



REGULAR TOWN COUNCIL MEETING

Monday, August 3, 2020 at 7:30 pm

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

- a. **Approve Minutes of Regular Town Council Meeting of 07/20/2020**

Exhibit: Agenda Report Number 4a

Attachments:

- Agenda Report Number 4a (Agenda_Report_Number_4a.pdf)

- b. **Approve Minutes of Town Council Workshop of 07/27/2020**

Exhibit: Agenda Report Number 4b

Attachments:

- Agenda Report Number 4b (Agenda_Report_Number_4b.pdf)

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

- a. **T&G Committee**

Exhibit: Agenda Report Number 7a

Attachments:

- Agenda Report Number 7a (Agenda_Report_Number_7a.pdf)

- b. **Park & Recreation Board**
 - c. **Planning & Zoning Board**

8. STAFF REPORTS

- a. **Manager**
 - b. **Public Works Director**
Written Report
 - c. **Fire Chief**
Written Report
 - d. **Clerk**

9. PUBLIC COMMENTS

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

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS (2)

a. First Reading: Amend Malabar Zoning Map to Match FLUM: 2525 Malabar Road (Ordinance 2020-07)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE ZONING MAP TO MATCH THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN FOR THE 4.72+/- ACRE SITE LOCATED AT 2525 MALABAR ROAD, ALSO KNOWN AS PARCEL B-4 IN SNEDEKERS SUBDIVISION IN SECTION 31, TOWNSHIP 28 AND RANGE 38, MALABAR, FLORIDA FROM RURAL RESIDENTIAL (RR-65) AND OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL/LIMITED COMMERCIAL (R/LC); PROVIDING FOR AMENDMENT TO THE TOWN ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Reports Numbered 10a(1), 10a(2), 10a(3) & 10a(4)

Attachments:

- Agenda Report Number 10a(1) (Agenda_Report_Number_10a_1_.pdf)
- Agenda Report Number 10a(2) (Agenda_Report_Number_10a_2_.pdf)
- Agenda Report Number 10a(3) (Agenda_Report_Number_10a_3_.pdf)
- Agenda Report Number 10a(4) (Agenda_Report_Number_10a_4_.pdf)

b. First Reading: Amend FLUM to Revert to RR Designation (Ordinance 2020-08)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2020-01; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE TOWN FROM OI (OFFICE INSTITUTIONAL) TO RR (RURAL RESIDENTIAL) FOR A PARCEL IN THE TOWN LYING ON THE SOUTH SIDE OF MALABAR ROAD AND EAST OF WEBER ROAD; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Reports Numbered 10b(1), 10b(2), & 10b(3)

Attachments:

- Agenda Report Number 10b(1) (Agenda_Report_Number_10b_1_.pdf)
- Agenda Report Number 10b(2) (Agenda_Report_Number_10b_2_.pdf)
- Agenda Report Number 10b(3) (Agenda_Report_Number_10b_3_.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES:0

RESOLUTIONS:0

MISCELLANEOUS:0

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

a. Direction to Staff for a Town Initiated Zoning/Land Use Change for Consistency

Exhibit: Agenda Report Number 13ab

Attachments:

- Agenda Report Number 13ab (Agenda_Report_13ab.pdf)

b. Direction to Staff for Property Owner Input on Depth of Five (5) Parcels on the South Side of Malabar Road for both R/LC and OI.

Exhibit: Agenda Report Number 13ab

Attachments:

- Agenda Report Number 13ab (Agenda_Report_13ab.pdf)

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

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

17. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
JULY 20, 2020 7:30 PM**

This mtg of the Malabar Town Council was held at 2725 Malabar Road, Malabar, FL 32950. Chair, Mayor Patrick T. Reilly called the meeting to order at 7:30 pm. CM Rivet led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DAVID SCARDINO, excused
	DANNY WHITE
	MATT STINNETT
	KARL BOHNE, excused
	DEBBY FRANKLIN

TOWN MANAGER: (TM)
TOWN ATTORNEY:
TOWN CLERK/TREASURER:
Malabar Fire Chief Mike Foley is not present.

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

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 7/06/2020

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

5. CERTIFICATE OF APPRECIATION – ANNELIE HARVEY Presented by Mayor

6. ATTORNEY REPORT: Not present

7. STAFF REPORTS:

7.a. MANAGER: Handed out a written report. Going on annual training the end of this week. FDOT is working on SR514 for turn lanes at Weber and Corey. Went over TPO report. Discussed possibilities of the five acres at what it could be used for. CM Rivet asked if there were any DEP issues. Yes, part of why he is willing to negotiate. We could use it for SW. Have for an agenda item at upcoming meeting. BCPAO has it valued at 60K.

7.b. CLERK: Candidate Qualifying runs from 7/28 thru 8/11. Election info is on the website. It was also in last issue of Hometown News. Also have sent out assessment notices to affected property owners on Hunter Lane for the paving. The Engineer is working on the paving specs.

8. 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**

9. PUBLIC HEARINGS: 0

10. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

11. ACTION ITEMS:

ORDINANCES for FIRST READING: 0

RESOLUTIONS: 2

11.a. Adopt a Deferred Compensation Plan – Reso 11-2020

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE ADOPTION OF A DEFERRED COMPENSATION PLAN PURSUANT TO SECTION 457 OF THE INTERNAL REVENUE CODE; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 11.a.

Reso read by title only.

MOTION: CM Rivet / CM Vail to adopt Reso 11-2020 as submitted. Discussion: none

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Excused; CM White, Aye. Motion carried 4 to 0.

11.b. Formally Appoint Interim Town Manager – Reso 12-2020

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF AN INTERIM TOWN MANAGER; PROVIDING FOR A TERM; PROVIDING FOR RE MOO NER ATION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 11.b.

Reso read by title only.

The Agenda Report and page 2 of contract was revised.

MOTION: CM White / CM Ball to adopt Reso 12-2020 as submitted. Discussion: Mayor invited Mrs. Morrell to podium.

Mrs. Morrell said it would be her pleasure to accept the invitation to fill in while Matt is on active duty. She has already been briefed on the Stormwater Master Plan and looks forward to serving. Clerk read CM Scardino’s memo of support.

CM White asked about the revised agenda item regarding FRS. TM explained they originally didn’t think the FRS was required for the temporary position. Last TA didn’t participate. They learned from FRS that was because Hoyt was already of retirement age. The position for Mrs. Morrell required participation. CM Ball said it is worth the payment to keep Matt involved and have them work it as a unit. You have added so much since he has been TM. CM Vail also said Matt would stay involved. This is a good transition.

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Excused; CM White, Aye. Motion carried 4 to 0.

MISCELLANEOUS: 0

12. DISCUSSION/POSSIBLE ACTION: 0

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

14. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Vail: nothing

CM Ball: nothing

CM Rivet: nothing

CM White: nothing

CM Scardino: excused

Mayor: Thanked Lisa Morrell for considering their offer to come here. He spoke for the Town and expressed his appreciation.

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

16. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 7:51 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/03/2020

MALABAR COUNCIL WORKSHOP MEETING
July 27, 2020 7:00 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 7:00 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
	DAVID SCARDINO
	DANNY WHITE
MANAGER:	MATT STINNETT, excused
BLDG DEPT MANAGER	DENINE SHEREAR
ATTORNEY:	KARL BOHNE, arrived at 7:30
CLERK/TREASURER:	DEBBY FRANKLIN

Also present: Engineer Morris Smith

C. ROAD WORKSHOP FOR DEVELOPING ROADWAYS

Chair said the purpose of the meeting was to gain consensus on the points brought up at earlier workshops to finalize those points for Staff.

First point: widths for the various road types. Staff had earlier suggested reducing the widths but now stands firmly behind the Manager's recommendation to keep them as stated in the Comp Plan and Code Book:

Local lanes – 60' if dirt road; 50' if paved with curbs and gutter

Minor Collector – 70'

Major Collector – 100'

Consensus to not back down on these needed dedications. Continue to require the ROW dedication as a prerequisite to having a building permit issued. Eventually we may have all the ROW needed when the Town needs it to accomplish a Public improvement such as emergency access, fire truck, utility, solid waste, traffic control, or for increasing capacity.

CM Ball said that if they dedicate it, it comes off their tax bill, but they can still use it until the Town is ready to make an improvement, so it is a benefit for the property owner.

CM Vail mentioned for those that need a little encouragement or maybe the Town needs it before the vacant parcel owner is ready to build, we could offer to pay for the needed ROW based on the current value of the parcel. Calculate it on the square foot cost of the parcel.

Regarding Beekeeper – continue to require the ROW dedication but allow a property owner to build to the 50' ROW dirt road standard. CM Vail said to try and make it a consistent 22' travelway. Council discussed the Exhibits B-2 through B-6 and agreed to Exhibit B-4 for the "typical" dirt road improvement. If the Town has been granted the ROW dedication the property owner can build a typical dirt road using this Exhibit B-4. As other property owners develop, they too can improve to the similar standard. At the point that other road(s) are connected or there are enough homes on the street, the Town will have the responsibility to convert the "dirt road" to a paved collector. Add this language to Chapter 13.

Exhibit B-5 and B-6 were adopted in Resolution 48-2010 and only intended for local lanes that serve few homes and do not collect to more than one other street. So, they would not be allowed for collectors. Use Exhibit B-4 for typical improvement requirements.

The reason for the needed ROW dedication is to be under Town's ownership when storm water, traffic, life safety and utility improvements are needed.

Mayor summarized the discussion for the benefit of the Attorney; keep current ROW requirements, continue to require dedications, require a property owner to improve to the Exhibit B-4 standard,

Attorney said the more reasons we can state for needing the ROW dedication the better, to defend it, if challenged. CM Ball said the purpose of the Comp Plan Transportation Element is to ensure the Town has the ROW needed when infrastructure improvements in the future are planned. If we are specific in the needs, even if the improvements won't be done immediately, we can defend the need for them.

CM Vail said the needs are stated for planning for the long view. As more houses are built, more fill is brought in creating more eventual run-off.

Mayor wants Morris involved. CM Vail asked if Morris could develop an overall map showing the current ROW widths and establishing the centerline. Morris said Florida doesn't require recording of all dedications. It would be an extensive undertaking. He could use the Property Appraiser's (BCPAO) maps. Franklin explained that we also use BCPAO maps for they are for tax purposes – we use them only for reference. We require surveys for verification of the ROW and property lines. Franklin then explained how a Building Permit for construction requires a survey showing the adjacent ROW and the property lines. The Building Department then knows how much ROW is needed for the dedication. It is also on the checklist used for new construction. Different roads require different ROW amounts and for corner lots, or some larger lots, ROW dedication may be requested from one, two, three or even all four sides (Melbourne Heights). Consensus to not have Morris develop an overall ROW needs map.

CM Rivet said we should always ask for the voluntary dedication first and use eminent domain as a last resort only if it is needed right away. The Town would have to pay current market value. Morris explained the example is Grace Lane dedicating ROW in order to build multiple homes. Morris described the recent ROW improvement for 25' that provided engineering for a sloped roadway with drainage to a ditch on only one side. The Mayor said that is an "un-typical" design. The Exhibits in the road improvement regulations are for "Typical" road improvements.

CM Vail asked Karl about liability to Town if you ask for the dedication and not use it right away. Karl said we discussed this at staff level – SW and drainage, emergency vehicles, traffic patterns, utility and sanitation. The more reasons the better to prove it. Still need to boost up our rationale nexus on what we are trying to accomplish. Karl referred to the earlier lawsuit and we were probably ill prepared. CM Rivet said we could have defended it better; it is all hindsight now, but that is the Attorney's opinion. CM Vail said sufficient basis justification is the drainage as it is developed and constructed. Get it now.

