

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY MARCH 8, 2017
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**

- 1. **Approval of Minutes** Planning and Zoning Meeting – 01/25/2017
- Exhibit:** Agenda Report No.1
- Recommendation:** Request Approval

- E. PUBLIC HEARING: none**
- F. ACTION:**
- G. DISCUSSION:**

- 2. **Discussion on Zoning/Land Use Change/Conditional Use in RR-65 (Mrs. Karissa Tolliver-Potential Land Owner)**
- Exhibit:** Agenda Report No. 2
- Recommendation:** Discussion
- 3. **SR 524 (Malabar Road) Widening Project (Florida Today Article 3/1/ 2017)**
- Exhibit:** Agenda Report No. 3
- Recommendation:** Discussion
- 4. **Draft Moratorium Ordinance on Medical Marijuana prepared by Town Attorney Bohne**
- Exhibit:** Agenda Report No. 4
- Recommendation:** Discussion/Action

- H. ADDITIONAL ITEMS FOR FUTURE MEETING:**
- I. PUBLIC:**
- J. OLD BUSINESS/NEW BUSINESS:**

OLD BUSINESS:

NEW BUSINESS:

- K. ADJOURN**

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.
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 insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with 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.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: March 8, 2017

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

SUBJECT: Approval of Minutes

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 January 25, 2017

ACTION OPTIONS:

Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
January 25, 2017 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Liz Ritter.

B. ROLL CALL:

CHAIR:	LIZ RITTER
VICE-CHAIR:	WAYNE ABARE
BOARD MEMBERS:	BUD RYAN
	DOUG DIAL
	GEORGE FOSTER, EXCUSED
ALTERNATE:	ALLEN RICE
ALTERNATE:	MARY HOFMEISTER
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

MAYOR	PAT REILLY
COUNCIL MEMBER	GRANT BALL
COUNCIL MEMBER	LAURA MAHONEY

C. ADDITIONS/DELETIONS/CHANGE:

D. CONSENT AGENDA:

- 1. Approval of Minutes** Planning and Zoning Meeting – 01/11/2017
Exhibit: Agenda Report No. 1
Recommendation: Request Approval

**Motion: Ryan/ Dial Recommend Approval of Minutes of 01/11/2017 as presented All Vote:
Aye**

E. PUBLIC HEARING

F. ACTION:

G. DISCUSSION:

- 2. Presentation to PZ Board of R/LC Maps- Mayor Pat Reilly**
Exhibit: Agenda Report No. 2
Recommendation: Discussion

Chair Ritter explained that Mayor Pat Reilly will make a presentation to PZ Board (new members) explaining the R/LC Maps.

Mayor Pat Reilly 1985 Howell Lane, Malabar discussed the purpose of the Comprehensive Plan that was done in 2010 is the vision of the Town and explained that it is registered with the state of Florida. The Comprehensive Plan and the Land Development Code cannot contradict each other. Mayor Reilly made a power point presentation about Future Land Use on the overhead projector. Mayor Reilly also reviewed Article II and Article III in the Town Codebook pointing out important points in these Articles discussing with the PZ Board Members answering questions. The Mayor explained to this Board to review Article II & Article III.

Mayor explained why this R/LC was done to better use of the land and have landowner have better options for their property.

The Mayor reviewed Article II.

Ritter said there are two turned around in Article II, MDR & HDR 4 & 6 (check)

The Mayor reviewed Article III.

The Mayor explained that the review and suggestions made by PZ in the previous years was given to Council in November of 2015 for review and consideration.

The Mayor said it has been 20 year since the last land use change of this magnitude, which was in 1985.

The Mayor went through the proposed R/LC map changes & explained changes that the Board worked on for a lengthy period of time

Ryan left 8:14PM

Abare commented that the Mayor did a good summary and presentation of the proposed R/LC changes.

Abare discussed and explained that the residents are not being forced to change their land, but if a resident would like to change, it is available.

Rice asked about a causeway going across the river between Sebastian and Palm Bay Road. There is none known, Rice also asked about the widening of Malabar Road and Ritter explained the update.

Hofmeister asked about speed limit on Malabar Road, and will the speed limit be lowered. Ritter & Mayor explained that it is a state road.

- 3. Draft Moratorium Ordinance on Medical Marijuana prepared by Town Attorney Bohne**
- Exhibit:** Agenda Report No. 3
- Recommendation:** Discussion/Action

Ritter discussed that the draft Moratorium prepared by Attorney that was passed by Council.

The Board discussed the options for the Zoning & Land Use Ordinance concerning "Medical Marijuana" in the Land Development Code for the Town.

Ritter suggested to the Board to read the draft Ordinance and make ideas/suggestions.

Ritter said to bring back this Ordinance in April for an Agenda Item for Medical Marijuana get "word document" and send out to PZ Board Members.

CM Ball explained to the Board about the Draft Ordinance that the Town Attorney presented and the PZ Board can make suggestion and review to have things in place.

Ritter explained that there is 280 days from the time the Florida Department of Health establishes guidelines/rules and accepts/adopts this Ordinance.

Mayor suggested the Board will have to determine where you want to allow these Medical Marijuana facilities or establishments and then if it is Condition Use. Ritter suggested looking at Article III to assist with determining locations.

Ritter suggested that Florida will adopt statutes concerning Medical Marijuana and we can review and reference these Florida Statutes when reviewing the Ordinance.

- H. **ADDITIONAL ITEMS FOR FUTURE MEETING**
- I. **PUBLIC**
- J. **OLD BUSINESS/NEW BUSINESS:**

Old Business:

- Discuss Local Government Planning Officials' Training Event that took place on January 20, 2017 in Titusville.

The Board discussed the meeting that some members attended. They enjoyed the training.

New Business:

Next meeting February 8, 2017

K. ADJOURN

There being no further business to discuss, MOTION: Abare / Dial to adjourn this meeting. Vote: All Ayes. The meeting adjourned 9:18 P.M.

BY:

Liz Ritter, Chair

Denine Sherear, Board Secretary

Date Approved: as presented/corrected

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: March 8, 2017

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

SUBJECT: Discussion on Zoning/Land Use Change/Conditional Use- Mrs. Karissa Tolliver- Potential Land Owner

BACKGROUND/HISTORY:

This is strictly an informal discussion requiring additional time more than a "public speaker card". Mrs. Karissa Tolliver, also a resident of the Town of Malabar came into Town hall and inquired about purchasing a portion of property located at 650 Hall Road, Malabar which is in our RR-65 Zoning. Mrs. Tolliver presently runs a small school in another location in Brevard County that incorporates horses and different animals for children's therapy.

Mrs. Tolliver is just wanting to get a feel if this is a potential site to pursue for her small school, and if a possible Land Use/Zoning change is even a possibility.

