NO/100) and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

G. The DEPARTMENT'S performance and obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be

terminated, which shall be effective upon the DEPARTMENT giving notice to the LOCAL GOVERNMENT to that effect.

4. COMPLIANCE WITH LAWS

A. The LOCAL GOVERNMENT shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The LOCAL GOVERNMENT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof. The LOCAL GOVERNMENT shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Agreement.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Contract.

5. TERMINATION AND DEFAULT

A. This Agreement may be canceled by the DEPARTMENT in whole or in part at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the LOCAL GOVERNMENT shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors.

B. If the DEPARTMENT determines that the performance of the LOCAL GOVERNMENT is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the LOCAL GOVERNMENT, the DEPARTMENT shall

notify the LOCAL GOVERNMENT of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the LOCAL GOVERNMENT shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL GOVERNMENT.

6. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the LOCAL GOVERNMENT constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the LOCAL GOVERNMENT, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

C. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the Project is completed, any subsequent litigation is complete and terminated, final costs are known, and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

D. **PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact

business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

E. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

i) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

ii) The LOCAL GOVERNMENT shall expressly require any contractors and require those contractors to require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

F. All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

DEPARTMENT

Allison Godwin
Program Coordinator
MS 4-520
719 South Woodland Boulevard
DeLand, Florida 32720-6834
PH: (386) 943-5458
allison.godwin@dot.state.fl.us

Megan Reinhart
Design Project Manager
MS 2-546
719 South Woodland Boulevard
DeLand, Florida 32720-6834
PH: (386) 943-5252
megan.reinhart@dot.state.fl.us

Vincent Vacchiano
Construction Project Manager
MS 3-506
719 South Woodland Boulevard
DeLand, Florida 32720-6834
(386) 943-5406
vincent.vacchiano@dot.state.fl.us

LOCAL GOVERNMENT

Bonilyn Wilbanks
Town Administrator
Town of Malabar
2725 Malabar Road
Malabar, Florida 32950-4427
PH: (321) 727-7764 ext. 13
bwfree@townofmalabar.org

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement this ____ day of _____, 2015, and the DEPARTMENT has executed this Agreement this ____ day of _____, 2015.

TOWN OF MALABAR

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Town Administrator

Frank J. O'Dea, P.E.
Director of Transportation Development

Attest:

Attest:

By: _____
Town Clerk

Executive Secretary

Legal Review:

FDOT Attorney

Financial Provisions Approved by
the Office of Comptroller

Authorization Received From
The Comptroller's Office As
To Availability of Funds:

EXHIBIT "A"
SCOPE OF SERVICES

Financial Management Number: 437229-1-58-02

Purpose:

LOCAL GOVERNMENT'S electric utility company shall install a roadway lighting system within the Project limits of U.S. 1 from South of Riverside Drive North Town Limits. The lighting system is a critical component of the DEPARTMENT'S project making it imperative that roadway lighting is installed in a timely manner. The locations of the light poles that need to be installed are as follows:

Street Light Locations:

Poles 7-10 between MP 11.890-12.010 on U.S. 1 (See attached sketch).

Maintenance of Illumination Equipment and Facilities

The following conditions shall apply to the equipment and facilities used to provide the illumination services after illumination services have begun:

1. The equipment and facilities shall at all times remain the property of and be properly protected and maintained by the electric Utility in accordance with the Utility Accommodation Manual and current utility permit for the equipment and facilities.
2. The equipment and facilities shall be maintained pursuant to a separate agreement between the Local Government and the electric Utility. In the event the Local Government fails to comply with that separate agreement, the electric Utility may terminate the illumination services, provided however, that the electric Utility shall first notify the Department in writing and provide the Department with a reasonable opportunity to cure the non-compliance prior to terminating the illumination services.
3. The electric Utility nor the Local Government shall not engage in any act or omission which in any way interferes with the provision of illumination services including, without limitation, granting rights to third parties with respect to the equipment and facilities which interferes with the continued provision of illumination services.