CM Vail said when you have an undeveloped ROW and the person four lots in wants to develop and dedicates the needed ROW, the Town should try and ask for the needed ROW from the first three lot owners. Karl explained the triggering mechanism is the desire to pull a building permit. If they never come in to pull a permit, the Town may need to "take" it.

Karl asked about the road payback time limit. GV limits their to 15 years. Consensus of Council to not limit the requirement for payback. Clerk asked Atty to think about a better Council certifying the costs (which creates the per linear foot improvement cost for payback purposes) and identifying at that point which other properties would be liable to the road payback. In a document that could be recorded.

Staff currently used Parcel ID numbers but if parcels are merged or separated, that information changes. Attorney said we could spell it out and incorporate the process into a Town Resolution that would identify those parcels using either the tax account numbers or legal Parcel ID that would be required to pay a road payback. Then the Resolution could be recorded in the Brevard County Clerk of Courts. Anyone doing a title search or applying for title insurance would discover this "encumbrance".

Mayor then referenced the email from the Brook Hollow person regarding repaving. Franklin included it in the package. Franklin explained that the memo handed out last year at road workshop explained a process Highland County used to "grade" their paved roads. Scheduling the repaving of such roads, based on a graded criterion would support the reasoning for putting it in a future budget.

CM Ball said Riverview Drive and First Street were both repaved using the Special Assessment process. Council discussed various methods to repave. Franklin said it was only for discussion at this point. Town has been setting aside surplus reserves for repaving for several years.

Karl gave the example of how Town could do special assessment to pave the roads. He also strongly suggested that the Town change the language to put the maintenance responsibility on the HOA and have that language in the Covenants.

Amend the subdivision Sections of the Code (Art XIV, XVII, XIII) to make it the responsibility of the subdivision in their covenants to maintain the paved roads in the future. If they fail to do so, the Town could step in and do it and use the Special Assessment process to pay for it. It would be for the health safety and welfare.

Morris wants to circle back to why we need to ask for ROW. He explained that St. Johns River Water Management District requires the same type of construction whether the applicant is constructing a dirt road or a paved road. Council asked him to provide those details. Morris said that is why the swales are designed so big; to handle stormwater runoff as if it were paved. Attorney said that information would be good to reference in the Code.

Chair Reilly, without objection, adjourned the workshop meeting at 8:22pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved: 8/03/2020

From: Drew Thompson <drew.thompson@prosolent.com>
Sent: Friday, July 17, 2020 4:29 PM
To: Pat Reilly <mayor@townofmalabar.org>
Cc: Murray.Hann@L3Harris.com <Murray.Hann@L3Harris.com>; Dorothy Carmel <dcarmel@townofmalabar.org>
Subject: T&GC Request for Agenda Item - Presentation to TC - Briar Creek Underpass

Agenda
Item
7.a.

Mayor Reilly,

As approved by T&GC motion, the T&GC would like to request the opportunity for a brief proposed project presentation to Town Council by Murray Hann, Vice Chair of TOM T&GC and Executive Administrator / Board Member of BMBA. The project anticipates that most needed funding would be sourced from BMBA with some possible participation from TOM. Regardless, TOM TC authorization for concept would be a needed prerequisite as the project involves TOM property. T&GC does not seek funding authorization at this time – just concept approval for further project plan development.

This past Monday night, at the TOM T&GC Meeting for July, I attended by phone and Murray Hann chaired the physical meeting. Among agenda items (as attached), was a presentation by Murray of a project that the BMBA - Brevard Mountain Bike Association (of which, I, too am a member) would like to primarily fund and construct. The project proposed is to build a wood bike path under the bridge located just prior to entering Brook Hollow. Murray presented the attached PowerPoint collection of slides – a copy of which I had available to reference from home during the meeting.

The proposed path (wood deck) would be on the east side of the creek at an appropriate height for bikers to have safe bridge clearance with a sufficient distance from the creek to allow use during the summer rainy season (at non-flood water levels). The wood deck for the bike path would be made of appropriate gauge pressure-treated wood, affixed to the bridge apron using stainless steel fasteners. A guardrail would be included along the creek side of the decking – to allow for folks to safely stand and observe the creek while bikers safely pass by. The structure would create minimal resistance to waterflow with regard to flood stages and would be built to withstand periodic flood submersion without damage to structural integrity of decking or bridge apron.

This project concept has been run past the Brevard County Environmentally Endangered Lands Program (EEL Pgm) as it would need that organization's cooperation for the routing of new trail segments to utilize this new feature. Mike Knight, Director of the EEL Pgm, has expressed support for the project, agreeing to incorporate the trail feature in future EEL Pgm managed trail routes if built.

As mentioned earlier, much of the project's funding and construction would be via BMBA. The project would enhance Malabar's Trail System and local ecotourism by providing a shade / rain protected observation deck to observe a Malabar creek on its path to Turkey Creek. Additionally, as a new alternative trail crossing, it is expected that the project would increase trail use safety by reducing some of the bike crossings of Briar Creek Blvd. at the marked trail crossing in the road. With a future Grapefruit Trail to Turkey Creek Sanctuary (south shore) trail recently approved in City of Palm Bay, this project would provide the critical link to create a contiguous trail system route. With this project, one could hike or bike without having to cross a public roadway within the greenway system located between Port Malabar Blvd to the north, Malabar Road to the south, and the Melbourne Tillman Canal to the west!

Could Murray share his brief Briar Creek Underpass presentation with TOM TC at an upcoming RTCM?

Thank you for considering this request. Please let me know if you have any questions and/or need additional actions by me at this time.

Drew Thompson
Chair, Trails and Greenways Committee, Town of Malabar (T&GC)

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.a
Meeting Date: August 03, 2020

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

SUBJECT: Property Owner Nicholas Shalton Requests a Zoning Map Amendment for the 4.72+/- acre parcel located at 2525 Malabar Road from Office Institutional (OI) and Rural Residential (RR) to Residential Limited Commercial (R/LC) to achieve consistency with the Future Land Use Map in the Comprehensive Plan. Property is in Section 31, Township 28 and Range 38 in the Town of Malabar. This is described in Ord 07-2020 for first reading.

BACKGROUND/HISTORY:

This is a request from a property owner to change the zoning to match the Town's intended use on the Future Land Use Map in the Town's Comprehensive Plan. P&Z heard this request at a public hearing of their Board on July 22, 2020. A memo will be provided to Council separately with the action taken by that Board.

This Council meeting is also a Public Hearing on the request for the zoning change. The method to accomplish this is done using an ordinance. Florida Statute provides the requirement for the second reading of the ordinance to also be at a Public Hearing. If this request is approved tonight, the ordinance 07-2020 will be advertised for a second reading on August 17, 2020.

The current zoning has the first 400 feet south of Malabar Road designated as Office Institutional (OI) and the remainder of the parcel to the south designated as Rural Residential (RR). The Town recently adopted an amended Future Land Use Map (FLUM) that changed the entire parcel to the mixed-use designation of Residential Limited Commercial (R/LC).

The property currently has a non-conforming single-family home in the OI area, a violation of the zoning regulations.

A recommendation from P&Z for Council to approve the zoning change will make the zoning consistent with the FLUM designation and allow the home to be renovated and occupied.

This is a zoning map amendment only. There is no request to change the FLUM.

ATTACHMENTS:

Application package from property owner
Ordinance 07-2020

Legal Advertisement for Florida Today and Notices to property owners based on radius package
Memos and Email from Town Planner, Engineer and Attorney

ACTION OPTIONS:

Council Action on first Reading of Ordinance 07-2020

Application for Zoning Change by
Property Owner Nicholas Shalton

Brevard County Property Appraiser
information sheet and map

Malabar Land Development Code
Article XII, Section 1-12.5.A.3.

Malabar Zoning Map showing subject
parcel

Malabar FLUM Map showing R/LC

TOWN OF MALABAR
2725 Malabar Road, Malabar, Florida 32950 TOWN OF MALABAR
(321) 727-7764 - Telephone
(321) 727-9997 - Fax

Date: 6/16/2020

JUN 16 2020
No. ZC 02-2020
RECEIVED

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

4.72 AC

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

Name of Applicant(s): Nicholas R. Shabon Telephone #: 321-750-3836
Mailing Address: 295 Ocean View Ln B Indian River, FL 32903

Legal description of property covered by application:

Township: 28 Range: 38 Section: 31
Lot/Block: 54 B-4 Parcel Subdivision: Snedekers Subd
Other Legal: _____

Property Address: 2525 Malabar Rd.

- 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: R/LC Proposed: R/LC
- Current and Proposed Zoning. The current and proposed zoning for the subject property shall be identified: Current: OI/RR 65 Proposed: R/LC
- Existing and Proposed Use. The existing and proposed use of the subject property shall be stated: Current: R/LC Proposed: R/LC

Fees:

- Rezoning - \$625.00 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 for **Residential**.
- Land Use Charges - \$300 which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant for **Residential**.
- Rezoning & Land Use Charges - \$1500.00 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 for **Commercial**.

(*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 \$ 665.00 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 LAND USE AMENDMENT AND ZONING CHANGE
TOWN OF MALABAR

JUN 16 2020

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: _____

I, Nicholas Shalton
Nicholas Shalton, being first duly sworn, depose and say that I, _____, am the 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.

Applicant Date
6/16/2020

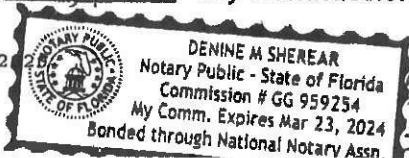
Nicholas Shalton
Applicant Date

Sworn and subscribed before me this 16 day of June, 2020.

NOTARY PUBLIC
STATE OF FLORIDA

Commission No.: GG 959254 My Commission Expires: MAR 23 2024

LU AND ZONING CHG AP
Revised February 14, 2020



Denine M Sherear
Denine M Sherear



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700
<https://www.bcpao.us>

PROPERTY DETAILS

Account 2851074
 Owners Shahton, Nicholas R
 Mailing Address 2525 Malabar Rd Malabar FL 32950
 Site Address 2525 Malabar Rd Malabar FL 32950
 Parcel ID 28-38-31-54-B-4
 Property Use 0110 - Single Family Residence
 Exemptions None
 Taxing District 34Z0 - Malabar
 Total Acres 4.72
 Subdivision Snedekers Subd Of Malabar
 Site Code 0381 - Malabar Rd (Sr514)
 Plat Book/Page 0001/0097
 Land Description Snedekers Subd Of Malabar W 1/2 Of Lot 4 Lying N Of Ditch Blk B



VALUE SUMMARY

Category	2019	2018	2017
Market Value	\$260,180	\$240,820	\$172,400
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$260,180	\$240,820	\$172,400
Assessed Value School	\$260,180	\$240,820	\$172,400
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$260,180	\$240,820	\$172,400
Taxable Value School	\$260,180	\$240,820	\$172,400

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
06/29/2017	\$275,000	WD	Improved	7932/1405
10/01/1998	\$139,000	04	Improved	3906/0492
02/01/1996	--	QC	Improved	3545/4502
01/01/1979	\$75,000	--	--	1997/0223
09/01/1971	\$70,000	--	--	1198/0079

BUILDINGS

PROPERTY DATA CARD #1

Building Use: 0110 - Single Family Residence

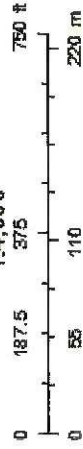
Materials	Details		
Exterior Wall:	Brick	Year Built	1972
Frame:	Wood Frame	Story Height	8
Roof:	Asph/Asb Shngl	Floors	1
Roof Structure:	Wood Truss	Residential Units	1
		Commercial Units	0
Sub-Areas	Extra Features		
Base Area (1st)	1,854	Carport	460
Open Porch	36	Enclosed Room	420
Total Base Area	1,854	Outbuilding	100
Total Sub Area	1,890	Covered Patio	114

Brevard County Property Appraiser



November 18, 2019

1:4,000



284,6350
Esri/Viewpoint/BCSNO

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

2525 Malabar Rd Malabar FL

ADMINISTRATIVE PROCEDURES

§ 1-12.5

Section 1-12.4. Town Council's role.

