



# REGULAR TOWN COUNCIL MEETING

Monday, April 3, 2023 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA

**a. Approve Minutes of 03/20/2023**

Exhibit: Agenda Report Number 4a

**Attachments:**

- **Agenda Report Number 4a** (Agenda\_Report\_Number\_4a.pdf)

**b. C.A.P. Government Contract Extension**

Exhibit: Agenda Report Number 4b

**Attachments:**

- **Agenda Report Number 4b** (Agenda\_Report\_Number\_4b.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS

**a. T&G Committee**

**b. Park & Recreation Board**

Exhibit: Agenda Report Number 7b

**Attachments:**

- **Agenda Report Number 7b** (Agenda\_Report\_Number\_7b.pdf)

**c. Planning & Zoning Board**

Exhibit: Agenda Report Number 7c

**Attachments:**

- **Agenda Report Number 7c** (Agenda\_Report\_Number\_7c.pdf)

**8. STAFF REPORTS**

**a. Town Manager**

**b. Town Treasurer**

Exhibit: Agenda Report Number 8b

**Attachments:**

- **Agenda Report Number 8b** (Agenda\_Report\_Number\_8b.pdf)

**c. Special Projects Manager**

Exhibit: Agenda Report Number 8c

**Attachments:**

- **Agenda Report Number 8c** (Agenda\_Report\_Number\_8c.pdf)

**d. Fire Chief**

**e. Public Works Director**

**f. Town Clerk**

Exhibit: Agenda Report Number 8f

**Attachments:**

- **Exhibit: Agenda Report Number 8f** (Agenda\_Report\_Number\_8f.pdf)

**9. PUBLIC COMMENTS**

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

***Five (5) Minute Limit per Speaker***

**10. PUBLIC HEARINGS / SPECIAL ORDERS**

**11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING**

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

**12. ACTION ITEMS**

ORDINANCES:0

RESOLUTIONS:0

MISCELLANEOUS:0

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**13. DISCUSSION/POSSIBLE ACTION**

**a. Amending Land Development Code, Article II – Land use Zoning, Section 1- 2.6**

Land Use Classifications and Table 1-3.2 Land Use By Districts for Limited Manufacturing Activities and Limited Manufacturing Activities providing for a permitted or conditional use in Article VI. Conditional Use and Special Exception Use Criteria in Table 1-6.1(B) - Conditional Land Use Requirements.

Exhibit: Agenda Report Number 13a

**Attachments:**

- **Agenda Report Number 13a** (Agenda\_Report\_Number\_13a.pdf)

**b. EDC Road Assessment Report**

Exhibit: Agenda Report Number 13b

**Attachments:**

- **Agenda Report Number 13b** (Agenda\_Report\_Number\_13b.pdf)

**c. Continued Discussion Build New or Expand Existing Town Hall**

Exhibit: Agenda Report Number 13c

**Attachments:**

- **Agenda Report Number 13c** (Agenda\_Report\_Number\_13c.pdf)

**d. Continued Discussion Organizational Chart**

Exhibit: Agenda Report Number 13d

**Attachments:**

- **Agenda Report Number 13d** (Agenda\_Report\_Number\_13d.pdf)

**14. PUBLIC COMMENTS**

General Items (Speaker Card Required)

**15. REPORTS - MAYOR AND COUNCIL MEMBERS**

**16. ANNOUNCEMENTS**

(1) Vacancy on the Board of Adjustments, (2) Vacancies on the Parks and Recreation Board, (1) Vacancy on the Planning and Zoning Board.

**17. ADJOURNMENT**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure 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. 86.26 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.

# TOWN OF MALABAR

## Regular Town Council Meeting

**AGENDA ITEM NO: 4.a**

**Meeting Date: April 3<sup>rd</sup>, 2023**

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Approve Minutes of the RTCM of 3/20/2023**

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**BACKGROUND/HISTORY:**

Summary of actions at Town Council Meetings

**ATTACHMENTS:**

- Draft Minutes of RTCM of 3/20/2023

**ACTION OPTIONS:**

Review

**MALABAR TOWN COUNCIL  
REGULAR MEETING MINUTES  
March 20<sup>th</sup>, 2023, 7:30 PM**

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

**1. CALL TO ORDER:**

Council Chair Mayor Patrick T. Reilly called meeting to order at 7:30 pm. CM Scardino led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

DAVID SCARDINO

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

JIM CLEVINGER

MARY HOFMEISTER

TOWN MANAGER:

MATT STINNETT

TOWN ATTORNEY:

KARL BOHNE - EXCUSED

SPECIAL PROJECTS MANAGER:

LISA MORRELL

TOWN CLERK:

RICHARD KOHLER

FIRE CHIEF:

MIKE FOLEY

- 3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** CM Vail requests an opportunity to delay item 11d, and states he is unprepared to make a decision. Mayor Reilly states it is discussion only.

**4. CONSENT AGENDA:**

**4.a. Approve Minutes of 3/06/2023 RTCM**

**MOTION:** CM Scardino/CM Vail to approve Consent Agenda.

**Discussion:** None

**Vote:** All Ayes (5-0).

- 5. ATTORNEY REPORT:** None

**6. STAFF REPORTS:**

**6.a. Town Manager – Matthew Stinnett –** TM Stinnett informed Council that the pre conflict assessment meeting with the county will take place on April 10<sup>th</sup>. That will be the first meeting of that process. Public Works Truck was delivered today.

**6.b. Special Projects Manager – Lisa Morrell –** States she will be out of office at the end of the month, and requests Council to delegate a staff member to perform Payroll while she is gone. None provided.

**6.c. Town Clerk – Richard Kohler –** TC Kohler informed Council that at today's Brevard County City Clerks Association meeting, the Brevard County Director of Communications, Mr. Don Walker, presented an update on the County's Legal Ad Website. Due to the passing of HB 7049, municipalities can post their legal ads on a County website, as long as it is less expensive than the local newspaper. In the pricing structure presented today, our most recent legal ad, which cost us \$159.31, would have cost \$50.00. We are expecting an ILA from the County by the end of May, and should be able to post to their website by the end of June.

- 7. PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

**Five (5) Minute Limit per Speaker.**

**Speaker:** None

- 8. PUBLIC HEARINGS / SPECIAL ORDERS: 0**

**9. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO TOWN APPOINTED BOARDS/COMMITTEES: 0**

**10. ACTION ITEMS:**

**ORDINANCES for FIRST READING: 0**

**RESOLUTIONS: 1**

**MISCELLANEOUS: 0**

**10.a. FDOT State Highway Lighting, Maintenance, and Compensation Agreement (Resolution 03-2023)**

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO A STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF MALABAR; PROVIDING FOR AUTHORIZATION FROM COUNCIL FOR THE TOWN MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING FOR A REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

Clerk Kohler read by title only.

**MOTION:** CM Acquaviva/CM Vail move to approve Resolution 03-2023.

**Discussion:** TM Stinnett states this is housekeeping. This funds our 335.4900, Traffic Signal Maintenance, and offsets account 541.4300, Street Lights and Signals.

**ROLL CALL VOTE:** CM Clevenger, Aye; CM Scardino, Aye; CM Hofmeister, Aye; CM Acquaviva, Aye; CM Vail, Aye. Motion Carries 5-0.

**Chair excused the Attorney at this time.**

**11. DISCUSSION/POSSIBLE ACTION**

**11.a Roadway Asphalt Pavement Surface Evaluation.**

Chair asked TM Stinnett to introduce. TM Stinnett introduced Mr. Baggett or EDC. Mr. Baggett stated his company has inventoried all asphalt roads in Malabar to provide information for future repairs.

Presentation available upon request.

Council thanked Mr. Baggett for his presentation. CM Hofmeister asks if he has a recommendation for the patch problem at Corey and Malabar. Mr. Baggett states patches are very rarely similar to the area around them. Mr. Baggett states that unpaved driveways can severely deplete the quality of a paved road. CM Vail noted the corners of many collector roads are not wide enough to handle Malabar's traffic. Mr. Baggett states his final recommendations are included in the report. The roads are all safe to drive, and there is no risk of road failure. The newer paved roads in Town look excellent, but should be maintained before they begin to show distress. He also states that poor drainage can contribute to road distress, particularly in Rocky Point. CM Acquaviva states we will need thermal painting in some roads soon, does he recommend the Town not paint until they repair the road? Mr. Baggett states it would not be advisable, as it will likely have to come up with the repairs on the roads. He states Reflective Pavement Markers (RPMs) can be installed instead. CM Hofmeister asks about what would be best for the driveways. Mr. Baggett stated a 4-6 inch concrete or asphalt footer to connect to the road. CM Vail states when the Town did Hunter Lane, they paved about a foot of each driveway to act as a benchmark. He suggests aprons be included on minor roads and driveways during any reconstruction. Mayor Reilly asks TM Stinnett what the action is moving forward. TM Stinnett states he will meet with Mr. Rivet to create a top-10 list and bring it back for Council review. He has also contacted Palm Bay about adding Briar Creek Blvd to their current paving project. CM Hofmeister asks why that is not ready now? TM explains there have been delays, and he only received the final presentation today.

**11.b Town Manager to Perform Employee Reviews.**

Chair asked CM Hofmeister to introduce, CM Hofmeister states that with all of the different issues around staffing, she feels it is important to do reviews. We want to retain our employees and hear from them. She remembers Council stated they would do reviews and wants the action to expand. She believes everyone is doing a great job and wants to look for ways to expand that success. CM Vail asks if she means all managers or the Town Manager? CM Hofmeister states she means the Town Manager, but each manager should review their employees too. CM Acquaviva believes Council should also review the Charter Offices. CM Hofmeister believes there have been a lot of changes in the last few years, and she would like to hear some feedback. CM Acquaviva states she is a big proponent of reviews. She has been regularly in contact with the Town Manager and is pleased with the information she receives. She does believe there should be reviews. CM Scardino asks if reviews are being done now? CM Acquaviva states no. CM Vail states reviews help employees that have room for improvement and may help employees that move on from Malabar. He believes they are constructive, and we should encourage them. He states the department managers should also review their staff. CM Acquaviva states that in the past, everyone did reviews annually. She suggests selecting a date and having all reviews be due by then. She hears the informal information, but we should formalize it. CM Hofmeister states that this is to hold people accountable, identify strengths and weaknesses, and find ways to improve. CM Clevenger states the department heads should keep tabs on their employees. He feels it would be micromanaging to review every employee but would support directing the Town Manager to perform reviews. Mayor Reilly asks what would happen to the data? He states it goes into their personnel file and doesn't go to Council. CM Hofmeister states when Ms. Franklin left, a lot of her duties were spread out. We should do a review to determine where those duties went, and if they are being properly handled. Before we move forward in our staffing selection, we should review the staff we have. CM Hofmeister moves to table this for discussion at a future date. Mayor asks what the outcome goal is? He states the TM will do the review, and it goes in the file. CM Vail states if the Chief did a review, it stays with the Chief. However, if the employee needs improvement or is unfit, the Department head will request help. Mayor states we will continue the discussion at a future meeting.

#### **11.c Expand Existing Town Hall or Build New Town Hall.**

Chair asked CM Hofmeister to introduce. CM Hofmeister states that in review, she asks why we are expanding our old building, and not building a new one like the Town has planned for years. What is the possibility of checking that out? Can we combine with the Fire Department? What about Marie Street, the Old School House? Mayor Reilly states there is a proposal to build one in Malabar Park. CM Scardino states we don't have the money to build a new Town Hall. He does not believe the citizens want a new Town Hall. He believes they would rather see their roads improved. CM Vail asks if this was a referendum in the past? Mayor states it was, and it failed. CM Clevenger states people's minds don't change on issues like that. CM Scardino states we have about 300k to expand the existing building. CM Acquaviva states she understands CM Hofmeister's point, but historically it has not been well received by the residents. CM Hofmeister states we have an aging community, and pulling in and out of our building is dangerous. Mayor Reilly suggests CM Hofmeister look independently at a proposal. CM Vail states that in the past, he has supported building a new Town Hall. He encourages her to explore any options, and to report back. CM Scardino states his fear is we will explore this, and nothing will happen. CM Vail suggests continuing to move forward with the existing expansion, and explore the new building option as well. Mayor states when he was first elected, he made it a major goal to build a new Town Hall. Grant Valkaria built theirs for about 500k. We were planning to offset costs with the EELs program, and they pulled their support. CM Acquaviva states she would love to see a new Town Hall, but we just raised taxes on the promise to build roads. TM Stinnett's suggestion was a quick fix that will improve the day to day operations. CM Vail suggests doing both. CM Scardino, states fix what we have with the money we have but explore other options for future funds. CM Hofmeister states she will research this and bring back her findings at a future meeting.

#### **11.d Organization Discussion Continued.**

Chair began by stating he believes we do not need an assistant Town Manager. We need an Administrative Assistant to assist all charter offices. CM Scardino & CM Hofmeister agree. CM

Hofmeister states while she appreciates the TM's service to our nation, we never know when TM Stinnett may get called up, so having an assistant could help, but she is confident this method will work effectively. CM Acquaviva asks who would fill the Project Manager/Treasurer? Mayor states potentially Ms. Morrell, but we will post the position. CM Hofmeister asks if we can renegotiate Ms. Morrell's contract to reflect the additional duties? Mayor states yes, we can. CM Acquaviva states we cannot punish someone for their National Guard Duties. She does not want Council to take TM Stinnett's additional duties in the Guard to count negatively against him. CM Hofmeister states that Ms. Morrell was hired to oversee the Town when TM Stinnett is gone. She has gone above and beyond and should be recognized for it. A lot has changed since she was hired, and she feels we should review it. She admires TM Stinnett's service and commitment, but the Town should have someone in place to keep the Town running while he's gone. CM Acquaviva states she wants to retain what we have and make it work. Mayor states this discussion will continue at a future meeting.

**12. PUBLIC COMMENTS: General Items (Speaker Card Required)**

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

**CM Acquaviva:** None

**CM Vail:** None

**CM Clevenger:** None

**CM Hofmeister:** None

**CM Scardino:** None

**Mayor Reilly:** Mayor thanked Staff for their help in planning and preparing the SCLoC dinner last week. He thought it was an excellent event.

**14. ANNOUNCEMENTS:** (1) Vacancy on the Planning & Zoning Board; (2) Vacancy on the Parks & Recreation Board; (1) Vacancy on Board of Adjustment.

**15. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:02 P.M.

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

ATTEST:

\_\_\_\_\_  
Richard W. Kohler  
Town Clerk

Date Approved: 04/03/2023



# TOWN OF MALABAR

## Regular Town Council Meeting

**AGENDA ITEM NO: 4.b**  
**Meeting Date: April 3<sup>rd</sup>, 2023**

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: C.A.P. Government Contract Extension**

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### **BACKGROUND/HISTORY:**

The Town of Malabar currently contracts its building inspection and plan review services through C.A.P. Government. The contract is piggybacked from the City of Palm Bay and has renewal clauses. Town Staff recommends executing this renewal clause to continue utilizing C.A.P. Government throughout the next year.

### **ATTACHMENTS:**

- CAP Government Amendment #1 to Contract #09-2021
- Professional Services Agreement Between the Town of Malabar, Florida and CAP Government, Inc. (Contract #09-2021)

### **ACTION OPTIONS:**

Extend Contract

**TOWN OF MALABAR**  
**AMENDMENT #1**  
**TO CONTRACT #09—2021**  
**PLAN REVIEW AND BUILDING INSPECTOR SERVICES**

**This amendment to contract** is made and entered into this 3<sup>rd</sup> day of April 2023, by and between the Town of Malabar, a municipal corporation organized and existing under the State of Florida, hereinafter referred to as the “Town” and C.A.P. Government Inc., hereinafter referred to as the “Contractor.”

WHEREAS the Town and the Contractor entered into a Contract under the date of October 21<sup>st</sup>, 2022, whereby the contractor would perform certain services with respect to **plan review and building inspector services**, and

WHEREAS the Town and the Contractor desire to **renew** the term of said agreement,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- I. To **renew** the term of agreement through **April 3, 2024**.
- II. No price increases will be allowed.

In all other respects and, except as specifically modified and amended, the Contract dated, October 21<sup>st</sup>, 2022, shall continue in full force and effect as written. The parties hereto execute this Amendment to become effective as of the date and year first written above.

**TOWN OF MALABAR**

**C.A.P. GOVERNMENT, INC.**

Matthew Stinnett

By: \_\_\_\_\_

Town Manager

Name/Title

\_\_\_\_\_

\_\_\_\_\_

Signature

Signature

\_\_\_\_\_

\_\_\_\_\_

Date

Date

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF MALABAR, FLORIDA  
AND CAP GOVERNMENT, INC.**

This Professional Services Agreement ("Agreement") is entered into by and between the Town of Malabar, Florida, ("Municipality") and CAP Government, Inc, 343 Almeria Avenue, Coral Gables, FL. 33134 ("Consultant"). The Municipality and the Consultant shall be jointly referred to as the "Parties".

**RECITALS**

WHEREAS, the Municipality's procurement ordinance and procedures permit the purchase of goods and/or services by "piggyback" on agreements awarded by other government entities; and

WHEREAS, Consultant is capable of performing the services previously contracted with the City of Palm Bay, Florida in accordance with the Agreement entered into March 11, 2021 pursuant to IFB No. 09-0-2021/SZ, Plan Review and Building Inspector Services; and

WHEREAS, Municipality and the Consultant have determined that the City of Palm Bay's Agreement is an acceptable agreement upon which the Municipality and the Consultant shall establish a cooperative agreement; and

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Municipality and Consultant agree as follows:

**1. TERM AND CONDITIONS**

Except as otherwise stated herein, the terms and conditions of the City of Palm Bay Agreement shall form the bases of this Agreement with the Municipality. A true and correct copy of the City of Palm Bay Agreement is attached as Exhibit A. The City of Palm Bay Agreement is hereby incorporated into the Agreement and shall be the controlling document.

**2. COMMENCEMENT AND COMPLETION**

This Agreement shall be effective on the latest date on which this Agreement is fully executed by both Parties. And ending on March 19, 2023. This Agreement may, by mutual written assent of the parties, be extended for four (4) additional twelve (12) month period of portions thereof.

**3. CHANGES TO SCOPE OF SERVICES**

Any changes to Services between the Municipality and Consultant shall be made in writing that shall specifically designate any changes in Service levels and compensation for the Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Agreement Amendment executed by both Parties.

**4. SCOPE OF SERVICE**

Consultant shall provide building official, code compliant inspection, plan review services and permit technician on an as-requested basis during normal business hours. Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality. The qualified professionals employed by Consultant will maintain current certifications, certificates, licenses as required for Services that they provide to Municipality in accordance with State of Florida, Chapter 468, Florida Statutes.

5. **FEE SCHEDULE**

Consultant fees for Services provided pursuant to this Agreement will be as follows:

<b>Position:</b>	<b>Standard Hourly Rates</b>
Building Inspector	\$80.00
Plans Examiner	\$90.00
Building Official	\$100.00
Fire Inspector	\$80.00
Fire Examiner	\$90.00
Permit Technician	\$45.00
Hourly rates include reimbursable cost and travel	
Services requested beyond regular business hours Monday through Friday or Saturday will be invoiced one and a half (1.5) times the standard hourly rate.	
Services requested on a US Federal Holiday or Sunday will be invoiced at two times the standard hourly rate.	

6. **INVOICE & PAYMENT STRUCTURE**

Consultant will invoice the Municipality monthly and provide all necessary supporting documentation. All payments are due to Consultant within 30 days of Consultant's invoice date. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. The Municipality may request, and the Consultant shall provide, additional information before approving the invoice. When additional information is requested the Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, if additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.

7. **TERMINATION**

Either party may terminate this Agreement, or any part of this Agreement upon ninety (90) days written notice, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination.

8. **NOTICES**

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

<b>If to the Municipality:</b>	<b>If to the Consultant:</b>
Matthew Stinnett, Town Manager Town of Malabar 2725 Malabar Road Malabar, Florida 32950 Email: <a href="mailto:TownManager@townofmalabar.org">TownManager@townofmalabar.org</a>	Carlos A Penin, PE, President C.A.P. Government, Inc. 343 Almeria Avenue Coral Gables, FL 33134  Judson D. Dulany, CBO,CFM, Regional Director of Operations Email: <a href="mailto:ddulany@capfla.com">ddulany@capfla.com</a>

9. **FORCE MAJEURE**

Any delay or nonperformance of any provision of this Agreement by either Party (with the exception of payment obligations) which is caused by events beyond the reasonable control of such party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

10. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

11. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and, except as provided otherwise in this section, neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for Municipality under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant.

Consultant and Municipality agree that Consultant will provide similar service to other clients while under contract with Municipality and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall at its sole discretion assign and reassign qualified employees, as determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which services are provided to Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or when requested to perform the services from office space provided by the Municipality, Consultant employees shall perform the services using Consultant information technology equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned a Municipal email address as their exclusive email address and any business cards or other IDs shall state that the person is an employee of Consultant or providing Services pursuant to a contractual agreement between Municipality and Consultant.

It is the intention of the Parties that Consultant shall be deemed to be an agent of the Municipality for purposes of Section 768.28 Florida Statute.

12. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, from and against any and all third-party claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities ("Claims") alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that any such Claims are caused by the negligence of Consultant or any officer, employee, representative, or agent of Consultant. Consultant shall have no obligations under this Section to the extent that any Claim arises as a result of Consultants compliance with Municipal law, ordinances, rules, regulations, resolution, executive orders or other instructions received from Municipality.

To the fullest extent permitted by law and without waiver of governmental immunity, Municipality shall defend, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all Claims alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that such Claims are caused by (a) the negligence of, or material breach of any obligation under this Agreement by, Municipality or any officer, employee, representative, or agent of Municipality or (b) Consultant's compliance with Municipal law, ordinances, rules, regulations, resolutions, executive orders or other instructions received from Municipality. If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.

13. LIMITS OF LIABILITY

EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR NON-INFRINGEMENT. EXCEPT TO THE EXTENT ARISING FROM MUNICIPALITY'S PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMAINING REMEDY. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENTIONAL CONDUCT, OR OTHERWISE) EXCEED THE GREATER OF THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT OR THE AVAILABLE LIMITS OF CONSULTANT'S INSURANCE (SUCH LIMITS DEFINE MUNICIPAL MAXIMUM LIABILITY TO THE SAME EXTENT AS IF MUNICIPALITY HAD BEEN OBLIGATED TO PURCHASE THE POLICIES).

14. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES

During the term of this Agreement and for one year thereafter, Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who provided services to Municipality pursuant to this Agreement ("Service Providers"), or who interacted with Municipality in connection with the provision of such services (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant). The Parties agree that this provision is reasonable and necessary in order to preserve and protect Consultant's trade secrets and other confidential information, its investment in the training of its employees, the stability of its workforce, and its ability to provide competitive building department programs in this market. If any provision of this section is found by a court or arbitrator to be overly broad, unreasonable in scope or otherwise unenforceable, the Parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable. In the event that Municipality hires any such employee during the specified period, Municipality shall pay to Consultant a placement fee equal to 25% of the employee's annual salary including bonus.

15. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all Materials and of all work product and deliverables created by Consultant pursuant to this Agreement. The Materials, work product and deliverables shall be used by Consultant solely as provided in this Agreement and for no other purposes without the express prior written consent of Municipality. As between Municipality and Consultant, all work product and deliverables shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and Municipality shall thereafter retain sole and exclusive rights to receive and use such materials in such manner and for such purposes as determined by it. Notwithstanding the preceding, Consultant may use the Materials, work product, deliverables, applications, records, documents and other materials provided to perform the Services or resulting from the Services, for purposes of (i) benchmarking of Municipality's and other client's performance relative to that of other groups of customers served by Consultant; (ii) improvement, development marketing and sales of existing and future Consultant services, tools and products; (iii) monitoring Service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties, other than hosting providers, development consultants and other third parties providing services for Consultant, only on an anonymized basis and only as part of a larger body of anonymized data. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored in Consultant's secure proprietary software pertaining to Municipality will be exported into a CSV file and become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

Upon reasonable prior written notice, Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of Consultant that are related to this Agreement for the purposes of audit or examination, other than Consultant's financial records, and may make excerpts and transcriptions of the same at the cost and expense of Municipality.

16. MUNICIPALITY OBLIGATIONS

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform Services (Materials). Municipality has the right to grant and hereby grants Consultant a fully paid up, non-exclusive, non-transferable license to use the Materials in accordance with the terms of this Agreement.

17. ASSIGNMENT

Neither party shall assign all or part of its rights or obligations under this Agreement to another entity without the written approval of both Parties; consent shall not be unreasonably withheld. Notwithstanding the preceding, Consultant may assign this Agreement to its parent, subsidiaries or sister companies (Affiliates) without notice to Municipality. Consultant may subcontract any or all of the services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and subcontractors will be subject to the same performance criteria expected of Consultant. Performance clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

18. CONFLICT OF INTEREST

Consultant shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for Consultant with regard to providing the Services pursuant to this Agreement. Consultant shall not offer or provide anything of benefit to any Municipal official or employee that would place the official or employee in a position of violating the public trust as provided under Municipality's charter and code of ordinances, state or federal statute, case law or ethical principles.

19. CONSULTANT ACCESS TO RECORDS

Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement.

20. PUBLIC RECORDS

Pursuant to section 119.071, Florida Statutes, Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and agrees to:

- A. Keep and maintain all public records that ordinarily and necessarily would be required by Municipality to keep and maintain in order to perform Services under this Agreement.
- B. Upon request from Municipality's custodian of public records, provide copies to Municipality within a reasonable time and public access to said public records on the same terms and conditions that Municipality would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- D. Meet all requirements for retaining said public records and transfer, at no cost, to Municipality all said public records in possession of Consultant upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from Chapter 119, Florida Statutes, disclosure

requirements. All records stored electronically must be provided to Municipality in a format that is compatible with the information technology systems of Municipality.

**E. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

<b>Clerk Office: Richard Kohler</b> <b>Address: 2725 Malabar Road,</b> <b>Malabar, FL 32950-4427</b>	<b>Phone: (321) 727-7764</b> <b>Email:</b> <a href="mailto:townclerk@townofmalabar.org">townclerk@townofmalabar.org</a>
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**21. GOVERNING LAW AND VENUE**

The negotiation and interpretation of this Agreement shall be construed under and governed by the laws of the State of Florida, without regards to its choice of law's provisions. Exclusive venue for any action under this Agreement, other than an action solely for equitable relief, shall be in the state and federal courts serving the Town of Malabar and each party waives any and all jurisdictional and other objections to such exclusive venue.

**22. COUNTERPARTS**

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

**23. ELECTRONIC REPRESENTATIONS AND RECORDS**

Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**24. ENTIRE AGREEMENT**

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.



IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

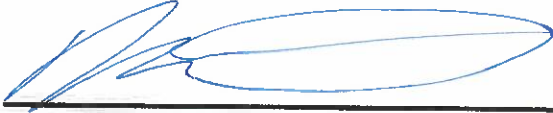


10/21/2022

Carlos A Penin, PE, President

Date

CAP Government, Inc.



10/21/2022

Matthew Stinnett

Date

Town Manager, Town of Malabar

Attest:



10/21/2022

Richard Kohler

Date

Town Clerk

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 7.b**

Meeting Date: April 3, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Parks and Recreation Board Update**

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**BACKGROUND/HISTORY:**

At the 03/15/2023 Parks and Recreation Board Meeting, the Board discussed potential improvements to several FCT properties in Town, such as adding a pavilion to Eschenberg Park, rebuilding a foot bridge in the Disc Golf Sanctuary, and adding plant and wildlife identification signs in the Cameron Preserve.

The Board also discussed at length the potential of adding regulation to Town Code to restrict or limit the use of E-Bikes on the trails. It was determined that due to already existing State regulations, the current usage of E-bikes is not an issue.

**ATTACHMENTS:**

- None

**ACTION:**

- None

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 7.C**

Meeting Date: April 3, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Planning and Zoning Board Update**

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**BACKGROUND/HISTORY:**

The Planning and Zoning Board recent discussion at the March 22, 2023, meeting is Amending the Land Development Code, Article VI "Conditional Use and Special Exception Use Criteria". It is recommended and suggested to define and clarify the Conditional Use and Land Development.

This discussion was recommended by Mayor Patrick Reilly. The PZ Board is going to review and work on this "Discussion" and bring suggestions and comments back to the next meeting, tentatively set for April 12, 2023, at 6:00PM.

**ATTACHMENTS:**

- None

**ACTION:**

- Discussion

# TOWN OF MALABAR

## COUNCIL MEETING

**Treasurer Staff Report**  
**Meeting Date: April 3, 2023**

**Prepared By: Lisa Morrell, Special Projects Manager**

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**SUBJECT: Treasurer Report**

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A monthly financial report through March 31, 2023 (unaudited) is delayed to the April 17<sup>th</sup> Regular Town Council Meeting due to the short timeframe between the agenda publishing date for the April 3<sup>rd</sup> meeting and the month end date of March.

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF/APRA) Project and Expenditure (P&E) Report is due April 30, 2023. Special Project Manager/Treasurer is required to submit their P&E report during this period for All SLFRF recipients, including Non-Entitlement Units (NEUs). The Town of Malar is a Non-Entitlement Units recipient.

The Town's Auditor, James Moore & Co., has requested the second round of financial information for the Annual Financial Report (AFR) for the prior fiscal year 2021-2022; The Town Clerk and Special Projects Manager/Treasurer are actively participating in these activities.

# TOWN OF MALABAR

## COUNCIL MEETING

### SPM Staff Report

Meeting Date: April 3, 2023

Prepared By: Lisa Morrell, Special Projects Manager

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**SUBJECT: Special Projects Report**

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Dane Contracting, Inc, the awarded contractor for the Malabar Community Park Restroom Facility Renovation Project, began the interior renovations March 29, 2023. The restroom facilities were closed to the public on Wednesday, March 28<sup>th</sup> for an estimated period of 30 days to complete the removal and preparation tasks to replace and installation new toilets, auto flush components, sinks, touchless faucets, hand dryers, stall partitions and doors, and exterior doors for each restroom area.

Per the Treasurer report, the annual projects and expenditure report is due by April 30, 2023, for Coronavirus State and Local Fiscal Recovery Funds (SLFRF/ARPA).

The Road Analysis Report, funded by SLFRF, was presented to the Town Council on March 20, 2023.

Remaining Projects:

- 22-10 FD Station Toning, Allocation \$18,500
- 22-11 Cybersecurity, Allocation \$5,000  
Applied for the Florida Digital Grant, closed on March 31, 2023.
- 22-13 Park Improvements, Allocation \$64,199.27
- 22-15 Roads, \$300,510.00
- 22-16 SWU, 310,511.00
- 22-17 Water Expansion, \$329,011.00

All SLFRF funds must be expended by 2026.

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 8.f**

Meeting Date: April 3, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Town Clerk Report**

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**BACKGROUND/HISTORY:**

During the last month, the Town's Auditor, James Moore & Co. have begun their second round of audit questions. The Clerk and SPM offices have been working closely to comply with their requests and have completed the tasks.

Brevard County approved the next step in the online legal advertisement process. I am actively working to schedule a meeting with Mr. Walker, Brevard County Director of Communications, and the Brevard County City Clerks Association to finalize the rate structure.

**ATTACHMENTS:**

- None

**ACTION:**

- None

# TOWN OF MALABAR

## COUNCIL MEETING

Agenda Item: Discussion

Meeting Date: April 3, 2023

Prepared By: Lisa Morrell, Special Projects Manager

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**SUBJECT: Amending Land Development Code, Article II – Land use Zoning, Section 1-2.6 – Land Use Classifications and Table 1-3.2 Land Use By Districts for Limited Manufacturing Activities and Limited Manufacturing Activities providing for a permitted or conditional use in Article VI. Conditional Use and Special Exception Use Criteria in Table 1-6.1(B) - Conditional Land Use Requirements.**

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### BACKGROUND

Advising Town Council to review and discuss that approved language development by the Planning and Zoning Advisory Board on February 8, 2023. Also included are staff comments to the Planning and Zoning Board Advisory; as well as a staff report that includes the analysis and review of the amendment that includes, data, maps, current land use zoning, future land use zoning, and a review of the comprehensive plan document for the final development of the public hearing ordinance readings and advertising, as required.

Unanimous approval by the Planning and Zoning Board for the following amendment to insert new items nine (9) and ten (10) and renumber existing items nine (9) through eleven (11) as eleven (11), twelve (12), and thirteen (13) under letter C. Commercial Activities. These changes also require updates to corresponding tables in the Code for Tables 1-3.2 - Land Use By Districts and Table 1-6.1(B) - Conditional Land Use Requirements.

P&Z Board Final Draft (2/8/2023) For Land Development Code Section 1-2.6 Land Classifications

9. Limited Manufacturing Activities. This land use classification is intended to accommodate small, limited item shops, with limited inventory serving a specialized market with customized service demand and which are to be conducted in a fully enclosed building.

This classification is intended to include the following:

- Manufacturing or processing of electronic &/or computer components, optical instruments, electrical appliances, or other precision components.
- Assembly and distribution of goods.
- Maintenance, repair, reconditioning, and cleaning.
- Printing.
- Limited packaging and processing activities.
- Research and development technology.
- Small machine shops.

Other similar Limited Manufacturing Activities may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses may exclude chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

10. Limited Manufacturing Services. Services such as Customer & Call Support; Low Impact Machinery &/or Electronic Device Repair or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and which are to be conducted in a fully enclosed building and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

Other similar Limited Manufacturing Services may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses may exclude, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

Staff **concurs** with the board's use and intent of Limited Manufacturing. Staff provided definitions to the Planning and Zoning Board at the initial discussion of this amendment on September 28, 2022. Staff recommends limited manufacturing nomenclature for Town Council's consideration to provide processing and manufacturing involving physical or chemical processes, example small scale three-dimensional (3D) printing. An additive manufacturing process that creates a physical object from a digital design. The process works by laying down thin layers of material in the form of liquid or powdered plastic, metal or cement, and then fusing the layers together.

Governmental Industry Standard Land Use Definitions:

Light Manufacturing zone is intended to provide for the development of industrial uses which include fabrication, manufacturing, assembly or processing of materials that are in already processed form

Limited Manufacturing: A land use involving the fabricating, or the assembling of standardized parts as contrasted to a processing activity which would involve a physical or chemical process that would change the nature or character of the product or raw material.

Staff **concurs** with the board's language intent to allow for small quantities of chemical storage used in the bonding, welding, soldering agents to manufacture and process raw materials. Staff has provided revision and refinement to the proposed verbiage for Town Council's consideration to clarify and preclude and processing, creation, or emulsification of chemical agents in both item nine (9) and ten (1)

9. Limited Manufacturing Activities...

Other similar Limited Manufacturing Activities may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The ~~uses-activities~~ ~~may exclude~~ strictly prohibit the manufacturing of any chemical or petroleum ~~process of manufacturing~~, rubber or plastics ~~manufacturing~~, and/or other ~~use-activities~~ generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

10. Limited Manufacturing Services....



Other similar Limited Manufacturing Services may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The ~~uses-activities may exclude~~ strictly prohibit the manufacturing of any chemical or petroleum process of manufacturing, rubber or plastics manufacturing, and/or other use-activities generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Staff **advises** a revision to the board's recommendation for approval by the Town's Building Official designation. The Building Official is a state licensed authority to enforce adopted building codes. Land use and activities shall be the authority of the Town Council or their designation of the Town Manager or designee.

10. Limited Manufacturing Services. Services such as Customer & Call Support; Low Impact Machinery and/or Electronic Device Repair or other services ~~uses~~ approved by the Town ~~Building Official Council~~ based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and which are to be conducted in a fully enclosed building and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

The Planning and Zoning Board additionally approved amending the use code for Limited Manufacturing Activities and Limited Manufacturing Services or each zoning district as permitted in Commercial General (CG) and conditional for Commercial Limited (CL) and Residential/Limited Commercial (R/LC). Staff generally **concur**s with a discussion by Town Council regarding the amendment to provide as conditional use permit for all affected zoning districts (CG, CL, R/CL), due to the utilization of a chemical change process in the small-scale Limited Manufacturing Activities and Services. An applicant seeking a conditional use permit would apply through the adopted Code, Article VII – Site Plan Review through the Town Clerk's office, review and commented with Town Staff and Officials, and then forwarded through to the Planning and Zoning Board with advisement for final approval by Town Council.

The Conditional Use table 1-6.1(B) Conditional Land Requirements requires an amendment to define the minimum size site, minimum width/depth, access requirements, building setback, and screening, and other specifications compliance.

Staff is recommending a conditional use applicant to have at a minimum: a property of 1 (one) acre, a width of 100 feet, a depth of 150, access on an arterial road (Babcock Street, Malabar Road, US Highway 1, or West Railroad Avenue), a building setback from a residential district of 100 feet or 25 feet from a non-residential district, parking setbacks of 25 feet from a residential district or 20 feet from a non-residential district. The applicant may use Type A or C, opaque or semi-opaque perimeter screening as defined in Article IV, Section 1-4.1 of the Land Development Code, and curb cut controls defined like other conditional use standards with footnote 7 of the adopted table 1-6.1(b). These specifications conform to similar commercial land use activities within the existing table, adhere to the site plan review process, and may be amended by reviews when conditions are necessary or of concern, where the Town Council has the final authority to grant a conditional use permit. Thus, each case shall be reviewed thoroughly for the unique conditions of the proposed site plan with compliance with all applicable Town Codes.

These minimum site plan specifications of a conditional use affect a small number of properties 46 of the 248 zoned sites, or more specifically 45 Residential / Limited Commercial (R/LC) and 1 Commercial Limited (CL), will be deemed ineligible to seek a conditional use permit for the proposed land use by district amendment, Limited Manufacturing Activities or Limited Manufacturing Services because the property site is less than 1 acre. Please see the attached staff report, pages 1- 3, properties are sorted by acres and list the zoning code. Staff advises a Commercial General (CG) zoned property will not seek a conditional use permit under the proposed amendment, as the recommendation is to permit the land use within the Commercial General (CG) district.

A review by the Department of Economic Office must occur after the first reading at a public hearing and before the publicly advertised final reading of the proposed ordinance changes.

### **Fiscal Impact**

Allows for potential development of small scale manufacturing in specific commercial zoning districts of unimproved properties that would otherwise be only allowed in Industrial zoning district, which is limited to

two (2) parcels with the Town of Malabar. Additionally, the proposed amendment has the potential to attract new and or expand existing business development within improved properties within the specific commercial zoning districts for small scale, low impact, limited manufacturing land uses.

**Attachments**

- Proposed amendments to Land Development Code 1-2.6 (No Tracked Changes)
- Proposed amendments to Table 1.3-2 Land Use by Districts
- Proposed amendments to Table 1-6.1(B) Conditional Land Use Requirements
- Minutes from the February 8, 2023, Planning and Zoning Board Meeting
- Mayor Reilly’s PowerPoint Presentation to Planning and Zoning Board
- Staff Report – Analysis of the code revisions with impacts and review of Adopted Comprehensive Plan.

**Action**

Town Council Discussion and direction. Staff has provided optional motions for consideration:

Motion to direct staff to prepare the Planning and Zoning proposed changes with staff revisions with certain conditional and permitted uses as desired by Town Council discussion.

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## Section 1-2.6. Land use classifications.

The purpose of these provisions is to classify uses into specially defined types on the basis of common functional characteristics and land use compatibility. These provisions apply throughout the zoning regulations.

All land use activities are classified into the following activity types.

A. *Residential Activities.*

1. Single Family Dwellings.
2. Two Family Dwellings.
3. Multi Family Dwellings.
4. Mobile Homes.
5. Accessory Residential Activities.

B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.
5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.
6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.
7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

Type of Golf Course	Minimum Acres Required
Regulation Course	120 acres
Executive Course	40 acres
Par 3 Course	35 acres

Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.

- 
10. *Public Health Facilities.* The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities" means any establishment that:

- (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
- (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following

Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

"Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare).

Part II Nursing Homes

"Nursing Home Facility" means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

Part V Intermediate, Special Services, and Transitional Living Facilities

Intermediate care facilities; intent-The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state government share the cost of providing care, is an appropriate option to explore in the continuum of care.

- 11. *Public Parks and Recreation Areas.* Public parks and recreation land and facilities developed for use by the general public.
- 12. *Public and Private Utilities (including Essential Government Services).* Use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution; wastewater collection and disposal; communication; and similar services and facilities.

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13. *Social Welfare Facilities.* The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430. Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.

A. **Community Residential Homes**

"Community Residential Home" means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency of Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Refer to Chapters 408 and 419.

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. **Assisted Care Communities**

Part I Assisted Living Facilities

"Assisted Living Facility (ALF)" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. Refer to Chapter 408 and 429.

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residents/beds

Level 2 is between 6 and 15 residents/beds

Level 3 is 16 residents/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residents/bed density. For example, RM-4 is allowed 4 units per acre multiplied by the 3 ALF Factor is equal to 12 residents/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 ALF Factor is equal to 18 residents/beds per acre.

Part II Adult Family-Care Homes

"Adult Family-Care Homes" means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. Refer to Chapters 408 and 429.

Part III Adult Day Care Centers

"Adult Day Care Centers" or center means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services. Refer to Chapters 408 and 429.

C. **Commercial Activities.**

1. *Bars and Lounges.* A commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.
2. *Business and Professional Offices.* Offices extending the following services which provide advice, information or consultation of a professional nature: insurance, real estate, and financial services; banking services; and executive management and

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administrative activities. This classification excludes commercial storage of goods and chattels for the purpose of sale or resale as a principal use.

3. *Commercial Amusement, Enclosed.* Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities. Facilities as defined herein as amusement arcade centers and/or electronic gaming establishments are permitted as conditional uses as provided for in Table 1-3.2. For purposes herein the following definitions apply:

*Arcade Amusement Center* as used in this section means a place of business which shall have at least fifty (50) coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. It is specifically intended by this definition that any place of business that does not have at least fifty (50) coin-operated amusement games or machines on premises shall not be granted a conditional use permit to operate such a business. The provisions of F.S. § 849.161 shall apply to an arcade amusement center.

