



REGULAR TOWN COUNCIL MEETING

Monday, September 9, 2019 at 7:30 pm

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

- a. Proclamation

E.D.C.

Attachments:

- E.D.C. Proclamation (Proclamation_EDC.pdf)

- b. Approve Minutes

1. Regular Town Council Meeting Minutes of 08/19/2019
 2. Town Council Budget Workshop Meeting Minutes of 08/26/2019
 3. Memorandum of Understanding EELs Cooperative Agreement

Exhibit: Agenda Report Number 1

Attachments:

- Consent Agenda Attachments (Agenda_Item_1_attachment.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee

b. **Park & Recreation Board**

c. **Planning & Zoning Board**

8. STAFF REPORTS

a. **Administrator**

b. **Clerk**

c. **Fire Chief**

d. **Public Works Director**

9. PUBLIC COMMENTS

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

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS (3) / SPECIAL ORDERS (0)

a. ORDINANCE 2019-08 Land Use and Zoning Change for Stuart J Borton and Nancy Tinio Borton Trust – 2nd Reading

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

Exhibit: Agenda Report Number 2

Attachments:

- [Agenda Report Number 2 \(Agenda_Item_2_attachment.pdf\)](#)

b. ORDINANCE 2019-11 Setting Millage for FY 19/20 – 1st Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.2680 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 3

Attachments:

- [Agenda Report Number 3 \(Agenda_Item_3_millage.pdf\)](#)

c. ORDINANCE 2019-12 Adopting Budget for FY 19/20 – 1st Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$2,204,996.00 FOR THE FISCAL PERIOD FROM OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020;

AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 4

Attachments:

- Agenda Report 4a (Budget2019-2020.pdf)
- Agenda Report Number 4b (Agenda_Item_4_budget.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES: 0

RESOLUTIONS: 1

MISCELLANEOUS: 0

a. Appointment to Board of Adjustment (Resolution 14-2019)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF KATIE ABARE TO THE MALABAR BOARD OF ADJUSTMENT AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 5

Attachments:

- Agenda Report Number 5 (Agenda_Item_5_BOA_appt.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(1) Vacancies on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board

17. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the

individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

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

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

OFFICIAL

PROCLAMATION

TOWN OF MALABAR, FLORIDA

WHEREAS, The Economic Development Commission of Florida's Space Coast (EDC) is officially launching its new County wide "Salute our Military" recognition campaign; and

WHEREAS, Brevard County is home to Patrick Air Force Base, Cape Canaveral Air Force Station, the 45th Space Wing, Naval Ordnance Test Unit (NOTU), Florida Air National Guard, The United States Coast Guard and numerous military organizations and their families who lend to the strength and engine that drives the economy and quality of life of Brevard County, Florida and the nation; and

WHEREAS, the (EDC) will spark an explosion of regional awareness with its bumper sticker campaign in appreciation of our United States Armed Forces and their family members who have an economic impact of \$1.1B in FY 2017 and military retirees residing in Brevard County, who receive over \$992.8M in military pensions; and

WHEREAS, it is appropriate to recognize, honor and encourage the dedication and commitment of members of the United States Armed Forces in serving the United States, and

WHEREAS, building partnerships between the public/private sector, our Military personnel and their families solidifies our commitment of the United States Armed Forces in preserving our freedoms.

NOW, THEREFORE, be it resolved by the Town Council and the Mayor of the Town of Malabar, Brevard County, Florida, hereby recognizes and supports

**CELEBRATING OUR MILITARY BY THE EDC
"SPACE COAST SALUTES OUR MILITARY" BUMPER STICKER CAMPAIGN**

Passed and adopted this 9th day of September 2019.



TOWN OF MALABAR

By:

Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

Attest:

Deily Faulkner
Clerk

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: September 09, 2019

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

SUBJECT: Consent Agenda – Items not requiring individual discussion

BACKGROUND/HISTORY:

- Town Council Regular Meeting Minutes– 8/19/2019
- Town Council Budget WS Minutes – 8/26/2019
- Memorandum of Understanding (MOU) EELs Cooperative Agreement

The minutes are the official record of the actions taken by Council.
The MOU is a renewal of earlier agreements.

Any item can be removed from Consent Agenda during *Approval of Agenda* at beginning of meeting. The Chair will then place it later in the agenda for discussion and action.

ATTACHMENTS:

Draft Minutes of 8/19/19 and 8/26/19 and the Memo of Understanding

ACTION OPTIONS:

A single motion to approve the Consent Agenda approves all items listed.