A. *Legislative Intent.* The legislative intent of the land development code is to provide the Town Council of the Town of Malabar zoning powers necessary to implement the Comprehensive Plan consistent with enabling legislation of Chapter 163 F.S.

B. *Powers of Town Council.*

1. *Enact Zoning Regulations.* Following receipt of a written report from the Town Planning and Zoning Board, the Town Council may amend or supplement the regulations and districts fixed by the adopted Town land development code. The Town Council shall hold a public hearing on such matters, with due public notice, if any change is to be considered and shall act on the proposed change after such hearing. In cases where the recommendation of the Town Planning and Zoning Board is adverse to the proposed change, such change shall not become effective except by an affirmative vote of a majority of three (3) members of the Town Council, after due process.
2. *Establish Fees and Appropriate Funds.* The Town Council may by resolution establish fees, charges, and expenses imposed by these land development code regulations.
3. *Consider and Act on Development Issues as Required.* The Town Council shall consider and act on development and growth management issues pursuant to this Code, Chapter 163 F.S., and other applicable laws and regulations.
4. *Enforce Land Development Code.* The Town Council shall enforce the land development code, including carrying out appropriate administrative and legal actions.
5. *Appoint and Confirm Members of Requisite Boards and Commissions.* The Town Council shall appoint and confirm members of the Town Planning and Zoning Board, the Board of Adjustment, and any other Board, Commission or Committee as may be deemed necessary by the Town Council or applicable laws.

Cross reference—Town council, § 2-26 et seq.

Section 1-12.5. Procedures for adopting, supplementing or amending the land development code.

A. *Initiating Amendments to the Land Development Code.* Amendments to the Land Development Code may be initiated by:

1. *Town Council.* The Town Council may initiate an amendment to the land development code by approving a written statement expressing its intent to amend this code and shall submit such written statement and any relevant supportive material to the Town Planning and Zoning Board for review and action pursuant to Section 1-12.5.C., 1-12.6(C) [1-12.5(C)] of this Chapter [Code].
2. *Planning and Zoning Board.* The Town Planning and Zoning Board may initiate a land development code amendment.

§ 1-12.5

MALABAR LAND DEVELOPMENT CODE

3. *Property Owner(s)*. An amendment to the land development code may be initiated by a petition signed by a property owner, or the property owner's authorized agent. Such petition shall be submitted to the office of the Town Clerk together with a fee as shall be determined by resolution of the Town Council. As many lots or parcels of property as the applicant may desire may be included in any single petition if they constitute one (1) contiguous. The petition shall be submitted on an application form prescribed by the Town Clerk. The application shall include, but not be limited to, the following:

- (a) *Property Description*. The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change
- (b) *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.
- (c) *Current and Proposed Zoning*. The current and proposed zoning for the subject property shall be identified.
- (d) *Existing and Proposed Use*. The existing and proposed use of the subject property shall be stated.
- (e) *Disclosure of Ownership*. The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

B. *Administrative Review*. The Town Clerk shall forward zoning change petitions, for which appropriate fees have been submitted, to all appropriate administrative staff for their review and comment. The application shall be reviewed for conformance with the requirements of this Chapter [Code].

C. *Planning and Zoning Board Review*. The Planning and Zoning Board, regardless of the source of the proposed zone change, shall hold a public hearing(s) thereon, with due public notice. The Town Planning and Zoning Board shall submit a written report and recommendation concerning proposed changes to the Town Council for official action. In its deliberations the Planning and Zoning Board shall consider the following criteria:

1. *Consistency with Plan*. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.
2. *Conformance with Ordinances*. Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances.

ADMINISTRATIVE PROCEDURES

§ 1-12.6

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.
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.
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 services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.
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.
7. *Economic Effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare.
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.
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.
10. *Other Matters.* Other matters which the Planning and Zoning Board may deem appropriate.

D. *Town Council Review.* The Town Council shall hold a public hearing on the requested zone change petition or amendment, with due public notice, if any change is to be considered and shall then act on the proposed change. An affirmative vote of three (3) members of the Town Council is required for favorable action on a zone change petition or amendment for which the Town Planning and Zoning Board has recommended denial. In its deliberations the Town Council shall consider the criteria identified in Section 1-12.5(C) above together with the findings and recommendations of the Planning and Zoning Board. Any modifications or revisions to the Town Planning and Zoning Board recommendation which involve a greater area of land to be rezoned or a more intensive zoning classification shall be the subject of an additional public hearing before the Town Council with due notice prior to action by the Town Council.

(Ord. No. 19-01, § 1, 3-4-19)

Cross reference—Ordinance adoption procedure, § 2-76 et seq.

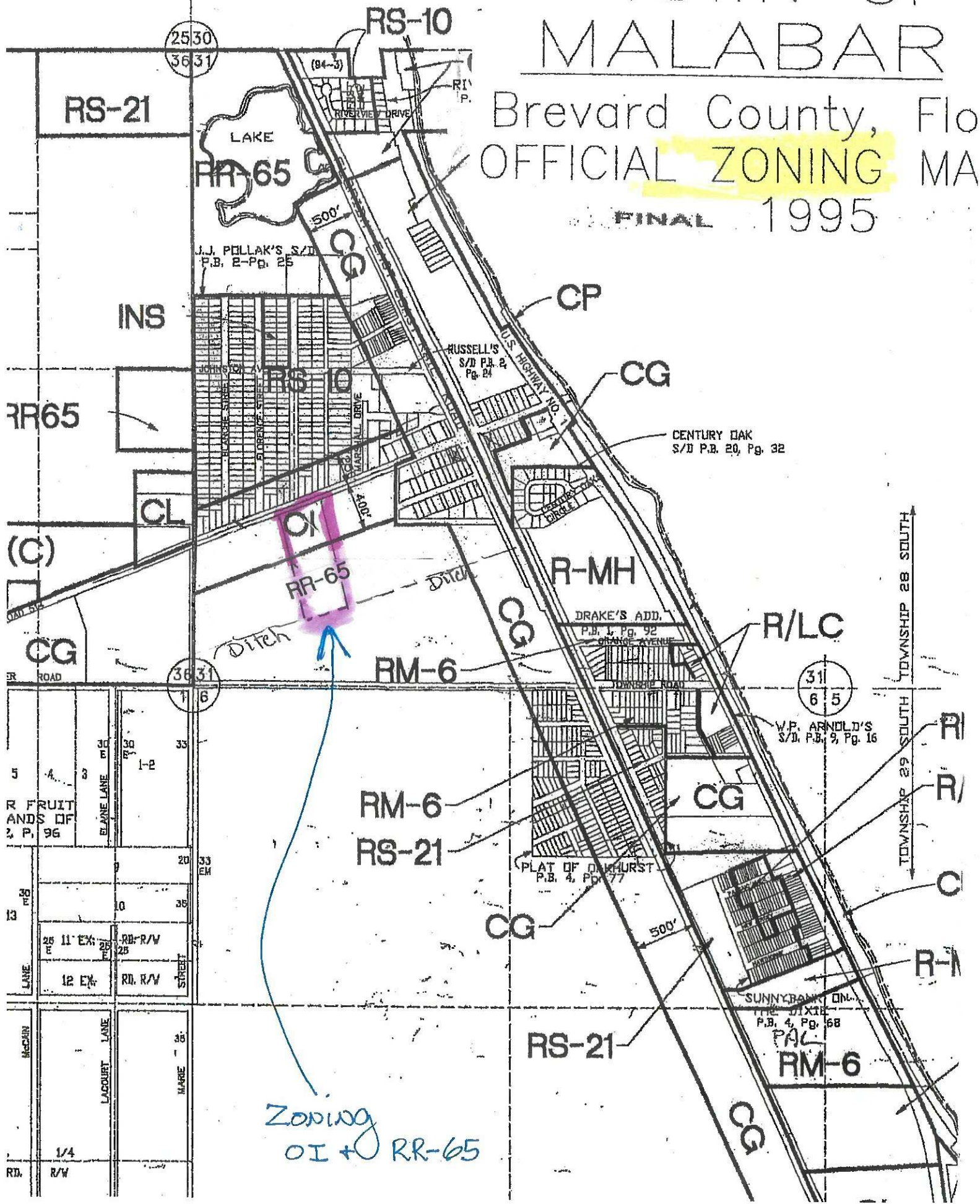
Section 1-12.6. Procedures for public hearings.

Due public notice shall be provided pursuant to § 166.041 F.S.

