



REGULAR TOWN COUNCIL MEETING

Monday, August 5, 2019 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 Regular Town Council Meeting Minutes of 07/15/2019

Exhibit: Agenda Report Number 1A

Recommendation: Approve Minutes

Attachments:

- Agenda Report 1A (TownCouncilMinutes0715_2019Draft.pdf)

b. Approve Town Council Workshop Meeting Minutes of 07/29/2019

Exhibit: Agenda Report 1B

Recommendation: Approve Minutes

Attachments:

- Agenda Report Item 2B (TownCouncilMinutes0729_2018road_Draft.pdf)

c. Approve Town Council Special Meeting Minutes of 07/29/2019

Exhibit: Agenda Report 1C

Recommendation: Approve Minutes

Attachments:

- Agenda Report Number 1C (TownCouncilMinutes0729_2019Dr420.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. Administrator
 - b. Clerk
 - c. Fire Chief
 - d. Public Works Director

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 (2) / SPECIAL ORDERS (0)

a. **ORDINANCE 2019-09 Amending Chapter 11, Providing for Public Rights of Way**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 11, SECTIONS 11-8(a) OF THE CODE OF ORDINANCE OF THE TOWN; PROVIDING FOR THE MAINTENANCE OF PROPERTY; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 2

Recommendation: Adopt Ordinance 209-09 on 2nd Reading

Attachments:

- Agenda Report Number 2 (Agenda_item_2_2019073014102527.pdf)

b. **ORDINANCE 2019-10 Amending Section 2.03 of Charter Regarding Qualifying Period - 2nd Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ORDINANCE 2008-06 REGARDING THE CANDIDATE QUALIFYING PERIOD TO CONFORM WITH SENATE BILL 7066; 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 3

Recommendation: Adopt Ordinance 2019-10 on 2nd Reading

Attachments:

- Agenda Report Number 3 (Agenda_Item_3_2019073014111194.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: 1

RESOLUTIONS: 0

MISCELLANEOUS:

a. ORDINANCE 2019-08 Land Use and Zoning Change for Stuart J. Borton and Nancy Tinio Borton Trust - 1st Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING LAND USE MAP AND ZONING MAP FOR THE .31 ACRES (+/-) ON THE EAST SIDE OF US HIGHWAY 1 IN TOWNSHIP 28S, RANGE 38E, SECTION 31, PARCEL 250.4, MALABAR, FLORIDA, FROM COASTAL PRESERVE (CP) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN LAND USE AND ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 4

Recommendation: Approve 1st Reading of Ordinance 2019-08

Attachments:

- Agenda Report Number 4 (Agenda_Item_4_LUZ_Ord.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

(2) Vacancies on the Board of Adjustments; (2) Vacancies on the Parks and Recreation 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.

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764)

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

JULY 15, 2019 7:30 PM

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

A. CALL TO ORDER:

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

B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

3) STEVE RIVET

COUNCIL MEMBERS:

1) GRANT BALL

2) BRIAN VAIL

4) DICK KORN

5) DANNY WHITE

TOWN ADMINISTRATOR:

MATT STINNETT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Clerk asked to add Ord 2019-10 regarding qualifying period for 2019 ballot per SB 7066 which requires the Supervisor of Election to mail out ballots prior to primary and increased the time between the primary and the general election to eleven weeks. That means Malabar must submit their election information to SOE by August 16, 2019.

D. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting Minutes 7/01/19

MOTION: CM Vail / CM Rivet to approve the 7/1/19 regular meeting minutes as submitted.

Discussion: none. **Vote:** 5 Ayes

E. ATTORNEY REPORT: Nothing currently.

F. Sheriff Report: Issue with new program for reporting of three zones, Palm Shores, G-V and Malabar. Had stolen vehicle, with arrest. Corey Road and Benjamin and has written quite a few citations. CM Korn notice them on Weber. Glad to hear they are being aggressive. CM Ball asked about how PB police is pulling cars over within Malabar. Deputy said they can stop if running radar in Palm Bay. CM Ball said it has happened twice. Report of reckless driver could be coming from north or south. CM Vail said about vehicle burglaries on Howell Lane, unlocked vehicle.

H. STAFF REPORTS:

ADMINISTRATOR: TA stated re: TPO/TAC mtg – working a development action plan to reduce fatalities. Approved the long-range goals. Looked at short range plan. 1.7 mil for next year at intersections. 4.4 mil in 2022, and another 1 mil in 2023 for widening project. We are #5 on priority list. Re: 528 doing SW improvements, had an interesting item, instead of buying up tracts of lands for SW ponds, they are taking the money to do septic to sewer conversions and believe that will have a bigger impact on improving the water quality of the IRL.

CLERK: Stated that we are working diligently on a records management / retention project that ultimately will provide all permanent records access via Laserfiche program stored on the cloud. There will also be an online portal for citizens to access public records. We will be using an affiliate of the Municode Corp that codifies our ordinances. This has become necessary because we are running out of physical space at Town Hall and in our storage unit. This will be a budgeted item in the next budget year as there will be an annual subscription and support cost of approximately \$3,600.00. The initial work will be funded from the surplus in the Administrative account and the Building Department restricted reserves on deposit.

I attended the BCCCA meeting today to get the updated election information. Supervisor of Elections Lori Scott and two of her staff spoke at the meeting. They informed us that FS 100.061 changed the primary dates by pushing them out 11 weeks before the general election. That makes our deadline to provide her office with candidate and referendum information outside the current timeline. Our deadline is 8/16/19 to have our election information to the SOE. That means we have to adopt an ordinance that will change our qualifying period to one week; from 8/7/19 – 8/14/19.

We had to do this in 2008 when the legislature changed the date for the primary. In that case the Legislature approved the bill in 2007 to go into effect in 2008. This time the Legislature approved the bill in the 2019 session and it went into effect on July 1, 2019. Most cities in Brevard that hold elections every year only have a one-week qualifying period.

This also means that if we are going to put a referendum question on the ballot to increase the millage by 1 mil for the 20/21 FY we must have it on the next agenda. We would propose to provide a draft ordinance increasing the millage by 1 mil for your review at a workshop to be held after the road workshop on 7/29/19. Then we could have the first reading on 8/5 and the 2nd reading at a special mtg on 8/12/19 and have it to the SOE before the deadline of 8/16/19.

No objection to add Ord 2019-10 to agenda as item 2.A changing the qualifying period.

I. 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. NONE**

J. PUBLIC HEARINGS/SPECIAL ORDERS:

K. UNFINISHED BUSINESS/GENERAL ORDERS

L. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

2. Amend Chapter 11, Section 11.8 (a) Providing for Public ROW (Ord 2019-09)

Exhibit: Agenda Report No. 2

Recommendation: Action – Approve First Reading of Ord 2019-09

Ordinance read by title only.

MOTION: CM Vail / CM White to approve 1st reading of Ordinance 2019-09.

Discussion: CM Ball said he read this and had a couple of calls – we continue to be reactive – not proactive; would this make it more reactive. The wording states it will be kept litter free. Does this mean if there is trash on curb for WM pick up, there is a violation? CM Rivet said we have been talking about encouraging the mowing of ROW. He is opposed to that. CM Korn said that we currently keep the mowing done between edge of property and roadway. CM White said we put this to rest at the last meeting; gave direction to staff to not make language more restrictive to property owners. There are times when tires and treated lumber are hauled out and that material will not be picked up. CM Vail is not for proactive code enforcement, but when somebody does complain, is the code adequate to react? His understanding is this is a housekeeping issue.

Roll Call VOTE: CM Ball, Nay; CM Vail, Aye; CM Rivet, Nay; CM Korn, Aye; CM White, Aye. Motion carried 3 to 2.

2.A. Ord 2019-10 (added at beginning of meeting)

Ordinance is read by title only.

MOTION: CM Rivet / CM Ball to approve Ordinance 2019-10 to Aug 7 to 14. CM Vail and Rivet would like it to include two weekends. Franklin explained if they add an additional week then it would start on 7/31/19 – before the ordinance was adopted on 8/5/19.

Roll Call VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.
Motion carried 5 to 0.

RESOLUTIONS: 0

MISCELLANEOUS: 0

Chair excused the Attorney at this time.

M. DISCUSSION/POSSIBLE ACTION:

3. Petition to Remove Stop Sign at Corey Road and Benjamin Road

Exhibit: Agenda Report No. 3

Recommendation: Discussion and Direction to Staff

They have been addressing it from the motor unit. He doesn't have issues. He has had them going up to 55mph. He asked his opinion, based on the traffic, he thought it needed to be there. It is slowing down the traffic. CM Ball with the noise. The screeching is from the people not paying attention.

Deputy said you could add speed bump. Have an opinion of the motor vehicle - CM Korn said he did homework on this today. Many of these addresses are not in Malabar. Beverly is a resident. 6 on first page are registered voters, pg. 2 and 3 no registered voters and the homes are in G-V. Last page are two registered voters. He believes in traffic control. Corey is as bad as Weber. There are advanced signs on all the stop signs. We've got animals, children and driveways, we got reckless and careless drivers. He is an advocate for public safety.

MOTION: Korn / Rivet to leave the stop sign up and get more enforcement. CM Vail said they have addressed it and are working it aggressively. Let the sheriff do their job. CM White was there this morning and he was priming the posts. We do have the advance signage. All the vehicles that he witnessed stopped properly.

Vote: All Ayes.

N. PUBLIC COMMENTS: General Items (Speaker Card Required) n

Jose Merino, 1720 Benjamin road. He read the statement he handed out to all of Council. He asked why the Mayor made the comments to come in and record. If you made this recording available, you may get more participation.

Mayor responded that he had asked him on a couple of occasions where he posts these videos. He was told they are on youtube and he can't find them. CM Korn said Jose should be commended for what he has been doing. CM Vail said thank you for what you have been doing. The Town can't afford to do the retention portion. CM Rivet also thanked him. CM Ball thanked him, and he is not on social media. Jose said it is on youtube under Malabar meetings and on Malabar next-door.

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: nothing

CM Vail: nothing

CM Rivet: Mentioned the continued presence of junk boats near him on vacant land. TA said he brought in a trailer to take out boat tower. He hasn't checked today.

