



REGULAR TOWN COUNCIL MEETING

Monday, May 17, 2021 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 05/03/2021

Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

b. Consideration of Hunter Lane Paving Proposal

Exhibit: Agenda Report Number 4b

Attachments:

- **Agenda Report Number 4b** (Agenda_Report_Number_4b.pdf)

5. ATTORNEY REPORT

6. STAFF REPORTS

a. Manager

Exhibit: Agenda Report Number 6a

Attachments:

- **Agenda Report Number 6a** (Agenda_Report_Number_6a.pdf)

b. Clerk

c. Request Permanent Reservation for Bluegrass Jam at the Sandhill Trailhead - by K.D. "Don" Williams

Exhibit: Agenda Report Number 6c

Attachments:

- **Agenda Report Number 6c** (Agenda_Report_Number_6c.pdf)

7. PUBLIC COMMENTS

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do

not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

8. PUBLIC HEARINGS (3)

a. Amend Chapter 13 of the Malabar Code of Ordinances, Street Improvement (Ordinance 2021-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ARTICLE II, DIVISION 2 OF THE MALABAR CODE OF ORDINANCES RELATED TO STREETS; AMENDING SECTION 13-37 DEFINITIONS; AMENDING SECTION 13-38 PRECONDITION TO ISSUANCE OF BUILDING PERMIT; DELETING SECTION 13-40; AMENDING SECTION 13-41 ROADWAY IMPROVEMENT PROCESS AND ADDING EXHIBITS "B-4", "B-5" AND "B-6" TO SECTION 13-41; AMENDING SECTION 13-42 ROADWAY IMPROVEMENT PROCESS; AMENDING SECTION 13-47 REIMBURSEMENT FOR EXPENSES INCURRED BY OWNER IN CONNECTION WITH THE CONSTRUCTION OF ROAD IMPROVEMENT; AMENDING SECTION 13-48 IMPROVEMENT OF UNACCEPTED PORTION OF PARTIALLY IMPROVED ROAD; AMENDING SECTION 13-49 IMPROVEMENT REQUIRED IF LAND PARTIALLY ABUTS UNACCEPTED ROAD; DELETING ARTICLE III IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8a

Attachments:

- **Agenda Report Number 8a** (Agenda_Report_Number_8a.pdf)

b. Road Improvement Waiver Request - South 200 feet of Hunter Lane adjacent to Parcel 325; Applicant Mr. Cranston Gittens

Exhibit: Agenda Report Number 8b

Attachments:

- **Agenda Report Number 8b** (Agenda_Report_Number_8b.pdf)

c. First Public Hearing of two required to Amend the Malabar Zoning Map for approximately 1,716 acres as shown in Exhibit "A" and specifically excluding the Parcels listed in the Ordinance. (Ordinance 2021-05)

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 ALL PARCELS EXCEPT THOSE LISTED IN THIS ORDINANCE; PROVIDING FOR THE EXISTING ZONING CLASSIFICATION FOR THOSE PARCELS; PROVIDING ACCESS TO THE NEW ZONING MAP ON THE TOWN WEBSITE; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8c

Attachments:

- **Agenda Report Number 8c** (Agenda_Report_Number_8c.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

10. ACTION ITEMS

ORDINANCES: 1

RESOLUTIONS: 0

MISCELLANEOUS: 2

a. Amend Chapter 2 of Code to require Property Posting for Land Use Issues (Ordinance 2021-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE IV, CREATING A NEW SECTION 2-76 OF THE MALABAR CODE OF ORDINANCES RELATED TO ADOPTING ORDINANCES, HOLDING PUBLIC HEARINGS AND PROVIDING PUBLIC NOTICES, PROPERTY POSTINGS AND LEGAL ADVERTISEMENTS; PROVIDING FOR LIMITED EXCEPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a.pdf)

b. Surplus of Municipal Owned Property 2540 Johnston Avenue (Property formerly known as Huggins Park)

Exhibit: Agenda Report Number 10b

Attachments:

- **Agenda Report Number 10b** (Agenda_Report_Number_10b.pdf)

c. Select Representative for Mediation Meeting regarding Painted Acres v. Town of Malabar

Exhibit: Agenda Report Number 10c

Attachments:

- **Agenda Report Number 10c** (Agenda_Report_Number_10c.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

11. DISCUSSION/POSSIBLE ACTION

a. Status of Contract Discussion with Waste Management (WM) - Ms. Dina Reider-Hicks

Exhibit: Agenda Report Number 11a

Attachments:

- **Agenda Report Number 11a** (Agenda_Report_Number_11a.pdf)

b. Discuss Repeal of Resolution 17-2020 (CM White)

Exhibit: Agenda Report Number 11b

Attachments:

- **Agenda Report Number 11b** (Agenda_Report_Number_11b.pdf)

12. PUBLIC COMMENTS

General Items (Speaker Card Required)

13. REPORTS - MAYOR AND COUNCIL MEMBERS

14. ANNOUNCEMENTS

(2) Vacancies on the Trails and Greenways Committee

15. ADJOURNMENT

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

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

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on 05/11/2021 at 3:16 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.

Meeting Date: May 17, 2021

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

SUBJECT: Consent Agenda

BACKGROUND/HISTORY:

4.a. Town Council Regular Meeting Minutes – 05/03/2021

ATTACHMENTS:

a. Draft Minutes of 05/03/2021

ACTION OPTIONS:

Council Action on Consent Agenda

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MAY 03, 2021

7:30 PM

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

1. CALL TO ORDER:

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

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

LISA MORRELL

KARL BOHNE

DEBBY FRANKLIN

TOWN MANAGER: (ITM)

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

For the record, the Fire Chief Mike Foley was also present.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg April 19, 2021

4.b. 52nd Annual Professional Municipal Clerks Week May 2 - May 8, 2021

MOTION: CM Rivet / CM Vail to approve. Vote: All Aye.

5. ATTORNEY REPORT: Governor DeSantis issued two executive orders (EO) today: first will lift all Covid 19 restrictions on July 1 for all government agencies. The second one invalidates and suspends all local govt mandates or restrictions related to emergency declarations going forward after a maximum of 42 days. He thinks we fall under the first EO. CM Acquaviva stated the Florida Surgeon General came out with his opinion.

6. BCSO REPORT:

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Mayor read written report.

7.b. Park & Recreation Board: Chair Eric Bienvenu – a few things to talk about. Presentation by Annalie Harvey at last Park Bd mtg regarding plans for a regular Farmers Marketplace at the Malabar Community Park (MCP) with different themes; the Park Bd really supported the idea. He understands that she will present to Council at their next meeting and wants Council to know the Park Board will assist in any manner necessary.

He also reported the Park Bd has looked at putting a pavilion at the north end of Corey Road (entrance to Cameron Preserve) instead of just the one picnic table there now. They have applied for a grant with Home Depot.

Last update is the playground replacement: as ITM Lisa has previously reported the playground equipment is 18 years old and is rough. ITM Lisa has taken down parts of it that create a hazard or danger, but it has reached its serviceability and needs replacement. They have put out a survey for citizen input on the Town's website and Facebook page and he put a link to the survey on Next-door. They have gotten a good response of over 40 responses. They posed questions about the age groups the play equipment supports. They saw that the visitation rate is pretty high. Climbing walls, slides, and jungle gem elements were the most favored elements. Forrest and jungle were the most popular themes. Section on survey added comments. Mother and baby swing was very popular. A paved ADA trail around lake with exercise stops was also suggested. Historical markers were also suggested and those will blend with the historical house under development. The sale

reviewed lasts until June. The Park Bd submitted serious questions for the ITM Lisa to request regarding the warranty, installation cost, "coastal preservative coating". They also want to know if the metal in new equipment is equal to what they have now. Any idea of what normally breaks so they can plan for replacements, as necessary. CM Vail said the drums are still good. If they are still working and they are detached they will be kept. Nice climbing wall and two swings. CM Vail has person that has volunteered to refinish or recoat. Park Board Chair Eric Bienvenu stated that the shade structure will also need to be sand blasted and painted.

7.c. P&Z Board: no report

8. STAFF REPORTS: 8.a. Town Manager

Singhofen and Assc (SAI) may have a report to Council at next meeting. She is also ready to sit down and discuss WM rates with their management team. They have figures ready.

Talked about the FDOT insp of the bridge for Briar Creek Boulevard (entrance to Brook Hollow phase 1 Subdivision). Insp is done every two years. FDOT did not have any comments about the proposed bike path alongside the bridge. SM Rivet asked about Hunter Lane. ITM Lisa said she has followed up with the vendor and is still waiting on their estimator. They picked up the plans in March.

8.b. Fire Chief – went over fire report for March. Mayor asked about 4 power lines down. Chief said it was a typo and the corrected report shows it as 1.

8.c. Clerk – nothing. CM Acquaviva

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: 3

10.a. Road Improvement Waiver Request – unimproved portion of right-of-way in line with Beekeeper ROW and Old Mission ROW running west from Corey Road – tabled from May 6, 2019 to March 15, 2021 to this date; applicant Mr. Chris Thomas

Exhibit: Agenda Report No. 10.a.

MOTION: CM Vail / CM Scardino to remove from table. Vote: All Ayes.

Introduction. Chris Thomas, Palm Bay FL. He owns 20 acres south of Atz. His property sits about 750' west from Corey in the line of right of way of Old Mission and Beekeeper. The ROW was used for farming in the past. His biggest concern is if he must build a regular road, he will impact wetlands. He would like to ask for a variance to use roadway that is there, and he will maintain it until it becomes an official road.

PH opened, None. PH closed.

Staff: ITM Lisa said the staff recommendation would be for Council to deny the waiver request tonight that has been tabled over the last two years and let the applicant reapply with a building permit to develop, the corresponding road improvement requirement and then the Waiver request to those requirements.

Currently there is no active building permit applied for; no survey or engineering; the wetlands issues are not stated in packet. That would be staff recommendation – deny the variance. Let applicant apply for a building permit and the road improvement application and then have a Waiver request proceed. Should not come to us until they apply for a building permit and then if they need a road permit and that would trigger the waiver. Can be done at same time.

Environmental report is also required. CM White we had a similar request on Beekeeper. He would be inclined to try and help him out to stay out of the wetlands. CM Vail said we are streamlining the process. CM Acquaviva said her questions were answered.

MOTION: CM Vail / CM White to approve waiver for that portion of ROW.

CM White said it was not until later that we have unintended consequences. Atty restated the significance of staff recommendation to deny without prejudice.

ROLLCALL VOTE: CM Acquaviva, Nay; CM Vail, Aye; CM Rivet, Nay; CM Scardino, Nay; CM White, Nay. Motion failed 4 to 1.

Applicant then stated he started this in 2017. He is not trying to avoid responsibilities – he will follow whatever direction from Council.

10.b. 2nd Reading Amend Comp Plan and LDC regarding MBC in R/LC to 20 percent (Ord 2021-02)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S COMPREHENSIVE PLAN FUTURE LAND USE ELEMENT; PROVIDING FOR A TEXT CHANGE TO THE PERMITTED MAXIMUM BUILDING COVERAGE IN THE RESIDENTIAL AND LIMITED COMMERCIAL (R/LC) MIXED USE DESIGNATION; PROVIDING FOR A SIMILAR CHANGE IN THE LAND DEVELOPMENT CODE DELETING THE MAXIMUM BUILDING COVERAGE OF 4,000SF AND UTILIZING THE TWENTY PERCENT COVERAGE AS STATED IN TABLE 1-3.3(A); PROVIDING FOR CODIFICATION; SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR TRANSMISSION OF ADOPTED PLAN TO THE FLORIDA STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING AN EFFECTIVE DATE.

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

Ord read by title only. PH opened. None. PH closed.

Discussion: Clerk said the changes recommended by the State DEO were incorporated into the final draft before Council. One was a typo as the minimum sf was also deleted in the text but not the table. The other was to add emphasis that the Comp Plan Amendment will take affect a maximum 31 days after sending the adopted amendment to the State or whenever they send confirmation which could be as quickly as one day. Then the amendment to the land development code (LDC) will become effective.

MOTION: CM White / CM Acquaviva to Adopt Ord 2021-02.

Discussion: no additional comments.

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

10.c. 2nd Reading Amend Article VIII of the Land Development Code to provide updated requirements for Culverts (Ord 2021-03)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; AMENDING SECTIONS 1-8.4 DEFINITIONS; AMENDING SECTION 1-8.8 ITEM 11b; AMENDING SECTION 1-8.14 ITEMS A, E & G; AMENDING SECTION 1-8.16 PARAGRAPH 3; PROVIDING UPDATED REQUIREMENTS FOR SURFACE WATER MANAGEMENT IN MALABAR; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

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

Ord read by title only. PH opened. None. PH closed.

MOTION: CM Vail / CM Acquaviva to Adopt Ord 2021-03.

Discussion: as presented in agenda report.

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

11. **UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0**

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Amend Chapter 13 of the Malabar Code of Ordinances, Street Improvement to provide codification of Exhibits (Ord 2021-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ARTICLE II, DIVISION 2 OF THE MALABAR CODE OF ORDINANCES RELATED TO STREETS; AMENDING SECTION 13-37 DEFINITIONS; AMENDING SECTION 13-38 PRECONDITION TO ISSUANCE OF BUILDING PERMIT; DELETING SECTION 13-40; AMENDING SECTION 13-41 ROADWAY IMPROVEMENT PROCESS AND ADDING EXHIBITS "B-4", "B-5" and "B-6" TO SECTION 13-41; AMENDING SECTION 13-42 ROADWAY IMPROVEMENT PROCESS; AMENDING SECTION 13-46 STANDARDS FOR ROAD IMPROVEMENTS; AMENDING SECTION 13-47 REIMBURSEMENT FOR EXPENSES INCURRED BY OWNER IN CONNECTION WITH THE CONSTRUCTION OF ROAD IMPROVEMENT; AMENDING SECTION 13-48 IMPROVEMENT OF UNACCEPTED PORTION OF PARTIALLY IMPROVED ROAD; AMENDING SECTION 13-49 IMPROVEMENT REQUIRED IF LAND PARTIALLY ABUTS UNACCEPTED ROAD; DELETING ARTICLE III IN ITS ENTIRELY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.a.

Ord read by title only.

Intro by Clerk: As stated in the agenda report – provides consistency between published code, application package and online version.

MOTION: CM Vail / CM Rivet to approve first reading of Ord 2021-04.

Discussion: CM Vail – questioned payback process. Clerk responded that the payback process is not part of this ordinance.

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

RESOLUTIONS: 0

MISCELLANEOUS: 1

12.b. Approve 460' of Improved Rivet Lane and Certify Cost at \$38,395.89

Exhibit: Agenda Report No. 12.b.

MOTION: CM Vail / CM Scardino to approve 460' of Rivet Lane and Certify Cost.

Discussion: ITM Lisa refers to memo and has new engineering firm review for correction.

VOTE: All Ayes.

Chair released Attorney at this time.

13. DISCUSSION/POSSIBLE ACTION: 2

13.a. Parks & Recreation Advisory Board Playground Recommendation

Exhibit: Agenda Report No. 13.a.

ITM Lisa explained that the recommended play equipment is a 52 x 52 play area. She has submitted to vendor, a company in America (Wisconsin) to see how they can set it up to put part of it under the shade structure and see if it can fit under shade structure.

MOTION: CM Scardino / CM Acquaviva to authorize ITM to proceed with the negotiation for the best deal for the Town.

Discussion:

VOTE: 4 Ayes 1 Nay (CM White).

13.b. Upcoming Amended Zoning Map for Council adoption (Ord 2021-05)**Exhibit: Agenda Report No. 13.b.**

Intro by Clerk: Applied Ecology created the GIS layer and ITM created the template with new columns for designations and Clerk input the designations. The Mayor provided Quality Assurance before finalizing the maps. The proposed ordinance with Zoning map was introduced to P&Z Board on April 28, 2021. They voted unanimously to recommend Council approval.

This is information only – no action required tonight. It will be on the next two Council agendas for Public hearings as required by law. Then the official zoning map and Future Land Use Map will be published on the Town's website. And it will be available for real time updates. This has been a 12-year process.

14. PUBLIC COMMENTS: General Items (Speaker Card Required) None:**15. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Acquaviva: nothing

CM Vail: nothing

CM Rivet: nothing

CM White: voted no on play equipment until they see asphalt on Hunter Lane. He will not vote for any more expenditures. He may not run again. CM Rivet said we all share the frustration. How to twist arms of contractors. We are small fish.

CM Scardino: contractors are very backed up. He has had a lot of delays. He does not know specifically the reason, but he does not have the labor for it. With Covid and unemployment. ITM Lisa said she is waiting on estimate from Goodson. She will contact other paving contractors. There are other things that are – She will have to get three prices. She has already been on Rivet Lane with other engineering firm. Council suggested she put a package together for multiple roads to get more interest. She does not have engineering on any of the other roads. Get more quotes.

Mayor: noting

15. ANNOUNCEMENTS: Openings on T&G Committee.

16. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:50 P.M.

BY: _____

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 05/17/2021

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.b
Meeting Date: May 17, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Consideration of Hunter Lane Paving Proposal

BACKGROUND/HISTORY:

Goodson paving has provided a proposal estimate and contract for execution for the paving of 1100' Hunter Lane (North of Atz) as approved for hard surface improvements by the Town Council using the Special Assessment Road Paving Process pursuant to resolution number 10-2020.

ATTACHMENTS:

Hunter Lane Bid 05_10_2021.PDF

FINANCIAL IMPACT:

Total estimate \$190,701.55

538.4900 Stormwater, SW Projects \$9,476.89 portion of the project

541.6300 Streets & Roads, TIFT Funding for the project, 12,000

541.6420, Streets & Roads, C.I.P Road Paving, Fund Balance is \$66,330

Balance of \$102,894.66 will require a budget amendment from general fund balance

Property Owners have an assessment repayment to the town totaling \$22,000

ACTION OPTIONS:

Upon approval by Town Council, staff will execute the contract and schedule a pre-construction meeting to review the project timeline schedule, advise of any in house labor tasks such as sod restoration and stormwater improvements to reduce the cost of the proposal to include material expenses only.