RANGE 37 EAST RANGE 38 EAST

TOWN OF MALABAR

Brevard County, Florida OFFICIAL ZONING MAP FINAL 1995



Zoning
OI + RR-65



TOWN OF MALABAR

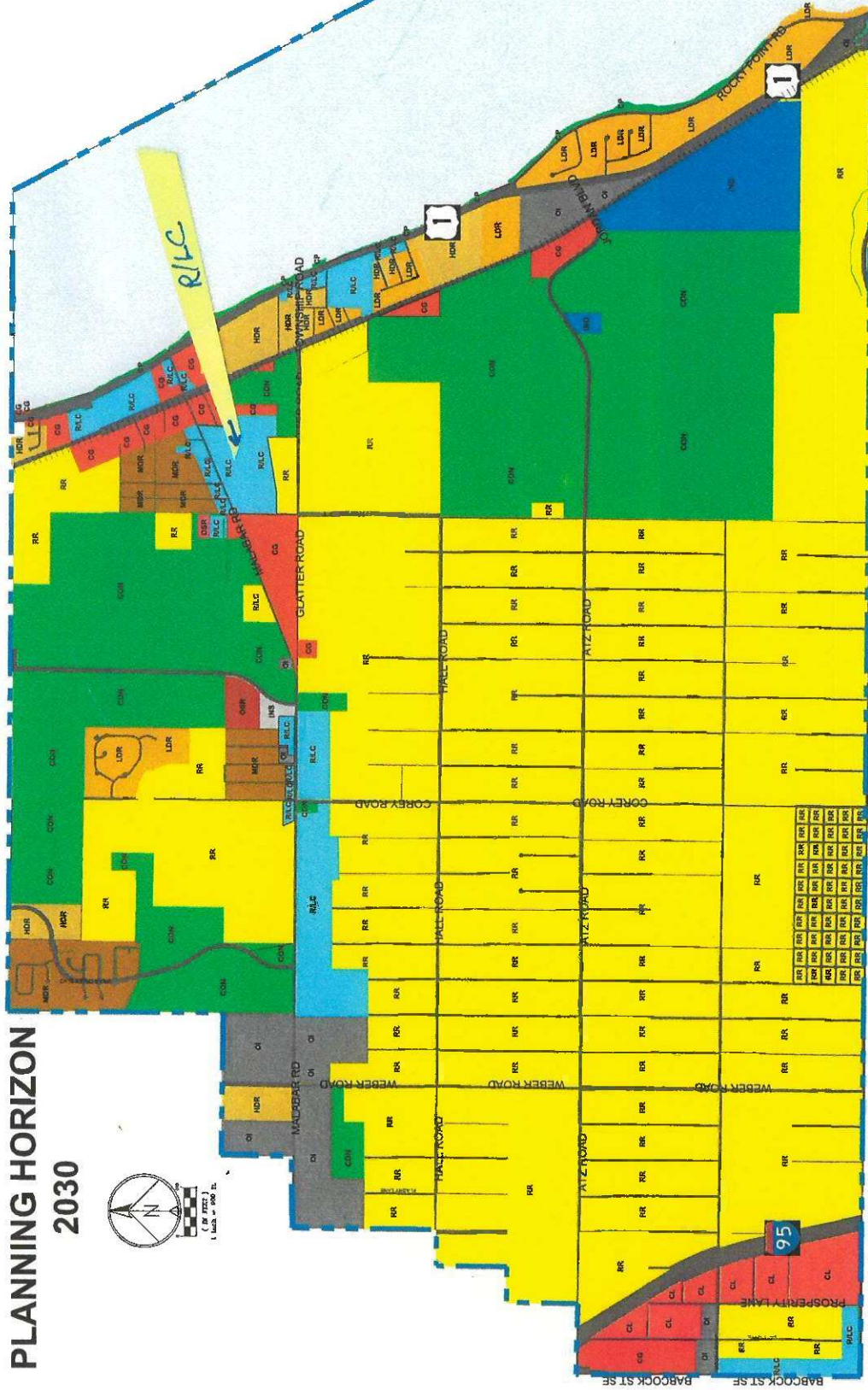
FUTURE LAND USE MAP

PLANNING HORIZON
2030



LAND USE DESIGNATIONS	
[Color]	RESIDENTIAL LIMITED COMMERCIAL (RLC)
[Color]	HIGH DENSITY RESIDENTIAL-4 UNITS PER ACRE (H4R)
[Color]	MEDIUM DENSITY RESIDENTIAL-4 UNITS PER ACRE (M4R)
[Color]	LOW DENSITY RESIDENTIAL-2 UNITS PER ACRE (L2R)
[Color]	RURAL RESIDENTIAL-1 UNIT PER 1/2 ACRE (R1H)
[Color]	COMMERCIAL GENERAL (CG)
[Color]	COMMERCIAL LIMITED (CL)
[Color]	INDUSTRIAL (ID)
[Color]	OFFICE INSTITUTIONAL (OI)
[Color]	INSTITUTIONAL (IN)
[Color]	OPEN SPACE AND RECREATION (OSR)
[Color]	MULTI-FAMILY RESIDENTIAL OR OFFICE SPACE (MRO)
[Color]	CONSERVATION (CON)
[Color]	RECREATIONAL SERVICES (RS)
[Color]	PAV. RESIDENTIAL OR COMMERCIAL
[Color]	COASTAL RESERVE (CR)
[Color]	MUNICIPAL BOUNDARY BORDER
[Color]	ROAD
[Color]	RAILROAD

THIS IS TO CERTIFY THAT THIS IS THE OFFICIAL PLIN MAP ADOPTED BY THE TOWN OF MALABAR, FLORIDA.



BREVARD COUNTY, FLORIDA
PRINTED DATE: AUGUST 2019

ORDINANCE 2020-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE ZONING MAP TO MATCH THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN FOR THE 4.72+/- ACRE SITE LOCATED AT 2525 MALABAR ROAD, ALSO KNOWN AS PARCEL B-4 IN SNEDEKERS SUBDIVISION IN SECTION 31, TOWNSHIP 28 AND RANGE 38, MALABAR, FLORIDA FROM RURAL RESIDENTIAL (RR-65) AND OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL/LIMITED COMMERCIAL (R/LC); PROVIDING FOR AMENDMENT TO THE TOWN ZONING MAP; 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 request from the property owner, Mr. Nicholas Shalton and the recommendation of the Planning and Zoning Board and approves the Zoning change for the property described below to be consistent with the Future Land Use Map designation of *Residential/Limited Commercial (R/LC)*:

The entire portion of Block B, Lot 4 of Snedekers Subdivision in Township 28, Range 38, Section 31, Malabar, Brevard County, Florida. This property is located at 2525 Malabar Road and consists of 4.72 acres +/-.

Section 2. The Town Clerk is hereby authorized and directed to cause the revision to the 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 effective date of this ordinance shall be six (6) days following adoption by Council.

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

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

This ordinance will become effective and considered adopted by the Malabar Town Council six business days from the date of adoption at second reading.

BY:

(seal)

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

P&Z PH: 7/22/2020
1st Reading: 8/03/2020
2nd Reading: _____



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

To: brelegals@gannett.com

From: Debby Franklin, Town Clerk, Town of Malabar, Acct # 126287

June 24, 2020

Please place the following legal ad one time on Thursday, July 2, 2020. Please put the heading in **BOLD** font. Please send proof via email to: townclerk@townofmalabar.org and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARINGS**

The Town of Malabar's Planning and Zoning Board shall conduct a Public Hearing on Wednesday July 22, 2020 at 7:00 PM to consider a request for a Zoning Map change from Office Institutional (OI) and Rural Residential (RR-65) to Residential/Limited Commercial (R/LC) to match the current Future Land Use Map Designation for a 4.72+/- acre site located at 2525 Malabar Road. The applicant is the Property Owner, Mr. Nicholas Shalton.

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, August 03, 2020 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 this document are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. ***All interested parties may email comments to townclerk@townofmalabar.org or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at these meetings of the Planning and Zoning Board and Town Council with respect to this topic.***

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, CMC, Town Clerk/Treasurer.



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

June 24, 2020

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DEAR PROPERTY OWNER:

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE LISTED AS A PROPERTY OWNER WITHIN 500' OF THE PROPOSED REQUEST TO AMEND THE TOWN'S ZONING MAP TO MATCH THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP. YOU ARE INVITED TO EMAIL, SUBMIT WRITTEN COMMENTS OR ATTEND AND SPEAK AT THE PUBLIC HEARINGS AT THE:

**PLANNING AND ZONING BOARD MEETING ON WEDNESDAY, JULY 22, 2020 AT 7:00PM
AND MALABAR COUNCIL MEETING ON MONDAY, AUGUST 03, 2020 AT 7:30PM.**

24

SHALTON, Nick

BATCHER, MICHAEL A
2099 NE SYRACUSE CT
PALM BAY FL 32905-3923

BEATTY, CARLALAN
775 STONY CREEK RD
HADLEY NY 12835-2309

CATANIA, MICHAEL
1415 FLORENCE ST
MALABAR FL 32950-6918

CDA SOLUTIONS INC
7622 EMERALD DR, STE 5
WEST MELBOURNE FL 32904-1124

CREEL, KEVIN
CREEL, TAMMY
1445 BLANCHE ST
MALABAR FL 32950-6906

DAVIS, LAURANCE III
DAVIS, GLORIA
1475 MARIE ST
MALABAR FL 32950-

GASPERINI, ROSITA SERNA
1405 BLANCHE ST
MALABAR FL 32950-6906

GRINDLEY, JOEL
130 POINSETTA ST
INDIALANTIC FL 32903-2537

HANCOCK, JAMES H, JR
PO BOX 140791
ORLANDO FL 32814-0791

JEAN ANN BAMBERGER REVOCABLE
TRUST
PO BOX 500057
MALABAR FL 32950-0057

MAHONEY, MARK D
MAHONEY, LAURA
2475 MALABAR RD
MALABAR FL 32950-

MARSHALL, TIMOTHY W
MARSHALL, JACQUELINE
3795 BURTON RD
MALABAR FL 32950-

MATHEWS, TERRY D
7665 OAK ST N
MELBOURNE FL 32904-

MILLER, WILLIAM E
WISE, EDITH S
2530 MALABAR RD
MALABAR FL 32950-

MP42 LLC
PO BOX 23023
TAMPA FL 33623-2023

OAKMONT PRESERVE SUBDIVISION
HOMEOWNERS ASSOCIATION INC
300 E NEW HAVEN AVE
MELBOURNE FL 32901-

PROCTOR, DOUGLAS K
5792 DE SOTO ROAD
LAKE WORTH FL 33463-

ROULSTON, JAMES K
ROULSTON, CAROL K
PO BOX 500067
MALABAR FL 32950-0067

SHALTON, NICHOLAS R
2525 MALABAR RD
MALABAR FL 32950-4410

SLATE PROPERTY MANAGEMENT LLC
7790 INDUSTRIAL RD
MELBOURNE FL 32904-1631

THOMAS, CHRISTOPHER B
299 LACHINE ST SW
PALM BAY FL 32908-

THOMAS, GEORGE
3009 E CORTEZ CT
IRVING TX 75062-

TOWNSEND, JAMES H
1401 FLORENCE ST
MALABAR FL 32950-6918

WILBUR, ROBERT JR
WILBUR, KATHIE L
PO BOX 500559
MALABAR FL 32950-0559

TOWN OF MALABAR

MAY 05 2020

RECEIVED

RADIUS MAP

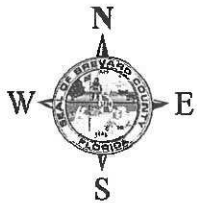
TOWN OF MALABAR

2525 MALABAR ROAD

shalton500

MAY 05 2020

RECEIVED







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: 3/6/2020

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

MAY 05 2020

RECEIVED

BUFF_ID	TAXID	PARCELID	OWNER1	OWNER2	MAIL1	MAIL2	CITY	STATE	ZIP5	ZIP4
1	0									
2	2851144	28	3831-54-4-40	BATCHER, MICHAEL A			2099 NE SYRACUSE CT			PALM BAY FL 32905-3923
3	2850963	28	3831-00-500	BEATTY, CARL ALAN			775 STONY CREEK RD			HADLEY NY 12835-2309
4	2851121	28	3831-54-3-7	CATANIA, MICHAEL			1415 FLORENCE ST			MALABAR FL 32950-6918
5	2851116	28	3831-54-2-5	CDA SOLUTIONS INC			7622 EMERALD DR, STE 5			WEST MELBOURNE FL 32904-1124
6	2851128	28	3831-54-4-6	CREEL, KEVIN			1445 BLANCHE ST			MALABAR FL 32950-6906
7	2851168	28	3831-54-5-44	DAVIS, LAURANCE III			1475 MARIE ST			MALABAR FL 32950-
8	2851129	28	3831-54-4-8	GASPERINI, ROSITA SERNA			1405 BLANCHE ST			MALABAR FL 32950-6906
9	2851069	28	3831-54-B-1.02	GRINDLEY, JOEL			130 POINSETTA ST			INDIALANTIC FL 32903-2537
10	2851172	28	3831-54-5-50	HANCOCK, JAMES H, JR			PO BOX 140791			ORLANDO FL 32814-0791
11	2851072	28	3831-54-B-3.02	JEAN ANN BAMBERGER			REVOCABLE TRUST			PO BOX 500057 MALABAR FL 32950-0057
12	2851075	28	3831-54-B-4.01	JEAN ANN BAMBERGER			REVOCABLE TRUST			PO BOX 500057 MALABAR FL 32950-0057
13	2851077	28	3831-54-B-4.03	JEAN ANN BAMBERGER			REVOCABLE TRUST			PO BOX 500057 MALABAR FL 32950-0057
14	2851070	28	3831-54-B-3	MAHONEY, MARK D			2475 MALABAR RD			MALABAR FL 32950-
15	2851171	28	3831-54-5-48	MARSHALL, TIMOTHY W			JACQUELINE			3795 BURTON RD MALABAR FL 32950-
16	2851170	28	3831-54-5-47	MARSHALL, TIMOTHY W			JACQUELINE			3795 BURTON RD MALABAR FL 32950-
17	2851169	28	3831-54-5-46	MARSHALL, TIMOTHY W			JACQUELINE			3795 BURTON RD MALABAR FL 32950-
18	2851055	28	3831-50-A-8.01	MATHEWS, TERRY D			7665 OAK ST N			MELBOURNE FL 32904-
19	2851114	28	3831-54-2-1.01	MILLER, WILLIAM E			WISE, EDITH S			2530 MALABAR RD MALABAR FL 32950-
20	2851076	28	3831-54-B-4.02	MP42 LLC			PO BOX 23023			TAMPA FL 33623-2023
21	2851088	28	3831-54-B-52	MP42 LLC			PO BOX 23023			TAMPA FL 33623-2023
22	2865076	28	3831-UU-P.4	OAKMONT PRESERVE SUBDIVISION			HOMEOWNERS ASSOCIATION INC			300 E NEW HAVEN AVE MELBOURNE FL 32901-
23	2851127	28	3831-54-4-1	PROCTOR, DOUGLAS K			5792 DE SOTO ROAD			LAKE WORTH FL 33463-
24	2851118	28	3831-54-3-1	ROULSTON, JAMES K			ROULSTON, CAROL K			PO BOX 500067 MALABAR FL 32950-0067
25	2851074	28	3831-54-B-4	SHALTON, NICHOLAS R			2525 MALABAR RD			MALABAR FL 32950-4410
26	2851068	28	3831-54-B-1.01	SLATE PROPERTY MANAGEMENT LLC			7790 INDUSTRIAL RD			MELBOURNE FL 32904-1631
27	2851115	28	3831-54-2-2	THOMAS, CHRISTOPHER B			299 LACHINE ST SW			PALM BAY FL 32908-
28	2851119	28	3831-54-3-3	THOMAS, GEORGE			3009 E CORTEZ CT			IRVING TX 75062-
29	2851122	28	3831-54-3-9	TOWNSEND, JAMES H			1401 FLORENCE ST			MALABAR FL 32950-6918
30	2851073	28	3831-54-B-3.03	WILBUR, ROBERT JR			WILBUR, KATHIE L			PO BOX 500559 MALABAR FL 32950-0559

