



REGULAR TOWN COUNCIL MEETING

Tuesday, January 14, 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

· Regular Town Council Mtg Minutes of 12/02/2019 · Workshop Council Mtg Minutes of 12/05/2019

Exhibit: Agenda Reports Number 4a & 4b

Attachments:

- Agenda Report Number 4a (TownCouncilMinutes1202_2019draft.pdf)
- Agenda Report Number 4b (TownCouncilMinutes_1205_2019_Draft_rdf)

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
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 (0) / SPECIAL ORDERS (0)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

a. Agenda Item Request by Kim Frodge

2715 Garden Street, Commercial General Zoning

Exhibit: Agenda Report Number 11a

Attachments:

- Agenda Report Number 11a (Agenda_Item_11a_sw.pdf)

12. ACTION ITEMS

ORDINANCES for FIRST READING:1

RESOLUTIONS:1

MISCELLANEOUS:

a. Ordinance 2020-01 - Amend Chapter 13 of Code to Provide Waivers

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADDING A NEW SECTION 13-38(c) RELATING TO WAIVERS AUTHORIZED BY THE TOWN COUNCIL; ESTABLISHING GROUNDS FOR A WAIVER; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

Attachments:

- Agenda Report Number 12a (Agenda_Item_12a_sw.pdf)

b. Resolution to Appoint Member to Planning and Zoning Board (Resolution 1-2020)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF JEFF RINEHART TO THE MALABAR PLANNING AND ZONING BOARD AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12b

Attachments:

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

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

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

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
DECEMBER 02, 2019 7:30 PM**

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

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called the meeting to order at 7:30 pm. CM White 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

DEBBY FRANKLIN

TOWN MANAGER: (TM)

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

Clerk said for the record the Fire Chief Mike Foley was also present.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: one by Mayor to cancel the Dec 16 RTCM – no objections.

4. CONSENT AGENDA: Town Council Mtg Minutes of 10/21/2019

MOTION: CM Vail / CM White to approve the minutes consent agenda. **VOTE:** All Ayes.

5. ATTORNEY REPORT: nothing

6. BCSO REPORT: not present –

7. BOARD / COMMITTEE REPORTS:

7.a. Drew Thompson, Chair, T&G Com: Chair got email from Drew – working on trails and signage.

7.b. Eric Bienvenu, Chair Park & Rec Board: not present

7.c. Wayne Abare, Chair, P&Z Board: not present

8. STAFF REPORTS:

8.a. MANAGER: Noted FPL has finished work on Atz west of Weber and ATT can now get out there and do their part. FDOT has begun work at Fern Creek property.

8.b. PW DIRECTOR: submitted written report.

8.c. FIRE CHIEF: Gave brief report in Nov had 62 calls, 27 EMS and 28 public assists. Hydrant testing will begin.

8.d. CLERK: FallFest had a great turnout with great team effort. Thanked Council for recognition.

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**

Skip Hard, 2560 Hard In – cave strong – also have t-shirts. 9/26 submitted a FOIA request for record of phone call between CM Rivet and Korn and got response from Clerk that there were no records. Asked CM Rivet what it was about. CM Rivet said it was about the health of his wife.

10. PUBLIC HEARINGS/SPECIAL ORDERS: 4

10.a. ORDINANCE 2019-13 Zoning Change for Huggins Park – 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADMINISTRATIVELY AMENDING THE ZONING MAP FOR THE 3.4 ACRE SITE IN SECTION 31, TOWNSHIP 28 AND RANGE 38 LOCATED IN THE JOHN J POLLAKS SUBDIVISION, MALABAR FLORIDA FROM

INSTITUTIONAL (INS) TO RESIDENTIAL (RS-10); PROVIDING FOR PROPER CLASSIFICATION IN ORDER TO SELL; PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 10.a.

Read by title only. PH opened: none. PH closed.

MOTION: CM Rivet / CM Vail to adopt Ord 2019-13 as amended to provide sale revenue to go to parks and/or trails purposes. Discussion: CM White made the amendment.

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

Chair explained process that will be conducted as quasi-judicial public hearing. Quasi-judicial proceedings give name and address, all documents to be given to clerk, ex parte communication, summary of communication. No disclosures by Council. Atty asked about swearing in witnesses – Chair said not necessary.

10.b. Complaint from Richard Kovach on Code of Conduct Violation committed by then CM Dick Korn

Richard Kovach presented and provided a handout – went through presentation showing multiple examples of alleged violations of the Code of conduct adopted by council and codified in Chapter 2 of Code. Examples show a lack of decorum. He said Korn should be censured and not allowed to hold any office for the Town. Showed seven instances of violations and insists Council levy the penalties.

Public: Skip Hard – Korn was six years on council – why didn't you police yourselves. Dawn Danielson do the right thing. Do penalty phase of the code of conduct you put into place two years ago.

Laura Mahoney –most were directed towards her but really it is about the residents.