Goodson Paving Inc.
630 Cidco Road
Cocoa, Fl. 32926

Telephone: (321) 631-5523 / FAX (321) 639-0497

Project: Hunter Lane for the Town of Malabar
To: Town of Malabar

PROPOSAL DATED 05/10/2021

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1.	1.00	LS	Mobilization	\$ 1,750.00	\$ 1,750.00
2.	1.00	LS	Maintenance of Traffic	\$ 1,285.00	\$ 1,285.00
3.			Erosion Control		
	2,400.00	LF	Silt Fence	\$ 2.20	\$ 5,280.00
4.			Demolition		
	20.00	LF	Remove Existing Culvert	\$ 44.50	\$ 890.00
5.			Clearing and Grubbing		
	1,988.00	CY	Stripping's Removed From Site	\$ 4.30	\$ 8,548.40
	2,743.00	SY	Clear Site	\$ 2.05	\$ 5,623.15
					\$ 14,171.55
6.			Earthwork		
	553.00	CY	Cut	\$ 6.80	\$ 3,760.40
	1,035.00	CY	Fill Spread and Compact	\$ 3.65	\$ 3,777.75
	31.00	CY	Export Fill	\$ 12.65	\$ 392.15
	2,743.00	SY	Grade R/W	\$ 2.98	\$ 8,174.14
	2,860.00	SY	Mix Existing Millings in Place	\$ 1.15	\$ 3,289.00
	5,140.00	LS	Final Grading	\$ 4.25	\$ 21,845.00
					\$ 41,238.44
7.			Asphalt Pavement		
	3,395.00	SY	1-1/2" SP-9.5 Asphalt Pavement	\$ 8.05	\$ 27,329.75
	3,395.00	SY	Prime	\$ 0.65	\$ 2,206.75
	3,395.00	SY	Tack	\$ 0.65	\$ 2,206.75
	3,496.00	SY	6" Base Rock	\$ 17.82	\$ 62,298.72
	3,668.00	SY	8" Compacted Subgrade	\$ 1.90	\$ 6,969.20
					\$ 101,011.17
8.	1.00	LS	Signage and Striping	\$ 3,416.00	\$ 3,416.00
9.			Seed and Sod		

28,625.00 SF Bahia Sod 2' Wide \$ 0.42 \$ 12,022.50

			SUBTOTAL		\$ 181,064.66
10.	1.00	LS Mobilization	\$	1,050.00	\$ 1,050.00
11.	1.00	LS Storm	\$	8,586.89	\$ 8,586.89
			SUBTOTAL		\$ 9,636.89
			GRAND TOTAL		\$ 190,701.55

Project Notes:

- 1 Engineering Layout and As-Builts By Others
- 2 Sod and Landscaping By Others
- 3 MSDS Reporting By Others

4 Due to the Rapid Price Increase on Plastic Pipe, Fittings and Anything Made of a PVC Resin we can Only Hold Plastic Material Pricing for Thirty (30) Days from the Date Above

- 5 Sod 2' By Edge of Pavement Only Any Beyond By Others

STANDARD GENERAL NOTES:

1. EARTHWORK PRICES ARE SUBMITTED BASED UPON ALL ON-SITE EXCAVATED MATERIAL BEING SUITABLE FOR STRUCTURAL FILL AND STABILIZATION.
2. INVOICES WILL BE SUBMITTED ON A MONTHLY BASIS BY THE 25TH OF THE MONTH UNLESS OTHERWISE REQUESTED. PAYMENT IS TO BE MADE WITHIN 30 DAYS AFTER INVOICE IS SUBMITTED. A LATE PAYMENT FEE OF 1.5% WILL BE APPLIED TO BALANCES EXCEEDING THE 30 DAY LIMIT.
3. GOODSON PAVING, INC. RESERVES THE RIGHT TO REVISE PRICING AS NECESSARY WHEN FINAL PLANS AND/OR PERMITS ARE ISSUED.
4. THIS PROPOSAL INCLUDES THE FDOT CLAUSE FOR BITUMINOUS MATERIAL ADJUSTMENTS. (BASED ON 2000 FDOT SPECIFICATIONS HANDBOOK.)
5. NO ITEMS MAY BE MODIFIED OR CHANGED FROM THIS PROPOSAL WITHOUT APPROVAL FROM GOODSON PAVING, INC.

STANDARD GENERAL EXCLUSIONS:

1. CONNECTION CHARGES, FEES, BONDS, TESTING, PERMITS; METER OR METER FEES
2. ENGINEERING-GEOTECHNICAL OR OTHERWISE
3. RELOCATIONS OF ANY EXISTING UTILITIES ;ANY FENCING, **ANY ELECTRICAL WORK, ANY UNDERGROUND UTILITIES**
4. ROCK EXCAVATION; DUST CONTROL, DEMOLITION
5. LANDSCAPING, & IRRIGATION, TREE RELOCATION; PROVIDING & INSTALLING TOPSOIL; ANY LANDSCAPE BERMS; TREE PROTECTION; ANY GRASSING; ANY TREE PROTECTION FENCING OR BARRIER, ANY TREE RELOCATION AS CALLED OUT IN PLANS; ANY TREE PRUNING OR TRIMMING REQUIRED TO BE COMPLETED BY CERTIFIED ARBORIST
6. INSTALLATION OF NEW SIGNS OR SIGN RELOCATION, DECORATIVE SIGNS & POSTS
7. ANY FENCING, ANY UNDERGROUND UTILITY WORK OR PATCHING OR RESTORATION ASSOCIATED WITH UNDERGROUND UTILITY INSTALLATION
8. EROSION CONTROL - PERMITS, FEES, PLANS, NOTICE OF INTENT OR TERMINATION & ANY MONITORING; ANY EROSION CONTROL DEVICES OR INSTALLATION OF EROSION CONTROL - **EXCEPT TYPE III SILT FENCE**

9. HANDRAILS, CONCRETE BUILDING FOUNDATIONS, ANY BRICK PAVERS OR LEVELING SAND,
ANY COLORED CONCRETE

10. WELL GROUTING OR ABANDONMENT; DEWATERING OF FOOTERS OR FOUNDATIONS

11. DUMPSTER PAD SCREEN WALLS OR GATES; ANY RETAINING WALL WORK

12. ANY ITEMS WHICH ARE NOT SPECIFICALLY DESCRIBED IN THIS PROPOSAL

PLEASE NOTE:

UPON ACCEPTANCE OF OUR PROPOSAL THE OWNER MUST PROVIDE AT LEAST (4) SETS OF "APPROVED FOR CONSTRUCTION" DRAWINGS. THE ABOVE PRICES WILL BE HONORED FOR (30) DAYS. WE WILL ONLY GUARANTEE PRICES WHEN THE PROJECT IS COMPLETED WITHIN (90) DAYS DUE TO THE FACT THAT SUPPLIERS WILL NO LONGER GUARANTEE THEIR PRICES. ALL ITEMS EFFECTED BY PETROLEUM PRODUCTS ARE SUBJECT TO FUTURE PRICE ESCALATIONS OF SAID PETROLEUM PRODUCTS. DUE TO THE EXTREMELY VOLATILE MARKET, PRICES COULD BE AFFECTED. IF THERE SHOULD BE REVISIONS TO THE CONTRACT IT WILL BE DONE BY CHANGE ORDERS.

ACCEPTED BY:

GOODSON PAVING, INC.

ACCEPTED BY:

CONTRACTOR

Date

Date

TOWN OF MALABAR

COUNCIL MEETING

Staff Report

Meeting Date: May 17, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Town Manager Report for May 17, 2021 Council Meeting

Hunter Lane Paving

Goodson paving provided a proposal on May 11, 2021 and will be considered under the consent agenda. A purchase order has been issued for proposal with an estimated commencement of 4 weeks per the contractor's schedule.

SAI Update –

SAI will be presenting an update to Town Council confirmed for June 7th.

Waste Management

An update to City Council is scheduled for the May 17th meeting under Council Discussion items after the ITM Morrell met with Waste Management to discuss the contract renewal on Thursday, May 6th, present was Dina Reider-Hicks and George Geletko of Waste Management.

Town Group Health Insurance

Headline: Health First Health Plans (HFHP) will end coverage for business accounts at end of year as published by Florida Today Article on April 26th Publication (Article Attached)

Here is a breakdown of Health First Health Plans' current membership affected by the announcement:

- Medicare Advantage (HFHP is keeping this business line): 28,740 in Brevard; 37,740 companywide.
- Individual policies (keeping): 13,140 in Brevard; 21,130 companywide.
- Commercial small group with less than 50 employees (not keeping): 8,470 in Brevard; 9,980 companywide.
- Commercial large group with 50 or more employees (not keeping): 9,100 in Brevard; 9,850 companywide.
- Third-party administrator (not keeping): 16,520 in Brevard; 92,182 companywide.

Contacted Broker of Record, Cotton Insurance, to confirm Town of Malabar Group Health Insurance Cancellation on May 6th, was surprised but had heard from other brokers and agents. The broker found the Health First announcement in their spam folder, dated April 6th; therefore, did not notice the Town until ITM Morrell Inquired.

ITM Inquired with Health First Health Plan Account Manager and confirmed that HFHP is seeking approval from the Florida Office of Insurance Regulations to withdraw from the marketplace. The item has yet to be determined but HFHP expects a decision soon. Therefore, HFHP was not able to adequately respond or provide information as to transition plans or actions required for the Town as the coverage is slated to renew October 1, 2021 yet HFHP plans to discontinue coverage December 31, 2021.

Town Staff has. inquired with FMIT for group health insurance quotes for the budget season for corrective measures to seek town council approval of health insurance contract and cancellation of broker of record services; both Hugh Cotton Insurance and Health First Health Plans exceeded the thresholds of the Towns Code of Ordinances relating to procurement and staff authority to approve and execute in 2018 and subsequent renewals to date; ITM Morrell research council meeting minutes and did not locate any discussions or agenda items.

Building Services

Safebuilt contract for Building Inspector/Official has been executed, awaiting staffing resource allocation from Safebuilt.

1675 Marie Street Property

Staff spoke with David Beatty regarding the five-acre parcel on Marie that he is disposing of after the death of his brother. He has an offer and a closing agent but is waiting for probate to approve the sale. He is also willing to allow Town representatives to walk the property and determine if they want to submit a backup offer. He said we had his permission to walk the property and then call to discuss but also said to touch base with the realtor handling the sale. Vicci Vaughn of National Realty has been contacted through voicemail, an email, and a follow-up text to ensure to ensure delivery, and confirmed delivery on May 10th. The Town has not received a response to the inquiry of a backup offer and access to the property from the agent; suspect contacting their client, David Beatty.

IAFF Union Contract – November 2021

Discussions with the Union President, David Ginsburg, will commence on Thursday June 9th; with the receipt of TM Stinnett's reply on May 7th to inquiry of his preference to an active or passive role requested March 8th and April 15th, communicated passive with updates.

Playground

Awaiting design elements and confirmation for new playground footprint and continued use of the existing shade structure. Burke stated the design would be sent the afternoon May 11th.

Engineering Projects Assigned to EDC and In Process:

Briar Creek Bridge (Entrance Brook Hollow Subdivision) Stormwater and Repairs
Rivet Lane – Road Paving Assessment Program

Ordinance Creation and Updates in Progress

ITM Morrell is working to compose a Recreation Vehicle Park zoning district for P&Z as well as a an update to the Town of Malabar Code of Ordinances, Chapter 13, Streets and Rows for right of way closures, vacates, and abandonments as the current code lacks key elements defined as time specific, public engagement, and council authority. The Town has received requests to close public rights of way from adjacent property owners as well as operational closures that were administratively instituted by staff rather than a public hearing process per the guidance of Florida State Statues; therefore, those are null and void and need to be re-addressed.

American Relief Plan Funding

Requesting a workshop with Town Council to present and discuss the 151-page US Treasury IRS guidance document for the designation of uses, an estimated \$1.3 million in relief funds are allocated to the Town of Malabar in response to the COVID-19 pandemic. Staff is suggesting June 8th and seeking councilmembers availability for a during business hours meeting.

Code Enforcement/Compliance

There are a dozen properties that are in process of notice of violation(s) with the first magistrate meeting scheduled for June 16th with the newly contracted Special Magistrate; the contract has been executed.

Licensing for Potential Outdoor Viewings

Staff is researching potential events for the Community Park for Fall Fest to include a bike race and fun run walk 5k through the trails, food trucks, family friendly field day games (cornhole, egg race, etc), and the like, to include an outdoor movie showing to cap the day.

MPLS – Indoor Events, does not provide outdoor licensing – Annual License is \$600
Criterion Pictures USA – Outdoor – No Response to website inquiry
Swank – Per Outdoor Movie Titles – ranges \$\$395-495 for the day.

ARP – American Relief Plan

Anticipating funding from the State to non-entitlement units of local government to start mid-May. The Town of Malabar is a non-entitlement unit as the Town does not receive CDBG funds directly from HUD. For these Non-entitlement units of local government, Treasury will allocate and pay funds to state governments, and the state will distribute funds to non-entitlement units of local government in proportion to population. This funding will be released in two allotments, half in the next 60 days following enactment of the legislation and the second half 12 months after the first payment. Other important provisions include: the funding has no minimum population threshold for communities, can be used for replacing lost revenue, can be transferred between jurisdictions or to non-profit partners, and finally, does not expire until December 31, 2024.

Staff is compiling a list of priorities for future council consideration, after more guidance is provided to local municipalities for eligibility. Funds issued by the U.S. Treasury Department do include a claw back penalty provision for improper use of non-eligible expenses.

GFOA

Be on the Lookout: American Rescue Plan Act Guidance Forthcoming

According to the text of the American Rescue Plan Act legislation, the Coronavirus State and Local Fiscal Recovery Funds, the Secretary of the Treasury “shall pay from such allocation the First Tranche Amount for such city, State, or county not later than 60 days after the date of enactment of this section.” Enactment of the American Rescue Plan Act occurred on March 10; therefore, for all states and CDBG cities and counties distribution of the funds will occur on May 10. For non-CDBG communities, funds will flow through the state and may take up to sixty additional days for distribution. For more specific information on aid provided to state and local governments, [click here](#).

Communities should prepare to certify these proceeds by ensuring they have an active DUNS and SAM registration as well as the entity’s payment information. [Click here](#) for more information from the U.S. Treasury. Additionally, GFOA members should review guiding principles for ARPA spending.

When it is released, GFOA will provide complete analysis of the new guidance. Watch your email for a member alert in the coming days.

BUSINESS

Health First Health Plans will end coverage for business accounts at end of year

Dave Berman Florida Today

Published 3:34 p.m. ET Apr. 26, 2021 | Updated 4:08 p.m. ET Apr. 30, 2021

In a move that will impact more than 112,000 people, including 34,000 in Brevard County, Health First Health Plans says it will drop three of its major insurance lines at the end of the year.

Affected are those who get Health First insurance through their employers. Senior citizens covered by Health First's Medicare Advantage plans, and those covered by the company's individual plans are not affected by the changes.

Health First Health Plans Chief Executive Officer Matthew Gerrell said his company decided to focus on its Medicare Advantage insurance, as well as individual plans for the underinsured, to improve the offerings it can give those customers.

Anti-trust suit: Brevard teachers' anti-trust suit against Health First dismissed, but can be re-filed

War of words: Between County Commission chairman, Health First attorney continues

"Our goal and responsibility is to help those two groups," Gerrell said, describing the decision as an effort to focus on where Health First Health Plans can "do the most good" to "improve health" in the community.

Insurance brokers were notified of the changes this month by Health First, but individual companies and government entities that provide Health First insurance to their employees have not yet been formally informed by the insurer.

The move will force companies offering their employees Health First insurance to seek another provider — which one local insurance broker says likely will cost more — or drop health insurance benefits for workers in the future. Companies transitioning to higher-cost insurance coverage could pay for the increased costs, pass the cost along to their employees or some combination.

Dr. Ross Clevens, who runs Clevens Face & Body Specialists, a large Melbourne-based plastic surgery group, said the changes will have "a huge impact" within the community.

Clevens described the letter from Health First to local insurance brokers — which began "Dear Valued Agents" — as "kind of like a 'Dear John letter' " when somebody gets dumped in a relationship.

Health sector surprised by move

Local insurance and health care officials said they were surprised by Health First's decision to drop its commercial and what's known as "third-party administrator" insurance lines. Those lines represent about 44.9% of Health First Health Plans' members in Brevard County and about 65.6% of its members companywide.

Part of the surprise in the health care sector comes from the fact that Health First Health Plans are affiliated with Health First, which also operates four hospitals in Brevard; the Health First Medical Group, which is the largest multispecialty physician group on the Space Coast; and various outpatient and wellness services.

The tie between the insurance business and the hospitals and health care providers made it financially advantageous for people with Health First insurance to use those hospitals and doctors affiliated with Health First.

Gerrell said financial considerations did not play a role in Health First Health Plans' decision to drop certain insurance lines, contending that his company is "entirely focused on improving wellness" in the community.

He said Health First Health Plans began to analyze its options about 18 months ago, and came to the conclusion that this is the best move.

Dean Brombacher, president of Brombacher Insurance LLC in Cocoa Beach, a insurance broker with a number of clients with Health First Health Plans contracts, last week sent a letter to Gerrell, asking that Health First reconsider its decision.

"I ask that you reconsider your strategy to leave the Brevard County group market," Brombacher wrote. "One option is to simply increase your group rates. Employers would be willing to spend a little more to keep HFHP as an option. The community needs Health First Health Plans to continue to offer group coverage. Employers and employees alike have supported the organization from the very beginning, and it seems to some degree that now the organization is turning their back on our community."

Brombacher — who was one of Health First Health Plans first employees in 1995 — said he did not want HFHP to abandon its local roots of insuring employees of Brevard businesses.