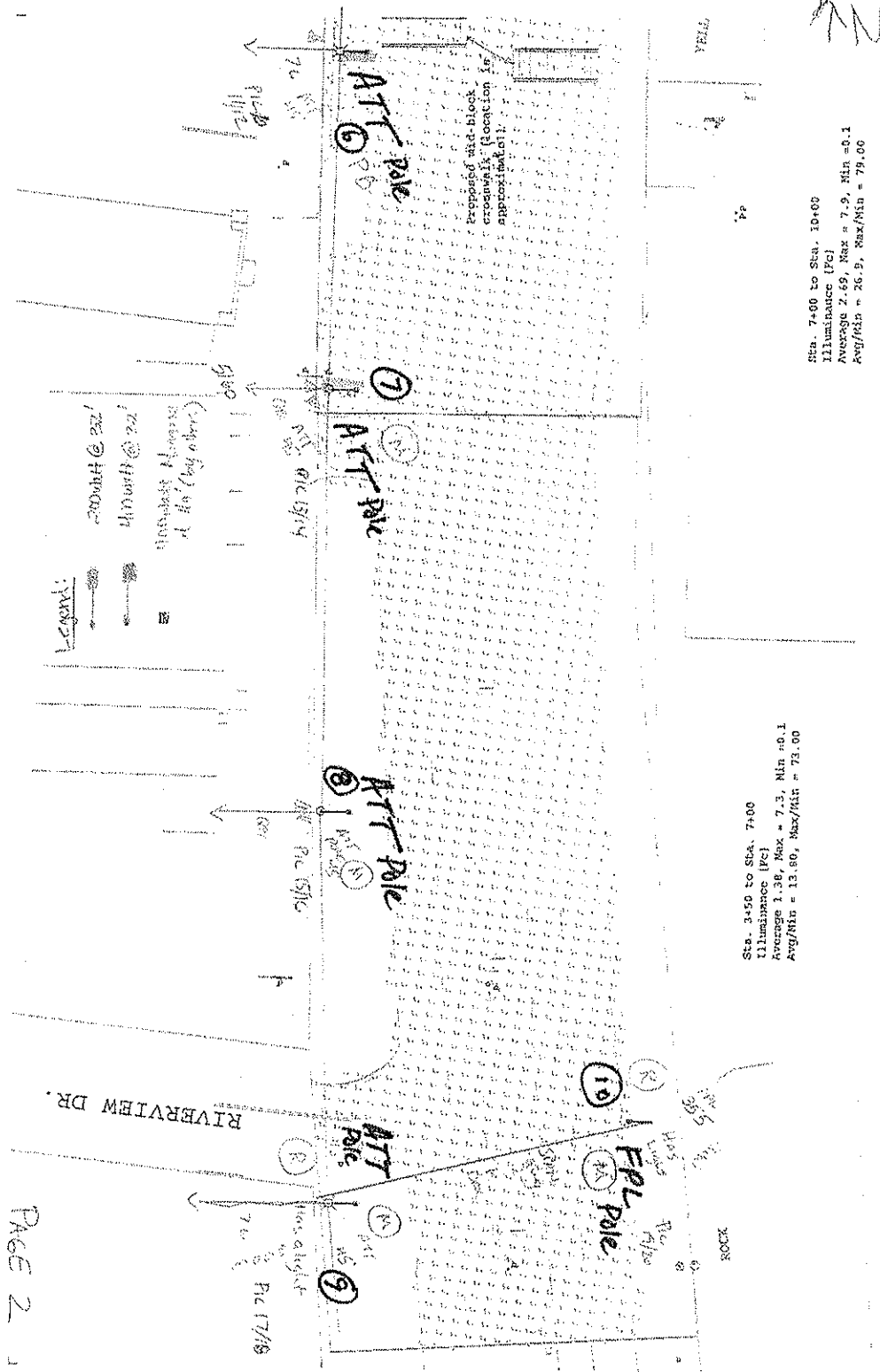


EXHIBIT "B"

NOTICE OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and the TOWN OF MALABAR

PROJECT DESCRIPTION: Construction of Highway Lighting on U.S. 1 from Riverside Drive to North Town Limits.

FINANCIAL MANAGEMENT ID# **437229-1-58-02**

In accordance with the Terms and Conditions of the JOINT PARTICIPATION AGREEMENT, the undersigned hereby provides notification that the work authorized by this Agreement is complete as of _____, 20__ and all terms and conditions of Utility permit associated with closing out the permit have been met.

By: _____

Name: _____

Title: _____

EXHIBIT "C"

RESOLUTION

Financial Management Number: 437229-1-58-02

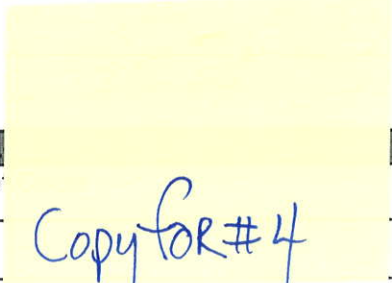
FYI.....

Week ending 11/14/14

Fire Department Update:

11/8/14 - 11/14/14

These are the incidents from ~~10/31/14~~ to ~~11/6/14~~



Quantity	Incident Type	Location
3	EMS	Malabar Rd.(2), Camelo
1	Wildland fire	Eva Lane
1	Public assist	Malabar Rd. & Weber Rd.
1	Cover assignment, standby	Babcock St. & Micco - (Mutual Aid Given)
1	Dispatched & cancelled	Hollow Brook Lane.



