



REGULAR TOWN COUNCIL MEETING

Monday, July 6, 2020 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 Regular Town Council Meeting 06/15/2020

Attachments:

- Agenda Report Number 4a (Agenda_Report_Number_4a.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board
8. STAFF REPORTS
 - a. Manager
 - b. Public Works Director
 - c. Fire Chief
 - d. Clerk

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

- a. **Second Reading: Change Qualifying Dates for 2020 Election and beyond. (Ordinance 2020-05)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2019-10 AND AMENDING SECTION 2.03 OF THE TOWN CHARTER RELATING TO THE COUNCIL CANDIDATE QUALIFYING PERIOD; AMENDING SECTION 2.04 OF THE TOWN CHARTER RELATING TO THE MAYOR QUALIFYING PERIOD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES

IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Attachments:

- Agenda Report Number 10a (Agenda_Report_Number_10a.pdf)

b. Second Reading: Amend Chapter 13 re: Special Assessment Process (Ordinance 2020-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, TO AMEND CHAPTER 13 OF THE CODE OF ORDINANCES; PROVIDING FOR A COST SHARE IN THE PAVING OF IMPROVED AND ACCEPTED DIRT ROADS THAT HAVE MET THE REQUIREMENTS FOR A SPECIAL ASSESSMENT IN SECTION 13.52.(2)B.; PROVIDING FOR NEW SUBSECTION 13.52.(2)C.; PROVIDING FOR THE FUNDING SOURCE FOR THAT COST SHARE; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10b

Attachments:

- Agenda Report Number 10b (Agenda_Report_Number_10b.pdf)

c. Public Hearing on Road Improvement Waiver Request - Right of Way known as Beekeeper Lane

A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE UNIMPROVED/UNACCEPTED RIGHT OF WAY EAST OF COREY ROAD KNOWN AS BEEKEEPER LANE IN SECTION 12, TOWNSHIP 29 AND RANGE 37 WITHIN THE TOWN OF MALABAR. REQUEST BY ADAM HAYWARD.

Exhibit: Agenda Report Number 10c(1), 10c(2), & 10c(3)

Attachments:

- Agenda Report Number 10c(1) (Agenda_Report_Number_10c_1_.pdf)
- Agenda Report Number 10c(2) (Agenda_Report_Number_10c_2_.pdf)
- Agenda Report Number 10c(3) (Agenda_Report_Number_10c_3_.pdf)
- Agenda Report Number 10c(4) (Agenda_Report_Number_10c_4_.pdf)

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:2

a. Form DR-420 - Tentative Maximum Millage and Public Hearing Date

Exhibit: Agenda Report Number 12a

Attachments:

- Agenda Report Number 12a (Agenda_Report_Number_12a.pdf)

b. Clarification on Land Use Designation & Zoning Consistency

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report Number 12b** (Agenda_Report_Number_12b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(1) Vacancy on the Parks and Recreation Board; (2) Vacancies on the Trails and Greenways Committee

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.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
JUNE 15, 2020 7:30 PM held at the Malabar Fire Dept**

This mtg of the Malabar Town Council was held at Malabar Fire Dept at 1840 Malabar Road.

1. CALL TO ORDER:

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

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

MATT STINNETT

KARL BOHNE

TOD MOWERY

DEBBY FRANKLIN

TOWN MANAGER: (TM)

TOWN ATTORNEY:

TOWN PLANNER:

TOWN CLERK/TREASURER:

Malabar Fire Chief Mike Foley also present. Mayor thanked the FD for setting up the station to accommodate this meeting.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: none

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 6/01/2020

4.b. ILA CARES Act Funding

MOTION: CM Rivet / CM Vail to approve consent agenda. **VOTE:** All Ayes.

5. ATTORNEY REPORT: Nothing

6. LIFE SAVE AWARD PRESENTATION BY CHIEF FOLEY TO MFD LT JOSEPH HOOKER, D/E SEAN BORDA AND FF BRAUN FRITZ

Chief Foley called up the three individuals and presented them with certificates and pins recognizing their life saving actions that saved a Malabarian's life. Mayor Reilly then presented Certificates of Appreciation to Lt. Hooker, Driver/Engineer Sean Borda and Fire Fighter Fritz Braun.

7. AUDIT PRESENTATION BY JAMES MOORE AND COMPANY

Doug Gillikin went through the PowerPoint presentation and then went through any questions. Thanks Council and management. No material weaknesses or deficiencies; no current year comments and prior year comments were corrected. Looked at investment policy and are in compliance. It is a clean audit report – definitely a good year.

8. STAFF REPORTS:

7.a. MANAGER: Nothing at this time.

7.b. CLERK: If Ord 2020-05 is adopted on its 2nd reading on July 6, 2020, the

Qualifying Period for the Nov 2020 election will be July 28, 2020 through August 11, 2020. We are preparing packages now. Districts 1, 2, 3 and the Mayor are all up for election. There is a tentative date on your meeting schedule for a Budget WS on June 22, 2020 at 7pm to hear Council priorities for the FY 2020/2021.

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**

10. PUBLIC HEARINGS: 2

Chair said both he and CM Scardino were at the P&Z Board meeting on 6/10/20 and asked the Attorney to speak to the issue from ethics position. The Attorney said he is going to ask first the Mayor and then CM Scardino if they had predetermined how they would vote on the 10.a. item.

Would they be able to listen to the evidence and consider both sides before voting? Both said yes.

Chair read the title of the request. The ordinance is the formalization of the request. The Public Hearing is on the request to change the land use designation and corresponding zoning designation for this parcel. After the presentation and Public Hearing, he will ask for an affirmative motion on the Ordinance. That is the Robert's Rules of Order that we use as a guide in handling public meetings.

10.a. Land Use Map Amendment and Zoning Change Request for the 1.35 acre (+/-) site known as Parcel 568 in Section 10, Township 29, Range 37, located at the northeast corner of Osage and Babcock Streets, Malabar, Florida from Residential/Limited Commercial (R/LC) and Office Institutional (OI) to Commercial General (CG). The applicant is Mr. Henry Morin representing the property owner, Phaneesh Sai, LLC. (Ord 2020-03)

Chair stated that this land use and zoning change was heard at a public hearing at P&Z on June 10, 2020 and the P&Z Board voted 3 to 2 to deny the request.

Chair called applicant up to present his request.

Mr. Morin presented this request for the owners who are doctors. Has potential for development in the future. He knows that CG is the most suitable for this location. This property is unique. One of the things brought up at P&Z is the domino effect. He disagrees. It has 300' of frontage on Babcock St. The others only have 200 feet of frontage. It is a corner parcel. Also, it is right across the street from GV and they have that zoned in heavy commercial and the planner has confirmed that. Most unique item is of all the other pieces fronting on Babcock Street, this piece does not back up to residential zoning. All the others north of there do back up to residential zoning. This unique parcel is surrounded by RCL is the lower grade of commercial It acts as a buffer between residential and CG. When you take all those facts it is ideally suitable and the fact that the Town has created that usage, they should locate them somewhere. The 10 points have been addressed by both the Atty and the Planner. He would like to say that he listened to the objections from several of the homeowners on Lett Lane. The complaints do not fall in those 10 items. Homeowners were concerned about their lifestyle changing; but any development would damage wildlife whether commercial or a new home next door. As far as lifestyle, Lett Lane does not go down to Osage Road and there are wetlands. He is willing to talk to the owners of the RLC lots to suggest they get that portion of Lett Lane vacated. He does not see how going from OI to CG, same size building, same size setbacks would negatively affect them. He did take careful notes. The two people that made the motion and second said OI provides enough uses for the property. That is not a valid factual reason to deny. Hofmeister echoed that and pointed to the audience and said the Lett Lane people don't want it. That is not a valid reason for denial. He will answer any questions.

CM Scardino asked if he had submitted the road vacate application. Were you planning to vacate that? Morin said he does not have the authority to be that applicant. Morin thought the Lett Lane residents should be making that request. He will help the owners on Lett Lane by contacting the landowners of the adjacent properties. CM Scardino asked how much lighting comes from an AutoZone? Morin said your code covers lighting. CM Scardino stated you don't know what they are planning to develop; do they own service stations? Morin said no, they own three lots on Malabar Road. Morin stated these owners are not in the trucking business. CM Scardino asked what they have developed. Morin said they are doctors. Market forces will come out and decide what should be there. Morin said there is not a use plan at this point.

Chair asked Town Planner to speak.

He walked through an abundance of information that you look through. There is a difference of quasi and legislative items. 2 items – LU and Z. LU is RLC with request to go to CG. Z is OI and request is to go to CG. They did get changed to RLC. A request to change the Z to match the LU. You have 4 commercial categories. Remain vacant remain as it is. He will focus on 10 standards go into each of those. And explains how they meet or don't meet those 10 standards. 3 C's. Some of the uses in OI – how different is that from CG – community facilities., parks, ofs, med, vet clinics. CG allows retail, storage and restaurants. Adult daycare centers are allowed in OI but not in CG. OI could go to RLC. RLC would provide for neighborhood shops, up to 6 dwelling uses per acre. Just as an idea. Typical taco bell is 1500sf. It is for neighborhood shops. It is for one lot on the intersection at Osage. You know the plans to widen the road and the interchange with I95 in GV. When they look at that parcel, not a large lot; can't put significant size bldg. There are 4 commercial districts. The rear setback is the same at 25' the side setback is a range between for 20 and 30. Coverage is the same for all – 65%. 20K is the minimum lot size lot. The length and width requirements are the same. 195 deep and 310' on Babcock. There is considerable information in the packet with the acreage to the west and as well as GV. They put the application meets the 10 points and recommend approval. There was a three to two vote to deny. The Chair of the P&Z is also present.

Attorney Karl Bohne reiterated he provided the memo to P&Z and went over the 10 factors to consider. Two of those are environmental and economic effects. His memo did not provide a recommendation; the planner is the expert. Atty said the application was brought forward by a landowner. Council has to determine if the landowner has met the burden. The Land Use and Zoning is inconsistent. Whether they change the Zoning or the Land Use, it must be consistent to develop.