Town Attorney Bohne email on the ten
criteria for consideration

Town Engineer Smith Memo

Town Planner Tod Mowery

RE: Town of Malabar- Review for 2525 Malabar Road Malabar (Re Zoning parcel to match the FLUM Amended in December 2019)

kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Tue 6/30/2020 5:10 AM

To: Denine Sherear <dsherear@townofmalabar.org>

Cc: Matt Stinnett <TownManager@townofmalabar.org>; Debby Franklin <townclerk@townofmalabar.org>;
todm@redtaildg.com <todm@redtaildg.com>

As a starting point, no development orders may be issued for this property unless the comp plan and the zoning are consistent. The current FLUM designates this property as RLC. The current zoning is OI. Clearly the zoning and FLUM are inconsistent. So in order to develop this property the FLUM and zoning must be consistent. As I recall the Council amended the FLUM for this and other properties to RLC and left the zoning designation as is and left the zoning decision up to the landowner.

The rezoning application requests that the zoning be changed to RLC which would be consistent with the FLUM.

Our rezoning criteria, 1-12.5 C, for which the Council/P&Z must consider are as follows (my comments in red):

1. Consistency With Plan. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board. **The proposed zoning will be consistent with the comp plan**
2. Conformance With Ordinances. Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances. **To be determined by facts presented at hearing**
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. **I offer as a suggestion that the Council's decision to change the FLUM on this property has created the inconsistency between the FLUM and current zoning**
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. **To be determined by facts presented at hearing**
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 services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. **To be determined by facts presented at hearing**
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. **To be determined by facts presented at hearing**
7. Economic Effects. Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare. **To be determined by facts presented at hearing**
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. **To be determined by facts presented at hearing**
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. **To be determined by facts presented at hearing**
10. Other Matters. Other matters which the Planning and Zoning Board may deem appropriate. **I am not privy to any other matters or conditions proposed or discussed by the P&Z. To be determined by facts presented at hearing**

Because this is a rezoning only and not coupled with a comp plan amendment the public hearing is quasi-judicial. This means that the council sits as the Judge of the evidence and makes its determination based on competent substantial evidence.

The evidence that meets this standard is more than mere opinion. It must be fact based opinion. This usually comes in the form of expert testimony. Unsupported opinions do not rise to the level of competent substantial evidence. Put another way, opinions that are not based on facts are generally not regarded as competent substantial evidence.

The Supreme Court of Florida has defined substantial evidence as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla.1957). For the "substantial" evidence to also constitute "competent" evidence, the evidence relied upon "should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." see *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986).

Such evidence and testimony, including that of the objecting residents must "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." Certainly the presentation of the applicant with evidence, the staff and the members of the public should be considered. Such evidence; however, should be more than mere opinions unsupported by facts. However, where the opinions are fact based then then they are to be given due consideration. Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. For example, lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise. Lay witnesses' speculation about potential problems and general unfavorable impacts of a proposed land use are not, however, considered evidence. Similarly, lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. There must be evidence other than the lay witnesses' opinions to support such claims.

When the facts are such that a zoning authority has a choice between two alternatives, it is up to the zoning authority to make the choice. Under the correct legal standard, citizen testimony in a zoning matter is perfectly permissible and constitutes evidence, so long as it is fact-based. Mere generalized statements of opposition are to be disregarded, but fact-based testimony is not. The facts disclosed by objecting neighbors should be considered.

But I must caution that if the zoning request is denied it will definitely prevent the property from being developed and it could form the basis for a Bert Harris claim. Such a claim is based on the premise that a governmental act which inordinately burdens real property can lead to the governmental body paying compensation to the landowner.

The obvious question is what does the applicant propose as the use of the property if the rezoning is approved. The best answer is that the permitted uses in RLC could be potential uses for the property.

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

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TOWN OF MALABAR
MEMORANDUM

TOWN OF MALABAR

JUL 10 2020

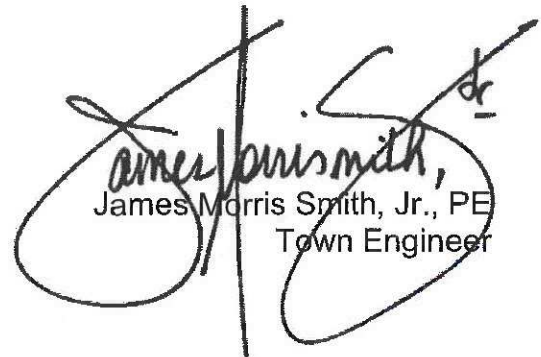
RECEIVED

Date: June 30, 2020
To: Denine Sherear, Building Department Manager
From: Morris Smith, Town Engineer
Ref: Rezoning Request to Match FLUM Amended in December 2019

Memo: 20-CE-12
Project No.
Variance No.:

As per your request, I have reviewed the Application package for the above referenced item and I have no objections to the Rezoning Request.

Very Truly Yours,



James Morris Smith, Jr., PE
Town Engineer



TOWN OF MALABAR

JUL 17 2020

RECEIVED

*corrected
page numbers
emailed
(DS)*

TO: Planning and Zoning Board, Town of Malabar

FROM: Tod Mowery, AICP, Town Planner

RE: Rezoning Request for Nicholas R. Shalton property located at 2525 Malabar Road

DATE: July 15, 2020

CURRENT ZONING AND LAND USE: OI/RR65 Office Institutional and Rural Residential / RLC Residential Limited Commercial

APPLICANT: Nicholas R. Shalton

OWNER: Nicholas R. Shalton

LOCATION: 2525 Malabar Road

PARCEL IDs: 28-38-31-54-B-4

LEGAL DESCRIPTION: Snedekers Subd of Malabar W ½ of Lot 4 Lying N of Ditch Blk B.

SIZE: 4.72 acres

EXISTING USE: Single Family Home

SURROUNDING ZONING / LAND USE

South: Town of Malabar – RR65/RLC

West: Town of Malabar - OI/RLC

North: Town of Malabar – OI/RLC

East: Town of Malabar – OI/RLC

REQUESTED ZONING: R/LC - Residential Limited Commercial



100 S. 2nd Street, Fort Pierce, FL 34950

772-742-1555

info@redtaildg.com

Land Planning - Landscape Architecture - Project Management Permitting - Government Consulting

JUL 17 2020

RECEIVED

BACKGROUND AND ANALYSIS:

This applicant is requesting consideration for a rezoning from OI/RR65 to RLC. The property was subject to a recent Town Land Use change, initiated by the Town Council. This particular site is located in an area the Town Council has designated for a change in zoning to the R/LC category and thus an application that does not require a lot of special or unique consideration. The applicant's site is the first site within the recently changed land use area

In evaluating the proposal, the Town of Malabar's Land Development Code, in Article XII, Section 1-12.5 C. provides for the following criteria to be considered when seeking to amend the Zoning (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 surrounding parcels in each direction appear to lead to a consistent request in line with the minimum levels of service (LOS) standards. This site is clearly consistent with the Comprehensive Plan.

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 conformity 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.

The subject site has not seen any changes since the effective date of the Town's regulations and it remains consistent with the Town's regulations.

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 subject site has a dual zoning designation and it will now have a singular designation. The designation is compatible and would not result in any incompatible land uses.

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

There are no known public facility issues that would affect consideration of the site to the proposed designation.

6. Natural Environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of

JUL 17 2020

wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection.

RECEIVED

The site contains a home and a linear pond. Most of the site is free from tree coverage and at the time of site plan, if any protected species of wildlife or fauna are identified, they can be addressed. 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.

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.

As development begins to occur along Malabar Road, better access management tools and design standards maybe implemented to better protect the health, safety and welfare of the community.

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. Also, the subject parcels are Capable of handling the permitted uses of the Zoning district.

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.

Any motion by the Planning and Zoning Board should clearly state the reasonings as to why the request is being approved or denied. A motion from the Planning and Zoning Board should not just recommend, but must include specific language stating reasonings, which are based upon planning principles.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA REPORT NO: 10.b.

Meeting Date: August 03, 2020

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

SUBJECT: Public Hearing of Ord 2020-08 requesting Expedited State Review on this Request:

Land Use Map Amendment for the 24.35 acre (+/-) site known as a portion of Lot 25 and 26 in the Florida Indian River Land Company Subdivision, Section 2, Township 29 South, Range 37 East, Plat Book 1, Page 165 of the Public Records of Brevard County, Florida more particularly described in Ordinance 2020-08 from Office Institutional (OI) to Rural Residential (RR) Designation. The application is submitted by Mr. Malcolm Kirschenbaum, Manager of Weber Woods, LLC.

BACKGROUND/HISTORY:

This request is being made by the current property owner. When the Twin Lakes Subdivision was initially submitted, the applicant was told that it would be reviewed under the current Land Use Designation and Zoning Designation. When Council finally adopted the amended Future Land Use Map it changed the Designation from RR to OI, creating an inconsistency between the Zoning and Land Use.

In order to avoid possible conflicts in the future they are requesting we revert back to the previous Land Use Designation of RR in order to be consistent with the development of the subdivision zoning of RR-65.

The Memorandum attached to the application explains the issue. This request was heard at the P&Z Board meeting on July 22, 2020 as a Public Hearing as required by Florida Statutes 163. A separate memo will be provided with their recommendation.

If Council approves this request and the first reading of the ordinance the request will be submitted to the State for a 30-day review period. It will also be sent to the other agencies that have authority to comment on the requested change. If no challenges are made to the requested amendment it will be legally advertised and formally adopted at a subsequent Public Hearing at Council in September.