US #1 Update

You may recall I updated you regarding changes to US 1 pertaining to the continuous green and reduction of speed limits. We have also been notified by FDOT that there will be changes made to the area near where the double fatality occurred last December. They have advised us that they will be installing new traffic lights, a pedestrian crossing signal as well as installing a meter to capture the electric usage. Due to the tariff laws, FDOT cannot contract with FPL directly and must go through the municipality to utilize our traffic signal maintenance and construction agreement to complete this project. Our agreement with FDOT requires us to pay maintenance on the traffic control devices throughout the year and then FDOT reimburses us with an annual payment. Last year we paid \$2,411 for the maintenance and we were reimbursed \$4,785. FDOT District 5 has stated that this is their highest priority and that it will be completed by the end of the year. I have discussed this project work with the Town Attorney and he has requested to see the FDOT agreement. FDOT references to review.

Brook Hollow Bridge Repair Update

The RFP has been uploaded to Demand Star and a pre-bid meeting has been set for November 19th. The vender that we were originally working with lead Morris to believe that the project was larger or more technical than he has handled. We should have the results for the Dec 15th RTCM.

All Aboard Florida (AAF) Information

I am passing on some information that we received from the Town Attorney regarding AAF.

SR 514 Widening Update

I am attaching an FDOT letter I received today in which they are saying that they will not have to environmentally impact any of our parks which is good news.

Hope you have a nice weekend.

Bonnie

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: March 2, 2015

Prepared By: Bonilyn Wilbanks, Town Administrator

SUBJECT: Adopt Resolution Opposes Seismic Testing in Atlantic Ocean (Reso 02-2015)

BACKGROUND/HISTORY:

This was proposed by Mayor Beatty. The Space Coast League of Cities has discussed this and is opposed to the seismic air-gun testing off the mid-Atlantic coast. The proposed testing would consist of intense blasts of compressed air every 1 to 12 seconds twenty four hours a day for prolonged periods. Such testing could threaten the economic vitality of many Florida communities.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Resolution 02-2015

ACTION OPTIONS:

Request Action

RESOLUTION 02-2015

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, OPPOSING THE PROPOSED SEISMIC AIR-GUN TESTING IN THE ATLANTIC OCEAN TO SEARCH FOR OIL AND GAS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Bureau of Ocean Energy Management (BOEM) has proposed using seismic air-gun testing off the mid-Atlantic coast to search for oil and gas; and

WHEREAS, the Town of Malabar joins with the Space Coast League of Cities in the opposition of such a proposal and considers this a major threat to the coastal community and natural resources.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF MALABAR OF BREVARD COUNTY, FLORIDA that;

SECTION 1. The Town of Malabar opposes seismic air-gun testing.

SECTION 2. The Town Council of the Town of Malabar directs the Clerk to send copies of this resolution to the President of the United States, U.S. Senators Bill Nelson and Marco Rubio, Congressman Bill Posey and the Director of the Bureau of Ocean Energy Management.

SECTION 3. Conflict

All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 4. Effective Date.

This Resolution shall take effect immediately upon passage.

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 Grant Ball	_____
Council Member Brian Vail	_____
Council Member Don Krieger	_____
Council Member Dick Korn	_____
Council Member Marisa Acquaviva	_____

This Resolution was then declared to be duly passed and adopted this 2nd day of March, 2015.

TOWN OF MALABAR
By:

(seal)

Mayor Carl Beatty, Council Chair

ATTEST:

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

Approved as to Form and Content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: March 02, 2015

Prepared By: **Bonilyn Wilbanks, Town Administrator**

SUBJECT: Slope Mower Repair Quotes

BACKGROUND/HISTORY:

At Council's request at the 01/05/2015 RTCM, I was asked to provide the breakdown for the quote I received for the refurbishment of the boom for the Slope Mower from Everglades Farm Equipment, the company that we purchased the John Deere Slope Mower from. In addition, the Robinson Equipment representative was asked to provide a quote with complete breakdown of the dollars for the repair of the boom for the slope mower.

Both company representatives spoke with Alamo the manufacturer of the Boom, and neither of them were able to locate any information for the kit that Mr. Ryan presented to Council for \$8,156.35.

FINANCIAL IMPACT:

Robinson Equipment = \$38,335.83 (estimate only)
Everglades Farm Equipment = \$49,451.37 (estimate only)

ATTACHMENTS:

Section of Draft minutes from the RTCM 01/05/2015
Robinson Equipment = \$38,335.83 (estimate only)
Everglades Farm Equipment = \$49,451.37 (estimate only)

ACTION OPTIONS:

Staff requests Council discussion and action on this matter.