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

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

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

4. *Drive-thru Facilities.* A facility, which by design, physical character, and/or by operation (i.e., service or packaging procedures) encourages or permits customers to receive services, obtain goods or be entertained while remaining in the motor vehicle.
5. *Funeral Homes.* Undertaking and funeral services involving care and preparation of human deceased prior to burial, including crematory facilities.
6. *General Retail Sales and Services.* Retail sale or rental from the premises of goods and/or services to include all uses listed under limited commercial activities as well as the following:
  - Appliance Stores, without major warehousing.
  - Art Shops and Supplies.
  - Bakeries, excluding wholesale production and distribution.
  - Bicycle Shops.
  - Copying Services.
  - Cosmetic Stores.
  - Department Stores.
  - Drapery Stores.
  - Drug Stores.
  - Dry Cleaning establishments complying with Class IV or Class V Fire Code Prevention requirements and using only Class IV solvents such as perchlorethelene, except for spotting as provided for in Section 9.6(m) of the Fire Prevention Code.
  - Dry Goods Stores.
  - Fabric Stores.
  - Furniture Stores.
  - Garden Supplies.
  - Grocery Stores.
  - Hardware Stores, without outside storage of lumber and other building supplies.
  - Health and Exercise Studios.
  - Home Furnishing Stores.
  - Lawn and Garden Supplies.
  - Large Specialty Shops.
  - Luggage and Leather Goods Stores.
  - Office Equipment and Supplies.
  - Paint and Wallpaper Retail Sales.
  - Pet Supply and Pet Shops.
  - Sporting Goods Stores.

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Other similar retail sales and service activities conducted within a fully enclosed building approved by the Town Council after receipt of a recommendation from the Planning and Zoning Commission. The use shall not include: wholesaling, warehousing, outside storage and distribution functions. The use shall not exhibit any characteristic dissimilar or incompatible with the uses identified herein. In review and approval of a request for a "similar" use, the Planning and Zoning Board and the Town Council shall use the procedures and criteria cited in the following Section 1-2.6 [1-2.7].

7. *Hotels and Motels.* A building or other structure used, maintained or advertised as a place where sleeping accommodations are supplied for rent to transient guests, in which ten (10) or more rooms are furnished for the accommodation of such guests; and which may have as an accessory use one or more dining room areas.
8. *Limited Commercial Activities.* Small limited item shops and stores limited to retail sales of personal service items, including small convenience items or services typically needed on a frequent and recurring basis. This land use classification is intended to accommodate shops with limited inventory serving: (1) a household market area in the immediate vicinity as opposed to citywide or region; (2) a specialized market with customized service demand; or (3) a tourist oriented market area in the immediate vicinity. This classification is intended to include the following:

Bait and Tackle Shop.

Barber and Beauty Shops.

Book and Stationary Stores.

Candy and Ice Cream Stores.

Clothiers.

Drug Stores and Pharmacies.

Dry Cleaning and Laundry Pick-Up Substations and Self-Service Facilities.

Florists.

Gift Shops.

Hobby and Handicraft Shops.

Interior Decorators.

Jewelry Stores.

Meat Shops.

Novelty and Curio Shops.

Optical Stores.

Photo Supplies and Studios.

Shoe Repair Shops.

Tailors or Seamstress.

Other similar limited commercial activities conducted in a fully enclosed building which are approved by Town Council after receipt of a recommendation from the Planning and Zoning Board. Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such "similar" uses shall be as cited in the following section, § 1-2.6 [1-2.7]. The use shall comply with criteria cited in the above definition of limited commercial activities and shall not include more intense general retail sales and services. The procedures and criteria for review of other similar limited commercial activities shall be as cited in the following section, § 1-2.6 [1-2.7].



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9. Limited Manufacturing Activities. This land use classification is intended to accommodate small, limited item shops, with limited inventory serving a specialized market with customized service demand and which are to be conducted in a fully enclosed building.

This classification is intended to include the following:

- Manufacturing or processing of electronic &/or computer components, optical instruments, electrical appliances, or other precision components.
- Assembly and distribution of goods.
- Maintenance, repair, reconditioning, and cleaning.
- Printing.
- Limited packaging and processing activities.
- Research and development technology.
- Small machine shops.

Other similar Limited Manufacturing Activities may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The activities strictly prohibit the manufacturing of any chemical or petroleum process of rubber or plastics, and/or other activity generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution. Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

10. Limited Manufacturing Services. Services such as Customer & Call Support; Low Impact Machinery &/or Electronic Device Repair or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and which are to be conducted in a fully enclosed building and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

Other similar Limited Manufacturing Services may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The activities strictly prohibit the manufacturing of any chemical or petroleum, rubber or plastics, and/or other activity generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

Renumbering formatting for final amendment is required for items below, from 9 through 20 to 11 through 22.

11. Waterfront Marine Related Activities. The following marine related land uses are included in this land use classification: commercial wet or dry storage and boat sales and rental; Marine power sales and service; and bait and tackle shop; and excluding marine salvage and boat yards.

12. Medical Services. The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical laboratory testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging. This land use classification includes pharmacies when developed as an accessory use within a medical service facility.

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13. *Parking Lots and Facilities.* Governmental or private commercial building of [or] structure solely for the off-street parking or storage of operable motor vehicles.
14. *Plant Nurseries.* Retail sale of flowers, shrubs, trees, and plants as well as landscaping contractors and provision of related consultative services.
15. *Restaurants (excluding drive-ins and fast food service).* Any establishment (which is not a drive-in service establishment) where the principal business is the sale of food, desserts or beverages to the customer in a ready-to-consume state and where the design or principal method of operation includes two or more of the following:
- (a) Customers, normally provided with an individual menu, are served generally in non-disposable containers by a restaurant employee at the same table or counter at which items are consumed.
  - (b) Ice cream parlors and other specialty restaurants having floor area exclusively within a shopping or office center and sharing common parking facilities with other businesses within the center and expressly prohibiting freestanding stores having characteristics of a drive-in restaurant.
  - (c) A cafeteria or cafeteria type operation where foods, desserts or beverages generally are served in non-disposable containers and consumed within the restaurant building.
  - (d) Customers purchase food, desserts or beverages for carryout.
16. *Restaurants (drive-ins and fast food service).* Any establishment where the principal business is the sale of foods, desserts or beverages generally contained in a ready-to-consume state and whose design, method of operation or any portion of whose business includes one or both of the following:
- (a) The restaurants are self-service. Food is generally served in disposable containers and customers generally do the bussing and clean-up for themselves or foods, desserts or beverages are served directly to the consumer in a motor vehicle.
  - (b) The consumption of foods, desserts or beverages within a motor vehicle parked upon the premises, or consumption at other facilities on the premises is allowed, encouraged or permitted.
  - (c) *Mobile Food Dispensing Vehicle* means any vehicle that is licensed by the State of Florida as a public food service establishment {See F.S. § 509.013(5) for definition of a public food service establishment} and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.
  - (d) *Mobile Food Dispensing Vendor.* The operator of a Mobile Food Dispensing Vehicle.
  - (e) *Location of mobile food dispensing vehicle/vendor.* A mobile food dispensing vendor may operate a mobile food dispensing operation in the following locations:
    - 1. *Town-Owned Property.*
      - A. On the following Town-owned property, total operation must be contained within the area designated for their operation by the Town Manager or designee:
        - 1. Malabar Community Park
        - 2. Sandhill Trailhead Park
        - 3. Town Hall
      - B. *Access.* A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, building entrances, pedestrian ingress or egress, emergency exits, or access to businesses. Notwithstanding anything to the contrary herein, a mobile food dispensing vendor may only operate on Town-Owned Property in areas so designated by the Town.
      - C. *Conflict.* A mobile food dispensing vendor may not operate on or at any location where the Town Manager or designee determines that a conflict exists between a mobile food dispensing vendor's

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vehicle or operation and an existing license or franchise agreement, contractual obligation, or any other public health or safety concern, including but not limited to a special event or rental facility.

2. *Improved Property.*

A. A mobile food dispensing vendor may operate on improved private property located within the following zoning districts, only with the written permission of the property owner(s). Evidence of a property owner's written permission must be available for inspection by the Town upon request while the mobile food dispensing vendor is operating.

1. Commercial General (CG)
2. Industrial (IND)
3. Residential/Limited Commercial (R/LC)
4. Office Institutional (OI)
5. Commercial Limited (CL)
6. Institutional (INS)

B. *Set-back Requirement.* When operating on private property, a mobile food dispensing vendor may operate only if set-back at least fifty (50) feet from any abutting residential district and at least one hundred and fifty (150) feet from any exclusively single family residential structure, unless the owner(s) of the residential structure immediately abutting such proposed location provides the mobile food dispensing vendor with express written permission to operate. The one hundred and fifty-foot set-back requirement is reduced to fifty (50) feet where an intervening non-residential building, such as a commercial building, screens the operation from the direct view of the single-family residential structure.

C. *Access.* A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, pedestrian ingress or egress, building entrances, blocks a public or private right-of-way, emergency exits, or access to businesses. A mobile food dispensing vendor may locate upon a public or private utility easement area; provided, however, that such location may be terminated by the town Manager if it is determined that such location has cause a deterioration to such easement or utility service needs unrestricted access to the easement area.

3. *Construction areas.* A mobile food dispensing vendor may operate on private property that has an active building permit as part of a commercial or multi-family construction site. Such operation may also occur on a site undergoing master infrastructure construction within a single-family subdivision until the first certificate of occupancy is issued.

4. *Principal structure requirement.* A mobile food dispensing vendor may only operate on a lot that has a permitted principal structure.

[5.] *Stationary location requirement.* A mobile food dispensing vendor must operate from a stationary location, but may operate from multiple locations throughout the day, except as otherwise permitted in this article.

17. *Service Stations, Including Gasoline Sales.* Establishments for the dispensing of motor fuels and related projects at retail and having pumps, underground storage tanks and other facilities for such activity and which may include the retail sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles within enclosed service bays or stalls. For the purpose of this Code, these services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.

18. *Trades and Skilled Services.* Shops providing services requiring skilled labor or craftsmanship for repair including household items, office equipment, appliances, printing, blue printing, carpet sales and service, feed stores, lawn and maintenance

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services, newspaper printing, radio and television broadcasting, restaurant equipment and supply sales and services. All such activities shall not include outside storage.

19. *Vehicular Service and Maintenance.* Vehicular establishments providing sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles. These services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.
20. *Vehicular Sales and Related Services.* The retail or wholesale sale or rental of motor vehicles and related equipment, with incidental services and maintenance.
21. *Veterinary Medical Services.* The provision of animal medical care and treatment by a Florida licensed veterinarian.
22. *Wholesale Trades and Services.* The display, limited storage and sale of goods to other firms for resale, excluding outside storage, except as otherwise provided in this chapter [Code].

D. *Industrial Activities.* The following land uses are included in the industrial land use classification where the same are conducted within a totally enclosed building except as specifically provided herein:

1. *Kennels* for boarding of domestic dogs and cats and veterinary medical operations.
2. *Manufacturing Activities* including:
  - Manufacturing or processing of electronic components, optical instruments, electrical appliances, or other precision components;
  - Assembly and distribution of goods;
  - Maintenance, repair, reconditioning, and cleaning;
  - Printing;
  - General packaging and processing activities;
  - Research and development technology;
  - Commercial laundries;
  - Machine shops;
  - Agricultural research laboratories;
  - Vocational and trade schools;
  - Sale of building material.

Other similar manufacturing activities conducted in a fully enclosed building which are approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses shall exclude metal fabrication, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited in the following Section 1-2.6 [1-2.7].

3. *Manufacturing Service Establishments*, such as heavy machinery repair and service; heavy machinery or heavy equipment rental or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

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4. *Vehicle and Other Mechanical Repairs and Services*, including those not permitted as commercial zoning activities including paint and body shops.
  5. *Warehousing, Storage and Distribution Activities*, including building contract construction, building supplies, furniture stores with major warehousing, and trade services with extensive warehousing, trucking support facilities, or requirement of outside storage.
- E. *Agricultural Activities*. The following land uses are included in the agricultural land use classification. No such activity shall permit commercial retail operations, except as otherwise expressly provided in the definition and/or the agricultural district provisions cited within this Code.
1. *Commercial Stables*, including a stable operated for profit on a minimum five (5) acre site of not more than one (1) horse for the first one (1) acre and one (1) additional horse for each additional one-half (½) acre. Also reference conditional use criteria.
  2. *Noncommercial Agricultural Activities*, including home gardens, noncommercial greenhouses, and keeping of agricultural animals. Keeping of agricultural animals shall be limited to one (1) agricultural animal for the first one (1) acre and one (1) additional animal for each additional one-half (½) acre.
  3. *Wholesale Agricultural Activities*, including harvested agricultural crops, fish and aquatic farms, grazing of cattle, and wholesale trade of products grown or raised on premises. These agricultural operations shall be restricted to sites with a minimum of five (5) acres.

All animals permitted pursuant to this subsection shall be maintained within a controlled area bounded by a fence or other barrier approved by the Town.

(Ord. No. 12-48, § 1, 1-23-12; Ord. No. 14-01, § 1, 2-3-14; Ord. No. 20-14, § 1, 12-21-20)

**Attachment: Proposed amendments to Table 1.3-2, Page 3**

Underline depicts new text; Strikethrough depicts the deletion of text.

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
<b>RESIDENTIAL USES</b>														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			
<b>COMMUNITY FACILITIES</b>														
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship								P, A <sup>1</sup>	P	C	C		P	
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P		P	
Educational Institutions								C, A <sup>1</sup>					C	
Golf Course Facilities	C													
Hospital and other Licensed Facilities								C					C	
Nursing Homes and Related Health Care Facilities					C	C		C					C	
Protective Services					C	C	C	C	C	C	C	C	C	

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TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	
<b>COMMUNITY RESIDENTIAL HOME</b>														
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>				C	C								
Level 2 (7 to 14 residents/beds)					C	C							C	
<b>ASSISTED CARE COMMUNITIES</b>														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C <sup>4</sup>	C <sup>4</sup>					C			
Level 2 (6 to 15 residents/beds)					C <sup>4</sup>	C <sup>4</sup>								
Level 3 (16 or more residents/beds)					C <sup>4</sup>	C <sup>4</sup>								
II Adult Family-Care Homes														
(1 to 5 residents/beds)	C <sup>3</sup>	C	C	C	C	C					C			
III Adult Day Care Centers					C	C		C			C		C	
<b>AGRICULTURAL ACTIVITIES</b>														
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													

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TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Commercial Stables	C													
<b>COMMERCIAL ACTIVITIES</b>														
Adult Activities										C				
Bars and Lounges										C				
Bed and Breakfast											P <sup>1</sup>			
Business and Professional Offices								P	P	P	P	P	P	
Enclosed Commercial Amusement										P				
Arcade Amusement Center/ Electronic Gaming Establishment										C <sup>2</sup>				
Funeral Homes									P	P	C			
General Retail Sales and Services										P				
Hotels and Motels										P				
Limited Commercial Activities									P	P	P			
<u>Limited Manufacturing Activities</u>									<u>C</u>	<u>P</u>	<u>C</u>			
<u>Limited Manufacturing Services</u>									<u>C</u>	<u>P</u>	<u>C</u>			
Marine Commercial Activities										C*				
Medical Services								P	P	P	P			



**Attachment: Proposed amendments to Table 1.3-2, Page 3**

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TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Mini Warehouse/Storage									C	P		P		
Parking Lots and Facilities								P	P	P	P		P	
Recreational Vehicle Park							P							
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales										C*		C*		
Trades and Skilled Services										P		P		
Veterinary Medical Services								P	P	P	C	P		
Vehicular Sales and Services										C*		P		
Vehicular Services and Maintenance										C*		P		
Wholesale Trades and Services										C*		P		
<b>INDUSTRIAL ACTIVITIES</b>														
Kennels												C		
Manufacturing Activities												P		
Manufacturing Service Establishments												P		

**Attachment: Proposed amendments to Table 1.3-2, Page 3**

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TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Vehicle and Other Mechanical Repair and Services										C*		P		
Warehouse, Storage and Distribution Activities												P		
<b>WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES</b>														
Noncommercial piers, boat slips, and docks														C

**EXPAND**

C	=	Conditional Use
P	=	Permitted Uses
A	=	Accessory Use
*	=	These uses are permitted only on sites abutting Babcock Street, US 1, West Railroad Avenue, Garden Street and Pine Street.
1	=	Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

<sup>1</sup> Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

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

<sup>3</sup> Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

<sup>4</sup> ALF Factor of "3" (see section I-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's

**Attachment: Proposed amendments to Table 1-6.1(B) Conditional Land Use Requirements,  
Page 1**

Underline depicts new text; Strikethrough depicts the deletion of text.

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District / Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District / Nonresidential District (feet)	Perimeter Screening Residential District / Nonresidential District (5)	Curb Cut Controls	Other
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	Type A/B	(7)	
Places of Worship	5 Acres	250	Paved	70/45	25/20	Type A/C	(7)	
Educational Institution	(1)	500	Arterial	70/45	25/20	Type A/C	(7)	
Enclosed Arcade Amusement Center/Electronic Gaming Establishment	1 Acre	120	Highway 1 and Babcock Street only	100/30	N/A	Type A/C	(7)	
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/C	(7)	
Hospitals and other Licensed Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)	
Nursing Homes and Related Health Care Facilities	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	
Protective Services	(4)	120	Paved	50/30	25/20	Type A/C	(7)	
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	Type C/C	(7)	
Public and Private Utilities	N/A	120	N/A	70/30	25/20	Type A/C	(7)	
Commercial Stables	5 Acres	325	N/A	100/75	50/40	Type B/C		
Adult Entertainment	1 Acre (8, 9, 10)	120	US1 / Babcock	100/30	N/A	Type A/C	(7)	(6)
Bars and Lounges	1 Acre (8, 9)	120	US1 / Babcock	100/30	N/A	Type A/C	(7)	(6)
<u>Limited Manufacturing Activities</u>	<u>1 Acre</u>	<u>100/150</u>	<u>Arterial / West Railroad Avenue</u>	<u>100/25</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>	
<u>Limited Manufacturing Services</u>	<u>1 Acre</u>	<u>100/150</u>	<u>Arterial / West Railroad Avenue</u>	<u>100/25</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>	

**Attachment: Proposed amendments to Table 1-6.1(B) Conditional Land Use Requirements,  
Page 1**

Underline depicts new text; Strikethrough depicts the deletion of text.

Marine Commercial Activities	1 Acre	120	US1 / Babcock / West Railroad Avenue	100/30	N/A	N/A	(7)
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)
Trades and Skilled Services	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	N/A	Type A/C	(7)
Vehicular Services and Maintenance	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	N/A	Type A/C	(7)
Wholesale Trades and Services	1 Acre	145	US1 / Babcock / West Railroad Avenue	50/30	15/10	Type A/C	(7)
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)
Vehicular and Other Mechanical Repair	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	15/10	Type A/C	(7)
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)
Community Residential Home							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)

**Attachment: Proposed amendments to Table 1-6.1(B) Conditional Land Use Requirements,  
Page 1**

Underline depicts new text; Strikethrough depicts the deletion of text.

II Adult Family-Care Homes							
(1 to 5 residents/ beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

Note: Arterial streets refer to transportation linkages on the Major Thoroughfare Plan within the Comprehensive Plan (i.e., Malabar Road, US 1, and Babcock Street).

- (1) Minimum spatial requirements for public and private, primary and secondary educational institutions shall comply with standards used by the Brevard County School Board and the State of Florida.
- (2) Minimum spatial requirements for golf courses shall comply with standards recommended by the U.S. Golf Association or the American Society of Golf Architects.
- (3) Minimum spatial requirements shall comply with the requirements established by the Town of Malabar District Provisions or the Florida Statutes, whichever requirement is greater.
- (4) Minimum spatial requirements for the American Insurance Association and the National Fire Prevention and Control Administration.
- (5) The Type A, B, and C screening requirements reflect the standards cited in Section 1-4.1(G)(2)(a)–(c).
- (6) No parking lot or structure within 200 ft of residential or institutional district.
- (7) No more than two curb cuts shall be permitted to any one street frontage. The ingress-egress width shall be restricted to a maximum width of thirty (30) feet at the point of curvature at the property line; shall be located no closer than thirty (30) feet to a right-of-way intersection; and shall be at least ten (10) feet removed from property lines. A minimum fifty (50) feet separation shall be maintained between curb cuts. The Town may require controlled access, including dedication of cross easements and joint use of drive. The Town Council may grant a waiver to these requirements after considering the recommendations of the Planning and Zoning Board and the Town staff.
- (8) Shall not be located adjacent to a residential district, including the RR district.
- (9) Shall not be located within 1000 feet of a religious institution, educational institution, or public park.
- (10) Reference Town of Malabar Ordinance Regulating Adult Entertainment. (Ord. No. 94-4, § 9, 4-3-95; Ord. No. 12-48, §§ 3, 4, 1-23-12; Ord. No. 14-01, § 4, 2-3-14) **Cross reference**— Adult entertainment establishments, regulations, § 10-26 et seq.