ATTACHMENTS:

Application, Memorandum summarizing need

Council Minutes of 5/6/19 stating subdivision would be reviewed under RR land use

Future Land Use Map showing parcel to be changed back to RR

Ordinance 2020-08 Amending Land Use Designation from OI to RR in the Comprehensive Plan

Notice of Public Hearing on Request published in Florida Today

ACTION OPTIONS:

Action on First Reading of Ord 2020-08

TOWN OF MALABAR
2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 – Telephone
(321) 727-9997 - Fax

JUN 24 2020 9:18

Date: June 15, 2020

No. _____

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): Malcolm Kirschenbaum, Weber Woods LLC Telephone #: _____
Mailing Address: 516 Delannoy Ave, Cocoa, FL 32922

Legal description of property covered by application:

Township: 29 Range: 37 Section: 02
Lot/Block: 26/25 Parcel Subdivision: _____
Other Legal: See Exhibit A.

Property Address: Not assigned.

- 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: Office Institutional Proposed: Rural Residential
- Current and Proposed Zoning. The current and proposed zoning for the subject property shall be identified: Current: RR-65 Proposed: RR-65
- Existing and Proposed Use. The existing and proposed use of the subject property shall be stated: Current: Vacant Residential Land Single-Family Proposed: single family residential subdivision with 16 lots

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 \$ 300 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.


Signature of Applicant

Signature of Applicant

TOWN OF MALABAR
APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE

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, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, being first duly sworn, depose and say that I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, 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.

[Signature]
Applicant

6/18/2020
Date

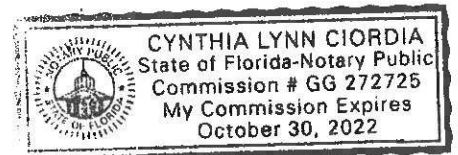
Applicant

Date

Sworn and subscribed before me this 18th day of June, 2020.

NOTARY PUBLIC
STATE OF FLORIDA

Commission No.: GG 272725 My Commission Expires: 10/30/2022



I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, being first duly sworn, depose and say that I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, am the 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.

[Signature]
Applicant

6/18/2020
Date

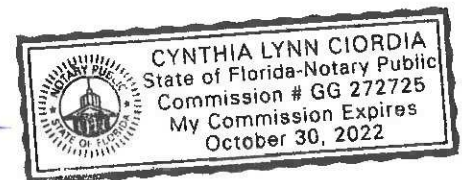
Applicant

Date

Sworn and subscribed before me this 18th day of June, 2020.

NOTARY PUBLIC
STATE OF FLORIDA

Commission No. GG 272725 My Commission Expires: 10/30/2022



Town of Malabar Comprehensive Plan Amendment Application Memorandum

Property owned by Weber Woods LLC

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

Comprehensive Plan Amendment

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

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

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

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

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

Jack Hessey, Whimsical Lane. He commented that half of the six owners of the properties are from out of state. He thinks Council is being over generous to the out of town speculators.

Bruce Moia, MBV Associates, representing 25-acre piece. They have been here a couple of times. The owners are not in favor of the change. He is the owner of MBV and they recently submitted for a subdivision development.

Attorney Bohne told Council the applicants submitted a subdivision package for preliminary plat review. It will be reviewed under the current land use and zoning designation of RR (rural residential).

MOTION: CM Rivet / CM Vail to keep the depth to 660 feet - for discussion.

Discussion: CM Rivet understands we support commercial development. He supports that unless it negatively impacts the rural residential community. Putting commercial land use next to residential at the depth of 1,320 feet is too far into RR land use. Splitting the land use for these deep lots will protect the rural development. If we are serious about keeping Malabar rural, we would oppose a deeper depth.

CM Ball does not agree. To take a whole property and divide it could hurt both values. CM Rivet said the alternative is keeping it all the same. Keep it rural.

CM White said 660' is a lot of depth. He understands the resident's concerns, but a 660-foot buffer is extreme. He agrees with CM Vail.

CM Vail said splitting the land would create access problems. CM Vail said he thinks we can provide adequate buffer between the two land use designations so that the existing RR uses will not be adversely affected. We have a very limited commercial development especially due to the State purchase of land in the Industrial Park. We have to use the commercial we have. Residential tax base will not support the Town.

CM Ball said the key is to leave commercial development along the main corridors to support the rural residential development.

CM Vail keep it a whole property. The downside is the 660' buffer will be worthless. CM Vail said there are already regulations on buffer requirements in the code and if necessary, they can amend those to make it more restrictive.

Juliana Hirsch, 1035 Malabar Road. If we move to keep it half and half, then you will still need a buffer between the commercial and the residential. CM Rivet's argument doesn't stand. There is a larger buffer requirement whenever commercial abuts residential so if the land use change is at 1,320 feet or 660 feet, there will be a more restrictive setback. If Council changes the separation line to 660 feet, there is still a setback requirement due to the land use change. She stated she was asked personally during the P&Z discussion and the early Council discussions and does not see an additional protection to land owners, but rather an additional burden/restriction. If the land use designation goes back 1320 or 660 you will still have Commercial abutting residential. Whether you move the line. It is still abutting – she is totally against this. She stated that the wetland people have looked at her property and said that most of it is wetlands.

Vote: Ayes, 1 (CM Rivet); Nay, 3

ORDINANCE 2020-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2020-01; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE TOWN FROM OI (OFFICE INSTITUTIONAL) TO RR (RURAL RESIDENTIAL) FOR A PARCEL IN THE TOWN LYING ON THE SOUTH SIDE OF MALABAR ROAD AND EAST OF WEBER ROAD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Malabar updated its Future Land Use Map on May 20, 2019 pursuant to Ordinance 2018-01ER, which amended the designation for the property from Rural Residential to Office Institutional; and

WHEREAS, Council's intention was for the property to be allowed to develop as a residential subdivision pursuant to a preliminary plat under review by the Town at the time, which has subsequently been approved; and

WHEREAS, it is Council's intention to adopt the Comprehensive Plan Amendment in order for the proposed residential subdivision to be consistent with the designation on the Future Land Use Map.

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

SECTION 1. The Future Land Use Map of the Comprehensive Plan of the Town is hereby amended to provide for Rural Residential use for the parcel as more particularly described as follows:

"A PORTION OF LOT 25 AND 26, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION, SECTION 2, TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT BOOK 1, PAGE 165, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT MARKING THE NORTHWEST CORNER OF SAID SECTION 2, THENCE RUN SOUTH 89°59'54" EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 471.36 FEET TO A POINT; THENCE RUN SOUTH 00°07'32" EAST, A DISTANCE OF 58.00 FEET TO A POINT, SAID POINT BEING ON THE SOUTH RIGHT OF WAY LINE OF STATE ROUTE 514 AND ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE RUN SOUTH 89°59'54" EAST, ALONG THE SOUTH RIGHT OF WAY LINE OF SAID STATE ROUTE 514, A DISTANCE OF 497.91 FEET; THENCE NORTH 00°00'06" EAST, A DISTANCE OF 25.00 FEET; THENCE SOUTH 89°59'54" EAST, A DISTANCE OF 348.30 FEET TO A POINT ON THE EAST LINE OF LOT 26, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION OF SAID SECTION 2; THENCE SOUTH 00°07'21" EAST, ALONG THE EAST LINE OF SAID LOT 26, A DISTANCE OF 1287.71 FEET TO A POINT, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 26; THENCE RUN NORTH 89°59'58" WEST, ALONG THE SOUTH LINE OF SAID LOT 25 AND 26, A DISTANCE OF 846.19 FEET; THENCE RUN NORTH 00°07'32" WEST, A DISTANCE OF 1262.73 FEET TO THE POINT OF BEGINNING."

SECTION 2. The current and proposed zoning for the Property is Rural Residential (RR-65). The Property is vacant and the proposed use is single-family residential.

SECTION 3. It is the intention of the Malabar Town Council to adopt the amendment to the Comprehensive Plan. The Clerk of the Town is hereby directed to incorporate the approved Comprehensive Pain Amendment into the Comprehensive Plan of the Town.

SECTION 4. Town Staff is directed to send three full copies of the adopted amendment to the State Department of Economic Opportunity and one copy each to the Saint Johns River Water Management District and the Department of Environmental Protection.

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

SECTION 6. The effective date of this plan amendment, if the amendment is not timely challenged, shall be the date the state land planning agency posts a notice of intent determining that this amendment is in compliance. If the amendment is timely challenged, or if the state land planning agency issues a notice of intent determining that this amendment is not in compliance, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective.

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

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

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

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST

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

P&Z Board Review: 7/22/2020
Transmittal Council Reading: 8/03/2020
Adoption Second Reading _____

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr.
Town Attorney

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

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

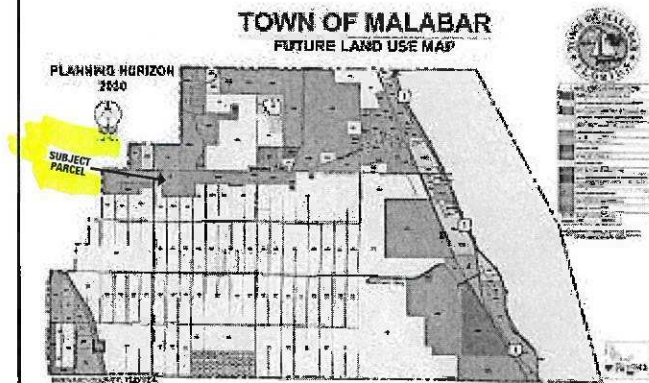
Thank you,
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

**NOTICE OF COMPREHENSIVE PLAN LARGE SCALE
AMENDMENT**

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

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

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



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

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

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 13.a and 13.b

Meeting Date: August 03, 2020

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

SUBJECT:

Discuss: 13.a

- Town Initiated Blanket Zoning Change to Match FLUM; or

Discuss: 13.b

- In addition, request property owner input of the five parcels on the south side of Malabar Road that FLUM changed to 1320 feet – keep at 1320' or reduce to 660'
-

BACKGROUND/HISTORY:

The P&Z Board Chair Wayne Abare made this suggestion to the Mayor for Council consideration. It was regarding the recent multiple requests for zoning changes. The suggestion is to send notices out to all property owners that had their land use designation changed and ask if they want the zoning changed to match. Give them 60 days for reply and then have Council decide if they want to do a blanket zoning map change so there is consistency between zoning and land use. That can be done in house.

Depth of Land Use designation for the five parcels south of Malabar Road:

The P&Z Board had originally recommended the entire parcels be included in the land use designations on the south side of Malabar Road. Council initially changed the depth to 660' but ultimately they were changed back to include the entire parcel depth. The parcels under discussion are shown on the next page as lots 1, 2, 3, 5 and 6.

Lots 1, 2 and 3 have the OI land use designation, for the entire depth of 1,320'. The option would be to reduce to 660' for the front and revert to RR for the rear portion. These lots at the west end of Town (lots 1, 2 and 3) have market values of \$580,000.00 to \$600,000.00 each. (from April 2019 data)

Lots 5 & 6 were changed to R/LC for the entire depth. The owner of Lot 5 is on record for wanting to keep the entire depth R/LC and change the zoning to match.

Does Council want staff to send notices out to these property owners to seek their preference?