ROBINSON EQUIPMENT CO

QUOTE

3030 CUYLER STREET
MIMS, FL 32754

321-529-4905 PHONE
321-267-5824 FAX
BRYAN1@CFL.RR.COM

DATE January 27, 2015

EXPIRATION DATE 30 DAYS

TO: TOWN OF MALABAR
ATT: BONILYN WILBANKS
PHONE# 321-506-9392

SALESPERSON	JOB	PAYMENT TERMS	DATE
BRYAN MICHAUD		Due upon receipt	

QUANTITY	DESCRIPTION	UNIT PRICE	LINE TOTAL
	PARTS		
1.00	BOOM INSERT WITH KIN PIN		\$7,145.00
1.00	BOOM ASSEMBLY WITH HOSES		\$19,500.45
1.00	MAIN LIFT CYLINDER		\$1,192.18
1.00	SWING CYCLINDER		\$1,039.97
1.00	PIN		\$52.21
1.00	ARM PIN		\$101.12
1.00	HYDROLIC PUMP		\$2,623.21
1.00	HYD. FILTER		\$71.19
50.00	HYDROLIC FLUID	\$9.81	490.50
	REPLACE BOOM MOUNT, A-BOOM, ALL CYLINDERS, HYDRAULIC PUMP, AND HYDRAULIC FILTER, FLUSH HYD. SYSTEM		
72.00	EASTAMATE HOURS TO REPAIR	\$85.00	\$6,120.00
NOTE	DUE TO PREVIOUS WELD REPAIRS ON BOOM AND BOOM INSERT, LIABILTY REQUIRES REPLACEMENT.		

Quotation prepared by: _____ BRYAN MICHAUD _____

This is a quotation on the goods named, subject to the conditions noted below:
(Describe any conditions pertaining to these prices and any additional terms of the agreement.
You may want to include contingencies that will affect the quotation.)

To accept this quotation, sign here and return: _____

SUBTOTAL	\$ 38,335.83
SALES TAX	
TOTAL	

THANK YOU FOR YOUR BUSINESS!



6150 Orange Ave.
Fl. Pierce, FL 34947
(772) 461-5568
(772) 466-0735 Facsimile

January 26, 2015

To: Town of Malabar-Bonnie Wilbanks

Fr: Everglades Farm Eq-Rose Noelke

772-461-5568 ext 6

This estimate is for replacement of Alamo Boom mower, including all hoses & hardware needed that is attached to a 6420 John Deere tractor, all parts, labor & freight fees have been included in the estimate.

Parts: \$ 38,501.37

Labor: \$ 10,500.00

Freight fees: \$ 450.00

Estimated total: \$ 49,451.37

Please keep in mind this is an estimate, upon removing old boom or installing new boom technician may find other repairs that may be needed-which will be over and above this estimate.

This repair carries a 90 day parts & labor warranty, please see attached parts list for break down, if you have any questions please feel free to contact me.

Authorization





www.evergladesfarmequipment.com

2017 NW 16th Street • P.O. Box 910
Belle Glade, FL 33430
561-996-6531 • 800-582-4308

775 East Main Street
Immokalee, FL 34142
239-657-4413

9501 State Road 82
Ft. Myers, FL 33905
239-332-5045 • 888-213-7526

6918 US Highway 19
New Port Richey, FL 34652
727-842-8618 • 888-745-6855

1800 US Highway 441
Leesburg, FL 34748
352-315-1016 • 888-745-3823

820 US Highway 98 North
Okeechobee, FL 34972
863-763-1921 • 800-762-3214

6150 Orange Avenue
Ft. Pierce, FL 34947
772-461-5568 • 800-233-9958

13295 Southern Blvd.
Loxahatchee, FL 33470
561-784-4000

506 US Highway 301 North
Palmotote, FL 34222
941-722-3281 • 888-745-3822

2805 State Road 60 West
Plant City, FL 33567
813-737-1660 • 888-464-7208

Ship to:

Town Of Malabar
2725 Malabar Rd
Malabar, FL 32950

Invoice to:

Town Of Malabar
2725 Malabar Rd
Malabar, FL 32950

Branch 05 - Fort Pierce, FL		
Date 10/29/2014	Time 11:15:58 (O)	Page 1
Account No. MALAB003	Phone No. 3217277764	Estimate No. 001232
Ship Via	Purchase Order	
591032996	Salesperson BP5	