Council action required.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

AUGUST 19, 2019 7:30 PM

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

A. CALL TO ORDER:

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

B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

MATT STINNETT

KARL BOHNE

MORRIS SMITH

TOD MOWERY

DENINE SHEREAR

MIKE FOLEY

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN ENGINEER

TOWN PLANNER

AABO

FIRE CHIEF

TOWN CLERK/TREASURER:

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

D. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting Minutes 8/05/19

MOTION: CM Vail / CM White to approve the 8/5/19 regular meeting minutes as submitted.

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

MOTION: CM Ball / CM Rivet to approve the 8/12/19 Budget Workshop meeting minutes as submitted. Discussion: none. **Vote:** 5 Ayes

E. ATTORNEY REPORT: Nothing

F. Sheriff Report: Deputy said there are problems with reporting system. Hope to have something next month.

G. STAFF REPORTS:

ADMINISTRATOR: Nothing

CLERK: Nothing

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

Five (5) Minute Limit per Speaker: NONE

I. PUBLIC HEARINGS/SPECIAL ORDERS: 0

J. UNFINISHED BUSINESS/GENERAL ORDERS

K. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

2. Land Use and Zoning change Request: Ord 2019-08

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

Chair stated the request is to change the Land Use Designation and Zoning for a specific parcel; the request has to do with the land, not the property owner. Chair said he will call on speakers in order he received them and asked speakers to address Council, not the audience, and to stay on topic. Five-minute limit will be enforced.

Ordinance read by title only.

Chair called petitioners to podium. Jeff Smith, Atty on behalf of Bortons. Hoping to change the zoning and land use designation. Their reason is to develop an eco-friendly boutique hotel on the parcel. It will be part of the Yellow Dog and will bring economic opportunity, employment, etc. They want to provide an expansion of their business, provide jobs, give support to the business community, while preserving the character of Malabar. Nothing they intend to do with the property would change this. The staff recommendation is to approve the request, he then read from Clerk's agenda report. Staff had evaluated the Comprehensive Plan and Code of Ordinances. He referenced the three "C's". The Attorney then went through the Town Planner's report on the ten items to consider. Attorney Smith said that many of the concerns would be reviewed at the site plan stage. (Town Planner Tod Mowery arrived at 7:40pm.) Atty Smith said the findings of the Town Planner regarding the change would reduce the amount of the CP of less than a .5 acre and would be de minimis or negligible. Adequate public facilities, solid waste available, natural environment, protected species, fauna, economic effects, no adverse impacts and in fact very positive impacts; #8, no problem with orderly development. The applicant would be building something that would be adjacent to their existing successful business – not a sprawling new development. Public interest – no conflict. Other matters – Stuart and Nancy are open to your input. Atty Smith said the opposition tonight were heard at P&Z and he felt they go into three buckets: 1) river view would be disturbed; 2) potential of future environmental harm; 3) fear of the unknown. Gave example of fear: May be a good plan for the Bortons but what if it later becomes a WaWa, expressing the concern for the domino effect.

Atty Smith said the Town Attorney's memo to Council is instructive and concludes, based on a Florida Supreme court ruling, that only property owners with property would have rights to the view. If someone has riparian rights that would be for the courts to judge.

Speculative impacts to the IRL (Indian River Lagoon). Changing the zoning would have no impact to the IRL. The site plan will be the stage to meet all requirements of the Town and all other outside agencies. He listed multiple agencies. Site plan will include retention and cleaning of stormwater. He referred to the fear of the unknown some brought up at P&Z. Applicants have been here for 22 years. He said if they get this done, they would then want to put in a gas station. Gavel by Mayor. Atty Smith then discussed the "domino" effect. If we change it to CG for the Borton's, then all others like this – what is the next domino. There is no other commercial property that has been on the river for 22 years and is thriving. Not a danger of domino effect. In conclusion, the proposal will benefit the entire Town. Staff in general has recommended Council approval; the applicant has met the three "C's", still must go through full site plan before any development. They would be bringing jobs to the community, investing millions and encouraging people to come to the Town. Chair called on applicant.

Stuart Borton, 905 Highway 1, has been looking at this project for two decades. Last piece to acquire was from FDOT owned parcel of 5000sf in order to meet the minimum lot size. They are the only place on Hwy 1 that has city water and sewer. This is not something they just thought of; 20 years ago, they bought the Callagy property, then bought the Toma property. They would appreciate your support in this process. Questions?

CM Rivet – what size hotel – 4 or 5 rooms. Borton said Code says hotel is 12 rooms. Would like it to be like a guest house for bride's family. Mayor said he will take the cards in order he received them. First, he passed the gavel to Vice-Chair Steve Rivet and stepped down to the podium to speak as a resident.