PH closed. Chair said the motion maker should support the motion. Chair said item dies for lack of motion.

10.c. Complaint from Jose Merino on Code of Conduct Violation committed by then CM Dick Korn

PH opened. Jose Merino agrees with everything that the preceding persons said. PH closed.

Dies for lack of motion.

10.d. Complaint from William Hard on Code of Conduct Violation committed by CM Danny White

PH opened. William Hard left building. Atty said Council needs to proceed with complaint that was filed. Atty said CM White should abstain if a motion is made.

Barbara Cameron is thoroughly confused that no motions are being made. Why isn't Council voting on that. Owned property here since 1974. She was asked to run for office. People that do not respect the citizens should not run for public office. It does not make any sense. PH is closed.

Dies due to lack of motion.

11. UNFINISHED BUSINESS/GENERAL ORDERS:

ACTION ITEMS: ORD for 1st: 0; RESOLUTIONS: 0; MISCELLANEOUS: 0

12. DISCUSSION/POSSIBLE ACTION: 1

13.a. Impact Fees for Malabar (CM Scardino)

David notice that Malabar does not impose impact fees. He has listened to the constituents and they are concerned the drainage, roads, infrastructure. The people who come from the outside should pay an impact fee. Mayor said it has been brought it up.

CM Rivet said that if development causes a need for infrastructure, development should pay for it. What is the next step. Atty said decide on the category of impact fees you want. Impact fees are not for maintenance – it is for impact of new development. Could be for public buildings. Funding a new town hall. SW utility pays for maintenance – impact fees would be for new infrastructure. Once you make thoses determinations then do the study. CM Ball said it should be discussed at an workshop. Don't want citizens already living here to have to pay. Also only want the impact fees to be responsible to not discourage new owners.

CM White would be for it and think it was discouraged when they saw that Brevard County imposes some impact fees and the school also charges an impact fee. TM said the transportation impact fees are collected by the county but Malabar can use the funds collected in Malabar for qualifying road projects and road paving is one of those.

CM Vail recalls it was the proportionality test. The cost of the study is what is holding us back. CM Ball says see what GV has done. CM White said how long would be cost effective. Would impact fees offset the cost of the study? CM Scardino – we should do impact fees.

Set WS for the last Monday in Jan – get staff information.

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

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

Laura Mahoney – read from paper.

Dawn Danielson – disappointed in Council – repeal those ordinances.

Susan Shortman – Ivey Ln – asked Dick to apologize.

MOTION: CM White / CM Vail to cancel the 12/1619 RTCM. All Ayes.

14. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: nothing

CM Vail: nothing

CM Rivet: nothing

CM Korn: nothing

CM White: nothing

Mayor: Thanked all for FallFest.

15. ANNOUNCEMENTS: Openings on Bd of Adjustment, T&G, P&Z and Park and Rec Bds.

16. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:38 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 1/14/2020

MALABAR COUNCIL WORKSHOP MEETING
December 05, 2019 1:30 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 1:30 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
	DAVID SCARDINO, excused
	DANNY WHITE
MANAGER:	MATT STINNETT
ATTORNEY:	KARL BOHNE
ENGINEER:	MORRIS SMITH
BLDG DEPT MANAGER:	DENINE SHEREAR
DEPUTY CLERK:	RICHARD KOHLER
CLERK/TREASURER:	DEBBY FRANKLIN

C. ROAD WORKSHOP Continued from 7/29/19

Chair turned over to Clerk.

Clerk reminded Council of Attorney's findings presented on 7/29/19. Town must be able to defend their requirement for right-of-way dedications. Attorney had 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. If challenged, the requirement for the dedication must be able to show that it is tied to a public improvement.

From July WS, Council directed staff to measure the road widths and make recommendations for changes to requirements and classifications. Local streets are lanes and generally serve 2 to 12 driveways with the average being six. LaCourt and Eva Lanes are exceptions as they were lanes that were converted to collectors. The current widths for unpaved roadways vary from 10 to 19 feet. In keeping with the rural character of Malabar, would Council consider a reduced right-of-way width that would still provide for drainage but require a narrower travelway.

In reviewing some planning references, it was suggested that narrower roadways and a corresponding requirement for trees along the roadway would better enhance the rural character of Malabar.

Required in Code

Recommendation:

Local unpaved road right-of-way width requirement is 60'

reduce to **25'** & 50'(lanes)

- There are no known local streets that comply

Minor collector paved road right-of-way width requirement is 70' reduce to **50'** (Atz, Hall)

- Hall, Atz, Benjamin and Old Mission are all 50' or less in ROW width

Major collector paved road right-of-way width requirement is 100' reduce to **70'** (Weber, Corey)

- Corey and Weber are both at 70' – Marie is at 50' – 70'
- Corey and Marie north of Malabar should not be major collectors.

Arterials – remain at 150' (Babcock, Malabar, US 1)

The actual roadway width would follow the requirements referenced in the road improvement package which have already been adopted.