QUOTE EXPIRY DATE: 11/28/2014

PARTS ESTIMATE - NOT AN INVOICE

Part#	Description	Qty	Price	Amount
00001800	LOCKNUT	3	.62	1.86
00002700	FLATWASH	5	.29	1.45
00007000	BOLT 3/8	1	.74	.74
00011100	FLATWASH	3	.23	.69
00013900	HHCS	1	1.08	1.08
00015800	LOCKNUT	3	.92	2.76
00023100	HHCS	1	.64	.64
00037200	NUT 3/4-	1	3.11	3.11
00605600	HHCS	3	2.36	7.08
00606000	PIN, COTT	1	.35	.35
00748000	LOCKWASH	1	4.17	4.17
00749946	WASHER	4	5.27	21.08
00751838	CORDURA SLEEVIN	1	32.86	32.86
02030300	NUT TOPL	3	8.20	24.60
02957089	LOCKWASH	1	1.97	1.97
02905200	HOSE #4	1	89.93	89.93
02905300	HOSE #4 - 4FJX	1	115.97	115.97
02906300	CORDURA SLEEVIN	1	44.11	44.11
02921700	NUT JAM	1	3.77	3.77
02956972	HHCS	1	23.54	23.54
02957969	RUBBER GROMMET	2	3.12	6.24
02959084	CYL ROD GUARD A	1	200.41	200.41
02959225	BUSHING	1	16.85	16.85
02960406	ADP HYD	2	91.17	182.34
02960869	SET, TUBE CLAMP	1	14.85	14.85
02959225	BUSHING	1	16.85	16.85
02960406	ADP HYD	2	91.17	182.34
02960869	SET, TUBE CLAMP	1	14.85	14.85
02960982	TOP FOUR LINKAG	1	397.38	397.38
02960983	TOP FOUR LINKAG	1	353.20	353.20
02960991	HYD TUBE, A-BOOM	1	278.75	278.75
02960992	HYD TUBE, A-BOOM	1	273.50	273.50
02961054	HOSE #20-20FJX	2	424.75	849.50

3/168.82



www.evergladesfarmequipment.com

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2805 State Road 60 West
Plant City, FL 33567
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Ship to:
Town Of Malabar
2725 Malabar Rd
Malabar, FL 32950

Invoice to:
Town Of Malabar
2725 Malabar Rd
Malabar, FL 32950

Branch 05 - Fort Pierce, FL		
Date 10/29/2014	Time 11:15:58 (O)	Page 2
Account No. MALAB003	Phone No. 3217277764	Estimate No. 001232
Ship Via	Purchase Order	
591032996		
Salesperson BPS		

QUOTE EXPIRY DATE: 11/28/2014

PARTS ESTIMATE - NOT AN INVOICE

Part#	Description	Qty	Price	Amount
02961085	CORDURA	1	99.53	99.53
02963154	CLAMP, 1.25 TUB	3	16.93	50.79
02963323	BRACKET, TOP	3	36.12	108.36
00750479	HEXB 1	2	29.03	58.06
02965538	WELDMENT	1	145.56	145.56
02965548	BSHG TF-	4	21.78	87.12
02966443	BUSHING	1	66.77	66.77
02966756	WELDMENT	1	67.17	67.17
02966757	WELDMENT	1	105.40	105.40
02966791	BSHG TF-	1	31.05	31.05
02966935	WELDMENT	1	169.67	169.67
02966936	PIN, DIPP	1	164.74	164.74
02966964	WELDMNT,	1	115.03	115.03
02967008	PIPE, PIN	3	24.05	72.15
02967013	PIN, DIPP	1	54.72	54.72
02967021	LINKAGE	1	337.16	337.16
02967246	SHSS	1	4.46	4.46
03100099	FLATWASHER 1 X	1	1.83	1.83
02961054	HOSE #20-20FJX	2	424.75	849.50
02905100	HOSE #4	1	91.54	91.54
02905000	HOSE #4	1	63.46	63.46
02961779	LIFT CYLINDER A	1	1371.01	1371.01
02921700	NUT JAM	1	3.77	3.77
02960650	BUSHING	2	15.48	30.96
00752405	HHCS	1	6.89	6.89

Subtotal: 7325.52
Tax: .00
TOTAL: 7325.52

Authorization: _____

Handwritten:
freight \$ 400.00 Estimate
Booms 22,619.50
turret 8,156.35
\$ 38,501.37

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

5. Report by Park & Recreation Advisory Board Chair, Mr. Hans Kemmler

Exhibit: Agenda Report No. 5

Recommendation: Request Direction

Park Board Chair Kemmler said the Malabar Madness Disc Golf Competition on the 1st Saturday of January was a great success. It is held each year. He thanked them for approving the expenditure for the elevation survey. They need it so they can see if trails could be installed on property. They are moving forward on restroom grant at Sand Hill trailhead.

TA explained how Jim Clevenger, a local resident and owner of Sweetwater Custom Homes volunteered to set the donated flag poles. TA explained how the poles would be installed. Mayor said you should use sand and not concrete in posts after flag poles are inserted; that would provide easy extraction of flag poles in future. TA said the contractor is following the instructions. CM Ball asked about the roadway between the Brook Hollow SD and Malabar Road and asked Kemmler if that was part of Parks Dept. No, the right-of-way belongs to the Town and the property on either side is EELs Malabar Scrub West.