This is a legislative decision because you have a Zoning request coupled with the Land Use change and the test is the fairly debatable standard. If there is a rational basis, the courts will not interfere with the legislative matter. You can't be capricious. The concerns of the residents are paramount; the ten standards you consider, you cannot make your determination based solely on whether people want it or not. There needs to be additional evidence in the decision. Impacts on general health, safety and welfare of the public.

Planner added when are making these decisions, it is not whether we like the owner, this decision goes with the land, not the owner. What the owner does and what he develops is not relevant to the decision. Is it in the general health, safety and welfare of the public is relevant?

Wayne Abare, PZ Chair, provided a brief summary of the comments made at the P&Z. Babcock Street is going to be four laned in that area. There are not any homes within 700-800 feet. Many residents on Lett Lane spoke and what struck him is that Lett Lane roadway does not connect to Osage. Residents on Lett Lane must go north on Lett Lane, west on Booth Road and then south on Babcock Street for a half mile to get to this parcel.

CM Scardino asked PZ Chair if RR-65 zoning could be changed to CG. Yes.

CM White drove the area today and said it is on the other side of I-95. CM White understands the Lett Lane residents' concerns. He measured from Osage Street to the first homesite is more like a .25 mile. The concern is when people think OI, they think they won't see high lighting.

Chair opened Public Hearing:

Charles Smutco, Lett Lane, addresses 10.a. This seems to have been an item of residents on Lett Lane against the request. There are also residents on Osage and there is another home on the south side of Osage. There was a sporting facility that was proposed on Booth and Lett and had no notice before the meetings. The current zoning will allow a buffer. There is property on

Osage being cleared. They have been moving to make them aware of what would transpire if this is approved. Lett Lane must use Booth to get out. 800' was cleared through wetlands to allow development. A lot of properties north of Booth are commercial. They understand and it is identified on the maps for commercial development. Why change it now. The other things are it is west Malabar, it is not a commercial district. Consider P&Z vote of 3 to 2.

Dick Korn, Weber Road, been on council and this is in his district. He was also not familiar with it once he became the representative. He pays attention to detail. The owner should not be the object of your decision. Change the zoning and then sell it. He stated the Town Planner misstated that R/LC allowed six residential units per acre and asked him to clean up his presentation. Mayor asked Planner to respond. Planner said the statement in report is correct.

Shawn Potter, Lett Lane, bought because the rural zoning. When you turn off Booth onto Lett Lane it is a whole different life. He can let the kids play and not worry about getting hit by a car. Changing this zoning will change the whole dynamic of the street. Worst thing you can do for the Town of Malabar.

Chair closed Public Hearing:

Chair invited applicant to respond to PH comments:

Typically, when he works with other cities, it is at the site plan stage, they would look at the other step. CM Scardino was concerned about the owners buying this for a petroleum use. Most cities require a CUP for a gas station. At one time most of these lots were zoned BU-1 or BU-2 and he showed the 1985 showing the heavy of the county commercial zoning. That falls into place with the point that he wanted to make that this corner was so unique and changing this zoning is not a slippery slope. Asked each of the council members to look at the zoning (page from packet).

Chair thanked applicant.

Chair asked the Clerk to read the Ord read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN AND THE ZONING MAP FOR THE 1.35+/- ACRE SITE KNOWN AS PARCEL 568 IN SECTION 10, TOWNSHIP 29 AND RANGE 37 LOCATED AT THE NORTHEAST CORNER OF BABCOCK AND OSAGE STREETS, MALABAR, FLORIDA FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) AND OFFICE INSTITUTIONAL (OI) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE FUTURE LAND USE AND TOWN ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

Chair asked for a motion in the affirmative.

MOTION: CM Rivet / CM Vail to approve first reading of Ord 2020-03.

Discussion: CM Scardino is not concerned with what the zoning plan was in 1985. His main concerns are light and noise pollution. The I-95 hwy already brings a tremendous amount of noise. More commercial development will bring more noise and lights. The original intent with heavy industrial, was designed as a buffer. There is already a lot of noise. That strip was designed to be a buffer. Are they not entitled to the same consideration as the other areas zoned RR-65?

CM Ball said they made plans that the development was going to be on Malabar, US1 and Babcock. Peays Electric on Malabar Road was denied, Yellow Dog on U.S. 1 was denied, now they are considering denying this on Babcock Street. They should have a discussion on should we double our millage rate, so we don't need commercial development and keep it all RR. 'Not in my back yard.' Either we change the FLU or double the taxes. It seems to be a fit, Babcock Street will be four laned. Palm Bay and Grant Valkaria will capitalize on the frontage along Babcock Street. He doesn't know if we have a better fit for this zoning.

Mayor said we are required by the State of Florida to have the Comp Plan and it requires we provide these types of use.

CM White asked who staff is. Who makes the recommendation? Franklin explained that office staff accepts and reviews the applications. We confirm that the request is complete, accurate and that the request is within the regulations stated in either the Future Land Use element of the Comp Plan and/or the requirements listed in Article XII of the Land Development Regulations. We then forward it to the outside professional staff, planner, attorney, engineer and ask for their written direction and/or recommendation. That is the requirement of staff per the Code. The Agenda Report gives the background provided by office staff and then states it met the requirements and was sent to outside professional staff for review and then list the attachments within the package. So, the staff recommendation is a combination of the professional office staff also professional outside staff comments.

CM White said that Babcock Street will be widened and will be commercial use. He was accused of not having 'skin in the game' on the Yellow Dog request. It is beyond him to think anyone would want to change the RR in his residential area. Why was it OI to begin with? They must have considered the residents on Lett Lane.

CM Vail said you can't consider the potential use at this point. Reviewing the evaluation, per the ten conditions and the FLUM so all of that was – we allowed it open to give the people the standards. Need to hold our ground on that. He does not believe it is consistent with the ten standards.

CM Rivet said they want it for what is appropriate for the land. If the residents don't want commercial development, do you want to pay higher taxes? CM Vail said we have commercial. CM Rivet said much of the low intensity commercial development guarantees that there will be no commercial development.

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Nay; CM Rivet, Aye; CM Scardino, Nay; CM White, Nay. Motion failed 3 to 2. It will not be advertised for a second reading.

10.b. MSTU Question for 2020 Ballot (Ord 2020-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING REPEAL AND AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 10.b.**

Ord read by title only. Open PH – no one. Closed PH

MOTION: CM Vail / CM Scardino to adopt Ord 2020-04. Discussion: none

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

11. UNFINISHED BUSINESS/GENERAL ORDERS:

12. ACTION ITEMS:

ORDINANCES FOR FIRST READING: 2

12.a. Change Qualifying Dates for 2020 Election and beyond (Ord 2020-05)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2019-10 AND AMENDING SECTION 2.03 OF THE TOWN CHARTER RELATING TO THE CANDIDATE QUALIFYING PERIOD; AMENDING SECTION 2.04 OF THE TOWN CHARTER RELATING TO THE MAYOR QUALIFYING PERIOD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING

FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH;
AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.a.

Ord read by title only.

MOTION: CM White / CM Rivet to approve Ord 2020-05 for first reading. Discussion: none

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

12.b. Amend Chapter 13 re: Special Assessments (Ord 2020-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA TO AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES; PROVIDING FOR A COST SHARE IN THE PAVING OF IMPROVED AND ACCEPTED DIRT ROADS THAT HAVE MET THE REQUIREMENTS FOR A SPECIAL ASSESSMENT IN SECTION 13.52.(2)b.; PROVIDING FOR NEW SUBSECTION 13.52.(2)c.; PROVIDING FOR THE FUNDING SOURCE FOR THAT COST SHARE; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.b.

Ord read by title only.

MOTION: CM White / CM Ball to approve Ord 2020-06 for first reading. Discussion: .CM Vail made a comment reiterating that this Ordinance is only funded by TIFT funds, and will cease to exist if that fund runs dry.

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

RESOLUTIONS: 1

12.c. Acceptance of Audit on FY 2018/2019 (Reso 09-2020)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2018/2019 BY THE AUDIT FIRM OF JAMES MOORE AND CPA; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.c.

Reso read by title only.

MOTION: CM Vail / CM Rivet to adopt Reso 09-2020 as submitted. Discussion: none

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

MISCELLANEOUS: 0

Chair excused Attorney and Planner at this Point

13. DISCUSSION/POSSIBLE ACTION: 1

13.a. Town's Method to Share Information with Residents, Property owners, and Businesses – Quarterly MailBoat or continue monthly Hometown News

Exhibit: Agenda Report No.13.a.

Discussion:

CM White asked about the preference

CM Ball supports an electronic option. It saves on costs, and only goes to the people who want to read it.

Dawn Danielson, Hall Road, she subscribes to everything and has never once gotten a notification that the hometown issue. That needs to be fixed if you are going to make this available electronically.

CM Scardino had to adapt to the electronically. He had to learn how to do that. Life amber alerts. Electronically communicate with the citizens. Richard declared he had met with the vendors and from here on out that is a notification. It is usually in the mailbox within 5-10 minutes. CM White said dispersing this electronically compared to paper copies. He thinks as long as we can address with concerns that Dawn brought up. CM Vail stated we need to have a transition period maybe an annual paper form. CM Ball said we are used to doing a mailout and with a couple of little highlights. Going forward make sure that everyone has an opportunity to get this information.

Susan Shortman said when she can't come to meetings she tries to listen to recording and she has trouble listening it was almost lip reading the video.

MOTION: CM Rivet / CM Ball to approve the continuance of three more monthly issues in HomeTown News. Plan on seeing it at a particular time of month. Also do one more Mailboat mailed to residents explaining it is the last issue. **VOTE: All Ayes.**

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

Ms. Marcie Adkins introduced herself to Council and said she is running for state office and is a Valkaria resident for 24 years; she is your neighbor.

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Vail: nothing

CM Ball: Got the letter from Scardino. CM Scardino asked what do the people of Malabar want. That was the intent of the letter. People want the RR and he wasn't on it. People want to be involved. Get the people more involved. Concerned with the vision. CM Ball said one of the points he brought out was that employees should be from the town. CM Scardino said he is a developer and a city planner and a police officer. Might not be feasible. CM Ball said when we picked out last administrator, one of the top questions he asked for the administrator was if they lived in Malabar. Might live here but not be qualified. It is up to Council to make that point salient. That should be one of the criteria. You had a lot of trouble getting information from the town. You bashed staff. CM Scardino said it was the website he had trouble getting info. CM Ball asked the Fire Chief how many volunteers for FD how many are from Malabar. Two.