CM White: Will be attending the FLC Advocacy mtg this Friday in Kissimmee. The SCLC has proposed six visits to Tallahassee, funded by the SCLC at no cost to the cities. If he goes he can promote SCLC and FLC actions – not Malabar issues. Regarding a ballot issue, he would propose it for an even year; not on the odd year when there is a much lower turnout. If we ask the people of Malabar, we should wait until we have more input from voters.

CM Korn: Let the people know the issues that will be on the ballot. He will be contacting the sheriff and thank him for the increased enforcement and remind him to continue.

Mayor: nothing.

P. ANNOUNCEMENTS: Openings on Board of Adjustment and Park and Recreation Board.

Q. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 8:30 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/5/2019

DRAFT

MALABAR COUNCIL WORKSHOP MEETING
July 29, 2019 2:00 PM

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

A. CALL TO ORDER:

The meeting was called to order at 2:00 pm with P&P led by Chair Mayor Reilly.

B. COUNCIL:

COUNCIL CHAIR:	MAYOR PATRICK T. REILLY
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN, excused
	DANNY WHITE
ADMINISTRATOR	MATT STINNETT
ATTORNEY:	KARL BOHNE
CLERK/TREASURER:	DEBBY FRANKLIN

Also present Engineer Morris Smith (arrived 2:20PM).

C. ROAD WORKSHOP FOR 19/20 Fiscal Year

Chair asked Attorney to describe his findings. Atty Bohne has done case law update since the lawsuit in 1991 that the Town lost significantly related to a right-of-way dedication request. Atty explained that “exactions” as illegal unless they pass the three-part test referred to in his memo. The rough proportionality test must be able to be argued if we are again challenged.

Attorney suggested Council consider a review and possible reclassification of road types, widths and definitions of the reasons for the improvements. The improvements do have a value. The requirement for the dedication must be able to stand in court that it is tied to that public improvement.

Clerk has focused on six sections south of Malabar Road for this workshop. The agenda report describes the history of how some of these ROW’s were created before the LDC and road improvement language were adopted but these undersized ROW were never officially dealt with as being “grandfathered” or conditional or whatever.

Perhaps it is time to consider reclassification of some of the roadways. Staff recommends reinserting the ability to request a variance. For those ROW that do not have 60 feet available should allow consideration of other situations.

Staff went through six examples of either undersized improvements on an “accepted ROW width, or a undersized “travelway” within a undersized ROW or a perfectly legal “lack of dedication” maneuver as shown in the workshop.

After the examples were displayed by Denine Sherear on the overhead, Council summarized that there are four issues for Council action: reevaluate the road widths, reclassify the road types, revised language for a variance request, and how will the language be amended in the Comprehensive Plan to support these changes.

The Engineer suggested a bond or fee be paid to cover the cost to repair a road to the pre-construction condition. The fee would include the required a pre- and post-construction inspection and an estimated cost based on road frontage, conditions and distance.

Council directed staff to amend the variance language to eliminate wetland mitigation from the "payback" formula; Council did not feel that was a relevant "hardship".

Council also directed staff to develop a recommendation on the classifications and widths.

Chair Reilly, without objection, adjourned the workshop meeting at 3:48pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: 8/05/2019

MALABAR TOWN COUNCIL SPECIAL MEETING MINUTES

JULY 29, 2019 7:30 PM

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

A. CALL TO ORDER:

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

B. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN
	DANNY WHITE
TOWN ADMINISTRATOR:	MATT STINNETT
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

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

D. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Five (5) Minute Limit per Speaker. **Speaker Card: NONE.**

Jim Roulston, 2480 Malabar Road said Council had mentioned storm shutters for town hall and he wanted to show the material he had used in his windows. You can set it inside the window frame and secure it with angle iron. It lets light in and could be used year around; asked they consider it as an option. Chair confirmed we had received a quote from a shutter firm for storm shutters and asked TA to look into the cost for these panels to compare. Thanks Jim

E. MISCELLANEOUS: 2

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

Exhibit: Agenda Report No. 2

Recommendation: Request Approval

The information required by the Truth in Millage or TRIM notice is due to their office by August 4, 2019. Council determines the maximum millage to consider during budget workshop discussions and set the date for the first Public Hearing on the millage and budget. The information we send to the tax office is the following:

Last year's millage rate was 2.1582

The current year's rollback rate is 2.0615

The proposed maximum millage for discussion purposes is 2.2680

The date of 9/9/19 does not conflict with the school board or the county commission mtgs.

MOTION: CM Vail / CM Rivet to set date for first Public Hearing on 9/9/19 and the tentative maximum millage at 2.2680. **Vote:** All Ayes.

We plan to have the draft budget to you before the workshop on August 12.

2. Certify the assessment roll for stormwater non-advalorem collection and approve the estimate provided by the County. (Reso 13-2019)

Exhibit: Agenda Report No. 2

Recommendation: Certify the assessment roll and approve the estimate.

Resolution was read by title only.

MOTION: CM Rivet / CM White to certify the assessment roll and approve the estimate provided by the County. **Roll Call Vote was** All Ayes.

DISCUSSION/POSSIBLE ACTION: none

PUBLIC COMMENTS: General Items (Speaker Card Required) none

F. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Asked if derelict boats that are tagged being removed – does council have any authority? Mayor said only the State has the authority to tag and direct removal. CM Ball asked if the State has any duty or right to cut the pepper trees down along the riverfront.

Speaker: Jim Roulston, has heard that they have released a “bug” that is supposed to eat and kill/remove/eradicate the pepper trees. Question is what will the honey bees use next for pollination?

CM Vail: mowing the trees in the past – town paid for brontosaurus. North of here the banks along river are clear of pepper tree. Is Palm bay maintaining that? CM Ball said that the Town’s river drive is unique and special. CM Ball keeps his mowed. We should press whoever to maintain that view of the river.

CM Rivet: Asked about parked boats on Hall Rd property. TA said the tower had been removed and the permit has been applied for the culvert for access.

CM Korn: He stated there were some animal deaths shortly after spraying defoliant along Glatter and asked there was any connections. None.

CM White: when they start the budget process – the items they funded in the last budget will be first to pay back.

Mayor: nothing.

G. ANNOUNCEMENTS: Openings on Bd of Adjustment and Park and Recreation Bd.

H. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 7:50 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/5/2019

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2
Meeting Date: August 5, 2019**

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

SUBJECT: Public Hearing on Ord 2019-09 – Adding the work “public” before rights of way

BACKGROUND/HISTORY:

This was on the July 15, 2019 agenda for first reading. It has been legally advertised for a public hearing at this meeting.

ATTACHMENTS:

Ordinance 2019-09

ACTION OPTIONS:

Adoption of Ord 2019-09

ORDINANCE 2019-09

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 11, SECTIONS 11-8 (a) OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE MAINTENANCE OF PROPERTY; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Section 11-8 (a) of Chapter 11 of the Code of Ordinances of the Town, is hereby amended in full as follows:

“Sec. 11-8. Residential requirements.

(a) Maintenance of private property. All owners and/or tenants, agents, lessors, lessees or occupants of property within the town shall maintain their property in a clean and litter free condition, including sidewalks, grass strips, and contiguous alleys, curbs and public or private right-of-ways abutting their property to the edge of pavement of a paved road or to the edge of the road surface for an unpaved road, including easements.”

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Effective Date. This ordinance shall take effect upon adoption.

SECTION 6. 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 Dick Korn
Council Member Danny White

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 5th day of August, 2019.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr.
Town Attorney

First Reading: 7/15/19 – 3 Ayes; 2 Nays (CM Rivet, CM Ball)
2nd Reading: 8/5/19

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3
Meeting Date: August 5, 2019**

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

SUBJECT: Public Hearing on Ord 2019-10 – Changing Qualifying Period to 8/7-8/14, 2019

BACKGROUND/HISTORY:

This was added to the last agenda for first reading. I had learned that day that the Legislature passed SB 7066 increasing the time between Primary and General Elections to 11 weeks. Our deadline to get ballot information to the Supervisor of Elections for placement on the ballot is August 16, 2019, requiring us to reduce the qualifying period to just one week.

This has been legally advertised for the public hearing.

ATTACHMENTS:

Ordinance 2019-10

ACTION OPTIONS:

Adoption of Ord 2019-10

ORDINANCE 2019-10

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 2.03 OF THE CHARTER REGARDING THE CANDIDATE QUALIFYING PERIOD TO CONFORM WITH SENATE BILL 7066; 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 recently 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 Brevard County Supervisor of Elections has requested that all candidate and qualifying issues be finalized the Friday before the primary election to allow ample time for the printing and mailing of absentee ballots; and,

WHEREAS, the Town Council recognizes the need to adjust the candidate qualifying PERIOD to conform to the provisions of Senate Bill 7066 and the request of Brevard County Supervisor of Elections for an earlier submission of candidate and qualifying issues information; 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-one (91) 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. 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 3. 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 4. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. 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 Dick Korn	_____
Council Member Danny White	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 5th day of August, 2019.

BY: TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

First Reading: 07-15-19 Vote: 5 to 0
Second Reading: 08-05-19

ATTEST:

Debby K. Franklin, Town Clerk/Treasurer

(seal)

Approved as to form and legal sufficiency by:

Karl W. Bohne, Jr.
Town Attorney

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: August 5, 2019

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

SUBJECT: Land Use Map Amendment and Zoning Change for the .31 acre (+/-) parcel on the east side of Highway 1 in Township 28, Range 38, Section 31, Parcel 250.4 in Malabar (Ordinance 2019-08) - Applicants: Stuart J Borton and Nancy Tinio-Borton Trust

BACKGROUND/HISTORY:

This applicant's request to amend the future land use designation on the FLUM and the corresponding Zoning Map to Commercial General (CG) from the Coastal Preservation (CP) is due to the applicant's stated desire to construct a small boutique hotel.

As stated by the applicant's representative, Attorney Jeff Smith and the P&Z Board Chair, discussion of the ultimate use will be done at a subsequent site plan review meeting. That is when the size and dimension regulations will be reviewed, as well as review of the permits received from the other State regulatory agencies, specifically, FDOT, FDEP, St. Johns RWMD, the Florida Health Department, and possibly the Army Corp of Engineers.