**“The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board.”**

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
FEBRUARY 8, 2023, 6:00 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

**1. CALL TO ORDER, PRAYER, AND PLEDGE:**

Meeting called to order at 6:00 P.M. Prayer (by Meghan Wolfgram) and Pledge led by Chair Wayne Abare.

**2. ROLL CALL:**

CHAIR:	WAYNE ABARE
VICE-CHAIR:	DOUG DIAL
BOARD MEMBERS:	LIZ RITTER
	DAVE TAYLOR
	SUSAN SHORTMAN
ALTERNATE:	MEGHAN WOLFGRAM
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR
ADDITIONAL ATTENDEES:	PATRICK T. RIELLY, MAYOR

**4. CONSENT AGENDA:1**

**6.a. Approval of Minutes** Planning and Zoning Meeting – 01/11/2023

**Exhibit:** Agenda Report No. 6.a  
**Recommendation:** Request Approval

**Motion: Ritter/Shortman to Approve Minutes of 1/11/2023 as presented.**

**Voted: All Ayes**

**5. PUBLIC COMMENTS**

**6. PUBLIC HEARING:0**

**7. ACTION ITEMS:1**

**7.a. Last review Amending the Land Development Code to allow “Limited” Manufacturing in the R/LC, CL, and CG Commercial Land Use and Commercial Zoning Districts.** (Originally Presented by Mayor Patrick T. Reilly on September 14, 2022)

**Exhibit:** Agenda Report No. 7.a.  
**Recommendation:** Request/Action to Council

Abare explained to the Board the progress of this Land Use Amendment, the document will go from here to staff and Town attorney and reviewed before it moves on to Council.

The Board discussed the final documentation suggested. The mayor suggested taking “conditional” out of Industrial on the Table1-3.2 Land Use by Districts.

**Motion Dial/Ritter to send to staff, then on to Council the Amended the Land Code changes, to include "Limited" Manufacturing in certain zoning districts; Residential/Limited Commercial (R/LC), Commercial Limited (CL), Commercial General (CG).**

**Voted by Roll Call Vote**

**Taylor; Aye, Ritter; Aye, Shortman; Aye, Dial; Aye, Abare; Aye. Motion passed 5 to 0.**

Abare thanked the Board & Mayor for their hard work during this process.

The Board asked questions about the changes to this Amended Code. Abare explained that the Planning & Zoning (PZ) Board reviews and makes suggestions that gets forwarded on to Staff and Town Attorney. The PZ takes public comments by cards that are submitted to the Chair.

- 8 DISCUSSION:**
- 9. ADDITIONAL ITEMS FOR FUTURE MEETING**
- 10. PUBLIC COMMENTS**

Abare asked if anyone has public comments.

**11. OLD BUSINESS/NEW BUSINESS:**

Old Business:

New Business:

The Board (Ritter) discussed the FDOT information in reference to US 1 safety on the corridor along US 1 (February 21, 2023 meeting)

- **Reminder:** Next Meeting –February 22, 2023

**12. ADJOURN**

There being no further business to discuss, MOTION: Shortman / Dial to adjourn this meeting.  
Vote: All Ayes. The meeting adjourned 6:35 P.M.

BY:

\_\_\_\_\_  
Wayne Abare Chair

\_\_\_\_\_  
Denine Sherear, Board Secretary

\_\_\_\_\_  
Date Approved: as presented.

**AGENDA 7.a.**

**PZ BOARD FINAL DRAFT (2/8/2023) FOR LAND DEVELOPMENT CODE SECTION 1-2.6 LAND CLASSIFICATIONS**

9. Limited Manufacturing Activities. This land use classification is intended to accommodate small, limited item shops, with limited inventory serving a specialized market with customized service demand and which are to be conducted in a fully enclosed building. This classification is intended to include the following:

- Manufacturing or processing of electronic &/or computer components, optical instruments, electrical appliances, or other precision components.
- Assembly and distribution of goods.
- Maintenance, repair, reconditioning, and cleaning.
- Printing;
- Limited packaging and processing activities;
- Research and development technology;
- Small machine shops

Other similar limited manufacturing activities may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses may exclude chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

10. Limited Manufacturing Services. Services such as Customer & Call Support; Low Impact Machinery &/or Electronic Device Repair or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and which are to be conducted in a fully enclosed building and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

Other similar limited manufacturing services may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses may exclude, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

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Town of Malabar

Allowing "Light" Manufacturing in the  
R/LC, CL and CG Commercial Land Use and  
Commercial Zoning Districts

Patrick T. Reilly  
Town of Malabar Mayor  
14 Sep 2022

1

1

Agenda

- Land Development Code
  - Article II Land Use and Zoning (See Appendix A)
    - Section 1-2.6
      - D. Industrial Activities
        - 2. Manufacturing Activities
  - Article III District Provisions
    - Section 1-3.1
      - K. CL "Commercial Limited"
      - L. CG "Commercial General"
      - M. IND "Industrial"
      - O. R/LC "Residential and Limited Commercial"
    - Table 1-3.2 Land Use by Districts (See Appendix B)
    - Table 1-3.3(A) Size and Dimensions (See Appendix C)
    - Table 1-6.1B Conditional Land Use RQTs (See Appendix D)
  - Future Land Use Maps for CG Land Uses
  - Pictures of an example for a manufacturing business's
  - Conclusion

2

Article III District Provisions  
Section 1-3.1

K. CL "Commercial Limited." The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:

- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or
- A specialized market with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposable containers and/or providing drive-in facilities. No residential uses shall be located in the limited commercial district.

Town of Malabar Code for Commercial Limited Land Use

3

3

Article III District Provisions  
Section 1-3.1

L. CG "Commercial General." The CG district is established to implement comprehensive plan policies for managing general commercial development. The general commercial district is designed to accommodate general retail sales and services. Sites designated for CG zoning shall be located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements required by general commercial land use activities.

The general commercial district shall also accommodate commercial trades in strategically designated areas as defined in the conditional use criteria. Development standards within the land development code shall require that site plans incorporate amenities necessary to prevent potential adverse effects on the traffic circulation system, public services, and residential development within the vicinity.

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

Town of Malabar Code for Commercial General Land Use  
Consider **Allowing** the manufacturing, processing, or assembly of goods

4

4

Article III District Provisions  
Section 1-3.1

M. *IND "Industrial."* The industrial district is established to implement comprehensive plan policies for managing industrial development. In locating industrial districts, consideration shall be directed to selecting sites accessible to rail facilities, terminal facilities, major arterials, labor markets, and necessary urban services. Industrial districts shall not include residential activities. However, residence for night watchman or custodians whose presence on industrial sites is necessary for security purposes may be approved as an accessory use. Industrial districts shall be accessible to major thoroughfares and shall be buffered from residential neighborhoods.

Any additional industrial zoning shall be consistent with the comprehensive plan, including criteria for siting industrial activities, including but not limited to, policy 1-1.3.1, policy 1-1.3.2, and policy 1-1.3.3.

Town of Malabar Code for Industrial Land Use  
No mention of "Manufacturing" in the Description

Article III District Provisions  
Section 1-3.1

O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor, situated on the north and south side of Malabar Road and those sites on the east side of Babcock Street as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to six (6) units per acre. Commercial activities shall generally cater to the following markets:

Local residential markets within the town as opposed to regional markets; or

Specialized markets with customized market demands.

A Malabar Vernacular Style is required for all development along arterial roadways.

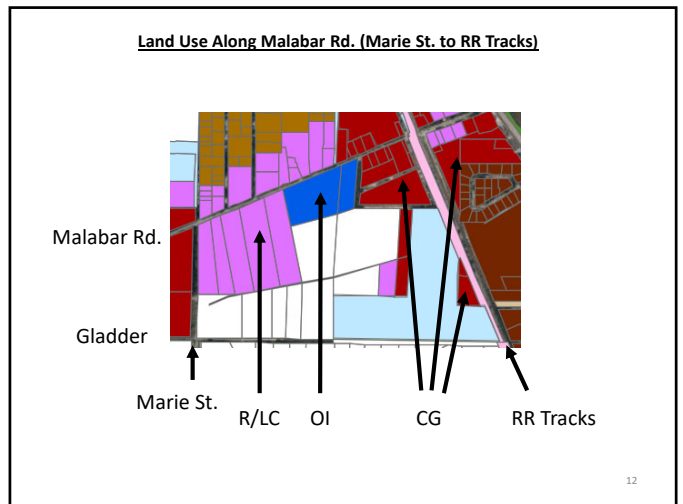
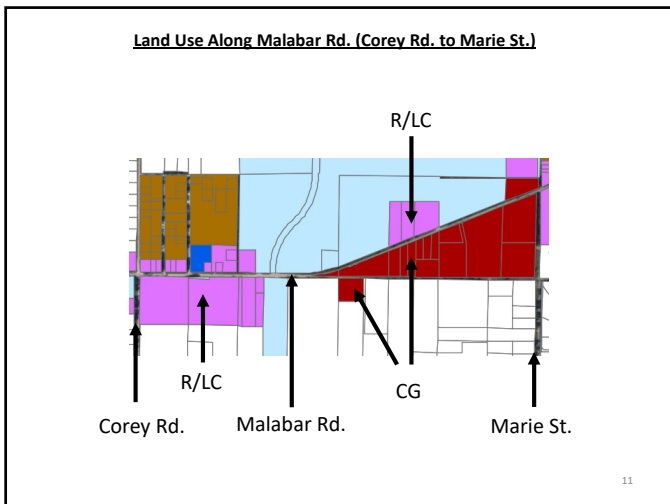
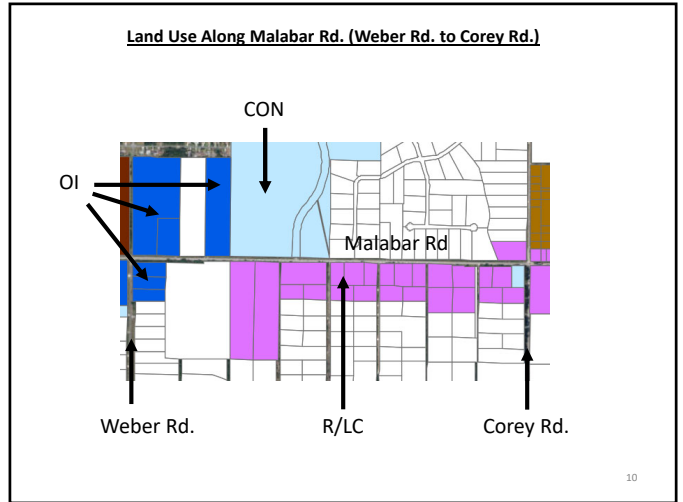
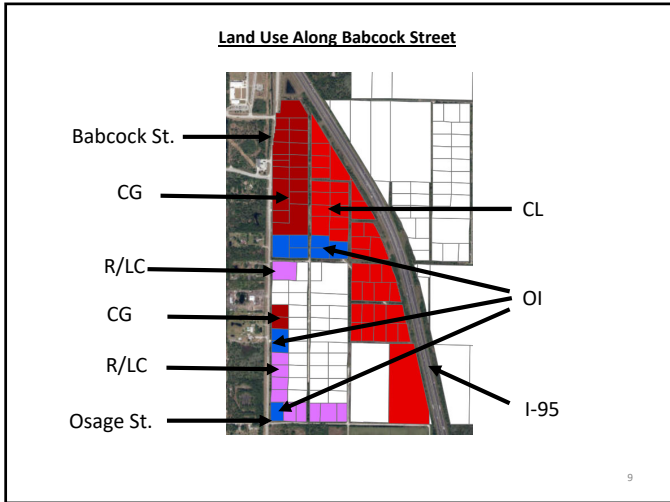
Town of Malabar Code for Residential and Limited Commercial Land Use

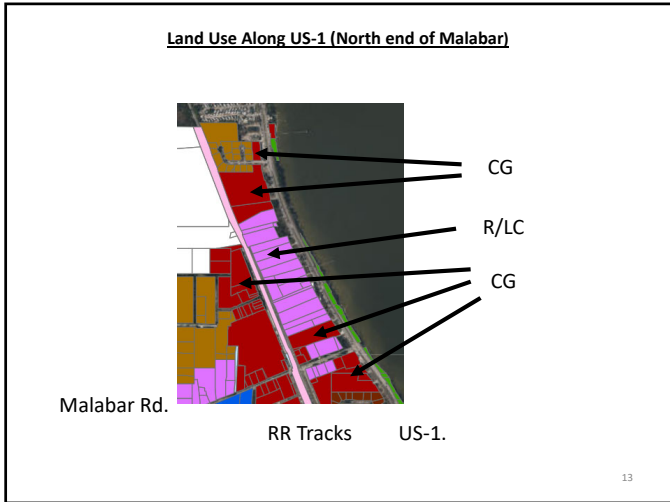
Residential and Limited Commercial (cont)

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets, and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

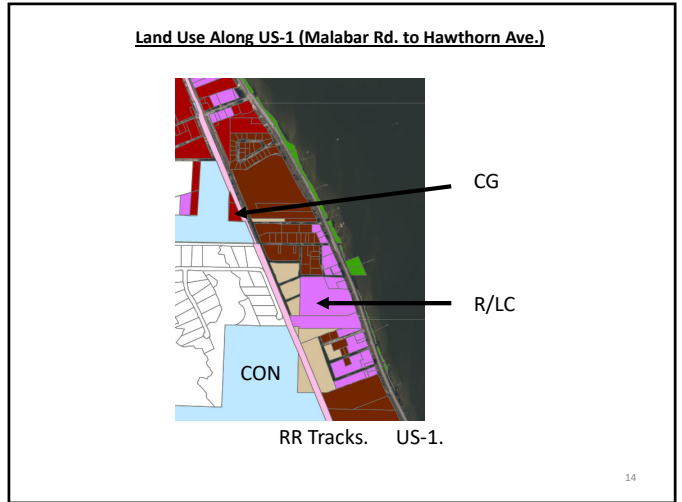
Town of Malabar Code for Residential and Limited Commercial Land Use

Future Land Use Maps

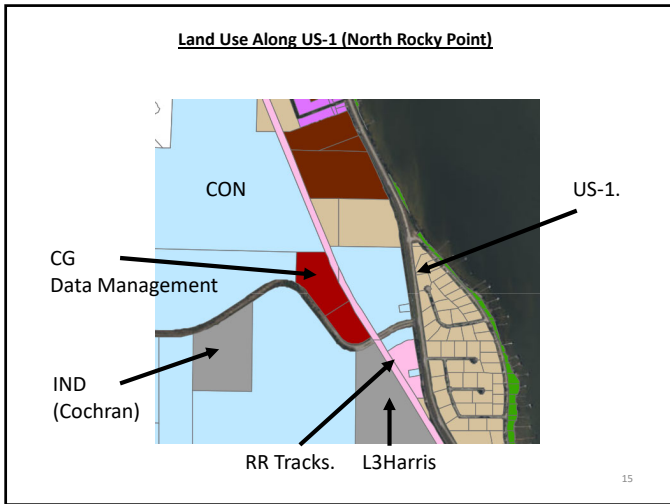




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15

**Manufacturing, Assembly, and Test Business Example**

- Downtown Melbourne
- Zoned C-2
- 4-Business Units
  - Insurance Agent
  - Psychiatrist
  - NoLand Engineering
    - Design, manufacture, test and sell electronic hardware

Example of "Light" Manufacturing in a Commercial General Land Use District

16

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**Manufacturing, Assembly, and Test Business Example (cont)**

City of Melbourne Code - Zoning Districts

*C-1 — Neighborhood Commercial District.* The provisions of this district are intended to apply to an area adjacent to arterial and major collector streets and convenient to major residential areas. The types of uses permitted are intended to serve consumer needs. Lot sizes and other restrictions are intended to reduce conflicts with adjacent residential uses and to minimize the interruption of traffic along thoroughfares.

(Comparable to Malabar CL)

*C-2 — General Commercial District.* The provisions of this district are intended to apply to an area intended to be developed and preserved as a major commercial center serving the commercial needs of the community and region as well as the motoring public. The types of uses and other restriction are intended to promote adequate protection from conflicts with adjacent residential and other noncommercial uses, and to minimize the interruption of traffic along adjacent thoroughfares.

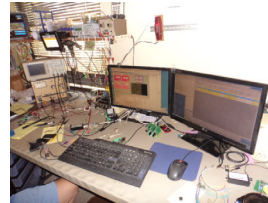
(Comparable to Malabar CG)

Similar Code Language between City of Melbourne and Malabar

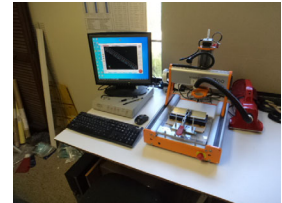
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**Manufacturing, Assembly, and Test Business Example (cont)**



Software and Hardware, Design and Test Station



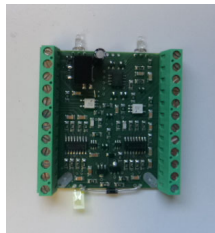
PC Card Layout Station

NoLand Engineering, Melbourne FL. Work Stations

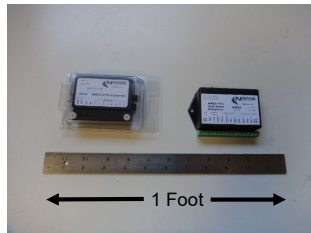
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**Manufacturing, Assembly, and Test Business Example (cont)**



Final PC Card Assembly



Final Product

NoLand Engineering, Melbourne FL. Manufactured Products

19

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**Manufacturing, Assembly, and Test Business Example (cont)**



Small Machine Shops Should be Allowed in Commercial Land Use Districts

20

20

**Manufacturing, Assembly, and Test Business Example (cont)**



- 3D Printer
- 11.6 x 7.6 x 6.5" Build Volume
- Fabricates Small parts

Rapid Prototyping Services, LLC  
In Satellite Beach

Should be Allowed in Commercial Land Use Districts

21

21

**Conclusion**

- I would like Planning and Zoning to consider allowing "Light Industry" manufacturing in the R/LC, CL and CG Commercial Land Use and Zoning Districts
- "Light Industry" manufacturing, assembly, integration and testing to be performed in enclosed buildings
- Minimal outdoor activities
- Establish Allowable verses Conditional Uses (Table 1-3.2)
- Consider having a workshop and have small manufacturing business's input

22

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**Appendix A**

Article II Land Use and Zoning

23

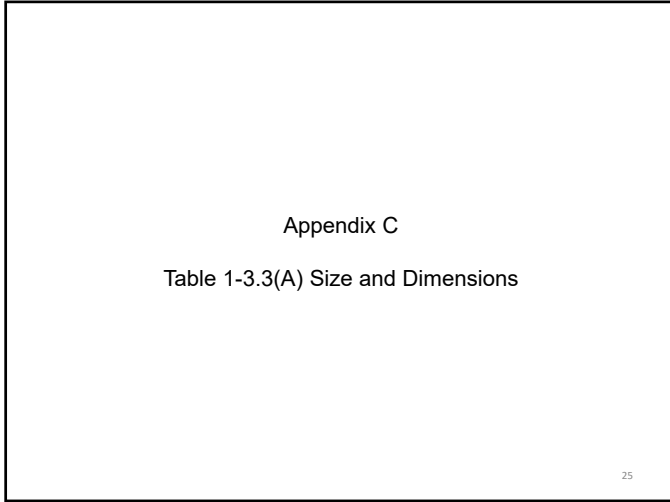
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**Appendix B**

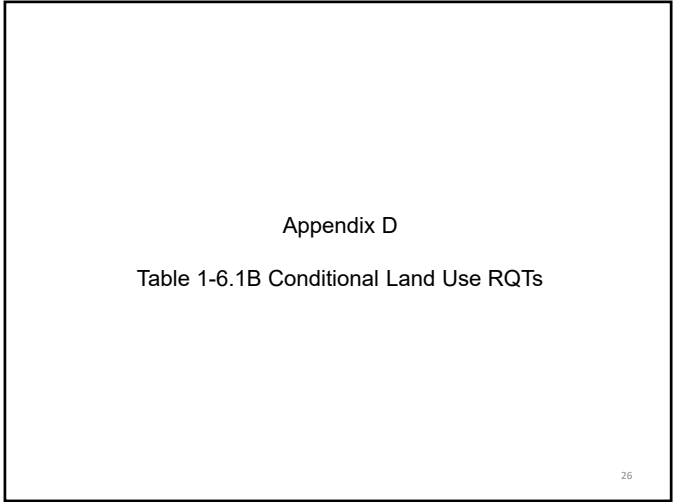
Table 1-3.2 Land Use by Districts

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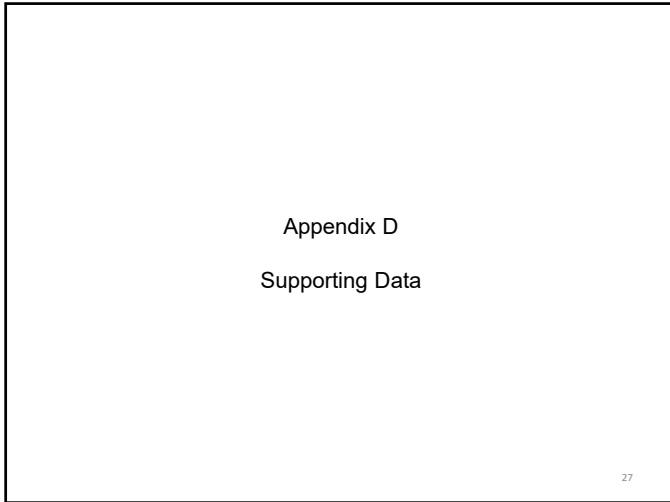
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# STAFF REPORT

## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

Prepared by: Lisa Morrell

The Planning and Zoning Board began reviewing the case on September 14, 2022.