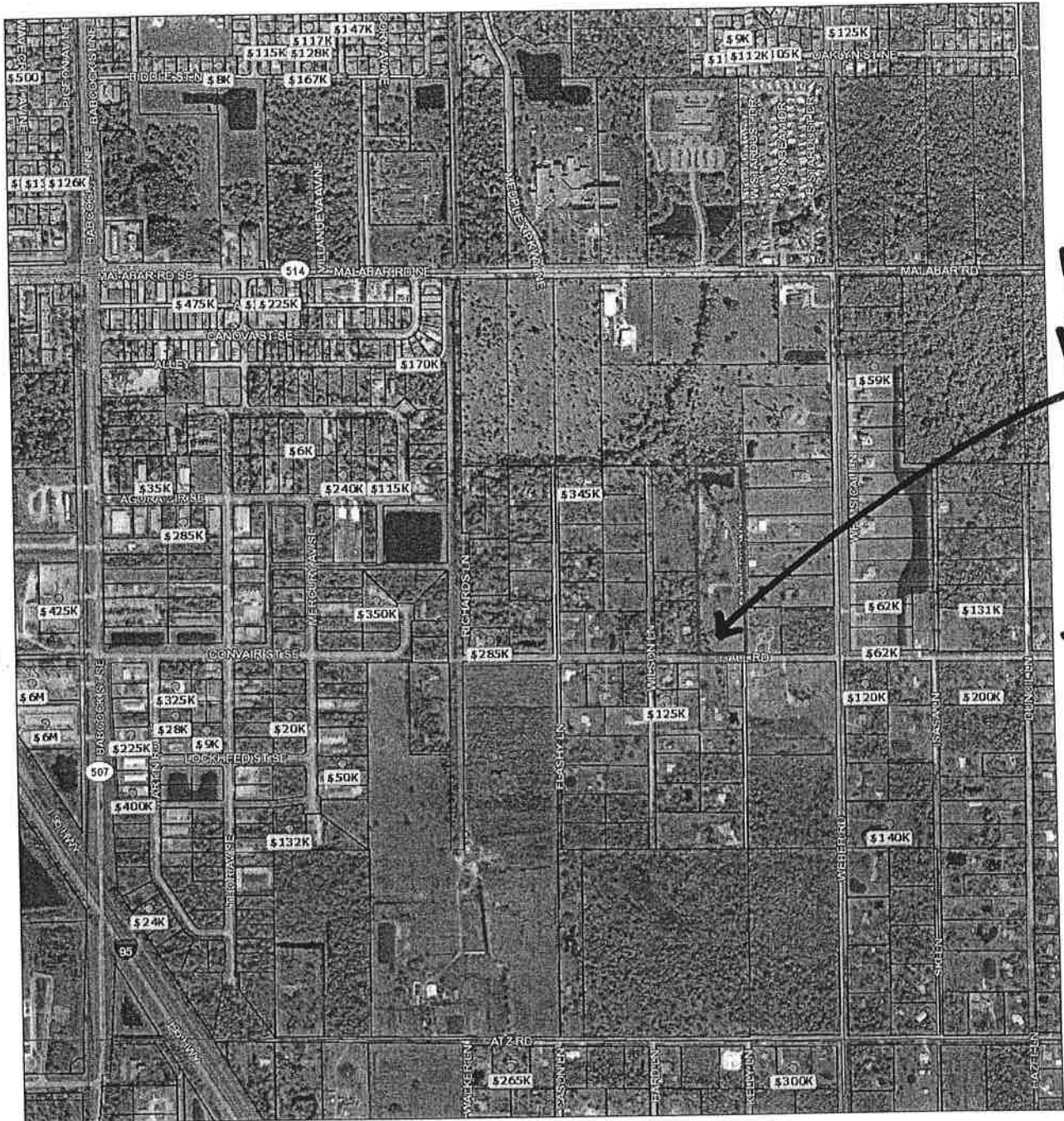
This is only a discussion.

ATTACHMENTS:

- Map showing location of property
- Article II & Article III from our Land Development Code
- Possible handout from Mrs. Tolliver (not in this packet)

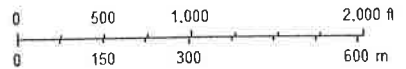
ACTION OPTIONS: Discussion Only

Brevard County Property Appraiser



March 1, 2017

1:8,000



S

294850



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2922713
 Owners Souter, Shawn; Lisa Souter
 Mailing Address 650 Hall Rd Malabar FL 32950
 Site Address 650 Hall Rd Malabar FL 32950
 Parcel ID 29-37-03-00-4
 Property Use 6110 - Grazing Land - Soil Capability Class II - With Res
 Exemptions None
 Taxing District 3470 - Malabar
 Subdivision N/A
 Total Acres 9.75
 Site Code 0001 - No Other Code Appl.
 Plat Book/Page N/A
 Description E 1/2 Of Lot 18 As Des IN Orb 693 Pg 781 & All Vac 25 Rd On E



VALUE SUMMARY INFORMATION

Category	2016	2015	2014
Total Market Value	\$240,500	\$230,950	\$225,380
Agricultural Market Value	\$2,040	\$2,040	\$2,040
Assessed Value Non-School	\$113,640	\$109,090	\$103,520
Assessed Value School	\$113,640	\$109,090	\$103,520
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$113,640	\$109,090	\$103,520
Taxable Value School	\$113,640	\$109,090	\$103,520

SALES/TRANSFERS INFORMATION

Date	Price	Deed	V O R I	Book/Page
03/08/2016	\$100	WD	Improved	7572/2469
06/02/2015	\$350,000	WD	Improved	7381/2793
12/22/2004	\$100	WD	Improved	5456/0919
02/28/1979	\$54,000	--	--	2023/0338
02/01/1974	\$1,000	--	--	1422/0187

BUILDING INFORMATION

PROPERTY DATA CARD #1			
Building Use	Year Built	Story Height	Floors
0110 - Single Family Residence	1982	8	1
Materials		Sub Areas	
Exterior Wall	Hrdybrd Siding	Base Area (1st)	1118
Frame	Wood Frame	Enclosed Por	128
Roof	Enamel Metal	Enclosed Por	264
Roof Structure	Hip/Gable	Garage	494
		Total Base Area	1118
		Total Sub Area	2004
Extra Features		Additional Extra Features	
Garage Detached: Average	1820	No Data Found	
Garage Detached: Low	1400		

ARTICLE II

LAND USE AND 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
		INS	Institutional
RR	Rural Residential	RR-65	Rural Residential
LDR	Low Density Residential	RS-21	Single Family LDR
MDR	Medium Density Residential	RS-15	Single Family MDR
		RS-10	Single Family MDR
		RM-4	Multiple Family MDR
HDR	High Density Residential	RM-6	Multiple Family HDR
		R-MH	Residential Mobile Home
MRO	Multiple-family Residential or Office Space	RM-4	Multiple Family HDR
		RM-6	Multiple Family MDR
		OI	Office-Institutional
OI	Office-Institutional	OI	Office-Institutional
		INS	Institutional
CL	Commercial Limited	CL	Commercial Limited
CG	Commercial General	CG	Commercial General
R/LC	Residential and Limited Commercial	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)

<i>Future Land Use Map Designations</i>		<i>Corresponding Zoning Districts</i>	
*PUD(C)	Planned Unit Development (Commercial)	PUD(C)	Planned Unit Development (Commercial)
*PUD(I)	Planned Unit Development (Industrial)	PUD(I)	Planned Unit Development (Industrial)

*Planned Unit Development (PUD) designations are special overlay map designations intended to promote voluntary public/private partnerships for managing and coordinating objectives which promote innovative development concepts, design amenities, and measures for protecting natural features of the land.
(Ord. No. 94-4, § 1, 4-3-95)

Section 1-2.3. Official Zoning Map and district boundaries.