Clerk said changing the classifications would need to be changed in both the LDC and also the Comp Plan. Council can direct staff to start working on these changes acknowledging that the Comp Plan amendment would take six months minimum. Council can start with the LDR.

Variance language – reinsert into street improvement code (Chap 13) and add requirements:

- Requirement to record Order stipulating the parcel will be responsible for future road improvement fair share cost
- Requirement to pave if roadway to that point has been paved
- Requirement for road bond for future needs?

Council discussed BOA variance vs. a waiver by Council. After discussion, staff was directed to draft the ordinance to call it a waiver and leave authority with Council – not a variance for BOA.

Chair Reilly, without objection, adjourned the workshop meeting at 2:43pm.

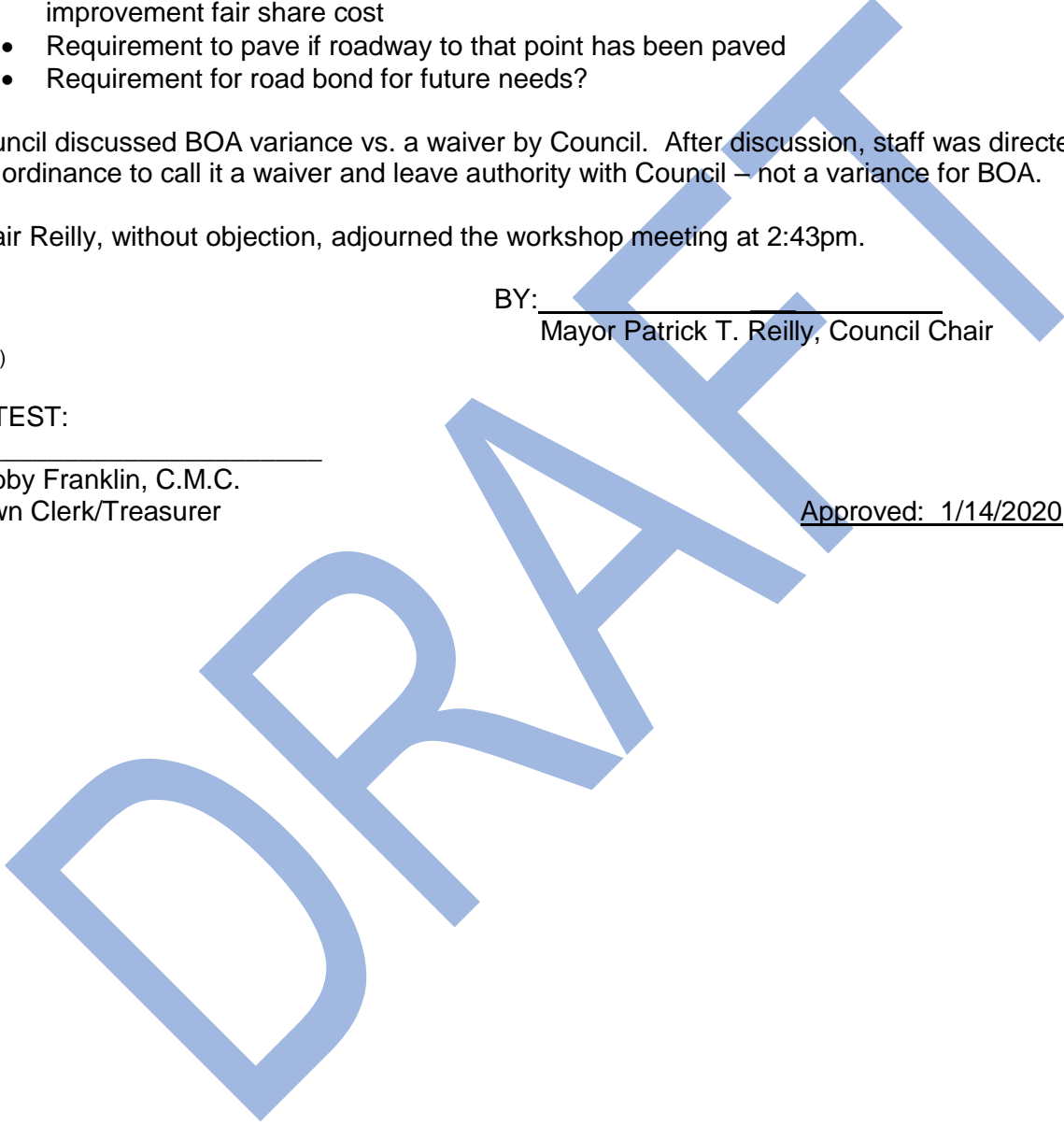
BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: 1/14/2020



**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 11.a.
Meeting Date: January 14, 2020

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

SUBJECT: Agenda Item Request – Allow Commercial General Trades and Services at 2715 Garden Street

BACKGROUND/HISTORY:

The property owner, Kim Frodge requested this agenda item. This property is zoned Commercial General and the Future Land Use Map designation is also Commercial General. Ms. Frodge operated the Nanna's House Thrift store on this 2.5-acre site. It consisted of retail sales in the main building and display and storage in three cargo structures. She is selling the property now and a septic company is interested in locating their business there.