The Comprehensive Plan is a living document that requires ongoing review and update to keep it current and applicable. As a point of information, the land use and zoning were changed 77 times from 1978 to 1988 to accommodate the evolving desires of Council and property owners. Lots 1 – 7 of Riverview Homes subdivision were classified as Commercial General in 1991 (see attached map).

Staff has found that the proposed CG classification is consistent with the Comprehensive Plan, (see Sections 1-1.2.1 and .2, attached) Compatible with the surrounding areas, (apartments and multi-family to the north and commercial to the west) Conforms with the stated desire of Council to encourage commercial development along the main corridors.

Staff has evaluated the requests based on the language in the Land Development Code and the Comprehensive Plan and recommends approval of the land use designation change and corresponding zoning change.

This was heard at the P&Z Board meeting on July 24, 2019. The Planning and Zoning Board voted 4 to 1 to recommend denial of the requests.

ATTACHMENTS:

Ord 2019-08 Amendment to Comprehensive Plan Future Land Use Map and Zoning Change
Comp Plan – FLU Element, Goals and Objectives 1-1.2.1 and 1-1.2.2
Malabar Land Use Designations for CG with map labeled Article 2
Page from Zoning Book listing changes from 1979-1988
Draft Minutes from P&Z minutes 7/24/19 – 5 pages
Applicant's package with radius map
Town Atty, Planner, Engineer review comments
Legal notices

ACTION OPTIONS:

Approval of 1st Reading of Ord 2019-08

ORDINANCE 2019-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE LAND USE MAP AND ZONING MAP FOR THE .31 ACRE (+/-) ON THE EAST SIDE OF US HIGHWAY 1 IN TOWNSHIP 28S, RANGE 38E, SECTION 31, Parcel 250.4, MALABAR, FLORIDA AS MORE PARTICULARLY DESCRIBED IN THIS ORDINANCE, FROM COASTAL PRESERVE (CP) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN LAND USE AND ZONING MAPS; PROVIDING FOR AN EFFECTIVE DATE.

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

Section 1. The Town Council has considered the recommendation of the Planning and Zoning Board and approves the land use and zoning change for the property described below and is hereby re-designated on the land use map and rezoned on the zoning map from *Coastal Preserve (CP)* to *Commercial General (CG)*:

All That Property Lying S Of The N Line Of Lot 1 Of Pb 13 Pg 3 Extended E To The Indian River & Lying N Of The S Line Of Lot 5 Of Pb 13 Pg 3 Extended E To The Indian River & Part Of NE 1/4 Of NW 1/4 As Desc In Orb 5890 Pg 8284 & Orb 7441 Pg 2670 All Lying E Of US Hwy 1.

Section 2. The Town Clerk is hereby authorized and directed to cause the revisions to the Land Use Map and Official Town Zoning Map as referenced in Article II of the Land Development Code to show the zoning change set forth above.

Section 3. The provisions within this ordinance shall take effect in accordance with State Law and the Town Code.

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 Dick Korn

Council Member Danny White

This ordinance will become effective and considered adopted by the Town Council, Town of Malabar, Brevard County, Florida six (6) business days from the date of this meeting: _____, 2019.

(seal)

BY:
TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

1-1.1.3 Policy:

Promote orderly transition in residential densities. Highest residential densities shall continue to be allocated to sites highly accessible to major thoroughfares or collector streets and adjacent to existing development with the same or higher density or less restrictive zoning districts. Residential densities shall be allocated in a manner compatible with available public services, natural features of land as well as existing and anticipated future development.

1-1.1. Policy:

Reinforce and enhance appearance of residential areas and provide amenities. Scenic vistas, especially along the Indian River, Turkey Creek, Goat Creek, and their tributaries as well as vistas adjacent to transportation corridors should be enhanced by preservation of open space, by installation and maintenance of landscape and by application of community appearance criteria which reinforces good principles of design.

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

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:

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 or Office (MRO), and Residential and Limited Commercial (R/LC) land use designations, as described in 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;
- c. Ability to meet established performance standards for preventing or minimizing nuisance impacts, such as emission of air pollutants, glare, noise or order, generation of hazardous by-products;
- d. Impact on established and planned development and natural systems; and

↓

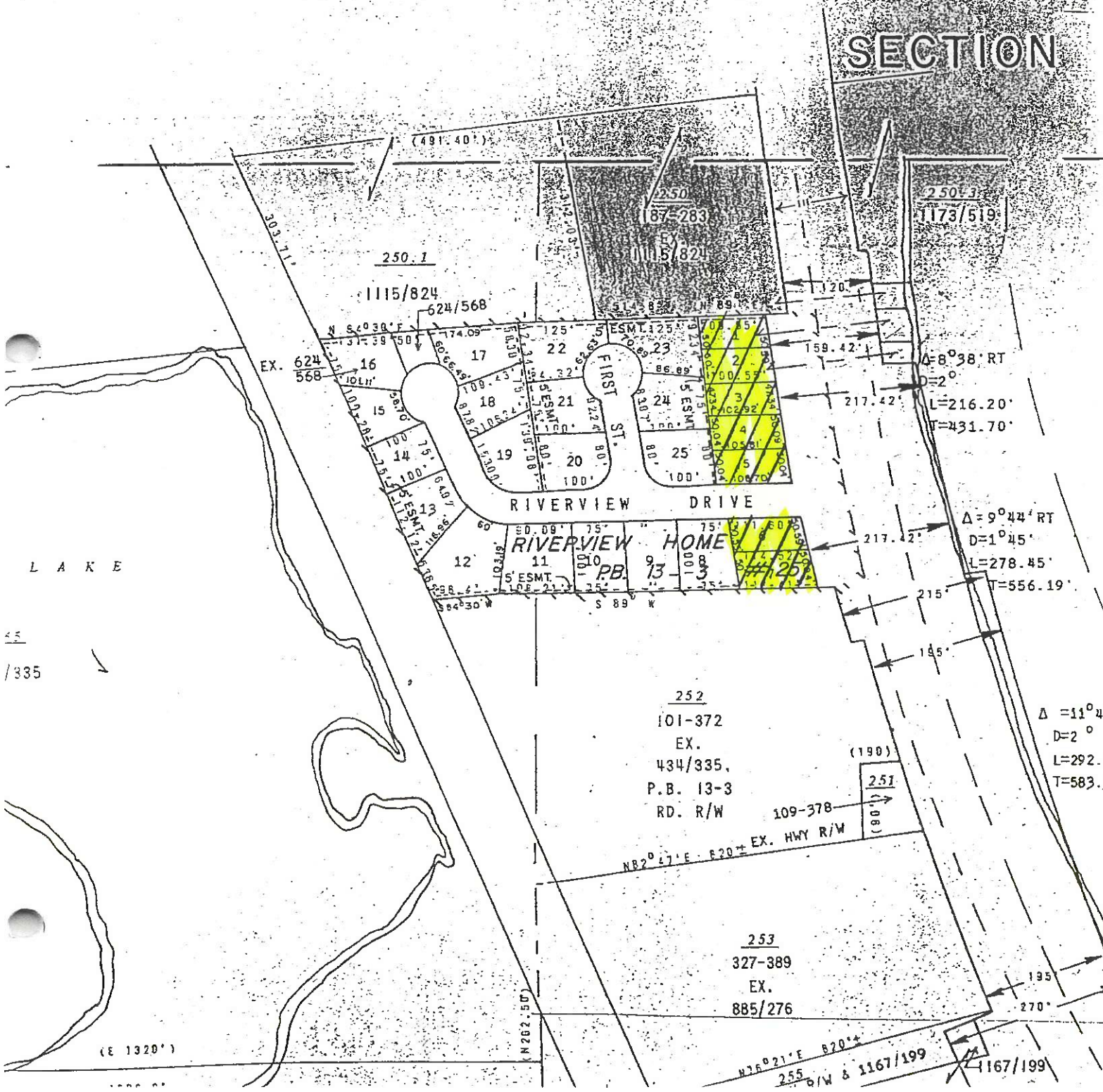
CG - COMMERCIAL GENERAL

- ↘
- o Portions of Lots 1 through 7 (inclusive) of the Riverview Homes subdivision (PB 13, Pg. 3), which are west of U.S. Highway #1, Section 31. See Article 2.
 - o Parcel #250.3 of the Town of Malabar in Section 31, Township 28S, Range 38E (AKA River View Cafe, Old Daddy's site).
 - o All lands between the FEC railroad and U.S. Highway 1, which are north of Malabar Road and south of the Riverview Homes subdivision (PB 13, Page 3), except cemetery, Section 31.
 - o All lands between the FEC railroad and U.S. Highway #1, which are south of Malabar Road and north of the Century Oaks subdivision (PB 20, Pg 32), Section 31.
 - 4 o All lands between the FEC railroad and U.S. Highway #1; from the northern boundary of parcel #759 of the Town of Malabar proceeding south to the southern boundary of a subdivision known as Sunnybank on the Dixie (PB 4, Pg 68), Section 6. *see 3/*
 - o A strip of land 500' wide which runs along the western edge of the FEC railroad right-of-way, beginning at a point 1,200' +/- south of the Town's northern limit and proceeding south to Jordan Boulevard.
 - o All lands east of Pine Street, west of the FEC railroad, north of Garden Street, and south of Malabar Road, Section 31.
 - o All lands south of Malabar Road, north of Glatter Road, and west of Marie Street, Section 36.
 - o The north two and one-half acres, exclusive of road right of way, of Lot 8, Section 1, Township 29S, Range 37E, of the Indian River Fruit and Truck Lands (PB 2, Pg 95), Parcel 53.
 - o All lands east of Babcock Street, west of Lett Lane, and south of Atz Road, with a southern limit of the northern boundary of parcels 266 and 278 of the Town of Malabar, Section 10. See Article 4.
 - o A piece of land in the northeastern portion of the Town of Malabar; on the Town's northern boundary, east of the FEC railroad, north of the Riverview Homes subdivision (PB 13, Page 3), and west of U.S. Highway 1. See Article 1.