A. *Map Adoption.* The boundaries of each zoning district are on the Official Zoning Map for The Town of Malabar, Florida. The boundaries of the districts, together with all explanatory statements thereon, are hereby adopted and incorporated as a part of this Code.

B. *Map Amendment.* No changes or amendments to the Official Zoning Map shall be made except in compliance and conformity with all procedures set forth in this Code. If changes or amendments are made to district boundaries or other subject matter portrayed on the Official Zoning Map, such changes or amendments shall be made promptly after official adoption of the change or amendment as provided for herein. The Town Clerk shall be responsible for assuring that the physical updating and amendment of the Official Zoning Map is carried out in a timely manner.

The new Official Zoning Map may correct drafting and clerical errors or omissions in the prior Official Zoning Map, but no such corrections shall have the effect of amending the Code or any subsequent amendment thereto without duly noticed public hearings as provided herein.

When any Official Zoning Map is replaced, the prior Map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption and amendment.

Section 1-2.4. Interpretation of district boundaries.

When uncertainty exists as to boundaries of the districts on the Official Zoning Map, the following rules shall apply:

- (1) *Center Lines.* Boundaries indicated as approximately following the center lines of streets, highways and alleys shall be construed as following such lines.
- (2) *Lot, Section and Tract Lines.* Boundaries indicated as approximately following platted lot lines, section or tract lines shall be construed as following such lines.

- (3) *Political Boundaries.* Boundaries indicated as approximately following political boundaries shall be construed as following such political boundaries.
- (4) *Railroad Lines.* Boundaries indicated as following railroad lines shall be construed to be following the centerline of the railroad right-of-way.
- (5) *Shorelines.* Boundaries indicated as following shorelines shall be construed as following such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline, boundaries indicated as approximately following the centerline of streams, rivers, canals, or other bodies of water shall be construed to follow such centerlines.
- (6) *Parallel Lines.* Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- (7) *Bisecting Lines.* Where district boundary lines approximately bisect blocks, the boundaries are the median line of such blocks, between the center line of boundary streets.
- (8) *Uncertainties.* Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in case any other uncertainty exists, the Town Council shall interpret the intent of the Official Zoning Map as to the location of district boundaries.
- (9) *Street Abandonments.* Where a public road, street or alley is officially vacated or abandoned, the regulations applicable to the property to which it reverted shall apply to such vacated or abandoned road, street, or alley.
- (10) *Excluded Areas.* Where parcels of land and water areas have been inadvertently excluded from a zoning district classification in any manner, said parcels shall be classified in conformance with the most restrictive zoning district which abuts the excluded area until or unless changed pursuant to amendment procedures contained herein.

Section 1-2.5. Compliance with district regulations.

No building or structure shall be erected, reconstructed or structurally altered, nor shall any building, land or water be used for any purpose other than a use permitted in the district in which such building, land or water is located. No building or land shall be used so as to produce greater heights, smaller yards, less unoccupied area, or higher density or intensity than is prescribed for such building or land within the district regulations in which the building or land is located. No lot, which is now or which may be hereafter built upon shall be so reduced in area so that the yards and open spaces will be smaller than prescribed by this Code.

Section 1-2.6. Land use classifications.

The purpose of these provisions is to classify uses into specially defined types on the basis of common functional characteristics and land use compatibility. These provisions apply throughout the zoning regulations.

All land use activities are classified into the following activity types.

A. *Residential Activities.*

1. Single Family Dwellings.
2. Two Family Dwellings.
3. Multi Family Dwellings.
4. Mobile Homes.
5. Accessory Residential Activities.

B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.
5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.
6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.
7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

<i>Type of Golf Course</i>	<i>Minimum Acres Required</i>
Regulation Course	120 acres
Executive Course	40 acres
Par 3 Course	35 acres

Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.
10. *Public Health Facilities.* The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities" means any establishment that:

- (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
- (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following

Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

"Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare).

Part II Nursing Homes

"Nursing Home Facility" means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

Part V Intermediate, Special Services, and Transitional Living Facilities

Intermediate care facilities; intent-The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state government share the cost of providing care, is an appropriate option to explore in the continuum of care.

11. *Public Parks and Recreation Areas.* Public parks and recreation land and facilities developed for use by the general public.
12. *Public and Private Utilities (including Essential Government Services).* Use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution; waste-water collection and disposal; communication; and similar services and facilities.
13. *Social Welfare Facilities.* The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430. Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.
 - A. *Community Residential Homes*
 "Community Residential Home" means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with

Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency of Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Refer to Chapters 408 and 419.

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. Assisted Care Communities

Part I Assisted Living Facilities

"Assisted Living Facility (ALF)" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. Refer to Chapter 408 and 429.

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residents/beds

Level 2 is between 6 and 15 residents/beds

Level 3 is 16 residents/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residents/bed density. For example, RM-4 is allowed 4 units per acre multiplied by the 3 ALF Factor is equal to 12 residents/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 ALF Factor is equal to 18 residents/beds per acre.

Part II Adult Family-Care Homes

"Adult Family-Care Homes" means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. Refer to Chapters 408 and 429.

Part III Adult Day Care Centers

"Adult Day Care Centers" or center means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services. Refer to Chapters 408 and 429.

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

services. The procedures and criteria for review of other similar limited commercial activities shall be as cited in the following section, § 1-2.6 [1-2.7].

9. *Waterfront Marine Related Activities.* The following marine related land uses are included in this land use classification: commercial wet or dry storage and boat sales and rental; Marine power sales and service; and bait and tackle shop; and excluding marine salvage and boat yards.
10. *Medical Services.* The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical laboratory testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging. This land use classification includes pharmacies when developed as an accessory use within a medical service facility.
11. *Parking Lots and Facilities.* Governmental or private commercial building of [or] structure solely for the off-street parking or storage of operable motor vehicles.
12. *Plant Nurseries.* Retail sale of flowers, shrubs, trees, and plants as well as landscaping contractors and provision of related consultative services.
13. *Restaurants (excluding drive-ins and fast food service).* Any establishment (which is not a drive-in service establishment) where the principal business is the sale of food, desserts or beverages to the customer in a ready-to-consume state and where the design or principal method of operation includes two or more of the following:
 - (a) Customers, normally provided with an individual menu, are served generally in non-disposable containers by a restaurant employee at the same table or counter at which items are consumed.
 - (b) Ice cream parlors and other specialty restaurants having floor area exclusively within a shopping or office center and sharing common parking facilities with other businesses within the center and expressly prohibiting freestanding stores having characteristics of a drive-in restaurant.
 - (c) A cafeteria or cafeteria type operation where foods, desserts or beverages generally are served in non-disposable containers and consumed within the restaurant building.
 - (d) Customers purchase food, desserts or beverages for carryout.
14. *Restaurants (drive-ins and fast food service).* Any establishment where the principal business is the sale of foods, desserts or beverages generally contained in a ready-to-consume state and whose design, method of operation or any portion of whose business includes one or both of the following:
 - (a) The restaurants are self-service. Food is generally served in disposable containers and customers generally do the busing and clean-up for themselves or foods, desserts or beverages are served directly to the consumer in a motor vehicle.

