

## Malabar, FL

# Planning and Zoning Board Meeting

Wednesday, July 24, 2019 at 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA

#### APPROVAL OF MINUTES

##### a. Approval of Minutes

Exhibit: Agenda Report #1

Recommendation: Request Approval of Minutes

#### Attachments:

- Agenda Report Number 1 (PZ\_Agenda\_Item\_1\_0724\_2019.pdf)

5. PUBLIC COMMENTS
6. ACTION ITEMS
7. PUBLIC HEARING: 1

##### a. Land Use Map and Zoning Map Change for Parcel 28-38-31-00-250.4 (Vacant Parcel South of 905 US Hwy 1) Malabar FL 32950: Request to change from Coastal Preserve (C.P.) to Commercial General (C.G.)

Applicant: Stuart J. Borton & Nancy Tinio-Borton Trust

Exhibit: Agenda Report Number 2

Recommendation: Action to Council

#### Attachments:

- Agenda Report Number 2 (PZ\_Agenda\_Item\_2\_0724\_2019.pdf)

8. DISCUSSION/POSSIBLE ACTION ITEMS
9. ADDITIONAL ITEMS FOR FUTURE MEETING
10. PUBLIC COMMENTS
11. OLD BUSINESS/NEW BUSINESS
  - a. Old Business
  - b. New Business

Board Member Comments

Next regular Meeting - August 14th, 2019

## **12. ADJOURNMENT**

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Contact: Denine Sherear ([dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org) 1321727764)

**TOWN OF MALABAR**  
**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: JULY 24, 2019**

**Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary**

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim, and some editing is done to convey the thought. People do not speak the way they write.

**ATTACHMENTS:**

Draft minutes of P&Z Board Meeting of 06/26/2019 (Not Ready)

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

**AGENDA ITEM NO: 2**  
**Meeting Date: July 24, 2019**

**Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary**

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**SUBJECT:** Land Use Map Amendment & Zoning Change for the following Vacant Parcel 28-38-31-00-250.4, Malabar, Florida 32950 from Coastal Preserve (CP) to Commercial General (CG); Applicant Stuart Borton & Nancy Tinio-Borton Trust

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#### **BACKGROUND/HISTORY:**

Mr. Stuart Borton & Nancy Tinio-Borton Trust submitted an application referencing the above-mentioned vacant land, zoned Coastal Preserve (CP). Stuart & Nancy Borton have requested the property be changed to Commercial General (CG), so the Applicant can proceed with a site plan. The Applicant has complied with all application procedures. This application was received in December of 2018 and placed voluntarily on hold by Applicants while the Town's Comprehensive Plan was being processed and updated.

The vacant property is located on the east side of US Highway 1, south of Yellow Dog Cafe. The adjacent property to the north is owned by Stuart Borton & Nancy Tinio-Borton and is currently Commercial General (CG) the property to the south is Coast Preserve (CP). The property to the west is Commercial General (CG).

The method used to make these changes is by ordinance. I have provided a complete package to the Town Staff i.e., Planner, Engineer, Staff, and Attorney for review. All Staff have been invited to attend both the Planning & Zoning and Council Public Hearings.

This request and the P&Z Board's recommendation will be heard at a Public Hearing at the Council meeting of August 5, 2019 @ 7:30PM.

Attached to this packet is the following documents including historical research.

#### **ATTACHMENTS:**

- Application & Cover Letter for Land Use Amendment & Zoning Change
- Staff Reports
- Public Notice/Advertising Florida Today Newspaper
- Historical Research for Coastal Preserve (CP)

#### **ACTION OPTIONS:**

Action to Council

# **AGENDA ITEM 2**

**LU/ZC**

**APPLICATION PACKET**



TOWN OF MALABAR  
DEC 11 2018  
RECEIVED

December 11, 2018

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

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

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

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

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

Sincerely,

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

DEC 10 2018

No. RECEIVED

Date: 12-7-18

APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE

Before completing this application, please refer to the attached:

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

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

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

Legal description of property covered by application:

Township: 28 Range: 38 Section: 31-~~00~~  
Lot/Block: 00 Parcel Subdivision: 250.9  
Other Legal: \_\_\_\_\_

if possible

Property Address: 913 S US Hwy 1 Malabar FL 32950

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

Fees:

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

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

Required Attachments:

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

[Signature]  
Signature of Applicant

[Signature]  
Signature of Applicant

TOWN OF MALABAR

JUN 14 2019

TOWN OF MALABAR  
APPLICATION FOR ZONING CHANGE AND LAND USE AMENDMENT

DEC 10 2018

RECEIVED

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

Please complete only one of the following:

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

\_\_\_\_\_  
Applicant Date

\_\_\_\_\_  
Applicant Date

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NOTARY PUBLIC  
STATE OF FLORIDA

Commission No.: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Signature

I, Stuart J. Borton + Nancy Tinjo - BORTON TRUST, being first duly sworn, depose and say that I, same as above, 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.

Nancy Tinjo Borton  
Applicant Date 12-10-18

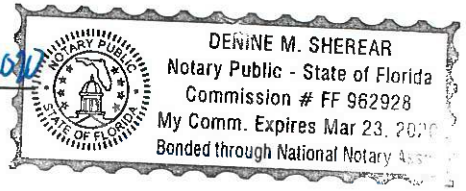
Stuart J. Borton  
Applicant Date 12-10-18

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

NOTARY PUBLIC  
STATE OF FLORIDA

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

Denise M. Sherear  
Notary Signature







# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account	2866124
Owners	Stuart J Borton & Nancy Tinio-Borton Trust
Mailing Address	905 S US Highway 1 Malabar FL 32950
Site Address	Not Assigned
Parcel ID	28-38-31-00-250.4
Property Use	1000 - Vacant Commercial Land
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	0.31
Subdivision	--
Site Code	0827 - Waterfront Dock Site
Plat Book/Page	--
Land Description	All That Property Lying S Of The N Line Of Lot 1 Of Pb 13 Pg 3 Extended E To The Indian River & Lying N Of The S Line Of Lot 5 Of Pb 13 Pg 3 Extended E To The Indian River & Part Of NE 1/4 Of NW 1/4 As Desc IN Orb 5890 Pg 8284 & Orb 7441 Pg 2670 All Lying E Of US Hwy 1



## VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$10,000	\$10,000	\$48,880
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$10,000	\$10,000	\$10
Assessed Value School	\$10,000	\$10,000	\$48,880
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$10,000	\$10,000	\$10
Taxable Value School	\$10,000	\$10,000	\$48,880

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
07/21/2015	\$5,000	QC	Improved	7441/2670
09/24/2008	\$64,000	WD	Improved	5890/8284
11/09/2007	--	QC	Vacant	5825/4178
01/25/2001	\$190,000	WD	Vacant	4280/2612
01/24/2001	--	QC	Vacant	4280/2611
12/10/1975	--	QC	--	1581/0122

No Data Found

**Malabar**  
**Code Book Article II**

**Land Use & Zoning**

**Article II**

**LAND USE AND ZONING**

**Section 1-2.1. Implementing the Comprehensive Plan.**


In order to implement the Comprehensive Plan in a manner consistent with § 163.3201, Florida Statutes, the following zoning regulations are hereby established. They are intended to assist in managing comprehensive planning issues surrounding the use and/or development of specific lots, parcels, and tracts of land or any combination thereof within the Town of Malabar.

**Section 1-2.2. Zoning districts established.**

Table 1-2.1, "Future Land Use Map (FLUM) Designations and Zoning Districts" references adopted FLUM designations contained in the land use element of the Town of Malabar Comprehensive Plan and identifies corresponding zoning districts which are hereby established in order to implement the FLUM designations, respectively.