CM Rivet: impact on people. Why is that zoning different from zoning on south side of Malabar Road. CM Rivet said they had an agreement that the LU would only extend 660 south of Malabar road and that was changed at the last minute. Asked for the justification leading up to that. That was a group decision. He wants to understand. CM Scardino asked why those cases different. CM Vail decisions are the same as they were when they made those decisions. Steve said they would have commercial zoning on Malabar Road. They agreed to have it 660 feet south of that. CM Vail had always stood firm on the 1320'. CM White said there is no difference, it was his perspective. They talked about wanting commercial development, but the people don't want commercial development. There is a great resistance to it. CM White thought with the Yellow Dog he was doing the right thing, but he did not listen to the people. Any for what his remaining term he will listen to the residents.

CM White: It was not well thought out thing to say. He has never had a problem getting information from staff. He is there 2 times a week. Last time you looked at property. When you pay people what we pay they can't afford to live in Malabar. The only person that doesn't live in the area is the town planner. He is exactly of the opposite opinion. CM Scardino stated he was looking for information and had a number of days in delay due to the Covid-19.

CM Scardino: It was his intention to look at the rural characteristics of the Town, and how they were viewed. He asked for it to be electronically sent and there was delay.

Mayor: the letter from CM Scardino really upset him. He was not prepared to speak to it unless it was on the agenda so he will not.

16. ANNOUNCEMENTS: Openings on T&G and Park and Rec Bds.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 9:40 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 7/06/2020

DRAFT

ORDINANCE 2020-05

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2019-10 AND AMENDING SECTION 2.03 OF THE TOWN CHARTER RELATING TO THE CANDIDATE QUALIFYING PERIOD; AMENDING SECTION 2.04 OF THE TOWN CHARTER RELATING TO THE MAYOR QUALIFYING PERIOD; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the current Town of Malabar Charter states that the Malabar candidate qualifying ends 76 days prior to the date of an election; and

WHEREAS, the State of Florida in 2019 approved Senate Bill 6077 amending Section 100.062 *Florida Statutes*, by changing the date of the primary election from 10 weeks prior to the general election to 11 weeks prior to the general election; and,

WHEREAS, the Town Council recognized the need to adjust the candidate qualifying period for 2019 to conform to the provisions of Senate Bill 7066 and reduced their qualifying period to one week and now desires to change it back to a two-week period; and

WHEREAS, Florida Statute §100.3065 states that the governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes; and,

WHEREAS, this language has been interpreted by the Attorney General of Florida as permitting the amendment of the candidate qualifying period provided for in a municipal charter without a referendum by the general electorate (see, AGO 2000-61).

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

SECTION 1. Section 2.03 of the Malabar Charter is hereby amended to read as follows:

“Section 2.03 Qualifications for Council Seat.

Any qualified elector of the town who has been a resident of the town for at least six (6) months prior to the date of qualification for office may qualify for the council seat by presenting to the town clerk a petition signed by residents of the candidate's district. The petition must be signed by fifteen (15) valid signatures of the district and by paying a filing fee if required, not less than eighty-four (84) days and not more than ninety-eight (98) days prior to the date of such election. The candidates shall submit with the petition a sworn statement containing the candidate's name, address, occupation and willingness to serve if elected. “

SECTION 2. Section 2.04 (b) of the Malabar Charter is hereby amended to read as follows:

“Sec. 2.04. Qualifications and Duties of the Mayor.

(b) The Mayor shall be at least thirty (30) years of age, an elector of the Town and shall have resided in the Town for at least one (1) year prior to the date on which the candidate qualified to run for the office of Mayor. A candidate for Mayor shall submit a petition signed by

15 qualified electors from within the Town not less than eighty-four (84) days and not more than ninety-eight (98) days prior to the date of such election. The candidates shall submit with the petition a sworn statement containing the candidate's name, address, occupation and willingness to serve if elected."

SECTION 3. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida that the provisions of this Ordinance shall be made a part of the Charter of the Town of Malabar, Florida; and codified into the Municipal Code and any section or paragraph may be renumbered or re-lettered to accomplish such intention.

SECTION 4. SEVERABILITY. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, such decision shall not affect the validity of the remainder hereto as a whole or part thereof to be declared invalid.

SECTION 5. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 6. EFFECTIVE DATE. The ordinance shall take effect immediately upon its adoption.

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

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this ____ day of ____, 2020.

BY: TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

First Reading: 06-15-20 Vote:
Second Reading: 07-06-2020

ATTEST:

Debby K. Franklin, Town Clerk/Treasurer

(seal)

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr., Town Attorney

ORDINANCE 2020-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA TO AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES; PROVIDING FOR A COST SHARE IN THE PAVING OF IMPROVED AND ACCEPTED DIRT ROADS THAT HAVE MET THE REQUIREMENTS FOR A SPECIAL ASSESSMENT IN SECTION 13.52.(2)b.; PROVIDING FOR NEW SUBSECTION 13.52.(2)c.; PROVIDING FOR THE FUNDING SOURCE FOR THAT COST SHARE; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the Town has acquired, built and maintained rights-of-way throughout the town to promote the general health, safety and welfare of its citizens and the travelling public; and

WHEREAS, utilities and communication services locate their facilities in the rights-of-way to ensure all citizens receive adequate service; and

WHEREAS, in 2017 the Town Council adopted a process to allow property owners on an improved and accepted dirt lane to request paving of their road using a Special Assessment process and adopted its first Special Assessment for paving of Smith Lane; and

WHEREAS, Town Council has further adopted a policy to share in the cost of a portion of the paving as a method to encourage property owners on improved and accepted dirt lanes to Petition to have their road paved; and

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. The above recitals are true and correct.

SECTION 2. Article II of Chapter 13 is hereby amended to add a new subsection "c" to Section 13.52(2) of the Code of Ordinances of the Town to read as follows:

"Sec. 13-52(2) c.

Cost Share. When a Petition is submitted pursuant to Sec. 13-52 (2) and the Petition meets the requirements to proceed with paving an improved and accepted dirt lane as depicted in subsection (b) the Town shall consider in the calculation of the total cost of the Special Assessment a reduction by forty percent (40%) which shall be the Town's contribution to the total paving cost.. The cost share portion of the Town shall be contributed by using only those funds available through the Transportation Impact Fees collected on new construction."

SECTION 3. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

SECTION 5. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 6. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

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

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared duly passed and adopted this ____ day of _____ 2020.

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

First Reading: 06/15/2020 Vote to

Second Reading: 07/06/2020

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.c.

Meeting Date: July 06, 2020

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

SUBJECT: Action on Road Improvement Waiver Request – Beekeeper Lane

BACKGROUND/HISTORY:

Ord 2020-01 was adopted to provide a waiver process for applicants to follow when dealing with the requirements for road improvements. It gives Council authority to grant “waivers” to the strict requirements.

In this case, the property owner of a parcel three lots east of Corey on the ROW known as Beekeeper Lane has asked for Council consideration of a waiver to the improvement regulations.

The applicant, Mr. Adam Hayward, is requesting a waiver to the requirement of ‘*developing the road to the furthest point of the parcel to be developed*’ - and a waiver to the improvement requirements for a minor collector.

The applicant will be in attendance and has been provided the Town Engineer’s memo and recommendation.

ATTACHMENT:

Waiver application – Beekeeper Lane
Malabar Comp Plan Chapter 2, Transportation
Malabar Accepted Streets list – see page 4
Town Engineer Morris Smith recommendation for Council

ACTION OPTIONS:

Action on waiver request

Reason for Waiver Request

MAR 17 2020 14:11

I am requesting this Waiver due to property encroachment issues that would be caused by the current required Right Of Way (ROW) width. The width of the "Beekeeper" ROW per the plat is 50 ft. and my surveyor has confirmed what is shown by the County Property Appraiser's aerial photos attached to this application, which is that widening "Beekeeper" to 50' would cut well into the driveway and drain the pond of an existing residence abutting Corey Road. Additionally, Beekeeper is also technically a Minor Collector per the town, requiring a 70 ft. ROW which would require both 10 more feet to be cut into the residence (which would likely cut into the house itself) and 10 more feet to be divided out of each parcel along both sides of the ROW and dedicated as ROW. This would require convincing 5 land owners to give away more of their land (including part of a driveway, house and pond), as well as convincing them (and likely a judge) that the town suddenly needs a 70 ft ROW for a single home, while none of the other minor collectors that serve hundreds of homes are over 50 ft and the majority are 40 ft or less.

Beekeeper is an extension of Old Mission going east of Corey Road that would eventually end at Marie Street and is currently only legally used a couple times a week by an agricultural lessee to access his Sheep and Goat Farm and on rare occasion by the Fire Department, there are no homes abutting Beekeeper. The first 850 ft. of Beekeeper has been improved in the past to roughly 25 ft wide with a 10 ft roadway with a crushed asphalt surface and a drainage swale on the north side that connects to the main road drainage canal at Corey rd. The first 200 ft is still maintained (presumably by FPL) due to a utility pole that serves the aforementioned property abutting Corey rd. The total length of the ROW from Corey to the furthest end of my parcel is 1284 feet.

My proposal to the town is to allow a waiver to "Section 13-38 Precondition to Issuance of Building Permit – Completion of Road" for the reasons stated above, with the following conditions: That I be responsible for bringing the current roadway within the ROW to standards approved by the town engineer that keep within the footprint of the currently used roadway from Corey rd to my proposed driveway location (a total of 1076 ft), and be required to share in the cost of ROW improvement to the full width if in the future it is widened. I also offer the following conditions if council finds them necessary: That I enter into an agreement to continue maintenance of said roadway and that the agreement is attached to the deed of the property in perpetuity, and that my mailbox and trash collection are at Corey Road instead of on Beekeeper to reduce the amount of potential traffic necessary.

I am only one person seeking to move to this beautiful rural area and wish to work with the town in every way to keep my impact to as minimal as possible while keeping in accordance with the town's comprehensive plan.