- (b) The consumption of foods, desserts or beverages within a motor vehicle parked upon the premises, or consumption at other facilities on the premises is allowed, encouraged or permitted.
15. *Service Stations, Including Gasoline Sales.* Establishments for the dispensing of motor fuels and related projects at retail and having pumps, underground storage tanks and other facilities for such activity and which may include the retail sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles within enclosed service bays or stalls. For the purpose of this Code, these services shall not include body repair and painting; frame straightening, or tire recapping or vulcanizing.
 16. *Trades and Skilled Services.* Shops providing services requiring skilled labor or craftsmanship for repair including household items, office equipment, appliances, printing, blue printing, carpet sales and service, feed stores, lawn and maintenance services, newspaper printing, radio and television broadcasting, restaurant equipment and supply sales and services. All such activities shall not include outside storage.
 17. *Vehicular Service and Maintenance.* Vehicular establishments providing sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles. These services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.
 18. *Vehicular Sales and Related Services.* The retail or wholesale sale or rental of motor vehicles and related equipment, with incidental services and maintenance.
 19. *Veterinary Medical Services.* The provision of animal medical care and treatment by a Florida licensed veterinarian.
 20. *Wholesale Trades and Services.* The display, limited storage and sale of goods to other firms for resale, excluding outside storage, except as otherwise provided in this chapter [Code].
- D. *Industrial Activities.* The following land uses are included in the industrial land use classification where the same are conducted within a totally enclosed building except as specifically provided herein:
1. *Kennels* for boarding of domestic dogs and cats and veterinary medical operations.
 2. *Manufacturing Activities* including:
 - Manufacturing or processing of electronic components, optical instruments, electrical appliances, or other precision components;
 - Assembly and distribution of goods;

- Maintenance, repair, reconditioning, and cleaning;
- Printing;
- General packaging and processing activities;
- Research and development technology;
- Commercial laundries;
- Machine shops;
- Agricultural research laboratories;
- Vocational and trade schools;
- Sale of building material.

Other similar manufacturing activities conducted in a fully enclosed building which are approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses shall exclude metal fabrication, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

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 uses shall be as cited in the following Section 1-2.6 [1-2.7].

3. *Manufacturing Service Establishments*, such as heavy machinery repair and service; heavy machinery or heavy equipment rental or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.
 4. *Vehicle and Other Mechanical Repairs and Services*, including those not permitted as commercial zoning activities including paint and body shops.
 5. *Warehousing, Storage and Distribution Activities*, including building contract construction, building supplies, furniture stores with major warehousing, and trade services with extensive warehousing, trucking support facilities, or requirement of outside storage.
- E. *Agricultural Activities*. The following land uses are included in the agricultural land use classification. No such activity shall permit commercial retail operations, except as otherwise expressly provided in the definition and/or the agricultural district provisions cited within this Code.
1. *Commercial Stables*, including a stable operated for profit on a minimum five (5) acre site of not more than one (1) horse for the first one (1) acre and one (1) additional horse for each additional one-half (1/2) acre. Also reference conditional use criteria.

2. *Noncommercial Agricultural Activities*, including home gardens, noncommercial greenhouses, and keeping of agricultural animals. Keeping of agricultural animals shall be limited to one (1) agricultural animal for the first one (1) acre and one (1) additional animal for each additional one-half (1/2) acre.

3. *Wholesale Agricultural Activities*, including harvested agricultural crops, fish and aquatic farms, grazing of cattle, and wholesale trade of products grown or raised on premises. These agricultural operations shall be restricted to sites with a minimum of five (5) acres.

All animals permitted pursuant to this subsection shall be maintained within a controlled area bounded by a fence or other barrier approved by the Town.

(Ord. No. 12-48, § 1, 1-23-12; Ord. No. 14-01, § 1, 2-3-14)

Section 1-2.7. Procedures and criteria for review of "similar" uses.

In the classification of uses stipulated in § 1-2.5 [1-2.6], wherever reference is made to the phrase "other similar" uses approved by Town Council after receipt of recommendations from the Planning and Zoning Board, the Planning and Zoning Board and the Town Council shall apply the following procedures and criteria in the review of such uses:

- (a) The criteria for review shall be the same general criteria used in review of conditional uses.
- (b) Procedures for review shall be the same procedures used in review of a conditional use.
- (c) In addition, the Town Council shall determine: (1) whether the use is similar in character to other uses cited in the specific land use classification; and (2) whether the impacts generated by the use are similar in character to the impact generated by other uses cited in the specific land use classification.

[The next page is 113]

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;

DISTRICT PROVISIONS

§ 1-3.1

- 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.

N. *PUD "Planned Unit Development."* The PUD district is established to implement comprehensive plan policies for managing planned unit development. The comprehensive plan incorporates policies encouraging innovative development concepts, including mixed use development. The planned unit development is intended to provide a voluntary framework for coordinating objectives of developers which may require departures from established public policy. The planned unit development district provides 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 land development code incorporates detailed regulations, standards, and procedures for implementing the planned unit development concept.

The planned unit development district 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. Developers who voluntarily participate in the process shall bind themselves as well as their successors in title to the stipulations within the development order approving the planned unit development district.

O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to six (6) units per acre. Commercial activities shall generally cater to the following markets:

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally 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 disposal containers and/or providing drive-in facilities.

Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.
(Ord. No. 94-4, § 2, 4-3-95; Ord. No. 07-02, §§ 1-4, 4-2-07; Ord. No. 14-01, § 2, 2-3-14)

Section 1-3.2. Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article X.

Cross reference—Alcoholic beverages, ch. 4.