**TABLE 1-2.1. FUTURE LAND USE MAP DESIGNATIONS AND ZONING DISTRICTS**

<i>Future Land Use Map Designations</i>		<i>Corresponding Zoning Districts</i>	
→ OSR	Open Space and Recreation	CP	Coastal Preservation
RR	Rural Residential	INS	Institutional
LDR	Low Density Residential	RR-65	Rural Residential
MDR	Medium Density Residential	RS-21	Single Family LDR
		RS-15	Single Family MDR
		RS-10	Single Family MDR
HDR	High Density Residential	RM-4	Multiple Family MDR
		RM-6	Multiple Family HDR
MRO	Multiple-family Residential or Office Space	R-MH	Residential Mobile Home
		RM-4	Multiple Family HDR
		RM-6	Multiple Family MDR
OI	Office-Institutional	OI	Office-Institutional
		OI	Office-Institutional
CL	Commercial Limited	INS	Institutional
→ CG	Commercial General	CL	Commercial Limited
R/LC	Residential and Limited Commercial	CG	Commercial General
		R/LC	Residential and Limited Commercial
IND	Industrial	IND	Industrial
INS	Institutional	INS	Institutional
*PUD(R)	Planned Unit Development (Residential)	PUD(R)	Planned Unit Development (Residential)


 C. *Commercial Activities.*

1. *Bars and Lounges.* A commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.
2. *Business and Professional Offices.* Offices extending the following services which provide advice, information or consultation of a professional nature: insurance, real estate, and financial services; banking services; and executive management and administrative activities. This classification excludes commercial storage of goods and chattels for the purpose of sale or resale as a principal use.
3. *Commercial Amusement, Enclosed.* Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities. Facilities as defined herein as amusement arcade centers and/or electronic gaming establishments are permitted as conditional uses as provided for in Table 1-3.2. For purposes herein the following definitions apply:

*Arcade Amusement Center* as used in this section means a place of business which shall have at least fifty (50) coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. It is specifically intended by this definition that any place of business that does not have at least fifty (50) coin-operated amusement games or machines on premises shall not be granted a conditional use permit to operate such a business. The provisions of F.S. § 849.161 shall apply to an arcade amusement center.

*Electronic Gaming Establishment* means a business operation, which shall have at least fifty (50) electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to F.S. § 849.094, including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. It is specifically intended by this definition that any place of business that does not have at least fifty (50) electronic machines or devices shall not be granted a conditional use permit to operate such a business. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, and cybercafes or sweepstakes cafes. This definition is applicable to any electronic gaming establishment, whether or not the electronic machine or device utilized:

- (a) Is server based;
- (b) Uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

- (c) Uses software such that the simulated game influences or determines the winning or value of the prize;
- (d) Selects prizes from a predetermined finite pool of entries;
- (e) Uses a mechanism that reveals the content of a predetermined sweepstakes entry;
- (f) Predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (g) Uses software to create a game result;
- (h) Requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;
- (i) Requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
- (j) Requires purchase of a related product, regardless if the related product, if any, has legitimate value;
- (k) Reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
- (l) Determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or
- (m) A slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any electronic gaming establishment that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. Electronic gaming establishments do not include arcade amusement centers, regulated pursuant to F.S. § 849.161, or the official Florida Lottery.

The term *prize* as used herein shall mean any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

4. *Drive-thru Facilities.* A facility, which by design, physical character, and/or by operation (i.e., service or packaging procedures) encourages or permits customers to receive services, obtain goods or be entertained while remaining in the motor vehicle.
5. *Funeral Homes.* Undertaking and funeral services involving care and preparation of human deceased prior to burial, including crematory facilities.
6. *General Retail Sales and Services.* Retail sale or rental from the premises of goods and/or services to include all uses listed under limited commercial activities as well as the following:

Appliance Stores, without major warehousing.

- Art Shops and Supplies.
- Bakeries, excluding wholesale production and distribution.
- Bicycle Shops.
- Copying Services.
- Cosmetic Stores.
- Department Stores.
- Drapery Stores.
- Drug Stores.
- Dry Cleaning establishments complying with Class IV or Class V Fire Code Prevention requirements and using only Class IV solvents such as perchlorethelene, except for spotting as provided for in Section 9.6(m) of the Fire Prevention Code.
- Dry Goods Stores.
- Fabric Stores.
- Furniture Stores.
- Garden Supplies.
- Grocery Stores.
- Hardware Stores, without outside storage of lumber and other building supplies.
- Health and Exercise Studios.
- Home Furnishing Stores.
- Lawn and Garden Supplies.
- Large Specialty Shops.
- Luggage and Leather Goods Stores.
- Office Equipment and Supplies.
- Paint and Wallpaper Retail Sales.
- Pet Supply and Pet Shops.
- Sporting Goods Stores.
- Other similar retail sales and service activities conducted within a fully enclosed building approved by the Town Council after receipt of a recommendation from the Planning and Zoning Commission. The use shall not include: wholesaling, warehousing, outside storage and distribution functions. The use shall not exhibit any characteristic dissimilar or incompatible with the uses identified herein. In review and approval of a request for a "similar" use, the Planning and Zoning Board and the Town Council shall use the procedures and criteria cited in the following Section 1-2.6 [1-2.7].



- 7. *Hotels and Motels.* A building or other structure used, maintained or advertised as a place where sleeping accommodations are supplied for rent to transient

guests, in which ten (10) or more rooms are furnished for the accommodation of such guests; and which may have as an accessory use one or more dining room areas.

8. *Limited Commercial Activities.* Small limited item shops and stores limited to retail sales of personal service items, including small convenience items or services typically needed on a frequent and recurring basis. This land use classification is intended to accommodate shops with limited inventory serving: (1) a household market area in the immediate vicinity as opposed to citywide or region; (2) a specialized market with customized service demand; or (3) a tourist oriented market area in the immediate vicinity. This classification is intended to include the following:

- Bait and Tackle Shop.
- Barber and Beauty Shops.
- Book and Stationary Stores.
- Candy and Ice Cream Stores.
- Clothiers.
- Drug Stores and Pharmacies.
- Dry Cleaning and Laundry Pick-Up Substations and Self-Service Facilities.
- Florists.
- Gift Shops.
- Hobby and Handicraft Shops.
- Interior Decorators.
- Jewelry Stores.
- Meat Shops.
- Novelty and Curio Shops.
- Optical Stores.
- Photo Supplies and Studios.
- Shoe Repair Shops.
- Tailors or Seamstress.

Other similar limited commercial activities conducted in a fully enclosed building which are approved by Town Council after receipt of a recommendation from the Planning and Zoning Board. Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such "similar" uses shall be as cited in the following section, § 1-2.6 [1-2.7]. The use shall comply with criteria cited in the above definition of limited commercial activities and shall not include more intense general retail sales and

**Malabar**  
**Code Book Article III**

**District Provisions**




Article III

DISTRICT PROVISIONS

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

Section 1-3.1. Purpose and intent of districts.

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

-  A. *CP "Coastal Preserve."* The CP district was originally established by the Town Council through Ordinance Number 7-1-76, § 5.12 and Ordinance Number 7-12-79 § 1. This district is intended to preserve a narrow strip of land east of highway US 1 directly abutting the Indian River Lagoon, a State designated Aquatic Preserve. The district provisions are intended to assist in implementing land use, coastal management, and conservation goals, objectives, and policies within the comprehensive plan. For instance, the district provisions reduce exposure to natural hazards to persons or property as a result of windstorms and high tides; preserve the marine resources of the Aquatic Preserve; and restrict usage to noncommercial piers, boat slips, and docks.
- B. *RR-65 "Rural Residential."* The rural residential district is established to implement comprehensive plan policies for managing rural residential development at a density not to exceed one and one-half (1.5) acres per dwelling unit. The district is intended to protect and preserve existing agricultural and rural residential lands. These lands are generally developed for agricultural uses or for large lot rural residential home sites. The areas designated for rural residential development generally contain few urban services and the street system is generally incapable of carrying traffic generated by more intense urban development. The district is intended to accommodate and preserve a unique lifestyle which cannot be accommodated in more dense residential areas.
- C. *RS-21 "Single-Family Low-Density Residential."* This district is established to implement comprehensive plan policies for managing low-density, single-family residential development at a density not to exceed two (2) single-family dwelling units per acre. The RS-21 district is established in order to protect the quality and character of existing and future conventional single-family low-density neighborhoods, preserve open space, and manage future densities in order to assure compatibility with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
- D. *RS-15 "Single-Family Medium-Density Residential."* The RS-15 district is designed to accommodate traditional single-family development on lots not less than 15,000 square feet. The district is established to preserve the stability of existing and future conventional single-family residential neighborhoods, preserve open space, and man-

age future densities in order to assure that future densities are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.