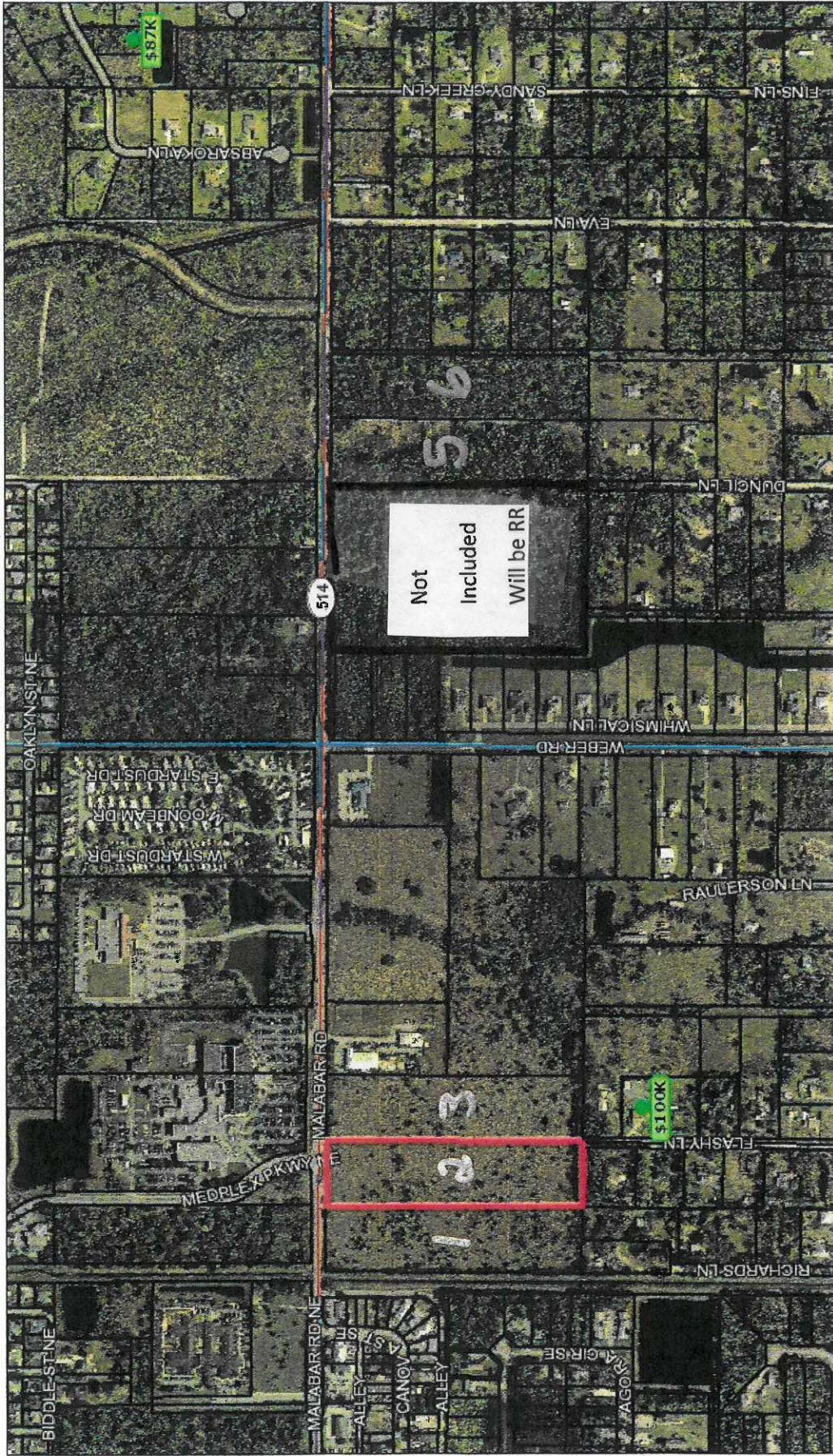
ATTACHMENTS:

- Aerial of the five lots under discussion.
- Map included in the Comprehensive Plan Amendment sent to the State showing how the designation would split the parcels.

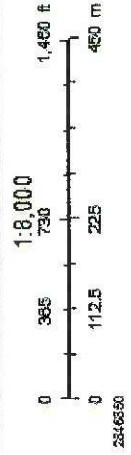
ACTION OPTIONS:

Direction to staff

Brevard County Property Appraiser



Not
Included
Will be RR

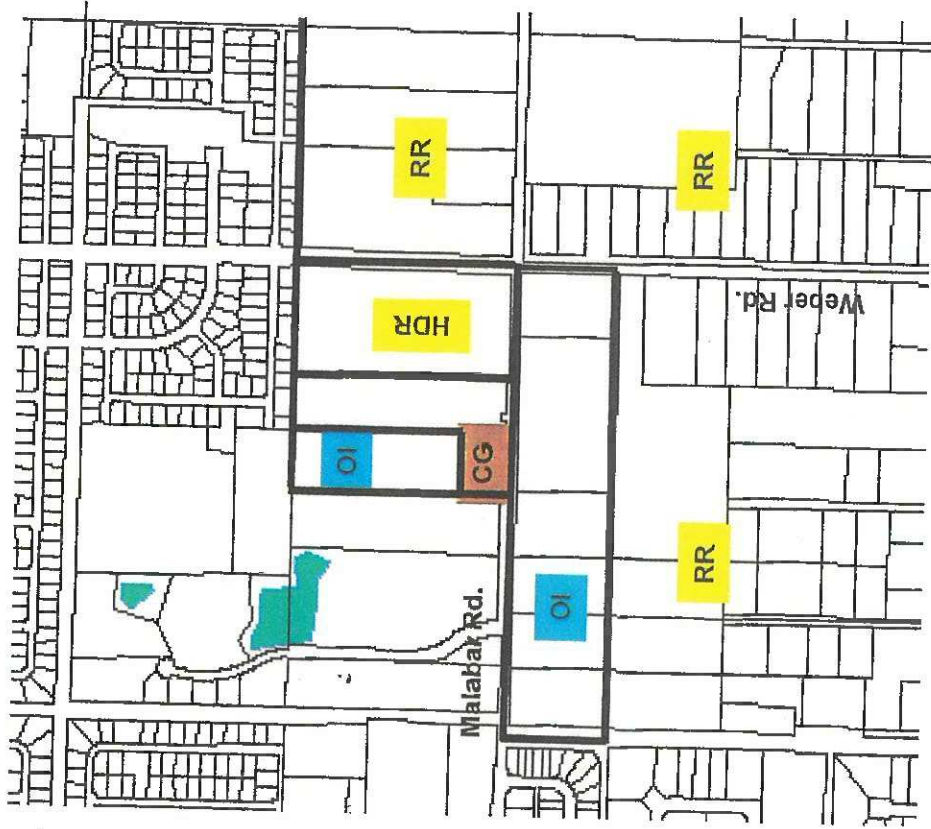


March 25, 2019

For illustration only. Not a survey. Map style may not precisely align.
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Land Use Along Malabar Rd. (West end)

Present Land Use



Proposed Land Use

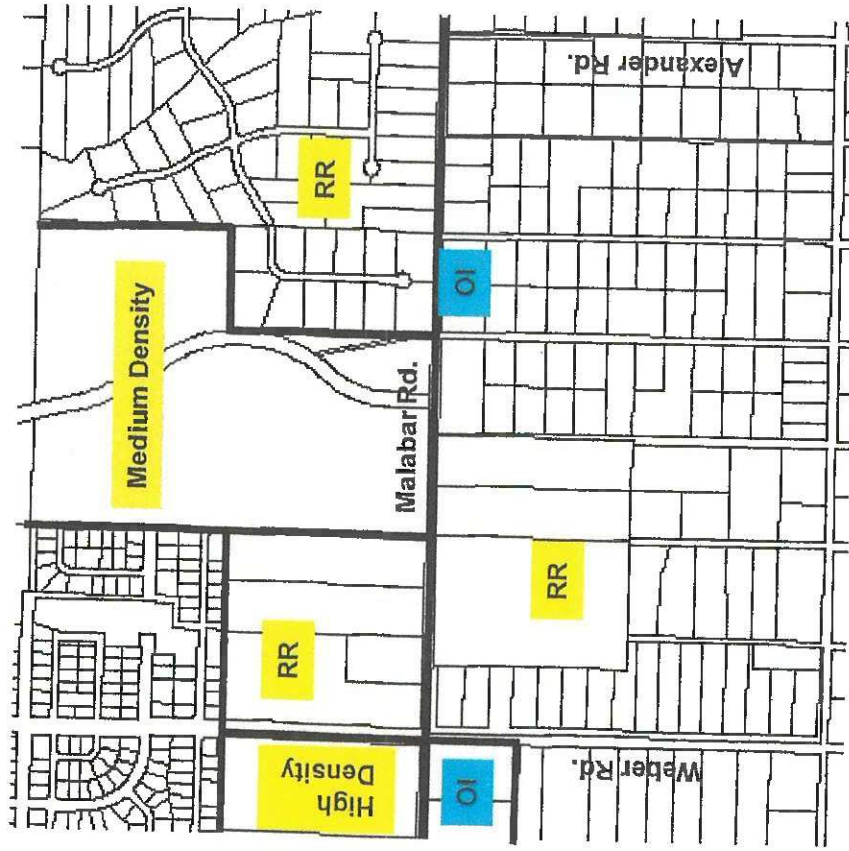


X = Homes

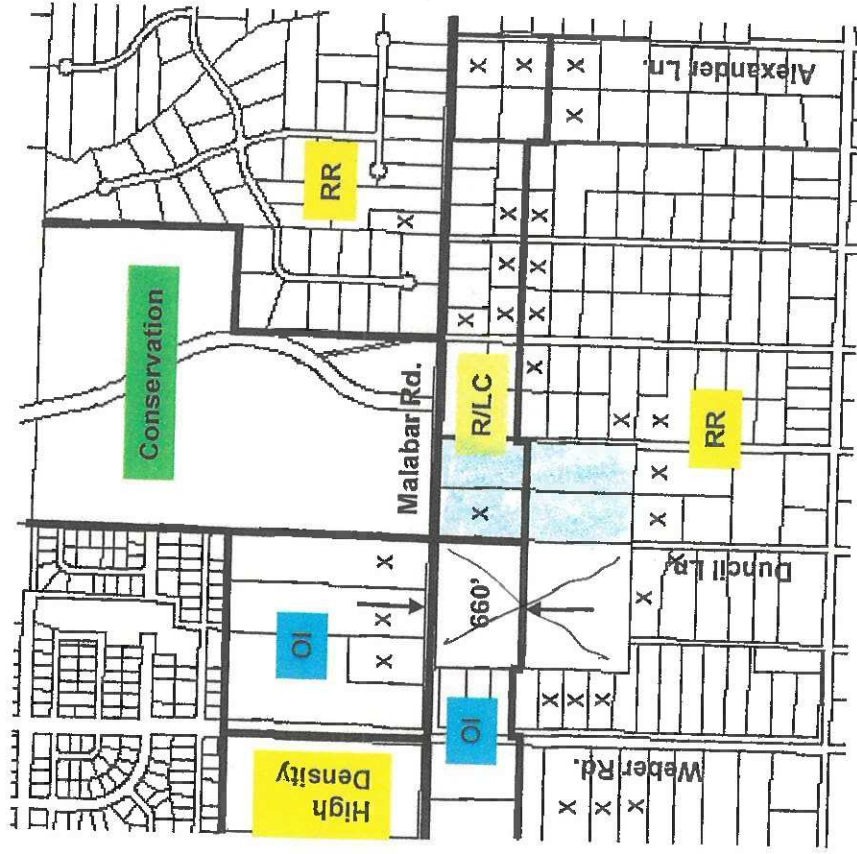
October 1, 2018

Land Use Along Malabar Rd. (Weber Rd. to Alexander Ln.)

Present Land Use



Proposed Land Use



X = Homes

October 1, 2018

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 13.a and 13.b

Meeting Date: August 03, 2020

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

SUBJECT:

Discuss: 13.a

- Town Initiated Blanket Zoning Change to Match FLUM; or

Discuss: 13.b

- In addition, request property owner input of the five parcels on the south side of Malabar Road that FLUM changed to 1320 feet – keep at 1320' or reduce to 660'
-

BACKGROUND/HISTORY:

The P&Z Board Chair Wayne Abare made this suggestion to the Mayor for Council consideration. It was regarding the recent multiple requests for zoning changes. The suggestion is to send notices out to all property owners that had their land use designation changed and ask if they want the zoning changed to match. Give them 60 days for reply and then have Council decide if they want to do a blanket zoning map change so there is consistency between zoning and land use. That can be done in house.