The language in Article II and Article III of the Code would appear to allow the proposed use, but the Table in Article III adds a restriction to *trades and services* not referenced in the narrative. That restriction limits trades and services to a Conditional Use Permit and further requires them to abut only Malabar Road, Babcock Street or West Railroad Avenue.

The property owner is requesting Council expand on the streets that trades and services are allowed by adding Garden and Pine Streets.

The property owner would further request that such use be considered a *Permitted* use rather than a *Conditional* use.

The property owner prior to Ms. Frodge upgraded the building to meet current commercial building and fire codes. The property at that time was operating a well drilling service.

ATTACHMENT:

Agenda Request Form
Zoning, aerial and land use maps
Article III narrative and Table
Minutes from P&Z Board dated 5/22/19

ACTION OPTIONS:

Direction to staff

OFFICE OF THE TOWN CLERK
(321) 727-7764
FAX (321) 722-2234



2725 MALABAR ROAD
MALABAR, FLORIDA 32950-4427

**AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL**

Please mail completed form to:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Nana's Childrens Home Inc

ADDRESS: 2715 Garden St
malabar FL 32950

TELEPHONE: 321-266-3829 321-724-5111
(Home) Cell (Business)

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

Permission for ASAP Septic to move in and operate their business as is in current zoning.

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

I have researched other Septic Companies in Brevard County and they are located in general commercial zoning.

Palm Bay Septic
Gen. Comm.
SOS Septic
Gen. Comm.
Pence Septic
Gen. Comm.

Please state desired action by Town Council.

Permission for ASAP Septic to move in and operate their business as is in current zoning.

Signed: Kim Inodge

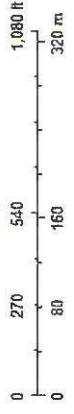
Date: 12/2/2019

Brevard County Property Appraiser



December 10, 2019

1:4,000



28-46850
EngleView Palmetto BCP&C

For illustration only. Not a survey. Map layers may not precisely align.
© BCP&C 2015

Brevard County Property Appraiser



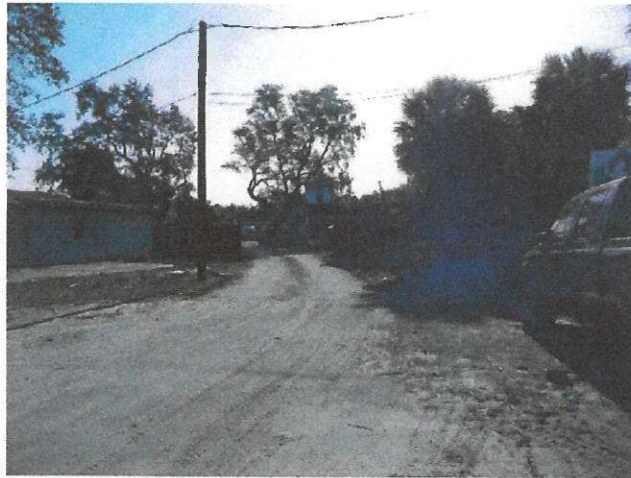
December 9, 2019

1:4,000



2046820
Esri/View Platform/BCPAO

For illustration only. Not a survey. Map layers may not precisely align.
© BCPAO 2019