- E. *RS-10 "Single-Family Medium-Density Residential."* The RS-10 district is established to implement comprehensive plan policies for managing traditional single-family residential development on lots not less than 10,000 square feet. This district is established to preserve the stability of existing and future single-family residential neighborhoods, preserve open space, and manage future densities in order to assure that they are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
- F. *R-MH "Residential Mobile Homes."* The R-MH district is established to implement comprehensive plan policies for managing high density mobile home residential development. The district is designed for managing mobile home development at a density not to exceed six units per acre. The district is intended to provide sites for mobile home development within existing established mobile home parks.
- G. *RM-4 "Multiple-Family Medium-Density Residential."* The RM-4 district is established to implement comprehensive plan policies for managing medium-density residential development not to exceed four units per acre. The district is established to ensure sufficient land area for development of medium-density multiple-family residential developments which are fully serviced by adequate public facilities. Sites for medium-density multiple-family residential development shall be located so that they provide a smooth transition between low density residential development and areas developed and/or designated for more intense uses.
- H. *RM-6 "Multiple-Family High-Density Residential Development."* The RM-6 district is established to implement comprehensive plan policies for managing high-density residential development at a density not to exceed six units per acre. The district is established to ensure that sufficient land is available for developments of high-density residential development and is intended to ensure availability of adequate public facilities.
- I. *OI "Office-Institutional."* The OI district is established to implement comprehensive plan policies for managing office-institutional development. This district is designed to accommodate businesses and professional offices together with institutional land uses on sites which:
- Have accessibility to major thoroughfares;
  - Have potential to be served by a full complement of urban services;
  - Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;


- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those Community Facilities defined as Nursing Homes and Related Health Care Facilities in 1-2.6.B.10(B)), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.

J. *INS "Institutional Services."* The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.

K. *CL "Commercial Limited."* The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:

- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or
- A specialized market with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposable containers and/or providing drive-in facilities. No residential uses shall be located in the limited commercial district.

 L. *CG "Commercial General."* The CG district is established to implement comprehensive plan policies for managing general commercial development. The general commercial

district is designed to accommodate general retail sales and services. Sites designated for CG zoning shall be located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements required by general commercial land use activities.

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

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

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

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

M. *IND "Industrial."* The industrial district is established to implement comprehensive plan policies for managing industrial development. In locating industrial districts, consideration shall be directed to selecting sites accessible to rail facilities, terminal facilities, major arterials, labor markets, and necessary urban services. Industrial districts shall not include residential activities. However, residence for night watchman or custodians whose presence on industrial sites is necessary for security purposes may be approved as an accessory use. Industrial districts shall be accessible to major thoroughfares and shall be buffered from residential neighborhoods.

Any additional industrial zoning shall be consistent with the comprehensive plan, including criteria for siting industrial activities, including but not limited to, policy 1-1.3.1, policy 1-1.3.2, and policy 1-1.3.3.

TABLE 1-3.2. LAND USE BY DISTRICTS

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

TABLE 1-3.2. LAND USE BY DISTRICTS

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

- C = Conditional Use
- P = Permitted Uses
- A = Accessory Use
- \* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.
- 1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.
- 1 Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.
- 2 Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.
- 3 Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429
- 4 ALF Factor of "3" (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's (Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12; Ord. No. 14-01, § 3, 2-3-14)

# RADIUS MAP

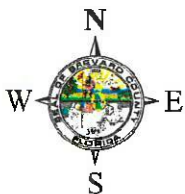
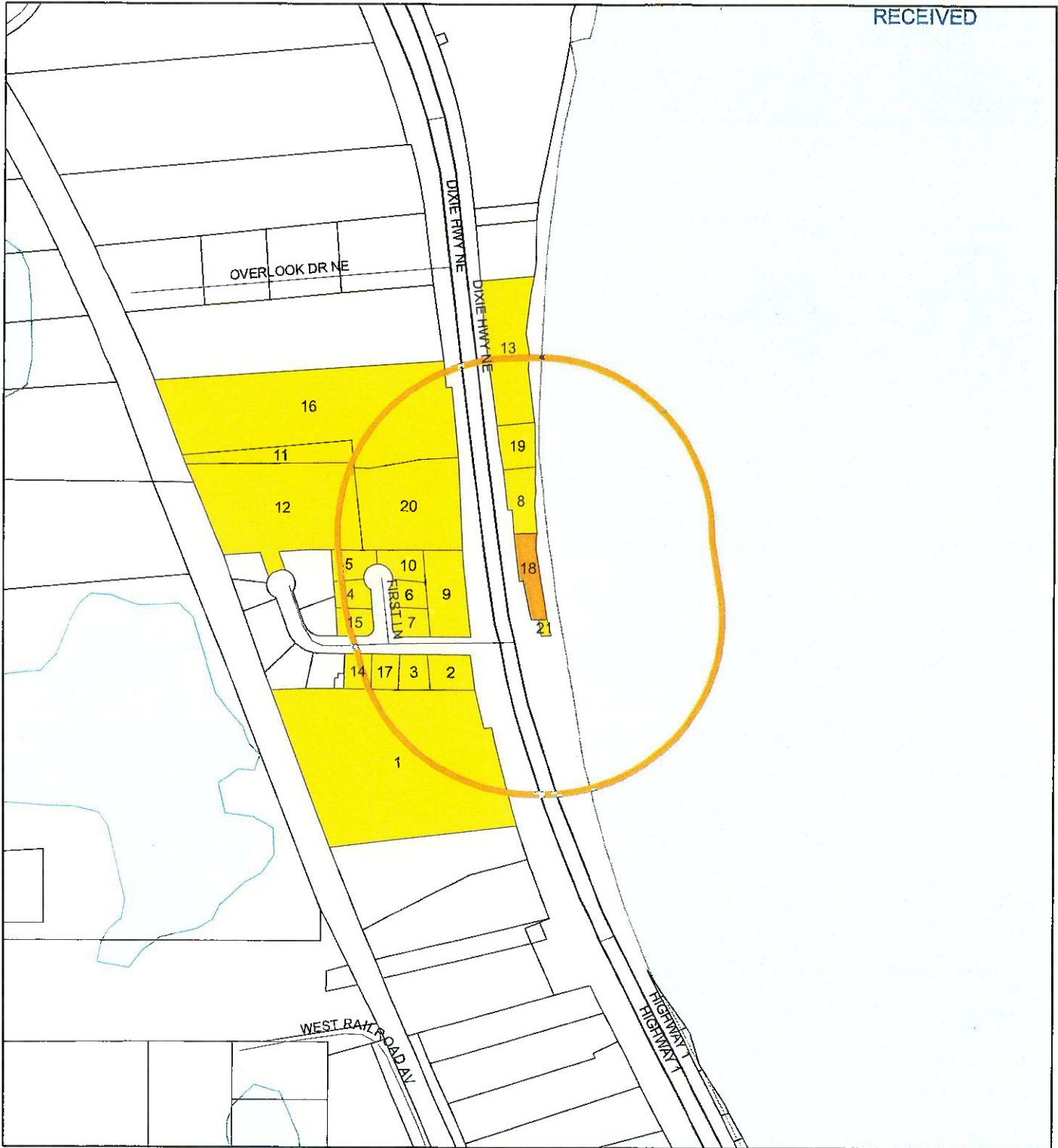
TOWN OF MALABAR

STUART J BORTON & NANCY TINIO-BORTON TRUST

DEC 10 2018

borton500

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1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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

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

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

TOWN OF MALABAR

borton500  
Page1

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BORTON, Stuart

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SMITH, LACHLAN V  
133 RIVERVIEW DR  
MALABAR FL 32950-