**RIGHT OF WAY (ROW)
ROAD IMPROVEMENT WAIVER APPLICATION**

This application is separate and in addition to the Road Improvement Application that must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) Adam Hayward Tel: 321-831-6147

Mailing Address: 2735 Woodside Ave. Winter Park, FL 32789 Email: ahayward03@msn.com

Name of Owner if other than Applicant: N/A Tel: N/A

Legal description of property covered by application:

Township 29, Range 37, Section 12, Parcel 295, Road ROW Name "Beekeeper"

Property Address: Not Assigned Zoning classification RR65

Existing Special Conditions or Conditional Uses Previously Granted: None

Required ROW dedicated / will be dedicated x prior to hearing per Section 13-39 of Road Improvement Code in Chapter 13 of Malabar Code of Ordinances.

Reason for waiver request (state specific hardship or attach correspondence, drawings, etc.).

See attached explanation and illustrations

Required attachments:

- Hearing fee of \$300.00 for Residential and \$1,500.00 for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership of abutting parcel
- Survey to include Site layout depicting the right-of-way (ROW), roadway width and length subject to waiver request and parcel owned by applicant
- List of property owners (with tax parcel numbers) abutting the road right-of-way involved in the waiver request as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.


Applicant(s)

3/17/20
Date

Chapter 13, Malabar Code of Ordinances, Section 13-38(c) provides as follows for waivers:

“(c) Waiver. The Town Council may grant a waiver to the provisions of Section 13-38 (b) (1) and (2).

1. The below stated procedures shall in all respects be utilized for consideration of a waiver to subsection (b)(1) and (2). In order to authorize a waiver under this section the Town Council must find the following:

i. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38 (b) (1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a waiver under this section;

ii. The special conditions and circumstances are not caused in any way by the owner or applicant;

iii. That such waiver will not be injurious or detrimental to the public welfare;

iv. That the waiver granted is the minimum waiver that will make possible the reasonable use of the land;

v. As a condition to the issuance of a waiver the owner of the property for which such waiver is granted shall dedicate the right of way required by section 13-39 of the code, if no such public right of way exists at the time of the granting of a waiver authorized herein, through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed.

2. The owner of the property for which such waiver is granted shall also execute an agreement in recordable form with the Town that binds the owner and his/her successors in interest of the property for which such waiver is granted to pay for the completion of the entire width of the right of way as it existed on the date the waiver is granted by the Town Council through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The Agreement shall provide, in part, that should the owner of the property for which the waiver was granted fail to pay for the completion of the entire width of the right of way through the furthest boundary of the lot of record when it is constructed by another then the Town may reimburse the person who completed the road portion through the furthest boundary of the lot of record of the owner who was granted the waiver and the Town shall be entitled to record a lien against the property for which such a waiver was granted for the cost of the reimbursement and/or the Town may withhold the issuance of any future building permit, development order or development permit, for the property for which such waiver is granted.

3. By way of example, and not by way of limitation, “special circumstances” may include:

i. Environmental conditions, and restrictions exist which prohibit any disturbance of such area and make it impossible to complete the road to the furthest extent of the property; [for example where mitigation is not possible]; or

ii. There exists no dedicated public right of way immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies; or

iii. The property immediately abutting and beyond furthest boundary of the lot of record for which the waiver applies is owned by a governmental agency and is designated as conservation or environmentally sensitive land; or

iv. The property immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies already has existing accepted access through the use of another public or private right of way

4. Town Council may impose additional reasonable conditions and safeguards that it deems appropriate;

5. The Town Council may prescribe a reasonable time limit within which the action for which the waiver is required shall be begun or completed or both.

6. The decision of the Town Council regarding a request for a waiver is final and no reconsideration, rehearing or further appeal to the Town is available.

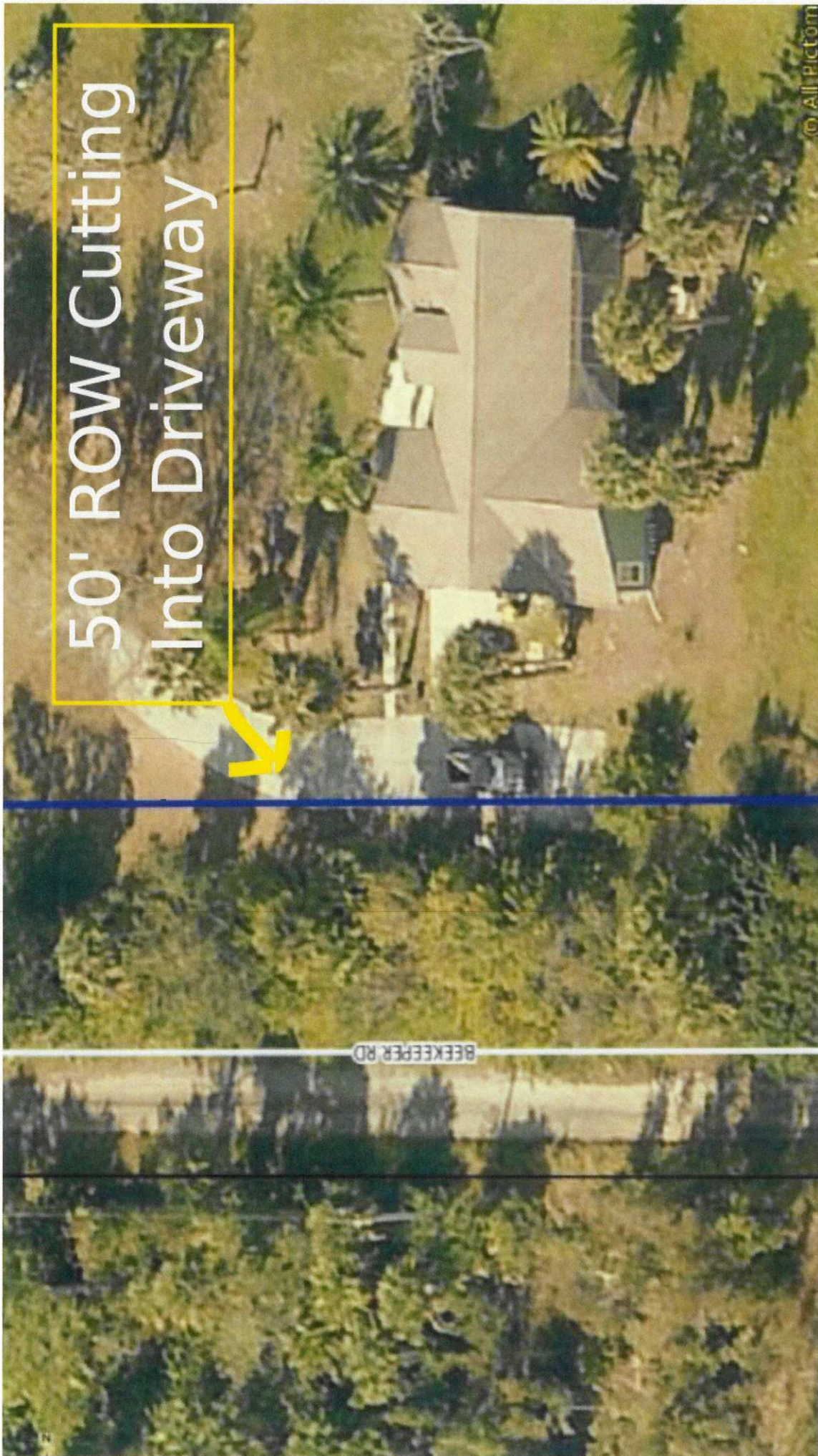
7. Application Process: Any person owning an interest in any real property may apply to the Town Council for a waiver hereunder. The application shall be accompanied by a fee established from time to time by the Town Council. The application shall be in such form as provided by the Town, and shall contain the following information:

- i The name of the owner of the particular real property shall be included.
- ii If the applicant is other than all the owners of the particular property, written consent signed by all owners of the particular real property shall be attached.
- iii The application shall contain the legal description of the particular real property, accompanied by a certified survey of that portion of the map maintained by the property appraiser reflecting the boundaries of the particular real property.
- iv The application shall contain the current zoning classification, and any specified conditions or conditional use designation as recorded on the official zoning maps.

8. Public Hearing; Notice Upon receipt of an executed application pursuant to this section, the Town Clerk forthwith shall schedule a hearing on the application before the Town Council. Notice of the time and place of the public hearing shall be given to the applicant at least 15 days prior to the public hearing. Notice of the time and place of the public hearing on the application shall be mailed, at least 15 days prior to the public hearing, to all property owners abutting the road right of way in question. Such notice shall contain the name of the applicant, the legal description of the affected property, and that the owner of the affected property desires a waiver to section 13-38(b)(1) or (2). In addition, a notice containing such information shall be posted at Town Hall and on the Town's website.



50' ROW Cutting
Into Driveway



Malabar Comprehensive Plan
2019 Ed.

Chapter 2: Transportation

Minor Street Classification

Level of Service "D"