East View Garden Street

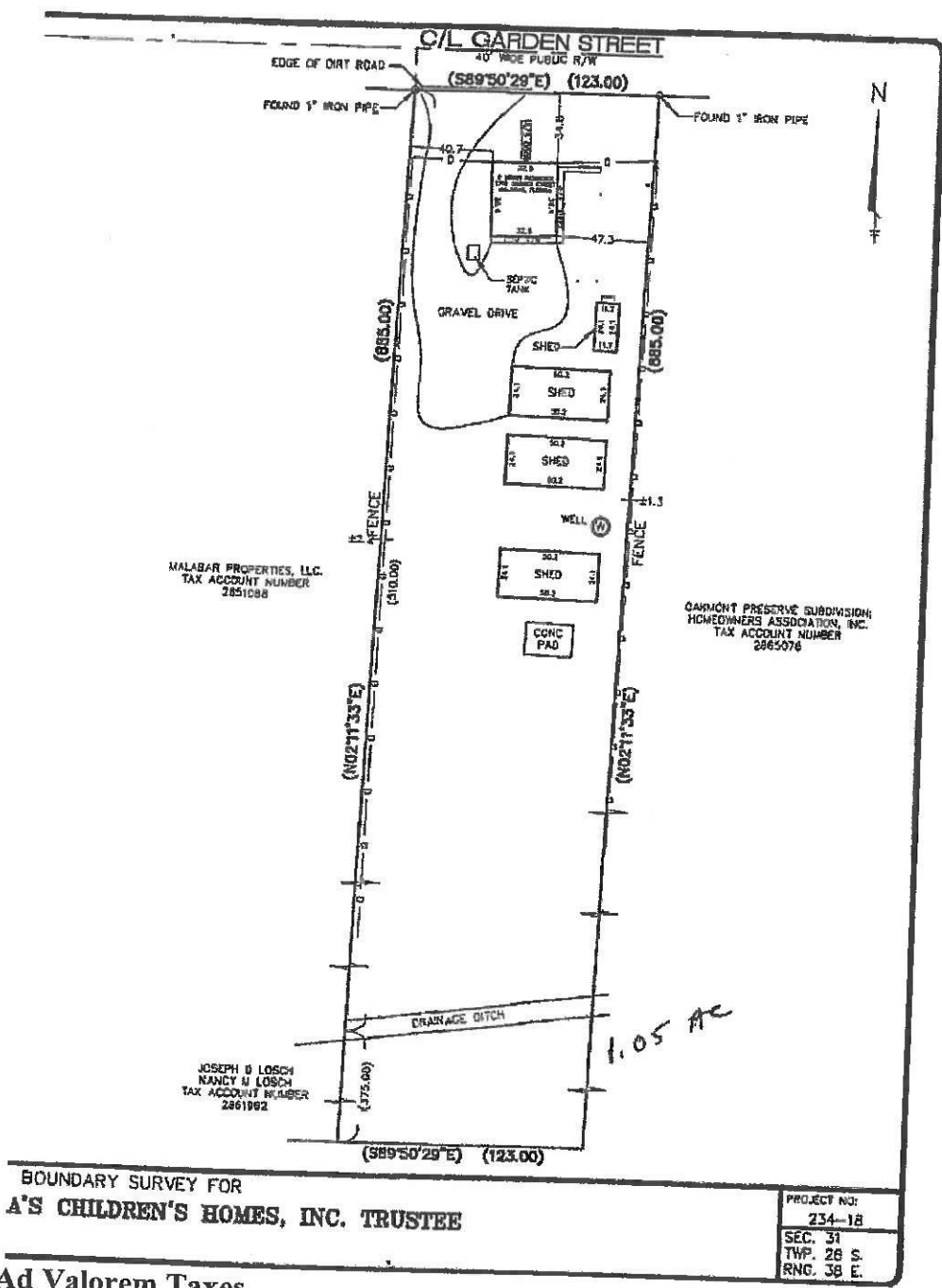


Aerial View

GENERAL INFORMATION

Client/Intended User

The intended user and client is Centerstate Bank. This report has been prepared for the exclusive use of Centerstate Bank per our letter of engagement. No other persons or entity that receives a copy of this appraisal becomes an intended user.



Ad Valorem Taxes

The following illustrates the current assessed values for the subject property attributable to the land and improvements. The subject property is currently assessed as following.

Tax ID No: 28-38-31-54-B-54

Year	Assessed Value Land	Assessed Value Improvements/Misc	Total Assessed Value
2018	\$47,150	\$119,800	\$166,950

The above assessed land value is based on \$1.53 per square foot. Real estate taxes with non-advalorem fees (before discount for early payment) are \$230 that results in a tax rate of \$1.3777 per \$1,000 of assessed value. The taxes for 2018 have been paid. The subject property is currently exempt from paying real estate taxes as it is a Non-profit charitable use. This will change if the property is sold to the prospective buyer.

HIGHEST AND BEST USE

The value of real property relates directly to its utility. For Appraisal purposes, we define Utility as "The ability of a product to satisfy a human want, need, or desire."²

The product referred to in the definition is real property. We measure the utility of real property by evaluating alternate uses. This process results in selection of what is considered the property's "**highest and best use**". The appraiser estimates market value assuming that the property will be utilized according to its highest and best use.

Definition of Highest and Best Use:

"The reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value."³

In addition to being reasonably probable, the highest and best use must meet four implicit criteria, i.e., the highest and best use must be:

Physically Possible
Legally Permissible
Financially Feasible
Maximally Productive

Highest and Best Use As Vacant

Physical Limitations

The sites physical limitations include its, size, shape, location, topography, soil conditions, access, visibility, and available utilities.

The site has a narrow frontage and long depth. In addition the rear 1.07 acres has a ditch with no access across the ditch. The rear 1.07 acres is mostly located in a *Freshwater Forested Shrub Wetland Habitat*. The rear 1.07 acres "as is" is not developable and has very marginal utility.

² The Appraisal of Real Estate Thirteenth Edition (Chicago, Illinois: Appraisal Institute, 2008) page 16

³ Ibid: Page 278

Article III

DISTRICT PROVISIONS

This article describes the purposes and intent of each zoning district, identifies permitted and conditional uses by zoning district, and provides size and dimensional regulations for respective zoning districts.