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

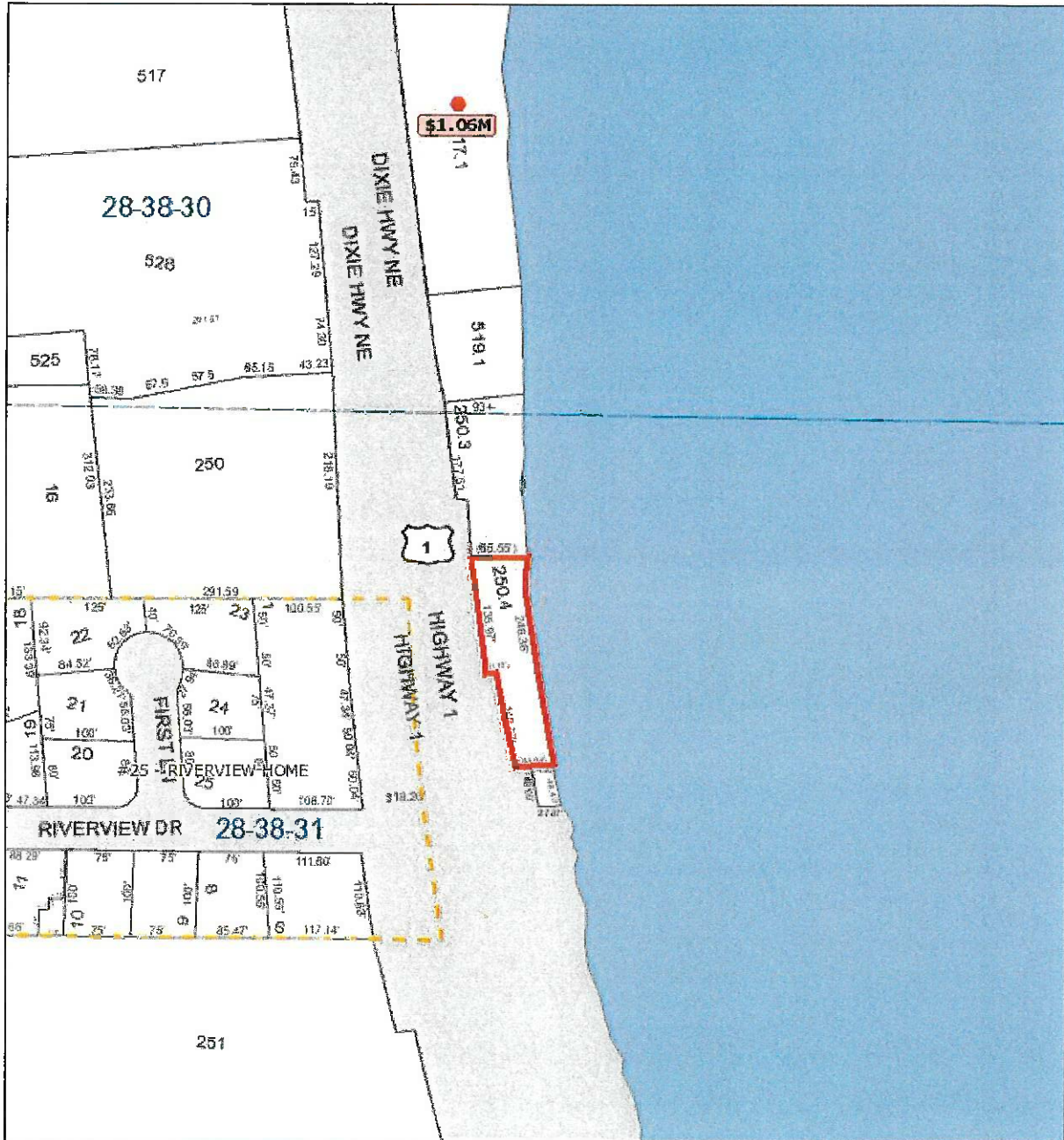
THERIAULT, ROBERT P  
THERIAULT, SUSAN L  
5151 DIXIE HWY NE  
PALM BAY FL 32905-

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

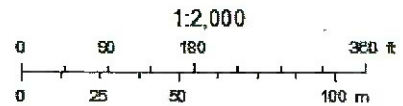
TOMA, FRANK P TRUSTEE  
TOMA, THERESE F TRUSTEE  
1931 N 50TH AVE  
HOLLYWOOD FL 33021-



# Brevard County Property Appraiser



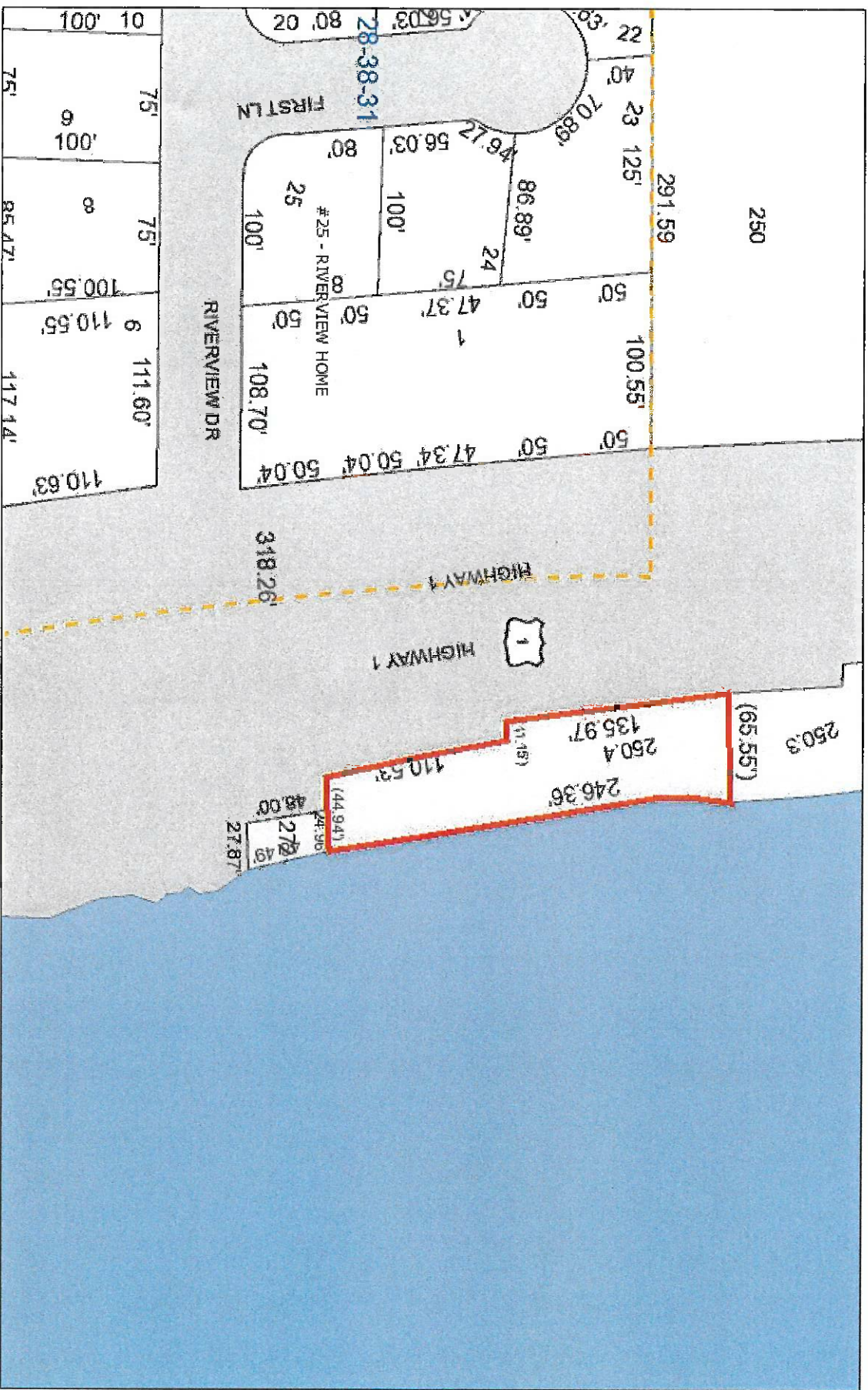
June 14, 2019



2846550

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

# Brevard County Property Appraiser



June 14, 2019

TOWN OF MALABAR

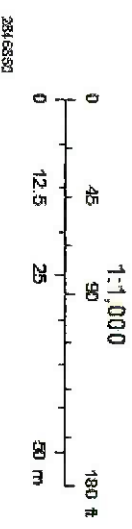
Brevard County Property Appraiser

DEC 10 2018

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December 10, 2018



For illustration only. Not a survey. Map buyers may not reproduce this map.