Gerrell, however, said businesses have other options for getting health insurance for their employees, including Aetna, Cigna, Florida Blue, Florida Health Care Plans and United Healthcare.

He said Health First Health Plans gave the insurance brokers early notice, so they could begin shopping around for the best option for local employers.

Potential for higher costs

But employers could find that their rates will be higher for comparable coverage, Brombacher said.

"It's going to have a very large impact on small businesses, large businesses and municipalities," Brombacher said. "It will have a tremendous impact to the community. This has an impact from A to Z."

He said the cost differences can be significant.

"In some instances, the delta between HFHP and national carriers exceed 40% when comparing premiums, and that is usually with a national carrier having an inferior plan design," Brombacher said in his letter to Gerrell.

"I would like to think that the executives at Health First would not turn their backs on the business community, especially when Health First Health Plans' success was initiated from those same businesses and their employees," Brombacher added.

Canaveral Fire Rescue Fire Chief Dave Sargeant said, with the help of Brombacher, he already has started to research the consequences of losing Health First as his fire department's insurer. And the bottom line is not good.

"It will cost \$11,000 a month more for three-quarters of the benefits," said Sargeant, whose department now pays about \$23,000 a month for insurance for the 39 people on staff.

Clevens, a facial plastic surgeon, said his business will be affected in several ways. Many of his skin cancer patients getting reconstructive surgery currently have Health First insurance. Also, Clevens' 40 employees are covered by Health First insurance, and Clevens now will have to start looking for a new insurance carrier.

Clevens questions Health First Health Plans' decision.

"I don't really see how this is serving our community," Clevens said. "It will be far more costly to small businesses like ours."

But, Clevens added that "Health First is a very well-run and strategically run organization," so it must have a strategy behind the move.

Gerrell maintained that Health First Health Plans' focus on a limited number of insurance lines will enable the company to improve its offerings in those lines. He said, for example, the company in October will announce a number of additional features for its Medicare Advantage coverage for senior citizens.

Separately, Health First Health Plans in January announced it has signed an administrative services agreement with a subsidiary of Oscar Health, which will transfer some of the functions HFHP staff currently does to Oscar for coverage involving its Medicare Advantage and individual lines.

Gerrell said he did not have a projection on how many of Health First Health Plans' current 598 employees would be affected by the change or how many jobs would be cut.

But he said Oscar currently is recruiting some HFHP employees for positions at Oscar, and Health First would seek to place other affected HFHP employees in positions within other units of Health First.

Here is a breakdown of Health First Health Plans' current membership:

Medicare Advantage (HFHP is keeping this business line): 28,740 in Brevard; 37,740 companywide.

Individual policies (keeping): 13,140 in Brevard; 21,130 companywide.

Commercial small group with less than 50 employees (not keeping): 8,470 in Brevard; 9,980 companywide.
Commercial large group with 50 or more employees (not keeping): 9,100 in Brevard; 9,850 companywide.
Third-party administrator (not keeping): 16,520 in Brevard; 92,182 companywide.

Recommendations for businesses

Health First is recommending that employers preparing for a transition of their health insurance:

Consider using an independent insurance agent to help assess the available options and make an informed decision in the open market. Recognize that the employer insurance market has changed, and additional approaches are available in the market to provide and fund benefits.

Reevaluate the overall benefits strategy of the organization. Considerations can include such things as access to telehealth; in-person and remote fitness options; and digital wellness tools.

In its letter to insurance brokers, Health First said it would work closely with its affected customers "to help them navigate this change and ensure continuity of care is provided along with a seamless transition. We will continue to provide support for our accounts through this period of transition. Health First Health Plans sincerely values our relationship with you."

As the changes draw closer, companies large and small with Health First Health Plans coverage will have to make important decisions for their businesses and their employees.

"It's got a real ripple effect," Clevens said.

Dave Berman is business editor at FLORIDA TODAY. Contact Berman at dberman@floridatoday.com. Twitter: @bydaveberman.

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TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 6.C.

Meeting Date: May 17, 2021

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

SUBJECT: Request Permanent Reservation for Bluegrass Jam at the Sandhill Trailhead – by K.D. “Don” Williams

BACKGROUND/HISTORY:

Council adopted a user fee resolution in 2002 that established the fees for reserving areas of the parks and recreation within the Town. Council's intent was to have the parks open and available to all on a first come, first serve basis. If a person wanted the exclusive use of an area, then they could pay for a reservation and would be given a copy of the approved reservation application.

This item is before you because we have had a recent conflict for competing uses of the pavilion at the Sandhill Trailhead. We had accepted a reservation of the pavilion at the Sandhill Trailhead for a baby shower on May 2, 2021. We keep a current calendar for both the Malabar Community Park (MCP) and the Malabar Sandhill Trailhead reservations. Everyone at Town Hall knows where to look in the reservation book to check for conflicts before accepting reservations.

We apologized to the person that reserved the pavilion for the baby shower and refunded her money. We also explained to the Bluegrass person that we have a process to follow and provided him with the reservation application. His response was if he had to pay, they would go somewhere else. As a follow-up we provided him an Agenda Request Form to state his case and ask for special exception by Council.

FINANCIAL IMPACT:

Using the current fee schedule, we could anticipate \$30.00 each Sunday in user fees from the Bluegrass group (\$10.00 per hour)
52 Sundays per year would equal \$1,560.00.

ATTACHMENTS:

Agenda Request Form and attachment by Mr. Williams

ACTION OPTIONS:

Council Action – if Council directs staff to provide a special exception, then we will mark up the calendar for the Sandhill Trailhead as reserved for every Sunday for the rest of the year. Staff would recommend, if this is what Council decides to do, then the applicant should be required to come in at least once a year and update their request, so it stays current in the reservation book.

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



TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 6.c.
Meeting Date: May 17, 2021

**AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL**

Please mail completed form to:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: K.D. "Don" Williams

ADDRESS: 4096 Hield Rd NW

Palm Bay, FL 32907

TELEPHONE: (321) 724-9866

(Home)

(Business)

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

A request for reinstating a permanent reservation for the Bluegrass Jam at the Sandhill Trailhead Park pavilion every Sunday, 2-5 PM, with no fees for the group.

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

It seems the Town of Malabar has lost record of the jam's permanent reservation of the pavilion every Sunday afternoon, which began at least 13 or 14 years ago. We have had a few conflicts where the pavilion was reserved by another group during our timeslot. When the jam first commenced, some record must have existed and there were never reservation fees. (See attachment.)

Please state desired action by Town Council.

We are requesting that the Town Council please permanently reserve the pavilion every Sunday 2-5 PM for a bluegrass jam, as it once was when Gary Dotson was alive. We are requesting a waiver of the fees be instituted, as the Bluegrassers will seek a new location if we must pay the Town of Malabar.

Signed:

ADDENDUM

Subject: Supplement to the Agenda Item Request by the Castaway Bluegrass Bunch.

The undersigned Bluegrass musicians and spectators who regularly participate or attend the Sunday Bluegrass jam at Sandhill Trailhead Park Pavilion, believe this under-publicized event is good, clean entertainment for residents of the Town of Malabar and surrounding communities, and should continue at this location.

Furthermore, we believe the Town Council should know more about the event and its history. Several major points are listed below:

1. This event is open to the general public to listen and enjoy. Due to a lack of publicity, the audience is sometimes small, but it attracts people from the Malabar/Palm Bay area and surrounding communities. If the jam continues at Sandhill Trailhead, announcements of the event will be sent to Florida Today for the TGIF entertainment section. We would like to grow the event.
2. Participation in the jam is also open to the general public. We have a group of musicians from all skill levels - from those that have been in local bands, to seasoned jammers, and to beginners.
3. The Castaway Bluegrass Bunch is a name given to the jammers by the founder of the jam, the late Gary Dotson. **It is not a band** and it has not had a gig since we last performed at the Spring Festival near the Malabar Fire House. When we performed there in the past, we had an audience but we were moved to a tent far away from the center of the event and had few spectators.
4. The Castaway Bluegrass Bunch name was derived from the Castaway Point Tavern, where bluegrass jams were held continuously from the late 70's until the place was destroyed by hurricanes.
5. Gary coordinated the jam with the Town of Malabar Parks and Recreation Dept. sometime probably about 2006 or 2007. We thought it was permanent. The oldest record we have is a picture from 2007. One person thinks it started earlier than 2007, but no record.
6. This is not an event with food, so there is nothing to clean up after our jam, as we pick up our water bottles and soda containers.
7. The Town of Malabar was once involved with the jam and with the help of Agnes Dotson created this memorial to Gary:



We, the undersigned musicians and spectators agree with the Agenda Item Request for consideration by the Malabar Town council:

<u>Signature</u>	<u>Printed Name</u>	<u>Date</u>
<u>Don Williams</u>	<u>K. DON WILLIAMS</u>	<u>05/09/21</u>
<u>Dorothy W. Flynn</u>	<u>DW Flynn</u>	<u>05/09/21</u>
<u>Russ Bardwell</u>	<u>Russ Bardwell</u>	<u>05/09/21</u>
<u>Ken Leiper</u>	<u>Ken Leiper</u>	<u>05/09/21</u>
<u>Alan Dwyer</u>	<u>Alan Dwyer</u>	<u>05/09/21</u>
<u>C.H. Kierie</u>	<u>C.H. Kierie</u>	<u>5/9/21</u>
<u>Les Barna</u>	<u>LES BARNA</u>	<u>5/09/21</u>
<u>Michael Barnes</u>	<u>Michael BARNES</u>	<u>5/9/21</u>
<u>Don Sudder</u>	<u>Don Sudder</u>	<u>5/9/21</u>
<u>Judith K Maze</u>	<u>JUDITH K MAZE</u>	<u>5/9/21</u>
<u>Ed Maze</u>	<u>ED MAZE</u>	<u>5-9-21</u>
<u>Elizabeth A. Williams</u>	<u>ELIZABETH A. WILLIAMS</u>	<u>5-9-21</u>

TOWN OF MALABAR

COUNCIL MEETING

AENDA ITEM NO: 8.a.
Meeting Date: May 17, 2021

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

SUBJECT: Ordinance 2021-04 Amend Chapter 13 of Code to Codify Exhibits in Street Improvement Regulations. Second Reading and Public Hearing.

BACKGROUND/HISTORY:

These Exhibits were adopted by Council as follows:

Exhibit "B-4" in Resolution 15-2008
Exhibit "B-5" in Resolution 48-2010
Exhibit "B-6" in Resolution 48-2010

The purpose of including them in this ordinance is to codify them into Chapter 13 so the online Code, Code Book, and applications all match.

The other sections of Chapter 13 that are either corrected or deleted so the regulations match the actual process used.

This is in the front of the Code, so it does not go to the P&Z Board first. The street improvement code is legislative, and policy is set by Council.

It has been legally advertised for the second reading at this meeting.

ATTACHMENTS:

Ord 2021-04

ACTION OPTIONS:

Action on adopting Ord 2021-04

ORDINANCE 2021-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ARTICLE II, DIVISION 2 OF THE MALABAR CODE OF ORDINANCES RELATED TO STREETS; AMENDING SECTION 13-37 DEFINITIONS; AMENDING SECTION 13-38 PRECONDITION TO ISSUANCE OF BUILDING PERMIT; DELETING SECTION 13.40; AMENDING SECTION 13.41 ROADWAY IMPROVEMENT PROCESS AND ADDING EXHIBITS "B-4", "B-5" and "B-6" TO SECTION 13.41; AMENDING SECTION 13-42 ROADWAY IMPROVEMENT PROCESS; AMENDING SECTION 13-46 STANDARDS FOR ROAD IMPROVEMENTS; AMENDING SECTION 13-47 REIMBURSEMENT FOR EXPENSES INCURRED BY OWNER IN CONNECTION WITH THE CONSTRUCTION OF ROAD IMPROVEMENT; AMENDING SECTION 13-48 IMPROVEMENT OF UNACCEPTED PORTION OF PARTIALLY IMPROVED ROAD; AMENDING; AMENDING SECTION 13-49 IMPROVEMENT REQUIRED IF LAND PARTIALLY ABUTS UNACCEPTED ROAD; DELETING ARTICLE III IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to road improvement requirements by adopting this ordinance.

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

SECTION 1. Chapter 13, Article II, DIVISION 2, Section 13-37 is amended as follows:

Sec. 13-37. - Definitions.

As used herein, the following terms shall have the following meanings:

Building permit shall mean any permit for construction of any structure on property located within the town, whether it is a principal or accessory structure.

Improved road shall mean the path upon which vehicular traffic is intended to travel and upon which the travel way has been improved and accepted by the Town for maintenance ~~altered from its natural state~~ in order to permit use as a road.

~~*Interim roadway* shall mean any road, street, or right-of-way which is improved pursuant to this division on a right-of-way, or on an improved but unaccepted road which is less than sixty (60) feet in width and accepted for maintenance by the town. The improved roadway shall be temporary until such time as all the parcels adjacent to the improved roadway have all received permits to construct a permitted structure.~~

Local streets/roads shall mean any street or road other than an arterial roadway, major collector street, minor collector street located within the Town.

Owner shall mean the individual, entity or, in the event that the property is owned by a partnership or an aggregation of individuals or entities, all of the partners or persons or entities who have a present, possessory interest in such property. In the event that an application for building permit is made by an

individual or entity that holds a leasehold interest in the fee, that individual or entity shall be considered the "owner" for the purposes of this division.

Permitted structure shall mean any structure for which a permit is required pursuant to the Town's Land Development Code, whether it is a principal structure, accessory structure or any combination thereof.

Road /right of way shall mean the path upon which vehicular traffic is intended to travel in order to obtain ingress and egress to and from real property. As used in this division, the terms "road" and "street" are interchangeable and intended to have the same meaning as expressed herein.

~~*Travel way* shall mean any right-of-way, dedicated to the town, for the purpose of providing ingress and egress by motor vehicles or other method into privately or publicly owned real property.~~

Unaccepted road shall mean any unimproved road, street, or right-of-way that has not been accepted by the town for maintenance by affirmative vote of the town council resulting in such street, road or right-of-way to be approved and included on the official list of "accepted" roads within the town.

SECTION 2. Chapter 13, Article II, Division 2 Section 13.38 is amended as follows:

Sec. 13-38. - Precondition to issuance of building permit—Completion of road.

(a)

As a precondition for the issuance for any permit for a new residence or new commercial structure on property that abuts an unimproved right-of-way or unaccepted local street/road within the Town of Malabar, Brevard County, Florida, the owner of the property for which such permit is requested must provide for the improvement of the local street/road from which a person will obtain primary ingress and egress to and from such property from the nearest improved and accepted road continuously in the most direct route (or route otherwise approved by the town) on public rights-of-way through and including the furthest boundary of the lot of record on which the principal structure is to be constructed.

...

(c)

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

...

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

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

...

(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 fifteen (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 fifteen (15) days prior to the public hearing, to all affected property owners abutting the road right of way in question.

...

SECTION 3. Chapter 13, Article II Division 2 is amended; by deleting Section 13.40 in its entirety:

Sec. 13-40. Cost of Improvement (bond)

~~Each owner who applies for a building permit, either personally or through an agent or contractor, shall complete an application for a road permit, in the form approved by the town council and shall execute a written agreement with the Town of Malabar, Brevard County, Florida, in a form approved by the town council and town attorney, to construct a road as described hereinabove in accordance with the town's standards. The entire cost of constructing such road shall be the responsibility of the owner and, prior to the issuance of such road permit, the owner shall post a cash bond with the town. The amount of the bond shall be set by the town council after receiving public bids for said improvements and shall be equal to the estimated cost of completion of the improvement plus twenty (20) percent of such amount. The procedure for establishing the road bond shall be established by town council. Procedure shall be adopted by resolution and may be amended by resolution of the town council from time to time, as needed.~~

~~The applicant shall have thirty (30) days from the date the bond is set to post said bond. Failure to post a bond within thirty (30) days shall result in revocation of all road and building permits issued.~~

~~Any person desiring to appeal any decisions made by the town council related to bonds shall do so by filing a notice of appeal with a court of competent jurisdiction as required by the laws of the State of Florida. All procedural requirements for taking an appeal to a court of competent jurisdiction must be complied with by the party making the appeal. (Ord. No. 01-01, § 1-5, 2-5-01)~~

SECTION 4. Chapter 13, Article II, Division 2, Section 13.41 is amended to read as follows:

"In order to obtain a road permit, an applicant must complete road permit application. The application for a road permit shall be in a form approved by the town and shall include the following:

- (1) Such surveys and drawings as are required by the standards attached hereto as Exhibit "A," "B-1," "B-2," or "B-3," "B-4," "B-5" or "B-6" whichever is applicable. The standards set forth in Exhibit "A" through "B-3" may be amended from time to time by resolution of the town council of the town.

- (2) Such reports as to soil composition as are required by the standards attached hereto as Exhibit "A," "B-1," "B-2," or "B-3," "B-4," "B-5" or "B-6" whichever is applicable. The standards set forth in Exhibit "A" through "B-6" "B-3" may be amended from time to time by resolution of the town council of the town."
- (3) A written estimate, based upon such surveys and drawings described hereinabove in paragraphs (1) and (2), which estimate shall contain a sufficient description of the work to enable the town engineer and building official to determine that the proposed improvement is consistent with the specifications of the town.

The town council shall set the fee for such road permit, which fee may be amended from time to time by town council by resolution. No action shall be taken on behalf of the applicant until a completed road application permit is filed with the town clerk and the applicable application fee is paid.