1. Pat Reilly spoke as a resident; he respectively disagrees with Town staff recommendation. The Town has spent five years working on the Comp Plan amendment. He said it does not meet the 3 C's. He read from a paper regarding requirements stated in other sections of the Code. This parcel is not compatible. Our Town fathers desired pristine riverfront on the east side of Highway 1. The Coastal Preservation (CP) is the lowest impact and CG is the 2nd highest intensity. The question is – would this parcel handle the development. He handed out a sketch and again read from a paper stating it did not meet minimum lot size requirement and with the existing dimensions, would not meet the setback requirement of 100'. Also, the Comp Plan, general pattern of development is not met. Mayor then resumed his position as Chair and began calling on the speaker cards.
2. Rick Peidl, 142 Riverview Dr in Malabar, is opposed to the request for CG.
3. Regan O'Rourke, 141 Riverview Dr., lives in house Nancy and Stuart Borton sold them. Part of reason they bought it was for the river view. It will have a negative economic impact to him when he goes to sell it. Concept – what does CP mean – what did it mean when it was set up? Keep the land like it was, preserved. The Atty for Bortons said it would not be a domino effect and he disagrees. Save shoreline for future generations. If the Council approves this, he will look at opening a Starbucks along there.
4. Patricia Marshall Hammock, 165 Riverview Dr. Not here to bash the Bortons. There is already an impact of the driving on Riverview Dr from the restaurant and that would be increased. People already think it is a through street adding to traffic problems by turning around. She has lived here since age 19 and is now 82. Her husband, Donald Marshall was on the original planning group for the Town. Now they are asked to allow a Bed and Breakfast. The river belongs to all. She said if the Bortons would like to do something for community, there is a 2-acre site not too far away that would be better suited. She said it is a shame it is not a rural community anymore.
5. Barbara Taminsky, 157 Riverview Dr. bought in 2013. Keep is CP – received a postcard from FWC today regarding the license plate sales. The climate change is happening. Hottest Jan – Aug. She was in Alaska 3 weeks ago. The oceans will rise, and rivers will rise. The subject piece is very small and very steep. Recently there were trees planted and with the recent rains a couple of them have slid into river. The traffic problems would increase dramatically. They are using Riverview Drive as a turn around. Don't just think about today think about the future. Friends of Nancy and Borton for many years
6. David Kello, 2850 Smith Lane, runs a real estate company, supports anyone's goals to develop land. Biggest obstacle is fear, the demon. Drives many decisions. Fear does not bring results; need to bring the right attitude and right goal. Many councils before this one have made decisions as a result of fear. Person comes in as a business owner, what about their fear if business should fail? No one addresses growth. The fear of growth and refusal to be a part of the solution. There is a younger demographic and they are spending more for electric, water and real estate. Homes used to cost \$80/sq. ft to build. He spent \$155/sq. ft to build in Malabar so his family could grow. Fear motivated him to be dedicated to the mission. Implores Council to consider the demographic. People want to spend money at the local feed store and the local sign shop, all of the local businesses, want to spend in Malabar but businesses need to survive – he sells a lot of property in Malabar. You have a business that is leaving a positive legacy. Be afraid to leave a bad legacy.
7. Nancy Peltonen, President of Palm Bay Chamber. She was asked to speak on behalf of their long-time chamber partners, owners of the Yellow Dog. Been in business for 20 years. Emeril Lagasse has filmed there. Methodically over time, put in a lift station. They are good stewards and would continue to do so with this