CL - COMMERCIAL LIMITED

- o A piece of land on the northwestern corner of the intersection of Malabar Road and Marie Street, consisting of parcels #752, #753, and #762 of the Town of Malabar, Section 36. See Article 5.

SECTION



L A K E

45
/335

(E 1320')

(N 262.50')

252
101-372
EX.
434/335,
P.B. 13-3
RD. R/W

253
327-389
EX.
885/276

(190)
251
(100)
109-378
EX. HWY R/W

N 76° 21' E 820.4'
255 R/W & 1167/199

$\Delta = 11^{\circ} 41'$
 $D = 2^{\circ}$
 $L = 292.0'$
 $T = 583.0'$

$\Delta = 9^{\circ} 44'$ RT
 $D = 1^{\circ} 45'$
 $L = 278.45'$
 $T = 556.19'$

$\Delta = 8^{\circ} 38'$ RT
 $D = 2^{\circ}$
 $L = 216.20'$
 $T = 431.70'$

250.3
1173/519

250
187-283
EX.
1115/824

250.1
1115/824
624/568

RIVERVIEW DRIVE

RIVERVIEW HOME

P.B.

1010

5 ESMT.

10E 21.2'

S 89° W

75'

75'

75'

75'

75'

75'

75'

75'

75'

75'

75'

75'

75'

75'

75'



KEY TO PLANNINGS

NUMBER	ACTION	DATE ENACTED	ZONING
1A	Ord. 5-18-79 ✓	7/17/79	Ag. - R2
1B	Ord. 5-18-79 ✓	7/17/79	Ag. - RM2
2	Ord. 6-1-79 ✓	7/17/79	Ag. - R1
3	Ord. 6-3-79 ✓	7/17/79	Ag. - RM2
4	Ord. 6-4-79 ✓	7/17/79	Ag. - R2
5	Ord. 6-16-79 ✓	10/27/79	Ag. - B2
6	Ord. 11-1-79 ✓	2/19/80	R1 - RM2
7A	Court Settlement	5/6/81	Ag. - R2
7B	Court Settlement	5/6/81	Ag. - R3
7C	Court Settlement	5/6/81	Ag. - RM2
8	Ord. 8-7-81 ✓	9/1/81	R2 - R3
9	Ord. 7-6-82 ✓	8/3/82	MH - R3
10	Ord. 9-20-82 ✓	10/19/82	Ag. - CP
11	Ord. 11-10-82 ✓	1/4/83	Ag. - LI
12	Ord. 11-17-82 ✓	1/4/83	Ag. - JT
13	Ord. 11-18-82 ✓	3/1/83	Ag. - Inst
14	Ord. 1-8-83 ✓	3/1/83	Ag. - Inst
15	Ord. 2-24-83 ✓	4/19/83	Ag. - B2
16A	Ord. 2-8-83 ✓	5/3/83	R3 - B2
16B	Ord. 2-8-83 ✓	5/3/83	R3 - CP
17A	Ord. 5-2-83 ✓	6/7/83	Ag. - B2
17B	Ord. 5-2-83 ✓	6/7/83	Ag. - CP
18	Ord. 6-2-83 ✓	6/21/83	Ag. - B2
19	Ord. 6-6-83 ✓	7/5/83	Ag. - B2
20	Ord. 7-2-83 ✓	8/16/83	Ag. - B2
21	Ord. 7-10-83 ✓	9/6/83	Ag. - CP
22	Ord. 7-4-83 ✓	10/4/83	R2 - B1
23	Ord. 11-2-83 ✓	10/6/83	R2 - R3
24	Ord. 11-4-83 ✓	10/6/83	R2/Ag. - R2
25	Ord. 11-4-83 ✓	10/6/83	Ag. - B2
26	Ord. 11-2-83 ✓	10/6/83	Ag. - B2
27A	Ord. 11-2-83 ✓	10/6/83	RR - B1
27B	Ord. 11-2-83 ✓	10/6/83	RR - B2
28	Ord. 5-8-84 ✓	6/5/84	RR - CP
29	Ord. 7-3-84 ✓	7/3/84	RR - LJ
30	Ord. 8-21-84 ✓	9/4/84	RR - B2
31	Ord. 9-18-84 ✓	10/2/84	RR - B1
32	Ord. 10-9-84 ✓	10/2/84	RR - CP
33	Ord. 10-16-84 ✓	10/2/84	RR - CP
34	Ord. 11-20-84 ✓	10/2/84	RR - B1
35	Ord. 12-11-84 ✓	10/2/84	RR - B1
36	Ord. 11-6-84 ✓	10/2/84	RR - B1
37	Ord. 11-13-84 ✓	10/2/84	RR - PC
38	Resolution 11-5 ✓		F.U.D.
39	Ord. 4-9-85 ✓		RR - B1
40	Ord. 5-23-85 ✓		RR - B2
41	Ord. 11-19-84 ✓		RR - B2 C.I. M.L. W.H.S.
42	Ord. 11-11-85 ✓	1/2/86	RR - B2 C.I. M.L. W.H.S.
43	Ord. 10-5-85 ✓	10/2/85	RR - B2 C.I. TV. STATION
44	Ord. 6-19-85 ✓	6/10/85	RR - PC
45	Ord. 12-9-85 ✓	2/4/86	RR - PC
46	Ord. 2-10-85 ✓	2/7/86	RR - B2
47	Ord. 2-11-85 ✓	2/7/86	RR - B2
48	Ord. 1-9-86 ✓	6/2/86	RR - B1
49	Ord. 4-7-85 ✓	6/2/86	RR - B1
50	Ord. 6-09-86 ✓	3/10/86	RR - B1
51	Ord. 2-2-87 ✓	2/27/87	RR - PC
52	Ord. 2-3-87 ✓	2/17/87	RR - PC
53	Ord. 2-10-87 ✓	2/24/87	B2 - CU GAS PUMP
54	Ord. 87-2 ✓		RR - Inst
55	Ord. 87-8 ✓		MH - MH
56	Ord. 87-9 ✓	3/15/87	RR - B2
57	Ord. 87-10 ✓	3/15/87	RR - B2
58	Ord. 3-18-87 ✓	5/5/87	RR - B1
59	Ord. 88-9 ✓	2/2/88	RR - B1
60	Ord. 88-10 ✓	2/2/88	RR - B1
61	Ord. 88-11 ✓	2/2/88	RR - B1
62	Ord. 88-13 ✓	2/2/88	RR - B1
63	Ord. 88-14 ✓	2/2/88	RR - B1
64	Ord. 88-16 ✓	2/2/88	RR - B1
65	Ord. 88-20 ✓	4/2/88	R2 - I
66	Ord. 88-26 ✓	4/19/88	RR - PC
67	Ord. 88-27 ✓	4/19/88	RR - PC
68	Ord. 88-28 ✓	4/19/88	RR - PC
69	Ord. 88-29 ✓	4/19/88	RR - PC
70	Ord. 88-30 ✓	4/19/88	RR - PC
71	Ord. 88-31 ✓	4/19/88	RR - PC
72	Ord. 88-32 ✓	4/19/88	RR - PC
73	Ord. 88-34 ✓	4/19/88	RR - PC

COURT DRIVE

“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
JULY 24, 2019 7:00 PM**

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

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:00 P.M. Prayer and Pledge led by PZ Chair Wayne Abare.

B. ROLL CALL:

CHAIR:	WAYNE ABARE
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	DOUG DIAL
	GEORGE FOSTER, arrived at 7:12pm
	MARY HOFMEISTER
ALTERNATE:	ALLEN RICE
ALTERNATE:	SUSAN SHORTMAN
TOWN PLANNER:	TOD MOWERY
TOWN ENGINEER:	MORRIS SMITH
RECORDING SECRETARY:	DEBBY FRANKLIN, CLERK/TREASURER
BOARD SECRETARY:	DENINE SHEREAR

Chair stated that Allen Rice will be voting in George Foster's place.

C. ADDITIONS/DELETIONS/CHANGES TO AGENDA: Board Secretary Denine Sherear stated the day was incorrectly listed as “Monday” on the agenda face sheet, but was correct on legal ad, posting of property and notices sent to radius properties. The agenda was corrected and resent out to Board and staff last week.

Board Chair Wayne Abare opened with comments about the proceedings. This P&Z Board is an advisory board. Explained the request was for a change to the land use designation and the zoning map from Coastal Preservation to Commercial General, and the applicants are Stuart and Nancy Burton, owners of the Yellow Dog Café. The P&Z Board's decision will be in the form of a recommendation to Council for action. Council has the authority to approve or deny the request. Motions are put in positive format as it eliminates the double negative. If there is no motion in the positive, Chair will allow a motion to deny.

Regarding the land use and rezoning, it is a Public Hearing (PH) and no speaker cards are necessary. Just raise your hand and be recognized one at a time.

ACTION:

E. PUBLIC HEARING: 1

1. Request for LU and Z change from CP to CG. Applicant Stuart J. Borton and Nancy Tinio-Borton Trust

Chair asked Secretary to read request by title only. Denine read from application.

Chair opened the Public Hearing:

Richard Peidl, 142 Riverview Drive, received letter. He is against the request. He sees no benefit to the change the preserve area. He is within the 500 feet. It doesn't benefit the lagoon or the environment. Don't need anymore development on the river. He asked how many notices went out. Notices went out to all property owners within 500' – 21 notices.

Regan Oroke, 141 Riverview Dr. Asked if it is an extension of the restaurant's eating area, or is it a 10-story addition? Has the state approved this? He thinks we got too little information. Chair stated the request has been legally advertised, posted for 30 days and notices sent out. Oroke asked what is coastal preserve?

Stephen Chalmers was on Rocky Pt Rd for 10 years but now lives in Palm Bay but is a member of MRC (Marine Resources Council). He wanted to share his conflicted concerns. What does the Comprehensive Plan say about the coastal preservation? What about the structure? Encouraged Board to consider – low impact development in terms of the environment; to minimize the impact on the ecology.

Member George Foster arrived 7:12pm

John Baker IV, 125 Riverview Dr. He is against the rezoning request and supports the same statements of Rich Peidl.