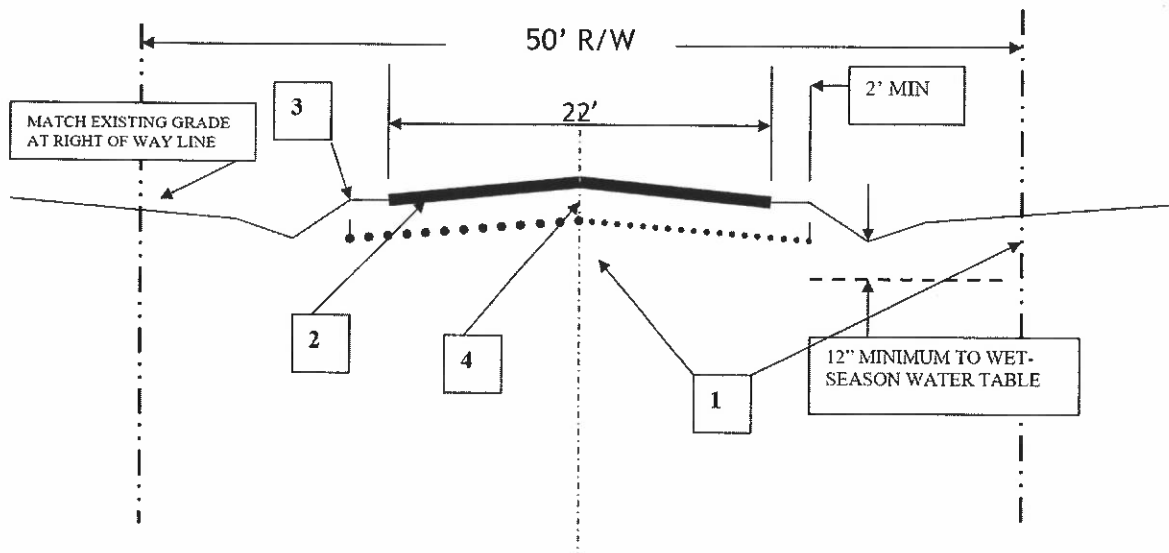
Upon receipt of a completed application and fee, the town clerk shall forward the application package to the appropriate town staff as directed by the Town Manager.

~~town engineer. Upon receipt of the completed road permit application package, the town engineer shall make a recommendation to town council as to the appropriate bond that shall be required from the applicant as set forth in section 34-40 of this division."~~

....

EXHIBIT "B-4"

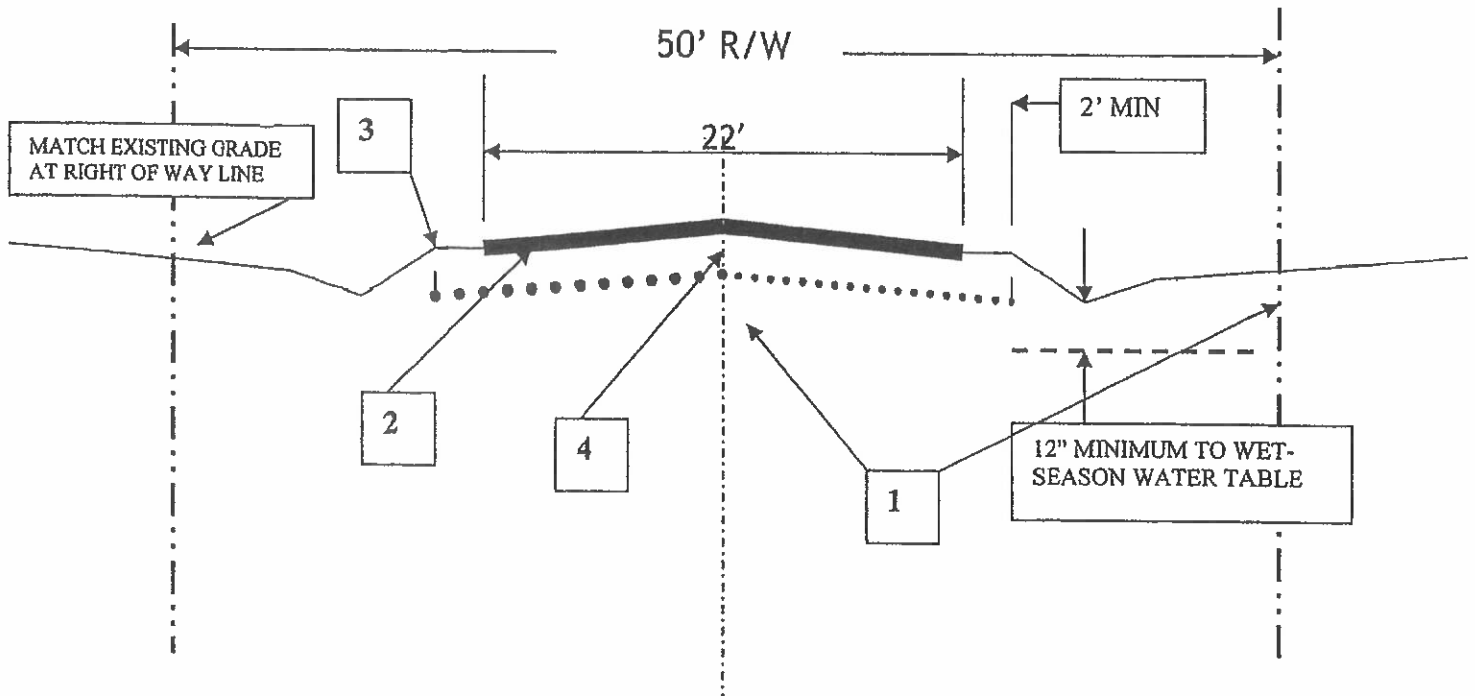
TYPICAL UNPAVED ROADWAY SECTION FOR 50' WIDE R/W



1. CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES AND DISPOSE OF ALL DEBRIS OFF SITE.
2. STABILIZED & MECHANICALLY MIXED 8" MINIMUM THICKNESS ROAD BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40. USE FDOT APPROVED MATERIALS OR LOCAL MATERIALS APPROVED BY TOWN ENGINEER.
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE AND ON SWALE BANKS. SWALE SIDE SLOPES MIN. 3:1. BACKSIDE OF SWALES MAY BE SEEDED.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT SOILS TO 98% DENSITY PER AASHTO T-180.
5. DRAWING IS NOT TO SCALE.

EXHIBIT "B-5" Country Lane

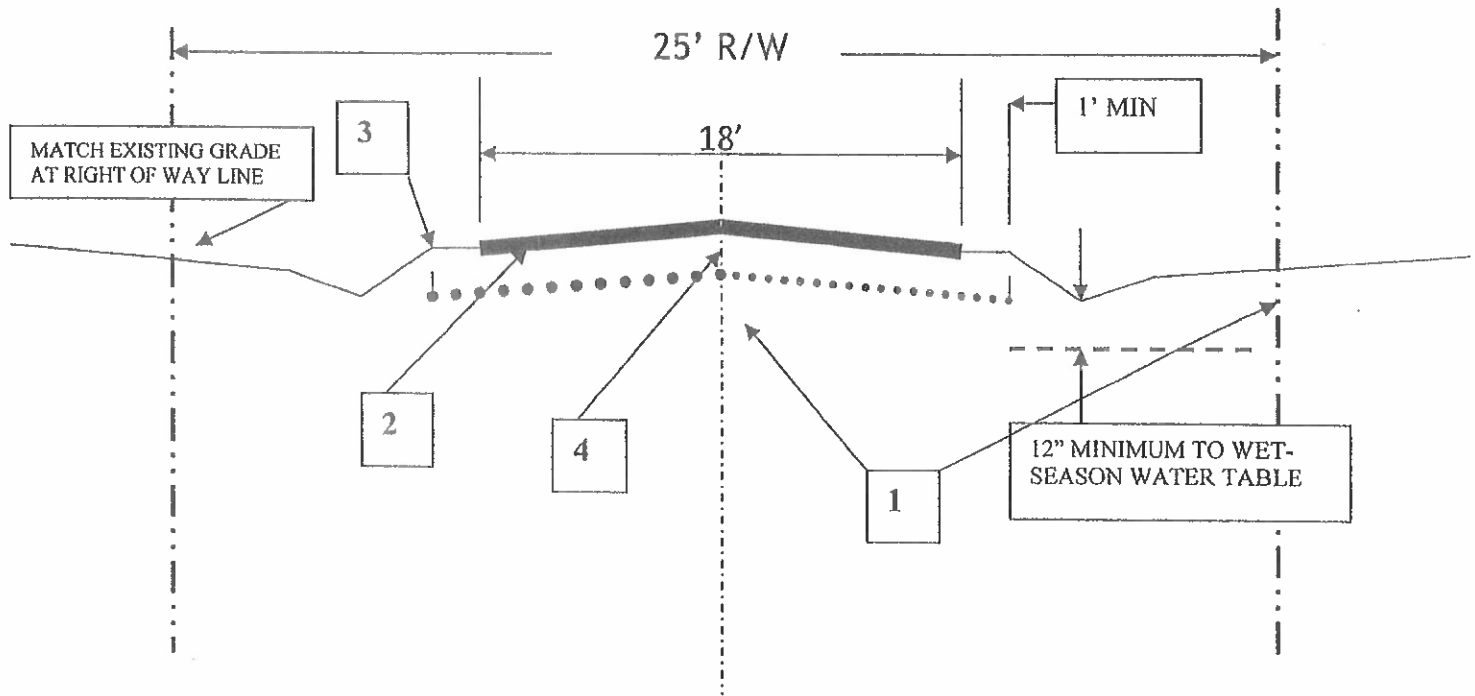
TYPICAL UNPAVED ROADWAY SECTION FOR 50' WIDE R/W



1. CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES AND DISPOSE OF ALL DEBRIS OFF SITE.
2. STABILIZED & MECHANICALLY MIXED 8" MINIMUM THICKNESS ROAD BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40. USE FDOT APPROVED MATERIALS OR LOCAL MATERIALS APPROVED BY TOWN ENGINEER.
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE TRAVELWAY ON EACH SIDE A MINIMUM 4' WIDE; SOD A MINIMUM OF 2' WIDE IN CENTER OF RIGHT-OF-WAY; SOD SWALE BANKS. SWALE SIDE SLOPES MIN. 3:1. BACKSIDE OF SWALES MAY BE SEEDED. SOD OR SEED OF THE ENTIRE ROADWAY SHALL BE AS APPROVED BY TOWN ENGINEER.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT SOILS TO 98% DENSITY PER AASHTO T-180.

EXHIBIT "B-6" Country Lane

TYPICAL UNPAVED ROADWAY SECTION FOR 25' WIDE R/W



1. CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES AND DISPOSE OF ALL DEBRIS OFF SITE.
2. STABILIZED & MECHANICALLY MIXED 8" MINIMUM THICKNESS ROAD BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40. USE FDOT APPROVED MATERIALS OR LOCAL MATERIALS APPROVED BY TOWN ENGINEER.
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE TRAVELWAY ON EACH SIDE A MINIMUM 2' WIDE; SOD A MINIMUM OF 2' WIDE IN CENTER OF RIGHT-OF-WAY; SOD SWALE BANKS. SWALE SIDE SLOPES MIN. 3:1. BACKSIDE OF SWALES MAY BE SEEDED. SOD OR SEED OF THE ENTIRE ROADWAY SHALL BE AS APPROVED BY TOWN ENGINEER.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT SOILS TO 98% DENSITY PER AASHTO T-180.

SECTION 5. Chapter 13, Article II, Division 2, Section 13-42 is amended, as follows:

Sec. 13-42. - Roadway improvement process.

- (a) Any person (applicant) desiring to improve a public right-of-way within the Town of Malabar shall follow the process described herein:
- (1) Obtain a copy of the town's ~~master~~-roadway design standards and permit forms.
 - (2) Provide the town with a right-of-way survey prepared by, signed and sealed by a Florida registered surveyor.
 - (3) Provide the town with a set of design plans and specifications signed and sealed by a Florida registered engineer and complying with the town's ~~master~~-roadway specifications.
 - (4) Obtain a roadway improvement permit from the town with administrative approval by the engineer as directed by the Town Manager.
 - (5) ~~Obtain administrative approval of the town engineer, stamped "APPROVED" plans and specifications, town construction inspection requirements and any governmental permits and mitigating requirements necessary to proceed with the roadway construction.~~
 - (6) Retain a Florida or Brevard County licensed contractor, meeting the town's licensing and insurance requirements, to perform the construction in accordance with the plans, specifications and permits.
 - (7) Schedule inspection of the work through the Building Department by the town engineer at (1) completion of clearing and rough grading, (2) completion of drainage infrastructure and satisfactory test reports of roadway sub-grade and (3) final inspection.
 - (8) Provide certified soils laboratory test reports indicating that the completed construction or construction progress complies with the roadway plans, specifications and permits.
 - (9) Provide, to the town, "as built" drawings of the roadway improvements certified by a Florida registered surveyor or engineer.
 - (10) Request, in writing, to the Building Department for the Town's designated engineering firm to examine the completed facilities and certify that the work meets the requirements of the Town Code and ~~master~~ roadway specifications and provide a written recommendation that Council accept the road for maintenance.
 - (11) Provide written documentation to the town of roadway survey, design, permitting, testing, mitigation, construction and inspection costs that may be reasonably considered to be included in the costs of improving the right-of-way for certification of costs and determination of the linear foot payback amount.

(12) Request Malabar to place on the next regular town council agenda consideration of formally ~~adopting~~ accepting the roadway and certifying the completed improvement costs as public facilities and assume the maintenance responsibilities.

(b) After determination that the roadway design meets current town standards the town's designated engineer ~~is authorized to administratively~~ shall approve the construction plans for of the roadway improvement and stamp the plans. After administrative approval the owner shall ~~deposit with the town~~ pay the applicable fees for the town roadway improvement permit, the inspection fee estimated by the Building Department ~~town engineer~~ and furnish the proposed roadway construction schedule. After such determination the town staff will:

- (1) Perform, as a minimum, inspections of the laboratory test results and three (3) inspections of the construction work. The first inspection is at the time of completion of land clearing, the second is at completion of drainage and sub-base shaping/compaction and a final inspection at completion of the roadway work and receipt of documentation of final costs, test results and "as built" drawings.
- (2) Collect, from property owners abutting that segment of the roadway improved, a pro-rata share of the roadway improvement costs from and after the date of roadway acceptance by the town. Payment to the town treasurer is required prior to issuance of any building permit for an improvement on such abutting property.
- (3) Keep a record of payments to the town and disbursement of funds to the applicant.
- (4) Place on the next regular town council agenda, after receipt of the town Town's designated engineering firm written ~~engineer's~~ certification of roadway construction completion, an item for consideration of acceptance of the completed segment of the roadway for operation and maintenance.
- (5) The town council shall not unreasonably withhold acceptance of the completed roadway.

• • •

SECTION 6. Chapter 13, Article II, Division 2, Sections 13-46 through Section 13-49 are amended as follows:

Sec. 13-46. - Standards for road improvements.

The standards for the contractors to complete local road improvements on sixty (60) foot, fifty (50) foot rights-of-way and twenty-five (25) foot rights-of-way are respectively set forth in Exhibit "A" through "B-6" and "B" to this division and are incorporated herein. The standards may, from time to time, be modified by the town council, by ordinance resolution, provided that no such modification shall affect any owner who has filed an application for a building permit prior to the effective date of any such change in the standards.

Sec. 13-47. - Reimbursement for expenses incurred by owner in connection with the construction of road improvement.

The certified costs, as determined pursuant to ~~section 13-42~~ ~~sections 13-43 and 13-44~~ hereinabove, shall be reimbursed to the individual expending such monies to complete the improvement, or their assignees (provided such assignment is recorded as hereinbelow described), by monies obtained from property owners who subsequently apply for building permits on property adjacent to or abutting any street that has been improved by the owner seeking reimbursement, provided that such improvement has been accepted by the town and further provided that the construction of the improvement was commenced after the effective date of this division [February 5, 2001] and in accordance with the terms and conditions of this division.

The method of reimbursement shall be as follows: In order for any property owner to obtain a development permit for a property that abuts any street that had previously been fully or partially improved pursuant to the terms and conditions set forth in this division, such owner must, at the time of application for a development permit, ~~pay post-a-cash-bond-with~~ the town in accordance with the formula hereinbelow described.

Sec. 13-48. - Improvement of unaccepted portion of partially improved road.

When an owner wishes to obtain a development permit for a property that abuts a street that has not been completely improved pursuant to this division, such owner shall follow the procedure described hereinbefore in sections 13-38, 13-39, ~~13-40~~, 13-41, 13-42, ~~13-43~~, ~~13-44~~, 13-45 and 13-46 to construct the improved street through and including the owner's furthest property line from such improved street if the street had not been previously completed through the owner's furthest property line. Said owner shall be entitled to reimbursement for his expenses as set forth in ~~section 13-46~~ 13-47 of this division.

Sec. 13-49. - Improvement required if land partially abuts unaccepted road.

If an owner wishes to obtain a development permit for a property that partially abuts a street that has been improved pursuant to the terms of this division, after the effective date of this division [February 5, 2001], such owner shall complete the street through such owner's furthest property line using the procedure set forth in sections 13-38, 13-39, ~~13-40~~, 13-41, 13-42, ~~13-43~~, ~~13-44~~, 13-45 and 13-46 and shall be entitled to reimbursement from subsequent property owners who build on that portion of the street improved by such owner in accordance with the terms of this division. Additionally, such owner shall further be obligated to reimburse the prior owner(s) who expended certified costs to improve the street that partially abuts such owner's property in accordance with the pro rata formula described hereinabove.

SECTION 7. Chapter 13 is amended by deleting Article III in its entirety:

ARTICLE III. -- ACCEPTANCE OF LOCAL ROADS

Sec. 13-61. -- Definitions.