Continued discussion by the Planning and Zoning Board on the following dates:

October 12, 2022 - 6:00pm

October 26, 2022 - 6:00pm

November 15, 2022 - 6:00pm

December 14, 2022 - 6:00pm

January 11, 2023 - 6:00pm

January 25, 2023 - 6:00pm

At the February 8, 2023 Planning and Zoning Meeting, the board moved to approve and progress the item to Town Council for approval. The proposed ordinance will amend the Land Development Code to define and add "Limited Manufacturing Activities and Limited Manufacturing Services" as land use classifications to certain zoning districts, specifically Commercial General (CG), Commercial Limited (CL), and Residential Limited Commercial (R/LC).

#### PROPERTY OWNER OR REPRESENTATIVE

Town of Malabar  
2725 Malabar Road  
Malabar, Florida 32950

The proposed amendment would affect 245 of the 2,365 parcels which are currently zoned Commercial General (CG), Commercial Limited (CL), and Residential Limited Commercial (R/LC), totaling 437.35 Acres. The affected parcels are listed in Table 1.

**TABLE 1. ARCGIS DATA SOURCE AS OF MARCH 10, 2023, CG, CL, R/LC:**

TAX ACCT	PARCEL ID	ACRES	ZONING/FLU
3020287	28 3831-54-*-R.01	0.05	CG
2851066	28 3831-51-A-5	0.06	CG
2851019	28 3831-26-3-20	0.07	CG
2851013	28 3831-26-2-8	0.09	CG
2851100	28 3831-54-C-27	0.12	CG
2851108	28 3831-54-D-12	0.13	CG
2851146	28 3831-54-5-1	0.14	R/LC
2851148	28 3831-54-5-3	0.14	R/LC
2851084	28 3831-54-B-26	0.14	CG
2953352	29 3806-03-A-5	0.14	R/LC
2851083	28 3831-54-B-14	0.14	CG
2851147	28 3831-54-5-2	0.14	R/LC
2931308	29 3710-00-260	0.17	CL
2851081	28 3831-54-B-10	0.17	CG
2851043	28 3831-50-A-1.01	0.18	CG
2851065	28 3831-51-A-4	0.19	CG
2953359	29 3806-03-C-5	0.20	R/LC
2851115	28 3831-54-2-2	0.20	R/LC
2851093	28 3831-54-C-17	0.21	R/LC





# STAFF REPORT

## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

2851004	28 3831-26-1-3	0.22	R/LC
2953354	29 3806-03-B-1	0.23	R/LC
2850944	28 3831-00-250.3	0.25	CG
2866229	28 3736-00-515	0.26	CG
2851012	28 3831-26-2-5	0.26	CG
2846407	28 3736-51-2-3	0.26	R/LC
2846408	28 3736-51-2-4	0.26	R/LC
2846384	28 3736-51-1-2	0.26	R/LC
2846383	28 3736-51-1-1	0.26	R/LC
2851103	28 3831-54-D-1	0.27	CG
2846377	28 3736-50-A-35	0.27	R/LC
2846381	28 3736-50-B-33	0.27	R/LC
2851078	28 3831-54-B-7	0.27	CG
2960442	29 3806-03-A-3	0.27	R/LC
2851171	28 3831-54-5-48	0.28	R/LC
2851091	28 3831-54-C-15	0.29	R/LC
2851637	28 3831-00-269	0.30	CG
2851016	28 3831-26-2-14	0.31	CG
2851014	28 3831-26-2-9	0.31	CG
2851079	28 3831-54-B-7.01	0.34	CG
2851080	28 3831-54-B-9	0.34	CG
2851064	28 3831-51-A-3	0.34	CG
2851063	28 3831-51-A-2	0.34	CG
2850977	28 3831-00-764	0.34	CG
2953335	29 3806-02-A-1	0.36	R/LC
2851002	28 3831-26-1-1.01	0.36	R/LC
2851592	28 3831-54-C-28.01	0.37	CG
2851104	28 3831-54-D-2	0.39	CG
2851015	28 3831-26-2-11	0.39	CG
2851181	28 3831-75-*-C	0.39	R/LC
2851107	28 3831-54-D-10	0.40	R/LC
2953337	29 3806-02-A-6	0.40	R/LC
2953360	29 3806-03-C-7	0.40	R/LC
2851095	28 3831-54-C-20	0.41	R/LC
2851094	28 3831-54-C-18	0.42	R/LC
2851173	28 3831-54-5-52	0.43	R/LC
2851172	28 3831-54-5-50	0.43	R/LC
2953324	29 3806-00-18	0.44	R/LC
2953351	29 3806-03-A-1	0.44	R/LC
2846375	28 3736-50-A-14	0.48	R/LC
2851055	28 3831-50-A-8.01	0.48	R/LC
2851018	28 3831-26-3-14	0.50	CG
2846406	28 3736-51-2-1	0.52	R/LC



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**CASE 2023-01:**

## **LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

2846385	28 3736-51-1-3	0.52	R/LC
2922168	29 3701-00-254	0.54	R/LC
2851105	28 3831-54-D-4	0.56	R/LC
2953331	29 3806-01-1-1	0.56	R/LC
2850948	28 3831-00-255	0.56	R/LC
2851182	28 3831-75-*E	0.58	R/LC
2850980	28 3831-25-*1	0.59	CG
2851180	28 3831-75-*A	0.60	R/LC
2850955	28 3831-00-262	0.61	R/LC
2846322	28 3736-00-766	0.62	CG
2851058	28 3831-50-A-8.04	0.63	R/LC
2851096	28 3831-54-C-22	0.63	CG
2931342	29 3710-00-294	0.64	CG
2931368	29 3710-00-321	0.64	CG
2851114	28 3831-54-2-1.01	0.72	R/LC
2846320	28 3736-00-764	0.73	CG
2851057	28 3831-50-A-8.03	0.78	CG
2953364	29 3806-03-D-7	0.79	R/LC
2851098	28 3831-54-C-25	0.82	CG
2846323	28 3736-00-767	0.82	CG
2850954	28 3831-00-261	0.82	R/LC
2931311	29 3710-00-263	0.86	CL
2846319	28 3736-00-763.2	0.91	CG
2851082	28 3831-54-B-11	0.95	CG
2922199	29 3701-00-286	1.00	R/LC
2851009	28 3831-26-1-7	1.00	R/LC
2846318	28 3736-00-763.1	1.02	CG
2953355	29 3806-03-B-3	1.03	R/LC
2851039	28 3831-26-10.1	1.04	R/LC
2931333	29 3710-00-285	1.05	CG
2851036	28 3831-26-8.1	1.06	CG
2931349	29 3710-00-302	1.06	CL
3017126	28 3831-26-8.3	1.06	CG
2953314	29 3806-00-2	1.07	R/LC
2851020	28 3831-26-3-21	1.07	CG
2953332	29 3806-01-1-3	1.07	R/LC
2931375	29 3710-00-509	1.08	CL
2922424	29 3702-00-25	1.10	R/LC
2851118	28 3831-54-3-1	1.11	R/LC
2851119	28 3831-54-3-3	1.12	R/LC
2931348	29 3710-00-301	1.13	CG
2850953	28 3831-00-260	1.16	R/LC
2931429	29 3710-00-564	1.19	R/LC



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## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

2931439	29 3710-00-574	1.19	R/LC
2931371	29 3710-00-505	1.19	R/LC
2922443	29 3702-00-43	1.19	R/LC
2922447	29 3702-00-47	1.19	R/LC
2931358	29 3710-00-311	1.19	CL
2851097	28 3831-54-C-24	1.19	CG
2922441	29 3702-00-41	1.20	R/LC
2931309	29 3710-00-261	1.20	CL
2931356	29 3710-00-309	1.21	CL
2851106	28 3831-54-D-6	1.21	R/LC
2851006	28 3831-26-1-5	1.21	R/LC
2931415	29 3710-00-550	1.22	CL
2846317	28 3736-00-763	1.22	CG
2931390	29 3710-00-524	1.23	CL
2931392	29 3710-00-526	1.23	CL
2846314	28 3736-00-761	1.23	CG
2931310	29 3710-00-262	1.23	CL
2931316	29 3710-00-268	1.23	CL
2931398	29 3710-00-532	1.26	R/LC
2931400	29 3710-00-534	1.26	R/LC
2931399	29 3710-00-533	1.26	R/LC
2931387	29 3710-00-521	1.26	CL
2931365	29 3710-00-318	1.26	CG
2931313	29 3710-00-265	1.26	CG
2931350	29 3710-00-303	1.26	CG
2851003	28 3831-26-1-2	1.26	R/LC
2931378	29 3710-00-512	1.29	R/LC
2931434	29 3710-00-569	1.29	CG
2931426	29 3710-00-561	1.29	CG
2931332	29 3710-00-284	1.29	CG
2931388	29 3710-00-522	1.33	R/LC
2922456	29 3702-00-56	1.34	R/LC
2851085	28 3831-54-B-30	1.35	CG
2922437	29 3702-00-37	1.35	R/LC
2931425	29 3710-00-560	1.35	CL
2861962	28 3831-54-B-53.01	1.35	R/LC
2922471	29 3702-00-71	1.36	R/LC
2922513	29 3702-00-274	1.36	R/LC
2931421	29 3710-00-556	1.36	CL
2931391	29 3710-00-525	1.38	CL
2922436	29 3702-00-36	1.38	R/LC
2931370	29 3710-00-502	1.40	CL
2922469	29 3702-00-69	1.40	R/LC



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## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

2931411	29 3710-00-546	1.40	CL
2931396	29 3710-00-530	1.40	CL
2931423	29 3710-00-558	1.40	CL
2931397	29 3710-00-531	1.40	CL
2931345	29 3710-00-298	1.40	CG
2922484	29 3702-00-84	1.40	R/LC
2922528	29 3702-00-290	1.40	R/LC
2931340	29 3710-00-292	1.40	CL
2931325	29 3710-00-277	1.40	CL
2931343	29 3710-00-296	1.40	CL
2931334	29 3710-00-286	1.40	CL
2931339	29 3710-00-291	1.40	CL
2931366	29 3710-00-319	1.40	CL
2931361	29 3710-00-314	1.40	CG
2931352	29 3710-00-305	1.40	CG
2931319	29 3710-00-271	1.40	CG
2931359	29 3710-00-312	1.40	CL
2931353	29 3710-00-306	1.40	CG
2931330	29 3710-00-282	1.40	CL
2931360	29 3710-00-313	1.40	CG
2931329	29 3710-00-281	1.40	CG
2931355	29 3710-00-308	1.42	CL
2851041	28 3831-26-10.3	1.42	R/LC
2958905	29 3702-00-88	1.44	R/LC
2851040	28 3831-26-10.2	1.52	R/LC
2851042	28 3831-26-10.4	1.55	R/LC
2846293	28 3736-00-502	1.57	R/LC
2846321	28 3736-00-765	1.61	CG
2922438	29 3702-00-38	1.62	R/LC
2850950	28 3831-00-257.1	1.67	R/LC
2931335	29 3710-00-287	1.69	CL
2850946	28 3831-00-253	1.70	R/LC
2931430	29 3710-00-565	1.76	R/LC
2922442	29 3702-00-42	1.76	R/LC
2931418	29 3710-00-553	1.85	CL
2846311	28 3736-00-758	1.87	R/LC
2850961	28 3831-00-267	1.93	CG
2931382	29 3710-00-516	1.93	CL
2931315	29 3710-00-267	1.93	CL
2846316	28 3736-00-762	1.97	CG
2851127	28 3831-54-4-1	2.01	R/LC
2851017	28 3831-26-3-1	2.02	CG
2931376	29 3710-00-510	2.04	CL



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## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

2851116	28 3831-54-2-5	2.04	R/LC
2931324	29 3710-00-276	2.06	CG
2922402	29 3702-00-2	2.07	R/LC
2851001	28 3831-26-1-1	2.07	R/LC
2858397	28 3831-00-760	2.10	CG
2846310	28 3736-00-757	2.11	R/LC
2931367	29 3710-00-320	2.14	CL
2850952	28 3831-00-259	2.23	R/LC
2931363	29 3710-00-316	2.24	CL
2931304	29 3710-00-253	2.24	CL
2851038	28 3831-26-9	2.26	CG
2851068	28 3831-54-B-1.01	2.30	R/LC
2922416	29 3702-00-17	2.31	R/LC
2931380	29 3710-00-514	2.44	R/LC
2851099	28 3831-54-C-26	2.49	CG
2846138	28 3735-00-755	2.49	R/LC
2922147	29 3701-00-53	2.50	CG
2922406	29 3702-00-3.1	2.50	R/LC
2851089	28 3831-54-B-54	2.51	CG
2846306	28 3736-00-753	2.52	R/LC
2922419	29 3702-00-20	2.60	R/LC
2922167	29 3701-00-253	2.66	R/LC
2846308	28 3736-00-755	2.67	CG
2851101	28 3831-54-C-28	2.85	CG
2851067	28 3831-54-B-1	2.88	R/LC
2931312	29 3710-00-264	2.90	CG
2850966	28 3831-00-750	3.22	CG
2851069	28 3831-54-B-1.02	3.85	R/LC
2851086	28 3831-54-B-36	3.95	CG
2922525	29 3702-00-287	4.00	R/LC
2846324	28 3736-00-768	4.32	CG
2846312	28 3736-00-759	4.38	R/LC
2851074	28 3831-54-B-4	4.60	R/LC
2931323	29 3710-00-275	4.65	CG
2846315	28 3736-00-761.1	4.83	CG
2953286	29 3805-00-503	5.00	CG
2953317	29 3806-00-6	5.33	R/LC
2851070	28 3831-54-B-3	5.50	R/LC
2850945	28 3831-00-251	5.55	CG
2922166	29 3701-00-252	5.72	R/LC
3017138	28 3736-00-770	5.76	CG
2953353	29 3806-03-A-7	6.60	R/LC
2953353	29 3806-03-A-7	6.60	R/LC



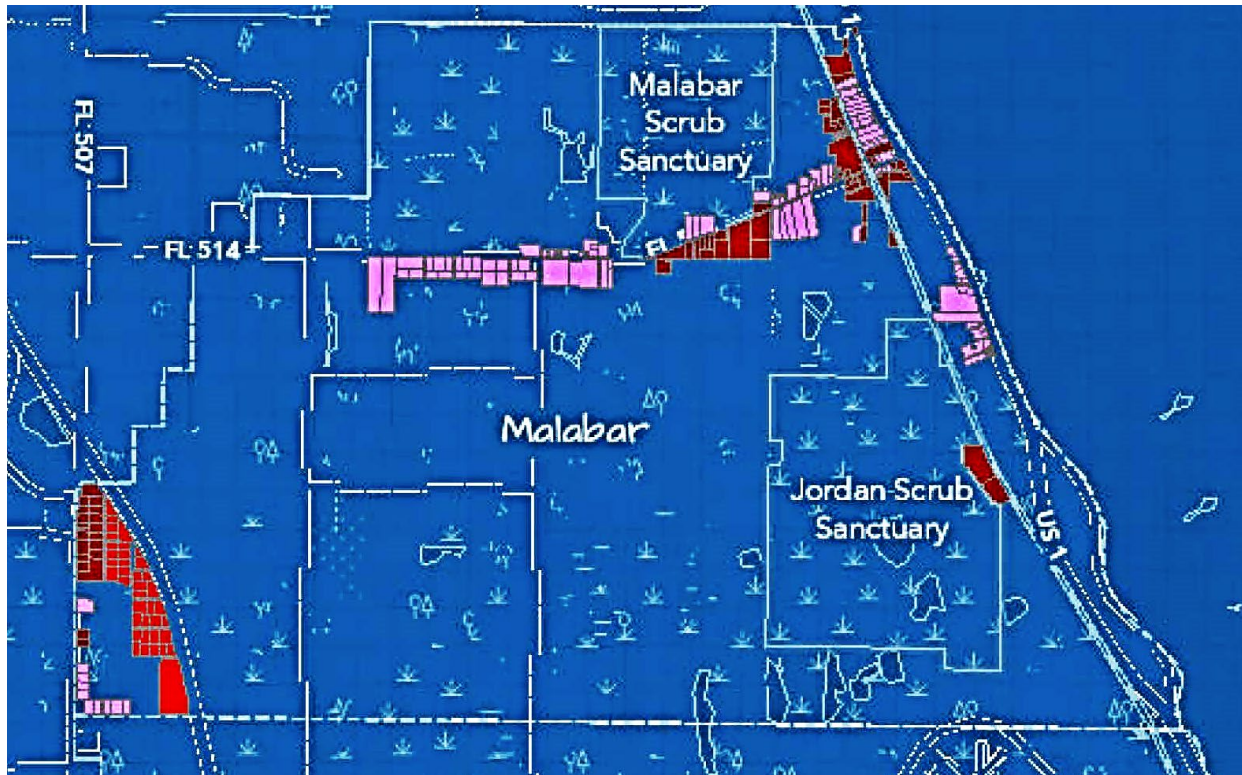
# STAFF REPORT

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## LAND USE CLASSIFICATION: LIMITED MANUFACTURING

2953353	29 3806-03-A-7	6.60	R/LC
2862244	28 3736-00-769	8.77	CG
2922490	29 3702-00-254	9.68	R/LC
2922169	29 3701-00-255	9.82	R/LC
2953330	29 3806-00-757	10.00	CG
2922170	29 3701-00-256	10.00	R/LC
2922488	29 3702-00-251	10.00	R/LC
2851046	28 3831-50-A-3	10.32	CG
2953315	29 3806-00-3	10.53	R/LC
2846374	28 3736-50-A-3	11.56	R/LC
2931374	29 3710-00-508	17.25	CL

### TOWN OF MALABAR PARCELS WITH CG, CL, R/LC ZONING ONLY MAP



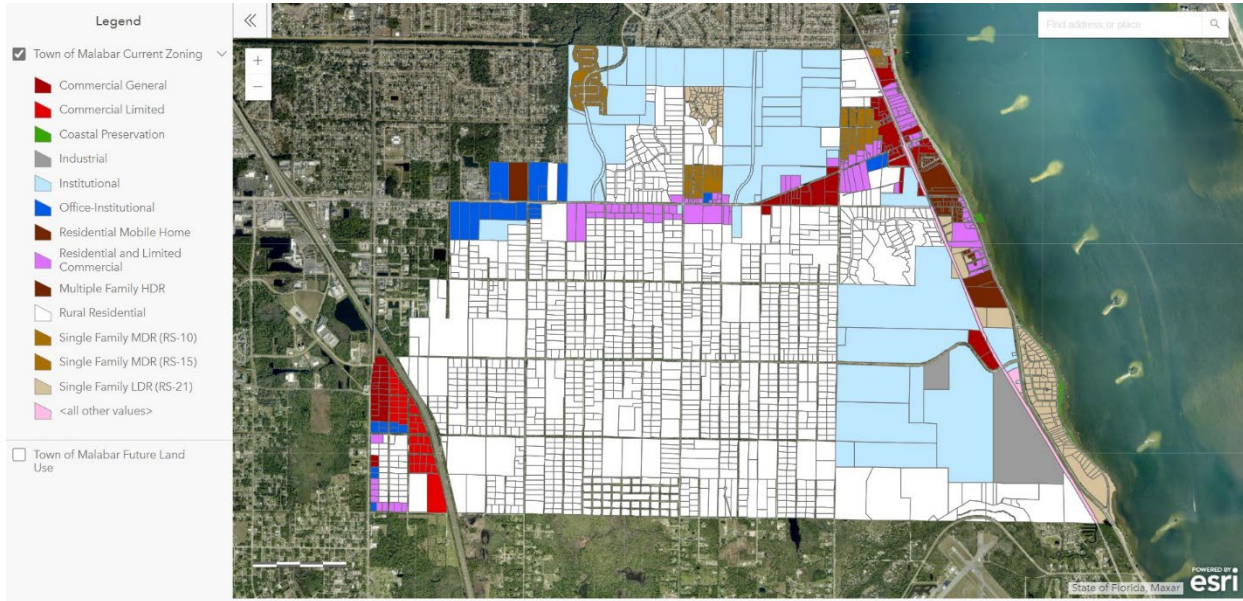


# STAFF REPORT

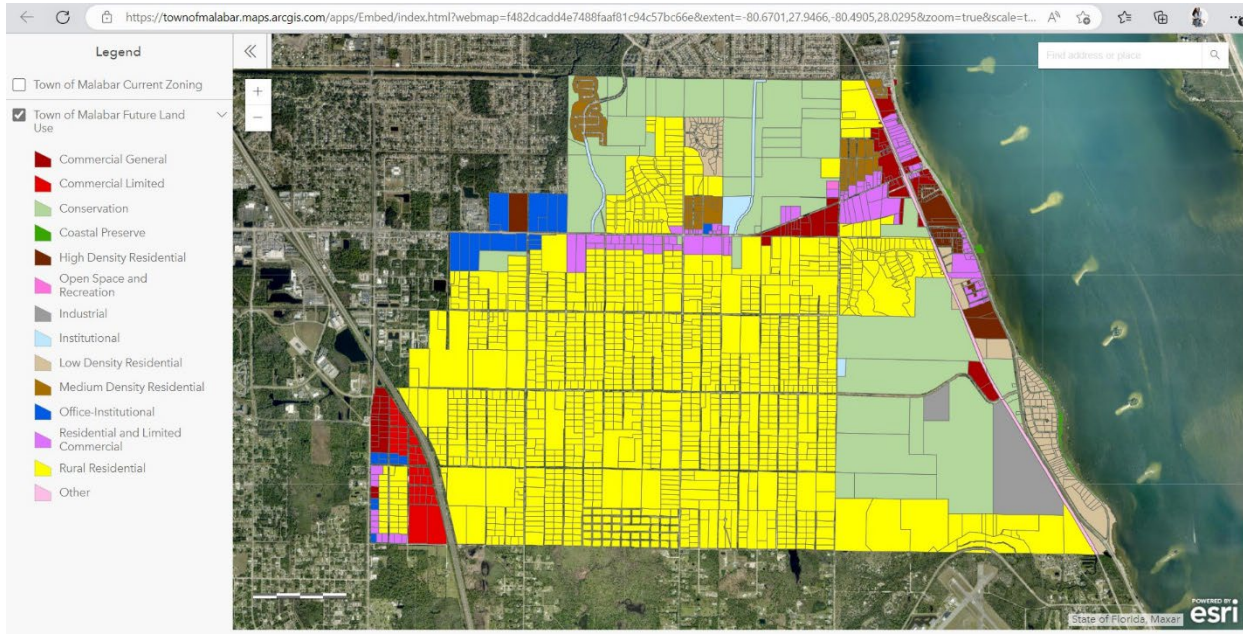
## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

#### TOWN OF MALABAR CURRENT ZONING MAP



#### TOWN OF MALABAR FUTURE LAND USE MAP





# STAFF REPORT

**CASE 2023-01:**

## **LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

### **SUMMARY OF REQUEST**

Amend the Land Development Code to add “Limited Manufacturing Activities” and “Limited Manufacturing Services” to Section 1-2.6 – Land Use Classifications in certain zoning districts within the Town of Malabar and update the corresponding Table 1-3.2, Land Use By Districts to define conditional and permitted uses and Table 1-6.2(B), Conditional Land Use Requirements.