Deborah Ball, 1190 Hwy 1, also owns 4 properties across the street from this site. She showed others parcels that could possibly be changed to CG if this is approved. In 1960 Hwy 1 was changed from 2 lanes to 4 lanes. Most of remaining areas on east side are fairly small. That leaves about 8 that could be developed. You are talking about spot changes. If a structure is built how would it meet setbacks. How much fill would be allowed to be added into the river? She would prefer commercial free waterfront.

Lachlan Smith, 133 Riverview Dr. has been there since 2002. He grew up beachside by water. Then his dad bought this property for him and he spent time sailing on this river. Where is it going to end? There are already issues with parking. Walkways back and forth. Not only a problem with parking but what about safety? Waterfront has already been disturbed. Overcome with cut grass and rocks. That was the ultimate plan to do that. He has had issues in the past on getting access to the riverfront. He doesn't want to see any more disturbances to riverfront or hazards to the river, or loss of view. He is not against Stuart and Nancy, just this rezoning.

Barbara Tominsky, 157 Riverview Dr. Has always been into conserving lands for wildlife and the river is a special place. Development along the river has adversely affected the health of the river. Also, does not want to lose her river view. Whatever is coming into play, there is not enough information that has been provided for this request. Not sure what they intend to do. Need to conserve land.

Chair said the applicant has asked for a change to the future land use map designation and the corresponding rezoning from Coastal Preserve to Commercial General.

PH closed.

Chair then called on the Town Planner. Tod Mowery said these are questions that come before the Board from time to time. Board's role is to provide a recommendation. A lot of things being mentioned now are not what staff is allowed to consider at this time. As mentioned, he did provide a staff report with the adjacent land uses. The land use is the forward-looking desire – then comes the zoning. This property today is CP. They look if it is contiguous to other similar uses. On 2nd page of his report, you don't consider the use at this time. There is nothing that takes place tonight or at council regarding the use, until a site plan is brought before board and council at a later time. He understands it may be frustrating to members of the public, but they must follow State law. He referred to the ten items they need to consider. Consistent, compatible, capable, economic, orderly, public interest, other matters. All those things have been looked at and considered. There has been consideration for an overlay or even a PUD but that is not an option at this time. This is a straight forward land use and zoning change request. Tod said at the RTCM of Oct 15, 2018,

Council had considered this regarding CP and a memo went to P&Z as part of EAR from Clerk requesting input from the P&Z Board to a possible update to CP.

Tod said we are not allowed to consider the site plan requests at this time as mentioned from comments made tonight. When the site plan is submitted there will be other requirements that will be looked by FDOT, FDEP and other state agencies as well as the Town. Recommendation to approve the Land Use and Zoning change does not mean they can do anything they want. Tod explained that when they go through the site plan criteria, they will consider the minimum size, setbacks, unity of title and all the other requirements in Section 1-3.2, Table 1-3.3.A, with the dimensional and open space criteria. Planner said there are other things to consider – they could ask for a variance from the Town and from the state.

For this request, the focus was on the three C's and look at consistency, compatible and capability. Staff provided a recommendation for an affirmative action.

Member George Foster asked if there were any other alerts that would be an overwhelming problem to move forward with this. Tod said how to provide for parking, then questions for FDOT and other agencies. Tod said regarding the NPDES standards, the applicant will have to provide for their own stormwater retention prior to discharge. So, they can't just come in and do whatever they want.

Chair asked for applicant to present.

Attorney Jeff Smith, Smith and Associates, on behalf of the applicants, Stuart and Nancy Borton said they are seeking to make a land use and zoning change. They appreciate all the public input. He has known them a long time. They have been a part of this community for 21 years. Want to go forward with a boutique type hotel, benefit to the community. They would not do anything that would harm the IRL. They would provide a high-end experience. No high-rise hotels, it is not what is planned. We are not here to talk about the site plan. There are a whole list of site plan processes they must meet and if they can't meet the requirements, they will apply for a variance or the site plan or it will be denied. All the concerns the public has raised will be addressed. He appreciates, Planner, Mr. Mowery's report, on each of the ten factors, there was a positive recommendation. The conclusion, for the record, they have looked at the 3 C's (consistent with land development code, compatible and capable). The application is consistent, is compatible, and the parcels are capable provided the applicant meets the appropriate regulations. Also, the Town Attorney and Town Engineer looked at this and gave a positive recommendation. When they are able to submit the site plan, there will be a unity of title. Think the applicants have been a vital part of the community.

Stuart Borton, applicant, at least give them a chance to go through the process. They know it is an uphill battle on how they want to go forward.

Chair said they have been a credit to the community.

Applicant's Attorney said the limited size – diminishment change to the extent that the parcel is very small, a variance will be something they have to look at going forward. There will be no horribly large project.

Tod, for the record, staff did not mention the word diminishment impact. Chair asked for explanation. It is like negligible.

Chair asked if any members have had contact with the applicants, and all members said they had no contact.

Make a note to the board members, any board member that makes the motion is bound to vote to support. The seconder does not have that requirement. This is before discussion. Make a motion and then have the discussion. Chair asked for motion.

MOTION: Member George Foster / no second to recommend Council approve the application for land use map change and zoning change as stated in applicant's application for Parcel 28-38-31-00-250.4 aka vacant land south of 905 US Hwy 1.

MOTION: Member Liz Ritter / Member Mary Hofmeister to recommend Council deny the application for land use map change and zoning change as stated in applicant's application for Parcel 28-38-31-00-250.4 aka vacant land south of 905 US Hwy 1.

Discussion:

Member Alan Rice likes the idea of having the boutique hotel and thinks it fits the land use of Malabar. People coming and being on the river. It will give a very nice impression of Malabar and it is a great place. He does not live on Riverview Drive and doesn't know how it may impact them, but he thinks there could be a benefit. You can't even launch a sail boat – he thinks it would be nice for Malabar to have such a place.

Member George Foster is and has been a supporter of the business community. The Bortons' have been great neighbors and have high standards. They have a wonderful place and their standards are sky high. One of the benefits of being on this board is you get to hear from lots of folks. Some comments may be difficult. He gets comments from other businesses, they have served this community for years. Nancy served on Council, they fed the Fire Dept when the fires came through. Their place sets a standard second to none. Their meals are an event. He knows they have had problems with parking and have done everything possible to improve that situation. They are smart imaginative people and have a lot of grit. What is important to him, he wants our Town to grow in a great way, with great quality businesses and industry if possible. Our Town is faced with a lot of dynamics. We have the natural beautiful to distract from the beauty of the river. They could almost be a signature of the Town. They are exactly what Malabar needs. They have added value to our Town. It also makes this Town more viable. There is nothing that they have done but enhance the value of this community.

Member Doug Dial, first he agrees with George and if there was anyone he would trust, it would be them. His concern is the comment Tod made at the beginning of the meeting. What if the boutique gets denied, then how many other things could it become? Also, they would be setting precedent for other property owners with desires to develop on the eastside. Ms. Ball said there are 8 to 12 parcels that could also be developed. Are they opening up for commercial development? Doug asked about the overlay, he would like to think they could look at an overlay for this specific parcel. It basically would be for a specific piece of property for a specific use.

Member Susan Shortman, has the same concerns, she understands they are good stewards, but what happens when the next owners come in. They just made a land use map and are now torpedoing it. You should follow the land use map and avoid the domino effect. There are other properties they already own. Her problem is not the boutique hotel, it is the site and the domino effect. The dimensional concern was also a concern and thinks that caution is advised.

Member Liz Ritter appreciates their vision, but they knew that it was CP when they bought it. It already does not meet the minimums. The public – they represent the people. There has already been the safety issue. That is why she brought up the denial.

Member Mary Hofmeister would love to see the growth in the Town. Does it meet the 3 C's – does not meet the minimum size and setbacks. Also, the other issues. Without a site plan it is hard to give a stamp of approval.

Chair – made some comments. In the late 1970’s Council adopted an Ordinance to not develop on riverside. He had a neighbor help him talk to residents about this proposal. Of the nine people who were asked, eight said they were against it and 1 didn’t care. How do you close the door once opened?

Roll Call Vote: Member Foster, Nay; Member Dial, Aye; Member Hofmeister, Aye; Member Ritter, Aye; Member Abare, Aye. Motion carried 4 to 1.

This portion ended at 8:12pm.

Next regular P&Z Board meeting will be August 14, 2019.

J. ADJOURN

Chair asked for a motion.

MOTION: Member Hofmeister / Member Dial to adjourn. Vote: All Ayes. The meeting adjourned 8:12PM.

BY:

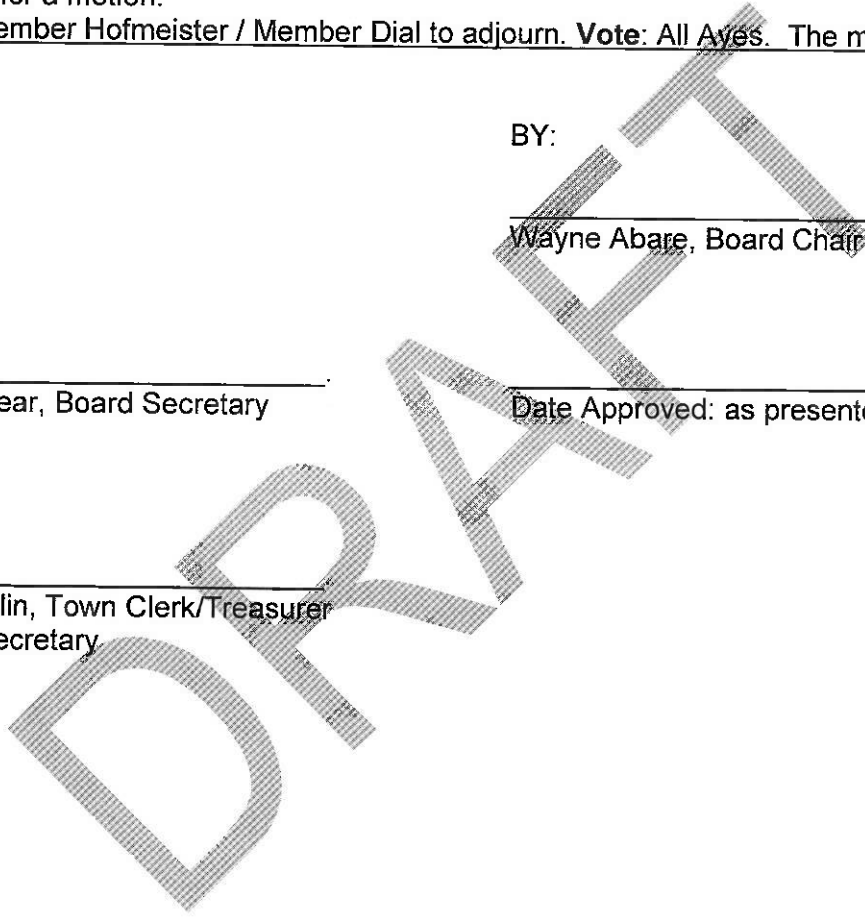
Wayne Abare, Board Chair

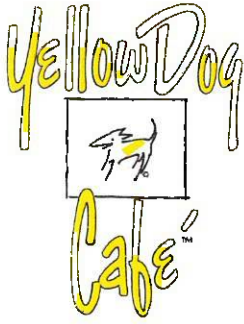
ATTEST:

Denine Sherear, Board Secretary

Date Approved: as presented/corrected

Debby Franklin, Town Clerk/Treasurer
Recording Secretary





TOWN OF MALABAR
DEC 11 2018
RECEIVED

December 11, 2018

Planning and Zoning
Town of Malabar
2725 Malabar Road
Malabar, FL 32950-4427

Staff, Planning and Zoning Board, Honorable Town Council and Mayor, and residents of Malabar

As you know we are a long-term community member and local restaurateurs. Over the past 21 years we have acquired three separate parcels just South of Yellow Dog Café. Starting in early 2000's from Gene Callagy then acquiring a piece from Frank Toma then acquiring the final piece from DOT a couple of years back. We have a total of 20,000 square feet of land that we will be able to work with.

We are requesting to change the zoning from CP (Coastal Preserve) to CG (Commercial General) to be able to build a small Boutique Inn to complement our restaurant and community. Over the past 21 years, Yellow Dog Café, Inc. has been in Malabar and has added considered employment opportunities for Malabar residents and the local community and we expected to add 10 to 12 more employees with this expansion. Also property taxes will increase substantially bring in additional revenue to the town.

We are excited about the proposed addition of the Boutique Inn adjacent to Yellow Dog Café. We would like to request your approval to our zoning request and thank you very much for your consideration as we move forward on this project.

Sincerely,

Stuart and Nancy Borton
Stuart J. Borton and Nancy Marie Tinio-Borton Trust

DEC 10 2018

No. RECEIVED

Date: 12-7-18

APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE

Before completing this application, please refer to the attached:

- General Information
- Section 1-12.5 - Procedures for Adopting, Supplementing or Amending the Land Development Code
- Florida Statutes, Chapter 166.041(c)
- Article III - District Provisions

This application must be completed, with required attachments listed below, and returned to the Town Clerk's office.

Name of Applicant(s): Stuart Beaton Telephone #: 321 508 8550
Mailing Address: 905 US Hwy 1 Malabar FL 32950

Legal description of property covered by application:

Township: 28 Range: 38 Section: 31-~~00~~
Lot/Block: 00 Parcel Subdivision: 250.4
Other Legal: _____

if possible

Property Address: 913 S US Hwy 1 Malabar FL 32950

- Current and Proposed Comprehensive Plan Land Use Map Designation. The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified: Current: CP Proposed: CG
- Current and Proposed Zoning. The current and proposed zoning for the subject property shall be identified: Current: CP Proposed: CG
- Existing and Proposed Use. The existing and proposed use of the subject property shall be stated: Current: _____ Proposed: _____

Fees:

- Rezoning - \$325 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant.
- Land Use Charges - \$300 which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant.
- Rezoning & Land Use Charges - \$625 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant.

(*Additional costs may include, but are not limited to engineering fees, attorney fees, etc.)

Required Attachments:

- Completed application, including Disclosure of Ownership (Pages 1 & 2)
- Fee of \$_____ in check or money order payable to *Town of Malabar*. We do not accept cash or credit cards.
- Radius package from Brevard County P&Z GIS Department providing a list of names and addresses of property owners and legal descriptions of all property within 500 feet of the boundaries of the property covered by this application. The source of this list must be the most current records maintained by the Brevard County Tax Appraiser's Office. (321-633-2060)

Signature of Applicant

Signature of Applicant

TOWN OF MALABAR
APPLICATION FOR ZONING CHANGE AND LAND USE AMENDMENT 10 2018

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Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a rezoning review of the property.

Please complete only one of the following:

I, _____, being first duly sworn, depose and say that I, _____, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Applicant Date

Applicant Date

Sworn and subscribed before me this _____ day of _____, 20____.

NOTARY PUBLIC
STATE OF FLORIDA

Commission No.: _____ My Commission Expires: _____.

Notary Signature

I, Stuart J. Borton + Nancy Tinjo, being first duly sworn, depose and say that I, same as above, am the BORTON TRUST Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Nancy Tinjo Borton
Applicant Date 12-10-18

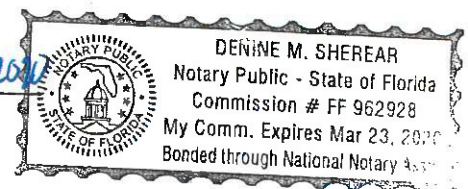
Stuart J. Borton
Applicant Date 12-10-18

Sworn and subscribed before me this 10 day of December, 2018.

NOTARY PUBLIC
STATE OF FLORIDA

Commission No.: FF962928 My Commission Expires: MAR 23 2020

Denise M. Sherear
Notary Signature



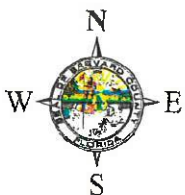
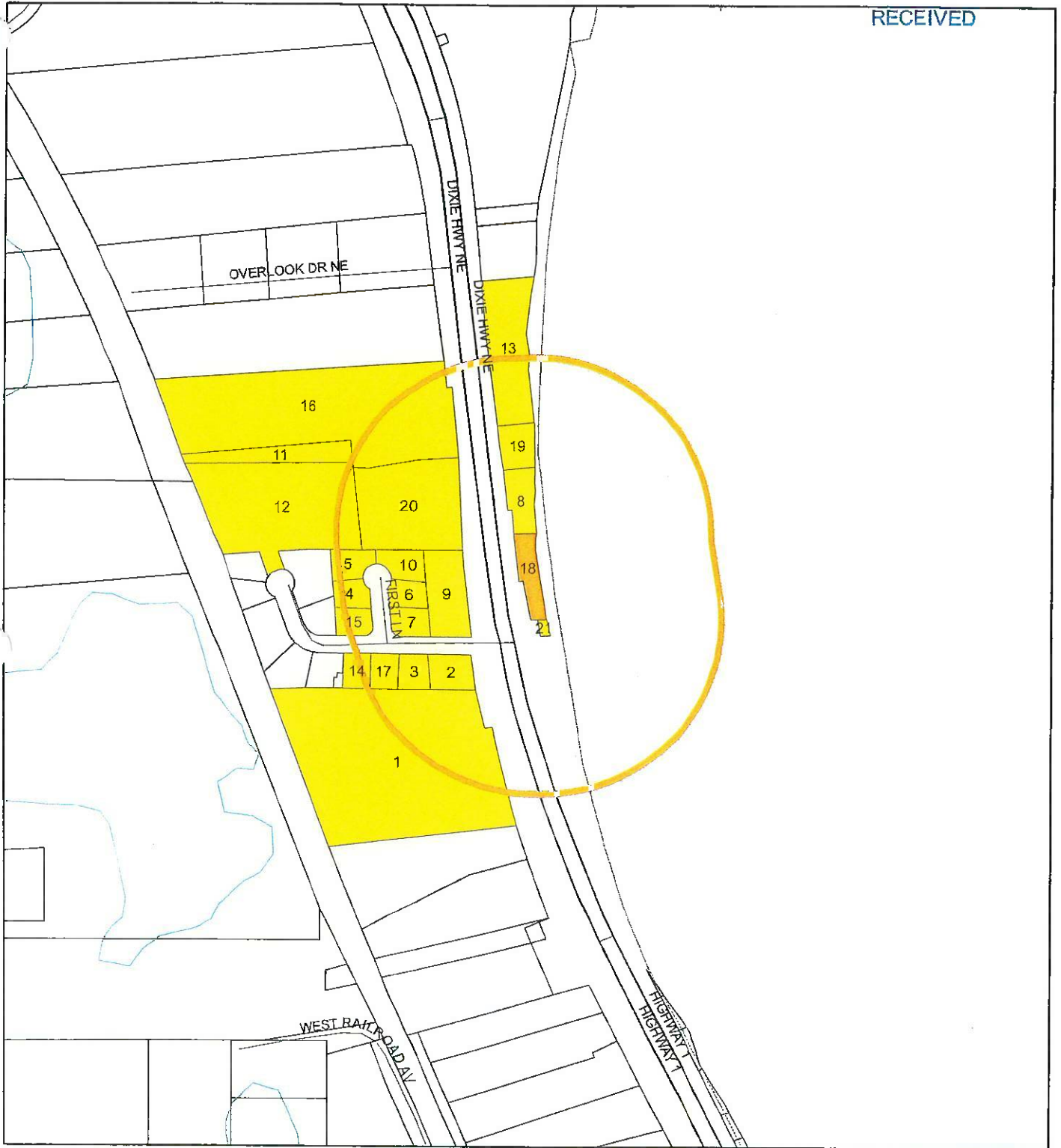
RADIUS MAP

TOWN OF MALABAR

STUART J BORTON & NANCY TINIO-BORTON TRUST
borton500

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1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

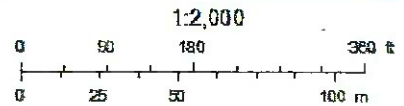
Produced by BoCC - GIS Date: 12/10/2018

- Buffer
- Subject Property
- Notify Property
- Parcels

Brevard County Property Appraiser



June 14, 2019



2816850

For illustration only. Not a survey. Map lines may not precisely align.
© BCPAO 2015


 Reply all | 
 Delete
  Junk | 


RE: Town of Malabar- Review package for Land Use Zoning Change




kbohne@fla-lawyers.com

Mon 6/17, 1:41 PM

Denine Sherear; Matt Stinnett; 'MORRIS SMITH' <morris@morrissmitheng.com>; 'Carl F We' 



Reply all | 

Inbox

I have reviewed the application and offer the following:

First, because this involves a change to the future land use map of the comprehensive plan and an accompanying rezoning the procedure before the P&Z and Town council is legislative and not quasi-judicial. *See Clay County v. Qualls*, 772 So.2d 544 (Fla. 1DCA 2000). This means that the decision concerning this application is subject to the fairly debatable standard and not the "substantial competent evidence" standard. That means the decision concerning this application will be upheld unless it is clear that their action has no foundation in reason and is a mere arbitrary or irrational exercise of power having. If there is some conceivable factual predicate which would rationally support the decision then the decision will be upheld.