~~As used herein, the following terms shall have the following meanings:~~

~~*Improved road* shall mean the path upon which vehicular traffic is intended to travel and upon which the travel way has been altered from its natural state in order to permit use as a street.~~

~~*Owner* shall mean the individual, entity or, in the event that the property is owned by a partnership or an aggregation of individuals or entities, all of the partners or persons or entities who have a present, possessory interest on such property.~~

~~Road shall mean the path upon which vehicular traffic is intended to travel in order to obtain ingress and egress to and from real property. As used in this article, the terms "road" and "street" are interchangeable and intended to have the same meaning as expressed herein.~~

~~Travel way shall mean any right-of-way, dedicated to the town, for the purpose of providing ingress and egress by motor vehicles or other method into privately or publicly owned real property.~~

~~Unaccepted road shall mean any road, street, or right-of-way that has not been accepted by the town for maintenance by affirmative vote of the town council wherein such street, road or right-of-way is approved and included on the official list of accepted roads within the town.~~

~~(Ord. No. 92-5, § 1, 6-19-92)~~

~~Sec. 13-62. – Local street acceptance.~~

~~Any owner of real property located within the town, said property being adjacent to an improved, unaccepted local road, may apply to the town for acceptance of the improved, unaccepted, local road. The application process shall be as follows:~~

~~(1) The applicant shall submit to the town an application for acceptance of improved, unaccepted local road. Said application to be approved as to form and content by the town.~~

~~(2) The application for acceptance of an improved, unaccepted local road shall specify the name of the street to be accepted; the length of the street to be accepted; and the number of residential dwellings currently located in the street to be accepted. In addition, a survey containing the required information as set forth in Exhibit "A,"^(A) not more than six (6) months old, of the street to be accepted shall be attached to the application at the time it is submitted to the town.~~

~~(3) The applicant shall be required to pay an application fee, as established by town council, at the time of submitting the application.~~

~~(4) Upon receipt of a completed application and survey, the town engineer shall inspect the road for the purpose of determining if the road meets the minimum safety standards adopted by this article and attached hereto as Exhibit "B."~~

~~(5) If the town engineer determines that said road meets the minimum safety standards, then the town engineer shall recommend to the town council acceptance of said road for all purposes.~~

~~(6) Upon receipt of a recommendation from the town engineer for acceptance of a local road, the town council may accept said road for maintenance and all other purposes.~~

~~(Ord. No. 92-5, § 2, 6-19-92)~~

~~Sec. 13-63. – Reapplication.~~

~~If an application, submitted pursuant to section 13-62 of this article, is denied by council, the applicant, after correcting the condition which resulted in denial of his original application, may submit a request for reconsideration of the original application for acceptance of the improved, unaccepted, local road. If the request for reconsideration is resubmitted within ninety (90) days of council's denial of the original application, the application fee, as required by section 13-62, may be waived.~~

All requests for reconsideration shall be submitted to the town on a form approved by the town. An application for reconsideration shall be processed according to the requirements of section 13-62 of this article. (Ord. No. 92-5, § 3, 6-19-92)

~~Sec. 13-64. – Minimum safety standards.~~

~~The town hereby adopts minimum safety standards for local roads within the corporate limits of the town. Said minimum standards are attached hereto as Exhibit "B" and may, from, time to time, be amended by resolution of the town council. It is the intention of these safety standards to provide minimum standards for local roads to provide for the safe ingress and egress to local residential properties. (Ord. No. 92-5, § 4, 6-19-92)~~

~~Sec. 13-65. – Policy statement and application.~~

~~It is the expressed intention of the town, through adoption of this article, to provide a method whereby real property owners within the town, whose property is adjacent to an improved, unaccepted roadway, may have their road accepted by the town for maintenance purposes.~~

~~Through adoption of this article, the town is not accepting roads which do not meet the adopted minimum safety standard. Further, local roads which meet current minimum safety standards, but which have not been accepted pursuant to the terms and provisions of this article, are expressly not being accepted by the town for any purpose.~~

~~This article is not to be construed as an acceptance of all local roads which meet current minimum safety standards, nor is this article to be construed to reduce the current standards required for new roadways being constructed within the town.~~

~~This article shall only be applied to local roads which are improved as of the date of adoption of this article, but are currently unaccepted by the town for maintenance purposes.~~

~~All dedicated rights of way, within the town, upon which no improvements have been made as of the date of adoption of this article, shall not be considered for acceptance under the terms and conditions of this article.~~

SECTION 8. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 9. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

SECTION 10. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 11. Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

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

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared duly passed and adopted this 15th day of May 2021.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

First Reading: 05/03/2021 Vote to .
Second Reading: 05/17/2021

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.b.

Meeting Date: May 17, 2021

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

SUBJECT: Request Road Improvement Waiver for 200 feet of Hunter Lane adjacent to Parcel 325, south of Atz Road. Requested by Parcel owner Mr. Gittens.

BACKGROUND/HISTORY:

The applicant bought this parcels many years ago and has been using it for agricultural purposes. He was able to fence two sides to join existing fences in 2014. He desires now to add a well and an open carport to provide shade for his animals.

The road in currently improved and accepted for 1500' just reaching his parcel. His neighbor to the north at 2665 Hunter Lane permits him to gain access to the parcel through his fence opening, negating the need for road improvement at this time.

He is requesting a postponement to the road improvement requirement until he decides to build a home. He would like to improve the conditions for his agricultural use with the shade structure.

ATTACHMENTS:

Application for Waiver to Road Improvement Requirements with Exhibit A & B
Environmental study done by Toland Environmental Consulting
Legal Ad and Radius Pkg for legal notices to property owners within 500'
Building Permit 6771 for 400LF of fencing in 2014.

ACTION OPTIONS:

Action on Request for Postponement of Road Improvement Requirements if a "Waiver" could be granted with conditions for this applicant.

TOWN OF MALABAR
2725 Malabar Road
Malabar, FL 32950
Tel. 321-727-7764 x 14

CRANSTON • GITTENS @GMAIL.COM

RIGHT OF WAY (ROW)
ROAD IMPROVEMENT WAIVER APPLICATION

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

Name of Applicant(s) OPPLETON GITTENS Tel: 321-960-9200

Mailing Address: 1495 DORAL CT. NE PALM BAY, FL 32905 Email: CRANSTON • GITTENS @GMAIL.COM

Name of Owner if other than Applicant: _____ Tel: _____

Legal description of property covered by application:

Township 29, Range 37, Section 12, Parcel (A), Road ROW Name HUNTER LANE

Property Address: 2725 HUNTER LN MALABAR, FL 32950 Zoning classification RR6S/AGRICULTURE

Existing Special Conditions or Conditional Uses Previously Granted: _____

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

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

SEE ATTACH (B) EXHIBIT

Required attachments:

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

Opplenton Gittens
Applicant(s)

03/31/2021
Date

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where the property is not owned by the applicant, a notarized letter must be attached giving the consent of the owner/owners to the applicant to proceed with request for waiver.

Please complete only one of the following:

1) 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.

Signature of Applicant(s)

Date

Sworn and acknowledged before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20____ by _____.

Notary Seal

Signature of Notary Public

Notary Public, State of Florida

Commission No. _____ My Commission Expires _____.

Personally Known _____ OR Produced Identification _____ Type: _____

-----OR-----

2) I, ODDLETON GITTENS, being first duly sworn, depose and say that I, Oddleton Gittens, 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.

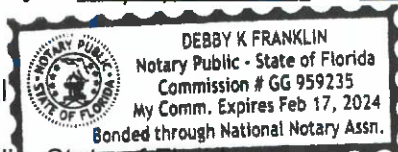
Oddleton Gittens
Signature of Applicant(s)

03/31/2021
Date

Sworn and subscribed before me by means of physical presence or _____ online notarization, this 31 day of March, 2021 by ODDLETON GITTENS.

Notary Seal

Signature of Notary Public



Notary Public, State of Florida

Commission No. GC 959235 My Commission Expires 2/17/2024.

Personally Known OR Produced Identification _____ Type: _____



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2931906
Owners	GITTENS, ODDLETON A
Mailing Address	PO BOX 060742 PALM BAY FL 32906
Site Address	2725 HUNTER LN MALABAR FL 32950
Parcel ID	29-37-12-00-325
Property Use	0009 - VACANT RESIDENTIAL LAND (SINGLE FAMILY, UNPLATTED)
Exemptions	None
Taxing District	34Z0 - MALABAR
Total Acres	1.40
Subdivision	--
Site Code	0001 - NO OTHER CODE APPL.
Plat Book/Page	0000/0000
Land Description	N 200 FT OF S 1200 FT OF W 1/2 OF LOT 21 OF PB 1 PG 165 EX W 25 FT AKA TRACT 89

VALUE SUMMARY

Category	2020	2019	2018
Market Value	\$14,000	\$12,600	\$11,200
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$12,660	\$11,510	\$10,470
Assessed Value School	\$14,000	\$12,600	\$11,200
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$12,660	\$11,510	\$10,470
Taxable Value School	\$14,000	\$12,600	\$11,200

SALES/TRANSFERS

Date	Price	Type	Deed
11/04/2003	\$9,000	QC	5114/2641
04/27/2000	\$3,600	XD	4164/1833

No Data Found

EXHIBIT
A

(A)

Using property as Agriculture until such time to build. Therefore, I am requesting access to my property for Agriculture Purposes. Also, need to put a well and protection for my animals.

I am asking for a waiver of the Road Improvement Requirement until such time, as the parcels adjacent, or south of my parcel, request improvement.

~~EXHIBIT~~

~~B~~

2 pages

EXHIBIT B

The Carport Company

945 NW 17th Ave. Ocala, FL 34475
 1-866-277-5700/1-877-436-3134 Customer Service/Delivery
 1-866-311-0301 To fax an order
 www.thecarportcompany.com

QUOTE!

Dealer TCC TCC Invoice# _____ Date 02/25/21
 Name Oddleton Gittens Phone 391/9601200

Address (where unit will be delivered) _____
 City Malabar State FL Zip 32950

Type of Structure (circle one): CLASSIC A-FRAME VERTICAL A-FRAME FLAT
 Style: OPEN ENCLOSURE BARN SHOP-PORT
 Color: MOCHA TAN Trim: MOCHA TAN No Warranty or Premium (10% upcharge)
 Anchoring Surface: Concrete Soil Asphalt Other (Add'l fee) _____

CRANSTON.GITTENS@GMAIL.COM

Structures are designed to be on level surface and are engineered for soil, concrete or asphalt
 Frames are 1' shorter in length than roof coverage

Size:(Ex. 18x20) <u>W 18 X L 26</u>	Price: <u>1620⁰⁰</u>
Leg Height:(ex. 5') <u>7</u>	Price: <u>75⁰⁰</u>
Close Sides: Yes No If yes, 1 side or 2 sides _____	Price: _____
Close Ends: Yes No If yes, 1 end or 2 ends _____	Price: _____
Garage Doors: Size: _____ Qty: _____	Price: _____
Side Headers: Yes No Qty: _____	Price: _____
Walk in Door Yes No <input type="checkbox"/> 36" x 80" Qty: _____	Price: _____
Gable: Yes No If yes, 1 or 2 gables _____	Price: _____
Windows: Yes No If yes, Qty _____	Price: _____
Other: _____	Price: _____

Special Instructions
NEED GENERATOR!

Retail _____
 % TAX _____
 TOTAL 1695⁰⁰
118⁰⁵
18136⁰⁵

On hold - Pending outcome of ROAD imp. waiver request Rec'd 3/31/2021.

Check Schedule	
DEPOSIT (10% of Retail) Check #1	<u>2034⁰⁰</u>
Delivery (15% of Retail) Check #2	<u>2542⁵⁰</u>
MATERIAL BALANCE Check #3 (Grand total-deposit-delivery=material balance)	<u>1356⁰⁰</u>

Delivery Additions	
Fuel S/C	_____
Connect Fee	_____
Extra fees	_____
Total Delivery	_____

kits are for agricultural use only (Unless permitted for other use). The Carport Company of Florida company will be responsible for delivery of unit. I have read and completely understand the above of God or any weather related events. Wind ratings are guide to purchasing a product but are not a

X _____



Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321.727.7764 (Office) 321.727.9997 (Fax) www.townofmalabar.org

**TOWN OF MALABAR
NOTICE OF
PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **May 17, 2021**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: Request a Waiver (postponement) from the road improvement requirement while utilizing the parcel for Agricultural purposes. Applicant is Oddleton (Cranston) Gittens, owner of parcel 29-37-12-00-325.

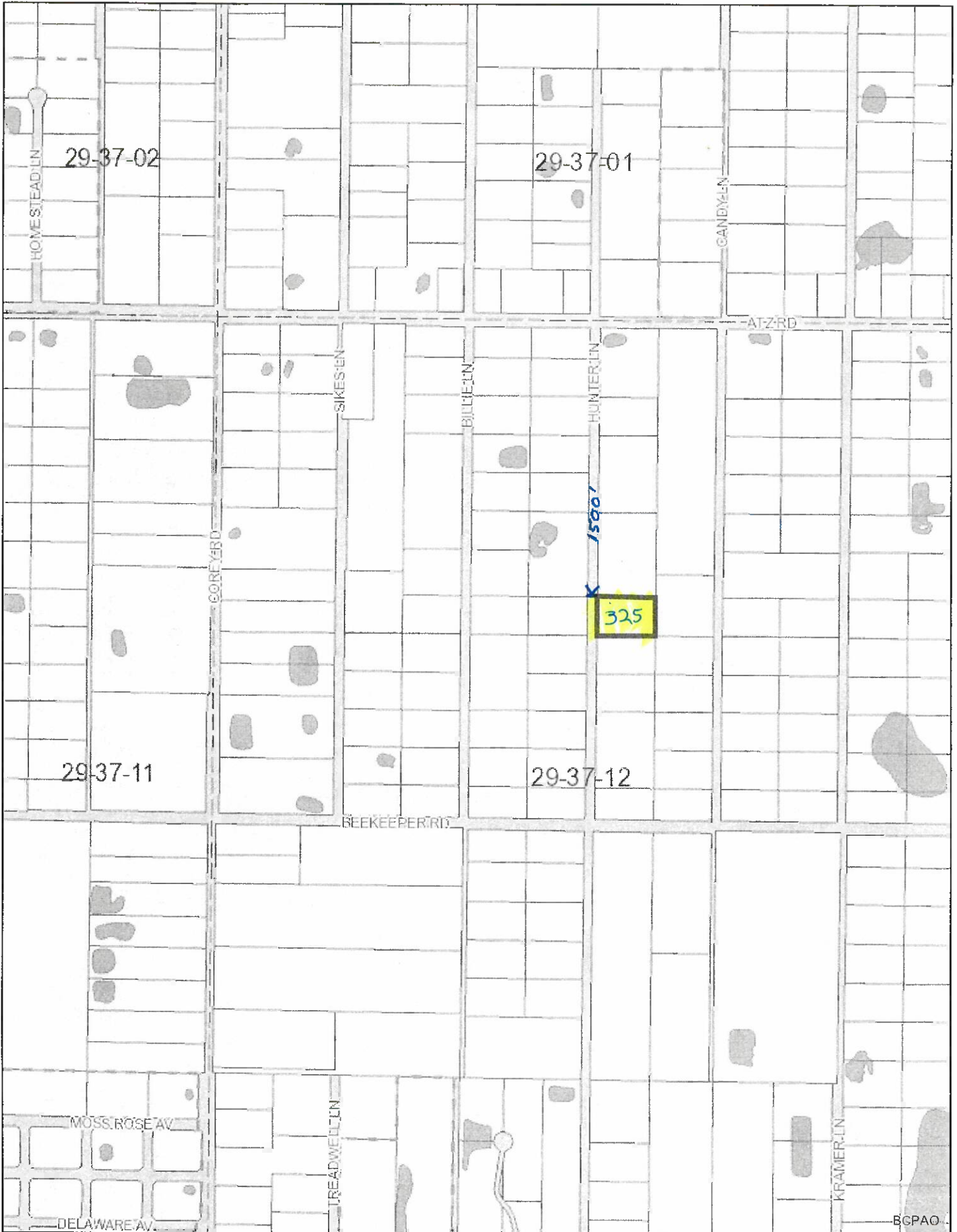
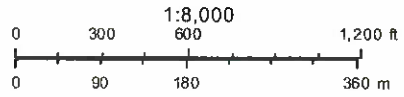
ROAD IMPROVEMENT WAIVER REQUEST

A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE 200 FEET JUST SOUTH OF THE ACCEPTED PORTION OF HUNTER LANE, SOUTH OF ATZ ROAD UNTIL SUCH TIME AS HE DESIRES TO BUILD A HOME. REQUEST BY ODDLETON (CRANSTON) GITTENS, OWNER OF PARCEL 325 IN SECTION 12, TOWNSHIP 29, RANGE 37.

If you received this notice then you are listed as an owner of property, as shown in the records of Brevard County Property Appraiser's office, within 500' of the applicant's requested waiver request. This Notice is provided as required by Malabar Code, Chapter 13, Section 13-38.