Section 1-3.1. Purpose and intent of districts.

This section presents the basic purpose and intent of each zoning district.



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

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

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

The location and distribution of general commercial activities shall be determined based on the following considerations:

- Trip generation characteristics, impact on existing and plan transportation facilities and ability to achieve a functional internal circulation and landscaped off-street parking system;
- Location and site requirements based on specific needs of respective commercial activities, their market area, anticipated employment generation, and floor area requirements;
- Compatibility with and impact on other surrounding commercial activities;
- Relationship to surrounding land uses and natural systems; and
- Impact on existing and planned community services and utilities.
- A Malabar Vernacular Style is required for all development along arterial roadways.

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
COMMERCIAL ACTIVITIES														
Adult Activities										C				
Bars and Lounges										C				
Bed and Breakfast											P ¹			
Business and Professional Offices							P		P	P	P	P	P	
Enclosed Commercial Amusement										P				
Arcade Amusement Center/ Electronic Gaming Establishment										C ²				
Funeral Homes									P	P	C			
General Retail Sales and Services										P				
Hotels and Motels										P				
Limited Commercial Activities									P	P	P			
Marine Commercial Activities										C*				
Medical Services							P		P	P	P			
Mini Warehouse/Storage									C	P	P	P		
Parking Lots and Facilities								P	P	P	P			P
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales										C*				C*
Trades and Skilled Services										C*				P
Veterinary Medical Services								P	P	P	C	P		P
Vehicular Sales and Services										C*				P
Vehicular Services and Maintenance										C*				P
Wholesale Trades and Services										C*				P
INDUSTRIAL ACTIVITIES														
Kennels														C
Manufacturing Activities														P

DISTRICT PROVISIONS

§ 1-3.2

TABLE I-3.2. LAND USE BY DISTRICTS

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

C = Conditional Use

P = Permitted Uses

A = Accessory Use

* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.

1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

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

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

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

4 ALF Factor of "3" (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's

(Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12; Ord. No. 14-01, § 3, 2-3-14; Ord. No. 2016-03, § 1, 2(Exh. A), 10-3-16)

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 12.a.
Meeting Date: January 14, 2020**

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

SUBJECT: Amend Chapter 13 to Provide for Waivers to Road Improvement (Ord 2020-01)

BACKGROUND/HISTORY:

This ordinance amends the Street and Road Improvement Chapter in the Malabar Code book to allow Council to grant waivers to the code requirements. It is very specific and does not allow cost of improvements as a consideration.

If approved at first reading it will be advertised legally and placed on the February 3, 2020 agenda for public hearing.

ATTACHMENT:

Ordinance 2020-01

ACTION OPTIONS:

Action on first reading of Ord 2020-01

ORDINANCE NO. 2020-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADDING A NEW SECTION 13-38(c) RELATING TO WAIVERS AUTHORIZED BY THE TOWN COUNCIL; ESTABLISHING GROUNDS FOR A WAIVER; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 13-38(c) of the Code of Ordinances of the Town of Malabar is hereby added to read as follows:

“(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 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 shall also execute an agreement in recordable form with the Town that binds the owner and his/her successors in interest 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.

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; 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 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.

Section 2. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

Section 3. Should any Section, Clause, or Provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the remaining provisions or parts of this Ordinance.

Section 4. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

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

The foregoing 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 to be duly passed and adopted this ____ day of _____, 2020.

TOWN OF MALABAR

seal

BY: _____
Mayor Patrick T. Reilly, Council Chair

First Reading: _____
Second Reading: _____

ATTEST

Debby K. Franklin, CMC
Town Clerk/Treasurer

Approved as to form and content:

Karl W. Bohne, Jr.
Town Attorney

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 12.b.

Meeting Date: January 14, 2020

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

SUBJECT: Appoint Alternate to Planning & Zoning Board (Reso 01-2020)

BACKGROUND/HISTORY:

Board and Committee terms are for three years. There is one opening for Alternate on the P&Z Board and we have received one application.

ATTACHMENTS:

Reso 01-2020 Appointment to P&Z Board as Alternate
Application package from Jeff Rinehart

ACTION OPTIONS:

Action on Reso 01-2020

RESOLUTION 01-2020

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF JEFF RINEHART TO THE MALABAR PLANNING AND ZONING BOARD AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has been notified of an opening on the Planning and Zoning Board; and

WHEREAS, Malabar Town Council desires to fill this opening by appointment.

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

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Jeff Rinehart as an alternaate member of the Planning and Zoning Board for a three-year term.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the member, the Board Chair and the Board Secretary of this appointment.