## **AGENDA ITEM 2**

## **STAFF REPORTS**

# **STAFF REPORTS FOR LAND USE/ZONING CHANGE FOR BORTON**

- **Karl Bohne, Town Attorney**
  - **Tod Mowery, Planner**
  - **Morris Smith, Engineer**
  - **Carl Weaver, Fire Marshal**

Reply all | Delete Junk | ...

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



kbohne@fla-lawyers.com

Mon 6/17, 1:41 PM

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

Reply all |

Inbox

I have reviewed the application and offer the following:

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

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

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

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

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

Office Hours:

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

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

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

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

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

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

29



TOWN OF MALABAR

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

---

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

**APPLICANT:** Stuart J Borton and Nancy Tinio-Borton

**OWNER:** Stuart J Borton and Nancy Tinio-Borton Trust

**LOCATION:** Adjacent to 905 S. US Highway 1

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

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

**SIZE:** 0.31 acres

**EXISTING USE:** Vacant

**SURROUNDING ZONING / LAND USE**

South: CP/CP

West: CG/CG

North: CG/CG

East: N/A

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



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

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**BACKGROUND AND ANALYSIS:**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

*There are no conflicts of public interest identified.*

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

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

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

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**STAFF FINDINGS AND RECOMMENDATION:**

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

**PLANNING BOARD ACTION OPTIONS:**

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

•Motion to recommend approval

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

•Motion to recommend denial

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

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**TOWN OF MALABAR  
MEMORANDUM**

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

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

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


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

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

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

I have no objections to this request.

Very Truly Yours,



James Morris Smith, Jr., PE  
Town Engineer

Reply all | Delete | Junk | ...

*Carl Weaver, Fire Marshal*

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



Carl Weaver <cweaver3@cfl.rr.com>

Tue 6/18, 5:25 PM

Denine Sherear; Karl Bohne <KBohne@fla-lawyers.com>; Matt Stinnett; MORRIS SMITH <m >

Reply all |



Inbox

Good afternoon. I do not see any issues. Any fire code comments will be addressed during the plans review process. Thank you

Sent from my iPhone

On Jun 17, 2019, at 11:07, Denine Sherear <dsherear@townofmalabar.org> wrote:

I am attaching an application for staff review relating to a Land Use /Zoning Change, please forward all comments back to my email address no later than June 28th. This was put on hold in December due to possible discussion of "layover" presentation to Boards. Now it was decided to move forward on June 14, 2019.

This request will go before the Planning & Zoning Board on July 24, 2018.

*Thank you,  
Denine*

Denine Sherear, Admin. Assist. to Building Official  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

<Borton LU ZC 0724 2019.pdf>

# **AGENDA ITEM 2**

## **PUBLIC NOTICE**



## PUBLIC NOTICE

### CASE NO. SSA-ZC-2-2019

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

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

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

APPLICANT: Stuart Borton

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

Ordinance 2019-08

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

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

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

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



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

**Customer:** TOWN OF MALABAR

**Address:** 2725 MALABAR RD  
MALABAR FL 32950  
USA

**Ad No.:** 0003668573

**Pymt Method:** Invoice

**Net Amt:** \$119.77

**Run Times:** 2

**No. of Affidavits:** 1

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

**Text of Ad:**

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

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

Copies of these documents are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764, Debby Franklin, CMC, Town Clerk/Treasurer



July 3, 2019

Dear Property Owner:

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARINGS**

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

Ordinance 2019-8

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

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

Thank you,

*Debby Franklin*

Debby K. Franklin

Town Clerk/Treasurer



## **AGENDA ITEM 2**

# **HISTORICAL INFORMATION ON COASTAL PRESERVE (CP)**

ings shall submit upon application, a scale drawing of at least one (1) in. equals twenty (20) ft. showing the required parking spaces, loading and unloading space, maneuvering space and openings for ingress and egress in a workable plan according to the minimum requirements of this ordinance.

Section 14. Principal Building on Lot.

14.1 Only one principal building and its customary accessory buildings may hereafter be erected on any lot of record. In any residence district, any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

Section 15. Reduction in Lot Area. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of this ordinance are not maintained. This section shall not apply where a portion of a lot is acquired for a public purpose.

Section 16. Setback Line. The setback requirements of this ordinance for rear setbacks shall not apply to any lot where the average depth of existing setbacks on the developed lots located within one hundred (100) ft. on each side of such lot is less than the minimum required front yard depth. In each case, the front yard setback may be less than required but not less than the average of the existing depths for front yards on developed lots within one hundred (100) ft. In no case, however, shall the minimum setback be less than twenty-five (25) ft. from the property line.

Section 17. Trailers or Mobile Homes. The use of a trailer or mobile home as a dwelling or living unit on any lot, other than licensed and approved trailer court, within the corporate limits of Malabar, shall not be permitted. No person, firm or corporation, who owns, rents or has permission to use land and plans to build a home on said land while building is under construction, providing before placing trailer or mobile home on said land the owner takes out a building permit for building, said building to be completed in six months and trailer or mobile home to be removed as soon as building is ready for occupancy.

Section 18. Water Areas. All areas within the corporate limits of the town of Malabar which are under water and not shown as included within any district shall be subject to all of the regulations of the district which immediately adjoins or abuts the water area. If the water area adjoins two or more districts, the boundaries of each districts shall be construed to extend into the water area in a straight line as projected until they intersect a projected line from other district boundaries.

Section 19. Yards and Open Spaces. The minimum yards and other open spaces, required in this ordinance for each and every building existing at the time of the passage of this ordinance, or for any building hereafter erected or altered, shall not be encroached upon or considered as yard or open space or use requirements for any other building.

Section 20. Nothing in this Ordinance shall apply to or limit the Town, except by referendum vote of the freeholders of the Town of Malabar, from construction and maintaining public utilities and public buildings in any districts.

7-64 July 7-1-76

# Boardwalk next phase of project

TREE, from 1B

Council member, is concerned herbicide hasn't been applied to the trees.

The Florida Department of Environmental Protection recommends applying the herbicide within 30 seconds of cutting the trees, which are notorious for growing back. Sometimes even a second application is required.

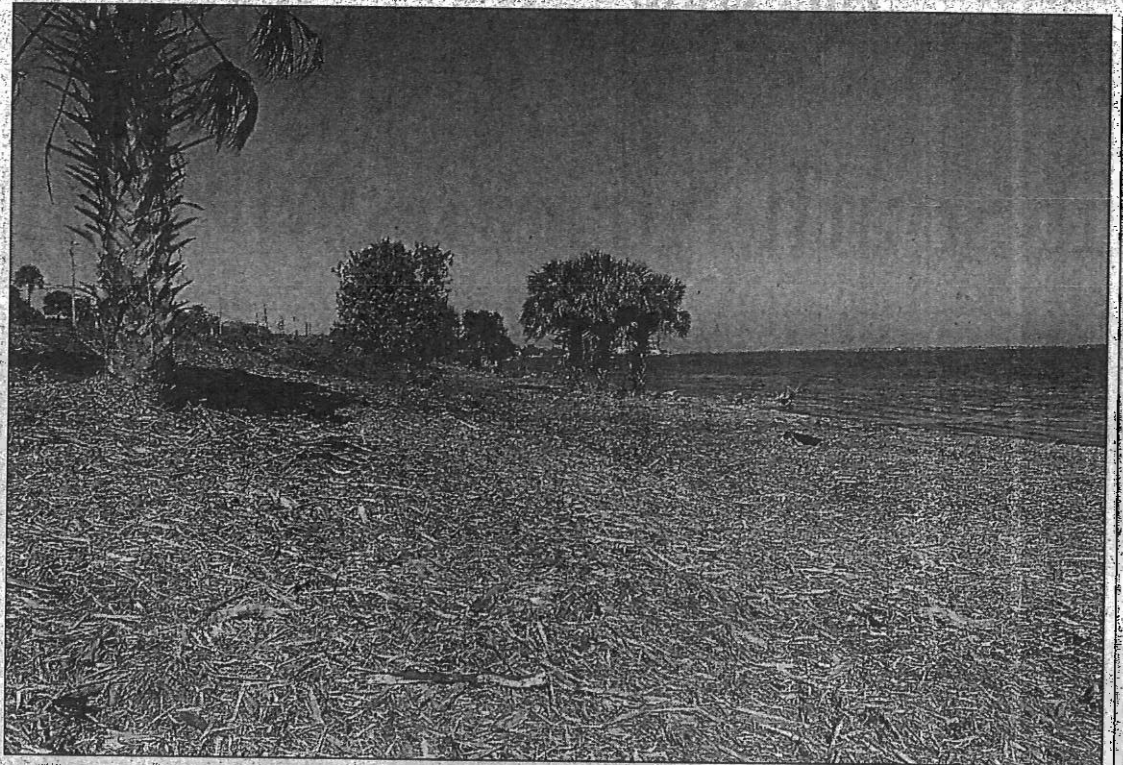
But Booth said it would have been impractical to do this because of the sheer volume of trees being removed. He said town workers and prisoners will continue to cut the trees as they sprout, then apply the herbicide.