Second, have not seen any legal deficiency in the application. The Town's Comp Plan, while creating a conservation element, exempts the northern most parcels from the proscriptions in the conservation element. This property is within the exempted properties in the comp plan so a proper rezoning and future land use map may be applied for.

Thirdly, even if the applications are approved, that does not mean that development activities may commence. Any development is subject to outside agency approvals and town site planning requirements.

I also notice that the property appraiser's information shows that a trust owns the property. A search of the public records indicates that title is held as follows: "Stuart J. Borton and Nancy Tinio-Borton in their capacity as Trustee or their successors in Trust, of the Stuart J. Borton and Nancy Tinio-Borton Trust dated August 7, 2006". The application should reflect the proper owner designation.

Karl W. Bohne, Jr.
 Schillinger & Coleman, P.A.
 1311 Bedford Drive
 Melbourne, FL 32940
[321-255-3737](tel:321-255-3737) Telephone
[321-255-3141](tel:321-255-3141) Facsimile

Office Hours:

8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

THE INFORMATION CONTAINED IN THIS E-MAIL COMMUNICATION IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. This message may be an Attorney-Client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of the message is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and/or by reply e-mail. Thank you.

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IRS CIRCULAR 230 NOTICE: Pursuant to Treasury Department Circular 230, this is to advise you unless we otherwise expressly state in writing, email communications, including all attachments, from this firm are not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties. This firm does not give legal advice as to federal or state tax issues.

From: Denine Sherear [mailto:dsherear@townofmalabar.org]

Sent: Monday, June 17, 2019 11:08 AM

29



TOWN OF MALABAR

JUL 11 2019

RECEIVED

TO: Planning and Zoning Board, Town of Malabar
FROM: Tod Mowery, Town Planner
RE: Land Use and Rezoning for land south of Yellow Dog Cafe
DATE: July 8, 2019

CURRENT ZONING AND LAND USE: CP Coastal Preserve/ CP Coastal Preserve

APPLICANT: Stuart J Borton and Nancy Tinio-Borton

OWNER: Stuart J Borton and Nancy Tinio-Borton Trust

LOCATION: Adjacent to 905 S. US Highway 1

PARCEL IDs: 28-38-31-00-250.4

LEGAL DESCRIPTION: All That Property Lying S Of The N Line Of Lot 1 Of Pb 13 Pg 3 Extended E To The Indian River & Lying N Of The S Line Of Lot 5 Of Pb 13 Pg 3 Extended E To The Indian River & Part Of NE 1/4 Of NW 1/4 As Desc In Orb 5890 Pg 8284 & Orb 7441 Pg 2670 All Lying E Of US Hwy 1.

SIZE: 0.31 acres

EXISTING USE: Vacant

SURROUNDING ZONING / LAND USE

South: CP/CP

West: CG/CG

North: CG/CG

East: N/A

REQUESTED ZONING AND LAND USE: CG Commercial General/ CG Commercial General/



241 SW Fernleaf Trl
Port St. Lucie, FL 34953
c. - 561.262.6304
todm@redtaildg.com

JUL 11 2019

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BACKGROUND AND ANALYSIS:

This applicant is requesting consideration for a rezoning from CP to CG, as well as a Land Use amendment. The applicant owns the adjacent property to the north, the Yellow Dog Cafe. While a site plan application has not yet been received, the Applicant has indicated that he wishes to start planning for the future expansion of the café by adding a Boutique Hotel. The Application was submitted in December, but placed voluntarily on hold while the Comprehensive Plan was updated as part of the Evaluation and Appraisal Report. With the conclusion of the Evaluation and Appraisal Report completed, the applicant has indicated he wishes to proceed with the change in zoning and land use.

The Coastal Preserve area was established to preserve the strip of land east of US 1 Highway 1 abutting the Indian River Lagoon. The uses in this district are limited to non-commercial piers, boat slips and docks. As the property owner has indicated he would like to expand the business by offering a Boutique Hotel, a change in the land use and zoning designations must occur. A hotel is an allowed use as part of the Commercial Activities listing of the Town's CG zoning district regulations.

In evaluating the proposal, the Land Development Code, in Article XII, Section 1-12.5 C. the criteria for the Zoning change is outlined, with our review in italics.

1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program.

There are no identified inconsistencies at this stage, and the parcels to the north and west of this site are CG. At the time of site plan, an analysis may be more fully evaluated for consistency with the Comprehensive Plan. At that time, the trip generation and impacts on the levels of service will be evaluated.

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

There are no identified nonconformities at this stage. At the time of site plan, an analysis may be more fully evaluated to determine conformance including elevations, height, parking requirements and ingress/egress.

3. Changed Conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment.

Malabar continues to be a major roadway, as is US Highway 1. The Yellow Dog Cafe has been there for over 20 years, and has created a thriving business that brings visitors and residents to the area. In recent years, they have also purchased the property on the west side of US 1, adding additional parking and a business office.

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

The surrounding properties to the north and west are zoned for Commercial General, a change would reduce the amount of Coastal Preserve from the northernmost section by less than a half acre, a de minimus reduction.

5. Adequate Public Facilities. Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and

JUL 11 2019

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services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

This site is served by a major roadway (US Highway 1) providing the existing capacity transportation. Solid waste is available, any modifications for the site will provide for utility services, as well as drainage and emergency service.

6. Natural Environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection.

At the time of site plan, if any protected species of wildlife or fauna are identified, they can be addressed. The Comprehensive Plan outlines additional consideration during the site plan review process for utilizing best management practices and reducing the impacts of coastal flooding. During the site plan review, the base flood elevation and stormwater modeling may be more fully explored for consistency with the Comprehensive Plan and compatibility with adjacent properties.

7. Economic Effects. Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare.

No adverse economic impacts are anticipated. As stated, the property owner has the parcels to the north and west, and wishes to utilize this area for a business expansion that would create more ad valorem value and jobs.

8. Orderly Development. Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

At the time of site plan, an analysis may be more fully evaluated.

9. Public Interest; Enabling Act. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation.

There are no conflicts of public interest identified.

10. Other Matters. Other matters which the Planning and Zoning Board may deem appropriate.

If approved by the Town, Redtail DG recommends a Unity of Title combining the properties together for the parcel where the Café is located.

In reviewing the surrounding neighborhood, the Applicant's request and the Town's Code, we have been unable to identify potentially adverse conditions. We have looked at what is called the 3 "C's." Consistency, Compatibility and Capability. Is the subject application request consistent with the intent of the land development code.. Is the request Compatible with the neighborhood and are the subject parcels; Capable of handling the use proposed. Based upon a review of the application, the Town Ordinances, it would appear the application is Consistent with the Town's Codes and the application is Compatible with the surrounding uses with the majority having a CG zoning and land use. Also, the subject parcels are Capable of handling the permitted uses of the CG Zoning district provided that the applicant can meet the requirements of the land development code and addresses coastal resiliency reviews

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STAFF FINDINGS AND RECOMMENDATION:

Based upon the Land Development Code and the Comprehensive Plan for Consistency, Compatibility and Capability, we are recommending approval of the rezoning and land use, with a site plan to follow. Note the site plan is not a consideration at all for these requests and should not be used as a determination for approval or denial. If a site plan is approved with the Yellow Dog restaurant site, a Unity of Title is recommended with the restaurant property and/or an additional parcel for parking.

PLANNING BOARD ACTION OPTIONS:

Application for Land Use Amendment and Zoning Change from CP to CG:

•Motion to recommend approval

I move that the Land Use Amendment and Zoning Change for the vacant parcel of land south of the Yellow Dog Cafe be recommended for approval to the Town Council based upon the fact that the Land Use Amendment and Zoning Change from CP Coastal Preserve to CG Commercial General is Consistent with the Town's Comprehensive Plan and Policies, Compatible with the surrounding area, and the site is Capable of handling the uses within the CG District.

•Motion to recommend denial

I move that the Land Use Amendment and Zoning Change for the vacant parcel of land south of the Yellow Dog Cafe be recommended for denial to the Town Council based upon the fact that the Land Use Amendment and Zoning Change from CP Coastal Preserve to CG Commercial General is Inconsistent with the Town's Comprehensive Plan and Policies, Incompatible with the surrounding area, and the site is Incapable of handling the uses within the CG District.

JUL 10 2019

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**TOWN OF MALABAR
MEMORANDUM**

Date:	July 10, 2019	Memo: 19-CE-05
To:	Denine Sherear, Assistant Building Official	Project No.
From:	Morris Smith, Town Engineer	Variance No.:
Ref:	Rezoning Request – Borton – Coastal Preserve to Commercial General	

Subject Parcels: Brevard County Property Appraiser's Parcel ID: 28-38-31-00-250.4

I have reviewed the documents provided to me by the Town in reference to this Land Use Amendment & Zoning Change.