Required ROW Width – 70 feet



Existing Roadway System

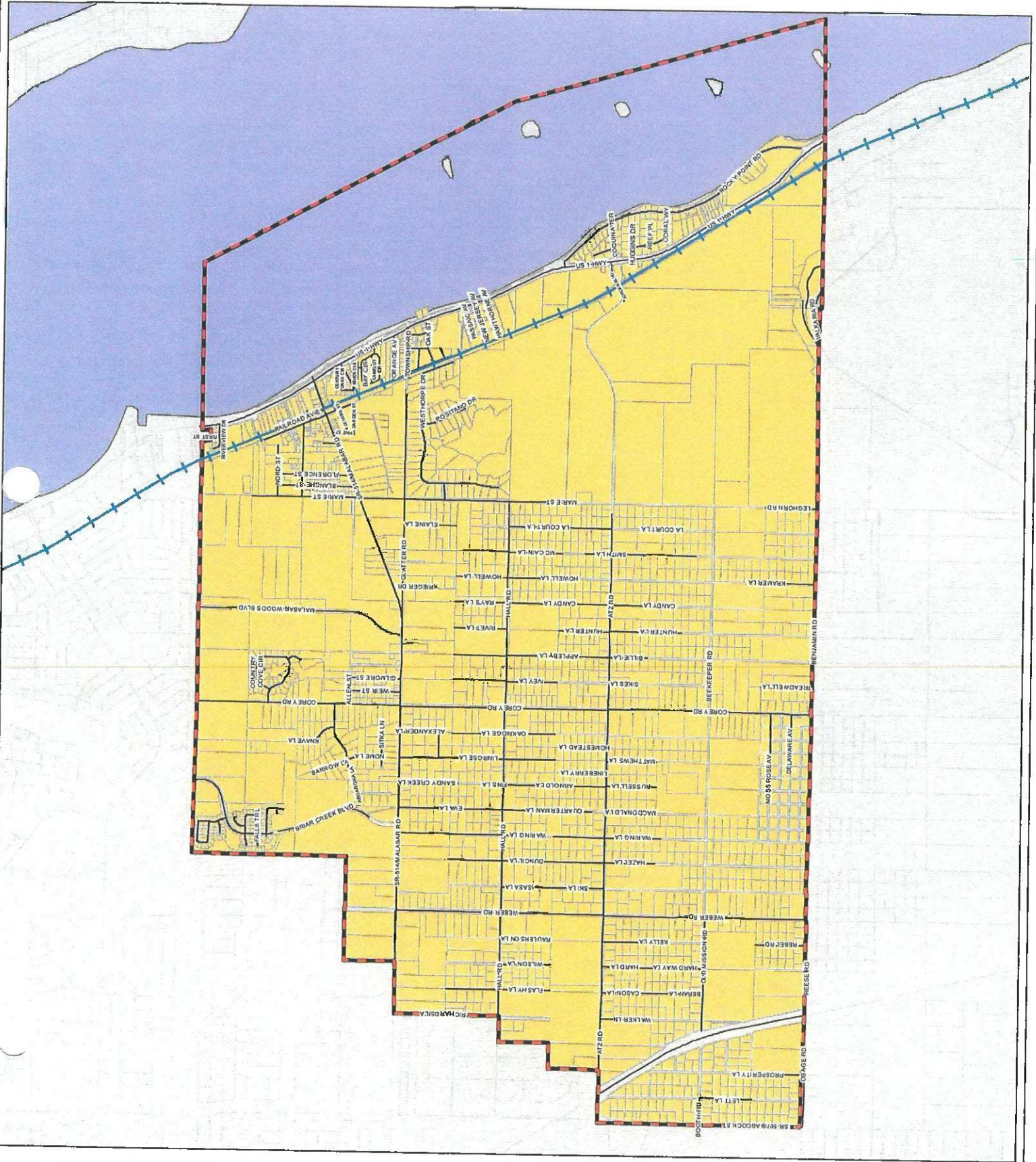
TRN - 1

Legend

- Malabar Town Boundary
- Roads
- Florida East Coast Railway

Print Date : June, 2009

Source :
Town of Malabar, 2009





Future Number of Lanes (2025)

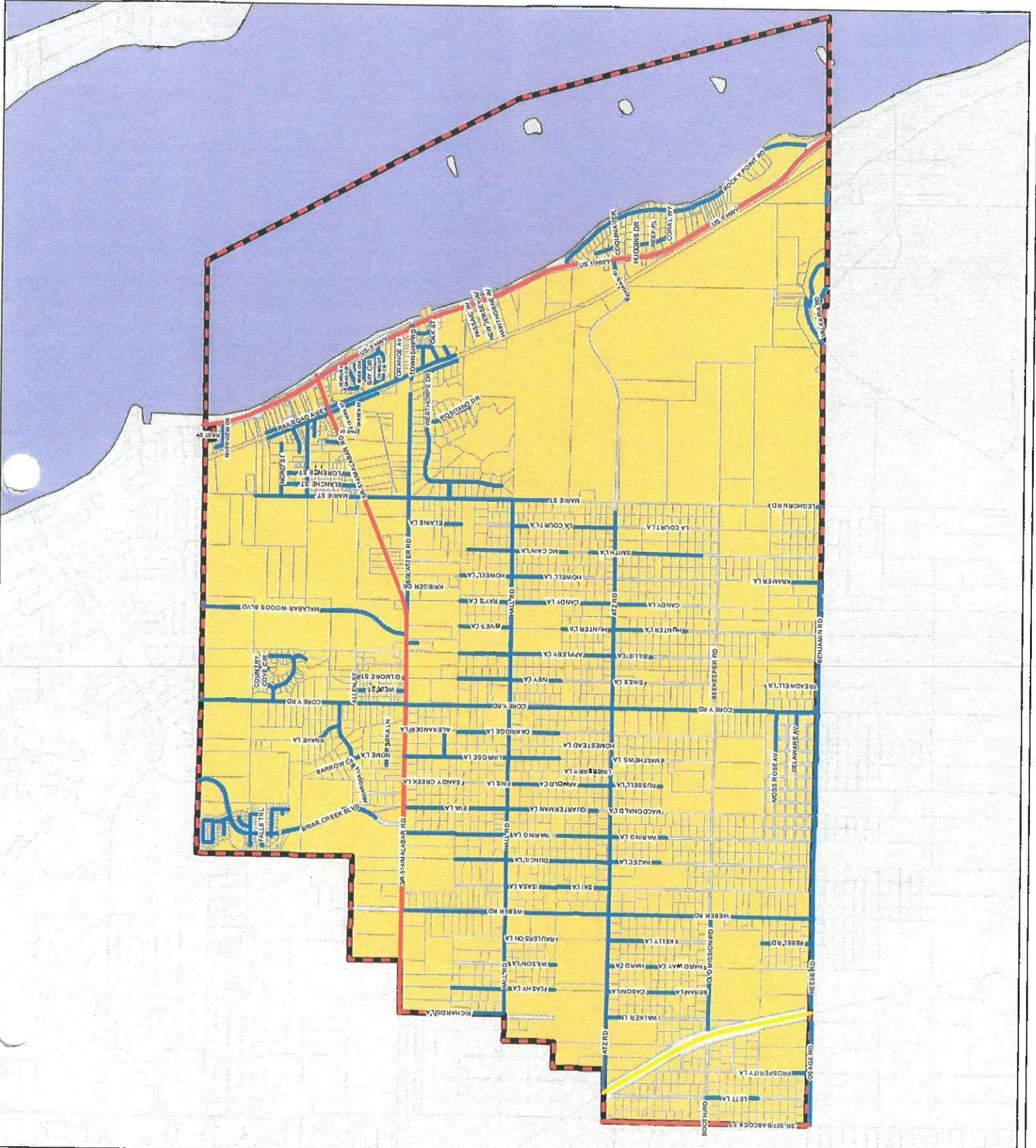
TRN - 6

Legend

- Malabar Town Boundary
- Roads
- Malabar Number of Lanes
 - 2 Lanes
 - 4 Lanes
 - 6 Lanes

Print Date : June, 2009

Source :
FDOT,
Town of Malabar, 2009





Existing and Future Functional Classification (2025)

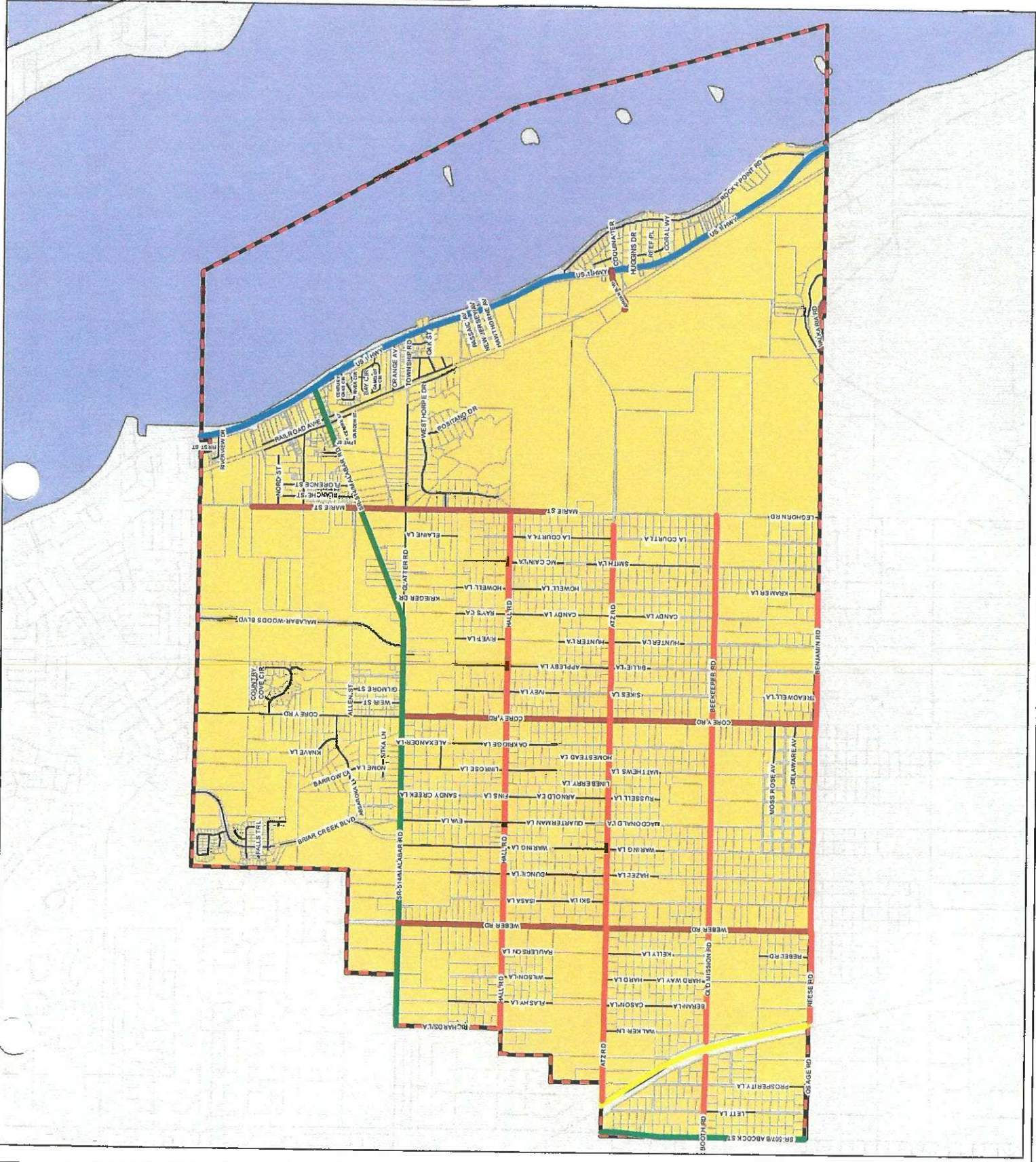
TRN - 3

Legend

- Malabar Town Boundary
- Existing and Future Roads
- Functional Classification
- URBAN PRINCIPAL ARTERIAL - INTERSTATE
- URBAN PRINCIPAL ARTERIAL
- URBAN MINOR ARTERIAL
- MAJOR COLLECTOR
- MINOR COLLECTOR

Print Date : June, 2009

Source :
FDOT,
Town of Malabar, 2009



Valkaria Road

Valkaria Road serves as Major Collector and runs east-west between SR-507/Babcock Street and US-1. Only a very small portion of Valkaria Road lies within the Town and is used to access Leghorn Lane.