- rezoning. They are not looking to build an industry. The river is part of their livelihood and is a world class establishment. New structure would be compliant.
8. Lachan Smith, 133 Riverview Dr. When he moved here, he had more access to the river. There was more vegetation years ago. The ugly warehouse on west side would be a better location. Grew up on water, loves the view of the river. Sorry to see the trees planted five days after the P&Z. Don't like the whole outlook. He was able to use the access and was gradually moved. He doesn't trust anything they say. Want it to be safe. Tear the warehouse down and put it there.
 9. Debra Ball, 1190 Highway 1. She considers this to be spot zoning. Already have a problem with parking. Parking problem would be worse. She spoke at P&Z on July 24. At that time, it didn't meet the minimum size and setbacks. The increased traffic and concerns of people crossing Hwy 1. They owned five houses in Riverview subdivision, sold one but still have four. She noticed on July 28th the large quantity of trees had been planted. In general, CP is good for Malabar, maintain the rural nature of the Town. This would conflict with the Town's character. Malabar is unique and keeping the riverfront free is desirable.
 10. Donald Hicks, 1897 Hazelton St. NW in Palm Bay, does a lot of work in this area. He has heard a lot of complaints about extra driving and parking on Riverview Drive. Yellow Dog offers free valet service to all customers. There is a mobile food van that parks right on the corner of Riverview Drive and Hwy 1 and it actually ran over the stop sign. The applicants have been upstanding citizens.
 11. Lloyd Behrendt, 1085 Hall Road, bought in 1973 and has been living there since 1981. He was Town Council Chair in 1985 when the land use plan was passed. He has known the Bortons for years and they have never lied to him. Brevard Zoo just started a program for eco-tourism. He is trying to think of another view that would be as magnificent. He headed up the first visioning process. He is basically a photographer. He pondered the impact to the environment. In order to enjoy the environment, you have to have a good business base. This would be good for jobs. He supports what they are trying to do. Yellow Dog has become a destination.
 12. Virginia Foley, Grant, owns Berri Patch and has always known them to be honest and helpful, very active in the community and own and operate a first-class restaurant. It is enormously successful, and their proposal based on their current success would also be. She gets upset when she hears about environmental land restrictions on private parcels. They could have bought the property.
 13. Jim Parker, 2885 Orange Ave, also has property on east side of Hwy 1. He is opposed to this rezoning request. He is also a business owner and wants to go on record as opposing this.
 14. Bob Siegmann, 2305 LaCourt Ln. They have Malabar Mariners Association (MMA) at 1555 Hwy 1. Have been there 35 years. He doesn't think changing the zoning would be a good idea. Look a little north of the Yellow Dog Café and you have the Indian River ALF and the Venetian condos, both at six stories. The repercussions would be a very difficult thing.
 15. George Foster, 1205 Malabar Road, volunteer member of P&Z Board but is here as a resident. He supports the rezoning of this property. The Bortons have gone through the regulations and followed all of the required steps and the Town staff have provided supportive recommendations so far. As all of us have made statements to seek out quality businesses and encourage them to locate in Malabar in order to meet its requirements and obligations to provide services to its residents. He has heard from key people that the Town struggles to meet its requirements. Everything about running the Town and solving the stormwater problems such as failed culverts. All the residents have a responsibility for this success. He asked what do you expect to see when you go down A1A and Hwy 1 and the IRL. He supports the Town Staff recommendations to approve this request for a change to the land use designation and zoning change.

16. Jason Steele, 343 Orlando Blvd. Just exactly what he thought would happen, has happened. People are expressing fears on things that just are not true. One of the reasons Malabar Road has not been widened yet is because of Town resistance. Hwy 1 and Malabar Road are major arterial roads. He met the Bortons 23 years ago, heard the passion of the Bortons to build the restaurant. They have brought more things to Malabar than anyone else, put Malabar on the map. Emeril Lagasse has filmed at their restaurant. Private property rights – unless you own on the river, you have no rights. What have they done – raised more money than you can imagine for various groups and causes. They have to have private property rights. Every piece around this parcel is CG. You cannot isolate a piece of CP and say it is non-consistent with the surrounding properties. The Bortons have been great ambassadors and will do nothing less with their proposed project to enhance the IRL.
17. Norma Frazee, 2860 Rocky Pt Rd has known them for 25 years. She is speaking as a friend of theirs. She was with them when they bought the original building that became the Yellow Dog Café – how they followed the rules and made it great and a destination site. They also know how to take care of it. It will be an improvement to the Town. Please support this request to rezone to CG.
18. Tracy Goode, Palm Bay, want to attest to Bortons love of this community. They could move their restaurant anywhere. They care about Malabar, they love Malabar, and this project will be an additional value to the Town. If you allow it, it will be a benefit to our community going forward.
19. Helen Voltz, “don’t tell her husband”, 778 Wyatt St. West Melbourne, former County Commissioner, gave example of a request to zone a large parcel of land off Micco Road to require two acres and the people said they didn’t want it. The zoning request was withdrawn. Palm Bay then came in and annexed and the parcel now permits more intense development. Bortons own the property. Nothing in their proposal is illegal about what they are trying to do. Gave an example of people claiming to enjoy using parts of Melbourne Beach that actually belong to other persons.
20. Betsy Farmer, 280 Sage Crest Cir West Melbourne, in support of Bortons amazing friends, echoes what everything everyone has said. Four rooms is a small hotel.
21. Chris Goodman, Palm Bay, he is a leading home loan provider. He has been here for 13 years. Not being resident in Malabar, he still knows growth, development and people. He first went to Yellow Dog Café in Oct 2006 and is still a frequent visitor to the restaurant. Growth is coming from major companies and that brings the extra traffic – not one restaurant and a hotel. Growth and development are inevitable. The people that own and work at the Yellow Dog Café are passionate. Star Bucks will be coming, and they won’t invest as much as the Bortons and their staff will do. Invest in a business that has invested in Malabar. Be supportive.
22. Liz Ritter, read from paper, Chap 5, Comp Plan. She gets people from all over the country and the world at her business. Our Charter says we have been rural residential. Many opportunities. Don’t have the land to be CG. Of the 90 parcels many more could be developed.
23. Juliana Hirsch, 1035 Malabar Road, is here to support the change in the zoning. Everything has already been said. They made a silk purse from a sow’s ear when they bought that place and turned it into Yellow Dog Cafe.
24. Marisa Acquiviva, 1120 Baywood Ct., everything has been said to support this request. She served on Malabar Council for six years. She has heard many comments. These applicants are one of our own. She has talked to Nancy about the proposed location and it is because it will be part of “the Dog”. Council will make this decision after considering all the recommendations. The Yellow Dog Cafe, they feel it is their hometown restaurant. They have had rehearsal dinners there and they love it. Also have to address the view issue. In 1988 you could not see the river. Nature has a way of cleaning itself. The hurricanes provided the first views available of the river. Give them a chance. They deserve a chance.