Carl Beatty, supervisor of the town's public works department, remembers when there was a clear view of the river in the early 1960s.

"Right now it's how it was," he said.

But with a widening project of U.S. 1 decades ago, the road extended into the river. Workers created a steep bank that could no longer be mowed and that's when the pepper trees took over. The town's struggle with the pepper trees is now in the past.

Booth said it used to take a crew at least four months to clear half a mile. Beatty, who used to supervise the manual tree removal, said it would have taken a year for a prison crew to do what the machine did in one week.



Clear view. A mulching machine called the Brownosaurus was used to cut down Brazilian pepper trees along U.S. 1 south of Malabar Road. It cut the trees and turned them into smaller pieces. Pepper trees in the foreground is what is left of the pepper trees.

Michael R. Brown, FLORIDA TODAY

"I think it's terrific," Town Mayor Phil Crews said.

The next phase of the project is to build a boardwalk along the river, which will help stabilize the river bank, then the beautification of the area can begin.

"I think it's long overdue to get some beautification along that highway," Crews said. "It just improves the impression of Malabar."

The town's already gotten a \$150,000 grant to put vegetation along the medians that the town will have to match. The money will also be used for sprinklers and decorative lighting.

While town officials are hoping to develop the area along U.S. 1, they plan to keep the rest of the town as is: rural and residential.

"The lots are an acre and a half and it has the old Florida look to it," Booth said. "But to be able to afford those things that the town needs to do, such as stormwater, police, fire and all the other things, the economic engine to drive that will be Highway 1 and Malabar Road."

Longtime resident John Yust doesn't see a problem with that.

"It seems like a logical place for commercial development," he said.

But others such as former state Sen. Patsy Kurth are concerned about what type of businesses come in.

"I hope that it would be something that's tightly controlled, and positive for the community," she said.

Right now, residents and drivers seem happy about the change.

"We have a 180-degree view of the river," said Bobby Ritter, co-owner and resident of Camelot R.V. park. "The view went from not so good to spectacular."

Contact Briz at 409-1422 or lbriz@flatoday.net

# Measure would let counties cap property taxes

TAXES, from 1B

governor are two different things.

With Speaker of the House Johnnie Byrd, R-Plant City, being an adamant tax cutter, the bill would seem to face an easier time in the lower chamber. "I think with a Speaker that wants to protect sky-box tax exemptions and

ostrich-feed exemption, he would probably like that and it would have a chance getting heard," State Sen. Bill Posey said, referring to some of the exemptions to the state sales tax. "But it would be a whole different animal over in the Senate."

The fact that it doesn't affect state revenue is a mark in the bill's favor. "There is a strong phi-

losophy in the Legislature for allowing Home Rule," said Bob Allen, R-Merritt Island. "When you have 85 percent of the voters vote for something, I don't think you should ignore it."

Kay Burke, one of the residents who sued to get rid of the local tax cap, declined to comment on Needelman's bill. But she said the local cap was not legal.

"I agree that it was against the state law. The courts agreed. And I still agree," she said.

"This bill wouldn't reverse the court's decision," Needelman said. "But it would allow the counties to move forward and try" ballot initiatives to establish local tax caps."

Contact Blake at 242-3644 or sblake@flatoday.net

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# POST CARD

## DRAYTON COURT AND RESTAURANT

Malabar, Fla.

Six miles south of Melbourne on the Dixie Highway (U.S. 1). A paradise spot in the sunny south. Modern cottages, each with private bath and hot water and oil burner heat. Best fishing the famous Indian River. 300-foot pier and boats.

Owner-Manager

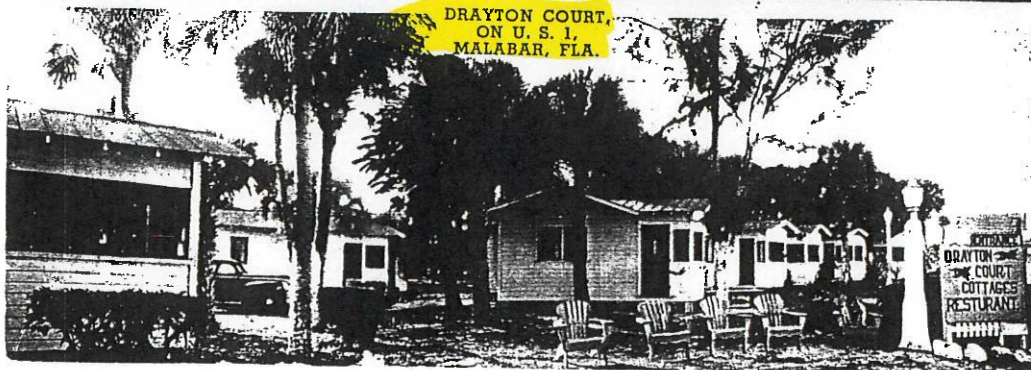
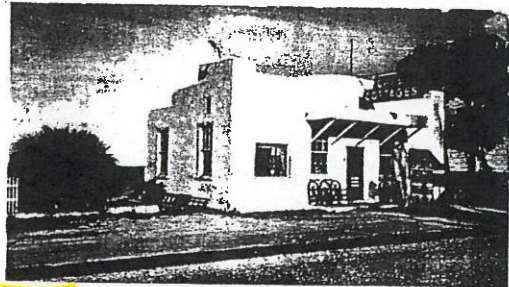
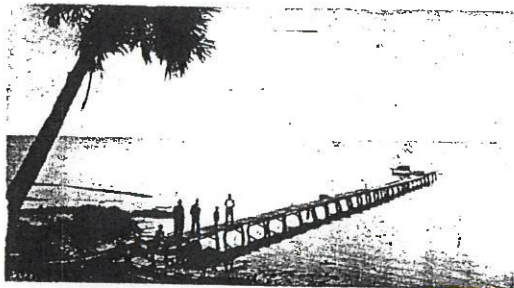
**A. F. Creedman**

Pub. by The Colotype Co., Elizabeth, N.J. and N.Y.

*Our Restaurant  
Malabar Coffee Shop  
1945*

This Side for Correspondence

This Side for Address



Malheur 1913-1915  
MAP (B)

Indian River

Vanderwater pier (1,500 ft)

DIXIE HWY.

GROVES  
ALBERTS  
ALBERTS  
FERRY

John Nord  
Castles

Gen'l. Store  
run by A. J. Vanderwater

Township Ave.

Stark  
Henry Gordon  
Charlie house  
Roth's



Township Ave.

Information provided by  
Harvey Huggins Jan 1981

Additional info according to  
A.W. Scott:  
In house later owned the ferry  
there was an Indian mound  
between ferry & highway

Malheur 1913-1915  
MAP (C)

Indian River

GROVES Fish house  
GROVES pier

DIXIE HWY

SEEB  
CRATER

Charlie Bolton

→ No buildings  
between here  
and Goat Creek

This map continues the Dixie Hwy.  
South from MAP (B)

Indian River

DIXIE Hwy

- John Dr. John LUTHER
- DAVER R. Hwy Fullwood
- Charles Comstock
- Packing house x
- Orange Grove
- PETE GRIEMEL
- AMIS STOVALL
- Guest cottage
- Harvey + Helen JACOBS lived here at one time
- KORNER

This map is a continuation of DIXIE Hwy going North from MAP (A)

MALABAR 1913-1915

Indian River

DIXIE Hwy

- Graves
- J.A. Family packing house
- (P.O. here)
- HUGGINS' STAGE
- HUGGINS
- Roller Bros. warehouse + machine shop
- F.E. R.R. depot
- depot built here in 1918/1919
- Dick Moore's barbershop (black man)
- Ed Arnold, Jr.
- First Christian Church
- Remotory
- Huebner house
- (Hoch Sheep got drunk + took this house in)
- STARK
- WAGGARD
- Graves
- Arnold's barn, horse + buggy shelter
- RUSSELLS (LATER GAYTON)
- Stanley (later John)
- Conant (Geo. + Chas)
- (LATER HUGGINS' STAGE)
- R.R. tracks 1914 + track
- English
- Grover Henning lived here + had meat mkt
- Schoolhouse
- DAVE HUNTERS
- Farm Area
- Perry Follen
- pond
- GLATTERS (Johns originally)

MAIN ST (Now MALABAR ROAD)

In 1979 the community of Malabar had 34 residents who had lived in South Brevard for over 50 years.