Marie Street

The Marie Street corridor generally extends from approximately 970 feet north of Johnston Avenue south to Malabar Road and should be classified as a Minor Collector due to the lack of right-of-way north of that point.

Marie Street right-of-way proceeds south of Malabar Road to a point 850-feet past Hall Road. It was originally intended to be a Major Collector to connect to Leghorn Lane and reach Valkaria Road to the south. Difficulties with wetland issues, conservation dedications and lack of right-of-way to the south have all contributed to Marie Street being used as a Minor Collector instead of a Major Collector.

Jordan Boulevard

Jordan Boulevard runs east west in the southeast section of the Town and its right-of-way lines up with Atz Road. It was classified as a major collector for this reason. When the Industrial Land Use designation was made for the acreage off Jordan Boulevard to provide for an industrial park, Council directed that Jordan Boulevard should not be improved to Atz Road due to concern that commercial traffic would be brought through the Rural Residential area. The Town still owns the 100-foot wide right-of-way through this area which was subsequently bought by the State for conservation land and the Jordan Boulevard right-of-way has been fenced off. The Town intends to improve this right-of-way for emergency access only. Part of this Jordan Boulevard right-of-way is currently used for trail access into the Jordan Scrub Sanctuary. This roadway should be changed to a Minor Collector.

Minor Collectors

Atz, Hall, Old Mission, and Benjamin Roads are east-west roads. These roads are classified as Minor Collectors. As stated above, Marie Street and Corey Road north of Malabar Road should both be reclassified to Minor Collectors. In addition, Jordan Boulevard should be reclassified to a Minor Collector. LaCourt Lane was improved and used a Minor Collector to avoid the more expensive and challenging road improvements needed for Marie Street in order to connect Hall and Atz Roads. Eva Lane was also cut through from Malabar Road to Hall Road and thus became a Minor Collector.

Local Roads

All other remaining roads are classified as local roads. The local roads serve minimal homes on dead-end roads in the rural residential zoning and can be either paved or unpaved. Local dirt roadways can be paved by Special Assessment as stipulated in Chapter 13 of the Code of Ordinances.

TRANSPORTATION ELEMENT GOALS, OBJECTIVES, AND POLICIES

§2-1 *Transportation Goals, Objectives, and Implementing Policies.*

This section stipulates goals, objectives, and implementing policies for the Transportation Element pursuant to 163.3177(6)(b), F.S., and §9J-5.007(3), F.A.C.

GOAL 2.1: EFFECTIVE MULTIMODAL TRANSPORTATION SYSTEM


Plan for a safe, convenient, and efficient motorized and non-motorized transportation system which shall be available for existing and anticipated future users of the system.

2-1.1 Objective:

Safe, Convenient, and Efficient Transportation System. Establish a safe, convenient and efficient motorized and non-motorized transportation system through development and implementation of level of service (LOS) standards.

2-1.1.1 Policy:

Level of Service Standards. The Town hereby adopts that following peak hour LOS standards for non FIHS and non-SIS facilities:

- 
- a. US-1: LOS Standard D (FDOT facility)
 - b. Malabar Road (SR 514); LOS Standard D (FDOT facility)
 - c. Babcock Street (SR 407); LOS Standard D (FDOT facility)
 - d. Collector Roadways: LOS Standard D
 - e. Paved Local Roadways: LOS Standard D
 - f. Unpaved Local Roadways: LOS Standard D

2-1.1.2 Policy:

Level of Service Standards. The Town hereby adopts the following peak hour LOS standards for FIHS and SIS facilities within the Town:

- a. I-95: LOS Standard C (FIHS and SIS facility)

2-1.1.3 Policy:

Master Plan for Road Paving. By 2010 The Town shall prepare and adopt a plan and schedule for paving local streets. The plan shall establish mechanisms for funding road paving projects and the schedule for

management techniques including ridesharing, van pool, and parking strategies.

2-1.1.15 Policy:

Public Involvement. The Town shall encourage public involvement in transportation planning and transportation improvement projects.

2-1.1.16 Policy:

Establishment of Passenger Rail Line. The Town shall support Florida Department of Transportation efforts towards the establishment of passenger rail line along the Florida East Coast (FEC) corridor.

2-1.2 Objective:

Right-of-Way Acquisition. The Town shall protect existing and future right-of-way from building encroachment. By 2010 additional transportation system right-of-way acquisition needs shall be identified and relative priorities for land acquisition shall be established.

2-1.2.1 Policy:

Transportation Map. The Town hereby adopts that Future Transportation System Map. Additional right-of-way (R/W) needs for future roadway and drainage improvements shall be identified based on an assessment to be completed by 2010. The findings regarding specific additional R/W needs for roadway and drainage facility improvements shall be incorporated as an amendment to Future Transportation System Map.

2-1.2.2 Policy:

Standards of Future Road R/W Acquisition. The Town hereby adopts the following minimum standards for road rights-of-way:

- a. Arterial Roadways: 150' R/W
- b. Major Collector Streets: 100' R/W
- c. Minor Collector Streets: 70' R/W
- d. Local Streets: 60' R/W (if swale drainage)
50' R/W (if curb and gutter)

2-1.2.3 Policy:

Mandatory R/W Dedication/Fees in Lieu. The Town shall continue to implement a program for mandatory dedication or fees in lieu thereof as a condition of development approval associated with plats, replats, PUDs, or site plans where such development generate a need for new or improved roadways. The purpose and intent of such program shall be to assure that:
1) adequate road R/W and necessary roadway improvements are dedicated

Malabar Accepted Street List

See page 4
re: Beekeeper



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Street Name</u>	<u>Width</u>	<u>Length or distance</u>
<u>Absaroka Ln</u>	22'	3200' paved west from Corey Rd– private, Stillwater Preserve SD
<u>Arnold Lane</u>	23'	870' south of Hall Road approved in 2006
<u>Atz Road</u>	23'	2.5 mile paved west from LaCourt Ln to Weber & 21' west to Town limits (and 114 ft dirt east of LaCourt)
<u>Appleby Ln</u>	14'(S)16'(N)	1,322' x 25' north from Hall Rd and 800' south from Hall Rd
<u>Barrow Lane</u>	22'	980' paved from Absaroka – private, Stillwater Preserve SD
<u>Baywood Court</u>	21'	200' paved, Country Cove S/D
<u>Benjamin Road</u>	18'	3,325' x 40' paved east from Corey Road to Kramer Ln
<u>Beran Lane</u>	17'	930' north from Old Mission; Parcel 103 has payback under 90-3
<u>Billie Lane</u>	16'	700' south from Atz Rd.
<u>Blanche Street</u>	20'	1,060' paved north from Malabar Road
<u>Bluff View Place</u>	20'	115' paved west from Pemberton Tr., Brook Hollow S/D
<u>Booth Road</u>	17'	630' east of Babcock Street
<u>Briar Creek Blvd.</u>	23'	2,875' paved south from Malabar Town limit, Brook Hollow S/D
<u>Briar Run Circle</u>	n/a	85' paved west from Briar Creek Blvd, Brook Hollow S/D
<u>Brookshire Circle</u>	20'	334' paved west from Hollow Brook Ln, Brook Hollow S/D
<u>Candy Lane</u>	15'	1322' x 50' north from Atz Road. No records in file of approval south of Atz
<u>Cason Lane</u>	16'	1,330' south of Atz Road
<u>Centre Street</u>	19'	528' between Pine St and W. Railroad Ave.
<u>Century Oak Cr</u>	20'	S/D 1,260 ft. paved
<u>Coral Way</u>	22'	1,550' paved south from Huggins Dr and east to Rocky Point Rd, Coquina Pt S/D
<u>Corey Road</u>	22'	2 mi paved south from Malabar Rd to Town limit & 3,900' paved north of Malabar Rd
<u>Coquina Ter</u>	20'	1,350' paved west from Rocky Point Road, Coquina Point S/D
<u>Country Cove Cir</u>	20'	3,085' paved, Country Cove S/D
<u>Crescent Road</u>	13'	460' x 40' south from Township Road
<u>Delaware Ave</u>	16'	1,293' west from Corey Rd, Melbourne Heights S/D
<u>Duncil Lane</u>	20'(S) 16'(N)	2,440' south from Hall Road and 1,055 ft. north from Hall Road
<u>Elaine Lane</u>	17'	1,310' south from Glatter Road to dead end
<u>Eva Lane</u>	18'	.5 mile from Malabar Road to Hall Road – paved in 2018
<u>Falls Trail</u>	20'	219' paved from Briar Creek Blvd, Brook Hollow S/D
<u>Fins Lane</u>	16'	550' north of Hall Rd (previously known as <u>Mussell Shoal Ln</u>)
<u>First Lane</u>	20'	240' paved north from Riverview Drive, Riverview S/D