DISTRICT PROVISIONS

§ 1-3.2

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
RESIDENTIAL USES														
Duplex					P	P					P			
Mobile Homes					P	P					P			
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P					P			
COMMUNITY FACILITIES														
Administrative Services (Public and Not-for-Profit)								P	P	P	P			P
Child Care Facilities								C			C			C
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A ¹	P	P	P			P
Clubs and Lodges (Not-for-Profit)									P	P	P			P
Cultural or Civic Activities								C, A ¹						C
Educational Institutions														
Golf Course Facilities	C							C						C
Hospital and other Licensed Facilities														
Nursing Homes and Related Health Care Facilities					C	C		C	C	C	C	C	C	C
Protective Services					C	C		C	C	C	C	C	C	C
Public Parks and Recreation	C	C	C	C	C	C		C	C	C	C	C	C	C
Public and Private Utilities	C	C	C	C	C	C		C	C	C	C	C	C	C
COMMUNITY RESIDENTIAL														
HOME														
Level 1 (1 to 6 residents/beds)					C	C								C
Level 2 (7 to 14 residents/beds)					C	C								
ASSISTED CARE COMMUNITIES														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C ⁴	C ⁴								C
Level 2 (6 to 15 residents/beds)					C ⁴	C ⁴								
Level 3 (16 or more residents/beds)					C ⁴	C ⁴								
II Adult Family-Care Homes (1 to 5 residents/beds)					C	C		C						C
III Adult Day Care Centers					C ³	C								C
AGRICULTURAL ACTIVITIES														

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									C				
COMMERCIAL ACTIVITIES														
Adult Activities										C				
Bars and Lounges											Pl			
Bed and Breakfast														
Business and Professional Offices								P	P	P	P	P	P	
Enclosed Commercial Amusement														
Arcade Amusement Center/										C ²				
Electronic Gaming Establishment									P	P	C			
Funeral Homes										P				
General Retail Sales and Services										P	P			
Hotels and Motels										P	P			
Limited Commercial Activities										C [#]				
Marine Commercial Activities								P	P	P	P	P		
Medical Services									C	P	P			
Medical Services								P	P	P	P			
Mini Warehouse/Storage									P	P	P			
Parking Lots and Facilities														
Retail Plant Nurseries														
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)										P	P			
Restaurants (Drive-ins)													C*	
Restaurants (Drive-ins)										C*			P	
Service Station, Including Gasoline Sales										C*			P	
Trades and Skilled Services								P	P	P	C		P	
Veterinary Medical Services										C*			P	
Veterinary Medical Services										C*			P	
Vehicular Sales and Services										C*			P	
Vehicular Sales and Services										C*			P	
Vehicular Services and Maintenance										C*			P	
Wholesale Trades and Services													C	
INDUSTRIAL ACTIVITIES														
Wholesale Trades and Services													P	
Kennels														
Manufacturing Activities														

DISTRICT PROVISIONS

§ 1-3.2

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)

Section 1-3.3. Size and dimension criteria.

A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

DISTRICT PROVISIONS

§ 1-3.3

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (1)		Maximum Height (ft./stories)	Maximum Lotting Area (sq. ft.)	Setback (ft./ft ²)			Maximum Impervious Surface Percentage (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density Units per Acre with Central Water and Wastewater			
	Size (sq. ft.)	Width (ft.)			Depth (ft.)	Front	Rear					Side (1)	Side (2)	
Rural Residential Development														
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	30	20	N/A	80	0.66
Traditional Single Family Residential Development														
RS-21	21,780	120	150	35/3	1,800	35	30	15	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	15	45	N/A	55	2.00
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	10	50	N/A	50	4.00
Multiple Family Residential Development														
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	40	50	n/a	50	6
Mixed Use Development														
R/LC	20,000	100	150	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	10	50	n/a	50	4
Mobile Home Residential Development														
H-MH	Site: 5 Acres Lot: 7000				Commercial Min. Area: 900 Max. Area: 4,000	50	25	10 ⁴	20	20	65	n/a	35	6
Office Development														
						10	8	8	10	10	50	N/A	50	6.00

Zoning District	Minimum Lot (1)			Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.) Minimum Floor Area: 1000	Setback (ft./2)				Maximum Impervious Surface Rtn. (in %)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (1)	Side (2)				
O1	20,000	100	150	35/3		35/60	25	20	25	65	20	35	N/A
Commercial Development													
CL	20,000	100	150	35/3	Minimum Floor Area: 900 Max. Area: 4,000	50	25	10' ⁴ 15' ³	20	65	0.20	35	N/A
CG	20,000	100	150	35/3	Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit	50	25	20' ¹ 15' ¹	30	65	0.20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 ⁶	25 100 ⁶	20 100 ⁶	30 100 ⁶	70	0.42	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	60	0.20 0.10 ⁶	40	N/A
Coastal Preservation													
CP	No Size or Dimension Standards Adopted												

¹Minimum size sites and lots include one-half of adjacent public right-of-way.
²Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(E) whichever is most restrictive.
³Setback where rear lot line abuts an alley.
⁴Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such case the more restrictive abutting setback shall apply.
⁵Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
⁶Recreation activities maximum FAR shall be .10.

B. *Area requirements for uses not served by central water and wastewater services.* All proposed development within areas not served by central water and wastewater services shall comply with the septic permitting requirements of Brevard County.

C. *Impervious Surface Requirements (ISR) for All Uses.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface.

1. *Calculation of ISR.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Water bodies are impervious but shall not be included as such in the ISR calculation.

Cluster development or other site design alternatives may result in individual lots exceeding the ISR, while other lots may be devoted entirely to open space. The Town may require, as a condition of approval, deed restrictions or covenants which guarantee the maintenance of such open space in perpetuity. The ISR requirement shall not be bypassed or reduced. However, the intent is to allow maximum flexibility through calculating ISR on the gross site, and not on a lot-by-lot basis.

2. *Use of Porous Material.* Porous concrete, asphalt, porous turf block, or similar materials may be used subject to approval of the Town Engineer.
3. *Compliance with ISR Stipulated in Table 1-3.3(A).* All proposed development shall comply with the standards given in the table of impervious surface ratios in Table 1-3.3(A).

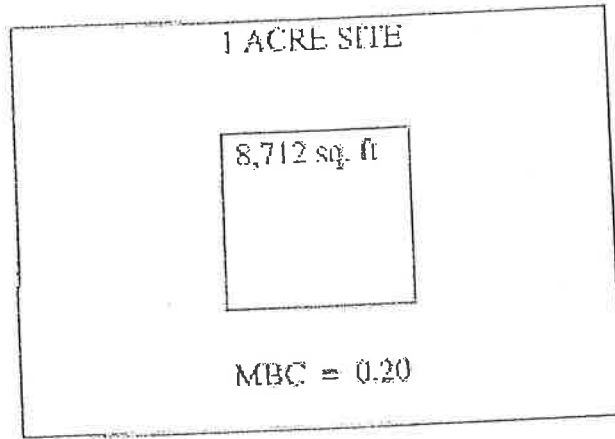
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, and other required project amenities.

D. *Maximum Building Coverage.* The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

1. *Calculation of MBC.* The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.

All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located.

FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

E. *Building Setbacks.* Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

	<i>Building Setback (feet)</i>
<i>Transportation Facility</i>	
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65

Minor Collector Streets (80 feet R/W)

Atz Blvd.

Hall Road

Old Mission Road

Benjamin (Reese) Road

F. *Minimum Distance Between Principal Buildings.* The minimum distance between principal buildings shall be twenty (20) feet. The distance shall be measured at the narrowest space between buildings and shall not include roof overhang.