Currently, The Town of Malabar permits all manufacturing activities only in the industrial zoning district. Industrial zones account for (2) two parcels within the Town’s boundaries. One parcel is currently developed and the other remains vacant with no improved roadway access for development, currently. The small number of industrial designations impede or limit development for light or limited manufacturing activities.

The purpose of the amendment is to allow for a small-scale level of manufacturing as a permitted or conditional land use classification within three existing zoning districts; Commercial General (CG), Commercial Limited (CL), and Residential / Limited Commercial (R/LC), comprised of 248 parcels. Offering additional small-scale activities within these designations may provide for a wider variety of uses to appeal to commercial development within the Town.

The Planning and Zoning Board advises permitting Limited Manufacturing Activities in Commercial General (CG) and conditional uses in Residential Limited Commercial (R/LC) Commercial Limited (CL).

Discussions by the Planning and Zoning board members have varied on permitting a chemical or physical change in the assembly of raw material or solely assembly of products in a current processed form. Specific discussions include small-scale three-dimensional printing as a permitted or conditional use activity within the new land use classification was met with board approval, yet this activity is a chemical change. The Board was not in favor of creating chemicals within these designations and land use classification.

The terminology must be discussed and finalized by the Town Council during the first reading of the proposed ordinance and public meeting process to clarify the intent of the amendment. The Town Council may approve or return the item for further review and discussion by the Planning and Zoning Board.

Staff recommends limited manufacturing term and defining a small-scale process with the chemical changes to include soldering, welding, laser effected materials, molds, kilns, computer aided numerical control (CNC) machines on a small commercial use scale that does not emit large nuisances of noise, order, or warehouse storage of chemicals.

Staff advises Town Council to revisit the Florida State Statutes Chapter 633 entitled Florida Fire Prevention Code and review the Town of Malabar Code of Ordinances for compliance with annual public safety inspections for non-residential structures after the certificate of occupancy is issued by the Building Official. Establishing a process and ordinance to ensure public safety education and mitigating any risks to the property through an annual inspection for the surrounding properties, occupants, employees, and or members of the public for proper ingress and egress, maintenance of fire protection systems, exit lighting, extinguisher equipment, inventory or supply storage of materials, and fire department pre planning survey updates for emergency personnel responses to calls for service.

### **PROPOSED TEXT ORDINANCE AMENDMENT EXCERPT:**

Unanimous approval by the Planning and Zoning Board for the following amendment to insert new items nine (9) and ten (10) and renumber existing items nine (9) through eleven (11) as eleven (11), twelve (12), through twenty-two (22) under letter C. Commercial Activities. The proposed amendments require updates to corresponding tables within the Land Development Code: Table 1-3.2, Land Use By Districts to define conditional and permitted uses and Table 1-6.2(B), Conditional Land Use Requirements.

P&Z Board Final Draft (2/8/2023) For Land Development Code Section 1-2.6 Land Classifications





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**CASE 2023-01:**

## **LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

9. Limited Manufacturing Activities. This land use classification is intended to accommodate small, limited item shops, with limited inventory serving a specialized market with customized service demand and which are to be conducted in a fully enclosed building.

This classification is intended to include the following:

- Manufacturing or processing of electronic &/or computer components, optical instruments, electrical appliances, or other precision components.
- Assembly and distribution of goods.
- Maintenance, repair, reconditioning, and cleaning.
- Printing.
- Limited packaging and processing activities.
- Research and development technology.
- Small machine shops.

Other similar limited manufacturing activities may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses may exclude chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section1-2.7.

10. Limited Manufacturing Services. Services such as Customer & Call Support; Low Impact Machinery &/or Electronic Device Repair or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and which are to be conducted in a fully enclosed building and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

Other similar limited manufacturing services may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses may exclude, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section1-2.7.



# STAFF REPORT

**CASE 2023-01:**

## **LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

### **FUTURE LAND USE IMPACT:**

There are no impacts to the Future Land Use or Current Zoning for the 248 parcels as the amendment only includes Land Use Classifications additions to specific existing zoning districts and future land uses to permit Limited Manufacturing to Commercial General (CG) and conditional use permits to Residential Limited Commercial (R/LC) and Commercial Limited (CL) zoning districts.

### **SITE IMPROVEMENTS:**

None; the amendment only affects Code of Ordinances, Section 1-2.6 entitled Land Classification Uses and Land Use by Districts Table 1-3.2 and Conditional Land Use Requirements in Table 1-6.1(B).

### **SITE ACREAGE:**

Amendment potentially impacts 437+/- specifically zoned acres, for land use classifications only.

### **SURROUNDING ZONING AND USE OF LAND USE:**

Multiple, refer to Zoning and FLU Map on page 8. The Town's Comprehensive Plan and Code of Ordinance requires a site plan review process and compliance of the adopted comprehensive plan policy in the development of land.

### **REFERENCE:**

Comprehensive Plan, Chapter 1, FUTURE LAND USE ELEMENT - GOALS, OBJECTIVES, AND POLICIES

### **GOAL 1-1**

*Land Use.* Insure that the character and location of land uses reflect best management practices and principles of resource conservation, promote orderly land use transition, and minimize threats to health, safety and welfare which may be engendered by incompatible land uses, environmental degradation, hazards, and nuisances.

1-1.1 Objective: *Plan and design for residential quality.*

Sufficient space shall be provided for residential development and require community facilities to adequately meet the housing needs of the present and expected future population of the Town. Residential development shall be planned and designed to create and perpetuate stable living areas and protect land and land improvements.

1-1.1.1 Policy: *Provide access to good and services and protect residential areas from adverse impacts of transition in land use.*

Stable residential areas and projected future residential areas as delineated on the Land Use Map shall be protected from encroachment by incompatible nonresidential development. This objective does not preclude necessary community facilities from locating within residential areas when such activities satisfy established criteria of this plan and the Town's Code of Ordinances.

Any potential adverse impacts caused by different land uses located adjacent to each other shall be minimized by landscaping, screening and buffering of all nonresidential activities located adjacent to residential activities. In addition, other reasonable design principles shall be included in the zoning code in order to alleviate any potential adverse impacts of potentially incompatible land uses.

1-1.1.5 Policy: *Encourage separation of urban and rural land uses.*

Within one (1) year of the adoption of this plan, Article VII, Site Plan Review of the Land Development Code shall be amended to incorporate performance standards, urban service availability standards, and other similar incentives and disincentives which encourage a separation of urban and rural land uses. Performance standards may include emission of noise, air pollutants, odor, vibration, fire or explosive hazard, and glare. Urban service standards may include transportation system, off street parking and



# STAFF REPORT

**CASE 2023-01:**

## **LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

loading, utilities and waste management, storm water management, tree protection, landscaping and signage.

### **COMPREHENSIVE PLAN COMPATIBILITY:**

The Town's Comprehensive plan defines Future Land Use Elements and Policies associated with future land use designations with a direct correlation of the Town's established and adopted Zoning Districts. The proposed amendment affects the land use classifications as defined in the Town's Code of Ordinances within each affected Zoning Districts: Commercial General, Commercial Limited, Residential/Limited Commercial as defined in the Future Land Use Map of the Comprehensive Plan:

### **1-2 Managing Future Land Use**

**Goal 1-2: Future Land Use Map.** Continue to maintain and manage a Future Land Use map.

The Future Land Use Map, reflects the Town policy for managing the allocation of future land use. Land use designations on the Future Land Use map have been allocated pursuant to the goals, objectives and policies stipulated in the Comprehensive Plan; an analysis of population, housing and land resources; the need to conserve natural resources including wetlands, estuaries, floodways, flood plains, water recharge areas, fish and wildlife; consideration of capital improvement needs; conservation of fiscal resources; discouragement of urban sprawl; energy-efficient land use patterns accounting for existing and future electric power generation and transmission systems; and greenhouse gas reduction strategies.

The Future Land Use Map shall designate areas for the following uses: Rural Residential; Low Density Residential; Medium Density Residential; High Density Residential; Multiple-Family Residential or Offices; Residential and Limited Commercial; Limited Commercial; General Commercial; Industrial; Institutional; Conservation; And Open Space and Recreation land uses. This section of the Future Land Use Element shall define the nature, density and intensity of the allowable uses for each of the designations represented on the Future Land Use map. Nothing in this section shall preclude necessary community facilities from locating within any future land use designation when such activity satisfies established criteria of this plan and the Town's Code of Ordinances.



# STAFF REPORT

## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

#### BACKGROUND:

The following pages of the report are relevant excerpts from Comprehensive Plan that shall be taken into consideration and discussion by Town Council while formalizing and adopting the proposed ordinance amendment relating to the characteristics of the Town, policies established for existing and future land use elements, the commercial development policy, Malabar Corridor Plan, and residential and non-residential land development and intensity standards.

#### EXISTING LAND USE CONDITIONS

The Town of Malabar is located in the southeast section of Brevard County. The Town's eastern border is along the beautiful and ecologically diverse Indian River Lagoon. In the late 1800's mail was delivered to the fledgling community via a mail boat that docked along the Indian River Lagoon's banks. The Town remains proud of their rustic and rural roots. The Future Land Use element supports the Town's desire to retain its rural heritage both in new development and redevelopment.

An analysis of Existing Land Use indicates that single family residential use designations make up approximately 55%; Commercial, Industrial and Agricultural uses make up 12% and conservation and municipal uses make up 33% of the total land area.

**TABLE 1-1 EXISTING LAND USES**

Existing Land Use	Acres	Percentage
AGRICULTURE	89.15	1.30%
AQUATIC PRESERVE	16.35	0.20%
COMMERCIAL	38.43	0.56%
CONSERVATION	1009.45	14.75%
INDUSTRIAL	120.58	1.45%
INSTITUTIONAL	83.33	1.00%
INTRACOASTAL WATERWAY	1,467.95	17.65%
MOBILE HOMES	2.95	1.00%
MULTI-FAMILY RESIDENTIAL	4.08	0.05%
Existing Land Use	Acres	Percentage
PARKS	80.14	0.96%
ROW	501.92	6.04%
SINGLE-FAMILY RESIDENTIAL	1,714.11	20.61%
TRANSPORTATION	39.28	0.47%
VACANT AGRICULTURAL	386.96	4.65%
VACANT COMMERCIAL	343.73	4.13%
VACANT INDUSTRIAL	245.33	2.95%
VACANT INSTITUTIONAL	70.96	0.85%
VACANT RESIDENTIAL	1,987.30	23.90%
VACANT RESIDENTIAL/LIMITED COMMERCIAL	29.45	0.35%
<b>TOTAL</b>	<b>8,315.59</b>	<b>100.00%</b>

Source: Brevard County Property Appraiser; Town of Malabar, Calvin, Giordano & Associates



**STAFF REPORT**  
**CASE 2023-01:**  
**LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

FUTURE LAND USE ELEMENT  
GOALS, OBJECTIVES, AND POLICIES

---

**§1-1 Future land use goals, objectives and policies.** This section stipulates goals, objectives, and implementing policies for the Land Use Element pursuant to S163.3177(6)(3), F.S., and S9J-%.006(3), F.A.C.

**GOAL 1-1**

*Land Use.* Insure that the character and location of land uses reflect best management practices and principles of resource conservation, promote orderly land use transition, and minimize threats to health, safety and welfare which may be engendered by incompatible land uses, environmental degradation, hazards, and nuisances.

1-1.2 Objective:

**Allocating commercial development.** Commercial development shall be comprised of a wide range of business uses. The allocation of land resources shall consider the location and space requirements of commercial activities and potential fiscal and environmental impacts on the Town of Malabar.

1-1.2.1 Policy:

*General considerations in locating commercial development.* The location and distribution of specific types of commercial activities shall be determined based on the following considerations.

- a. Trip generation characteristics, impact on existing and planned transportation facilities and ability to achieve a functional internal circulation and landscaped off-street parking system;
- b. Location and site requirements based on specific needs of respective commercial activities, their market area, anticipated employment generation and floor area requirements;
- c. Compatibility with and impact on other surrounding commercial activities;
- d. Relationship to surrounding land uses and natural systems;
- e. Impact on existing and planned community services and utilities.

**1-1.2.2 Policy:**



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General pattern of commercial land use. In order to promote efficient flow of traffic along thoroughfares, achieve orderly development and minimize adverse impact on residential quality, commercial development shall be concentrated in strategically located areas having location characteristics which best accommodate specific land, site, public facilities and market location requirements of respective commercial uses.

### 1-1.2.3 Policy:

*Provide appropriate locations for commercial office development.* Office development shall be encouraged to locate on accessible sites near major thoroughfares and may serve as transitional uses separating more intensive commercial uses from residential development. In addition, office complexes may be compatible with multiple family units and/or institutional uses situated on strategically located sites along major thoroughfares where the sites are of sufficient size to accommodate land requirements for controlled access, effective internal circulation and off-street parking, and appropriate landscape, screening and buffering to assure stability and protection of established or anticipated future residential areas.

The Office-Institutional (OI), Multiple-Family Residential of Office (MRO), and Residential and Limited Commercial (R/LC) land use designations, as described herein, are designed to carry out the intent of this objective. Land Development Code performance standards shall require significant landscaping, screening, urban design controls.

### 1-1.3 Objective:

*Planning for industrial development.* Sufficient land shall be allocated to accommodate industrial development.

#### 1-1.3.1 Policy:

*General considerations in locating industrial development.* The allocation of land resources for industrial development shall reflect the location and space requirements of industrial activities and potential fiscal and environmental impacts on the Town of Malabar. The location and distribution of specific types of industrial activities shall be determined based on the following considerations:

- a. Trip generation characteristics, impact on existing and planned transportation systems, including dependency on rail, air, or trucking for distribution of material and goods;
- b. Anticipated employment generation, floor area requirements, and market area;



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- c. Ability to meet established performance standards for preventing or minimizing nuisance impacts, such as emission of air pollutants, glare, noise or odor, generation of hazardous by-products;
- d. Impact on established and planned development and natural systems;
- e. Impact on existing and planned public services, utilities, water resources, and energy resources.

#### 1-1.3.2 Policy:

*Review of proposed Future Land Use Map amendments for industrial development.* A high priority shall be directed toward encouraging development of existing lands designed for industrial development. These lands contain rail access and are highly accessible to the U.S. 1 highway corridor. These transportation facilities provide convenient access to regional markets. Furthermore, the existing designated acreage is compatible with adjacent land uses and furthers goals, objectives, and policies of the Comprehensive Plan.

The Town shall not amend the Future Land Use Map in a manner which would promote the encroachment of industrial activities into residential areas or in a manner which would adversely impact the integrity of established development. No such Future Land Use Map amendment shall be approved unless the applicant presents requisite information needed to affirmatively address policy considerations identified in Policy 1-1.3.1 above.

Any additional industrial designation of lands on the Future Land Use Map shall generally be concentrated near the existing industrial node and shall incorporate those amenities required by respective industrial uses.

#### 1-1.4 Objective:

*Promote community appearance, natural amenities and urban design principles.* The community appearance shall be reinforced and enhanced through application of the site plan review process.

#### 1-1.4.1 Policy:

*Reinforce and enhance the Town's community appearance.* Major attributes shall be preserved through application of design review standards and management of signs, landscape, and tree removal or relocation. Special emphasis shall be placed on preserving and/or improving the character of major natural and man-made



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## **LAND USE CLASSIFICATION: LIMITED MANUFACTURING**

corridors, including the intracoastal shoreline, the scenic estuary system, and major transportation corridors which serve as a focal point for the motoring public and an inviting gateway to the visiting tourist.

### 1-1.4.2 Policy:

*Continue to maintain Malabar Vernacular Architecture Style.* The Town shall maintain Land Development Code regulations that require the use of the Malabar Vernacular Architectural Style in non-residential and Residential/Limited Commercial developments located along arterial roadways.

## **§1-2 Managing Future Land Use**

### **Goal 1-2**

*Future Land Use Map.* Continue to maintain and manage a Future Land Use map.

The Future Land Use Map, reflects the Town policy for managing the allocation of future land use. Land use designations on the Future Land Use map have been allocated pursuant to the goals, objectives and policies stipulated in the Comprehensive Plan; an analysis of population, housing and land resources; the need to conserve natural resources including wetlands, estuaries, floodways, flood plains, water recharge areas, fish and wildlife; consideration of capital improvement needs; conservation of fiscal resources; discouragement of urban sprawl; energy-efficient land use patterns accounting for existing and future electric power generation and transmission systems; and greenhouse gas reduction strategies.

The Future Land Use Map shall designate areas for the following uses: Rural Residential; Low Density Residential; Medium Density Residential; High Density Residential; Multiple-Family Residential or Offices; Residential and Limited Commercial; Limited Commercial; General Commercial; Industrial; Institutional; Conservation; And Open Space and Recreation land uses. This section of the Future Land Use Element shall define the nature, density and intensity of the allowable uses for each of the designations represented on the Future Land Use map. Nothing in this section shall preclude necessary community facilities from locating within any future land use designation when such activity satisfies established criteria of this plan and the Town's Code of Ordinances.

### 1-2.2 Objective:

*Allocating commercial development.* The Future Land Use Map shall identify the allocation of commercial land for: 1) multiple-family residential or office development; 2) limited commercial development; and 3) general commercial activities. The allocation of land for commercial development is compatible with goals and objectives identified in the Comprehensive Plan and consistent with supportive research and analysis. The policies sated below provide an explanation of the purpose, intent and character of the commercial land use designations.

### 1-2.2.1 Policy:





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*Multiple-Family Residential or Office Development (MRO)*. The MRO policy designation is a \_\_\_\_\_ designed to accommodate residential development, offices, and institutional uses. This policy designation is intended for sites which shall:

- Have good accessibility;
- Have potential to be serviced by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential future adjacent land uses of differing intensity;
- Accommodate only freestanding multiple-family residential structures or office buildings and shall expressly exclude general retail sales and services, warehousing, and outside storage; and
- Generally serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher density or intensity.

The density of residential development within MRO designated lands shall not exceed six (6) units per acre.

#### 1-2.2.2 Policy:

*Office-Institutional Development (OI)*. The OI policy designation is a land use designation designed to accommodate business and professional offices and institutional land uses. This policy designation is intended for sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential future adjacent land uses of differing intensity;
- Accommodate only office buildings and institutional land uses and shall expressly exclude general retail sales and services, warehousing, and outside storage; and



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- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.