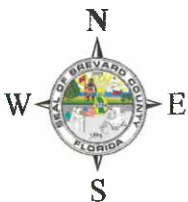
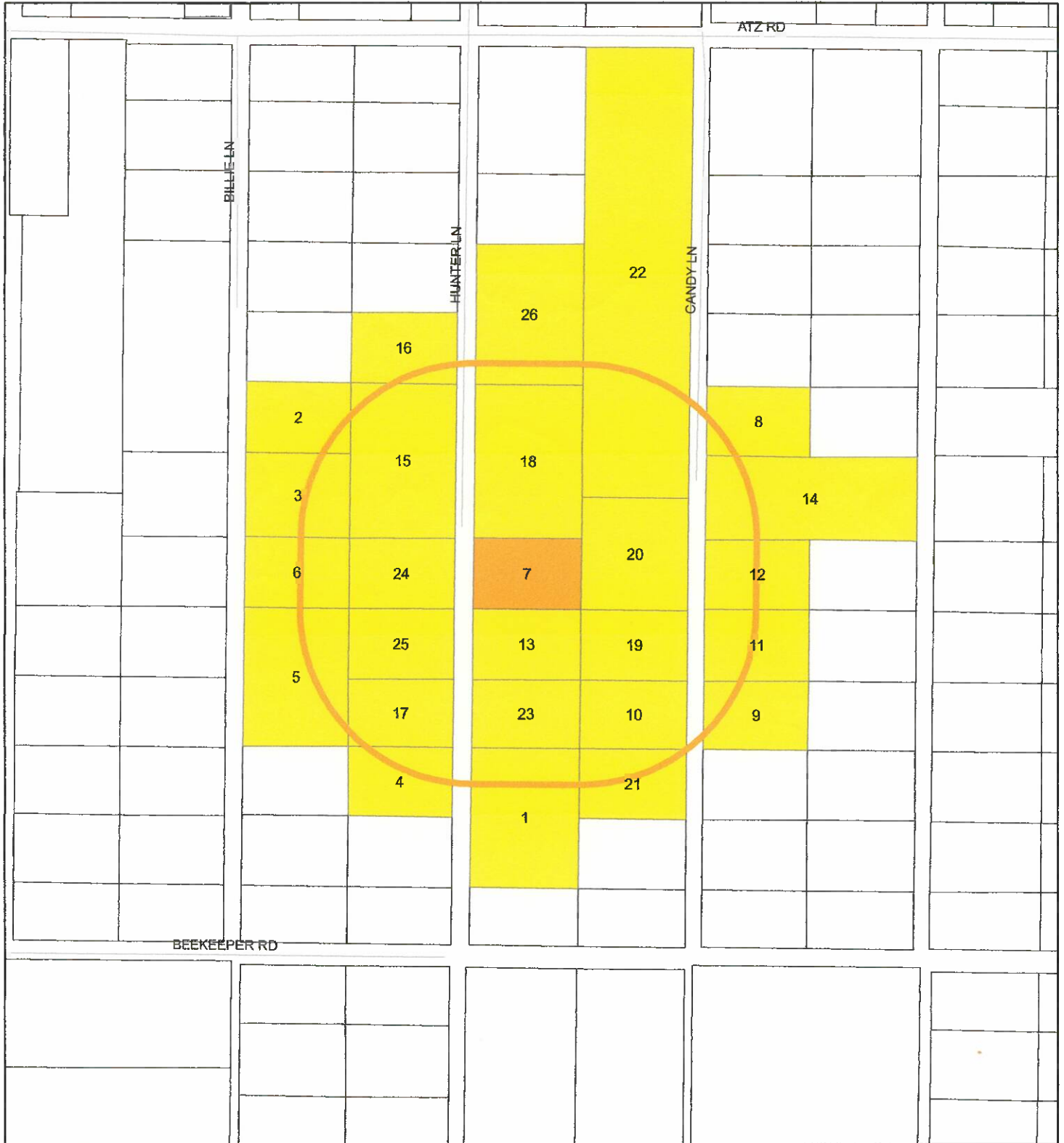
Dana Blickley, CFA
 Brevard County Property Appraiser



RADIUS MAP

GITTENS, ODDLETON A

gittens500







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: 3/2/2021

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

GITTENS, Oddleton

BARFUS FAMILY REVOCABLE TRUST
6520 BETHEL ST
COCOA FL 32927-4268

DANAHER, PETER J
DANAHER, KAREN
849 SW 12TH AVE
BOCA RATON FL 33486-8427

GITTENS, ODDLETON A
PO BOX 060742
PALM BAY FL 32906-0742

HARDY, KEVIN ROBERT
HARDY, MARIAH PAIGE
625 INDIAN RIVER DR
MELBOURNE FL 32935-6936

HICKS, JAMES C
HICKS, DIANA W
11912 ASH ST
PALM BCH GARDENS FL 33410-

KONATSU, BETTY
KONATSU, MASANOBU
207 E WOODLAWN DR
HARKER HEIGHTS TX 76548-

KOSHINSKI, DAVID ALAN
KOSHINSKI, CANDYCE L
2705 CANDY LANE
MALABAR FL 32950-

MORTENSEN, MARK C
MORTENSEN, MARGARET R
2690 HUNTER LANE
MALABAR FL 32950-

NIAKAROS, ARTHUR
41 SYCAMORE DRIVE
WESTWOOD MA 02090-

PERRY, KEITH
2930 INDIANA ST
MELBOURNE FL 32904-

PRICE, PAUL D
PRICE, NANCY E
2665 HUNTER LN
MALABAR FL 32950-

SACULLES, RINA SHIELLA MIRANDA
700 CARLYLE SE AVE SE
PALM BAY FL 32909-4533

SEIWERT, MICHAEL G
SEIWERT, JULIE B
843 CLIFTON ROAD SE
PALM BAY FL 32909-

SHAW, ERNEST
SHAW, ROSELINE
3287 SE WEST SNOW RD
PORT ST LUCIE FL 34984-

SPRINGWATER HOMES OF FLORIDA INC
435 STAN DR, STE C
MELBOURNE FL 32904-1051

VAN DE GRIFT, JAMES E
VAN DE GRIFT, JAN A
2797 ROSELLEN AVE
MADISON WI 53711-

VEERASAMI, RONALD
VEERASAMI, DARO
116 -13 103RD AVENUE
RICHMOND HILL NY 11419-

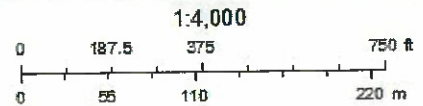
VEERASAMI, SHIVANI
1234 CRAFTSLAND LANE NE
PALM BAY FL 32905-

WELTON, DANIEL JOSEPH III
WELTON, SHERYL ANNE
2635 HUNTER LN
MALABAR FL 32950-3805

Brevard County Property Appraiser



June 17, 2019



2846350
EagleView Photography BCPAO

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



March 17, 2021
Mr. Oddleton Gittens
1495 Doral Court, NE
Palm Bay, FL 32905

RE: Preliminary Site Inspection
1.4-acre Property located at
2725 Hunter Lane, Malabar, FL 32950
Tax ID: 2931906, Parcel ID: 29-37-12-00-325

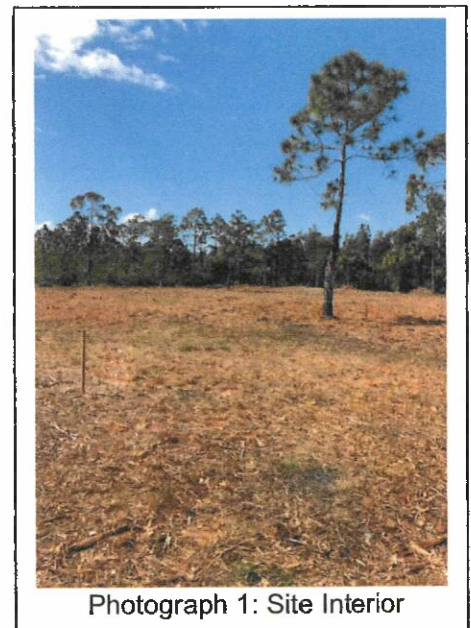
Dear Mr. Gittens:

The following is a summary of Toland Environmental Consulting's (TEC) preliminary site inspection of a 1.4-acre study area located at 2725 Hunter Lane, Malabar, Florida whose tax and parcel identification numbers are 2931906 and 29-37-12-00-325, respectively. The property is surrounded to the north by a single-family residence, to the east by undeveloped single family residential property, to the south by undeveloped single family residential property, and to the west by the undeveloped continuation of Hunter Lane (Figure 1).

The purpose of the preliminary site inspection was to identify environmental resources on the site and to evaluate whether consideration needs to be made during the acquisition or conceptual design process to address environmental restrictions on the property's development. To prepare this ecological assessment, TEC reviewed natural resource maps including GIS database coverages of the Brevard County Soil Survey, the National Wetland Inventory, U.S.G.S. Topographic Quadrangle Maps, the 2008 Brevard County Florida Scrub-Jay Occupancy Map, the Florida Fish and Wildlife Conservation Commission's (FWC) Bald Eagle Nest Site Locator Map and other listed species databases.

In addition, on March 10, 2021, TEC ground-truthed, delineated and described the natural communities present within the study area with reference to the Cooperative Land Cover Map, Version 3.3 (CLC) which is the land cover system maintained by FWC and prepared in concert with the Florida Natural Areas Inventory (FNAI) that expands and updates the Florida Department of Transportation's Florida Land Cover Classification System (FLUCCS) last revised in 1999. In its current condition, the site would be classified by CLC as having 0.93 acres of Bare Soil/Clear Cut (CLC Code 1880), 0.24 acres of Mesic Hammock (CLC Code 1120), and 0.23 acres of Hydric Hammock (CLC Code 2232) with a wetland-cut drainage ditch running through it (Figure 2).

The Bare Soil/Clear Cut area was originally Pine Flatwoods and Dry Prairie (CLC Code 1300) prior to being cleared, and it currently consists of a few scattered slash pines (*Pinus elliottii*) and a cleared understory. The understory was cleared originally in 2014 pursuant to an approved land clearing permit approved by the town of Malabar, and the understory was cleared again in 2021 by the owner (Photograph 1).



Photograph 1: Site Interior

The Mesic Hammock consists of Brazilian pepper (*Schinus terebinthifolius*) and cabbage palm (*Sabal palmetto*), with a sparse understory of swamp fern (*Blechnum serrulatum*). Along the western edge, the Mesic Hammock becomes more of a monoculture of Brazilian pepper lacking an understory.

Figure 1: Regional Location



Legend

 Property



450 225 0 450 Feet


Figure Prepared by Toland Environmental Consulting
Using FDOT 2018 Aerial Imagery

Figure 2: Natural Communities Cover Map



Legend

-  Property
-  Bare Soil/Clear Cut - 1880
-  Mesic Hammock - 1120
-  Hydric Hammock - 2232
-  Wetland-cut Drainage Ditch



Figure Prepared by Toland Environmental Consulting
Using FDOT 2018 Aerial Imagery

Figure 3: NRCS Soils Map



Legend

-  Property
-  Basinger Sand
-  Myakka Sand



Figure Prepared by Toland Environmental Consulting
Using FDOT 2018 Aerial Imagery

The Hydric Hammock has a canopy of laurel oak (*Quercus laurifolia*), slash pine, melaleuca (*Melaleuca quinquenervia*), wax myrtle (*Myrica cerifera*), and red bay (*Persea palustris*). The understory consists of royal fern (*Osmunda regalis*), swamp fern, saw grass (*Cladium jamaicense*), St. John's wort (*Hypericum fasciculatum*), and perennial fleabane (*Pluchea odorata*), as well as cattails (*Typha spp.*) in the culverted wetland-cut drainage ditch that runs through the middle of the wetland (Photograph 2).

The onsite soils are classified by the National Resources Conservation Service (NRCS) as Myakka Sand and Basinger Sand (Figure 3).

Myakka fine sands are poorly drained soils that are composed of sandy marine deposits. These soils are usually associated with flatwoods on marine terraces. In general, native vegetation associated with this soil series consists of longleaf and slash pine with an undergrowth of saw palmetto, gallberry, wax myrtle and pineland threeawn. The depth to the seasonal high-water table ranges from 6 to 18 inches below land surface for 1 to 4 months during most years. These soils are classified as having no frequency of flooding under normal weather conditions or ponding where water stands in a closed depression on the average more than once every two years or with a greater than fifty percent chance during any given year (NRCS 2019). The vertical conductivity (KSAT) of water moving through the water column is moderately high to high (0.57 to 5.98 in/hr). Within Brevard County, the Florida Association of Environmental Soil Scientists classify Myakka sands as an upland soil.



Photograph 2: Wetland Interior

In Brevard County, Basinger sands may be either a hydric soil or an aquifer recharge soil. Hydric soils form under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile. While on the other hand, aquifer recharge soils are highly permeable soils with permeability rates greater than 20 inches per hour as identified by the Brevard County Soil Survey, 1974. Hydric soils are usually associated with wetlands while non-hydric soils are generally associated with upland habitats. Basinger sands are made up of poorly drained, sandy marine deposits that have formed on flat areas on marine terraces. Basinger sands have exceedingly high vertical permeability rates (KSAT values 19.98 to 39.96 in/hr). Basinger sands can also develop as hydric soils in areas where they are very poorly drained, have a water table at the ground surface during the growing season, and are made up of coarse to fine sands within the first 20 inches of the soil profile. As such, Basinger sand is a soil series that is classified as a hydric soil by the Hydric Soils of Florida Handbook, fourth edition published in 2007 by the Florida Association of Environmental Soil Scientists.

The most western side of property is mapped as freshwater emergent wetlands by the National Wetland Inventory (NWI) and as mixed scrub-shrub wetlands by the St. Johns River Water Management District. TEC confirmed the presence of wetlands in this area in association with a potentially wetland cut drainage ditch which provided hydrology to the adjacent wetland areas (Figure 2). The extension of Hunter Lane resulted in alteration of the area and likely the transfer of fill from ditches to the road-right-of-way resulting in this area being classified as uplands. TEC's wetland delineation was based upon observing wetland vegetation and signs of hydrology, such as adventitious rooting, that indicated that part of the property flooded or had water ponding on it. TEC also reviewed soil samples to confirm the presence of hydric soils, but the soils did not meet the requirements of the Florida Hydric Soil Indicators for Delineation. However, this area meets the proper combinations of wetland vegetation and signs of hydrology to meet the delineation criteria for classification as a wetland according to either Chapter 62-340, Florida Administrative Code or Section 404 of the Clean Water Act (33U.S.C. 1344).

Impacts to wetlands are regulated by the federal, state and local governments through the Clean Water Act, Chapter 62-340, Florida Administrative Code (FAC) and local land development regulations. Recently, the State of Florida assumed part of the federal 404 Wetland Permitting Program (404 Permit) allowing Florida to

issue both the state's Environmental Resource Permit (ERP) and the federal 404 Permit within areas that are not retained for jurisdiction by the US Army Corps of Engineers (ACOE) or federal retained waters. The Applicant's site does not lie within 300-feet of a retained water. Therefore, residential development for this lot would be subject to the jurisdiction of the Florida Department of Environmental Protection issuing permits for both the FDEP and ACOE. FDEP will require mitigation for primary and secondary impacts that cause a loss of functional wetland systems that are isolated and bigger than one-half acre and do not provide habitat for listed species or are connected and larger than 0.1-acres. Primary impacts are direct impacts to wetland areas within an approved jurisdictional line, and secondary impacts are alterations within an average of 25-feet of a wetland jurisdictional line where the 25-feet may be reduced to 15-feet in some areas so long as larger buffers are provided elsewhere adjacent to the jurisdictional line that net in an average 25-foot buffer. The study contains approximately 0.24 acres of isolated wetlands and therefore will require an ERP and 404 Permit exemption from FDEP for any primary or secondary impacts to these wetlands. To issue the permit, FDEP will require that any impacts to wetlands be minimized as much as is reasonably practical and prevented by directing development into uplands whenever possible. The project may be eligible for a general permit issued pursuant to Section 62-330.439 FAC for the construction or maintenance of a culverted driveway or roadway crossing if the state determines that the ditch is a wholly artificial drainage conveyance, the culvert is placed under the roadway, the length of the roadway does not exceed 50 feet and the width does not exceed 75-feet and the slopes are no steeper than a 2:1 grade.

The Town of Malabar will be the local regulating agency for wetland impacts. However, Malabar's land development regulations defer to the permitting requirements of the state and federal agencies and does not duplicate or layer additional wetland protections on these existing regulations.

Bare Soil/Clear Cut and Pine Flatwoods and Dry Prairie could potentially support federal or state species listed as endangered, threatened, or species of special concern including gopher tortoises (*Gopherus polyphemus*), Florida scrub-jays (*Aphelocoma coerulescens*), eastern indigo snakes (*Drymarchon corais couperi*) and bald eagles (*Haliaeetus leucocephalus*). TEC's review of listed species databases indicated the site is not mapped as being potentially occupied by scrub-jays or nests for bald eagles within regulatory protection limits.

As an authorized gopher tortoise agent for the Florida Fish and Wild Conservation Commission (FWC) to survey for gopher tortoises, TEC surveyed 100 percent of all suitable gopher tortoise habitats on the property using the surveying protocols outlined in FWC's Gopher Tortoise Permitting Guidelines as last updated in July 2020. TEC also surveyed the Pine Flatwoods and Dry Prairie to the east of the property to compare gopher tortoise density to assess the likelihood of gopher tortoises occupying the property prior to being cleared. During the site visit, TEC did not observe any gopher tortoises, their burrows or their sign on the property or in the surrounding Pine Flatwoods and Dry Prairie. This is attributed to by the proximity to the wetlands which may make the ground water table too high for gopher tortoises to establish burrow.

If you have any questions or require additional information regarding this initial site inspection, please contact me on my office phone at 321-242-7173 or by e-mail [at teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com).

Sincerely,

Lisa J. Toland

Lisa J. Toland, President

Clare E. Crenshaw

Clare E. Crenshaw, Environmental Specialist

BUILDING PERMIT

PERMIT INFORMATION		LOCATION INFORMATION	
Permit #: 6771	Issued: 6/19/2014	Address: 2725 Hunter Lane Malabar, FL	
Permit Type: BUILDING PERMIT		Township: 29	Range: 37
Class of Work: 250 Fence		Lot(s): 325	Block: Section: 12
Proposed Use: RR65 RURAL RESIDENTIAL		Book:	Page:
Sq. Feet:	Est. Value:	Subdivision: Fl. Indian River Land Co.	
Cost: 1,250.00	Total Fees: 69.00	Parcel Number: 29-37-12-00-00325	
Amount Paid: 69.00	Date Paid: 6/25/2014		
CONTRACTOR INFORMATION		OWNER INFORMATION	
Name: OWNER/BUILDER		Name: Gittens, Oddleton	
Addr:		Address: P.O. Box 060742 Palm Bay, FL 32906	
Phone:	Lic: QUAL BUS	Phone: (321)960-9200	

Work Desc: INSTALL FIELD FENCE 4FT HIGH 400 LF ON TWO SIDES AS DESIGNATED ON SURVEY FOR ANIMALS ON VACANT PROPERTY

APPLICATION FEES

BUILDING PERMIT	65.00	Surcharge to DCA online	2.00	Surcharge to DBPR	2.00
-----------------	-------	-------------------------	------	-------------------	------

INSPECTIONS REQUIRED

FINAL			
-------	--	--	--

WARNING TO OWNER:

YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

Before building construction is started, approved sanitary facilities for workmen must be provided. It is the responsibility of the permit holder of each phase of work to procure inspections as required and to verify approvals prior to proceeding to the next phase. In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of Brevard County, and there may be additional permits required from other government entities such as Water Management Districts, State Agencies or the Federal Government. It is the applicants responsibility to secure those permits.