CM Acquaviva said she and her family, friends and those visiting for the holidays play turkey bowl at Malabar Community Park over Thanksgiving holiday. She said many people attend; more every year. They have been doing it for 15 years and each year everybody complements the park and how nice and clean it is kept. She wanted Kemmler to know how much it is appreciated.

6. Resident Mr. Charles Ryan re: Slope Mower Repairs & Maintenance

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Mr. Ryan, resident on Howell Lane, Malabar. He said he had 60 years of electronic, mechanical and electronic engineering. While in military service he did one year in Philippines working and taught himself to weld. Also while in service worked on power plants and steam plants and learned diesel equipment and what was needed to keep them running. Also was a machinist and that is how he funded his college. He had heard some concerns on Council and by non-Council residents regarding the slopemower. He did this just like he did the old school house when Council was considering that purchase.

Based on some questions about why we are replacing this. He met with Tom and this is when the pictures were taken. He is only dealing with slope mower, not the tractor. He showed pictures of the arm and the pin. He showed the way the arm is used. He pointed out there was no indication of being greased. He stated the grease keeps them from wearing.

He stated he did a public records request (PRR) on 11/19 for maintenance records on the slope mower. Eventually found out that there were no maintenance records, only miscellaneous receipts. He said Council can draw their own conclusions. The people in the Fire Dept and in Public Works are custodians of Town property. Mr. Ryan said TC was under impression that Everglades was going to do the inspection and then found out it was done by Robinson.

CM Acquaviva asked Mayor Beatty what records he kept when he was in charge. Mayor said trip tickets were done. They did not do maintenance logs. Mayor Beatty said for the record, we, PW, back in the day; they had a log book and every piece of equipment. They hired two secretaries that were supposed to input all the records into an Excel spreadsheet. The one was sent to school to learn Excel on a Tuesday and then was let go on a Thursday.

TA said no records of trip tickets or any other records were found when Tom took over. CM Acquaviva said Council started with the FD with the two workshops last year and requested logs be kept; we need to do this for PW equipment also. CM Acquaviva asked Mr. Ryan what is the

bottom line of his presentation? What is his conclusion? Mr. Bud Ryan said he will not make a recommendation. CM Korn said they are getting away from Mr. Ryan's report. All employees that operate equipment owned by the Town are responsible to maintain it. (Note: While Mr. Ryan was at the screen showing and speaking to the pictures his comments were not picked up by microphone.

TA reported on why they used Robinson Equipment. She explained the attempt to get the John Deere dealer to certify that the five heads we had could be used on that unit. They finally got back to her and said no the heads would not work. That is why they asked for the additional 12K so they could get the model with the arm that would allow us to use the Town owned heads. At budget time they discussed buying a new slopemower and using the old tractor to operate another head that would not have to be switched out and would save PW from three (3) hours of downtime while the heads are changed. Council asked her to get a professional inspection. Separate boom from tractor. She reported to Council that the inspection would be done by Robinson.

CM Acquaviva said they want to know how it is going to be fixed. What is the bottom line? Should they get the kit? Mr. Ryan said that it is an all inclusive kit. She said it seems Mr. Ryan is saying that maintenance wasn't done, and he didn't get requested records in a timely fashion. CM Korn said a 23 year old tractor is not old for a tractor. Mr. Ryan said he had to leave the meeting.

TA would like to afford the professional representative from Robinson Equipment the opportunity to speak. Brian Bresshard, came to podium. He lives in Mims; He is here on his own time. Gave a little background; was Chief Mechanic for 280 pieces of equipment at Titusville for 14 years. They had the exact same machine. Every 200 hours it is greased from top to bottom. In between other things need to be done. In nine years the boom was rebuilt several times. Where he worked if a piece of equipment needed work the piece was sidelined until it is fixed. When he arrived at Malabar PW to look at it, it turned over but did not start. Tom told him PB repaired the fuel system. He went over it best he could. The hydraulic pump had wrappings because it leaked. The last picture showed that the bad wear and is so worn that no bushing replacement kit will fix

He showed the three feet of boom removed. That is substantial -- he would have gotten a full replacement. After repeated welding's the metal fatigues. It is dangerous to the operator and is a liability for the Town.

He then went over the prior pictures. Regarding the pins, once it is worn out there is no fixing this. And until you pull it apart you don't know.

TA said that we do have all of the receipts for parts so our PW could do repairs. TA said since the recession the budget has not provided for any improvements in PW. We did everything possible in house to save money. Things changed in 2011 and we signed contract with Palm Bay Fleet Services. CM Acquaviva confirmed that.