#### 1-2.2.3 Policy:

*Limited Commercial Development (CL)*. Limited commercial development is allocated to commercial sites accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this designation are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets: 1) neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional markets; or 2) a specialized market with customized demands. Commercial development within the limited commercial designation shall generally be restricted to any of the following uses: neighborhood convenience stores; small limited item shops and stores restricted to retail sales of convenience items and services including barber, beauty care, and other personal services; small scale drugstores, laundry and dry cleaning pick-up stations; specialty shops; small scale activities associated with a specialized facility.

Areas designated for limited commercial development are not intended to accommodate large scale retail sales, service, and trade activities, generally servicing a city-wide or regional market. Such store would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require a substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas, supermarkets; department stores; large scale wholesaling and warehousing activities; general sales, service or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; fast food establishments primarily serving in disposable containers and/or providing drive-in facilities, and other similar services to be expressly defined in the zoning ordinance.

No residential uses shall be located in a CL designated area.

#### 1-2.2.4 Policy:

*General Commercial Development (CG)*. The general commercial areas are designated on the Future Land Use Maps for purposes of accommodating general retail sales and services. These areas are located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements. Zoning policy shall stipulate provisions regulating specific land uses.



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The areas designated for general commercial developments are specifically not adaptive to permanent residential housing and such uses shall be located in other areas designated for residential development.

#### 1-2.2.5 Policy:

***Residential and Limited Commercial Development (R/LC).*** The R/LC Future Land Use Map designation is intended to accommodate and shall accommodate a mixture of land uses expressly restricted to uses allowed in the "limited commercial" designation together with uses allowed on lands designated for high density residential activities with a density no greater than six (6) units per acre. Such residential uses may be located either within a free-standing structure or within a structure housing both Residential and Limited Commercial activities. The "R/LC" FLUM designation is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in the Town's Land Development Code.

These sites currently are characterized by a mixture of generally small scale commercial businesses together with predominantly single family residential land uses. Acres designated "R/LC" are not suitable for and shall not be developed for large scale general retail activities or other commercial activities more intense than land uses expressly provided for in the "limited commercial" Future Land Use Map designation (Reference Policy 1-2.2.3) since such development would be incompatible with existing and anticipated future residential development within or in the vicinity of areas designated "R/LC" on the Future Land Use Map.

#### 1-2.2.6 Policy:

***Criteria for the Residential and Limited Commercial Development R/LC Designation.*** The following criteria for development within the R/LC FLUM designation shall be incorporated into the Town of Malabar Land Development Regulations:

- a. *Percent of Site for Mixed Use Development.* Within the R/LC designation where Residential and Limited Commercial activities are proposed to occupy the same site and/or the same building the following minimum and maximum percentages shall apply:

	Minimum	Maximum
Limited Commercial	20%	90%
Residential	10%	80%



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### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

- b. *Limited Commercial Uses.* Limited Commercial uses with the R/LC FLUM designation shall have a minimum floor area of nine hundred (900) square feet and a permitted maximum building coverage of twenty percent (20%) of the gross lot size ~~four thousand (4,000) square feet.~~
- c. *Residential Uses.* Single family units shall have a maximum density of four (4) units per acre. Multiple family uses shall have a density no greater than six (6) units per acre. However, any residential site located with a high surficial aquifer area on the Atlantic Coastal Ridge and not served by central water and wastewater shall have a density no greater than two (2) units per acre.
- d. *Minimum Lot Requirements.* Lots within the R/LC FLUM designation shall have a minimum lot size of 20,000 square feet, a minimum width of 100' and a minimum depth of 150'.
- e. *Setback Requirements.* Single family units shall have setbacks of 25' in the front, 10' on the interior and street sides, and 20' in the rear. Multiple family units shall have setbacks of 50' in the front, 10' on the interior side, 20' on the street side, and 25' in the rear.
- f. *Building Height Requirements.* Any building within the R/LC FLUM designation shall have a maximum height of thirty-five (35) feet or three (3) stories.
- g. *Coverage Requirements.* Single family residential uses shall have an impervious surface ration of 50% with a minimum open space requirement of 50%. Multiple family residential uses shall have an impervious surface ratio of 65% with a minimum open space requirement of 35%. Limited commercial uses shall have a maximum floor to area ratio (FAR) of 0.20.
- h. *Buffering.* The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required buffering and other provisions referenced by zoning district in the Land Development Code.

#### 1-2.7 Objective:

*Allocating Industrial Development (IND).* The Future Land Use Map shall allocate land resources for existing and anticipated future industrial needs and requisite support services.

#### 1-2.7.1 Policy:

*Industrial Land Use Designation.* The allocation of industrial land use designations should provide a high priority to industry's frequent need for strategically located lands which are accessible to rail and terminal



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facilities, major arterials or interchanges, labor markets and necessary urban services.

Industrially designated areas are not generally adaptive to residential use and as such industrial activities shall not be located in areas designated for residential development. This provision shall not prohibit residences for night watchmen or custodians whose presence on industrial sites is necessary for security purposes. Such a use may be permitted as an accessory use through appropriate zoning procedures.

The industrial land use designation is allocated to industrial sites accessible to major thoroughfares and buffered from residential neighborhoods. Light industrial uses include: light manufacturing and assembling activities; kennels; truck or bus terminal facilities; warehousing and storage activities; and other similar land uses which might be permitted through appropriate zoning procedures excluding heavy metal fabrication, chemical or petroleum manufacturing or refining, rubber or plastics manufacturing, or other uses generating potentially harmful nuisance impacts.

#### 1-2.8 Objective:

*Allocating Institutional Services (INS).* The Town shall set aside land sufficient to accommodate institutional land uses. For instance, approximately 25 acres of institutional land area is anticipated to be required by 2010. The Town shall monitor the need for such increased land area for institutional uses and shall assure that the institutional land use designation on the Future Land Use Map is expanded to accommodate the development of public and semi-public facilities such as government administrative buildings; fire, police and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this land use designation.

#### 1-2.8.1 Policy:

*Institutional Land Use Designation.* Lands designated for institutional services shall contain sufficient acreage and open space and be properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses.

#### 1-2.9 Objective:

*Allocating Open Space and Recreation (OSR).* The open space and recreation designation has been established to direct the preservation of open spaces and recreation areas, both publicly owned and privately owned, including golf courses, parks, recreation areas and similar facilities.



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1-2.9.1 Policy:

*Open Space and Recreation Land Use Designation.* Lands designated for open space and recreation shall be consistent with the Recreation and Open Space Element and shall reflect actions taken to implement the goals, objectives and policies of the Recreation and Open Space Element.

1-2.10 Objective:

*Allocating Conservation (CON).* The conservation designation has been established to direct the preservation of publicly-owned major natural resources and environmentally sensitive corridors. The purpose of preservation is for the conservation and protection of natural resources or environmental quality. These areas may be used for wildlife management, passive recreation, and environmental restoration/preservation. These natural areas may include site improvements to support uses which are deemed appropriate and consistent with the function of the designated area.

1-2.10.1 Policy:

*Conservation Designation.* The Town shall designate lands which are deemed appropriate to conserve in order to implement natural resource conservation goals, objectives, and policies stipulated in the Comprehensive Plan. Where such designations are enacted, the Town Council shall adopt appropriate programs, policies, and/or ordinances for managing implementation of the respective conservation Future Land Use Plan designations.

1-2.10.2 Policy:

*Conservation Designation consistent with Conservation Element.* Lands designated for conservation shall be consistent with the Conservation Element and shall reflect actions taken to implement the goals, objectives and policies of the Conservation Element.

1-2.10.3 Policy:

*Designate Lands as Conservation on the Future Land Use Map.* Within two (2) years of the adoption of this plan, publicly owned lands that the Town deems appropriate for conservation shall be allocated as Conservation on the Future Land Use Map.



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#### 1-2.10.4 Policy:

*Designate Environmentally Endangered Lands as Conservation on the Future Land Use Map.* Within two (2) years of the adoption of this plan, lands that are managed by the Brevard County Environmentally Endangered Lands (EELS) program shall be allocated as Conservation on the Future Land Use Map.

#### 1-2.10.5 Policy:

*Amend Land Development Code to create a Recreation/Open Space (RS) district.* Within one (1) year of the adoption of this plan, the Land Development Code shall be amended to create a Recreation/Open Space (RS) District. The RS District is intended to implement the open space and recreation land use and conservation land use of the Town's Comprehensive Plan by providing areas for the development of active or passive recreational facilities and the preservation of open space.

#### 1-2.10.6 Policy:

*Implement Land Development Regulations to protect Conservation Areas.* Within one (1) year of the adoption of this element the Town shall adopt Land Development Code regulations that protect and preserve conservation space. Regulations shall include specific open space definitions and standards addressing protection of open space, natural vegetation, landscape, and signage.

#### 1-2.10.7 Policy:

*Implement Land Development Regulations to protect lands east of US-1.* Within one (1) year of the adoption of this plan the Town shall amend the Land Development Code to further regulate the Coastal Preserve Zoning District. Land development regulations shall contain performance standards which may include setbacks, buffers, control of exotic species, stormwater management and runoff, signage, public access, and preservation of Indian River Lagoon, seagrass beds, and other estuarine resources.

#### 1-2-13 Objective:

*Malabar Road as a local corridor.* The Town shall evaluate the development of Malabar Road as a local corridor.

#### 1-2.2.13.1 Policy:



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## CASE 2023-01:

### LAND USE CLASSIFICATION: LIMITED MANUFACTURING

Malabar Road Corridor Plan. The Town shall pursue a corridor plan for Malabar that incorporates the following objectives; incorporates low density office and commercial uses; promotes economic development; provides additional services to the Town; remains true to the spirit and rural atmosphere of the Town; and enhances and improves traffic operations and mobility along Malabar Road.

#### 1-2.13.2 Policy:

*Access Management.* The "Malabar Road Corridor Plan" shall include an Access Management Plan to address right of way limitations.

#### 1-2.13.3 Policy:

*Overlay Zoning District.* The Land Development Code shall be amended to incorporate overlay zoning district regulatory provisions and performance standards. The provisions may include permitted land uses, densities, design standards, signage, and required improvements along the corridor.

#### 1-3.1.8 Policy:

*Non-residential development standards.* Land development regulations shall be adopted which address the location and extend of non-residential land uses in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, and intensities of land uses contained in this Element.

#### 1-3.1.9 Policy:

The Town shall regulate intensity of non-residential land uses as noted in the below Table.

Land Use Category	Intensity Standards	
	Height	Building Coverage
<i>Multiple-Family Residential or Office Development (MRO).</i>	35 feet	20%
<i>Office-Institutional Development (OI).</i>	35 feet	20%
<i>Limited Commercial Development (CL).</i>	35 feet	20%
<i>General Commercial Development (CG).</i>	35 feet	20%
<i>Industrial Development (IND).</i>	35 feet	42%
<i>Institutional Services (INS).</i>	35 feet	20%
<i>Open Space and Recreation (OSR)</i>	35 feet	10%
<i>Conservation (CON)</i>	35 feet	5%



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 13.b**

Meeting Date: April 3, 2023

Prepared By: Matthew Stinnett, Town Manager

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**SUBJECT: Roadway Asphalt Pavement Surface Evaluation Report**

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**BACKGROUND/HISTORY:**

The Town contracted Engineering Design & Construction Inc. (EDC) to conduct a town wide asphalt pavement surface evaluation to assist with developing a maintenance and resurfacing plan. David Baggett (EDC) will present the results of the study to the Town Council.

Steve Rivet was appointed by the Town Council to work with me to review the study and develop a recommendation for prioritizing the roads for resurfacing.

**ATTACHMENTS:**

None

**FINANCIAL IMPACT:**

None

**ACTION OPTIONS:**

Presentation and discussion.

# Town of Malabar Asphalt Resurfacing

Top 10 Priority  
Recommendation



# Considerations for Prioritization

- EDC Inc. Roadway Asphalt Pavement Surface Evaluation Report Results/Recommendations
- Distress Score vs Adjusted Score Ranking
- Other Considerations:
  - Timeline
  - Financial resources
  - Community impact
  - Interlocal partnership opportunities

# Briar Creek Boulevard

Collector Road

Estimated Service Life: 0-5 years

Recommended Treatment

Mill and structural overlay

Distress Score/Rank: 22/2

Adjusted Score: 22/1

Sole ingress/egress for Brook Hollow Subdivision

Significant local community impact and access to recreation facilities

Potential to piggyback on City of Palm Bay contract, maintain consistent service level if resurfaced at the same time.

# Weber Road

Collector Road

Estimated Service Life: 0-5 years

Recommended Treatment

Subsurface/Structural Investigation

Mill and structural overlay or FDR/reconstruction

Distress Score/Rank: 13/10

Adjusted Score/Rank: 19.5/2

Primary connector for other Town collector roads and Malabar Road

Significant broad community impact and access to recreation facilities

# Rocky Point Road

Collector Road

Estimated Service Life: 0-5 years

Recommended Treatment

Subsurface/Structural Investigation

Mill and thin or structural overlay

Distress Score/Rank: 15/6

Adjusted Score/Rank: 15/3

Storm damage requiring partial reconstruction, FEMA funding

Significant local community impact

# Corey Road

Collector Road

Estimated Service Life: 5-10 years

Recommended Treatment

- Continued monitoring for structural issues (minor rutting)

- Crack sealing

- Rejuvenation

Distress Score/Rank: 9/14

Adjusted Score/Rank: 13.5/4

Significant broad community impact

Service life can be extended with lower cost treatment options

# Benjamin Road

Local Road

Estimated Service Life: 5-10 years

Recommended Treatment

Full depth reclamation (FDR)

Shoulder stabilization

Distress Score: 7/20

Adjusted Score: 1.75/23

Significant Local impact, connects several dirt roads in Malabar and Grant-Valkaria to Corey Road

Inconsistent original construction, significant edge cracking on narrow lane width

Potential to cost share with Grant-Valkaria



# Coral Way

Local Road

Estimated Service Life: 0-5 years

Recommended Treatment

Subsurface/Structural investigation

Mill and structural overlay or FDR/Reconstruction

Distress Score/Rank: 23/1

Adjusted Score/Rank: 5.75/9

Significant local community impact connects Rocky Point Road and US1 (by Huggins)

Reef Place: cul-de-sac repaved recently, remainder should be repaved w/Coral Way

# Huggins Drive

Local Road

Estimated Service Life: 0-5 years

Recommended Treatment

Subsurface/Structural investigation

Mill and structural overlay or FDR/Reconstruction

Distress Score/Rank: 21/4

Adjusted Score/Rank: 5.25/11

Significant local community impact connects Rocky Point Road and US1 (by Coral Way)

Should be repaved w/Coral Way and Reef Place to maintain consistent service level

# Coquina Terrace

Local Road

Estimated Service Life: 0-5 years

Recommended Treatment

Subsurface/Structural investigation

Mill and structural overlay or FDR/Reconstruction

Distress Score/Rank: 15/5

Adjusted Score/Rank: 3.75/12

Minor local community impact, dead end road no other connections

# Hollow Brook Lane

Local Road

Estimated Service Life: 0-5 years

Recommended Treatment

Subsurface/Structural investigation

Mill and structural overlay or FDR/Reconstruction

Distress Score/Rank: 14/7

Adjusted Score/Rank: 3.5/13

Significant local community impact connects Brookshire Circle to Briar Creek BLVD

Brookshire Circle (short road) is in need of chip seal and rejuvenation with some minor alligator cracking that could be cut out and restored at the same time

# Booth Road

Local Road

Estimated Service Life: 0-5 years

Recommended Treatment

Reconstruction required

Distress Score: 21/3

Adjusted Score: 5.25/10

Significant Local impact, serves residential and commercial zoning

Connects Lett Ln and other undeveloped rights-of-way to Babcock

Poor materials used (large aggregate and weak binder), no maintenance options recommended

# Conclusion

- Results include 4 collectors and 6 local roads (plus 2 additional short local roads)
- 8/10 roads in the top 10 priorities are estimated to have 0-5 years of service life remaining. Reaching the end of service life indicates reconstruction is the most likely treatment needed for restoration.
- The top 10 priorities should act as a guide to focus efforts and resources for the near future. Available funding may dictate the order in which certain roads are paved. (Example: In year 1 there is insufficient funding to complete Road A but there is enough to do Road D and Road E and set aside some funding to complete Road A in year 2)

# Next Steps

- Define funding sources
  - ARP funds, general fund, resident assessments
- Create five-year improvement plan
- Get firm estimates for first year of plan
- Integrate lane paving plans

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 13.C**

Meeting Date: April 3, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Continued Discussion Build New or Expand Existing Town Hall**

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### **BACKGROUND/HISTORY:**

Over the last few Council Meetings, Council has discussed the possibility of either expanding the existing Town Hall or building a new Town Hall. Below is a brief summary of events:

- 3/6/23 *RTCM*, TM Stinnett provides a recommendation to expand the existing Town Hall to consolidate the offices on one half of the building, and to expand Council Chambers.
  - o After lengthy discussion, **CM Scardino/CM Vail move to continue developing the proposal in the direction TM Stinnett is heading.** That motion passed unanimously.
- 3/20/23 *RTCM*, CM Hofmeister requested additional Council discussion on the topic.
  - o Suggestions were made to investigate the possibility of building a new Town Hall in Malabar Community Park, combining Town Hall with the Fire Department, or refurbishing the Old School House to serve as Town Hall.
  - o CM Hofmeister stated she would research the options and report back at a future meeting.
- 3/22/23, CM Clevenger meets with TM Stinnett and SPM Morrell.
  - o CM Clevenger requested the following be discussed at the next *RTCM*:
    - “Consider the New Town Hall being built on the property located on the Town Park property in front of the fire station. Remodel of existing Town Hall is not feasible with existing setbacks and conditions.”

### **ATTACHMENTS:**

- ! Survey of current Town Hall property

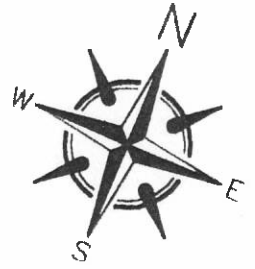
### **ACTION:**

- Discussion



# Sketch of Survey

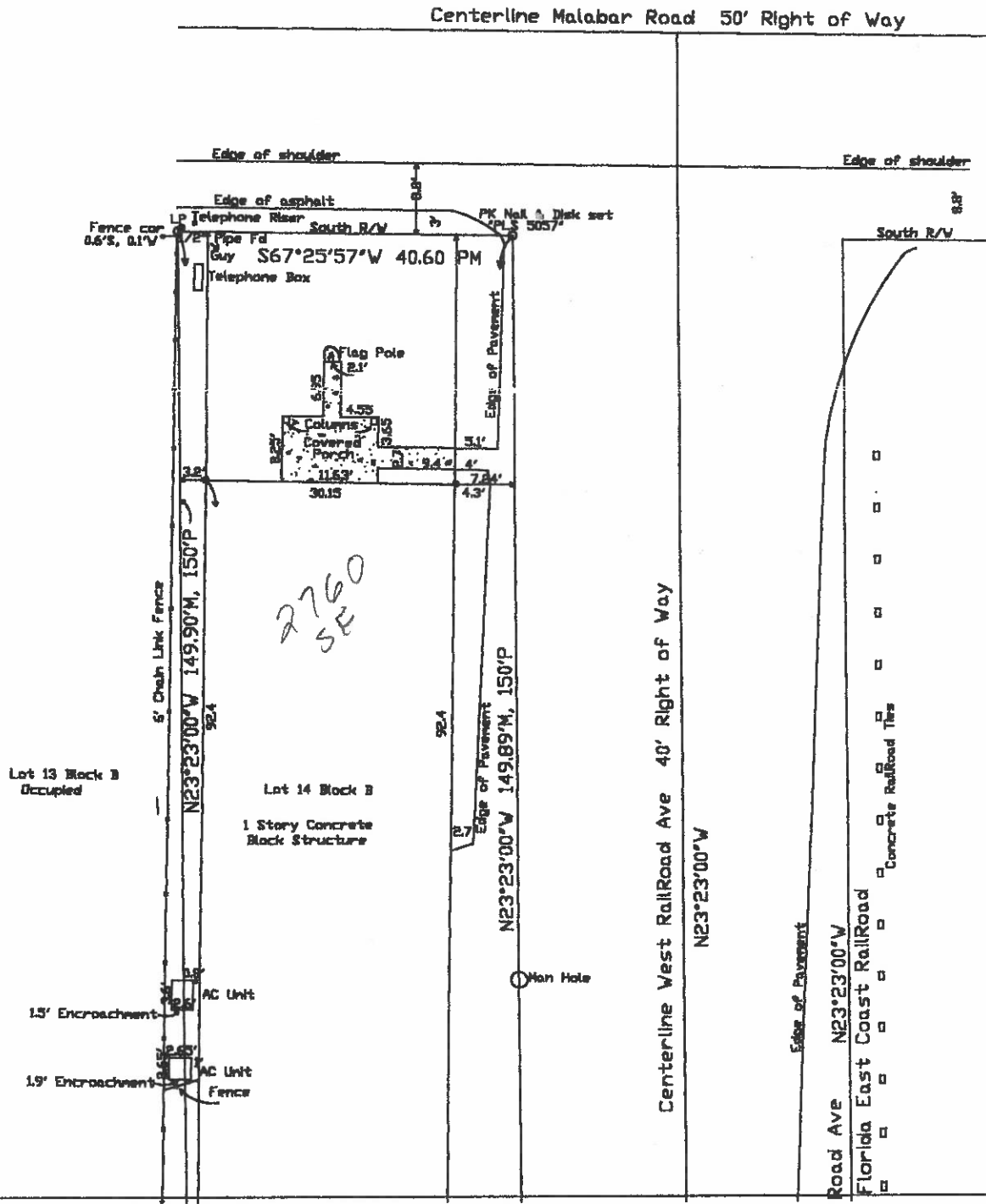
Legal Description: Lots 14 and 26, Block B as shown on the Map of Snedeker's Subdivision of the Town of Malabar, Plat Book 1, Page 97A located in the Public Records of Brevard County, Florida.