In consideration of the granting of this Permit, the owner and builder agree to construct the structure in full compliance with the Florida Building Code and Zoning regulations of the Town of Malabar, Florida. This permit not refundable after 30 days.

A CERTIFICATE OF OCCUPANCY MUST BE ISSUED BEFORE ANY BUILDING IS OCCUPIED.

 Owner/Contractor/Agent Date

 Building Official Date

Permits shall become void if work authorized does not maintain continual approval within six months of the date of the permit.
 FILE _____ APPLICANT _____ COUNTY _____



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

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

Ad No.: 0004698774
Pymt Method Invoice
Net Amt: \$83.59

Run Times: 1

No. of Affidavits: 1

Run Dates: 04/22/21

Text of Ad:

Ad#4698774 04/22/2021

TOWN OF MALABAR
NOTICE OF PUBLIC HEARING
The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, May 17, 2021, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: Request a Waiver from the road improvement requirement while utilizing the parcel for Agricultural purposes. Applicant is Oddleton (Cranston) Gittens, owner of parcel 29-37-12-00-325.

ROAD IMPROVEMENT WAIVER REQUEST
A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE 200 FEET JUST SOUTH OF THE ACCEPTED PORTION OF HUNTER LANE, SOUTH OF ATZ ROAD UNTIL SUCH TIME AS HE DESIRES TO BUILD A HOME. REQUEST BY ODDLETON (CRANSTON) GITTENS, OWNER OF PARCEL 325 IN SECTION 12, TOWNSHIP 29, RANGE 37.

Copies of this application request 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 wnclerk@townofmalabar.org or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the 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
COUNCIL MEETING**

**AGENDA REPORT NO: 8.c.
Meeting Date: May 17, 2021**

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

SUBJECT: First Reading of Ordinance 2021-05 and Public Hearing on the amendment of the Town's Zoning Map for approximately 1,716 acres shown on Exhibit "A" and specifically excluding the parcels listed in the ordinance.

BACKGROUND/HISTORY:

This blanket zoning will change all the properties changed when the Future Land Use Map was updated in 2018 and exclude only those five parcels listed in the ordinance as those property owners expressed desire to keep their existing zoning.

This was heard at the P&Z Board meeting on April 28, 2021 as an action item with their recommendation attached.

The State statute requires a second Public Hearing on any ordinance that provides for municipal wide zoning changes. That is scheduled for June 7, 2021.

ATTACHMENTS:

Ordinance 2021-05

Malabar Proposed Zoning Map with exceptions listed in Ordinance 2021-05

Malabar Current FLUM adopted and approved by the State in 2018.

Memo from P& Z Board

ACTION OPTIONS:

Action on Approval of first PH on Zoning map changes in Ord 2020-05

ORDINANCE 2021-05

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 ALL PARCELS EXCEPT THE ONES LISTED IN THIS ORDINANCE; PROVIDING FOR THE EXISTING ZONING CLASSIFICATION FOR THOSE PARCELS; PROVIDING ACCESS TO THE NEW ZONING MAP ON THE TOWN WEBSITE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council desires to create a zoning map that reflects the planning horizon adopted in the Comprehensive Plan Future Land Use Map for approximately 1,716 acres within Malabar, primarily along the Malabar Road and Babcock Street corridors and the conservation lands, while providing for exceptions for those property owners that have opposed such zoning change at this time.

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

Section 1. The Town Council adopts the zoning map attached hereto as Exhibit "A" which reflects the adopted planning horizon in the Comprehensive Plan's Future Land Use Map for approximately 1,795 acres within Malabar, primarily along the Malabar Road and Babcock Street corridors and the conservation lands, with exclusions for those opposing such changes.

Section 2. The Town Council has considered the responses from those property owners that desire to retain their existing zoning classification at this time and are identified as the following.

Tax account #: 2851088	Parcel ID: 28-38-31-54-B-52	Size: 12.32 acres
Tax account #: 2851076	Parcel ID: 28-38-31-54-B-4.0	Size: 11.75 acres
Tax account #: 2931413	Parcel ID: 28-37-10-00-548	Size: 1.29 acres
Tax account #: 2931412	Parcel ID: 29-37-10-00-547	Size: 1.29 acres
Tax account #: 2846131	Parcel ID: 28-37-35-00-505	Size: 9.56 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 as set forth in the attached map and parcel list. The Clerk is directed to make such new map available on the Town's website.

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 Marisa Acquaviva ____
- 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:

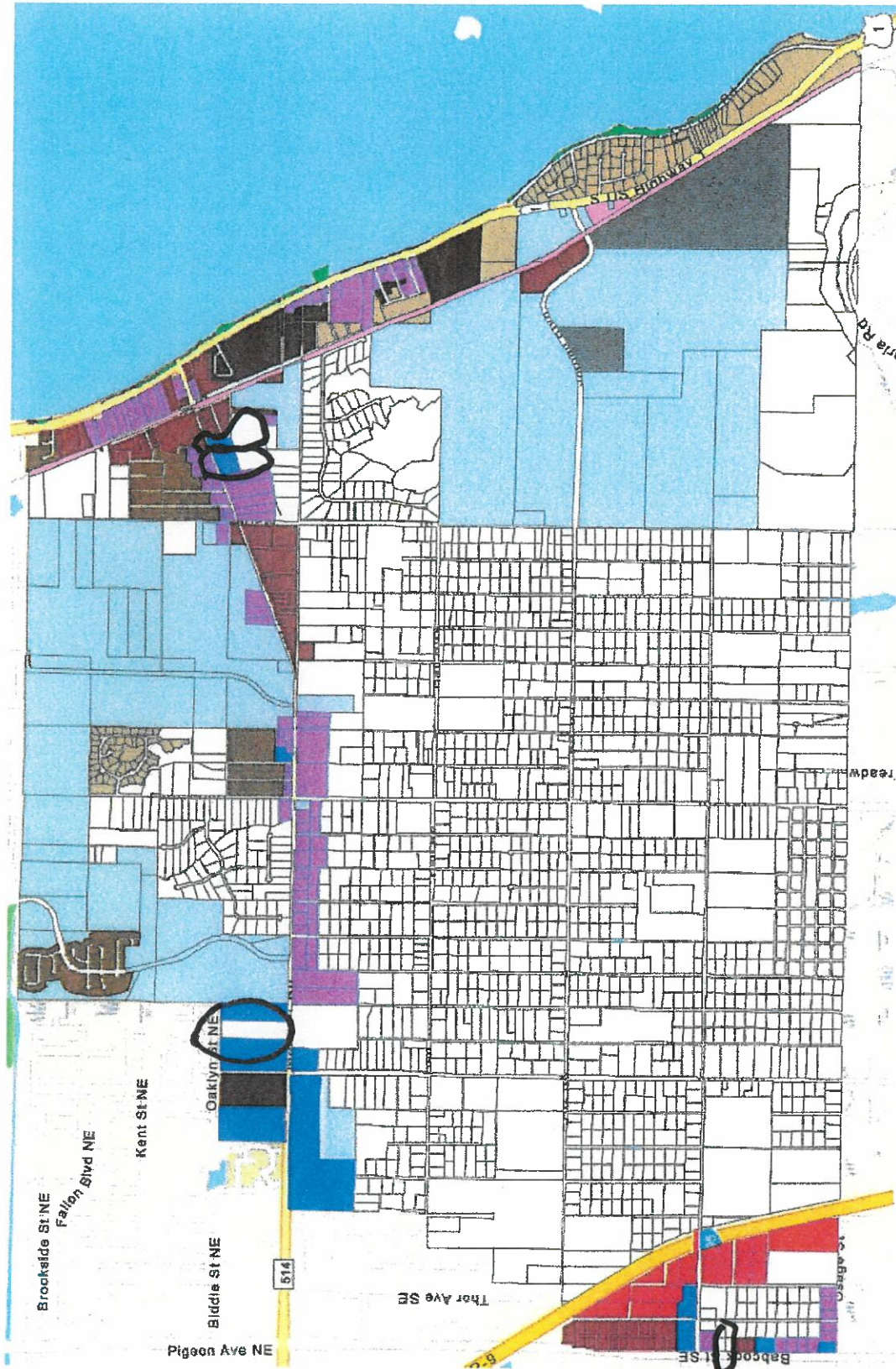
Karl W. Bohne, Jr., Town Attorney

P&Z PH: 4/28/2021 vote: _____
1st Reading: 5/17/2021: vote: _____
2nd Reading: 6/07/2021: _____

EXHIBIT "A" of Ordinance 2021-05















Future Zoning Map

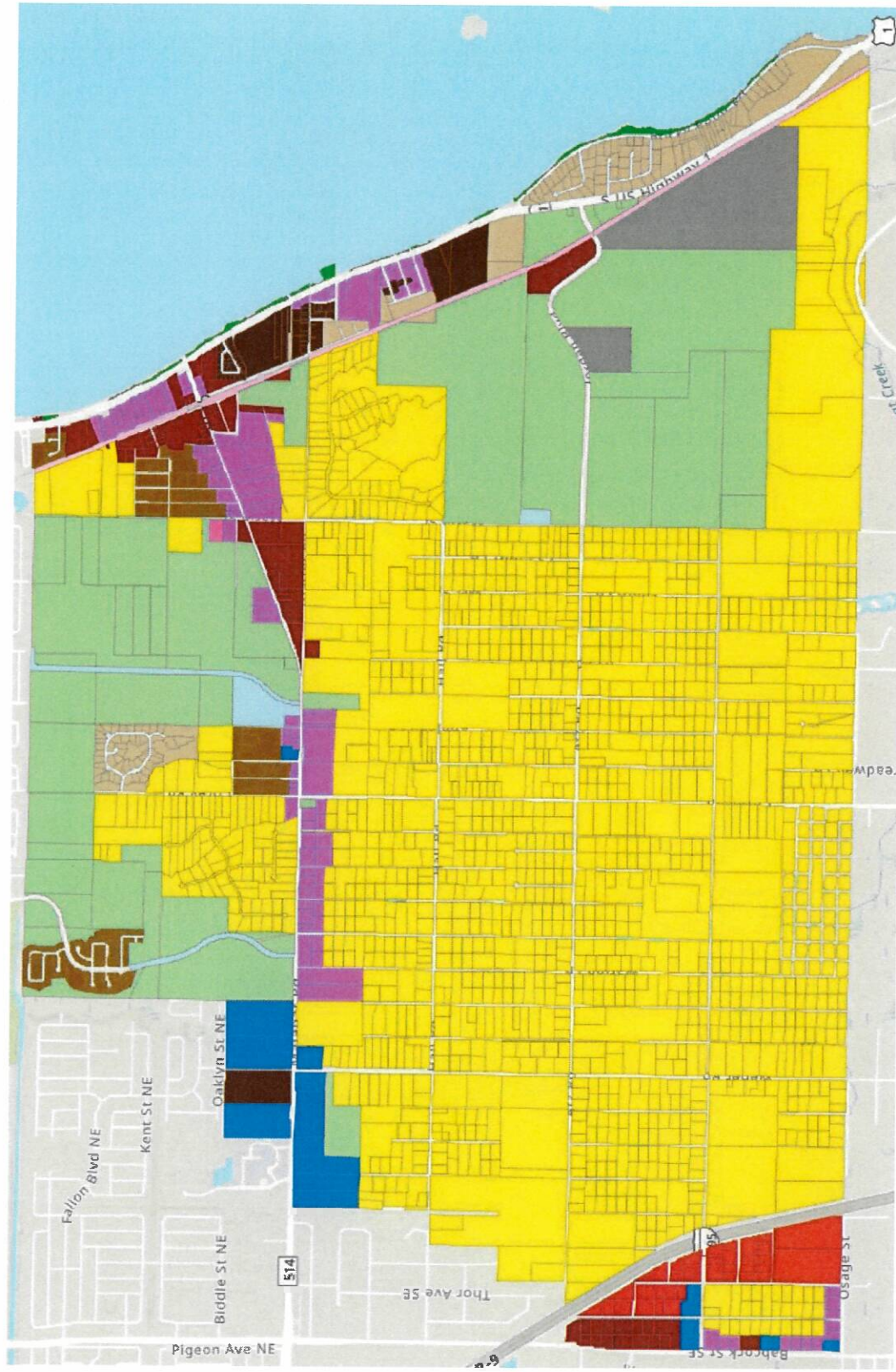
-  Commercial General
-  Commercial Limited
-  Coastal Preservation
-  Industrial
-  Institutional
-  Office-Institutional
-  Residential Mobile Home
-  Residential and Limited Commercial
-  Multiple Family HDR
-  Rural Residential
-  Single Family MDR (RS-10)
-  Single Family MDR (RS-15)
-  Single Family LDR (RS-21)
-  <all other values>



MALABAR FUTURE LAND USE MAP PLANNING HORIZON TO 2030

Future Land Use Map

-  Commercial General
-  Commercial Limited
-  Conservation
-  Coastal Preserve
-  High Density Residential
-  Open Space and Recreation
-  Industrial
-  Institutional
-  Low Density Residential
-  Medium Density Residential
-  Office-Institutional
-  Residential and Limited Commercial
-  Rural Residential
-  Other



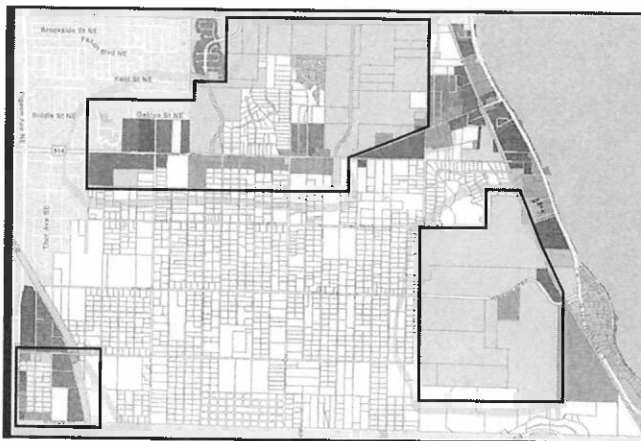
TOWN OF MALABAR NOTICE OF TWO PUBLIC HEARINGS FOR THE ADOPTION OF THE AMENDED MALABAR ZONING MAP WITH ORDINANCE 2021-05.

Town of Malabar Council will hold the first of two Public Hearings on May 17, 2021 at 7:30 p.m. and the second Public Hearing on June 7, 2021 at 7:30 p.m., or as soon thereafter as the matter may be heard in the Council Chamber located at 2725 Malabar Road, Malabar, Florida. The Council will vote to adopt the Amended Zoning Map described in Ordinance 2021-05.

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 ALL AFFECTED PARCELS EXCEPT THE ONES LISTED IN THIS ORDINANCE; PROVIDING FOR THE EXISTING ZONING CLASSIFICATION FOR THOSE PARCELS; PROVIDING ACCESS TO THE NEW ZONING MAP ON THE TOWN WEBSITE; PROVIDING FOR AN EFFECTIVE DATE.

The Town Council adopts a zoning map that reflects the adopted planning horizon in the Comprehensive Plan's Future Land Use Map for approximately 1,716 acres within Malabar, primarily along the Malabar Road and Babcock Street corridors and the conservation lands, with exclusions for those opposing such changes and are identified as the following.

Tax account #: 2851088	Parcel ID: 28-38-31-54-B-52 Size: 12.32 acres
Tax account #: 2851076	Parcel ID: 28-38-31-54-B-4.0 Size: 11.75 acres
Tax account #: 2931413	Parcel ID: 28-37-10-00-548 Size: 1.29 acres
Tax account #: 2931412	Parcel ID: 29-37-10-00-547 Size: 1.29 acres
Tax account #: 2846131	Parcel ID: 28-37-35-00-505 Size: 9.56 acres



The areas of town circled with the marker are the proposed changes.

A copy of the proposed ordinance and map is 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 (townclerk@townofmalabar.org or 2725 Malabar Road Malabar, FL 32950). 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

MEMORANDUM

Date: May 4, 2021 21-BDM-012

To: Town Council
Debby Franklin, Town Clerk/Treasurer

From: PZ Board
Denine M. Sherear, Building Department Manager

Ref: Amendment the Zoning Map to match the Future Land Use Map of the Comprehensive Plan Ord (2021-05)

At the Planning and Zoning Meeting of 4/28/2020 the Board discussed Agenda Item 6.a. for the Amending the Zoning Map to match the Future Land Use Map. The following Motion was made:

Motion: Ritter/Hofmeister Recommended to Town Council to Amend the Zoning Map to Match the Future Land Use Map of the Comprehensive Plan for All parcels except the ones listed in this Ordinance Ord. 2021-05); Providing for the existing Zoning Classification for those Parcels; Providing access to the New Zoning Map on the Towns website; Providing for an effective date. All Vote, Roll Call Vote:

Roll Call: Foster; Aye, Abare; Aye, Ritter; Aye, Dial; Aye, Hofmeister; Aye.

Motion Approved 5 to 0

TOWN OF MALABAR

COUNCIL MEETING

AENDA ITEM NO: 10.a.

Meeting Date: May 03, 2021

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

SUBJECT: Ordinance 2021-06 Amend Chapter 2 of Code to Require Property Posting for Land Use Issues. First Reading.

BACKGROUND/HISTORY:

This is another housekeeping ordinance to have our Code support what we require the applicant to do. When an applicant requests a site plan, rezoning, conditional use, variance, special exception, etc., we ask them to post the property with a sign for 30 days before the issue is discussed at Planning and Zoning.

This amendment would add that requirement to the code. The Public Hearings, legal advertisements and notice to adjacent property owners is already referenced in other sections of the code but this will reference them all in one section.