Victoria Bolton Moeller, Malabar's lively longtime historian lived in Malabar all her life.

At the 1979 Malabar Pioneer Day she recalled the shoot-out on the Sebastian River Bridge at Micco, which occurred in the 1920s, when the notorious Ashley Gang was wiped out by the Sheriff's Dept.

Her parents came to South Brevard and settled in Malabar, in 1876. Shortly after setting up housekeeping, their home burned to the ground.

"My father carried the mail, by sailboat, from Titusville. The first Malabar Post Office was a palmetto shack on the Indian River shore." The area around the old post office was a beautiful place. There was plenty of land there before they four-laned the road in 1961. They ruined the river frontage. It had palm trees and a natural sea wall of coquina rock. I guess they just love to tear stuff up."

---

The following is an old folklore legend of how Malabar got its name:

"Some 100 years ago a robust, early Florida sailor of Spanish descent stood knee-deep in water about 200 yards offshore in the Indian River cursing his ill luck. His small ketch had grounded on a long jut, which at high tide was partially obscured.

"Mala bar!.....Mala bar!" he shouted (among other seafaring curses known only to sailors).

"The river has since shifted its course and the long, narrow "bad-bar" no longer exists."

---

Malabar's first school building was unpainted, unsealed, unlighted and unheated and contained but one room. It was built for \$40. School lasted about three months at first, which permitted the youngsters to work in the fields most of the year. The school was located on Malabar Road, west of town. The Hunter family of Malabar were mostly responsible for the school Dave Hunter had six children and only 8 pupils were required for a school, so they called the school "The Hunterville School" of #39.

March 21, 1974

Decisions on the Zoning Plan

GEOGRAPHICAL ZONING OF MALABAR

1. The east riverfront along US #1 shall not be further developed, from the north to the south boundary of Malabar.
2. From US #1 to the railroad North of Malabar Rd. will be Commercial except Riverview Homes.
3. Riverview Homes shall be Residential, single family.
4. South of Malabar Rd. from the railroad to US #1 extending south until the intersection of Jordan Rd. with US #1 shall be zoned Multi-Family Residential, except as in #5.
5. The South side of Malabar Rd. east of the railroad extending to Century Oaks, is to be Commercial.
6. West of the railroad to Maries St. from Township Rd., North to the Town Limits is to be Single Family Residential, with grandfather clause exceptions.
7. US #1 to Rocky Point Drive is to be Single Family Residential except for grandfather clause exceptions.
8. The SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 36 is to be Multi-Family Residential.
9. Malabar Rd., 300' each side of the Center Line, West of McCain shall be Commercial on the North side to the Town Limits, and on the South side it shall be Commercial to the western boundary of the Tyminski property line.
10. All the remainder, except existing trailer parks, Manchester, Ritter, Savoia, and DeCaro, shall be zoned Agricultural.
11. No more trailer parks shall be dedicated.



Minutes Town Council Meeting October 3, 1978

Chairman Radencic opened the meeting.  
The prayer and the pledge were given.

Councilman Richards made a motion to accept the minutes of the last regular meeting, seconded by Councilwoman Fenter, all in favor.

The minutes of the workshop held on September 26, 1978 contained an omission, that Mayor Yust had also been absent, with this correction to be made, the minutes were accepted on a motion made by Councilwoman Todd, seconded by Councilman Richards, all in favor.

Mr. Tony Thurman of the Brevard County Animal Control Department discussed with the council the requirements of the Animal Control Act and its affect on the Town of Malabar. This is to be discussed further.

Correspondence:

A letter from Mr. William Kaye, owner of Palm Terrace Motel, requesting a hearing to have a Special Exception on his property, he had also presented the fee of \$50.00. The Clerk was instructed to discuss this matter with the town attorney and relay the information to Mr. Kaye.

A letter from the Brevard County Health Department, which was a copy of a letter the Health Department had sent to Mr. Kaye. The Health Department stated they would only allow 12 bedrooms to be located on the present Palm Terrace Motel property, due to sewerage limitations, and that they would not permit trailer hook-ups without authority from the town of Malabar. Council directed the town planner to obtain from the town attorney advise relative to a developer bringing in water and sewer utilities without the town council approval. A report to be made at the next meeting.

A letter from CETA was read by the town planner advising that this position was being extended until December 31, 1978.

A letter from the Planning & Zoning Department of Brevard County requesting the appointment of a representative to the local government comprehensive planning committee. The Town Planner was appointed and will report to the county.

The Palm Bay Fire Protection contract was discussed and Councilman Richards was delegated by the Council to obtain from Palm Bay City Manager the minimum cost to Malabar, in the event we wish to cancel at an early date.

A request from the Fire Chief for emergency equipment was reviewed by the Council. During the discussion which followed the council reiterated that all expenditures be supported by proper documentation and that the town clerk will not issue a check without a proper payee and/or such documentation. Councilman Richards made a motion authorizing this emergency purchase, seconded by Councilwoman Todd, all in favor.

Fire Chief Fawcett announced that they would be holding a dance, at the Grant Fire Station for the benefit of the Malabar Volunteer Fire Department.

The town planner reported that he had withdrawn from the race of councilman in Indian Harbor Beach after being advised by the town attorney that his holding of these two positions would be a conflict of interest.

**RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.****MOTION: CM Rivet / CM White to approve Reso 16-2018.**

Discussion: CM Mahoney – Council could formulate a roads and drainage committee and Doug could be on that and Andy could start next Wednesday on P&amp;Z.

**Roll CALL Vote:** CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, excused; CM White, Aye. Motion carried 4 to 0 (CM Korn excused).

8. **Reso 17-2018 Approving a Three-year Interlocal Agreement with Brevard County for Administration of the Malabar Stormwater Program**  
**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF A THREE-YEAR INTERLOCAL AGREEMENT WITH BREVARD COUNTY FOR STORMWATER PROGRAM ADMINISTRATION AND MANAGEMENT; PROVIDING FOR AN EFFECTIVE DATE.**

**MOTION: CM Rivet / CM Ball to approve Reso 17-2018.**

Discussion: CM Ball said it is more cost effective for the Town. It would be a monumental expense to do in house.

**Roll CALL Vote:** CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, excused; CM White, Aye. Motion carried 4 to 0 (CM Korn excused).**MISCELLANEOUS: none****COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME****J. DISCUSSION/POSSIBLE ACTION:****9. Coastal Preservation Land Use Along Indian River Lagoon**

Discussion:

Grant Ball, 1190 Highway 1. Stepped down from dais to speak as a resident/property owner. Council has had a request to change the CP to correspond to zoning on west side of Highway 1. He is one of the people that own land along there. We should consider what that allows the property owner to do but also do we want to change how Malabar looks. We have a beautiful view of the Indian River through Malabar. Look at the ramifications of how we are going to go forward from here. Thank you.

Mayor said there are some parcels on east side that could be developed. CM Rivet said allowing development would increase the tax base. Would be willing to listen to what P&Z Board recommends. CM White said his concern would be the individual property owner.

**MOTION: CM Mahoney / CM Rivet to send this to P&Z with a detailed black and white map showing potential parcels for development.** **Vote:** Ayes, 3; to 0 (CM Korn excused, and CM Ball recused himself.**K. PUBLIC COMMENTS: General Items (Speaker Card Required) none****L. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: nothing

CM Mahoney: Thanked Tom for his explanation of how he plans to finish the grading on lanes. She asked TA about drainage assessments. TA explained it was a letter sent to the property owners. CM Mahoney said it would be good for Council and P&Z to know about this before letters went out. She got Jeff McKnight's comments and wants to provide them. The Mayor said he disagrees with Jeff McKnight's. Each member of P&Z had a copy of the letter. She then requested a copy of the medical agreement. Did the Atty help with negotiations. MCA regular mtg at 5:30 to dark.