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

Name	Width	Length
<u>Flashy Ln</u>	19'(N)10'(S)	1,275' north from Hall Road and 530 ft. x 25 ft. south from Hall Road
<u>Florence Street</u>	21'	1,060' paved north of Malabar Road
<u>Garden Street</u>	15'	528' east from Pine Street to dead end
<u>Gator Way</u>	10'	Appx 700' south from Hall Road to Parcel 554
<u>Gilmore Street</u>	15'	220' paved plus 940' dirt north from Malabar Road to Allen St.
<u>Glatter Road</u>	18'(W)16'(E)	925' unpaved east of Marie St and 2,890' paved west of Marie to Malabar Rd
<u>Hall Road</u>	20'	2.5 miles paved from Marie Street west to Richards Ln
<u>Hard Lane</u>	13'	564' south of Atz Road to Parcels 93 and 100
<u>Hard Way Lane</u>	16'	1130' north from Old Mission Road. (Parcel 22 has payback under 90-3)
<u>Hawthorne Ave</u>	08'	150' west from Hwy 1
<u>Hollow Brook Ln</u>	20'	2,045' paved north from Briar Creek Blvd, Brook Hollow S/D
<u>Holloway Trail</u>	20'	324' paved west from Briar Creek Blvd, Brook Hollow S/D
<u>Homestead Ln</u>	20'	1,200' paved north from Atz Rd to cul-d-sac, Sugar Pines S/D
<u>Howell Ln</u>	16'(N)18'(S)	1100' No. of Hall and 928' So. of Hall Rd; Parcel 829 owes payback Ord 03-01.
<u>Huggins Drive</u>	22'	808' paved east from Hwy 1.
<u>Hunter Lane</u>	15'(N) 13'(S)	1,320' north from Atz Rd and 1,500' south of Atz Rd.—see Road payback book
<u>Isasa Lane</u>	16'	730' south from Hall Rd
<u>Ivey Lane</u>	17'	800' south from Hall Road
<u>Johnston Ave</u>	11'	1,164' east from Marie Street – payback complete
<u>Jordan Blvd</u>	70'	1,010' paved west from the center line Hwy 1 (paved divided road)
<u>Kelly Lane</u>	16'	1,483' south from Atz Road
<u>Knave Lane</u>	22'	1000' paved – private, Stillwater Preserve SD
<u>Kramer Lane</u>	19'	1,322' north from Benjamin Rd, payback complete
<u>LaCourt Lane</u>	21'	2,640' south from Hall Rd. to Atz Rd
<u>Leghorn Road</u>	13'	1,000' No of Section 12 from Valkaria Rd Parcel 763 has payback under Ord 01-01)
<u>Lett Lane</u>	19'	1,970' south of Booth Road - Parcels 519, 551, 567, 529 and part of 527 owe payback under Ord 91-2)
<u>Lineberry Ln</u>	20'	1,200' paved north from Atz Rd to cul-d-sac, Sugar Pines S/D
<u>Linrose Lane</u>	12'(N) 23'(S)	928' x 25' north from Hall Rd per Council 7/1/19; 1,300' south of Hall Rd to dead-end
<u>MacDonald Lane</u>	15'	600' south from Atz Rd (the last 200 feet is a payback under Ord 01-01)
<u>Marie Street</u>	22'	970' x 35' unpaved north from Johnston Avenue and 5,330' (1+ mi) paved south from Johnston Avenue to Hall Road and 1800 ft. x 25 ft. unpaved south of Hall Road to Town owned parcels (17' dirt roadway south of Hall)



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Name</u>	<u>Width</u>	<u>Length</u>
<u>Marshall Dr</u>	15'	528' north from Malabar Road to dead end
<u>Matthews Lane</u>	21'	1610' south from Atz Rd Parcels, 18, 27, 50 & 51 have payback under Ord. 01-01
<u>McCain Ln</u>	18'(N)16'(S)	1,100' north and 1,450' south of Hall Rd Parcel 859 granted variance in 2005 to improve only 50'. Council voted that Parcel 802 could use same access.
<u>Moss Rose Ave</u>	12'	1,015' west from Corey Rd, Melbourne Heights S/D
<u>New Jersey Ave</u>	09'	528' west from Hwy 1
<u>Nome Lane</u>	22'	920' paved, south from Absaroka – private, Stillwater Preserve SD
<u>Nord Street</u>	10'	528' east from Marie Street
<u>Oak Harbour Ln</u>	20'	338' paved, Country Cove S/D
<u>Oak Tree Place</u>	20'	389' paved north from Falls Trail, Brook Hollow S/D
<u>Oakridge Ln</u>	17'(N)16'(S)	700' x 50' & 350' x 25' north from Hall Rd and 1,130' south from Hall Rd
<u>Old Mission Rd</u>	18'	1,950' west from Weber Road to Beran Ln
<u>Orange Avenue</u>	13'	1,260' west from Hwy 1 to FEC railroad
<u>Osage Road</u>	21'	approved to 1,311' to Prosperity Lane in 2006
<u>Passaic Avenue</u>	14'	782' west from Hwy 1
<u>Pemberton Trail</u>	20'	1,053' paved east from Briar Creek Blvd, Brook Hollow S/D
<u>Pine Street</u>	20'	528' south from Malabar Road to Garden Street
<u>Positano</u>	22'	paved off of Westhorpe Dr – private, Oakmont Preserve SD
<u>Prosperity Lane</u>	16'	930' north from Osage Road in 2006
<u>Quarterman Ln</u>	17'	1850' south from Hall Road to Parcel 791
<u>Raulerson Lane</u>	12'	1270' south from Hall Road – 25' width – approved by Council 9/23/19
<u>Rebel Lane</u>	15'	1000' north from Reese Road
<u>Reef Place</u>	20'	510' paved east from Coral Way, Coquina Pt S/D
<u>Reese Road</u>	18'	685' x 25' west from Weber Rd to Rebel Ln
<u>Richards Lane</u>	10'	807' x 25' north from Hall Rd
<u>Riverview Drive</u>	20'	780' paved west from Hwy 1, Riverview S/D
<u>Rivet Lane</u>	13'	700' x 25' north from Hall Road
<u>Rocky Point Rd</u>	22'	7,590' paved (was old Hwy 1)
<u>Russell Lane</u>	16'	400' south from Atz Road
<u>Samantha Lane</u>	16'	Council approved name change to Taylor Lane in 2019 for 1200' So of Hall Road (Parcel 500 may have a payback under Ord 03-01 for 300')
<u>Sandy Creek Ln</u>	19'	1,500' south from Malabar Road
<u>Shiflett Lane</u>	17'	528' south from Malabar Road to dead end



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Name</u>	<u>Width</u>	<u>Length</u>
<u>Ski Lane</u>	11'	564' north of Atz Road – plus 240' -- payback under 91-2
<u>Smith Lane</u>	20'	paved in 2018 w/ special assessment. (the first 475 ft. is no payback; the next 1169' is a payback under 91-2; the next 600 ft. is a payback under 01-01)
<u>Steeplechase Cir</u>	20'	358' paved west from Briar Creek Blvd, Brook Hollow S/D
<u>Stika Lane</u>	22'	840' paved – private, Stillwater Preserve SD
<u>Township Road</u>	20'	1,056' paved east from FEC railroad to Hwy 1
<u>Waring Lane</u>	18'(N)21'(S)	1,312' north of Atz Rd and 2,400' south of Atz Rd (Paybacks complete)
<u>Weber Road</u>	23'	2 miles paved south from Malabar Road to Town limits
<u>Weir Street</u>	14'	1,160' north from Malabar Road to Allen Street
<u>W Railroad Ave</u>	20'	1200' paved north of Malabar Rd and 630' paved south of Malabar Road
<u>Westhorpe</u>	23'	paved east from Marie Street – private, Oakmont Preserve SD
<u>Wilson Lane</u>	16'	1,052 ft. south from Hall Road

Public Right-of-way named only for fire-fighting location purposes:

↙ Bee Keeper Ln 12' East from Corey Road - NOT AN ACCEPTED STREET:

Public Rights-of-way Not improved/Not accepted but have homes on them

Candy Ln 8' South of Atz – no record in file of any improvement

Christian Ln 10' Was Prospect Ln. Name change approved in 1/2011 but not improved

Private Easement used to access single family homes:

Alexander Lane 13' not maintained by the Town but accesses multiple homes

Latest Updates:

9/23/19 – added Raulerson Lane to accepted list.

11/25/19 – completed width measurements of roads

NOTE:

TOWN OF MALABAR
MEMORANDUM

Date:	June 29, 2020	Memo: 20-CE-10
To:	Debby Franklin, Town Clerk	Project No.
From:	Morris Smith, Town Engineer	Variance No.:
Ref:	Beekeeper Lane Development – Mr. Adam Hayward	

I have reviewed the Beekeeper Right-of-Way historical document package you delivered to me.

On Friday, June 19th, I made a walkthrough of Beekeeper Lane from Corey Road to a point approximately 1,320 feet, east of Corey Road. During that walk through I took photos to document the present-day condition of Beekeeper Lane.

What I observed on Friday June 19th was reinforced by the narrative I read from the Town's historical documents.

There exists two (2) manmade ditches, parallel to the travel way, one on either side of the travel way, for approximately the first 200 feet of Beekeeper Lane. There is a wooden power pole on the south side of the travel way that marks the east termination point of the ditch on the south side of the Beekeeper Lane.

The man-made ditch, parallel to the travel way, on the northside of Beekeeper has a easterly termination point approximately 635 feet east of Corey Road.

I observed that all other areas that contained standing and flowing surface water were naturally occurring areas. Many of those natural areas seem to have been bisected and partially filled in by the travel way that has been created.

While walking I observed many sloppy, mud-hole, boggy areas on the travel way, one can see that those areas are flanked by wetlands, inside and outside of the dedicated

TOWN OF MALABAR
MEMORANDUM

roadway rights-of-way. The edges of the travel way are rutted, with banks pushed higher than the wetland areas. As the water in the wetlands rise it overtops these rutted banks causing the boggy areas.

I reviewed the plat showing lands of the Florida Indian River Land Company, recorded February 27th, 1912 at Plat Book 1 Pages 165A and 165B, the legal descriptions for the two (2) parcels west of Mr. Haywards parcel as well as the two (2) parcels south of and west of Mr. Haywards property, to validate the roadway reservations in the legal descriptions for each of these neighboring parcels.

The legal descriptions for these parcels do not add any additional lands to the 20 feet wide roadway reservations that are shown on the plat for the subdivision.

These parcels are as follows:

1. Official Record Book 4045, Page 1242, L'Esperance to Jones,
2. Official Record Book 6037, Page 1140, Mission Road Property Holdings, Inc to Glorioso and Sheppard,
3. Official Record Book 5356, Page 0531, Hartman to Hartman Building Corp. and
4. Official Record Book 4817, Page 0313, Norma M. Defuria Trust to Wainuskis.