This is in the front of the Code, so it does not go to the P&Z Board first. The street improvement code is legislative, and policy is set by Council.

If approved at first reading, it will be legally advertised and set for second reading on June 7, 2021.

ATTACHMENTS:

Ord 2021-06

ACTION OPTIONS:

Action on first reading of Ord 2021-06

ORDINANCE 2021-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE IV, CREATING A NEW SECTION 2-76 OF THE MALABAR CODE OF ORDINANCES RELATED TO ADOPTING ORDINANCES, HOLDING PUBLIC HEARINGS AND PROVIDING PUBLIC NOTICES, PROPERTY POSTINGS AND LEGAL ADVERTISEMENTS; PROVIDING FOR LIMITED EXCEPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to public notices regarding land use issues; and,

WHEREAS, the Town Council desires to provide for consistent application of notice requirements as provided for in the Town's Code of Ordinances and state law by adopting these procedures; and,

WHEREAS, it's the intent of the Town Council to supplement the Town Code and state law and to provide a system of due process regarding the procedures herein to afford all interested parties the ability to voice their views at specified public hearings.

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

SECTION 1. A new section 2-76 is hereby added to Chapter 2, Article IV, of the Code of Ordinances of the Town to read as follows:

Chapter 2 – ADMINISTRATION

ARTICLE IV. – PUBLIC NOTICE PROCEDURE

"Section 2-76. Public Hearing Notices.

(A) *Newspaper publication.* Notice of all public hearings with respect to the adoption of ordinances shall be advertised as required by Florida Statutes.

(B) *Courtesy mail out.*

1. All property owners within five hundred (500) feet of property which is the subject of a rezoning, comprehensive plan amendment, conditional use, variance, special exception, road waiver, final site plan approval, vacate and abandonment of road right of way or public easements architectural style exception, preliminary subdivision, or final subdivision plats (*hereafter referred to as a "required notice event"*), shall be transmitted a courtesy notice by mail stating: the date, time, and place of the hearing; the type of request to be considered at the hearing; and the location where the request can be reviewed. If a request involves a public hearing before the Town Planning and Zoning Board and Town Council the mail out notice may cover both such hearings.
2. The applicant is required to provide a radius package from the Brevard County Planning and GIS department that includes the 500' radius map, list of all property owners within that radius, and labels for mailing the courtesy notices. Failure to mail or failure of a

property owner to receive a courtesy notice shall not affect any action or proceedings taken on a subject matter.

3. When a property within this radius is included in a legally constituted property owners', homeowners', cooperative association, or condominium association boundary, a courtesy notice will also be provided to that community association based on the latest contact information available from the Office of the Town Clerk.

(C) Signs posted on the subject property.

1. All properties that are subject to a required notice event shall be posted by the owner/applicant, at their expense, with a sign(s) meeting the following criteria:
 - a. Sign(s) shall have minimum dimensions of 24 inches by 24 inches (24" x 24") for requests related to single family homes. The font shall be a minimum of ¾" in height and be legible from the roadway. The signage shall include the Town logo in color.
 - b. Signs shall have minimum dimensions of 48 inches by 48 inches (48" x 48") for on all commercially zoned properties. The font shall be a minimum of ¾" in height and be legible from the roadway. The signage shall include the Town logo in color.
 - c. Corner properties shall require two (2) signs, one each facing both streets.
 - d. Signage shall be placed as close to the front (and side corner property line on corner lots) as possible, or in other locations approved by the Building Department in order to achieve maximum visibility from the roadway.
 - e. Signs shall include the date, time and place of the public meeting and/or hearing, applicant's name, and the specific request.
 - f. Sign(s) shall be posted thirty (30) days prior to the public hearing at Planning and Zoning Board meeting at which the matter is to be considered and shall remain in place until after the final public hearing on the matter by Town Council. Such signs shall be removed within forty-eight (48) hours of the conclusion of the final public hearing on the matter.
 - g. The Town staff shall provide sign posting instructions to each applicant consistent with this Code.

(D) Limited Exception

Any matter which is required to meet the requirements of F.S. 166.041(3)(c) is exempt from the provisions of subsections (B) and (C) above and shall follow the procedures in F.S. 166.041(3)(c) as applicable.

(E) Failure to post sign(s).

1. Failure to post the sign(s) within the time frame specified in paragraph 2-76 (C) of this section shall result in the continuance of the public hearing. The matter shall be rescheduled

in accordance with paragraph 2-76 (B) of this section. The applicant shall pay an additional fee equaling one-half (1/2) the initial filing fee.

2. Upon the continuance of the public hearing, failure to post the sign(s) within the time frame specified or to pay the additional fee within three (3) working days of the date of the public hearing is rescheduled, is conclusively considered a withdrawal of the matter and shall be removed from consideration. Nothing herein shall prevent a person from reapplying for a request in compliance with the provisions herein.

Secs. 2-77—2-100. - Reserved.”

SECTION 2. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 3. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code, or regulations, the more restrictive shall apply.

SECTION 4. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

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

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared duly passed and adopted this 7th day of June 2021.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

First Reading: 05/17/2021 Vote to .

Second Reading: 06/07/2021

2021-07-02

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.b.

Meeting Date: May 17, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Surplus of Municipal Owned Property 2540 JOHNSTON AVE

BACKGROUND/HISTORY:

In accordance with Florida State Statute Chapter 275.05 entitled TANGIBLE PERSONAL PROPERTY OWNED BY LOCAL GOVERNMENTS, staff is requesting Town council to classify a 3.4-acre parcel, owned by the Town of Malabar, located at 2540 Johnston, Avenue, Malabar Florida, 32950, with Brevard County Property Appraiser's Parcel Identification number of 28-38-31-26-5-1 deemed as surplus. The parcel previously used and zoned as park has a current zoning of RS-10.

Town Staff will publicly offer the property for sale through GovDeals, an Auctioneer Service and Related Products contract number R100601 with Omnia Partners National Cooperative Purchase Contract vendor; previously authorized for use by Town Council at the November 2, 2020 Regular Town Council Meeting.

GovDeals provides an online live auction service. The auction fees will be passed onto the buyer. If the town collects the money from the sale, the buyer fee is 5%, conversely if Govdeals collects the money from the sale, the fee is 7% to the buyer. There is a minimum auction timeframe of 3-4 weeks for residential property. The Town can determine the minimum value to start the auction, staff is recommending to council to start the auction at 100,000 for the parcel and include and disclose all fees relating to the sale, transfer, and recording of the real property. Staff used the most recent property appraisal report for residential use, it reported Town of Malabar vacant residential land market value range from \$25,000-50,000 per acre. Additionally, the auction can include the final sale amount to be approved by the Town Council, if desired.

ATTACHMENTS:

Govdealsrealesateflyer.PDF

FINANCIAL IMPACT:

No direct expenses, all surplus sale proceeds will return to the Parks and Recreation Capital Fund.

ACTION OPTIONS:

Motion to surplus vacant parcel, owned by the Town of Malabar, located at 2540 Johnston, Avenue, Malabar Florida, 32950 (parcel id 28-38-31-26-5-1) with online real estate auction services vendor, GovDeals, with the auction start value of \$100,000, or as determined by Town Council, with all disclosed fees to be paid by the buyer and the Town collects the final sale amount.



Selling Real Estate with GovDeals®

Live auctions are steadily becoming a thing of the past; the days of selling real estate solely on the courthouse steps will soon be a distant memory. You can sell your property, virtually – anytime, anywhere with GovDeals. Over the past 4 years, 1,243 successful real estate auctions were held on GovDeals resulting in \$19.5 million in sales.



4 Years

=



1,243 Auctions

=



\$19.5 Million

Real Estate Auctions Live On GovDeals

Real Estate Auctions Sold In The Past Year

Property Sold on GovDeals.com

- Residential Property
- Commercial Property
- Vacant/Imperfect Property
- Tax & Non-Tax Foreclosure
- Property without Dwellings



\$513,095



\$75,000



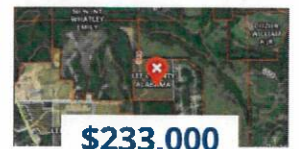
\$127,000



\$152,500



\$250,000



\$233,000

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Comprehensive and
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GovDeals®

“GovDeals has proven to be an invaluable service for the Real Estate Division of the City of Jacksonville. In the past two years, we have conducted 600 online real estate auctions using this service and have had outstanding results. GovDeals streamlines the auctioning process providing us with organized, easy to track downloadable reports. GovDeals has turned a labor-intensive process into an efficient system for successful auctioning and frees up our agents to focus on customer interaction, service and other high priorities. GovDeals has become our go-to solution for real estate auctions. We look forward to continuing using your online service for future auctions.”

- Joe Namey - Jacksonville, Florida

What kind of information is needed for a real estate auction?



Be as descriptive as possible

- The more information you add, the better. Include accurate, detailed information (including legal description for each property location).
- Include pictures, aerial photographs, links to maps, property information, and parcel numbers.



Set your boundaries

- Include a specific contact person to address questions regarding the auction(s)
- If applicable, include a single inspection time for the property or dwelling for all interested parties to visit, like an open house.



Be precise

- If you know what the property you are selling is zoned for, please include it in the description.
- If you have an appraisal, this is also great information to upload.



Announce taxes, liens or fees

- Inform the buyer that there will be added fees at the end of the auction and detail how those fees are calculated.



Inform prospective buyers

- Include any legal disclosures and rights of the seller, as well as the kind of Deed that will be provided to the buyer.



Stay one step ahead

- Include lot size or dimensions in the description. Describe additional items if any are included.
- Outline the process and timeline regarding the transfer of the deed to the winning bidder.



Frequently Asked Questions

Can we sell a parcel of land only?

Yes. The property does not have to include a house or dwelling.

Can our agency sell commercially zoned real estate?

Yes. Include the same information (legal description and description) of the property as you would for a non-commercial property.

How long should the property remain at auction?

GovDeals recommends conducting a Real Estate auction for three to four weeks minimum. For higher valued commercial properties, we recommend six to eight weeks. This will allow substantial time for our Marketing team to advertise the property.

What type of marketing is done for real estate?

Marketing varies based on the type and value of the real estate being sold. It can include real estate ads, social media publications, press releases, email blasts to existing GovDeals bidders, and providing real estate signage for placement on location.

Will GovDeals assist in the creation of the auction for us?

Yes. GovDeals will train you and your staff on loading real estate auctions and can assist you with the process if needed. Typically, you would need to notify your account manager before you are ready to have the auctions go live. At that time, GovDeals will consult with you about what information is needed for a successful auction. We recommend providing all auction information in a spreadsheet with detailed legal description and pertinent information regarding the auctions. Include pictures, links, disclosures, etc. GovDeals can provide sample real estate auctions for you to view before preparing your own.



Frequently Asked Questions

Can I set a reserve amount?

Yes. Both minimum bids and reserve amounts can be set on real estate auctions.

Can specific fees be added to the auction?

Yes. Fees can be added prior to or after the auction. These fees, like deed stamp fees and recording fees, must be disclosed in the description when the auction is sent live. Fees are added when the auction closes since they are based on the auction's final sale price and the number of pages needed to record the deed. In the auction description, the seller must outline all of the fees that will be added upon the close of the auction, so buyers are aware.

Can a bid deposit be collected from bidders?

Yes. Bid deposits can be collected from bidders. GovDeals will give a recommendation on the appropriate amount based on the value of the property.

The final sale amount must be approved by our "Commission/Board/Management", can we reserve the right to approve bids and/or reject them?

Yes. There are several options available to reserve the right to approve the final bid and reject any bids that might have been placed. Work with your account manager on what options work best for you.

I already have a GovDeals Account, but I do not want to use it for my Real Estate sales. Can I set up a second account for these auctions?

Yes. Work with your account manager on setting up another account.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.c.

Meeting Date: May 17, 2021

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

SUBJECT: Select Representative for Mediation Meeting regarding Painted Acres v. Town of Malabar

BACKGROUND/HISTORY:

Town Council Representative to sit with legal Counsel Dean, Ringers, Morgan & Lawton, representing the Town in Painted Acres v. Town of Malabar

ATTACHMENTS:

None

ACTION OPTIONS:

Council Action

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.a

Meeting Date: May 17, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Status of Contract Discussion with WM – Ms. Dina Reider-Hicks

BACKGROUND/HISTORY:

The Solid Waste Franchise agreement with Waste Management (WM) was approved for renewal at the February 2, 2021 regular town council meeting, passed unanimous.

WM communicated contract renewal review with emails dating back to November 6, 2020 and met on Friday, November 13, 2020 to discuss services and feedback as well as contract renewal items, where ITM Morrell briefed councilmembers on items discussed related to the renewal: annual CPI rate, set out changes, billing and debt, and review of solid waste ordinance for mandatory service (confirmed inclusion on November 11, 2020).

A meeting on March 11, 2021 occurred at Town Hall with notes of costs of CDL truck drivers, back down service of streets, conditions of roads as unpaved, distance to landfill on Sarno Road, Melbourne, FL, cart management, CPI, debt/debt write-off, set out of carts to one roadside, unlimited yard waste, bulky/white goods, limitations of 1claw truck assigned, and fleet maintenance and management concerns from WM. After action: follow-up by WM with financial picture of the renewal.

April 15, 2021, Waste Management team delayed on providing the financial computation, expected sometime the following week. April 30, 2021, scheduled a meeting for May 6th. ITM Morrell requested Waste Management brief council at a public meeting to discuss their findings of the contract renewal and concerns.

Waste Management confirmed attendance for the Regular Town Council Meeting scheduled for Monday, May 17, 2021 which begins at 7:30pm

The term of the Solid Waste Franchise Agreement with Waste Management was effective on August 23, 2014 and extend until - August 23, 2021, with renewal for two (2) time for (7) seven-year periods at the mutual agreement of the TOWN and COLLECTOR.

ATTACHMENTS:

FINANCIAL IMPACT:

ACTION OPTIONS:

Discussion by Town Council and any staff directives based on the Waste Management contract renewal update.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.b
Meeting Date: May 17, 2021

Prepared By: Richard W. Kohler, Deputy Clerk/Treasurer

SUBJECT: Discuss Repeal of Resolution 17-2020 (Face Coverings) (CM White)

BACKGROUND/HISTORY:

- a. CM White request Council discuss the repeal of resolution 17-2020.

ATTACHMENTS:

- a. Resolution 17-2020

ACTION OPTIONS:

Council Action

RESOLUTION 17-2020 -extended

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PURSUANT TO THE GENERAL POWERS RESERVED TO THE TOWN COUNCIL IN THE TOWN CHARTER; MAKING LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; REQUIRING ALL PERSONS TO WEAR FACE COVERING AT DESIGNATED TOWN FACILITIES; PROVIDING FOR EXCEPTIONS; PROVIDING FOR SUNSET; PROVIDING FOR SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

WHEREAS, Novel Coronavirus Disease (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza, and in some cases death; and

WHEREAS, guidance released by the CDC on June 15, 2020 states that (i) the COVID-19 virus is mostly spread by respiratory droplets released when people cough, sneeze and talk and (ii) that a person can get COVID-19 by touching a surface or object that has the virus on it and then by touching their mouth, nose or possibly their eyes. This guidance goes on to state that “personal prevention practices (such as staying home when sick, social distancing, wearing a cloth face covering, and handwashing) and environmental prevention practices (such as cleaning and disinfection) are important are important ways to prevent the spread of COVID-19; and

WHEREAS, the CDC has expressly found that “COVID-19 spreads mainly from person to person through respiratory droplets produced when a person coughs, sneezes or talks. These droplets can land on the mouths or noses of people nearby and possibly inhaled into the lungs. Studies and evidence on infection control report that these droplets usually travel around 6 feet (about “2 arms’ length”); and

WHEREAS, the CDC therefore specifically recommends that as communities reopen, and people resume their daily activities, people should wear face coverings to slow the spread of COVID-19 particularly in “public settings where other social distancing measures are difficult to maintain”; and

WHEREAS, based on the advice of medical professionals, the number of COVID-19 cases may continue to rise unless measures are instituted to slow the spread and stop the introduction of the COVID-19 virus; and

WHEREAS, the State of Florida has the highest percentage of population in the United States 65 years of age and older, as well as the second largest population of that demographic; and

WHEREAS, according to the CDC, the vast majority of persons that test positive for the COVID-19 virus that are hospitalized are persons over the age of 65 years and/or have underlying health conditions; and

WHEREAS, according the CDC the highest percentage of severe outcomes among persons are aged 85 years of age and older; and

WHEREAS, the Town Council finds that it is in the best interest of the residents of the Town of Malabar and the general public, and it is in furtherance of the public health, safety, and welfare, to formally adopt this Resolution to require face coverings at and in designated Town Facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA, as follows:

Section 1. The above recitals are adopted by the Town Council as legislative findings.

Section 2. *Definitions.*

“Face Covering” shall mean a uniform piece of material, made of paper or cloth and including plastic shield coverings, that securely covers a persons’ nose and mouth and remains affixed in place without the use of one’s hands, whether store-bought or homemade, concurrent with CDC guidelines.

“Social Distancing” shall mean keeping space between yourself and other people by staying at least 6 feet.

Section 3. Face Coverings Required in Designated Town Owned and Operated Facilities.

(a) Every Person living, working, or visiting the Town of Malabar shall wear a face covering in the following Town owned and operated facilities:

1. Town Hall 2725 Malabar Road
2. Malabar Fire Dept, 1840 Malabar Road
3. Malabar Public Works Building 1435 Centre Street

(b) Exceptions:

1. Persons under the age of 6 years old; and
2. Persons observing social distancing under the CDC guidelines; and
3. Persons for whom a face covering would cause impairment due to an existing health condition; and
4. When a person who is hearing impaired needs to see the mouth of someone wearing a face covering in order to communicate.

Section 4. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this Resolution is invalid or unconstitutional, the remainder of the Resolution shall not be affected and it will be presumed that the Town did not intend to enact such invalid or unconstitutional provision. It shall further be