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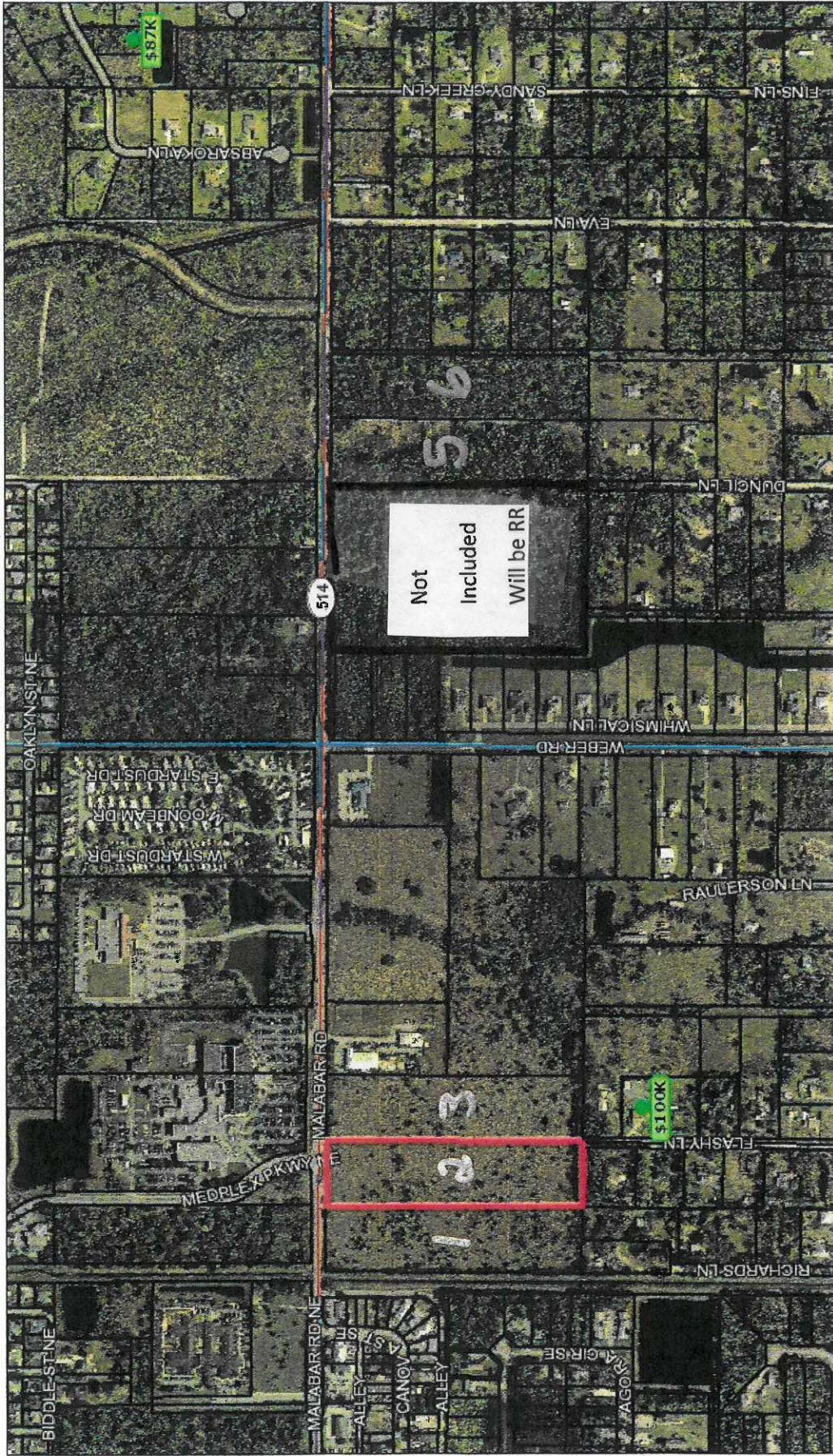
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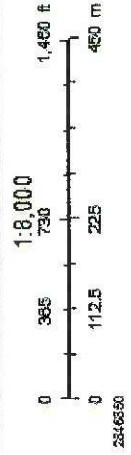
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Direction to staff

Brevard County Property Appraiser



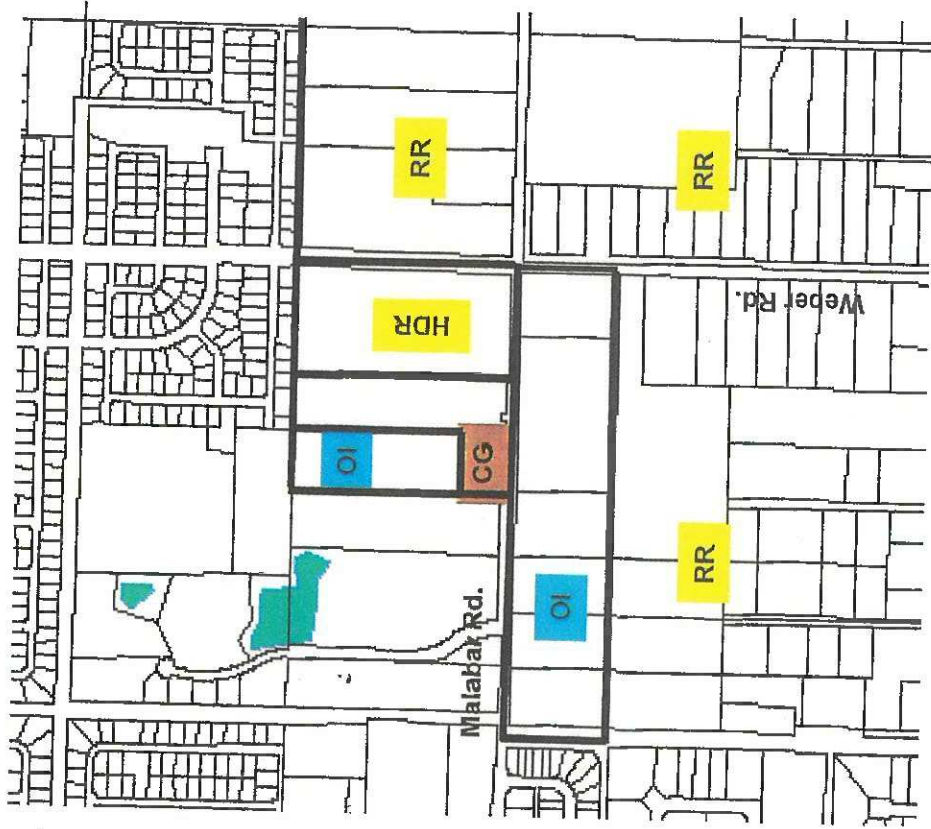
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Present Land Use



Proposed Land Use

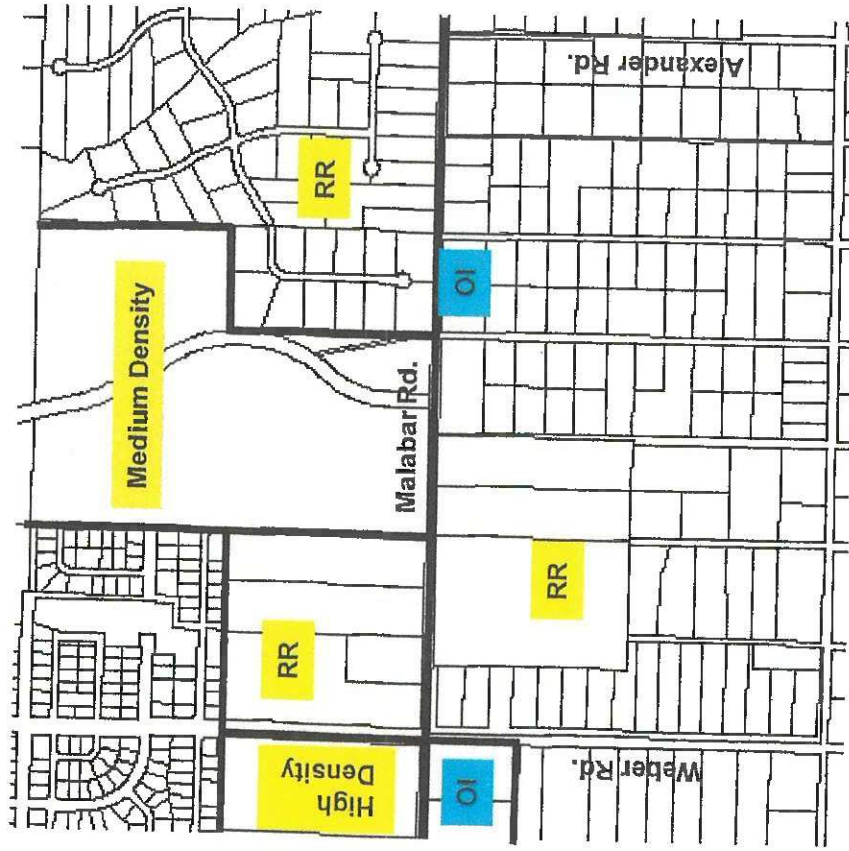


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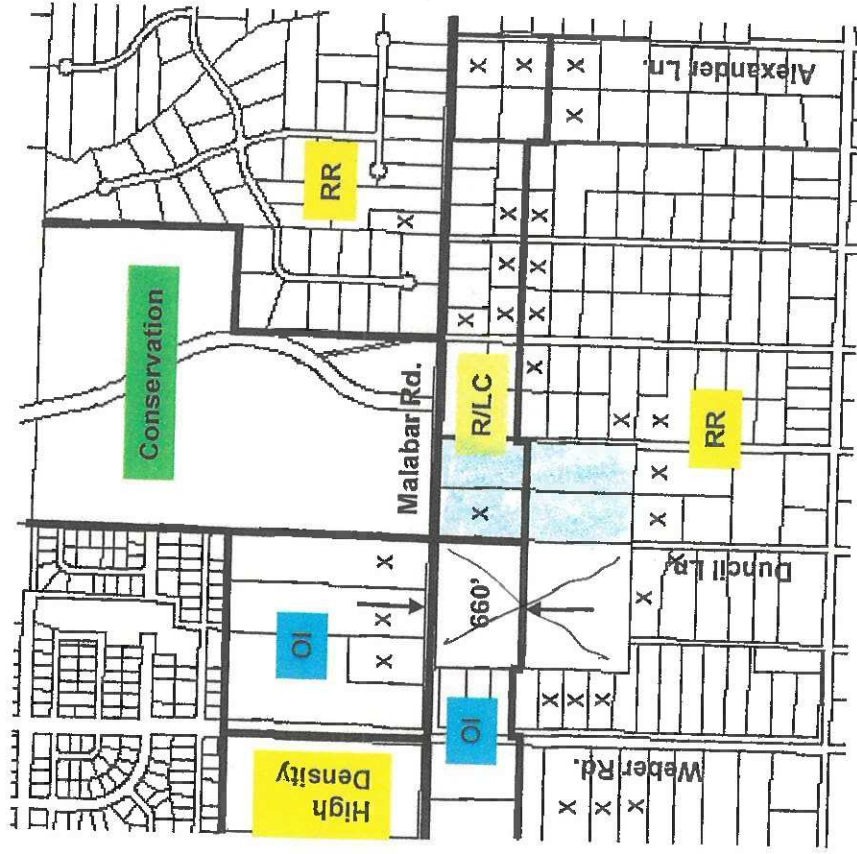
October 1, 2018

Land Use Along Malabar Rd. (Weber Rd. to Alexander Ln.)

Present Land Use



Proposed Land Use



X = Homes

October 1, 2018