Parcels 1 and 2 above parcels would have to dedicate the South 35 feet of their property and Parcels 3 and 4 above would have to dedicate the North 35 feet of their property. These dedications would provide the 70 feet dedicated right-of-way for this designated collector road.

These additional dedications would follow the example already establish in legal description for Mr. Hayward's parcel. Mr. Haywards legal description closes with the statement "and less the south 35 feet for road, utility and drainage right of way."

TOWN OF MALABAR
MEMORANDUM


After the required right-of-way issue is resolved, Mr. Hayward's land surveying and civil engineering consultants can begin their data collection, calculations, design and permitting of a Type "B2" roadway, extending from the east edge of pavement of Corey Road to the southeast corner of Mr. Hayward's property. The Type "B2" roadway requires a minimum 60 feet of dedicated roadway right-of-way.

This Type "B2" roadway design shall meet all the design and permitting requirements of the Town of Malabar Land Development Code (Town), the St. Johns River Water Management District (SJRWMD) and the Florida Department of Environmental Protection (FDEP).

I recommend that the applicant visit the newly constructed Grace Lane roadway, approximately three tenths of a mile, east of Corey Road, connected to Benjamin Road, to observe what construction standards the Town, the SJRWMD and the FDEP will require for a successful roadway construction project.

I do not support the Road Improvement Waiver request for which Mr. Hayward has applied.

Very Truly Yours,


James Morris Smith, Jr., PE
Town Engineer

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.

Meeting Date: July 06, 2020

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

SUBJECT: Form DR-420 – Tentative Maximum Millage and Public Hearing Date

BACKGROUND/HISTORY:

This is the first step in the annual *Truth in Millage* process. Council must set the maximum proposed millage they wish to consider during their discussions and set the date for the first public hearing on the proposed millage and budget. This information is then sent to the Property Tax office and they include it on the TRIM Notice that is mailed to every Malabar property owner.

The ten percent ad valorem increase cap we are held to due to Special Law 74-430 is based on the **rolled-back rate**, not the millage rate. Based on this, the maximum millage rate we are permitted to set is 2.3810.

To start the budget process, we should set the preliminary rate high and as you go through the budget workshops, if we set it low now and then decide we need to increase it, we must do so at a great expense.

Municipal public hearings on annual budgets can not be held on the same date at either Brevard County Commission or the School Board. So the dates available for the Malabar Council September meetings are shown on the attached September calendar. ***Staff is recommending using the 3rd and 17th in order to provide sufficient time to advertise between the first and second public hearing. Both of those dates are Thursdays.***

By August 4, 2020, we must tell the Property Appraiser the following:

- prior year's millage rate (2.2680)
- current years rolled-back rate (2.1627)
- current year's **proposed maximum millage** rate of 2.3810
- the date, time and meeting place of the first tentative budget hearing (9/03/2020 at 7:30pm)

ATTACHMENTS:

Calendar for September

ACTION OPTIONS:

Staff seeks Motion to set the Maximum Tentative Millage for the first Public Hearing at 2.3810 and select September 03, 2020 as the date for the first Public Hearing.

This is the information that will print on the Truth in Millage (TRIM) Notice that is mailed out by the Brevard County Property Appraisers Office in August.

Our millage rate was 2.2680 in 2020, 2.1582 in 2019, 2.0906 in 2018, 2.0260 in 2017, 1.9256 in 2016, 1.800 in 2015, and 1.6630 for 2011-2014.

SEPTEMBER 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	31	1	2	3	4	5
6	Labor Day 7 Town hall closed	8 No X	9 P&Z Board Mtg 7:00	10 No X	11	12
13	SCLC ? 14	15	16 Park&Rec Board Mtg 6:00	17	18	19
20	21	22 No X	23 P&Z Board Mtg 7:00	24	25	26
27	28	29	30	1	2	3

Notes:

Sep 07

Labor Day

Sept 1, 3, 14, 15, 17, 21, 24, 28

Possible RTCM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.b

Meeting Date: July 06, 2020

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

SUBJECT: Comprehensive Plan Future Land Use Map Amendment for the 24+ acre parcel known as Twin Lakes Subdivision owned by Weber Woods LLC to restore the previous designation of RR.

BACKGROUND/HISTORY:

This is an informational item for Council. We have acted on our expert advisors that this would be the appropriate action to take to ensure there is not a conflict in the future.

Either the Clerk or the Manager will be able to speak to this item.

It is set for a Public Hearing at P&Z on July 22 and then before Council on August 3, 2020. It will then be transmitted to the State for expedited review.

If no adverse comments are received within the 30-day review period Council may proceed with final adoption of the amendment using Ordinance 2020-08.

ATTACHMENTS:

Advertisement for Florida Today

Memo describing issue and corrective measures

ACTION OPTIONS:

No Council Action is requested at this time

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321-727-7764 (Office) 321-727-9997 (Fax) www.
townofmalabar.org

To: brelegals@gannett.com June 29, 2020
From: Debby Franklin, Town Clerk, Town of Malabar
Account # 126287
townclerk@townofmalabar.org

Please place the following ¼ page display ad (no less than 2 columns wide by 10 inches long) in the non-legal section one time: Wednesday, July 8, 2020. Please put the heading in BOLD and the headline in 18 point font. Please send proof via email to: townclerk@townofmalabar.org and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

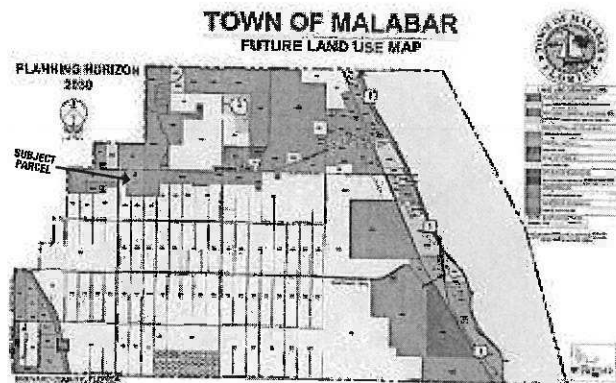
Thank you,
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

**NOTICE OF COMPREHENSIVE PLAN LARGE SCALE
AMENDMENT**

**TOWN OF MALABAR NOTICE OF PUBLIC HEARINGS
FOR ADOPTION OF THE MALABAR COMPREHENSIVE
PLAN LARGE SCALE AMENDMENT 2020-01; AMENDING
THE FUTURE LAND USE MAP OF THE COMPREHENSIVE
PLAN OF THE TOWN FROM OFFICE INSTITUTION (OI) TO
RURAL RESIDENTIAL (RR) FOR A PARCEL IN THE TOWN
LYING ON THE SOUTH SIDE OF MALABAR ROAD EAST OF
WEBER ROAD; PROVIDING FOR AN EFFECTIVE DATE**

Town of Malabar Planning and Zoning Board will hold a Public Hearing on July 22, 2020 at 7:00 p.m., or as soon thereafter as the matter may be heard in the Council Chamber located at 2725 Malabar Road, Malabar, Florida. The Planning and Zoning Board will vote on a recommendation to Malabar Town Council for their consideration of the adoption of the Comprehensive Plan Amendment 2020-01 with Ordinance 2020-08 at their Public Hearing on August 3, 2020 at 7:30 p.m.

Comprehensive Plan Amendment 2020-01 is submitted for Expedited State review to revert the land use designation on this parcel that was intended to retain its previous land use designation of Rural Residential.



A copy of the proposed amendment incorporated in Ordinance 2020-08 and map are available for the public inspection at Malabar Town Hall, 2725 Malabar Road, Malabar, Florida between the hours of 8:30AM and 4:30PM weekdays.

All interested parties may appear and be heard at these meetings or submit written comments to the Town Clerk with respect to these topics. In compliance with the Americans with Disabilities Act (ADA) Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, 24 hours in advance of the meeting at 321-727-7764. Debby K. Franklin, C.M.C., Town Clerk/Treasurer.

Town of Malabar Comprehensive Plan Amendment Application Memorandum

Property owned by Weber Woods LLC

Parcel ID No. 29-37-02-00-253

Comprehensive Plan Amendment

In 2019, the Town adopted a Comprehensive Plan amendment to the text and Future Land Use map, which changed the FLUM designation of the Property and several other properties fronting Malabar Road to Office-Institutional (O-I) (the "Amendment"). The O-I designation allows for business, professional and institutional uses. The plain text of the Comprehensive Plan regarding Office Institutional designation does not allow for residential development.

During the related Town Council meetings, the Council indicated that the intent was for the single-family residential development proposed for the Property (the "Intended Use"), as shown on the preliminary plat under review at the time (and subsequently approved) to be reviewed utilizing the prior Future Land Use designation for the Property, Rural Residential. However, the Amendment created an inconsistency with the Comprehensive Plan designation for the Property and both the zoning designation and the Intended Use of the Property.

* Florida courts have determined that a development order (such as a final plat) must be consistent with the comprehensive plan as it exists on the date of issuance of the development order, not on the date of application. See, *Lake Rosa v. Bd. of Cty. Comm'rs*, 911 So. 2d 206, 208 (Fla. Dist. Ct. App. 2005). Therefore, a preliminary plat under review cannot be "vested" from the Comprehensive Plan amendment and the Town Council cannot "waive" the inconsistency of the Intended Use with the Comprehensive Plan.

There is a risk that all future development orders issued for the Property, including the final plat and building permits, could be challenged as inconsistent with the Town Comprehensive Plan. See, for example, *Pinecrest Lakes, Inc. v. Shidel*, 795 So.2d 191 (Fla. 4th DCA 2001), rev. denied, 821 So.2d 300 (Fla. 2002) (where the court ordered the demolition of nineteen two-story buildings upon finding them to be inconsistent with the local comprehensive plan). Even if development approvals have been obtained, this risk will continue to remain until such time as the project is in compliance with the Comprehensive Plan.

Consequently, a Comprehensive Plan amendment to change the Property from Office Institutional back to Rural Residential on the Town's FLUM is required for the future approvals (such as the construction plans, final plat and building permits) to be legally sufficient. To accomplish this, we have provided a Comprehensive Plan amendment application and map, a draft ordinance and an outline of how to submit a Comprehensive Plan amendment to the Department of Economic Opportunity.