CM Korn said it spent 8 weeks at PB. TA said it is not the only piece they work on. If we did that and if it is broke again did we contact Palm Bay? CM Ball how long do you expect a piece to last. Tractors, dump trucks, 15 years. They replaced the boom at 11 years. The cost of the tractor back then was 48K. You can get 12 to 15 thousand hours if it is operated properly. One bad operator in first two years could shorten the equipments life years later. Brian said it is 10 years of use – not misuse.

CM Acquaviva stated she is not a mechanic, but it is not always operator error. She relates analogy of her new dryer breaking down and her being at fault. Turned out there was a piece in the dryer that didn't fit and it jammed the drum. There are probably things that could be similarly

wrong with any piece of equipment; we can pontificate all night, but that is not going to resolve this.

CM Vail is a mechanic and has worked on this machine. Bushings could be fabricated for this. The welds are nothing more than throwing bubblegum on it. Is the 8K kit for the mast? The bottom line is that 6K hours is not old. CM Vail said the 6450 John Deere they had to change fuel filters every three years. They cleaned out the fuel tank. He said Felix greases it twice daily. It is not operator abuse. Do we invest the money to repair what we have?

Mr. Bresshard said it is a catch 22; you can spend 20K and three months later it stops running again. PW Director Tom had told him it was like that since he was here.

Mayor wanted to address a few points. Has 20-25 years experience with Alamo and then John Deere. Explained how it was.

CM Vail – point of order. Can Attorney leave? Yes 9:50pm.
(No Recess – Attorney Excused)

Mayor said he has extensive experience with this. There are issues with this tractor that should have been brought up three (3) years ago. He has pulled them apart and changed things and put in bushings. The boom doesn't swing fast. Mr. Bresshard said the expenses can just mount up. At Titusville they caught it before it got this bad. TA asked what Council wanted.

CM Vail said they want the refurb on the boom, remove the welds, so we have 3-5 years of extended life. Fuel system problem TBD. Worst case scenario, the arm can be mounted on something else.

Mayor said the fuel tank has never been cleaned. It should be run down and cleaned or replaced. Mayor wants to look at tractor when it is available.

CM Korn asked Mr. Bresshard if he could get Robinson to give us a quote to refurb the slopemower. Mr. Bresshard said yes.

- J. ACTION ITEMS:**
MISCELLANEOUS: 4
 7. **Cancel or Reschedule 2nd Meeting in January & February**
Exhibit: Agenda Report No. 7
Recommendation: Request Action

MOTION: CM Korn / CM Acquaviva to cancel the 2nd meeting in January and February, 2015
Vote: All Ayes

8. **Request Ford Explorer used as Eagle Patrol be Declared Surplus**
Exhibit: Agenda Report No. 8
Recommendation: Request Action

MOTION: CM Acquaviva / CM Vail to surplus vehicle and bring back to next meeting on how disposal is to be done.

Discussion: TA explained how staff handles it. CM Krieger called the question. **VOTE:** All Ayes

(No Recess – Attorney Excused)

- K. PRESENTATIONS:**
L. PROCLAMATIONS:
M. STAFF REPORTS: ADMINISTRATOR:
 Detour signs for work on Corey and Atz. The concrete pipe needs to be wrapped.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 7
Meeting Date: March 02, 2015

Prepared By: **Bonilyn Wilbanks, Town Administrator**

SUBJECT: Disposal of Surplus Property

BACKGROUND/HISTORY:

At Council's request at the 01/05/2015 RTCM, I was asked to provide the process for the disposal of Town property that was established before my tenure and I have followed the process that Mr. Booth used.

- A list was compiled by the Department Head of the various departments of property items that were of no active or future usefulness to the department.
- On the list the department head would advise on any dollar value or trade-in value for the equipment that Council would take into consideration at the time of determining the property to be surplus.
- List would be brought to Council and the designation would be made by Council of surplus.

Once that step was completed, any items that had value would be considered to be put on the GovDeals.com website and they handle the selling of the property and reimburse the Town once the sale is completed.

To date, the items brought to Council have had no real value. There were two vehicles that were surplus and we requested Council to allow the Fire Department to use them to practice with "jaws of life" training on them. There were two other vehicles, one old white van in 2009 that was not in running condition and the body was in very bad shape. We were setting it up to be scrapped and an employee in PW asked to purchase it and submitted a sealed bid and paid the Town (\$500) for it. He was using the metal from it to repair his own vehicle as he was a welder. In 2014, the old jeep (Chief's old vehicle) and the Ford Crown Victoria were surplus by Council. The jeep was sold by sealed bid for \$200 to an employee of the Fire Department in "as is" condition and she was going to put in a new engine and do the body work that was needed.

The other items surplus, which were old computers have not been disposed of as it requires us to clean the hard drives before we can scrape them or donate them and we have not had the time to have that done. In 2012, (estimated year), the Council approved a donation of a piece of equipment for farming that we had sitting in the PW yard for better than 10 years, and it was donated to the Brevard County Farm which falls under FS Chapter 274 for disposal.