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

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

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

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

This Resolution was then declared to be duly passed and adopted this 14th day of January, 2020.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

Planning & Zoning Advisory Board Application

DEC 13 2019 12:23

The Planning and Zoning Board is hereby established and shall consist of five (5) seats and two (2) alternate-seats. The Planning and Zoning Board is advisory in nature. Members of the Board shall hold no other Town office. The affirmative vote of a majority of the regular and alternate board members present and voting (maximum of five votes) shall be necessary for the adoption of any motion. The Planning and Zoning Board deals with land use issues such as site plans, conditional uses, special exceptions, residential subdivision developments, plats, re-plats and zoning change requests. They also review and compile updates for the Comprehensive Plan and present to Council. They shall also draft land development code to conform to changes adopted by Council to the Comprehensive Plan. They shall annually prepare a Capital Improvement Projects list to submit to Council. Some of the issues that the Board considers will be quasi-judicial and staff will alert them to those situations.

- 1. Name: JEFF Rinehart Phone: 407-738-9155
 - 2. Home Address: 2395 Corey Rd Malabar FL 32950
 - 3. Email Address: jrinehart2000@malab.com
 - 4. Are you a resident of the Town: Yes No
 - 5. How long have you been a resident of the Town of Malabar: 1.5 yrs
 - 6. Are you currently involved with any other organization of the Town: Yes No
- If yes, which organization: _____

Town of Malabar 2725 Malabar Road Malabar, Florida 32950
Phone: 321-727-7763 ~ Fax 321-722-2234 ~ Email: townclerk@townofmalabar.org
Website: www.townofmalabar.org

TOWN OF MALABAR

APPLICATION FOR APPOINTMENT TO BOARD/COMMITTEE

NOTE: Florida's Public Records Law, Chapter 119, Florida Statutes states, "It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Your application when filed will become a public record and subject to the above statute. In addition, any appointed member of a board of any political subdivision (except members of solely advisory bodies) and all members of bodies exercising planning, zoning or natural resources responsibilities are required to file a financial disclosure form within 30 days after appointment and annually thereafter for the duration of the appointment as required by F.S. Chap. 112.

NAME: JEFF R. DRIMCHART TELEPHONE: 407-735-9155
ADDRESS: Jdrimchart200@yahoo.com 2385 Corey Rd Malabar
EMAIL: Jdrimchart200@yahoo.com

RESIDENT OF TOWN FOR 12 MONTHS OR LONGER: YES NO

OCCUPATION: (If retired, please indicate former occupation or profession.)

Self

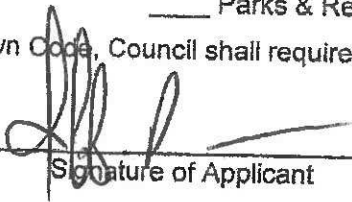
PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:

ADDITIONAL INFORMATION/REFERENCES:

Please select the Board that you would like to serve on by indicating first choice & second choice:

Board of Adjustment Planning & Zoning
 Parks & Recreation Trails & Greenways

Per Town Code, Council shall require removal of members after 3 successive absences.


Signature of Applicant

12/13/19
Date

Please return this form to: Town Clerk
Town of Malabar
2725 Malabar Road
Malabar, FL 32950-4427
Email: townclerk@townofmalabar.org

Note: If you need more information concerning the duties of these Boards, please contact the Town Clerk. Please attach a copy of your resume to this application. You will be notified of the date of the Town Council Meeting that your application will be considered for appointment. You will need to plan to attend the Council Meeting.

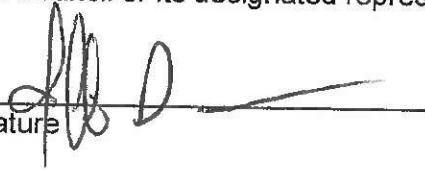
Applicant Certification

By completing this application with the Town of Malabar and placing my signature below, I do hereby acknowledge the following:

- This application, when completed and filed with the Office of the Town Clerk, is a PUBLIC RECORD UNDER Chapter 119, Florida Statute, and is open to public inspection.
- I am responsible for keeping the information on this form current and that any changes or updates will be provided to the Office of the Town Clerk.
- I acknowledge that I am a resident of the Town of Malabar.
- I consent to filing the Statement of Financial Interest as required by Chapter 112, Florida Statutes.
- If appointed to a Committee or Board, I acknowledge that it is my obligation and duty to comply with the following:
 - Malabar Code of Conduct
 - Code of Ethics for Public Officials (F.S., Chapter 112, Part III)
 - Florida Sunshine Law (F.S., Chapter 286)

I understand the responsibilities associated with being a Committee or Board member and I will have adequate time to serve on this Committee or Board.

The information provided on this form is true and correct and consent is hereby given to the Town Council or its designated representative to verify any and/or all the information provided.