25. David Ness, 353 Breckenridge, Palm Bay, is the GM for Yellow Dog, he is completely in support of request. When you come around the corner and the Yellow Dog comes into view, that is what Malabar is about. It will not ever be like Ft. Lauderdale. Regarding economics, Yellow Dog is already paying a living wage to employees, providing income for 40 employees, and he would like to see another 15 employees if land use and zoning is approved and boutique hotel is built.
26. Pat Dalton, 4265 Lakemont Dr., Melbourne. Everything has been said they are a class act, would add to the beauty of Malabar.
27. Jason Stokes, 553 Peyton Place, Palm Bay, worked for Yellow Dog for six years, until Mr. Kello, brought it up, didn't realize that you have to go somewhere else to work. Driving here today he saw so many parcels for sale on Malabar Road. Only saw a church along there as new construction. Bortons have brought only good things to Malabar. Their track record should give no reason to deny. They are kind in heart. When people ask why he has left employment if was to grow professionally – this approval tonight will allow them to grow.
28. David Botto, IHB, volunteer on MRC, here to defend the IRL, proactive advocate of the IRL. All the requests for zoning changes, he speaks as a witness. This is exactly what got us to where we are. Congrats to Malabar for designation of CP. Acquire a solid blue way. The water is impaired. The save the lagoon project is – there are 80 some parcels that are CP. They are very concerned. Especially to the water's edge, if this is approved, you can't deny the next. Changes to conservation areas. Must protect them. Urging all local leaders to consider low impact development (LID).
29. Barry Eschenberg, Palm Bay, his dad, Tom Eschenberg, was Malabar Mayor. He is here to support the Bortons, asking how they have done so far. Look at their record. Dad loved this Town. Everything is a one up project.
30. Wayne Abare, comments are as resident, 2530 Rocky Point Road, not as Chair of P&Z Board, many speakers tonight spoke favorably of the Bortons. This is not a citizen award. Unless you live in Malabar you don't have any skin in the game. He kept track and it was 9 against and 6 for.

Chair called on Staff:

Atty Bohne first. Atty Bohne stated that most of the matters that were brought up can be addressed at site plan. Consider the ten factors. Ultimate decision is based on quasi – legislative standard – debatable.

Planner Tod Mowery. He referred to his report. The zoning issue is before you, it is not about a particular use, but what uses would be permitted in CG. Comments, you have permitted and conditional uses. Hotel is a permitted use in CG, bed and b-fast is a conditional use. Dealing with land use and zoning. Don't deal with the land owner. The change will stay with the land. For a CG zoning district there is a minimum of 20,000sf size and a specific setback. The 100' setback is from the centerline of Hwy 1. We believe it would be compatible. Burden of proof is on the applicant. The 35-foot height limit deals with site plan. He explained the negative. First thing they would have to ask about is a variance. There is no provision for overlay in the code and the PUD is for larger piece. Overlay is not a consideration. Question of takings. Assumption that you can utilize the land and if the government takes it then there are other ramifications, see your town atty.

CM Ball asked about height – what is the maximum? Tod said it is 35' from ground elevation to the highest point of the structure. From what height – measure from where – under definitions – building height, finished at the finished grade to top of bldg.

CM White asked about minimum size – combine the properties, unity of title. Referenced the Route 1 Motorsports, 3 parcels joined together. CM White said this site will be joined to existing Yellow Dog. CM Korn said these questions would be raised at site plan review step.

No other questions.

Eng. – no additional comments.