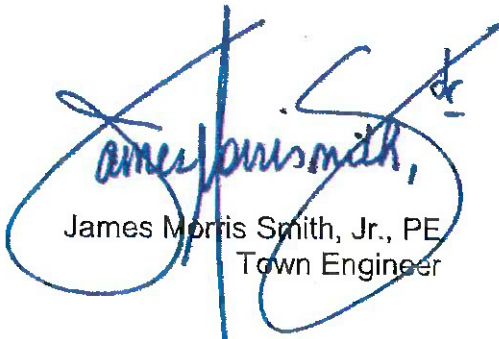
If approved any Future Commercial development at this parcel of land has the possibility to be served by the City of Palm Bay Utilities for potable water, fire suppression water and wastewater services, provided that capacity for adding this demand is available.

If approved any Future Commercial development at this parcel of land will be required to gain driveway access to Highway U.S. 1 via permitting with the Florida Department of Transportation.

If approved any Future Commercial development's civil engineering based, land development issues, i.e., site grading, site paving, site parking, pedestrian ingress/egress and stormwater management will be addressed in the Town of Malabar's site plan application and the site plan review process.

I have no objections to this request.

Very Truly Yours,



James Morris Smith, Jr., PE
Town Engineer



PUBLIC NOTICE

CASE NO. SSA-ZC-2-2019

The Public Hearings will be conducted at the Town of Malabar Council Chambers, 2725 Malabar Road, Malabar, FL 32950

Planning and Zoning Board Meeting:
Wednesday, **July 24**, 2019 @ 7:00 pm

Town Council Meeting:
Monday, **August 5**, 2019 @ 7:30 pm

APPLICANT: Stuart Borton

REQUEST: COMPREHENSIVE PLAN MAP CHANGE & ZONING CHANGE
FROM CP TO CG

Ordinance 2019-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA CHANGING THE COMPREHENSIVE PLAN MAP AND ZONING MAP FOR ONE (1) VACANT PARCEL KNOWN AS:

- VACANT PARCEL ON S US HIGHWAY 1, MALABAR, FLORIDA IN TOWNSHIP 28, RANGE 38, SECTION 31, LOT 250.4 (0.31 ACRES) FROM COASTAL PRESERVE (CP) TO COMMERCIAL GENERAL (CG) PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

The proposed ordinance may be inspected by the public at the Town Clerk's Office between the hours of 8:30AM and 5:00PM weekdays. Interested persons are encouraged to appear at these hearings and provide comments regarding the proposed ordinances. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764, Debby Franklin, Town Clerk.

FOR MORE INFORMATION
CONTACT THE BUILDING DEPARTMENT
AT (321) 727-7764 X 14



A GANNETT COMPANY

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF MALABAR
Address: 2725 MALABAR RD
MALABAR FL 32950
USA

Ad No.: 0003668573
Pymt Method: Invoice
Net Amt: \$119.77

Run Times: 2

No. of Affidavits: 1

Run Dates: 07/11/19, 07/25/19

Text of Ad:

AD# 3668573 7/11/19 7/25/2019

TOWN OF MALABAR
NOTICE OF PUBLIC HEARINGS

The Town of Malabar's Planning and Zoning Board shall conduct a Public Hearing on Wednesday July 24, 2019 at 7:00 PM to consider a request for a future land use and zoning map change from Coastal Preserve (CP) to Commercial General (CG). The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday August 5, 2019 at 7:30 PM or as soon thereafter as the matter can be heard, to conduct a public hearing on the same request and to consider the recommendation from the Planning and Zoning Board.

Copies of these documents are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-Debbly Franklin, CMC, Town Treasurer



July 3, 2019

Dear Property Owner:

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARINGS**

The Town of Malabar Planning and Zoning Board will hold a Public Hearing on **July 24, 2019** at 7:00PM to consider a land use and zoning change request by Stuart and Nancy Borton, aka Stuart J. Borton & Nancy Tinio-Borton Trust, for a 0.31 parcel+/- site on the east side of US Highway 1, Parcel ID 28-38-31-00-250.4. This parcel is just south of 905 South Hwy 1, Malabar. The Malabar Town Council will consider the request and recommendation from the Planning and Zoning Board at their meeting on August 5, 2019 AT 7:30PM and will hold a Public Hearing on **August 19, 2019** at 7:30PM. These meetings will be held at the Town Hall, 2725 Malabar Road, Malabar, Florida, to hear interested persons regarding a Land Use and Zoning Change requested by applicants.

Ordinance 2019-8

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE COMPREHENSIVE PLAN MAP AND ZONING MAP FOR THE 0.31 +/- PARCEL ON THE EAST SIDE OF US HWY 1, PARCEL ID 28-38-31-00-250.4, JUST SOUTH OF 905 SOUTH HWY 1, MALABAR, FLORIDA FROM COASTAL PRESERVE (CP) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

If you received this notice then you are listed as a property owner, as shown in the records of Brevard County Property Appraiser's office, within 500' of the property involved in the application. This Notice is provided as required by Malabar Land Development Code, Article XII, Section 1-12.2.E.8.

Thank you,

Debby Franklin

Debby K. Franklin

Town Clerk/Treasurer

TOWN OF MALABAR

borton500
Page1

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BORTON, Stuart

BAKER FAMILY TRUST
1040 S US HIGHWAY 1
MALABAR FL 32950-6907

BAKER, JOHN D IV
125 RIVERVIEW DR
MALABAR FL 32950-6054

BALL, B GRANT
BALL, DEBRA H
PO BOX 500025
MALABAR FL 32950-0025

BALL, BROMLEY G
BALL, DEBRA H
PO BOX 500025
MALABAR FL 32950-0025

BALL, BROMLEY GRANT
BALL, DEBRA H
PO BOX 500025
MALABAR FL 32950-0025

BORTON, STUART
BORTON, NANCY TRUST
905 S US HIGHWAY 1
MALABAR FL 32950-6093

BORTON, STUART J
TINIO-BORTON, NANCY TRUSTEES
905 S US HIGHWAY 1
MALABAR FL 32950-6093

COPE, RICHARD D
COPE, JACQUELINE A
212 FIRST LANE
MALABAR FL 32950-

IACONO, CHARLES D
IACONO, GRACE D
3 DILISIO DR
SWAMP SCOTT MA 01907-1205

IACONO, CHARLES DELLO
IACONO, GRACE
3 DILISIO RD
SWAMPSCOTT MA 01907-

MARTINEZ, JOSE F
MARTINEZ, MIGDALY L
5141 NE DIXIE NE HWY
PALM BAY FL 32905-6041

O'RORKE, REGAN
141 RIVERVIEW DR
MALABAR FL 32950-

PEIDL, RICHARD B
TOMINSKY, RICHARD
142 RIVERVIEW DR
MALABAR FL 32950-6055

RV PARK 11 LLC
1880 VIRGINIA AVE
MC LEAN VA 22101-4934

SMITH, LACHLAN V
133 RIVERVIEW DR
MALABAR FL 32950-

STUART J BORTON & NANCY TINIO-BORTON
TRUST
905 S US HIGHWAY 1
MALABAR FL 32950-6093

THERIAULT, ROBERT P
THERIAULT, SUSAN L
5151 DIXIE HWY NE
PALM BAY FL 32905-

TOMA, FRANK P TRUSTEE
TOMA, THERESE F TRUSTEE
1931 N 50TH AVENUE
HOLLYWOOD HILLS FL 33021-

TOMA, FRANK P TRUSTEE
TOMA, THERESE F TRUSTEE
1931 N 50TH AVE
HOLLYWOOD FL 33021-

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24Jul2019: Planning and Zoning Meeting on Parcel ID 28-38-31-00-250.4



Rick and Jacqueline <rickandjacqueline@att.net>

Yesterday, 5:47 PM

Grant Ball; Brian Vail; Steve Rivet; Dick Korn; Danny White; Pat Reilly; Denine Sherear; Mike

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Inbox

You forwarded this message on 7/24/2019 8:17 AM

TOWN OF MALABAR
JUL 23 2019
RECEIVED via email

To: Malabar Councilmembers (et al)

Re: Rezoning Parcel ID 28-38-31-00-250.4

I understand there is an effort underway to consider rezoning the aforementioned Parcel from Coastal Preserve (C.P.) to Commercial General (C.G.).

Unfortunately, my spouse and I are out of the state of Florida for an extended period and unable to attend any meetings regarding this subject.

I am therefore contacting all Councilmembers to express my concerns that this zoning change will have on our community.

My primary concerns are twofold:

1. This would open the door for C.G. of the entire Malabar coastline and subsequent commercialization of our coast. This is contrary to the rural residential nature of Malabar that I cherish.
2. This would put at risk the water quality and have other unintended consequences that would have a deleterious effect on the Indian River Lagoon.
As a taxpayer already contributing to mediation efforts for the health and well-being of the IRL, I find the C.G. zoning to be in conflict with where my taxes are currently being used.

Note below that in the Town Charter Preamble shown below, it was mentioned not once, but twice that the Rural Residential Quality of Life and Rural Residential Character is in your hands as members of the Town Council.

I very much appreciate you taking the time to read this email.

Thank you Sincerely,

Rick and Jacqueline Cope
212 First Lane

Reply all | Delete | Junk | ...

TOWN OF MALABAR

CHARTER

JUL 23 2019

§ 1.04

PREAMBLE

RECEIVED via email

The people of the Town of Malabar desire to maintain the rural residential quality of life in their town and they are concerned about the possibility of uncontrolled growth in the future affecting that type of lifestyle. The people of the Town of Malabar are concerned that the power to govern their Town remain vested in a duly elected Town Council. Therefore, they have ratified by referendum this Charter and enacted it into law. They wish to maintain the rural residential character of their community. Furthermore, having complete faith in representative government with the ultimate power to govern remaining with themselves, they desire to codify the recent history of Malabar which has been the practice of vesting the decision-making power of the Town in a five (5) member Town Council elected by five single districts.

(Ord. No. 95-3, § 1, 7-17-95; Election Referendum on November 8, 2016 creating single district voting)

ARTICLE I. GENERAL PROVISIONS

Getting too much email from Rick and Jacqueline <rickandjacqueline@att.net>? You can unsubscribe