Signature 

Date 12-13-19

Town of Malabar 2725 Malabar Road Malabar, Florida 32950
Phone: 321-727-7763 ~ Fax 321-722-2234 ~ Email: townclerk@townofmalabar.org
Website: www.townofmalabar.org



TOWN OF MALABAR

2725 MALABAR ROAD • MALABAR, FLORIDA 32950
(321) 727-7764 OFFICE • (321) 722-2234 FAX
www.townofmalabar.com

Town of Malabar Board Member Code of Conduct

(Malabar Code Chap 2. – Code of Conduct) In addition to adhering to the requirements of State Law, any person appointed to serve as a Member of a Town Board or Committee shall commit to the following Code of Conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

I affirm that the proper Statutory and Town Charter role of Members of appointed Town Boards and Committees, as with any Member of an appointed government body, is to act collectively, not individually, to apply the Town's governing policies, and that the Town Administrator and Staff administer such policies.

I understand that an appointed Board or Committee Member does not manage the affairs of the Town. I will not intrude into daily operations or spheres of responsibility designated by Florida Statutes, Town Code, and Town Charter to the Town Administrator as the Chief Executive Officer; or undermine the Town Administrator's lawful authority. Further, I understand that the Town Administrator is responsible for administering the policy direction established by a majority vote of the Town Council and not the individual wishes of Board or Committee Members.

I will represent the interests of the entire Town when making decisions and will rely upon available facts and my independent judgment. In my capacity as an appointed Board or Committee Member, I will avoid conflicts of interest and avoid using my official position for personal, professional, or partisan gain.

I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as an appointed Board or Committee Member. I will refrain from intimidation and ridicule of fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, and those conducting business with the Town.

In my capacity as an appointed Board or Committee Member, I will refrain from inappropriate language including statements that are malicious, threatening, slanderous, disparaging, mean-spirited, vulgar or abusive. All disagreements, concerns or criticisms shall be framed in language that is in keeping with the dignity and professionalism of an appointed official and the honor of my respective Town Board or Committee.

I will focus on solving problems. I will maintain appropriate decorum and professional demeanor in the conduct of Town business and work cooperatively and conscientiously with others as I request or receive information, examine data or weigh alternatives in the decision-making process.

I will demonstrate patience and refrain from demanding, interruptive access to Staff or immediate responses or services when requesting information that requires significant Staff time in research, preparation or analysis or that will result in Staff neglect of urgent duties. Such requests will be made through the Town Administrator for scheduling and prioritizing through consensus of my respective Town Board or Committee.

I will devote adequate time for preparation prior to my respective Town Board or Committee meetings and as much as possible, I will be in attendance at such meetings and all other scheduled events where my participation is required.

I will respect diversity and encourage the open expression of divergent ideas and opinions from fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of Malabar. I will listen actively and objectively to others' concerns or constructive criticisms.

I will refrain from any individual action that could compromise lawfully authorized decisions of the Town or the integrity of the Town and my fellow Board or Committee Members. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a Town Board or Committee Member.

I will maintain the confidentiality of privileged information and will abide by all laws of the State applicable to my conduct as a Board or Committee Member, including but not limited to the Government in the Sunshine Law, the Florida Code of Ethics for Public Officers, and Town Rules of Procedure and Codes of Conduct.

I will promote constructive relations in a positive climate with all Members of the Town Council, Town employees, Town Attorney, and Town contractors and consultants consistent with my role as a Board or Committee Member, as a means to enhance the productivity and morale of the Town. I will support the Town Administrator's decision to employ the most qualified persons for Staff positions. I will recognize the bona fide achievements of the Town Council, Town Administrator, Staff, Town Attorney, Town contractors and consultants, business partners, and others sharing in, and striving to achieve, the Town's mission.

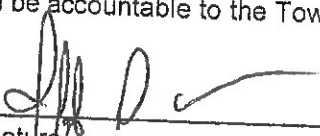
I will enhance my knowledge and ability to contribute value to the Town as a Board or Committee Member by keeping abreast of issues and trends that could affect the Town through reading, continuing education and training. I will study policies and issues affecting the Town, and will attend training programs if required by the Town. My continuing goal will be to improve my performance as a Board or Committee Member.

I will value and assist my fellow Board or Committee Members by exchanging ideas, concerns, and knowledge through lawful means of communication. I will help build positive community support for the Town's mission and the policies established by the Town Council.

I will support and advocate for my beliefs, but will remain open to understanding the views of others. I recognize that I share in the responsibility for all Town decisions that my respective Board makes and will accept the will of the majority.

As a Board or Committee Member, I will always hold the best interests of the citizens of the Town and the public health, safety and welfare of the community in the highest regard. I will seek to provide appropriate leadership that nurtures and motivates Town citizens to be stakeholders in the affairs and achievements of the Town.

I will be accountable to the Town Council for violations of this Code of Conduct.



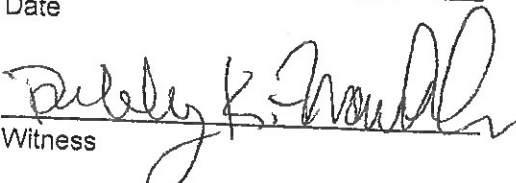
Signature

12-13-19

Date

JEFF D Rinehart

Print Name



Witness