(Ord. No. 92-8, § 1(B), (D), (J), 8-18-92; Ord. No. 94-4, § 4, 4-3-95; Ord. No. 96-1, § 1, 3-4-96; Ord. No. 97-5, § 1, 3-17-97; Ord. No. 02-03, § 1, 8-5-02; Ord. No. 03-02, § 1, 2-24-03; Ord. No. 04-08, §§ 1, 2, 7-12-04; Ord. No. 06-05, § 1, 2-6-06; Ord. No. 06-16, §§ 1, 2, 10-2-06)

[The next page is 175]

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: March 8, 2017

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

SUBJECT: SR 514 (Malabar Road) Widening Project – Florida Today Article 3/1/2017

BACKGROUND/HISTORY:

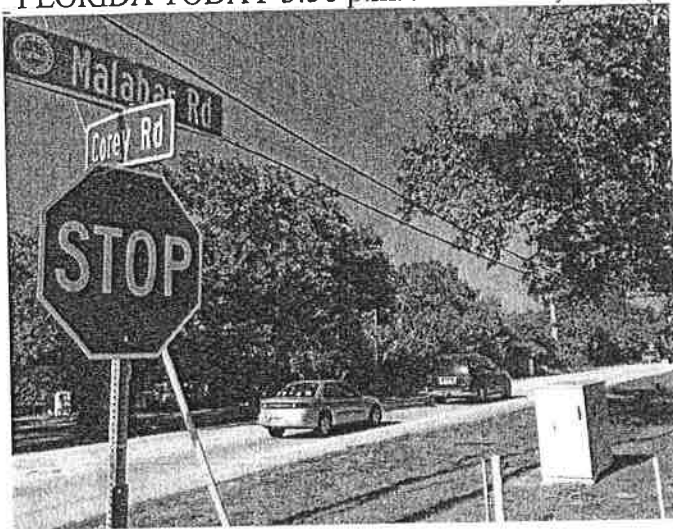
The Chair, Liz Ritter asked for this Item to be included on this Agenda for discussion. Please see attached, Florida Today Newspaper Article discussing the widening of SR-514 (Malabar Road).

ATTACHMENTS:

- Florida Today Newspaper Article dated 3/1/2017

ACTION OPTIONS: Discussion/Action

FLORIDA TODAY 3:56 p.m. ET Feb. 27, 2017 (POSTED IN FLA TODAY 3/1/2017)



Cars drive east on Malabar Road past the Corey Road intersection. (Photo: RICK NEALE/FLORIDA TODAY) Buy Photo

2 CONNECT [TWEET](#) [LINKED IN](#) 1 COMMENT [EMAIL](#) [MORE](#)

MALABAR — Town officials are lobbying political leaders across Florida to hurry up and widen the eastern end Malabar Road — a project that has generated discussion for decades.

"This has been going on since 1976. It's 41 years in the making. And nothing's happened. It's been 41 years, and it's still the same road," Malabar Town Administrator Doug Hoyt said.

"They've had three or four different plans. But generally, the consensus of these meetings is, 'Well, we're going to have to go back and do some more studies.' I'm a little baffled about this," Hoyt said.

"(State Road) 514 is one of the few east-west roads in Brevard County that isn't four-laned, that doesn't have stoplights, and that doesn't have safety measures that really are required here in this area," he said.

Last week, Hoyt sent a 37-page packet of Malabar Road information to Gov. Rick Scott, Florida Department of Transportation administrators, state legislators, city leaders in Palm Bay and Grant-Valkaria, Brevard Public Schools Superintendent Desmond Blackburn and other officials.

Town data shows Malabar Road crashes increased from 12 in 2012 to 48 last year. During that five-year span, the town reported a total of 73 non-injury crashes, 38 injury crashes, and five fatalities on Malabar Road.

[Malabar officials to FDOT: Improve Malabar Road ASAP](#)

Hoyt said Malabar officials support:

- Installation of a third, middle turning lane from Palm Bay Hospital east to U.S. 1.
- Stoplights and turn lanes at the intersections of Weber and Corey roads.
- Lowering the speed limit from 55 mph to 45 mph from Babcock Street to U.S. 1.
- An emergency stop signal at the Malabar Fire Department to help speed up response times.
- A paved multi-use trail for walkers and bicyclists along the north side of Malabar Road.

In the meantime, FDOT engineers continue studying a future project that could widen Malabar Road from two to four lanes between Babcock Street and U.S. 1.

A development-environmental study started in 2013, was paused in 2015, and restarted in 2016, said Steve Olson, FDOT spokesman.

"A unique challenge is fitting a four-lane roadway between locations with a wildlife sanctuary and a public park on opposite sides of the roadway, while also being mindful of impacts to private landowners. A design alternative that takes all factors into consideration will be presented at a public hearing during the second half of this year," Olson said.

FDOT anticipates completing the development-environmental study in March 2018, and design work will begin in April 2020, Olson said. No construction date has been scheduled.

Malabar Road eyed for \$50 million in widening, upgrades

On a smaller scale, FDOT is working on a \$1.8 million Malabar Road project designed to upgrade the Weber and Corey road intersections. Plans call for turn lanes, milling and resurfacing, guardrail upgrades, drainage improvements, signage and pavement marking.

Construction is funded for 2019, Olson said.

"Both projects are following specific schedules — and specific steps — that are part of the process, to bring a project from concept to completion," Olson said.

Hoyt's 37-page packet included Malabar Town Hall historical research on widening Malabar Road:

1976: In Malabar's comprehensive land-use plan, town officials stated that Malabar Road should be enlarged to four lanes after 1995.

1986: FDOT sent Malabar officials a letter stating that Malabar Road would be widened east of I-95, with land acquisitions starting in 1987.

1989: The Greater South Brevard Area Chamber of Commerce endorsed the widening of Malabar Road as soon as possible, contending that traffic congestion impeded commercial interests.

1989: A FDOT engineering report determined that Malabar Road warranted widening east of Babcock Street soon after 1993.

2014: A FDOT newsletter stated that intersection safety upgrades at Corey and Weber roads were funded for design, right-of-way acquisition and construction.

"Every year that improvements to SR-514 are delayed continues to put drivers at risk and the cost of these improvements continues to escalate. Another 'study' is not required, in the writer's opinion. The State needs to move ahead NOW with the long promised upgrades and safety to this road through our Town," Hoyt wrote in his presentation.

In a letter to Malabar residents posted Monday on the Town Hall website, Hoyt estimated that Malabar residents have bought at least 46 million gallons of gasoline and paid at least \$9 million in gas taxes since 1976.

FDOT engineers discussed the Corey-Weber intersection project during an open house last July at Palm Bay Hospital.

Contact Neale at 321-242-3638, rneale@floridatoday.com or follow @RickNeale1 on

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: March 8, 2017

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

SUBJECT: Draft Moratorium Ordinance on Medical Marijuana prepared by Town Attorney Bohne

BACKGROUND/HISTORY:

Please see attached *Draft* Moratorium Ordinance that was emailed to all PZ Members (in word format), this was prepared by the Town Attorney Bohne.