FINANCIAL IMPACT:

N/A at this time

ATTACHMENTS:

Section of Draft minutes from the RTCM 01/05/2015
FS Chapter 274.05-06
69I-73.005 Disposition of Property

ACTION OPTIONS:

Staff requests Council discussion and action on this matter.

69I-73.005 Disposition of Property.

(1) Methods of Disposition – Property within the meaning of these rules may be lawfully disposed of, as provided in Sections 274.05, 274.06 and 274.07, F.S. Property of the governmental unit which is not accounted for during regular or special inventories shall be subject to the rules regarding unaccounted for property (See Rule 69I-73.006, F.A.C.).

(2) Required Information – The following information shall be recorded on the individual property record for each item lawfully disposed of, pursuant to Sections 274.05, 274.06 or 274.07, F.S.:

(a) Date of disposition.

(b) Authority for disposition (resolution of the governing body properly recorded in the minutes as required by Section 274.07, F.S.).

(c) Manner of disposition (sold, donated, transferred, cannibalized, scrapped, destroyed, traded).

(d) Identity of the employee(s) witnessing the disposition, if cannibalized, scrapped or destroyed.

(e) For items disposed of, a notation identifying any related transactions (such as receipt for sale of the item, insurance recovery, trade-in).

(f) For property certified as surplus, reference to documentation evidencing that such property was disposed of in the manner prescribed by Section 274.05 or 274.06, F.S.

(3) Transfer of Property Records – The individual property record for each item lawfully disposed of as described in this rule shall be, upon disposition of the item, transferred to a disposed property file. Destruction of such records shall be governed by the provisions of Chapter 119, F.S.

(4) Control Account – The cost or value of items lawfully disposed of shall be removed from the control account at the time of disposition.

Specific Authority 274.02 FS. Law Implemented 274.02 FS. History–New 3-25-08.

274.05 Surplus property.—A governmental unit shall have discretion to classify as surplus any of its property, which property is not otherwise lawfully disposed of, that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function. Within the reasonable exercise of its discretion and having consideration for the best interests of the county or district, the value and condition of property classified as surplus, and the probability of such property's being desired by the prospective bidder or donee to whom offered, the governmental unit may offer surplus property to other governmental units in the county or district for sale or donation or may offer the property to private nonprofit agencies as defined in s. 273.01(3) by sale or donation. If the surplus property is offered for sale and no acceptable bid is received within a reasonable time, the governmental unit shall offer such property to such other governmental units or private nonprofit agencies as determined by the governmental units on the basis of the foregoing criteria. Such offer shall disclose the value and condition of the property. The best bid shall be accepted by the governmental unit offering such surplus property. The cost of transferring the property shall be paid by the governmental unit or the private nonprofit agency purchasing or receiving the donation of the surplus property.

History.—s. 5, ch. 59-163; s. 21, ch. 94-226; s. 6, ch. 96-209; s. 1, ch. 96-236.

274.06 Alternative procedure.—Having consideration for the best interests of the county or district, a governmental unit's property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function, which property is not otherwise lawfully disposed of, may be disposed of for value to any person, or may be disposed of for value without bids to the state, to any governmental unit, or to any political subdivision as defined in s. 1.01, or if the property is without commercial value it may be donated, destroyed, or abandoned. The determination of property to be disposed of by a governmental unit pursuant to this section instead of pursuant to other provisions of law shall be at the election of such governmental unit in the reasonable exercise of its discretion. Property, the value of which the governmental unit estimates to be under \$5,000, may be disposed of in the most efficient and cost-effective means as determined by the governmental unit. Any sale of property the value of which the governmental unit estimates to be \$5,000 or more shall be sold only to the highest responsible bidder, or by public auction, after publication of notice not less than 1 week nor more than 2 weeks prior to sale in a newspaper having a general circulation in the county or district in which is located the official office of the governmental unit, and in additional newspapers if in the judgment of the governmental unit the best interests of the county or district will better be served by the additional notices; provided that nothing herein contained shall be construed to require the sheriff of a county to advertise the sale of miscellaneous contraband of an estimated value of less than \$5,000.

History.—s. 6, ch. 59-163; s. 22, ch. 94-226; s. 7, ch. 96-209.

274.07 Authorizing and recording the disposal of property.—Authority for the disposal of property shall be recorded in the minutes of the governmental unit. The disposal of property within the purview of s. 274.02 shall be recorded in the records required by that section.

History.—s. 7, ch. 59-163.

274.08 Penalty.—Any person who violates any provision of this act or any rule prescribed pursuant to its authority shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 59-163; s. 158, ch. 71-136.