**Surveyors Notes:**

Bearings referenced to the centerline of West Railroad Ave. being N23°23'00"W per plat.  
 This site is subject to all easements and restrictions of record.  
 There are no above ground encroachments except as shown.  
 The survey depicted here is not covered by professional liability insurance.  
 No underground installations have been located except as shown.  
 Flood zone "X" per map #12009C0540 E dated April 3, 1989. Index dated Nov.19, 1997.

Centerline Malabar Road 50' Right of Way



**MATCH LINE**

**CERTIFICATION**  
 I HEREBY CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

*Craig S. McKinnon*  
**CRAIG S. MCKINNON**  
 FLORIDA REGISTERED LAND SURVEYOR # 5057

**SURVEY IS NOT VALID UNLESS IT IS EMBOSSED WITH SURVEYORS SEAL**

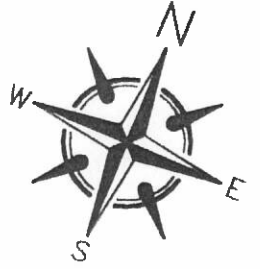
**CRAIG S. MCKINNON**  
**LAND SURVEYING**

1980 MARIE STREET  
 MALABAR, FLORIDA 32950  
 (321) 724-6257

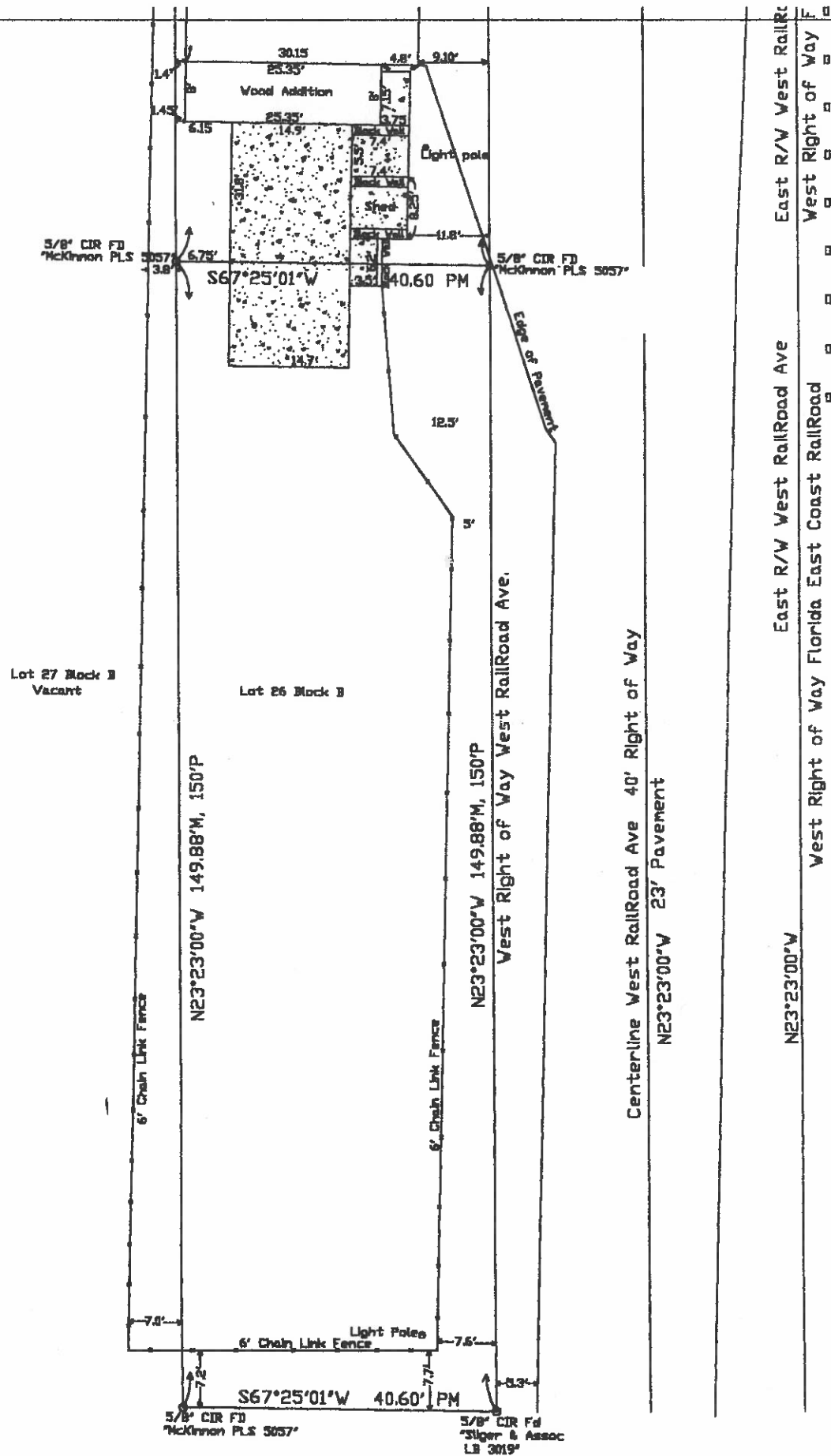
# Sketch of Survey

Boundary Survey  
With Imprivments  
For  
The Town of Malabar

Legend: R/W=Right of Way  
PLS=Professional Land Surveyor  
LP=Light Pole  
Cor=Corner  
Fd=Found  
P=Plat  
M=Measured  
AC=Airconditioner  
CIR=Capped Iron Rod



## MATCH LINE



**CERTIFICATION**

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

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# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 13.d**

Meeting Date: April 3, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Continued Discussion Organization Chart**

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### **BACKGROUND/HISTORY:**

Over the last few Council Meetings, Council has discussed the staffing needs of Town Hall. Previous discussion have led to suggestions of extending the SPM contract, creating a new permanent position for posting, adding an Administrative Assistant, Executive Assistance, Bookkeeper, Assistant Town Manager, Deputy Town Clerk, or Data Entry Clerk.

After the 3/20/23 RTCM, CM Clevenger met with TM Stinnett and requested the following items be discussed at the upcoming Council Meeting:

- Extend the Contract of SPM Lisa Morrell for a period of two years.
- The need to hire a Deputy Clerk, or similar assistant type position.

CM Scardino stated his support for the addition of an Executive Assistant, or Bookkeeper.

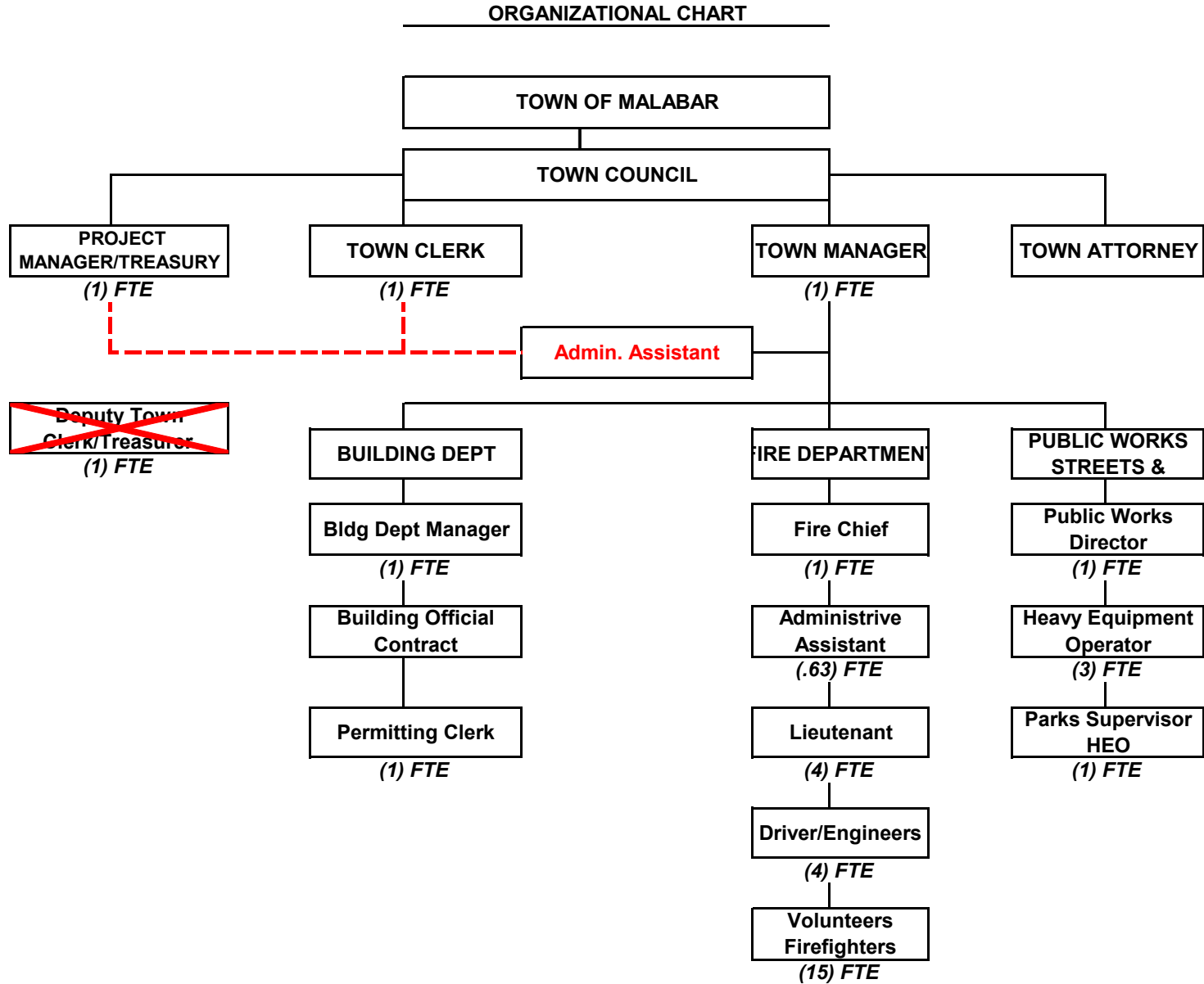
### **ATTACHMENTS:**

- Mayor Reilly's Organization Recommendation.
- SPM Morrell's existing contract, Resolution 07-2021

### **ACTION:**

- Discussion

# Mayor Reilly's Organization Recommendation



**RESOLUTION 07-2021**

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF LISA MORRELL AS THE MALABAR SPECIAL PROJECTS MANAGER; PROVIDING FOR ADDITIONAL TEMPORARY DUTIES; PROVIDING FOR A TERM; PROVIDING FOR REMUNERATION AND BENEFITS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Malabar Town Council has determined the benefit of hiring Lisa Morrell as the Malabar Special Projects Manager to improve various Capital Projects currently underway or planned; and new projects to benefit and improve the overall condition of the Town for a two-year period beginning on October 1, 2021; and

**WHEREAS**, Malabar Town Council has been notified that the current Town Manager continues to serve temporary military active duty for possibly three (3) more months until January 2022; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:**

**Section 1.** The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Lisa Morrell as the Malabar Special Projects Manager to begin on October 1, 2021 for two-years as described in Exhibit "A".

**Section 2.** The Town Council of Malabar, Brevard County, Florida, hereby directs Lisa Morrell to continue covering the employment requirements of the Town Manager until his return in January 2022 in addition to the duties as Malabar Special Projects Manager as described in Exhibit "A".

**Section 3.** The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the contract for these services to be executed.

**Section 3.** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**Section 4.** This resolution shall take effect immediately upon adoption.

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

Council Member Marisa Acquaviva	Aye
Council Member Brian Vail	Aye
Council Member Steve Rivet	Aye
Council Member Dave Scardino	Aye
Council Member Danny White	Aye

This Resolution was then declared to be duly passed and adopted this 16th day of August 2021.

**TOWN OF MALABAR**

By: original signed  
Mayor Patrick T. Reilly, Council Chair



Exhibit "A" of Reso 07-2021 Contract for Special Projects Manager

**EMPLOYMENT AGREEMENT FOR SPECIAL PROJECT MANAGER**

THIS AGREEMENT made and entered into on the 16<sup>th</sup> day of August, 2021, by and between the Town of Malabar, Florida, a municipal corporation of the State of Florida, Brevard County (hereafter the "Employer"), and Lisa Morrell (hereafter the "Employee").

**WITNESSETH:**

**WHEREAS**, Employer desires to employ the services of said Employee as Special Projects Manager for an period of two (2) years beginning October 1, 2021; and,

**WHEREAS**, it is the desire of the Town Council to provide certain salary and benefits, to establish certain expectations of employment, and to set working conditions of said Employee; and

**WHEREAS**, Employee desires to accept employment as Special Projects Manager of the Town of Malabar.

**ARTICLE I - Term of Employment**

1.01 The Town employs Employee, and Employee has accepted employment with Town upon the conditions set forth herein for a two-year term beginning October 1, 2021. During the first 90 days of employment, the Employee shall be continue to act as the Interim Town Manager until Town Manager Matthew Stinnett returns from Military Duty, in addition to the new projects. As an Employee with the title of Special Projects Manager she shall accrue benefits under Article IV.

**ARTICLE II - Employee's Duties**

2.01 The Employee is hereby employed as the Special Projects Manager of the Town of Malabar, Florida as discussed at the Council meeting on July 26, 2021. Such assignments will be bulleted here:

- Complete the RFP process for Solid Waste Collection
  - Complete the negotiation, transition and propose funding options
- Economic Recovery and Development Projects
  - Propose projects that encourage non-point access
- ARPA projects – propose and oversight
  - extend city water to Malabar Community Park (future town hall)
- Charter Review and Update (hasn't been done since 2003)
- Stormwater Masterplan follow-up with actual stormwater projects (five proposed)
- Scheduling and prioritizing capital road paving projects (Corey, Weber, Rocky Pt)
- Oversee the completion of the LDC and Code updates
- Grants Administrator
  - Pursue funding through F.I.N.D. for riverfront access
- Employee shall perform those duties specified in the meeting of 7/26/2021

- 2.02 In addition to the assignments specified in 2.01 the Town Employee with the title of Special Projects Manager shall continue acting as the Interim Town Manager until the return of Town Manager Matthew Stinnett.
- 2.03 Employee agrees to perform these duties to the best of her ability, and to perform those duties in a manner consistent with the best interests of the Town and in a professional and ethical manner.
- 2.04 The Employee shall devote substantially all of her productive time, ability, and attention to the business of the Town, both during normal business hours and outside normal business hours as the business of the Town may require, such as attending Council, Board and Committee meetings. To that end, it is agreed, that as compensation for time spent on Town business during non-business hours, the Employee shall be entitled to take compensatory time off as they shall deem appropriate during normal business hours within same pay period. This compensatory time off shall have no cash value as outlined in the Employee Manual. Employee shall not be involved in non-employee connected business for remuneration without approval of the Town Council.

#### ARTICLE III - Compensation

- 3.01 The Town agrees to pay Employee for their services rendered an annual base salary of \$100,000.00, payable in installments at the same time as other employees of the Town are paid. The Employee shall be required to keep a time sheet and submit it to the Clerk each pay period to track regular, vacation, sick and compensatory time off.
- 3.02 The Town shall not at any time during the term of the Agreement reduce the salary, compensation or other financial benefits of Employee.

#### ARTICLE IV - Employee Benefits

- 4.01 Employee shall be entitled to participate in any Employee benefit plan established by the Town. This includes Health, Dental, Vision insurance for family coverage paid 100% by the Town; a Life insurance policy equal to (1X) the annual wages; and Short-term and Long-term Leave provided to all Fulltime employees at Town's expense.
- 4.02 The Town agrees to pay the required contribution for Regular Class of the Employer portion for inclusion in the Florida Retirement System. This reduction from Senior Management is due to the new Employment classification not having any control over subordinate employees. The employee shall be required to pay the employee portion just as other Town employees.
- 4.03 Employee shall annually accrue sick leave on the same basis and at the same rate as other Town employees and is held to the same limits per the Employee Manual. Employee may participate in any refunding program for sick leave offered to other employees.
- 4.04 Employee will earn 18 days' vacation annually, accrued at 1-1/2 days per month. The Employee shall be required to take five consecutive days off each year per the Employee Manual. The Employee shall get Town Council approval of the taking of vacation time by the Employee
- 4.05 The Town hereby agrees to budget for and to pay the travel and subsistence expenses for travel outside Brevard County of Employee for official travel, meetings, conferences and seminars to adequately pursue the necessary official and other functions for the Town, based on the miles recorded for Town business on a an Employer provided mileage log similar to what other employees complete based on Florida Statutes limits as



currently set at .445 cents per mile and as defined in Florida Statutes 112.012, including but not limited to the Annual Conferences of the Florida League of Cities, GFOA, FCCMA and such other national, regional, state and local government organization groups and committees thereof which Employee serves as a member.

- The Town also agrees to budget and to pay for the registration fees of Employee for short courses, institutes and seminars that are necessary for their professional development and for the good of the Town.
  - The Town shall pay 100% of the Employee's annual professional organizational dues.
- 4.06 The Town shall defend, save harmless and indemnify Employee *pursuant to F.S. 111.07 and 111.071*. The Town shall be required to provide independent legal representation at the Town's expense to the Employee for any matter for which this indemnity shall apply. Legal representation, provided by the Town for Employee, shall extend until a final determination of the legal action including any appellate proceedings. Employee recognizes that the Town shall have the right to compromise and settle any claim or suit. Such payments shall continue beyond Employee's service to the Employer as long as litigation is pending.

#### ARTICLE V - Termination, Severance Pay, and Suspension

- 5.01 In the event employment of Employee is terminated at the pleasure of the Town or for any reason other than those set forth in paragraph 5.02 of this article, the Employee shall receive a lump sum cash payment equal to two (2) months aggregate salary computed as of the time of termination. Employee shall also receive full pay for unused vacation and accrued sick leave up to the caps provided in the Employee Manual.
- 5.02 In the event Employee is terminated for cause then the Town shall have no obligation to pay aggregate future salary but shall pay accumulated vacation above up to the caps provided in the Employee Manual. For purposes herein the Term "for cause" shall mean the grounds for removal from office in *F.S. 112.51*, misconduct as defined in *F.S. 443.036 (29)* and for misfeasance or malfeasance, or the conviction of any crime involving dishonesty, or the conviction of any crime designated as a felony under the laws of the jurisdiction imposing the penalty, breach of this Agreement, violation of the Town Charter, code of ordinances, resolutions and rules or employment policies of the town. For purposes of this section the term "conviction" shall mean a plea of no contest, a plea or adjudication of guilt or withholding guilt, or any plea involving entry into or participation in any diversion program. The Town Council may terminate the Employee without full pay and benefits at any time during the term of this Agreement based upon the grounds in this section, but only if after a public hearing a majority of the Council (3 members) votes to terminate Employee, "for cause", provided; however, that Employee shall have been given written notice setting forth any charges at least 10 days prior to such hearing.
- 5.03 In the event Employee voluntarily resigns their position with the Town, then Employee shall give the Town thirty (30) days written notice in advance, unless the parties other-wise agree. Employee will be entitled to full pay for all accumulated vacation and accrued sick leave at their then-current salary up to the caps as set forth in the Employee Manual. The employee shall be entitled to compensation for work performed before the effective date of their resignation.
- 5.04 Suspension: The Town Council may suspend the Employee without full pay and benefits at any time during the term of this Agreement, but only if after a public hearing a majority of the Council (3 members) votes to suspend Employee, "for cause", as defined

in section 5.02 above, provided; however, that Employee shall have been given written notice setting forth any charges at least 10 days prior to such hearing.

- 5.05 Disability: If Employee is permanently disabled or is otherwise unable to perform their duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued sick leave, The Town shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 5.01. Nothing herein is intended to override the provisions of the Family Medical Leave Act.

ARTICLE VI - General Provisions

- 6.01 The text herein shall constitute the entire Agreement between the parties along with a copy of the current Employee Manual. This Agreement shall be binding upon and inure to the benefit of the Employee heirs at law and executors of Employee.
- 6.02 This Agreement shall become effective on the date of its approval by the Town Council.
- 6.03 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable the remainder of the Agreement or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

**IN WITNESS WHEREOF**, this Agreement has been entered into the day and year first written above.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Lisa Morrell, Special Projects Manager

\_\_\_\_\_  
Witness

**THE TOWN OF MALABAR**

By: original signed  
Mayor Patrick T. Reilly

ATTEST:

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