This will require future action to Council recommending approval for this Ordinance, as presented or with any suggestions or revisions from this PZ Board.

ATTACHMENTS:

- *Draft* Moratorium Ordinance on Medical Marijuana prepared by Town Attorney Bohne

ACTION OPTIONS: Discussion/Action

ORDINANCE 2017-02

AN ORDINANCE OF THE TOWN OF MALABAR RELATING TO ZONING AND LAND USE; AMENDING ARTICLE III DISTRICT PROVISIONS OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING TABLE 1-3.2; PROVIDING FOR MEDICAL MARIJUANA TREATMENT CENTER IN THE COMMERCIAL ACTIVITIES PORTION OF SAID TABLE; PROVIDING MEDICAL MARIJUANA TREATMENT CENTER AS A CONDITIONAL USE IN THE COMMERCIAL LIMITED ZONING CATEGORY; AMENDING ARTICLE VI OF THE LAND DEVELOPMENT CODE OF THE TOWN; CREATING A NEW SUBSECTION D, "ADDITIONAL CONDITIONAL USE CRITERIA FOR MEDICAL MARIJUANA TREATMENT CENTER" TO SECTION 1-6.1; SETTING FORTH ADDITIONAL REQUIREMENTS AND CRITERIA FOR MEDICAL MARIJUANA TREATMENT CENTERS; AMENDING TABLE 1-6.1 (B) CONDITIONAL LAND USE REQUIREMENTS; PROVIDING FOR MEDICAL MARIJUANA TREATMENT CENTERS; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the Florida Right to Medical Marijuana Initiative was on the November 8, 2016 ballot as Amendment 2 under the title "Use of Marijuana for Certain Medical Conditions," and, it passed and become Section 29 to Article X of the Florida Constitution; and,

WHEREAS, Florida Statute sect. 381.986 as well as passage of Amendment 2 legalized the medical use of marijuana, allows for the creation of medical marijuana treatment centers, and allows for licensed caregivers to dispense medical marijuana; and,

WHEREAS, the Town of Malabar regulates the use of land within the Town of Malabar in accordance with the Future Land Use Map designations in the Comprehensive Plan and the Land Development Regulations; and,

WHEREAS, the Town Council has determined that it is in the best interests of the citizens of the Town to adopt zoning regulating the location of Medical Marijuana Treatment Center; and'

WHEREAS, The Town Council finds that protecting patients, caregivers of patients, physicians, persons lawfully engaged in activities associated the operation of a medical marijuana dispensary, property and the general health, safety and welfare of the Town is of a paramount concern; and

WHEREAS, the Town Council finds that protecting the public from criminal activity and to ensure the highest degree of conduct of owners, patients and business invitees of medical marijuana TREATMENT CENTER will promote the general welfare; and,

WHEREAS, the Town council has determined that it is in the best interest of the public to set siting requirements and other restrictions for medical marijuana TREATMENT CENTER; and,

NOW, THEREFORE, BE IT ORDAINED BY THE Town of Malabar of Brevard County, Florida, as follows:

SECTION 1. Table 1-3.2 is hereby amended to include Medical Marijuana Treatment Centers in the "Commercial Activities" section as a conditional use in "CL" zoning district to read as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
COMMERCIAL ACTIVITIES														
Medical Marijuana Treatment Centers									C ⁵					

5. See criteria in Article VI, Section 1-6.1 D

SECTION 2. Article VI, Section 1-6.1 is amended by adding a new subsection "D" to read as follows:

"D Medical Marijuana Treatment Center. Medical Marijuana Treatment Center, with a minimum 1,500 square foot facility, shall be allowed as a Conditional Use in the Commercial Limited (CL) zoning district. Medical Marijuana Treatment Center shall be defined as any business which has been approved by the State of Florida under chapter 381 of the Florida Statute and/or the Florida Administrative Code and Article X, Section 29 of the Florida Constitution. All activities of Medical Marijuana Treatment Center as authorized by this code shall occur wholly within the structure, or in the case of a multi-unit structure such unit upon which such medical marijuana facility is located. When considering an application for a medical marijuana treatment center, the planning and zoning board and the town council shall consider the criteria below. The town council may impose additional reasonable conditions and safe guards not inconsistent with Section 29 to Article X of the Florida Constitution as deemed necessary.

1. Criteria to be considered concerning an application for a medical marijuana dispensary:

a. *Controlled substance.* The on-site sale, provision, or dispensing of medical marijuana is prohibited except as specifically authorized by applicable federal or state law;

b. *Adequate facilities.* Medical marijuana Treatment Center shall provide adequate seating for its patients and business invitees. The medical marijuana treatment center shall not direct or encourage any patient or business invitee to stand, sit (including in a parked vehicle), or gather or loiter outside of the building where the dispensary is located and operates, including, but not limited to, sidewalks, parking areas, right-of ways, or neighboring properties for any period of time longer than that is reasonably required to arrive and depart. The medical marijuana treatment center shall post conspicuous "No Loitering" signs on all sides of that portion of a building occupied by the medical marijuana dispensary.

- c. Queuing or stacking of motor vehicles. The medical marijuana treatment center shall ensure that there is no queuing or stacking of motor vehicles in any right-of-way.
- d. Outside display. There shall be no outside display of any products, wares or merchandise.
- e. Alcoholic beverages. There shall be no sale, service or consumption of alcoholic beverages on the premises or in any parking area, sidewalk, or right-of-way.
- f. Separation distance. A medical marijuana treatment center shall not be located within twenty five hundred (2,500) feet of any pharmacy, school (as defined in section 1002.01 or 1003.01, Florida Statutes), medical office, day care center, day care home, adult living facility or similar type of facility, playground, religious institution, public park, another medical marijuana treatment center, any zoning permitting residential structures, or residential structure. All distance requirements shall be measured by drawing a straight line from the nearest property line of the premises upon which a medical marijuana dispensary is located to the nearest property line of the preexisting protected use.
- g. Hours of operation. Medical marijuana treatment centers shall only operate between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 8:00 a.m. through 12:00 p.m. on Saturday. Medical marijuana treatment center shall not operate on Sunday.
- h. Other Activities. Other than the cultivation, processing and dispensing of medical marijuana permitted herein no medical marijuana treatment center shall sell, market, dispense, provide, exchange, or otherwise vend any other services; product; or drug paraphernalia as defined by federal or state law.
- i. Compliance with other laws. In addition to the laws and ordinances of the Town of Malabar all medical marijuana treatment centers shall comply with all federal and state laws.
- j. Security Measures. Each medical marijuana treatment center shall provide the following, at the owner's expense:
- i. Drive through facilities are prohibited.
 - ii. A silent alarm that notifies the Brevard County Sheriff's Office or a private security agency that a break in or robbery is taking place
 - iii. Full time private armed security personnel from a licensed security firm during all hours the facility personnel are on the premises.
 - iv. A security camera capable of recording and retrieving an image. Such security camera system shall be operational at all times during and after business hours. The security cameras shall be located at every ingress and egress site of the facility, including doors and windows, as well as on the interior where any monetary transaction shall occur and shall also be located at the ingress and egress site where the medical marijuana is grown and/or stored;

v. Install a secure safety enclosure of transparent polycarbonate or other material with an indirect pass through or window to transact business that meets the following standards:

1. American Society for Testing and Materials Standard D3935 (classification PC110 B 3 0800700) and that has a thickness of at least 0.375 inches and has an impact strength of at least 200 foot pounds; or

2. Underwriters Laboratory Standard UL 752 for medium power small arms (level one), Bullet Resisting Equipment;

vi. A drop safe or cash management device that provides minimum access to the facility's cash receipts

vii. A lighted parking lot illuminated at an intensity of at least 2 foot-candles per square foot at 18 inches above the surface.

viii. Window signage must allow clear and unobstructed view from the outside of the building and in normal line of sight of the cash register and sales transaction area.

ix. The facility shall not have window tinting that reduces exterior or interior view in a normal line of sight.

x. Height markers at the entrance and exit of the facility that displays height measures.

k. *Fire Suppression.* The facility shall have installed, at the owners expense, a fire sprinkler system designed by a licensed fire suppression firm registered in the State of Florida, approved by the Fire Marshall, permitted by the Town Building Department, and installed by a licensed fire sprinkler system installer.

l. *Parking.* The facility shall provide 1 parking spaces per 200 square feet of gross floor area. In additional, any parking spaces designated for or used by a medical marijuana treatment center shall meet the requirements of subsection 1.f. above.

m. *Public Use or Consumption Prohibited.* The use, ingestion, consumption or smoking of medical marijuana or non-medical marijuana on any public property or property open to the public is prohibited. The term "public property or property open to the public" means, but is not limited to, any property owned, or controlled by any governmental body, including streets, right-of-ways, easements, parks, recreation area, any quasi-public area including stores, parking lots, malls, business establishments, shopping centers, private recreation area, common property of any community association; and any other area which is visible from any public property or property open to the public, except a private residence.

Any medical marijuana treatment center must, at all times when such establishment is open to the public or is selling marijuana or marijuana-based products, have a sign on the premises located where it can be readily seen and read by all customers of the marijuana dispensary which is at least six by eight and one-half inches (6" x 8½") in size and with seven-sixteenth inch minimum lettering and contains the following information:

"IT IS UNLAWFUL TO SMOKE, INGEST, OR CONSUME MARIJUANA INSIDE, OR IN THE PARKING LOT, OF THIS ESTABLISHMENT. MALABAR TOWN CODE SEC. 1-6.1 D. 1.m.

It is unlawful for the owner or operator of any marijuana dispensary to fail to comply with this section or for any person to sell or dispense marijuana in any establishment which is not in compliance with this section. The requirements of this section apply to all medical marijuana treatment centers.

n. *Dispensing by a Qualified Physician.* Any physician qualified under Section 381.986 Florida Statutes, the Compassionate Medical Cannabis Act of 2014 and/or the Florida Administrative Code and Article X, Section 29 of the Florida Constitution to place an order for marijuana may dispense such marijuana to a qualified patient, as defined in Section 381.986 (1)(d), from the physician's medical office. The medical office must be located within a zoning classification permits medical offices. Such physician shall not cultivate or process medical marijuana from the medical office. Nothing herein is intended to authorize the establishment of a Medical Marijuana Treatment Center as a conditional use in a zoning district other than IND. Furthermore, nothing herein is intended to permit any person to dispense marijuana in violation of either state or federal law.

o. *Mobile Medical Marijuana Treatment Center.* No Mobile Medical Marijuana Treatment Centers are permitted. In the Town. For purposes herein a Mobile Medical Marijuana Treatment Center is any legal entity, clinic, cooperative, club, business or group which transports or delivers, or arranges the transportation or delivery, of marijuana to any person

2. Cultivation. The term Cultivation shall mean the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof. FS 381.986 (2014) provides for a definition of a dispensing organization and such definition permits a dispensing organization to cultivate and process medical marijuana. Such dispensing organizations must meet state law criteria in order to be an approved dispensing organization. Although on site cultivation and processing of medical marijuana is prohibited under this code, in the event that it is legislatively or judicially determined that an approved dispensing organization under chapter 381 of the Florida Statutes or any administrative rule or pursuant to Article X, Section 29 of the Florida Constitution cannot be completely prevented from cultivating or processing medical marijuana as provided herein, the following shall apply:

a. Outside cultivation of medical marijuana is prohibited. Cultivation shall only be within a closed structure upon which such medical marijuana facility is located. Indoor cultivation is limited to 50 square feet of the medical marijuana facility. Cultivation may not occur in a structure which is not attached to the building upon which the medical marijuana facility is located.

b. Indoor grow lights in any structure shall not exceed an aggregate of one thousand two hundred watts and shall comply with all applicable building code regulations. Gas products (including, without limitation, CO2, butane, propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.

c. Cultivation shall not take place in any area of the medical marijuana facility

which is accessible by the general public. Such areas of cultivation must be restricted to authorized personnel, eighteen years of age or older, of the medical marijuana facility. Such area of cultivation shall be secured and locked at all times when not occupied by authorized personnel of the medical marijuana facility.

d. Such area of cultivation must have a ventilation system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with all applicable building code regulations, including obtaining all required permits and approvals. The ventilation system must be approved by a Florida Licensed Engineer and a Florida Licensed Heating and Ventilation Contractor at the applicant's expense, and installed prior to commencing cultivation within the fully-enclosed and secure structure.

3. Savings clause. In the event that any part of this section shall be preempted by federal or state law those provisions preempted shall be deemed to be invalid and the remaining provisions not preempted shall remain in full force and effect. "

SECTION 3. Table 1-6.1 (B) is amended by adding Medical Marijuana Treatment Centers to read as follows:

"Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/ Nonresidential District (feet)	Perimeter Screening Residential District/ Nonresidential District	Curb Cut Controls
<u>Medical Marijuana Treatment Centers</u>	<u>N/A</u>	<u>N/A</u>	<u>Paved Locations only permitted on U.S. Highway 1 and Babcock Street</u>	<u>(11)</u>	<u>(11)</u>	<u>Type A, only if the facility is located in a single building and not part of a multi-unit or building structure</u>	<u>(7)</u>

(11) Reference to Town of Malabar Land Development Code Section 1-6.1 D."

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7. Effective Date. This ordinance shall take effect upon adoption.

SECTION 8. The foregoing Ordinance was moved for adoption by Council Member _____, The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

- Council Member Grant Ball _____
- Council Member Laura Mahoney _____
- Council Member Steve Rivet _____
- Council Member Dick Korn _____
- Council Member Richard Kohler _____

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this ___ day of _____, 2017.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

APPROVED AS TO FORM AND CONTENT

Karl W. Bohne, Jr. Town Attorney

ATTEST:

Debby K. Franklin, CMC

Town Clerk/Treasurer

(seal)