CM Rivet: Thanked Mr. Hoyt for helping him clean up the tires that were illegally dumped in ditch on Rivet Lane.

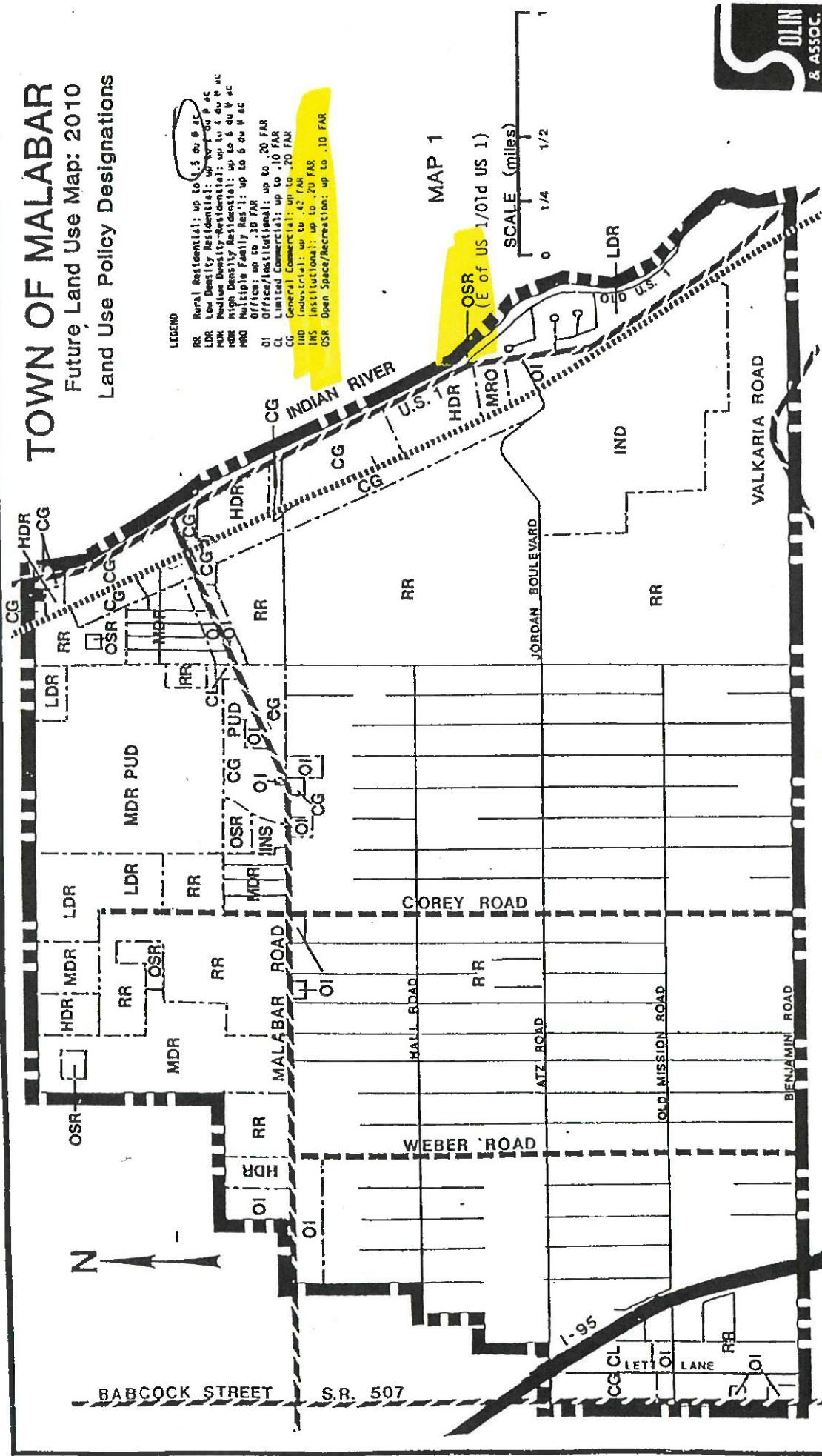
# TOWN OF MALABAR

## Future Land Use Map: 2010

### Land Use Policy Designations



- LEGEND**
- RR Rural Residential: up to .5 du/9 ac
  - LDR Low Density Residential: up to .25 du/9 ac
  - MDR Medium Density Residential: up to 4 du/9 ac
  - HDR High Density Residential: up to 6 du/9 ac
  - MRO Multiple Family Res: up to 6 du/9 ac
  - OI Offices: up to .30 FAR
  - CI Office/Institutional: up to .20 FAR
  - CG General Commercial: up to .10 FAR
  - IND Industrial: up to .42 FAR
  - INS Institutional: up to .20 FAR
  - OSR Open Space/Recreation: up to .10 FAR



Prepared: February, 1988 / Revised: October, 1988

**OBJECTIVE 1-2.4: ALLOCATING INSTITUTIONAL SERVICES (INS).** The Town shall set aside land sufficient to accommodate institutional land uses. For instance, approximately 25 acres of institutional land area is anticipated to be required by 2010. The Town shall monitor the need for such increased land area for institutional uses and shall assure that the institutional land use designation on the Future Land Use Map is expanded to accommodate the development of public and semi-public facilities such as government administration buildings; fire, police and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this land use designation.

**Policy 1-2.4.1: Institutional Land Use Designation.** Lands designated for institutional services shall contain sufficient acreage and open space and be properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses.

**OBJECTIVE 1-2.5: ALLOCATING OPEN SPACE AND RECREATION (OSR).** The open space and recreation designation has been established to direct the preservation of major open spaces and recreation areas, including golf courses, parks, recreation areas and similar facilities.

**Policy 1-2.5.1: Open Space and Recreation Land Use Designation.** Lands designated for open space and recreation shall be consistent with the Recreation and Open Space Element and shall reflect actions taken to implement the goals, objectives and policies of the Recreation and Open Space Element.

In addition, the OSR designation shall be applied to major natural resources and environmentally sensitive corridors which the Town Council deems appropriate to conserve in order to implement natural resource conservation goals, objectives, and policies stipulated in the Comprehensive Plan. Where such designations are enacted, the Town Council shall adopt appropriate programs, policies, and/or ordinances for managing implementation of the respective conservation Future Land Use Plan designations.

**OBJECTIVE 1-2.6: PLANNED UNIT DEVELOPMENT.** The Town shall promote innovative development concepts including mixed use development, and shall institute procedures for resolving conflict through use of the planned unit development.

**Policy 1-2.6.1: Planned Unit Development Overlay Designation.** The Town hereby establishes a planned unit development overlay designation in order to provide voluntary management framework for coordinating objectives of developers which may require departures from established public policy.

The planned unit development overlay designation shall provide a management strategy for negotiating innovative development concepts, design amenities, and measures for protecting natural features of the land. The management process shall promote public and private coordination and cooperation. The detailed regulations, standards, and procedures for implementing the planned unit development overlay designation shall be incorporated in the land development code.

The planned unit development overlay designation shall be available as a voluntary approach for managing specific development characteristics and project amenities to be incorporated in residential, commercial, industrial or mixed use development options. The basic development options, including principles for locating alternative land use activities shall be governed by the underlying land use designated for the site. Developers who voluntarily participated in the process shall bind themselves as well as those who may be their successors in title to the affected land.

### **§1-3 LAND USE ELEMENT IMPLEMENTATION.**

**GOAL 1-3: IMPLEMENTING LAND USE GOALS AND OBJECTIVES.** CONTINUE TO MONITOR AND EVALUATE DEVELOPMENT AND RESOURCE CONSERVATION WITHIN THE TOWN PURSUANT TO GOALS AND OBJECTIVES OF THE COMPREHENSIVE PLAN LAND USE ELEMENT AND CARRYOUT AN EFFECTIVE IMPLEMENTATION PROGRAM AS HEREIN ESTABLISHED.